

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.09.2016

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN

W.P.No.33156 of 2014

Cho Young Youn

... Petitioner

Vs.

1. The Regional Passport Officer,
Government of India,
Ministry of External Affairs,
4th Floor, Tower III,
No.158, Anna Salai,
Chennai-600 002.
2. The Superintendent of Police,
Kancheepuram District,
Kancheepuram.
3. The Inspector of Police,
DCB, Kancheepuram,
Kancheepuram District.

... Respondents

The writ petition is filed under Article 226 of the Constitution of India praying for the issue of a writ of mandamus, directing the respondents 2 and 3 to return the Passport No.SM0314791, issued on 14.1.2008, with validity upto 14.01.2018 issued by the Republic of Korea, in the name of the petitioner.

For Petitioner : No appearance

For Respondents : Mr.G.Baskaran, CGSC for R-1

Mr.P.Sanjai Gandhi,
Additional Government Pleader
for RR2 and 3

ORDER

There is no representation on behalf of the petitioner.
Heard the learned counsels appearing on behalf of the respondents.

2. This writ petition has been filed by the petitioner, praying that this Court may be pleased to issue a Writ of Mandamus, directing the respondents 2 and 3 to return the Passport, bearing Passport No.SM0314791, issued by the Republic of Korea, on 14.01.2008.

3. The petitioner had stated that he is a Korean national and had come to India, for business purposes, with multiple entry Visa, using the Korean Passport, bearing Passport No.SM0314791. As he is a qualified Engineer, he had entered into a joint venture, for construction of buildings. Even though, he had been designated, as an Executive Director of the ILL SUNG Constructions Pvt. Ltd., he was only an employee, authorised to supervise the constructions and the contractual works of the company. While so, certain disputes had arisen, with regard to the quality of the constructions, involving the said ILL SUNG Constructions Pvt. Ltd, Aristo Construction and certain other construction companies and also, with regard to the amounts transacted. In such circumstances, one Jayammal, a representative of Aristo Construction, had lodged a false and frivolous complaint against the petitioner, in Crime No.57 of 2009, on the file of the Inspector of Police, DCB, Kancheepuram District, the third respondent herein, under Sections 406, 420 and 506(i) of the Indian Penal Code and Section 14(b) of the Foreigners Act, 1946. The petitioner had stated that he is not liable, in any manner. Therefore, the seizure of his Passport by the third respondent is arbitrary and illegal. Further, the passport can be impounded or revoked only by the Passport authority and as per the conditions stipulated in Section 10 of the Passport Act, 1967.

4. The petitioner had further submitted that the power of the police for search and seizure of the passport or travel documents, is prescribed, under Section 14 of the Passport Act, 1967. The said power can be exercised only if certain offences are committed, as per Section 12 of the said Act. It had been further stated that this Court had passed orders, in W.P.Nos.18637 and 22205 of 2014, dated 15.9.2014 and in W.P.No.33546 of 2014, dated 24.09.2014, holding that the police authority cannot retain the passport, in violation of the express provisions contained in the Passport Act, 1967. In such circumstances, the petitioner has preferred the present writ petition before this Court, under Article 226 of the Constitution of India.

5. In the counter affidavit filed by the first respondent, it had been stated that the petitioner, who is a Korean national, has been holding a Korean Passport, bearing Passport

No.SM0314791, issued by the Government of Korea. The first respondent does not have any role, with regard to the issue raised in the writ petition.

6. In the counter affidavit filed on behalf of the third respondent, the reasons for the filing of a criminal case against the petitioner had been narrated. It had been stated that a case had been registered, in Crime No.57 of 2009, by the District Crime Branch, Kancheepuram, under Sections 406, 420 and 506(i) of the Indian Penal Code, based on the complaint lodged by one Jayammal, a representative of Aristo Construction. It had been further stated that the criminal case is pending against the petitioner, on the file of the Judicial Magistrate Court, Sriperumbudur, in C.C.No.267 of 2010. In such circumstances, the passport of the petitioner cannot be returned to him, by the respondents, as prayed for by the petitioner, in the present writ petition.

7. The learned counsel appearing on behalf of the second and the third respondents had submitted that it is for the petitioner to file an appropriate application before the Judicial Magistrate Court, Sriperumbudur, seeking return of his passport, bearing Passport No.SM0314791, if so advised.

8. In view of the submissions made by the learned counsels appearing on behalf of the respondents and on a perusal of the records available, this Court finds that the relief prayed for by the petitioner, in the present writ petition, cannot be granted, by this Court, at this stage. Hence, the writ petition stands dismissed. However, it may be open to the petitioner to seek his relief, before the Judicial Magistrate, Sriperumbudur, if so advised, in the manner known to law. No costs.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

vvk

To

1. The Regional Passport Officer,
Government of India,
Ministry of External Affairs,
4th Floor, Tower III,
No.158, Anna Salai,
Chennai-600 002.

2. The Superintendent of Police,
Kancheepuram District,
Kancheepuram.

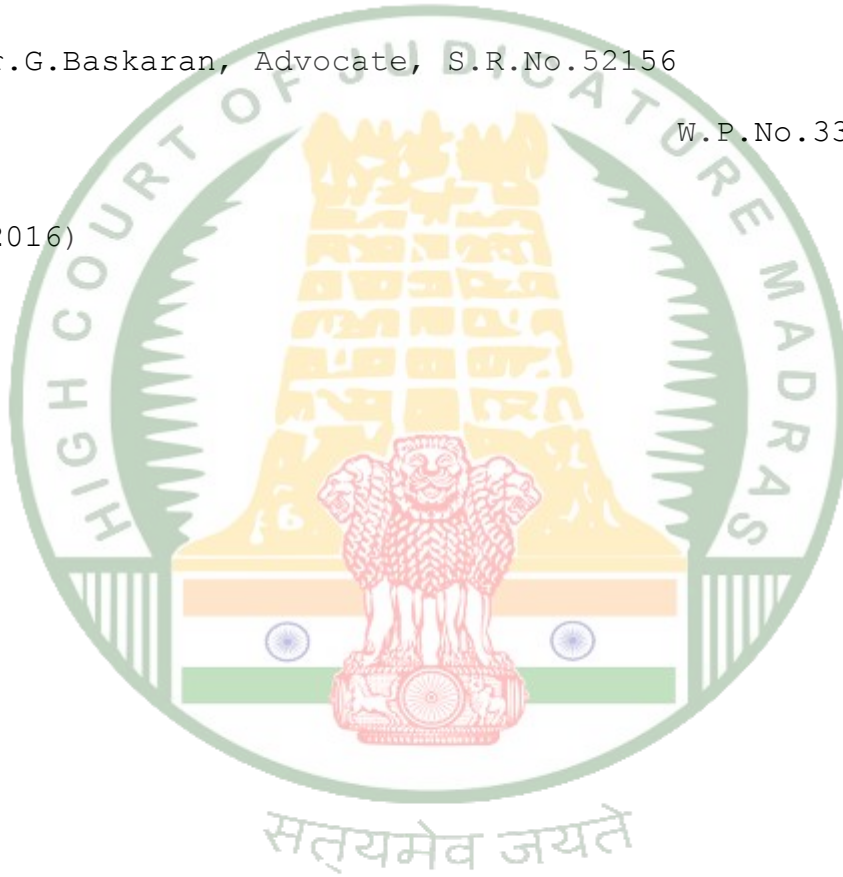
3. The Inspector of Police,
DCB, Kancheepuram,
Kancheepuram District.

4. The Judicial Magistrate,
Sriperumbudur.

+1cc to Mr.G.Baskaran, Advocate, S.R.No.52156

W.P.No.33156 of 2014

NM(CO)
CA(29/09/2016)



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