

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 125 OF 2015

Mansukh Samji Shah and anr. .. Petitioners

Vs.

Medical Health Officer and anr. .. Respondents

Mr.Zubin B. Kamdin a/w Ms.Vidya Nair and Mr.Jayesh Rathod
i/b Vimla & Co., for the Petitioners.
Ms.Vandana Mahadik, for BMC.

**CORAM : NARESH H. PATIL AND
M.S.KARNIK, JJ.**

07th DECEMBER, 2016

P.C. :

. Rule, returnable forthwith. Heard finally by consent
of the parties.

2. The petitioners claim to be adopted parents of
'Rushabh Ghosalia' whose name was changed to 'Rushabh
Mansukh Shah' after adoption. Reliance is placed on the State
Government's notification issued on 19/06/2003 (Exhibit 'C' to
the Petition). It is the contention of the petitioners that Rushabh
was adopted when he was one month old. Reliance is further

placed on deed of adoption made at Mumbai on 12th day of March, 2001 between Sejal Jitendra Gosalia – natural mother and Mansukh Samji Shah as adoptive father and Vandana Mansukh Shah as adoptive mother. The deed was registered with the office of Sub-Registrar Mumbai. The photo-state copy of the same is annexed at Exhibit 'B'. It is the contention of the petitioners that since the adoption, child is residing with them and that they are taking good care of their son as his parents.

3. Learned Counsel appearing for the petitioners submits that Rushabh is studying in 10th standard in Mumbai. He had applied for passport for the education and other purposes. It was felt necessary to apply to the Corporation for getting the birth certificate with certain modification in the entry of the birth certificate of Rushabh. Accordingly, an application was preferred to the Corporation. By communication dated 28/10/2014, the Medical Officer of Health, K/East Ward of the Corporation informed the petitioners that unless order of the Bombay City Civil Court is produced, it would not be possible to

carry out the necessary changes. This communication has been challenged in the present Petition.

4. Learned Counsel appearing for the petitioners referred to the judgment of the Kerala High Court in case of **M.D.Francis and anr. Vs. The Aluva Municipality dated 07/11/2012 in WP(C) No. 24203 of 2012** and provisions of the Hindu Adoptions and Maintenance Act, 1956 (for short 'Act'). It is submitted that even execution of the adoption deed is strictly not the requirement of the law to establish valid adoption, but in the present case, the parties have executed adoption deed, got it registered and corresponding change has been notified in the Government Gazette. This material is sufficient enough for the Corporation to carry out necessary changes in the birth certificate of the son of the petitioners.

5. Learned Counsel appearing for the Corporation placed on record certain communication issued by the Office of the Registrar General, Government of India to contend that it is

necessary and mandatory to obtain not only adoption deed but also Court's order for carrying out necessary changes in the entry of birth certificate.

6. We perused the record and adoption deed placed before us and the judgment in case of **M.D.Francis and anr.** (*supra*). We also perused the provisions of the Act.

7. We find that the sufficient material has been placed on record for carrying out necessary correction in the birth register for changing name of son of the petitioners as desired by the adoptive parents i.e. petitioners herein.

8. There is sufficient material placed on record to justify the contention raised by the petitioners for carrying out necessary correction in the birth certificate of Rushabh. The registered adoption deed has not been challenged.

9. In the fact, we are inclined to allow this Petition with

necessary directions to the Corporation. Hence, following order is passed.

ORDER

- i) We quash and set side the impugned communication dated 28/10/2014 issued by the Medical Officer of Health, K/East Ward, Municipal Corporation of Greater Mumbai.
- ii) We direct the Corporation to add names of both the petitioners as parents of minor 'Rushbh' in the birth certificate.
- iii) Necessary certificate after carrying out changes as directed by this Court be furnished to the petitioners at the earliest.

9. Rule is made absolute in the above terms..

(M.S.KARNIK, J.)

(NARESH H. PATIL, J.)