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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.12936 OF 2016
WITH
CIVIL APPLICATION NO.293 OF 2017

Syed Waseem Ur Rehman and Anr. ... Petitioners

Versus

Union of India and Ors. ... Respondents

Mr. Atul G. Damle, Senior Advocate i/by Mr. Vineet P. Sangvikar for the Petitioners.

Mr. Surel S. Shah i/by Mr. Devendra D. Pawar for the Applicant in CAW/293/2017.

Mr. P.G. Sawant, AGP for the Respondent Nos.4 and 5.

Mr. Rui A. Rodrigues a/w Mr. Dushant Kumar for the Respondent Nos.1 to 3.

CORAM : A.S. OKA &
ANUJA PRABHUDESSAI, JJ.

DATE : 3rd FEBRUARY, 2017

PC.

1 Heard the learned senior counsel appearing for the petitioners, the learned counsel appearing for the first to third respondents and the learned AGP for the fourth and fifth respondents. Admittedly the petitioners are citizens of Pakistan and they are holding passports issued by the Government of Pakistan. According to the case

made out in the Petition and as per the document annexed as Exhibit – G, stay visa granted to the petitioners was extended upto 18th November, 2016. It appears that the petitioners made a representation to the Hon'ble Home Minister of Government of India on 17th November, 2016. In the said application, a direction was sought by the Petitioners from the Hon'ble Minister to the concerned department for renewal of their visa to enable them to pursue the application for Indian citizenship. As the position stands today, the visa granted to the petitioners has admittedly expired on 18th November, 2016. There is an affidavit filed by Shri Deepak Kurulkar, Senior Police Inspector, I Branch, Special Branch - I, CID, Mumbai. In paragraphs 2 and 3, it is stated that visa to both the petitioners was valid till 16th November, 2010. It is stated in the said affidavit that Ministry of Home Affairs passed an order directing that the petitioners should exit from India on or before 18th November, 2016.

2 The first prayer in this Petition is for setting aside Exhibit – G to the Petition. The second substantive prayer is for directing the respondents to decide the application made by the petitioners for seeking citizenship of India. The third substantive prayer is for directing the respondents to extend the visa of the petitioners till the application of the petitioners seeking citizenship of India is decided by the

concerned authorities. Today, the learned AGP has placed on record a communication dated 12th January, 2017 issued by the Under Secretary to the Government of India in the Ministry of Home Affairs, Foreigners Division addressed to the Foreigners Regional Registration Officer, Deputy Commissioner of Police, S.B., CID, Mumbai. The said communication records that both the petitioners are not eligible for citizenship of India. A copy of the said communication be supplied to the Advocate on record for the petitioners.

3 The submission of the learned senior counsel appearing for the petitioners is that even according to reply filed by the State Government, the petitioners are residing in India from the year 2009 onwards. He submitted that grandfather of the first petitioner had applied for grant of Indian citizenship to the first petitioner long back. He invited our attention to the application for grant of citizenship made by the first petitioner on 29th November, 2015. His submission is that till the disposal of their application for grant of citizenship, the petitioners may be permitted to stay in India.

4 We have considered the submissions. Firstly, there is no right conferred on the petitioners to get visa from the Government of India as a matter of right. Secondly, there is no law which permits the

petitioners to continue to stay in India after expiry of the visa only on the ground that their applications for grant of citizenship are pending. In any case, now the stand taken is that by the communication dated 12th January, 2017 it is held that the petitioners are not eligible for grant of citizenship. The learned senior counsel appearing for the petitioners submits that they have a remedy of revision under the Citizenship Act, 1955.

5 As stated earlier, the petitioners have no right to seek extension of visa as a matter of right. In absence of a valid visa, the petitioners cannot claim right of residence in India only on the ground that their applications for citizenship are pending.

6 Therefore, this is not a case where the petitioners should be allowed to invoke extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. We may note here that we have not dealt with the submission regarding maintainability of the Petition at the instance of the petitioners. The said contention is raised by the intervenors.

7 Accordingly, the Writ Petition is rejected. However, rejection of the petition will not preclude the petitioners from

challenging communication dated 12th January, 2017 in accordance with law. In view of disposal of the Writ Petition, Civil Application No.293 of 2017 does not survive and the same is disposed of.

(ANUJA PRABHUDESSAI, J)

(A.S. OKA, J)