

# **Kulsum Bibi vs District Magistrate, Kanpur And Anr. on 6 November, 1952**

**Equivalent citations: AIR1953ALL178, AIR 1953 ALLAHABAD 178**

**Author: V. Bhargava**

**Bench: V. Bhargava**

## **JUDGMENT**

V. Bhargava, J.

1. This is a petition under Article 226 of the Constitution for issue of a writ of mandamus directing the District Magistrate and the Superintendent of Police of Kanpur to refrain from removing two minor children, Quraisha Begum aged about six years and Mohammad Elias aged about five years, from the lawful custody of the applicant and from taking them out of India to Pakistan. The facts of this case were given in detail in the order dated 12th September 1951, passed by a Bench of this Court and we need not repeat those facts. It was held in that order that the father of the minor children had migrated to Pakistan in March 1948, and had, therefore, lost his Indian domicile. It was further held that the children had also lost their Indian domicile when they were taken by their father to Pakistan a little later. After this finding the Bench left open for decision only one question, viz. whether the act of the father in bringing the two children back to India subsequently had the effect of reviving their original Indian domicile. Time was granted to the petitioner to file a supplementary affidavit to show the circumstances and the intention of the father at the time when he brought the children back to India. The affidavit has been filed but we find that there are no facts given in it which would give Indian domicile to the children under the provisions of Article 7 or 8 of the Constitution.

Under Article 7, the children ceased to be Indian citizens on migration in the year 1948 after the 1st day of that month. They could, however, become Indian citizens if they had returned to the territory of India under a "permit for re-settlement or permanent return issued by or under the authority of any law. There is no contention that the children returned under a permit for re-settlement or permanent return. The Indian citizenship would also have been maintained by the children had they got themselves registered under Article 8 with the Diplomatic or Consular representative of India in any foreign country. The affidavit does not disclose that there was any such registration with the High Commissioner of India in Pakistan. Consequently the children are not Indian citizens and their Indian citizenship has not been revived. In these circumstances there can be no ground for issuing directions to the District Magistrate and the Superintendent of Police, Kanpur, to refrain from

taking steps to remove the minors to the country of their domicile.

2. The petition fails and is dismissed with costs.