

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23/3/2016

C O R A M

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Writ Petition No.24004 of 2015

M. Kannan

... Petitioner

Vs

1. The Director of Public Health and Preventive Medicine and
Tamil Nadu Chief Registrar of Birth & Death
Department of Public Health
No.359 DMS Campus
Chennai 600 006.
 2. The Commissioner
Corporation of Chennai
No.1131 EVR Periyar Salai
Park Town
Rippon Buildings
Chennai 600 003.
 3. The Zonal Officer
Zone - 7 Ambattur - Chennai Corporation
No.536 Chennai Tiruvallur Highway Road
Ambattur
Chennai 600 053.
- ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records of the impugned order dated 24/3/2015 issued under Ma.A.7/Posu.Thu.Na.Ka.No.00568-2015 and also order dated 18/6/2015 issued under Z.O.7/HDC.No.0568/2015 which are passed by the third respondent, quash the same and consequently direct the third respondent to substitute my name and my wife's Mrs.K.P.Suji in the birth register bearing Registration No.2014/07/091/000009/0 dated 26/3/2014 issued to my dadoptive child in the place of biological parents.

For Petitioner ... M/s.Genicon & Associates

For respondents ... Mr.V.Jayaprakash Narayanan
Special Government Pleader
for R.1.

Mr.P.V.Selvakumar
for R.R.2 and 3.

O R D E R

With the consent of the learned counsel appearing on either side, this writ petition is taken up for final disposal.

2. Heard the learned counsel for the petitioner and the learned counsel appearing for the respondents.

3. This writ petition has been filed, praying to quash the order passed by the third respondent, in Ma.A.7/Posu.Thu.Na.Ka.No.00568-2015, dated 24/3/2015 and consequently, direct the third respondent, to substitute the name of the petitioner and his wife Mrs.K.P.Suji, in the place of the biological parents of the petitioner's adoptive child, in the birth register bearing Registration No.2014/07/091/000009/0, dated 26/3/2014.

4. The petitioner is working as a Chief Manager in a Private Limited Company. The marriage took place between the petitioner and one K.P.Suji, on 19/5/1996. Since they have no issues for more than fifteen years, they have decided to adopt a child. One Mr.Chinraj and Mrs.Ambica, were willing to give their two months old female child, to the petitioner, on adoption.

5. In order to comply with the legal formalities, the biological parents and the petitioner have executed an adoption deed, on 9/4/2014, which was duly registered as Document No.74 of 2014, at the Sub-Registrar Office, Konnur, Chennai. When the petitioner approached the third respondent, seeking to substitute their names in the place of the biological parents in the birth register, the third respondent directed the petitioner, to obtain necessary orders from the civil Court for adopting the female child.

6. The petitioner had made a representation, on 27/9/2014, to all the respondents. Since the petitioner did not get any response, the petitioner had filed a writ petition, in W.P.No.31602 of 2014. This Court, vide order, dated 5/2/2015, directed the third respondent, to consider and dispose of the representation of the petitioner, dated 27/9/2014, within a

period of four weeks, from the date of receipt of a copy of the order in the light of the circular, dated 12/3/2012, issued by the Registrar General, India.

7. Thereafter, the third respondent had passed an impugned order, dated 24/3/2015, rejecting the request of the petitioner. Subsequently, the third respondent has given a formal personal hearing to the petitioner, on 24/4/2015, in order to fulfill the direction of this Court. At the time of enquiry, the petitioner had filed a detailed written submission and also explained the legal position to the third respondent. But without considering the same, the third respondent had passed an another order, dated 18/6/2015, rejecting the request of the petitioner and insisting the production of the adoption order from a civil Court. In such circumstances, the petitioner has come forward with the present writ petition, praying for the relief as stated above.

8. The learned counsel appearing for the petitioner would submit that the third respondent has passed the impugned order, dated 24/3/2015, without giving any opportunity to the petitioner and rejected the request of the petitioner.

9. The learned counsel appearing for the petitioner would submit that the Notification, dated 24/6/2011, issued on the Guidelines Governing the Adoption of Children, 2011, will not apply to the case of the petitioner, because, Clause 4 of the said Guidelines are applicable only in respect of an orphan, abandoned or surrendered child.

10. The learned counsel appearing for the petitioner, placed reliance on a Circular, dated 15/5/2015, issued by the Government of India, Ministry of Home Affairs, Office of the Registrar General, India, on the subject - clarification on making/changing entries in birth record of children taken on adoption. The relevant portion from the afore stated Circular reads as follows:-

"3. In order to address the difficulties in producing the adoption order by general public in case of adoption within relatives/acquaintances, the matter has been reviewed and also discussed with the Central Adoption Resource Authority (CARA) of Ministry of Women & Child Development. Accordingly, it has been decided that for in country non-institutional adoptions took place within relations or acquaintances, registered adoption deed is enough, there would be no need to produce adoption order of a Court for such cases."

11. The learned counsel appearing for the petitioner also placed reliance on the Circular, issued by the Department of Public Health and Preventive Medicines, in R.No.37465/SBHI-I/S1/12, dated 17/6/2015 and the same reads as follows:-

"For non institutional adoptions that took place within relations or acquaintances, registered adoption deed is enough and no need to produce adoption order of a Court for such cases."

12. Section 9 (4) of the Hindu Adoption and Maintenance Act, 1956, reads as follows:-

"Where both the father and mother are dead or have completely and finally renounced the world or have abandoned the child or have been declared by a Court of competent jurisdiction to be of unsound mind or where the parentage of the child is not known, the guardian of the child may give the child in adoption with the previous permission of the Court to any person including the guardian himself."

13. The Registrar General of India, has issued a Circular No.1/7/2011-VS (CRS), dated 12/3/2012 and issued procedures and guidelines for making or changing entries in the birth record for children taken on adoption. In the Circular, in point No.2 (iii), it is reads as follows:-

"A birth shall be treated as registered only when supported by the biological birth certificate or a copy thereof. The place of birth and the date of birth as mentioned in the original birth certificate will not undergo any change and shall remain as it is. However, on the basis of details contained in adoption order/deed, requisite changes will be made in the name of child, name of adoptive parent(s) and address of adoptive parent(s) by the registrar where the birth was originally registered."

14. In view of the above said provision, the requirement of adoption order is applicable only when the adoption is taken either through the Institutions or from the persons other than the original parents, like Guardian, etc.

15. By referring the above Circular and the clarification issued by the Office of the Registrar General, India, the learned counsel appearing for the petitioner submitted that absolutely, there is no need for any Court order in order to substitute the name of the adopted parents in the birth certificate. Hence the learned counsel sought for suitable orders from the respondents and in fact, the petitioner had complied with all the requirements for adoption, as stipulated under the provisions of the Hindu Adoption and Maintenance Act, 1956.

16. Considering the facts and circumstances of the case and upon hearing the learned counsel appearing on either side, this Court is of the considered view that it would be suffice to remit back the matter once again to the respondents for fresh consideration.

17. Accordingly, this writ petition is allowed and the impugned orders passed by the third respondent, dated 24/3/2015 and 18/6/2015, are set aside and the matter is remitted back once again, to the third respondent, for fresh consideration. The third respondent is hereby directed to pass fresh orders, taking note of the Circular, issued by the Registrar General, India, dated 12/3/2012, referred to supra and pass appropriate orders, on merits and in accordance with law, after conducting due enquiry, without insisting upon the production of the civil Court order, within a period of two weeks, from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The Director of Public Health and
Preventive Medicine and Tamil Nadu Chief Registrar of
Birth & Death,
Department of Public Health,
No.359 DMS Campus,
Chennai 600 006.
2. The Commissioner,
Corporation of Chennai,
No.1131 EVR Periyar Salai,
Park Town,
Rippon Buildings, Chennai 600 003.

3. The Zonal Officer
Zone - 7 Ambattur - Chennai Corporation
No.536 Chennai Tiruvallur Highway Road
Ambattur
Chennai 600 053.

+1cc to M/S.Genicon & Associates, Advocate, S.R.No.18554
+1cc to Mr.P.V.Selvakumar, Advocate, S.R.No.18511
+1cc to the Government Pleader, S.R.No.18692

W.P.No.24004 of 2015

sns (CO)
srg (29/03/2016)



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