IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 05TH DAY OF JANUARY, 2024

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BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.5628 OF 2022 (GM-PASS)

BETWEEN:

MR. KOSHY VARGHESE
S/O LATE ABRAHAM VARGHESE
AGED ABOUT 59 YEARS
ADDRESS: A-04, VDB NUSA DUA
R.NARAYANAPURA MAIN ROAD
WHITEFILED, BENGALURU – 560 066.

... PETITIONER

(BY SRI. DILIP KUMAR I. S., ADVOCATE)

AND:

1 . UNION OF INDIA
THROUGH ITS SECRETARY
MINISTRY OF EXTERNAL AFFAIRS
SOUTH BLOCK, NEW DELHI.

2 . BANK OF BARODA
ZONAL STRESSED ASSETS
RECOVERY BRANCH, BENGALURU
REPRESENTED BY ASSISTANT GENERAL
MANAGER, 7TH FLOOR, VIJAYA TOWER, 41/2
MG ROAD, TRINITY CIRCLE
BENGALURU – 560 001.

3. ASSISTANT GENERAL MANAGER
BANK OF BARODA
(FORMERLY VIJAYA BANK)
K.G.ROAD BRANCH, BENGALURU – 560 001.

4. STATE OF KARNATAKA
THROUGH THE HOME SECRETARY
MINISTRY OF HOME AFFAIRS
GOVT. OF KARNATAKA
VIDHANA SOUDHA
BENGALURU – 560 001.

5. DIRECTOR GENERAL AND
INSPECTOR GENERAL OF POLICE
KARNATAKA STATE POLICE HEADQUARTERS
NO.2, NRUPATHUNGA ROAD
BENGALURU – 560 001.

... RESPONDENTS

(BY SRI. ADITYA SINGH, CGC FOR R1;
SRI. NAGARAJ DAMODAR, ADVOCATE FOR R2 AND R3;
SMT. NAVYA SHEKHAR, AGA FOR R4 AND R5)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 OF THE CONSTITUTION OF INDIA PRAYING TO DIRECT R-1, 4 AND 5 TO PROCURE THE ORIGINAL PASSPORT AND THE ORIGINAL OCI CARD OF THE PETITIONER FROM THE R-2 AND R-3 AND HAND OVER CUSTODY OF THE SAME TO THE PETITIONER.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 21.12.2023, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner is before this Court seeking a direction by issuance of a writ in the nature of mandamus directing respondents-1, 4 and 5 to hand over original passport and Overseas Citizen of India card ('OCI' for short) to the petitioner.

2. Heard Sri I.S.Dilip Kumar, learned counsel appearing for the petitioner, Sri Aditya Singh, learned Central Government Counsel appearing for respondent No.1, Sri Nagaraj Damodar, learned counsel appearing for respondents 2 and 3 and Smt. Navya Shekhar, learned Additional Government Advocate appearing for respondents 4 and 5.

3. Facts, in brief, germane are as follows:-

The petitioner is a citizen of United Kingdom and holds a OCI card for having born in this nation. The British passport comes about after acquiring citizen of United Kingdom and surrendering the passport that was issued to him in this country. The petitioner

is one of the Directors of a business venture viz., "VDB Property Ventures Private Limited" a private limited company which is in the business of real estate i.e., purchase of properties and selling them to intending buyers. It is the claim that the Company of the petitioner ventures into an agreement with the purchasers and the Bank which is in the nature of tripartite agreement. The Company claims that it is not involved or has not directly borrowed any loan from the Bank in respect of any property intending to be purchased by the customers of the Company. This is the plea in the petition with regard to the business of the petitioner. The issue in the *lis* does not concern the claim of businesses or the business venture of the petitioner.

4. A crime comes to be registered against the petitioner and several others pursuant to a complaint registered by the then Vijaya Bank now the Bank of Baroda. The complaint becomes a crime in Crime No.17 of 2019 for offences punishable under Sections 120B, 406, 418, 420, 423, 424, 465, 467, 468, 471 and 34 of the IPC. The petitioner is accused No.6. Certain events took place prior to registration of the complaint. It is the case of the

Bank that on 03-10-2018, the petitioner on his own volition appeared before the Bank and gave an undertaking to close the housing loan account of two persons – one Mr. T.Prasad and the other Mr. K.Jagadish which was in the branch. The amount in due by then was Rs.2.90 crores and Rs.2.65 crores respectively in both the accounts. The undertaking was not adhered to. It is, therefore, the crime comes to be registered against the petitioner and several others. The issue in the *lis* does not concern merit of the crime even.

5. It appears that the Bank directed surrender of passport of the petitioner till he clears the loan. This, according to the petitioner, comes about on 03-10-2018 itself when he was asked to sign the aforesaid documents and forced to hand over original passport and OCI card. The original passport and the OCI card from 03-10-2018 have been in the custody of the Bank. The subject petition was preferred on 4-03-2022. After filing of the petition, this Court directed the Bank to deposit the passport and the OCI card which were with it before this Court. The same is complied with. The issue now is, whether the petitioner is entitled to a mandamus to the release of passport and the OCI card that

was for four years held with the Bank and now before this Court pursuant to an order dated 17-10-2022.

6. The learned counsel appearing for the petitioner would submit that the Bank has no right to withhold the passport or the OCI card, as the power of withholding a passport issued by United Kingdom is not even available to the Bank and insofar as OCI card is concerned, it is only the Ministry of External Affairs under the Foreigners Act any action can be taken *qua* OCI card. Therefore, he would submit that he is entitled to a mandamus at the hands of this Court.

7. On the other hand, the learned counsel representing the respondents/Bank would submit that the Bank did not force the petitioner to surrender any document. The representation or undertaking of 03-10-2018 does contain a paragraph with regard to the petitioner depositing the original passport voluntarily with Vijaya Bank. He would, therefore, contend that if the petitioner had voluntarily deposited the passport, no fault can be found for holding the passport or the OCI card as deposited by the petitioner.

8. The learned Central Government Counsel Sri Aditya Singh representing Government of India would submit that no relief is claimed against them but would add that the passport or the OCI card cannot be withheld by the Bank officials.

9. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

10. The afore-narrated facts are not in dispute. The issue lies in a narrow compass. The transaction between the Bank and the liability of the petitioner is a matter of record, as the petitioner himself has undertaken to clear the dues in terms of a communication dated 03-10-2018. The communication insofar as it is germane for the present *lis* reads as follows:

> *"I have sold the property in contravention of the agreement of sale and tripartite agreement entered with Vijaya Bank, K.G. Road Branch, Bangalore. I take full responsibility for selling the above two flats by receiving the consideration and executing the registered sale deed in favour of Mr. Suresh Gowda.*
>
> *I am repaying the above loan amounts in full to the Bank on the dates referred to above. I undertake that I will*

also give a security by way of an alternative immovable property to secure the above amount in favour of the Bank. I will deposit my original passport voluntarily with Vijaya Bank, K.G. Road Branch till the encashment of all the cheques referred to above.

The above cheques are issued by me in my capacity as the Director of M/s VDB Whitefield Development Pvt.Ltd. I am in charge of the day-to-day affairs of the company and I am competent to issue the above cheques. I am absolutely empowered to issue the cheques on behalf of M/s VDB Whitefield Development Pvt.Ltd. and I am the authorized signatory.

I have read and understood the contents of this undertaking, abide by the undertaking and assure the Bank that the cheques, issued by me will be honoured on its presentation. I have voluntarily approached Vijaya Bank, present in person, given the present undertaking and undertake to honour the cheques stated above with an intention to close the above loan accounts."

It is in the aforesaid paragraph of the undertaking that the petitioner voluntarily submits to deposit original passport till encashment of cheques happen which form a part of the said undertaking. There was no mention about the OCI card but it was only the passport. The passport admittedly is not issued under any provision of law in India. It is not an Indian passport. It is a British passport issued to the petitioner depicting him to be a British Overseas citizen. The passport is appended to the petition. What the petitioner has for his stay in India is an Overseas Citizen of

India card, which is issued on 23-03-2017. The nationality depicted in the OCI card is that he is a citizen of Great Britain. Even if the petitioner had offered by way of an undertaking that he would deposit the OCI card and the passport with the Bank authorities, the Bank had no jurisdiction to keep it beyond 15 days. It is the property that had to be transferred to the authorities who have issued the passport or the OCI card.

11. In the case at hand, the passport is not issued by any authority in this country. It is a passport issued by the passport office of Great Britain – United Kingdom. Therefore, no authority in this country would have the power to withhold the passport or impound the same. The Bank, on the face of it, did not have any power even to retain the passport for four long years. The other fact is with regard to the OCI card. The OCI card is issued by Government of India through the Ministry of External Affairs by Foreigners Regional Registration Office ('FRRO' for short) under the Citizenship Act, 1955 r/w Foreigners Act. This card as well could not have been withheld by the Bank even if it is handed over voluntarily. It is the property of FRRO and the Bank had to transmit

it for the safe keep at the FRRO and the FRRO initiating proceedings if necessary in accordance with law. None of these things have happened in the case at hand.

12. The Bank has withheld or retained the passport for four long years – a British passport and OCI card of the petitioner. Both the acts, on their face, are without jurisdiction. Even if it is voluntarily handed over to the Bank, the Bank does not have the authority to keep the aforesaid documents with it. The Bank ought to have immediately intimated the authorities who could have taken up proceedings in accordance with law. Therefore, the petitioner becomes entitled to issuance of a writ in the nature of mandamus for return of both British passport and OCI card. Since both of them have been deposited before this Court pursuant to an order dated 17-10-2022, the Registry has to hand over the passport and the OCI card to the petitioner, after due verification of the documents.

13. For the aforesaid reasons, I pass the following:

O R D E R

(i) Writ Petition is allowed.

(ii) The action of the Bank in retaining the British passport of the petitioner and the Overseas Citizen of India Card is held to be illegal.

(iii) Since it is in the custody of this Court now, the Registry is directed to hand over the passport and the OCI card to the petitioner, after due verification of documents.

(iv) The respondents are at liberty to initiate any action in accordance with law, except the one that is found fault with in the subject order.

Sd/-
JUDGE

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