Ghulam Husain vs District Magistrate, Fatehpur And Anr. on 26 July, 1954

Equivalent citations: AIR1954ALL785, AIR 1954 ALLAHABAD 785

Author: V. Bhargava

Bench: V. Bhargava

JUDGMENT

Malik, C.J.

1. This is an application under Article 226 of the Constitution of India by one Ghulam Husain who has applied for a writ of habeas corpus or any other suitable writ or order so that he may be released forthwith as he has been illegally detained.

2. The undisputed facts now are that, in December, 1947, Ghulam Husain migrated to Pakistan. In June, 1950, he got a permit for permanent resettlement in India and returned to India in July 1950. On 8-7-1950, he reached his village Alamganj in the district of Fatehpur. On 9-7-1950, he deposited the permit for permanent resettlement at police station Bindki. He remained in his village for several months when, on 17-1- 1951, notice was issued by the District Magistrate of Fatehpur requiring him to leave India within fourteen days. On 22-1-1951, he made an application to the District Magistrate praying that the order of 17-1-1951, be vacated. He made a representation to the State Govt. on 10-8-1951. But tnese were of no avail and, on 29-9-1951, his movable property was taken possession of by the Deputy Custodian and was put in the charge of one Nasimul-lah, the Mukhia of that village.

In the meantime, the applicant had gone to Bombay and he says that he went there to seek employment. On 7-12-1951, he was arrested in Bombay under a warrant of arrest issued by the District Magistrate of Fatehpur under the Influx from Pakistan (Control) Act, 1949, and was brought back to Fatehpur. He was released on bail on 15-1-1952, but was arrested again on 15-2- 1952, and sent to the Jullundar Camp. He was released on bail from there also and, on 2-4-1952, he moved this application in this Court, of which notice was issued.

3. The case was heard by a learned Single Judge of this Court who referred it to a Bench as certain important questions of law might have arisen for our consideration if the permit for permanent resettlement in India had been obtained by the applicant by fraud and misrepresentation of facts. The permit was cancelled by the Chief Secretary of the U. P. Government on 21-12-1950, on the ground that the applicant had returned to India under a permit issued to him under the Delhi Agreement of 1950 but he did not fulfil the requisite condition of that agreement which was that he

should have migrated to Pakistan during the period from 1st February to 31st May, 1950. The permit was, therefore, cancelled and he was directed to leave India within 15 days from the date of the service of the order, failing which he was to be deported to Pakistan.

4. Under Article 7 of the Constitution, a person, who has, after the first day of March, 1947, migrated from the territory of India to the territory now included in Pakistan, is not to be deemed to be a citizen of India within the meaning of Articles 5 and 6 of the Constitution unless he has returned to the territory of India under a permit for resettlement or permanent return "issued by or under the authority of any law and every such person shall, for the purposes of Clause (b) of Article 6, be deemed to have migrated to the territory of India after the nineteenth day of July, 1948."

5. There can be no doubt that the applicant had migrated to Pakistan after 1-3-1947. There can also be no doubt that he had returned to the territory of India under a permit for permanent resettlement issued by the authority entiteld to issue the same. The only question is whether he managed to get this permit for permanent resettlement by fraud in which case it was claimed on behalf of the State Government that it had authority to cancel the permit and deport the applicant. So far as we can find, there is only one application for grant of a permit made by the applicant and that is dated 2-12-1949. In that application, it is mentioned that he migrated to Pakistan in December, 1947. The applicant denies that he ever made a second application for issue of a permit and, from the counter-affidavit filed on behalf of the State Government, it does not appear that he had made a second application.

There is no mention made in the courter-affidavit that the applicant had ever claimed that he was entitled to the benefit of the Delhi Agreement of 1950 as he had migrated to Pakistan between 1-2-1950, and 31-5-1950. Learned counsel on behalf of the State Government has urged that the permit would not have been issued to him unless he had asked for the issue of a permit on that ground. He has urged that the usual practice was that when an application was made for a permit on the basis of the Delhi Agreement, the person making it had to obtain a certificate from the Government of Pakistan to the effect that the person concerned had entered Pakistan between 1-2-1950, and 31-5-1950, and it was only on the basis of the information provided in this certificate issued by the Ministry of Refugees, Government of Pakistan, that the permit for permanent resettlement was normally issued to the person concerned.

It does not appear from the affidavit or from the papers in the possession of learned counsel appearing for the State that any certificate was obtained from the Government of Pakistan. If there was such a certificate issued by the Ministry of Refugees, Government of Pakistan, on the basis of which the permit was issued, that certificate, presumably, would be in the office of the High Commissioner for India in Pakistan. This case has been pending since 2-4-1952. There has, therefore, been sufficient time lor the State Government to make enquiries and place before us all the facts and circumstances to show that the permit for permanent resettlement was obtained by the applicant by fraud or misrepresentation.

6. The law on the point is well settled that fraud cannot be assumed and it must be clearly alleged & properly proved. Barring the vague assertion that unless fraud had been practised, no permit for

permanent resettlement would have been issued to the applicant, there is no proof that the permit was obtained by fraud or misrepresentation. We will not be justified in presuming that fraud was, as a matter of fact, practised on the High 'Commissioner's office. It may well be that the High Commissioner's Office made a mistake and issued a permit for permanent resettlement without fully going into the matter and verifying the fact whether the case of the applicant came or did not come under the Delhi Agreement. In the circumstances we are of the opinion that the permit could not be cancelled and the applicant cannot be deported out of India and his arrest and detention are, therefore, illegal.

7. As a result, the application is granted. The applicant is on bail. He need not surrender to his bail. The bail bonds are discharged.