

Federal Court



Cour fédérale

Date: 20210325

Docket: IMM-3268-20

Citation: 2021 FC 264

Ottawa, Ontario, March 25, 2021

PRESENT: Madam Justice Simpson

BETWEEN:

**SURINDER SINGH KHABRA,
RINKY KHABRA, REET KHABRA,
SACH KHABRA**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

**(Delivered orally from the Bench by videoconference
in Vancouver, British Columbia on February 8, 2021)**

I. Proceeding

[1] This application is for judicial review of a decision of the Refugee Appeal Division [RAD], of the Immigration and Refugee Board [the Board], dated March 6, 2020, dismissing the Applicants' appeal from a decision of the Refugee Protection Division [the RPD] of the Board

refusing their refugee claim. The RAD Member dismissed the appeal on the basis that the Applicants have an internal flight alternative [IFA] available in India in either Delhi or Mumbai.

[2] The Applicants are a husband, wife, and two minor children. They are Sikhs and Indian citizens. Before leaving India, they resided in the Punjab.

[3] The Applicants' underlying claim for refugee protection stems from the theft of the Principal Applicant's ancestral family lands by a wealthy man named Mr. Singh and the attempts by the Principal Applicant and his family members to reclaim their property.

[4] The Principal Applicant's father initially attempted to take back the land. Thereafter, in 1999, he was poisoned to death at Mr. Singh's direction. Eleven years later the Principal Applicant's brother was also murdered at the behest of Mr. Singh for again trying to reclaim the land.

[5] In 2010 following his brother's death, the Principal Applicant tried to file a report with the police alleging that Mr. Singh had murdered his brother. However, the police refused assistance. The Principal Applicant began to receive threatening phone calls from unidentifiable persons saying that he had made a mistake by going to the police and that he would pay for doing so.

[6] Seven years later, the Principal Applicant was attacked by several unknown assailants. As a result, the family fled and arrived in Canada in October 2017.

II. **The RAD Decision**

[7] The RAD Member concluded that the RPD had not erred in finding that the Applicants had failed to show that Mr. Singh did not have the motivation to search for them in the proposed IFAs. The RAD Member recognized that Mr. Singh's wealth and connections might give him the ability to find the Applicants, but concluded that he had no reason to do so. The RAD Member concluded that if the Applicants did not try to repossess their family land, they would not be at risk from Mr. Singh.

III. **The Issues**

[8] There are two issues:

1. Did the RAD Member ignore a Chairperson's Guideline?
2. Did the RAD Member overlook relevant documents about the tenant registration program?

IV. **Discussion and Conclusions**

A. *Issue 1*

[9] The Applicants argue that the RAD Member ought to have set aside the RPD's decision on the basis that the Principal Applicant testified that he was concerned for the "life and honour" of his wife if they returned to India. The Applicants submit that the RAD Member did not refer to the Guideline on Gender Related Persecution [the Guideline], and therefore failed to consider a nexus to one of the Convention grounds.

[10] I am not persuaded by this submission. The RPD referred to the Guideline but found that there was insufficient evidence of gender-related threats against the female Applicant.

Accordingly, it found no nexus to a Convention ground. Furthermore, the Applicants did not contest this finding on appeal. In these circumstances I find that the RAD Member's failure to mention the Guideline was reasonable.

B. *Issue 2*

[11] The Applicants also submit that the RAD Member failed to consider National Documentation Package item 14.8. This document describes the process by which police send tenant identification requests to police in the prospective tenants' home villages. It is submitted that during this process corrupt police might tell Mr. Singh where the Applicants had relocated.

[12] This submission is not persuasive for several reasons.

[13] First, the RAD Member did refer to document 14.8. It is referenced in footnote 8 in paragraph 15 of the RAD Decision.

[14] Second, the RAD Member's decision makes it clear that even if Mr. Singh could locate the Applicants, he had no motive to try to find them once they no longer expressed interest in repossessing their land. This conclusion about Mr. Singh's lack of motivation was reasonable because the only occasions on which he had initiated violence were those in 1999 and 2010 when the Principal Applicant's father and brother tried to reclaim the land.

[15] Lastly, there was no violence in the seven years before the Applicants left India, during which time they did not assert any rights related to the stolen property. In these circumstances it

was reasonable of the RAD Member to conclude that the Applicants had not demonstrated that they were at risk of being persecuted by Mr. Singh in the IFA cities.

[16] For all these reasons, the application for judicial review will be dismissed.

[17] No question was posed for certification for appeal.

JUDGMENT IN IMM-3268-20

THIS COURT'S JUDGMENT is that the application for judicial review is hereby dismissed.

"Sandra J. Simpson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3268-20

STYLE OF CAUSE: SURINDER SINGH KHABRA, RINKY KHABRA,
REET KHABRA, SACH KHABRA v THE MINISTER
OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE FROM
VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: FEBRUARY 8, 2021

JUDGMENT AND REASONS: SIMPSON J.

DATED: MARCH 25, 2021

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