Mst. Allah Bandi And Anr. vs Govt. Of Union Of India (Uoi) And Ors. on 21 December, 1953

Equivalent citations: AIR1954ALL456, AIR 1954 ALLAHABAD 456

JUDGMENT

Malik, C.J.

1. This is an application on behalf of two young women, Allah Bandi, aged 20 years, and Khatopn, aged 16 years, under Article 226 of the Constitution that they were being illegally deported to Pakistan.

2. The facts of the case now more or less admitted by counsel and established from the affidavits are that Allah Bandi was the daughter of one Abdul Latif, resident of village Gonchi in the district of Gurgaon, and Khatoon was the daughter of Shan Mohammad, brother of Abdul Latif, of the same village. These two girls were married, while minors, to two persons of Usmanpur, district Bulandshahr. Allah Bandi was married to Abdul Sattar and Khatoon was married to Abdul Jabbar.

In the year 1947 Abdul Latif and Shafi Mohammad left for Pakistan and they have settled there. At that time Allah Bandi and Khatoon were both minors, being aged 16 years and 12 years respectively. When their parents left for Pakistan they were with their parents and left with them. They were, however anxious to come back to India. In 1950 they returned to India on a permanent permit issued by the High Commissioner for India in Pakistan. This permit had, however, been obtained on the basis of a statement that they had migrated to Pakistan during the period between the 1st of February and 31-5-1950.

There had been an agreement between the two countries which provided that all those who had migrated from one country to another between those dates were entitled to come back to their original homes and re-settle there. The permanent permit, however, was cancelled on 20-12-1950, as it was found that Allah Bandi and Khatoon had migrated to Pakistan in 1947 and not between 1st February and 31-5-1950. On behalf of the State Government reliance was placed on an earlier application dated 21-9-1949.

On 21-9-1949, Biland Khan, brother-in-law of Allah Bandi and Khatoon, had made an application for a permanent permit to return to India and in the list of relations who were to accompany him he had included the names of Allah Bandi and Khatoon, his sisters-in-law. The application for a permanent permit for re-settlement was on a printed form which was to be filled in by Pakistan residents who had migrated from India since 1-3-1947. Reliance was placed on this application and it was asserted that the petitioners had left for Pakistan in 1947 and the permanent permit issued in

1950, having been obtained on a false statement of fact, was rightly cancelled.

3. Two points have been urged in this connection: whether a permanent permit issued for resettlement in India in accordance with the provisions of Article 7 of the Constitution can be cancelled by the authorities issuing the same on the ground that the permanent permit had been obtained by fraud. The other point raised is that the petitioners cannot be said to have migrated to Pakistan as both were minors and were, therefore, incapable in law of exercising their volition of leaving the country of their origin with the intention of resettling elsewhere. In other words, that a minor cannot during the continuance of his minority be deemed in law to have a mind of his own which he can exercise for himself and decide whether he will change his place of domicile and adopt another and that their husbands alone, they being married, could act as their guardian.

4. It is not necessary in this case to consider the first point as no arguments have been advanced by learned counsel in support of the proposition. Coming to the next point, it is not denied that the two petitioners were married before they left India for Pakistan. Under Section 16, Indian Succession Act (Act 39 of 1925) their domicile must be deemed to be the domicile of their husbands. As a matter of fact they were both Indian citizens by birth also. So long as the marriage subsisted they could not change their domicile at their will and during their minority the only persons who could decide such questions for them were their husbands, who were their legal guardians.

In Dicey's Conflict of Laws, 6th edition, at p. 44.

dealing with the question of change of domicile the learned author has pointed out that there are two types of persons--independent persons and dependent persons. A man of full age, or an unmarried woman of full age, is an independent parson. While a minor or a married woman is said to be a dependent person.

> "Neither of these classes has the legal capacity to make a change of domicile, and both of these classes are liable to have it changed by the act of another person, who in the case of infants is generally the father, and in the case of married women is always the husband."

5. It is admitted that the husbands are citizens of India. They were residents of Bulandshahr and they have continued to reside in Bulandshahr all along. The two girls happened to be with their parents at the time of the disturbances of 1947 and as their parents left for Pakistan, the minor girls could not be left behind and went with them.

It cannot, therefore, be said that the girls could legally change their domicile of origin and shift to Pakistan with the intention of settling there. There are certain observations in Beale's 'The Conflict of Laws', 1935 edition, Volume I, which are helpful. The relevant passage at p. 186 is as follows:

> "So important, so fundamental a thing as the family cannot be kept by the law amorphous and unorganized. In order to perform its social functions it must have a head, which determines its action. To speak precisely, the family must have a

> location, the legal domicile, and some one must determine where the domicile shall be. If it were practicable for the State to select the head of each individual family, it might choose here the husband, there the wife, and now and there, perhaps one of the children; for in actual practice the wife often, and a child not infrequently, proves the actual head of the establishment. But the law in determining general rules for domicile cannot deal with particular families; it must govern families in a, mass. The requirements of practical Government make it necessary to have one rule for all families, and the typical family is represented by the husband.
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> Though he is no longer the entire family he is still, in the eye of law, the head of the family and legally responsible for its support. Whether our view of married women's position be ultra-conservative or modern, we must accept this doctrine of the unity of the family and its necessary consequences. In normal case the husband and not the wife must choose the family dwelling place.
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> Either the husband or the wife must have the final say in the matter of where their home is to be; and so long as the husband is burdened with the responsibility of feeding and clothing the family, the wife and children, that very responsibility ought to carry with it the authority to determine the location where his toil will earn its best reward for their benefit."

6. The question what amounts to migration has also been considered in --. 'Badruzzaman v. The State', AIR 1951 All 16 (A). It has been said:

> "The expression (migration) embraces in its scope two conceptions: (1) Going from one place to another and (21 The intention to make destination a place of abode or residence in future."

In the Constitution it means the transference of allegiance from the country of departure to the country of adoption. In -- 'Shabbir Husain v. State of U. P.', AIR 1952 All 257 (B) the definition taken from the Shorter Oxford Dictionary has been quoted with approval and the learned Judge has observed as follows:

> "The first meaning contemplates, to my mind, a movement associated with transit and does not exactly contemplate merely an act of going from one place to another. I think that the second meaning, i.e., 'To move from one place of abode to another, specially to leave one's country to settle in another' is the meaning to be approximately associated with this word in Article 7 of the Constitution. The main provision of the Article therefore means that if a person has gone from the territory of India to the territory now included in Pakistan after 1-3-1947 with the intention of shifting his permanent residence from India to Pakistan he will lose all his citizenship which could have accrued to him by his coming within the terms of Article 5."

The same view has been taken by a Bench of the Patna High Court in -- 'Sayeedah Khatoon v. State of Bihar', AIR 1951 Pat 434 (C). We are, therefore, not satisfied that the two petitioners migrated to Pakistan, or could in law migrate, when they left India in 1947 with their parents.

7. We would like to mention that at our request Mr. D. P. Singh, Advocate, looked up the authorities and gave us the references quoted above and was thus of great assistance to the Court.

8. The application is, therefore, granted. The opposite parties are restrained from deporting the petitioners from their place of residence to Pakistan. We make no order as to costs.