



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2022

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.Nos.26854 and 26859 of 2021

And

W.M.P.Nos.28310 and 28311 of 2021

Manju Sardarmal Kothari

...Petitioner in both W.Ps.

Vs.

1. The Union of India
Rep. by the Ministry of Home Affairs,
Government of India,
Ministry of Home Affairs,
North Block,
New Delhi - 110 001.
2. Foreigner Regional Registration Officer,
Bureau of Immigration,
Ministry of Home Affairs,
Government of India,
Shastri Bhawan Annexe Building,
No.26, Haddows Road,
Chennai - 600 006.
3. The Assistant Foreigners Regional Registration Officer,
Bureau of Immigration,
Anna International Airport,
Meenambakkam Airport,
Chennai - 600 027.
4. Bureau of Immigration,
Ministry of Home Affairs,
Government of India,
Rep. by its Commissioner (Immigration),
East Block VIII, Level V,
Sector 1, R.K.Puram,
New Delhi - 110 066.
5. The Managing Director and CEO,
Union Bank of India,
Union Bank Bhavan,
No.239, Vidhan Bhavan Marg,
Nariman Point,
Mumbai - 400 021.



6. The Assistant General Manager,
Union Bank of India,
Stressed Asset Management (SAM) Branch,
No.38 and 39,
Whites Road,
Royapettah,
Chennai - 600 014.

... Respondents in both W.Ps.

Prayer in W.P.No.26854 of 2021:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Declaration declaring the Look Out Notice / Circular issued against the petitioner at the request of the 5th /6th respondent as an arbitrary exercise of Power, abuse of authority, vitiated by malafides, ultra vires and without jurisdiction and consequently, direct the respondents to recall the Look Out Notice/ Circular issued against the petitioner.

Prayer in W.P.No.26859 of 2021:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents 1 to 6, to provide the petitioner with the particulars and copy of any Look Out Notice / Circular, that has been issued at the instance of the 6th respondent Bank or any other authority, restricting the petitioner's travel out of India and consequently, direct the respondents not to prevent the petitioner from travelling to United States.

For Petitioner : Mr.AL.Somyaiji
Senior Counsel
for M/s.Menon

For Respondents : Mr.A.Kumaraguru for R1 to R4
Senior Panel Counsel
Mr.M.Muthuperiasamy for R6

C O M M O N O R D E R

W.P.No.26854 of 2021 has been filed by the petitioner seeking issuance of a Writ of Declaration declaring the Look Out Notice / Circular issued against the petitioner at the request of the 5th /6th respondent as an arbitrary exercise of Power, abuse of authority, vitiated by malafides, ultra vires and without jurisdiction and to consequently direct the respondents to recall the Look Out Notice/ Circular issued against the petitioner.



2.W.P.No.26859 of 2021 has been filed by the petitioner seeking issuance of a Writ of Mandamus directing the respondents 1 to 6, to provide the petitioner with the particulars and copy of any Look Out Notice / Circular, that has been issued at the instance of the 6th respondent Bank or any other authority, restricting the petitioner's travel out of India and to consequently, direct the respondents not to prevent the petitioner from travelling to United States.

3.Since the issue involved in both these writ petitions are related, the writ petitions are heard together and disposed of by way of a common order.

4.The case of the petitioner is that the petitioner is a permanent resident of Chennai and is a home maker. Her husband is a businessman in the steel manufacturing sector in Tamil Nadu. The petitioner's husband and family have availed credit facilities from financial institutions and Banks including the sixth respondent and as security, properties which are jointly owned by the petitioner were also mortgaged. Though the petitioner is not involved in the business, she was required to give guarantees for the loans.

5.The further case of the petitioner is that since there was default of the loans, the sixth respondent has initiated recovery proceedings against the borrowers/ guarantors/ mortgagors including the petitioner before the DRT II, Chennai and IA for impounding passports were filed but no order has been issued. Whiles, through negotiations an one time settlement was entered between the borrowers and sixth respondent on 25.08.2021, in terms of which, payment of a sum of Rs.21.75 Crores out of Rs.101 Crores has been made and the value of the mortgaged properties exceeds the balance payable.

6.The further case of the petitioner is that on 06.11.2021, the petitioner's husband was not allowed to travel out of India based on the alleged Look Out Notice issued by the sixth respondent, however, the sixth respondent is not disclosing the full particulars. The petitioner's daughter is in Miami, USA and is pregnant and as a mother the petitioner wants to be with her daughter during delivery and attend her needs and that of the newborn. Despite approaching the respondents, the petitioner was not given proper information as to whether she can travel or not though she has a valid visa. Hence, the petitioner has filed these writ petitions.

7.The learned Senior Counsel appearing for the petitioner submitted that from the counter affidavit filed by the respondents 1 to 4, it is known that there is no Look Out Notice issued against the petitioner. In the absence of the Look Out



Notice, the sixth respondent preventing the petitioner to travel to USA is not sustainable and is in clear violation of the fundamental right under the Constitution. The learned Senior Counsel further submitted that during the pendency of these writ petitions, the petitioner's daughter has delivered the baby and the petitioner wants to see the newborn.

8.The learned Senior Panel Counsel appearing for the respondents 1 to 4 submitted that as on date no Look Out Notice has been issued as against the petitioner and hence, there is no legal impediment for the petitioner to travel from India to USA.

9.The learned counsel appearing for the sixth respondent submitted that admittedly, the petitioner is guarantor and her husband is borrower and one time settlement was entered between the borrowers and sixth respondent on 25.08.2021, in terms of which, payment of a sum of Rs.21.75 Crores out of Rs.101 Crores has been made. Hence, this Court may permit the petitioner to travel to USA, however, this Court may direct the petitioner to file an affidavit of undertaking before the sixth respondent with regard to the travel period indicating the return date.

10.Heard the arguments advanced on either side and perused the materials available on record.

11.Though the sixth respondent has requested the first respondent to issue Look Out Notice as against the petitioner who is the guarantor, as on date, the first respondent has not issued any Look Out Notice as against the petitioner. In the absence of any Look Out Notice as against the petitioner, preventing the petitioner from travelling to USA is not sustainable.

12.In view of the above, this Court is inclined to issue the following directions:

(i) The petitioner shall file an affidavit of undertaking before the sixth respondent with regard to the travel period from India to USA indicating the travelling date and the return date.

(ii) On filing of such affidavit of undertaking before the sixth respondent, the petitioner is permitted to travel to USA from India to see her daughter and the newborn.



13. These writ petitions are disposed of with the above directions. No costs. Consequently, the connected miscellaneous petitions are closed.

WEB COPY

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

pri
To

1. The Ministry of Home Affairs,
Government of India,
Ministry of Home Affairs,
North Block,
New Delhi - 110 001.
2. The Foreigner Regional Registration Officer,
Bureau of Immigration,
Ministry of Home Affairs,
Government of India,
Shastri Bhawan Annexe Building,
No.26, Haddows Road,
Chennai - 600 006.
3. The Assistant Foreigners Regional Registration Officer,
Bureau of Immigration,
Anna International Airport,
Meenambakkam Airport,
Chennai - 600 027.
4. The Commissioner (Immigration),
Bureau of Immigration,
Ministry of Home Affairs,
Government of India,
East Block VIII, Level V,
Sector 1, R.K.Puram,
New Delhi - 110 066.
5. The Managing Director and CEO,
Union Bank of India,
Union Bank Bhavan,
No.239, Vidhan Bhavan Marg,



Nariman Point,
Mumbai - 400 021.

6. The Assistant General Manager,
Union Bank of India,
Stressed Asset Management (SAM) Branch,
No.38 and 39,
Whites Road,
Royapettah,
Chennai - 600 014.

+1cc to Mr.M.Muthuperiasamy, Advocate S.R.No 2132.

+1cc to Mr.Menon, Advocate, S.R.No.2804

[28/04/2022]

W.P.Nos.26854 and
26859 of 2021

And

W.M.P.Nos.28310 and
28311 of 2021

NRJK(CO)
SP(12/01/2022)