

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

WRIT PETITION (L) NO. 3443 OF 2020

LeeAnne Arunoday Singh. ... Petitioner.
V/s.
Ministry of Home Affairs and another. ... Respondents.

Mr.Subhradeep Banerjee i/b. Amit Survase for the Petitioner.
Mr.D.P.Singh for Respondent No.1.
Ms.Dhruti M. Kapadia for Respondent No.2.

CORAM : NITIN JAMDAR AND
MILIND JADHAV, JJ.

DATE : 27 October 2020.
(Through Video Conferencing)

P.C. :

The Petitioner has challenged the communications issued by the Respondent- Ministry of Home Affairs directing the Petitioner to surrender the Overseas Citizen of India Card (OCI Card).

2. The Petitioner is a citizen of Canada. She was married to Respondent No.2, who is an Indian citizen. Marriage was solemnized at Bhopal on 13 December 2016. On 10 May 2019, Respondent No.2 filed a petition for divorce in the Family Court at Bhopal under section 27 of the Special Marriage Act, 1954. On 22

May 2019, the Petitioner applied for restitution of conjugal rights in Family Court at Bandra, Mumbai. The Petitioner filed a transfer petition in the Supreme Court for transferring the case from Family Court, Bhopal to Family Court, Bandra. On 18 December 2019, the Family Court, Bhopal allowed the divorce petition filed by Respondent No.2 and dissolved the marriage. On 17 January 2020, the Petitioner received a notice from the Ministry of Home Affairs, Foreigners Division, OCI Section stating that since her marriage is dissolved, her OCI card be surrendered. On 24 January 2020, the Family Court, Bandra passed an order of status-quo about the flat at Mumbai and embryos preserved in cryopreservation centre. Thereafter the Respondent No.1 issued notices to the Petitioner to surrender OCI card on 26 February 2020, 9 June 2020, 21 July 2020 and 28 August 2020. The Petitioner has challenged the communications directing the Petitioner to surrender the OCI card. The Respondents have filed their reply affidavits.

3. We have heard Mr.Banerjee for the Petitioner, Mr.Singh for Respondent No.1 and Ms.Kapadia for Respondent No.2.

4. The statutory provisions concerning OCI card are contained in section 7A(1)(d) of the Citizenship Amendment Act, 2015. Relevant part of the section as regards issuance of OCI card to the spouse of an Indian national read thus:

"7A. (1) The Central Government may, subject to such conditions, restrictions and manner as may be prescribed, on an application made in this behalf, register as an Overseas Citizen of India Cardholder—

(a)

(b)

(c)

(d) spouse of foreign origin of a citizen of India or spouse of foreign origin of an Overseas Citizen of India Cardholder registered under section 7A and whose marriage has been registered and subsisted for a continuous period of not less than two years immediately preceding the presentation of the application under this section:

Provided that for the eligibility for registration as an Overseas Citizen of India Cardholder, such spouse shall be subjected to prior security clearance by a competent authority in India:

..... ..

Thus the Central Government empowered to register a spouse of foreign origin of a citizen of India as an Overseas Citizen of India Cardholder upon conditions as laid down. The OCI card holders, though remain citizens of their country enjoy certain privileges such as multiple entry Visa, exemption from Foreigners registrations, parity with Non Resident Indians in some aspects.

5. The Citizenship Act, 1955 was amended by the Citizenship (Amendment) Act, 2015. Section 7D(f) thereof deals with

cancellation of registration as Overseas Citizen of India Cardholder.

Section 7D (f) reads thus:

7D. The Central Government may, by order, cancel the registration granted under sub-section (1) of section 7A, if it is satisfied that:

.....

(f) the marriage of an Overseas Citizen of India Cardholder, who has obtained such Card under clause (d) of sub-section (1) of section 7A,—

(i) has been dissolved by a competent court of law or otherwise; or (ii) has not been dissolved but, during the subsistence of such marriage, he has solemnized marriage with any other person.

Therefore OCI card granted under Section 7A(1)(d) is liable to be cancelled upon dissolution of marriage by the competent court. The special privileges can then be withdrawn.

6. Petitioner was registered as OCI cardholder on 25 February 2019 under Section 7A(1)(d) because of her marriage to Respondent No.2, the Indian citizen. By order dated 18 December 2019, the Family Court at Bhopal has dissolved the marriage and Section 7D(f)(i) of the Citizenship Act has come into operation.

7. Petitioner contends that the Petitioner has filed a Family Court Appeal against the order granting the divorce. However, no provision of law is shown to us that if an appeal is filed challenging the decree of divorce, operation of Section 7D(f)(i) is suspended. The decree for divorce passed by the Family Court, Bhopal is not

stayed or set aside by the High Court where the appeal is stated to have been filed.

8. As regards the order of status-quo passed by the Family Court at Bandra is concerned, it relates only to the residential premises and the embryos. This order, therefore, has no bearing on the impugned orders issued by Respondent No.1 under the Citizenship Act.

9. The transfer petition filed by the Petitioner has been disposed of by the Supreme Court on 24 February 2020 as infructuous since the decree of divorce was already granted.

10. Provisions of Section 7 of the Act casts a duty on the officers of Respondent No.1 to take necessary steps regarding the OCI card issued on spouse basis, if the marriage is dissolved by the competent Court of law. Therefore the notices/orders issued by Respondent No.1 cannot be said to be illegal, nor the Respondent No.1 can be restrained from giving effect to the law.

11. Writ petition is rejected.

12. This order will be digitally signed by the Personal Assistant/Private Secretary of this Court. All concerned to act on production by fax or email of a digitally signed copy of this order.

(MILIND JADHAV, J)

(NITIN JAMDAR, J)