

Devashish Garg vs.directorate of Revenue Intelligence and Ors.

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Court : Delhi

Decided On : Sep-22-2017

Appellant : Devashish Garg

Respondent : Directorate of Revenue Intelligence and Ors.

Advocate for Def. : Mr. P.C. Aggarwal, Mr. Sanjeev Narula, Mr. Abhishek Ghei

Advocate for Pet/Ap. : Mr. Chetan Sharma, Mr. Prateek Chaturvedi, Mr. Anubhav Mehrotra

Judgement :

\$~32 * % + IN THE HIGH COURT OF DELHI AT NEW DELHI LPA6282017, CM APPL.34731-34733/2017 DECIDED ON:

22. 09.2017 DEVASHISH GARG Appellant Through: Mr. Chetan Sharma, Sr. Advocate with Mr. Prateek Chaturvedi and Mr. Anubhav Mehrotra, Advocates. versus DIRECTORATE OF REVENUE INTELLIGENCE & ORS

... RESPONDENTS

Through: Mr. P.C. Aggarwal, Adv. for R-1&2. Mr. Sanjeev Narula, Sr. Standing Counsel for CBEC with Mr. Abhishek Ghei, Advocates. CORAM: HON'BLE MR. JUSTICE S. RAVINDRA BHAT HON'BLE MR. JUSTICE SUNIL GAUR S.RAVINDRA BHAT, J.

(ORAL) 1. Issue notice. Mr. P.C. Aggarwal, Advocate accepts notice on behalf of the first and second respondents who are in effect the contesting parties. With consent of counsel, the appeal was heard finally.

2. The appellant is aggrieved by the order of the learned Single Judge who had accepted his contentions in the writ petition, holding that the impounding before seizure without initiation of appropriate proceedings under the Passports Act, 1967 by the respondent was LPA6282017 Page 1 of 7 unauthorised. However, the grievance articulated in this appeal is with respect to the operative portion of the order which reads as follows: - 5. Be that as it may, in view of the decisions of the Supreme Court in Suresh Nanda v. CBI (Supra), the petitioners passport cannot be impounded by the respondent.

6. In the circumstances, it is directed that the passport be forwarded to the concerned Regional Passport Officer who, if considers necessary, shall for impounding/suspension of the passport in accordance with the Provisions of the Passports Act, 1967. the proceedings initiate 7. It is clarified that in the event, such proceedings are not commenced within a period of two weeks from today, the passport will be returned to the petitioner forthwith. It is urged by learned senior counsel for the appellant that the directions complained of are contrary to the expressed intent and the spirit of the declarations in Suresh Nanda v. CBI, (2008) 3 SCC674 In that decision, the Court had noticed the distinction between the seizure and impounding of passport and further clarified that impounding could be only in terms of Section 10 (3) of the Passport Act, 1967 which had to be preceded by procedure prescribed in Section 10 (1) of the Passport Act, 1967.

3. Counsel for the respondents, on the other hand, submitted that there can be no grievance at this stage given that the learned Single Judge granted a window of two weeks time to the authorities to initiate impounding proceedings.

4. Section 10 of the Passport Act, 1967 to the extent it is relevant LPA6282017 Page 2 of 7 reads as follows: - 10. Variation, impounding and revocation of passports and travel documents

(1) The passport authority may, having regard to the provisions of sub-section

(1) of section 6 or any notification under section 19, vary or cancel the endorsements on a passport or travel document or may, with the previous approval of the Central Government, vary or cancel the conditions (other than the prescribed conditions) subject to which a passport or travel document has been issued and may, for that purpose, require the holder of a passport or a travel document, by notice in writing, to deliver up the passport or travel document to it within such time as may be specified in the notice and the holder shall comply with such notice.

(2) The passport authority may, on the application of the holder of a passport or a travel document, and with the previous approval of the Central Government also vary or cancel the conditions (other than the prescribed conditions) of the passport or travel document.

(3) The passport authority may impound or cause to be impounded or revoke a passport or travel document,- (a) if the passport authority is satisfied that the holder of the passport or travel document is in wrongful possession thereof; (b) if the passport or travel document was obtained by the suppression of material information or on the basis of wrong information provided by the holder of the passport or travel document or any other person on his behalf; 5 [Provided that if the holder of such passport obtains another passport the passport authority shall also impound or cause to be impounded or revoke such other passport]. (c) if the passport authority deems it necessary so to do in the interests of the sovereignty and integrity of India, the security LPA6282017 Page 3 of 7 of India, friendly relations of India with any foreign country, or in the interests of the general public; (d) if the holder of the passport or travel document has, at any time after the issue of the passport or travel document, been convicted by a court in India for any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than two years; (e) if proceedings in respect of an offence alleged to have been committed by the holder of the passport or travel document are pending before a criminal court in India. (f) if any of the conditions of the passport or travel document has been contravened; (g) if the holder of the passport or travel document has failed to comply with a notice under sub-section

(1) requiring him to deliver up the same; (h) if it is brought to the notice of the passport authority that a warrant or summons for the appearance, or a warrant for the arrest, of the holder of the passport or travel document has been issued by a court under any law for the time being in force or if an order prohibiting the departure from India of the holder of the passport or other travel document has been made by any such court and the passport authority is satisfied that a warrant or summons has been so issued or an order has been so made.

5. In Suresh Nandas case, the Court observed as follows: -

14. In our opinion, while the police may have the power to seize a passport under Section 102(1) Cr.P.C, it does not have the power to impound the same. Impounding of a passport can only be done by the passport authority under Section 10(3) of the Passports Act, 1967. LPA6282017 Page 4 of 7

15. It may be mentioned that there is a difference between seizing of a document and impounding a document. A seizure is made at a particular moment when a person or authority takes into his possession some property which was earlier not in his possession. Thus, seizure is done at a particular moment of time. However, if after seizing of a property or document the said property or document is retained for some period of time, then such retention amounts to impounding of the property or document. In Law Lexicon by P. Ramanatha Aiyar (2nd Edition), the word impound has been defined to mean, to take possession of a document or the like for being held in custody in accordance with law. Thus, the word impounding really means retention of possession of a good or a document which has been seized.

16. Hence, while the police may have power to seize a passport under Section 102 Cr.P.C. if it is permissible within the authority given under Section 102 of Cr.P.C., it does not have power to retain or impound the same, because that can only be done by the passport authority under Section 10(3) of the Passports Act. Hence, if the police seizes a passport (which it has power to do under Section 102 Cr.P.C.), thereafter the police must send it along with a letter to the passport authority clearly stating that the seized passport deserves to be impounded for one of the reasons mentioned in Section 10(3) of the Act. It is thereafter for the

passport authority to decide whether to impound the passport or not. Since impounding of a passport has civil consequences, the passport authority must give an opportunity of hearing to the person concerned before impounding his passport. It is well settled that any order which has civil consequences must be passed after giving opportunity of hearing to a party (vide *State of Orissa Vs. Binapani Dei*), AIR 1967 SC1269 17. In the present case, neither the passport authority passed any order of impounding nor was any opportunity of hearing given to the appellant by the passport authority for impounding the document. It was only the CBI authority which has retained LPA6282017 Page 5 of 7 possession of the passport (which in substance amounts to impounding it) from October, 2006. In our opinion, this was clearly illegal. Under Section 10A of the Act retention by the Central Government can only be for four weeks. Thereafter it can only be retained by an order of the Passport authority under Section 10(3).

18. In our opinion, even the Court cannot impound a passport. Though, no doubt, Section 104Cr.P.C. states that the Court may, if it thinks fit, impound any document or thing produced before it, in our opinion, this provision will only enable the Court to impound any document or thing other than a passport. This is because impounding a passport is provided for in Section 10(3) of the Passports Act. The Passports Act is a special law while the Cr.P.C. is a general law. It is well settled that the special law prevails over the general law vide G.P. Singh's *Principles of Statutory Interpretation* (9th Edition pg. 133). This principle is expressed in the maxim *generalia specialibus non derogant*. Hence, impounding of a passport cannot be done by the Court under Section 104 Cr.P.C. though it can impound any other document or thing.

19. For the aforesaid reasons, we set aside the impugned order of the High Court and direct the respondent to hand over the passport to the appellant within a week from today. However, it shall be open to the respondent to approach the Passport Authorities under Section 10 or the authorities under Section 10A of the Act for impounding the passport of the appellant in accordance with law.

20. We, however, make it clear that we are not expressing any opinion on the merits of the case and are not deciding whether the passport can be impounded

as a condition for grant of bail. 6. It is evident from the impugned order that the learned Single Judge was alive to and in fact applied the rule in Suresh Nanda (supra). However, it is at the same time facially apparent that instead LPA6282017 Page 6 of 7 of quashing the impounding order, the Court permitted retention of the passport and facilitated its onward transmission to the Regional Passport Officer which in effect itself amounts to impounding. This kind of impounding was frowned upon and held to be unauthorized in Suresh Nanda (supra) when it was declared that even the Court cannot impound a passport. Though, no doubt, Section 104 Cr.P.C. states that the Court may, if it thinks fit, impound any document or thing produced before it, in our opinion, this provision will only enable the Court to impound any document or thing other than a passport. Thus, the facilities or otherwise impounding, in our opinion, was not in order. Therefore, the directions in paragraph 6 requiring the forwarding of the passport to the Regional Passport Officer is hereby set aside. The passport shall be released forthwith to the appellant. This will, however, not preclude the Regional Passport Officer from initiating proceedings under Section 10 (1) of the Passport Act, 1967 in line with the Single Judges observations and declarations. The appeal is allowed in the above terms. Order dasti. S. RAVINDRA BHAT (JUDGE) SUNIL GAUR (JUDGE) SEPTEMBER22 2017/vikas/ LPA6282017 Page 7 of 7