

Court No. - 40

Case :- WRIT - C No. - 32924 of 2023

Petitioner :- Brij Mohan

Respondent :- State Of U.P. And 10 Others

Counsel for Petitioner :- Ratnesh Kumar Tiwari

Counsel for Respondent :- CSC

Hon'ble Mahesh Chandra Tripathi,J.

Hon'ble Prashant Kumar,J.

1. Heard learned counsel for the petitioner and Shri F.A. Ansari, learned Standing Counsel for the State respondents.

2. Present writ petition is preferred inter-alia with following reliefs:-

"a. Set aside the order dated 13.09.2022 and the order dated 16.09.2022 passed by respondent no.5 in regard to release of respondent no.9 to respondent no.8 and 7 respectively.

b. Take cognizance of offence committed by respondent no.8 in withdrawal of Criminal Appeal No.764/2023 (Hirdesh Kumar vs. State of U.P. and others) with suppression of real fact.

c. Direct the answering respondent no.2, 3 and 6 to take appropriate action against errant respondent no.7, 8, 10 and 11 in the interest of justice."

3. It transpires from the record that there is a valid adoption deed dated 24.03.2023, appended as Annexure no.7 and till date the same is not upset by the competent court. The petitioner claims to be maternal uncle (Mausa) of a minor and he does not fulfil the requirement as per Section 7 and 11 of the Hindu Adoption and Maintenance Act 1956. For ready reference, the Section 7 and 11 of the Act is extracted as under:-

"7.Capacity of a male Hindu to take in adoption.—Any male Hindu who is of sound mind and is not a minor has the capacity to take on or a daughter in adoption: Provided that, if he has a wife living, he shall not adopt except with the consent of his wife unless the wife has completely and finally renounced the word or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind.

.....

11.Other conditions for a valid adoption.—In every adoption, the following conditions must be complied with:—

(i) if the adoption is of a son, the adoptive father or mother by whom the adoption is made must not have a Hindu sonson's son or son's son's son (whether by legitimate blood relationship or by adoption) living at the time of adoption;

(ii) if the adoption is of a daughter, the adoptive father or mother by whom the adoption is made must not have a Hindu daughter or son's daughter (whether by legitimate blood relationship or by adoption) living at the time of adoption;

(iii) if the adoption is by a male and the person to be adopted is a female, the adoptive father is at least twenty-one years older than the person to be adopted;

(iv) if the adoption is by a female and the person to be adopted is a male, the adoptive mother is at least twenty-one years older than the person to be adopted;

(v) the same child may not be adopted simultaneously by two or more persons;

(vi) the child to be adopted must be actually given and taken in adoption by the parents or guardian concerned or under their authority with intent to transfer the child from the family of its birth 1[or in the case of an abandoned child or a child whose parentage is not known, from the place or family where it has been brought up] to the family of its adoption:

Provided that the performance of dattahomam shall not be essential to the validity of an adoption."

4. Considering the facts and circumstances, once the Court has indicated its mind in negative, learned counsel for the petitioner prays that the present writ petition be dismissed as not pressed.

5. Prayer made is allowed.

6. The writ petition is ***dismissed*** as not pressed.

Order Date :- 19.10.2023

A. Pandey