

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT
SRINAGAR**

Reserved on: 29.07.2025

Pronounced on: 09.09.2025

CJ Court

**CM No.4643/2025
in LPA No.170/2025
CM No.4644/2025**

1. Mohd. Khalil Qazi (aged: 80 years) S/o Late Gh. Mod. Qazi
 2. Arifa Qazi (aged: 61 years) W/o Mohd. Khalil Qazi
 3. Nayeem Ahmad Qazi (aged: 37 years) S/o Mohd. Khalil Qazi
- Residents of Baha-uddin Sahib, Srinagar.

...APPELLANTS(S)

Through: - Mr. A. H. Naik, Sr. Advocate.

Vs.

1. State of Jammu & Kashmir (now Union Territory of J&K) through Commissioner/Secretary to Govt. Home Department, Civil Secretariat, Jammu/Srinagar.
2. Union of India, through Secretary to Government, Ministry of Home Affairs, New Delhi.

...RESPONDENT(S)

*Through: - Mr. Mohsin Qadiri, Sr. AAG, with Ms. Maha Majeed, Assisting Counsel-for R1
Mr. T. M. Shamsi, DSGI, with Ms. Rehana Qayoom, Advocate-for R2.*

**CORAM: HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE**

JUDGMENT

OSWAL 'J'

CM No.4643/2025

1) As per report of the Registry, there is a delay of seven days in filing this intra-court appeal against the judgment dated 09.05.2025.

2) In view of the grounds urged in the application, which is duly supported by an affidavit, coupled with the submissions made at bar, the same is allowed and the delay in filing the appeal is condoned.

LPA No.179/2025
CM No.4644/2025

1. Before we proceed ahead to consider this appeal, it is apt to mention here that the appellant No.3 was not the petitioner in the writ petition preferred by other appellants, as such, this appeal is being considered only on behalf of appellants No.1 and 2 and the expression “appellants” shall henceforth refer only to appellant No.1 and 2.

2. Shorn of piffling details, the case projected by the appellants is that they entered the territory of India on the strength of a passport issued by the authorities of Pakistan, in the month of July, 1988 on fourteen days short period visa Nos.JK-277/88 and JK-278/88 dated 14.07.1988, valid upto 03.08.1988. The appellants were also issued the Residential Permits under No.RP223/88 and RP224/88 dated 27.07.1988. The appellants, thereafter, were granted three extensions of thirty days each, which period came to expire on 02.11.1988. The appellants claim to have approached the respondent No.1 through the medium of representation dated 18.06.1989 for grant of Indian citizenship. It is also contended that the

respondent No.1 referred the matter for grant of Indian citizenship to respondent No.2. While the said representation was pending consideration, an order of deportation of the appellants came to be issued by the respondents. Being aggrieved of the action of the respondents to deport the appellants, the appellants filed a writ petition bearing OWP No.114/1990, wherein they prayed for the following reliefs:

- i. *A writ, order or direction in the nature of certiorari declaring the action of the respondents to deport the petitioners as illegal unconstitutional and invalid under law.*
- ii. *A writ, order or direction in the nature of mandamus commanding upon the respondents not to deport the petitioners from the territories of J&K (India).*

3. It was stated by the appellants that the appellants continue to hold the status of citizens of India and the permanent residents of erstwhile State of J&K, especially when they were forced to acquire the citizenship of Pakistan and the uncle of appellant No.1 and also the parents of the appellant No.2 are holding the properties in the State of J&K. It was further contended by the appellants that respondents were bound to consider their representations for grant of Indian citizenship before their deportation.

4. In the objections filed by the respondent No.1, it was stated that the appellants are neither permanent residents

nor citizens of India and they have admitted in their writ petition that they have acquired the citizenship of Pakistan. Therefore, in terms of Section 9(1) of the Citizenship Act, 1955, any citizen of India who acquires citizenship of any other country voluntarily ceases to be the citizen of India. The respondent No.1 admitted the arrival of the appellants along with their minor son, Nayeem Ahmad, on fourteen day's short period visa on 27.07.1988 on Pakistani Passports and the visa period was extended thrice till 02.11.1988 and thereafter, the appellants requested for further extension of their stay in India, but their request was not acceded thereto, and the Home Department issued deportation order dated 13.09.1989. It was further stated that the appellants, on the strength of order of the High Court, are staying in Jammu and Kashmir and they cannot be allowed to stay in India illegally without valid documents, hence they need to be deported back to Pakistan.

5. The learned Writ Court vide its judgment dated 09.05.2025 dismissed the writ petition preferred by the appellants.

6. Being aggrieved of the judgment dated 09.05.2025, the appellants have come up with this intra court appeal on the identical grounds as urged by them in their writ petition.

7. Mr. A. H. Naik, learned Sr. Advocate, has argued that the learned Writ Court has not rightly decided the contention of the appellants that they had not acquired the citizenship of Pakistan voluntarily, and their representation for grant of Indian citizenship was pending and before deciding the representation, the appellants could not have been deported. He has placed reliance upon the judgment of the larger Bench of this Court in the case titled **S. Mohsin Shah vs. Union of India & Ors.** 2010 (8) JKJ[HC] 375.

8. *Per contra*, Mr. Mohsin Qadiri, learned Sr. AAG, has argued that the appellants are staying in India illegally without valid permission/visa from respondent No.2, and the appellants have themselves admitted that they are the Pakistani Nationals, as such, the learned Writ Court has rightly determined the controversy.

9. Mr. T. M. Shamsi, learned DSGI, has submitted that in terms of Section-3 of the Immigration and Foreigners Act, 2025, the appellants have no right to stay in India without valid permission/visa and in the writ petition preferred by the appellants, no relief was sought by the appellants for directing the Union of India to consider their request for grant of Indian citizenship. Mr. Shamsi has further submitted that no application for grant of Indian

citizenship is pending before the concerned authorities and otherwise also, there is no law/rule that prohibits the deportation of illegal immigrant, pending his request for grant of Indian citizenship.

10. Heard and perused the record.

11. The appellant No.1 has stated that he was born in Srinagar on 07.02.1945, and during partition of India, his father was running the business in Rawalpindi, Pakistan. Due to Indo-Pak war in 1948, he being four years old child along with his family got stranded in Pakistan, leading to involuntary acquisition of citizenship of Pakistan and could come to India only in the year 1988. Surprisingly, the appellant has annexed one school leaving certificate (Page-88 of LPA) issued by one Anjuman-I-Nusratul Islam, Kashmir as proof of age. The certificate reveals that appellant No.1 was the student of Central Islamia High School, Rajouri Kadal, Srinagar from 1955 to 1957. This certificate belies the whole story of the appellant No.1 that appellant No.1 due to Indo-Pak in the year 1948 got stranded in Pakistan and could not come back to India till 1988. The appellant No.1 has concealed the true facts from this court, as he cannot be simultaneously in India and Pakistan at one point of time. If the contents of certificate are assumed to be true that the appellant No.1 was in India

from 1955 to 1957, then he was residing in India in which capacity and thereafter how, he went to Pakistan, remain an uncut Gordian knot. The appellant is also silent as to when he acquired citizenship of Pakistan. So far as the appellant No.2 is concerned, the appellant No.2 got married with appellant No.1, a Pakistani National, in Rawalpindi, Pakistan in the year 1986 and claims to have applied with the respondents for grant of Indian citizenship not only for herself but for the appellant No.1 and her son also. These facts are sufficient enough to establish that they are Pakistani Nationals and not the citizens of India. This is an admitted case of the appellants that they entered India pursuant to fourteen day's short period visa and the period of their stay in India was extended thrice for thirty days each, till 02.11.1988. In the residential permit orders relied upon by the appellants, they have been shown as Pakistani Nationals. The claim projected by the appellants that they continue to be the citizens of India and as such have right to remain in India, is mis-conceived merely because of the reason that they admit themselves to be Pakistani citizens. Otherwise also, a person cannot simultaneously be a citizen of India as well as Pakistan.

12. We have no doubt in our minds that the appellants have not approached the Court with clean hands and to

prolong their illegal stay in India, false and frivolous story has been concocted by them. On this ground only, this appeal is required to be dismissed. Stressing upon the value of truth in Indian society and coming down heavily upon the litigants guilty of suppressing the material facts, approaching the courts with unclean hands or pleading false facts, just to secure favourable orders, the Hon'ble Supreme Court of India in *Kusha Duruka v. State of Odisha*, (2024) 4 SCC 432, has observed as under:

4. In *Dalip Singh v. State of U.P.* [*Dalip Singh v. State of U.P.*, (2010) 2 SCC 114] , this Court noticed the progressive decline in the values of life and the conduct of the new creed of litigants, who are far away from truth. It was observed as under :

“1. For many centuries Indian society cherished two basic values of life i.e. “satya” (truth) and “ahimsa” (non-violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of the justice-delivery system which was in vogue in the pre-Independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-Independence period has seen drastic changes in our value system. The materialism has overshadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings.

2. In the last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.”

5. In *Moti Lal Songara v. Prem Prakash* [*Moti Lal Songara v. Prem Prakash*, (2013) 9 SCC 199], this Court, considering the issue regarding concealment of facts before the Court, observed that “court is not a laboratory where children come to play”, and opined as under :

“19. The second limb of the submission is whether in the obtaining factual matrix, the order passed by the High Court discharging the respondent-accused is justified in law. We have clearly stated that though the respondent was fully aware about the fact that charges had been framed against him by the learned trial Judge, yet he did not bring the same to the notice of the Revisional Court hearing the revision against the order taking cognizance. It is a clear case of suppression. It was within the special knowledge of the accused. **Anyone who takes recourse to method of suppression in a court of law, is, in actuality, playing fraud upon the court, and the maxim suppressio veri, expressio falsi i.e. suppression of the truth is equivalent to the expression of falsehood, gets attracted.** We are compelled to say so as there has been a calculated concealment of the fact before the Revisional Court. It can be stated with certitude that the respondent-accused tried to gain advantage by such factual suppression. The fraudulent intention is writ large. In fact, he has shown his courage of ignorance and tried to play possum.

20. The High Court, as we have seen, applied the principle “when infrastructure collapses, the superstructure is bound to collapse”. **However, as the order has been obtained by practising fraud and suppressing material fact before a court of law to gain advantage, the said order cannot be allowed to stand.”**

6. It was held in the judgments referred to above that one of the two cherished basic values by Indian society for centuries is “satya” (truth) and the same has been put under the carpet by the petitioner. Truth constituted an integral part of the justice-delivery system in the pre-Independence era, however, post-Independence period has seen drastic changes in our value system. The materialism has overshadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings. In the last 40 years, the values have gone down and now litigants can go to any extent to mislead the court. They have no respect for the truth. The principle has been evolved to meet the challenges posed by this new breed of litigants. **Now it is well settled that a litigant, who attempts to pollute the stream of justice**

or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final. Suppression of material facts from the court of law, is actually playing fraud with the court. The maxim *suppressio veri, expressio falsi* i.e. suppression of the truth is equivalent to the expression of falsehood, gets attracted. It is nothing but degradation of moral values in the society, may be because of our education system. Now we are more happy to hear anything except truth; read anything except truth; speak anything except truth and believe anything except truth. Someone rightly said that: "Lies are very sweet, while truth is bitter, that's why most people prefer telling lies."

(emphasis added)

13. Though the appellants do not deserve adjudication of their claim on merits in view of suppression of material facts, but in view of the peculiar facts and circumstances of the case that legality of the judgment impugned in this appeal is required to be examined, we have deemed it proper to examine the claim of the appellants on merits, particularly when the date of birth certificate was not brought to the notice of learned writ court.

14. Both the appellants had allegedly approached the respondent No.1 through the medium of representation dated 18.06.1989 for grant of Indian citizenship, which, according to the appellants, has been forwarded to respondent No.2. The appellants have further placed reliance upon the communication dated 26th December, 1989 addressed to the Secretary, Government of India, Ministry of Home Affairs, New Delhi, , which is unsigned and as such cannot come to the rescue of the appellants.

The respondent No.1 in its counter-affidavit has clearly pleaded that the appellants have not placed on record any documentary proof that they have applied for citizenship before competent authority as per laid down norms of MHA, GOI. Mr. Shamsi, learned DSGI, has specifically stated before this Court that no such application is pending before the concerned authorities.

15. Since we are only concerned with the claim of the appellants to continue with their stay in India, therefore, we would not like to comment upon the entitlement of the appellants for citizenship of India but at the same time, we are of the considered view that the appellants are not the citizens of India. This court cannot lose sight of the fact that the appellant No.1 resided in Pakistan for good part of his life and came to India at the age of 43 along with appellant No.2, who, after her marriage with appellant No.1, acquired citizenship of Pakistan. In this context, it would be apt to take note of the observations of the Hon'ble Supreme Court of India in **Union of India v. Pranav Srinivasan, 2024 SCC OnLine SC 2920**, which are as under:

In view of Section 9(1), those citizens of India who voluntarily acquire citizenship of another Country after the commencement of the 1955 Act, or between 26th January 1950 and the date of the commencement of the 1955 Act, upon acquisition of such citizenship, automatically cease to be citizens of India. It is not in dispute that Pranav's parents acquired Singapore

citizenship on 19th December 1998, before his birth when he was in the womb. Therefore, immediately after the voluntary acquisition of Singapore citizenship, Pranav's parents ceased to be citizens of India by the operation of Section 9(1).
(emphasis added)

16. Now the only issue calling for its adjudication is as under:

“Whether or not a Foreign National (Pakistani Nationals in this case) has a right to remain in the territory of India without visa/permission?”

17. During the pendency of writ petition preferred by the appellants, the Immigration and Foreigners Act, 2025 (for short “the Act of 2025”) has come into force on 4th April, 2025. Through the medium of the Act of 2025, the Passport (Entry into India) Act, 1920, the Registration of Foreigners Act, 1939, the Foreigners Act, 1946 and the Immigration (Carriers Liability) Act, 2000 have been repealed. The Act of 2025, confers certain powers upon the Central Government to provide for requirement of passports or other travel documents in respect of persons entering into and exiting from India and for regulating matters related to foreigners including requirement of visa and registration and for matters connected therewith or incidental thereto. Section-3 of the Act of 2025 is relevant and is extracted as under:

3. (1) No person proceeding from any place outside India shall enter, or attempt to enter, India by air, water or land unless he is in possession of a valid passport or other travel document, and in case of a

foreigner, also a valid visa, and any foreigner while present in India shall also be required to possess valid passport or other valid travel document and valid visa, unless exempted under section 33 or through intergovernmental agreements:

Provided that notwithstanding anything contained in this sub-section, no foreigner shall be allowed to enter into or stay in India, if he is found inadmissible to do so on account of threat to national security, sovereignty and integrity of India, relations with a foreign State or public health or on such other grounds as the Central Government may, specify in this behalf:

Provided further that the decision of the Immigration Officer in this regard shall be final and binding.

(2) Notwithstanding anything contained in section 3 of the Passports Act, 1967, no person shall depart or attempt to depart from India by air, water or land unless he is in possession of a valid passport or other travel document and in case of a foreigner, also a valid visa:

Provided that notwithstanding anything contained in this sub-section, no person shall be allowed to depart or exit from India, if his presence is required in India by any authorised agency or on such grounds as the Central Government may, by order, specify in this behalf:

Provided further that the decision of the Immigration Officer in this regard shall be final and binding.

(3) The Immigration Officer may examine the passport or other travel document and visa of a foreigner during his entry into, transit through, stay in, movement within India and also require him to furnish such information as may be necessary and appropriate.

(4) The Immigration Officer may seize a passport or other travel document of any person which has been declared as lost or stolen or considered as damaged or forged or fraudulently obtained or on the direction of the passport issuing authority or courts.

(5) The overall supervision, direction and control on visa and related matters shall vest in and be exercised by the Central Government.

18. In view of the mandate of Section 3 of the Act of 2025 as quoted above, a person other than citizen of India cannot enter, stay and leave the territory of India without valid visa unless exempted under section 33 of the Act of 2025. The appellants, as already held above, are foreigners and cannot remain in India even for a second without being in possession of valid visa or other valid documents. The learned Writ Court has proceeded to dismiss the petition preferred by the appellants by taking into consideration Section 9 of the Citizenship Act, which provides that any citizen of India who, by naturalization, registration or otherwise, voluntarily acquires the citizenship of another country shall, upon such acquisition, cease to be a citizen of India.

19. Perusal of the record further reveals that the appellants have been staying in India only pursuant to the interim direction dated 25.04.1990 issued by the learned writ court at the time of filing of the writ petition in the year 1990. It is crystal clear that as on date, the appellants are not having any valid document in the form of visa/permission to stay in India. It is further revealed from the record that after the dismissal of their petition, vide notice dated 28.06.2025, the appellants have been directed to leave India.

20. In this context, we deem it appropriate to take note of the judgment of the Hon'ble Supreme Court of India in **Louis D Raedt vs. Union of India and others, (1991) 3 SCC 554** and the relevant para is extracted as under:

13. The next point taken on behalf of the petitioners, that the foreigners also enjoy some fundamental rights under the Constitution of this country, is also of not much help to them. The fundamental right of the foreigner is confined to Article 21 for life and liberty and does not include the right to reside and settle in this country, as mentioned in Article 19(1)(e), which is applicable only to the citizens of this country. It was held by the Constitution Bench in *Hans Muller of Nuremburg v. Superintendent, Presidency Jail, Calcutta* that the power of the government in India to expel foreigners is absolute and unlimited and there is no provision in the Constitution fettering this discretion. It was pointed out that the legal position on this aspect is not uniform in all the countries but so far the law which operates in India is concerned, the executive government has unrestricted right to expel a foreigner. So far the right to be heard is concerned, there cannot be any hard and fast rule about the manner in which a person concerned has to be given an opportunity to place his case and it is not claimed that if the authority concerned had served a notice before passing the impugned order, the petitioners could have produced some relevant material in support of their claim of acquisition of citizenship, which they failed to do in the absence of a notice.

(emphasis added)

21. We have gone through the impugned judgment and find that the learned Writ Court has rightly arrived at the conclusion that the appellants have been residing in Srinagar since 1988 on the strength of Pakistani passports and the period of their visa stands already expired and they have to return to their own country.

22. This Court is of the considered view that any foreign national having entered into India is required to leave the

country immediately at the expiry of visa period and if such person doesn't leave India, the Central Government is well within its power to issue any direction or instruction, as may be necessary, with regard to staying of such person in India in terms of Section 7 of the Act of 2025 including his removal from India. The issue is answered accordingly.

23. The judgment of the larger Bench in **S. Mohsin Shah's** case (supra), relied upon by learned senior counsel for the appellants, cannot come to the rescue of the appellants as the controversy involved in the said case was entirely different vis-à-vis the one involved in the present case. In the said case, the petitioner therein had not only sought quashing of order of deportation but had also prayed for a declaration that he is an Indian citizen and was not liable to deportation from the territory of India.

24. For all what has been discussed hereinabove, we have reached to an ineluctable conclusion that the appellants have miserably failed to make out any good ground for interference with the impugned judgment. Rather, the appellants have suppressed the material facts from this court and approached this court with unclean hands, just to prolong their stay in India and they succeeded to large extent because they continued to stay in India pursuant to interim direction issued by the learned writ court in the

year 1990. Accordingly, the appeal is dismissed being bereft of any merit.

(RAJNESH OSWAL)
JUDGE

(ARUN PALLI)
CHIEF JUSTICE

Srinagar
09.09.2025
“Bhat Altaj”

Whether the Judgment is speaking:	Yes
Whether the judgment is reportable:	Yes

