

CANADA / JUDGMENT

VB9-10036

COURT

Refugee Appeal Division

DECIDED

6 March 2020

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RAD File No. / No de dossier de la SAR : VB9-10036 VB9-10037 / VB9-10038 / VB9-10039 Private Proceeding / Huis clos Reasons and Decision ? Motifs et décision Persons who are the subject of the appeal XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX Personnes en cause Appeal considered / heard at Montréal, Quebec Appel instruit / entendu à Date of decision March 6, 2020 Date de la décision Panel Marie-Lyne Thibault Tribunal Counsel for the persons who are the subject of the appeal Baldev S Sandhu Conseil des personnes en cause Designated representative XXXX XXXX XXXX Représentant(e) désigné(e) Counsel for the Minister N/A Conseil du ministre REASONS FOR DECISION OVERVIEW

- [1] XXXX XXXX XXXX (the principal appellant), his wife, XXXX XXXX, and their children, XXXX XXXX and XXXX XXXX (the associate appellants), are citizens of India.
- [2] Should they return to India, they fear a risk to their life at the hands of XXXX XXXX as a result of a land dispute.
- [3] They are appealing the decision of the Refugee Protection Division (RPD) rejecting their refugee protection claims. They submit that the RPD erred in its analysis of an internal flight alternative (IFA) in Delhi or Mumbai.
- [4] For the reasons set out below, the Refugee Appeal Division (RAD) concludes that the RPD's determination is correct. The appellants can avail themselves of an IFA in Delhi or Mumbai.
- [5] The appeal is dismissed.

BACKGROUND

- [6] The appellants' allegations can be found in the principal appellant's Basis of Claim Form (BOC Form).¹ The following is a summary: * XXXX XXXX, a powerful and prosperous man with political ties throughout India, appropriated his father's land. His father tried to recover his land but was unsuccessful. * On XXXX XXXX XXXX 1999, his father was XXXX at a party by XXXX XXXX henchmen. XXXX XXXX XXXX then threatened his mother that she should not ask for an autopsy. * His brother, XXXX, continued efforts related to the family land and to their father's XXXX XXXX XXXX XXXX XXXX threatened to kill him if he did not stop these efforts. However, his brother continued his efforts and was eventually XXXX on XXXX XXXX, 2010. * The principal appellant asked the police for help. The police refused to

help him. * The appellants then started receiving threatening telephone calls. The caller said that going to the police had been a serious mistake. The principal appellant was subsequently beaten by unknown individuals. * Fearing for his life, he and the associate appellants left India.

ANALYSIS

- [7] The RAD applied the standard of correctness.² The RAD conducted an independent analysis of the evidence, which included listening to the recording of the hearing.
- [8] After listening to the recording, the RAD notes that, in its oral reasons, the RPD never mentioned the information linked to another case found between lines 17 and 28 of the written record.³ The RAD notes that the written record of the decision in the present case is marked [translation] "unrevised transcription of an oral decision."⁴ The RAD finds that this is a clerical error that occurred at the time of transcription. Consequently, the RAD cannot accept the appellants' arguments that this error raises questions about the RPD's focus in arriving at its conclusions, about procedural fairness and about the principles of natural justice.
- [9] It is also worth mentioning that the appellants do not contest the RPD's finding that their refugee protection claim has no nexus to one of the five Convention grounds. Furthermore, the RAD agrees with that finding.
- [10] The appellants submit, however, that the RPD erred in its analysis of the IFA. The Refugee Appeal Division concludes that the Refugee Protection Division did not err in its analysis of the internal flight alternative. The appellants did not demonstrate a prospective risk in Delhi or Mumbai.
- [11] The RAD concludes that the RPD did not err in concluding that the appellants would not be subjected to a serious possibility of persecution in the proposed IFAs or to a risk within the meaning of subsection 97(1) of the Immigration and Refugee Protection Act (IRPA).
- [12] The appellants submit that the RPD erred in drawing such a conclusion. They submit that the RPD erred in concluding that XXXX XXXX would not have the interest or the motivation to pursue them in the proposed IFAs.
- [13] The RAD concludes that the RPD did not err in concluding that the principal appellant failed to show that XXXX XXXX has the interest and the motivation to search for him in the proposed IFAs. The burden is on the appellants to establish that there is a prospective risk in the proposed IFAs. They have not discharged this burden. The fact that XXXX XXXX is prosperous and powerful does not lead to the conclusion that he is motivated to search for the appellants throughout India. However, this profile is relevant when assessing his ability to track them down. With respect to XXXX XXXX XXXX motivation to search for the appellants throughout India, it was open to the RPD to conclude that there was a lack of interest and motivation on the basis of the absence of any serious incident after 2010. The

principal appellant's father XXXX in 1999. His brother XXXX in 2010. The appellant was attacked two months later. Then, between 2010 and 2017, the appellants and the principal appellant's mother received threatening telephone calls. However, the appellants were not subjected to any other incident even though they continued to live in their home until they left India in 2017.

- [14] Upon reviewing the BOC Form,⁵ the RAD notes that XXXX XXXX XXXX responded with reprisals when action was taken against him. The principal appellant's father was XXXX when he tried to recover his land. The principal appellant's brother was XXXX when he tried to continue the efforts taken by his father to recover the land. The principal appellant was beaten after trying to file a complaint with police. While unknown individuals are still making threatening telephone calls to the principal appellant's mother, the appellants have not shown that XXXX XXXX XXXX has an interest in pursuing them in the proposed IFAs if they give up their family land and settle elsewhere in India.
- [15] As to XXXX XXXX ability to track down the appellants in the proposed IFAs, the RAD finds that the RPD did not err in its analysis. The RAD does not agree with the appellants' argument that the RPD selectively analyzed the documentary evidence to justify its conclusion as to XXXX XXXX inability to track them down in the proposed IFAs. The RAD is of the opinion that the RPD did not resort to speculation and that it correctly analyzed the documentary evidence⁶ to arrive at its conclusions. The RAD considered the evidence⁷ regarding tenant registration to which the appellants refer. The RAD considered Tab 12.8 of the National Documentation Package and the passages to which the appellants refer in their memorandum. The RAD accepts that tenant registration by owners is becoming increasing frequent in Delhi. However, the documentary evidence shows that verifications are not necessarily carried out by police and, furthermore, that police in other states would not respond to verification requests.⁸ According to a police commissioner cited in the documentary evidence, it is impossible for police officers to check the identity of all new tenants.⁹
- [16] The appellants submit that the RPD did not consider the documentary evidence on the Crime and Criminal Tracking Network and Systems (CCTNS),¹⁰ a database that interlinks police stations across India. It is true that the RPD did not mention this system. However, the RPD concluded that police communication between different states is minimal, except in the case of major crimes. This conclusion is correct based on the documentary evidence regarding communication between police departments.¹¹ The CCTNS is a system in which police reports are entered.¹² In this case, the principal appellant stated that he is not being sought in India for any criminal offence.¹³ He has not demonstrated that he would be the subject of a First Information Report and that his name could thus potentially appear in the CCTNS. Moreover, sources reveal that the implementation of this system is not complete and that it is not yet functional countrywide.¹⁴

- [17] In addition, the appellants were able to leave India via the airport in Delhi.¹⁵ As noted by the RPD, the fact that the principal appellant was able to pass through the rigorous controls of an Indian airport¹⁶ shows, on a balance of probabilities, that he is not wanted by the police.
- [18] As for tracing the appellants using their unique identity number (Aadhaar), the appellants submit that the increasingly widespread use of this number makes resettlement with no possibility of being traced virtually impossible. As the need to use the Aadhaar is not widespread at this time, the consequences described by the source cited by the appellants are speculative at this stage. The RPD considered the documentary evidence¹⁷ relating to the Aadhaar. As noted by the RPD, the Aadhaar card can be issued even when the person does not present any documentation corroborating their identity, and biometric data is not verified prior to issuing the card. The RAD finds that the appellants have not established, on a balance of probabilities, that XXXX XXXX has the ability to track them down in the proposed IFAs through the Aadhaar.
- [19] In view of the above, even if the RAD accepts that XXXX XXXX is an influential man who could use the police to try to track down the appellants, and even if the RAD accepts that police in India are corrupt, the appellants have not demonstrated how XXXX XXXX or the police could track them down in the proposed IFAs.
- [20] Therefore, the RAD finds that the appellants did not show, on a balance of probabilities, that they would be subjected to a risk of harm in Delhi or Mumbai.
- [21] The appellants also submit that the RPD erred in concluding that it would be reasonable for them to seek refuge in these cities. The Refugee Appeal Division finds that it is not unreasonable for the applicants to seek refuge in Delhi or Mumbai
- [22] The RAD finds that the RPD did not err in concluding that Delhi and Mumbai are reasonable IFAs for the appellants.
- [23] The appellants submit that, given their personal circumstances and the conditions in the proposed IFAs, the RPD erred in concluding that Delhi and Mumbai are reasonable IFAs.
- [24] In their memorandum, the appellants do not provide any evidence that the Rashtriya Swayamsevak Sangh and the Shiv Sena do not allow non-Hindus from other Indian states to live or work in Mumbai. The RAD finds nothing in the documentary evidence¹⁸ that supports this argument. The RAD also finds nothing in the documentary evidence¹⁹ about any significant difference in the treatment reserved for Sikhs from Mumbai versus those who wish to settle there. The RAD accepts that such a distinction may exist. However, the RAD notes that the Constitution of India prohibits discrimination based on religion.²⁰ The documentary evidence also states that the majority of Sikhs in India are not subjected to social discrimination or violence.²¹ The evidence further shows that Sikhs outside of Punjab are socially and economically integrated in the communities in which they live.²²

- [25] The threshold for showing that an IFA is unreasonable is very high. The conditions in the IFA must be such that the refugee protection claimant's life or safety would be at risk.²³ The appellants have not discharged this burden.
- [26] Consequently, the RAD concludes that the RPD's conclusion that it is not unreasonable for the appellants to seek refuge in Delhi or Mumbai is correct.
- [27] In view of the above, the RAD concludes that the RPD's decision is correct. The appellants did not establish a serious possibility of persecution on one of the five Convention grounds or show that if they returned to India they would be personally subjected to a risk to their lives or a risk of cruel and unusual treatment or punishment under subsection 97(1) of the IRPA. DECISION
- [28] The RAD dismisses the appeal. The RAD confirms the determination of the RPD, namely that XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX and XXXX XXXX are neither Convention refugees nor persons in need of protection. Marie-Lyne Thibault Marie-Lyne Thibault March 6, 2020 Date IRB translation Original language: French 1 RPD-1, Refugee Protection Division (RPD) record, Basis of Claim Form (BOC Form) of Surinder Singh KHABRA, pp. 9-20. 2 Canada (Citizenship and Immigration) v. Huruglica, 2016 FCA 93. 3 RPD-1, RPD record, Record of an oral decision rendered on November 19, 2019. 4 Ibid., p. 3. 5 Supra, endnote 1, BOC Form. 6 National Documentation Package (NDP) on India, May 31, 2019, Tab 10.2: Communication between police offices across the country, including the use of POLNET; whether police across India can locate an individual, particularly as a result of registration requirements for employment, housing and education, security checks... Immigration and Refugee Board of Canada (IRB0. May 10, 2016. IND105494.E; Tab 10.6: Surveillance by state authorities; communication between police offices across the country, including use of the Crime and Criminal Tracking Network and Systems (CCTNS); categories of persons that may be included in police databases... IRB. June 25, 2018. IND106120.E; Tab 14.4: Information on airport security screening procedures for passengers departing on international flights (2015-May 2017). IRB. April 28, 2017. IND105780.E; Tab 2.6: India. Freedom in the World 2019. Freedom House. 2019. 7 Ibid., NDP on India, January 31, 2020, and May 31, 2019, Tab 10.6. 8 Ibid., Tab 14.8: Requirements and procedures for tenant registration (or tenant verification), including implementation, particularly in Delhi, Mumbai, Kolkata and Bengaluru (2016-May 2019). IRB. May 14, 2019. IND106289.E, pp. 3-4. 9 Ibid., Tab 10.6, p. 14. 10 Ibid., Tab 10.6. 11 Ibid., Tab 10.2. 12 Ibid., Tab 10.6. 13 Recording of hearing, at about 00:20:00. 14 Supra, endnote 6, NDP on India, January 31, 2020, and May 31, 2019, Tab 10.6. 15 SPR-1, RPD record, IMM 0008, Question 9, p. 77. 16 Supra, endnote 6, NDP on India, January 31, 2020, and May 31, 2019, Tab 14.4; Tab 14.9: Exit controls and security measures for Indian citizens leaving the country, including use of computerized identity verification; information sharing between police, security and airport officials, including access to the Crime and Criminal... IRB. September 10, 2018. IND106148.E. 17 Ibid., Tab 1.5: DFAT Country Information Report: India. Australia. Department of Foreign Affairs and Trade. October 17, 2018, pp. 28-29. 18 NDP on India, January 31, 2020. 19 Ibid. 20 Ibid., NDP

on India, January 31, 2020, and May 31, 2019, Tab 1.5, p. 14. 21 Ibid., Tab 1.5, p. 16; Tab 12.8: Situation of Sikhs outside the state of Punjab, including treatment by authorities; ability of Sikhs to relocate within India, including challenges they may encounter. IRB. May 13, 2013. IND104369.E. 22 Ibid., Tab 12.8. 23 Ranganathan v. Canada (Minister of Citizenship and Immigration), 2000 (FCA), [2001] 2 FC 164.

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