

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.12.2016

CORAM:

THE HON'BLE MR. JUSTICE T.RAJA

W.P.Nos.31848 to 31858 of 2016

Sharanalayam,
A Registered Public Charitable Trust
and Licensed Adoption Agency,
Rep. By its Trustee Secretary
N.Chandran,
Singarapalayam,
Kinathukadavu,
Coimbatore District.

... Petitioner in
in all the cases

Vs

1.The Executive Officer,
Town Panchayat Office,
Kinathukadavu Taluk,
Coimbatore.

... 1st Respondent in all
Cases

2.T.Jagajeevarajan

3.C.Muthu Bharathi Devi

...2nd and 3rd Respondent in
W.P.31848/16

R.Karthick

K.Yasodha

...Respondents 2 & 3 in W.P No.31849/16

S.Sudhakar

J.Santhi

...Respondents 2 & 3 in W.P.No.31850 of 2016

K.Jayabal

Susilamani

...Respondents 2 & 3 in W.P.No.31851 of 2016

S.Raju

M.Dhanalakshmi

... Respondents 2 & 3 in W.P.No.31852 of 2016

N.Muralidaran

U.Umamaheswari

...Respondents 2 & 3 in W.P.No.31853 of 2016

M.Sekar

K.Kanniammal

...Respondents 2 & 3 in W.P.No.31854 of 2016

M.Sekar
K.Tamilselvi ..Respondents 2 & 3 in W.p.No.31856 of 2016

A.Selvakumar
S.Punithavathy ..Respondents 2 & 3 in W.P.No.31857 of 2016

S.Senthilkumar
S.Akilandeswari ..Respondents 2 & 3 in W.P.No.31858 of 2016

4.The District Child Protection Officer,
Coimbatore District,
Coimbatore. .. 4th Respondents in all Cases
(R4 is Suo Motu impleaded as
per order dated 16/9/16
in W.P.No.31848 to 31858 of 2016)

Prayer in W.P.No.31848 of 2016: Writ Petitions filed under
Article 226 of the Constitution of India seeking a writ of
certiorarified mandamus to call for the records relating to the
communication through letter bearing Na.ka.No.5/16, dated
23.06.2016 on the file of the first respondent and to quash the
same and consequently, to direct the first respondent to issue
birth certificate for

Praveen now known as J.Sairam viz. the adoptive child of
respondents 2 and 3 by incorporating the particulars in adoption
Order dated 10.05.2016 made in Adoption O.P.No.375/2016 on the
file of the Court of the Principal Family Judge, Coimbatore.
(W.P.No.31848 of 2016)

for Sugesh now known as Siddharth viz. the adoptive child
of Respondents 2 and 3 by incorporating the particulars in
adoption Order dt. 18.04.2016 made in Adoption O.P.No.199/2016
on the file of the Court of the Principal Family Judge
Coimbatore.(W.P.No.31849 of 2016)

for Yamini now known as Yogeshwari viz. the adoptive child
of Respondents 2 and 3 by incorporating the particulars in
adoption Order dt. 18.04.2016 made in Adoption O.P.No.211/2016
on the file of the Court of the Principal Family Judge
Coimbatore.(W.P.No.31850 of 2016)

for Mahalakshmi viz. the adoptive child of Respondents 2
and 3 by incorporating the particulars in adoption Order dt.
28.04.2016 made in Adoption O.P.No.195/2016 on the file of the
Court of the Principal Family Judge Coimbatore.(W.P.No.31851 of
2016)

for Arunkumar now known as Dharsith Ranjeev viz. the adoptive child of Respondents 2 and 3 by incorporating the particulars in adoption Order dt. 10.05.2016 made in Adoption O.P.No.373/2016 on the file of the Court of the Principal Family Judge Coimbatore.(W.P.No.31852 of 2016)

for Abhoorva now known as Sahana viz. the adoptive child of Respondents 2 and 3 by incorporating the particulars in adoption Order dt. 10.05.2016 made in Adoption O.P.No.371/2016 on the file of the Court of the Principal Family Judge Coimbatore.(W.P.No.31853 of 2016)

for Aradhana now known as Nethraa viz. the adoptive child of Respondents 2 and 3 by incorporating the particulars in adoption Order dt. 10.05.2016 made in Adoption O.P.No.365/2016 on the file of the Court of the Principal Family Judge Coimbatore.(W.P.No.31854 of 2016)

for Mithra now known as Nitharshanaa viz. the adoptive child of Respondents 2 and 3 by incorporating the particulars in adoption Order dt. 10.05.2016 made in Adoption O.P.No.367/2016 on the file of the Court of the Principal Family Judge Coimbatore.(in W.P.No.31855 of 2016)

for Tamilarasi now known as Naveena viz. the adoptive child of Respondents 2 and 3 by incorporating the particulars in adoption Order dt. 28.04.2016 made in Adoption O.P.No.201/2016 on the file of the Court of the Principal Family Judge Coimbatore.(in W.P.No.31856 of 2016)

for Krish now known as Yaaliniyan viz. the adoptive child of Respondents 2 and 3 by incorporating the particulars in adoption Order dt. 10.05.2016 made in Adoption O.P.No.369/2016 on the file of the Court of the Principal Family Judge Coimbatore.(W.P.No.31857 of 2016)

for Annette now known as Swarnapriya viz. the adoptive child of Respondents 2 and 3 by incorporating the particulars in adoption Order dt. 28.04.2016 made in Adoption O.P.No.197/2016 on the file of the Court of the Principal Family Judge Coimbatore within the time that may be fixed by this Hon'ble Court in W.P.No.31858 of 2016.

In all WPs
For petitioner
(in all WPs) : Mr.R.Nandhakumar

For R1(in all WPs) : Mr.ERA.Premnath

For R4 in all WPs : Mr.M.Elumalai, GA
Mr.T.Sathiyamoorthy for R2 (in
WPs 31850 & 31854 of 2016) and
for R3 (in WP No.31854 of 2016)
No appearance for R2 (in WPs No.31848, 31849, 31851 to
31853, 31855 to 31858 of 2016)
No appearance for R3 (in WPs 31848 to 31853 and 31855
to 31858 of 2016)

COMMON ORDER

Since the issue involved in all these writ petitions are one and the same, they are disposed of by this common order. For better appreciation, facts involved in W.P.No.31848 of 2016 are stated below:-

The petitioner Institution is a Licensed Adoption Agency recognized by the Social Welfare and Nutritious Meal Programme Department, Chennai. It is a Charitable Non-profitable Organization with an object to take under its care and custody of the abandoned and surrendered children and to give infants eligible for adoption and then to give them a good future. Whiles, one male child, named Praveen, now known as J.Sairam, who was born on 09.05.2012, was handed over to the petitioner Institution for care and protection on 17.10.2013 as 1 year 5 months 8 days old baby. Thereafter, he was under the care and protection of the petitioner Institution and his health and other general conditions were properly studied and records were also maintained to that effect. In such circumstances, respondents 2 and 3, who are legally married and having no issues, have approached the petitioner Institution and expressed their desire to adopt the said male child. On such consent and willingness, the petitioner Institution, after following the due procedures, had handed over the said child temporarily to the respondents 2 and 3 on 04.02.2014. Subsequently, due to parental care of the respondents 2 and 3, the health condition of the adoptive child has been improved and therefore, the petitioner Institution have accepted to give the said adoptive child in adoption to the said respondents.

2. In view of the above stated circumstances, the petitioner Institution have filed an Adoptive petition in Adoption O.P.No.375 of 2016 before the Principal Family Court, Coimbatore, praying to grant permission to give the male child Praveen now known as J.Sairam for Adoption to the respondents 2 and 3. In support of the said petition, the petitioner Institution have also adduced necessary documents viz. Child Study Report, Physical Examination Report, proceedings of the Chairman (Child Welfare Committee, Coimbatore), Home Study Report, Income Certificate of the adoptive parents, Marriage

Certificate of the adoptive parents, etc. Upon considering the entire materials on record, the Court below has allowed the said petition on 10.05.2016 granting permission to the petitioner Institution to give minor child Praveen now known as J.Sairam born on 09.05.2012 in adoption to the respondents 2 and 3.

3. In view of such order passed by the Court below, the petitioner Institution have approached the first respondent with a representation dated 10.06.2016 requesting to issue birth certificate to the said adopted child, however, the first respondent, by way of impugned order dated 23.06.2016, rejected the same directing the petitioner Institution to approach the Court first and then to file a petition for grant of birth certificate. Aggrieved by the same, the petitioner Institution have filed the present writ petitions with a direction to the first respondent to grant birth certificate to those adopted children.

4. Terming the impugned order passed by the first respondent as unfair, improper, illegal and arbitrary, learned counsel for the petitioner Institution submitted that in view of the Circular dated 12.03.2012 issued by the Registrar General of India, the first respondent has to enter the particulars made in the Adoption order and then, to issue birth certificate to the Adoption Agency. Therefore, the refusal of the first respondent directing the petitioner Institution to approach the Court to get birth certificate is contrary to the said Circular, thus, he prayed for allowing the writ petitions.

5. On the contrary, learned counsel for the first respondent submitted that as per Rule 13(3) of the Tamil Nadu Registration of Birth and Death Rules (in short "Rules"), any parent, who has failed to register the birth within a year, will have to file a petition before the first respondent only after getting necessary orders from the Judicial Magistrate. However, it is further stated that in view of amendment made to the Rule 13(3) of the Rules, which is extracted below, if the petitioner Institution make an application with necessary documents, they would issue the birth certificate.

6. Amended Rule 9(3) of the Rules notified in G.O.Ms.No.293, Health and Family Welfare (AB2) Department, dated 02.12.2016, states thus:

"(3) Any birth or death which has not been registered within one year of its occurrence shall be registered by an order of the Executive Magistrate not below the rank of Revenue Divisional Officer."

From the above said amended Rules, it is clear that the Executive Magistrate not below the rank of a Revenue Divisional

Officer is empowered to register the birth of a child which has not been done within one year of its occurrence, replacing the old rule of directing such persons to approach the Judicial Magistrate for a direction to obtain birth certificate.

7. It is seen that the petitioner Institution runs several homes for mentally challenged people in the name of Sharanalayamm Jyothi, a home for HIV infected people in the name of Sharanalayamm Jeevan, an old age home in the name of Sharanalayamm Preetham, a home for children of beggars and street children in the name of Sharanalayamm Dhaya, etc. The main object of the said institution is to take them under its custody and care so as to give them a good future. With regard to adoption, they have also followed due procedures before handing over of the children from their homes and in that process, they have also filed an adoption petition before the Principal Family Court, Coimbatore, and upon considering the various documents as stated above, the Court below granted permission to the petitioner Institution to give those minor children in adoption to the respondents 2 and 3 of the respective writ petitions.

8. The nation's children are a supremely important asset. Their nurture and solicitude are our responsibility. Children's programme should find a prominent part in our national plans for the development of human resources, so that our children grow up to become robust citizens, physically fit, mentally alert and morally healthy, endowed with the skills and motivations needed by society. Equal opportunities for development to all children during the period of growth should be our aim, for, this would serve our larger purpose of reducing inequality and ensuring social justice. Therefore, without appreciating the services rendered by the petitioner Institution in protecting the abandoned children against neglect, cruelty and exploitation as this would ultimately ensure the growth of abandoned children with that of the normal family neighborhood, the first respondent has passed the impugned order refusing to grant birth certificate to those adopted children.

9. Therefore, by virtue of the recent amendment made to the Rule 13(3) of the Rules empowering the Executive Magistrate not below the rank of a Revenue Divisional Officer to register the birth of a child which has not been done within one year of its occurrence, and also taking note of the yeoman services rendered by the petitioner Institution in taking them under its custody and care, this Court directs first respondent to issue birth certificate to the adopted children of respondents 2 and 3 of the respective writ petitions, within a period of two weeks from the date of receipt of a copy of this order.

Accordingly, for the reasons stated above, the writ petitions are allowed, by setting aside the impugned order. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS II)

//True Copy//

Sub Assistant Registrar

To

1.The Executive Officer,
Town Panchayat Office,
Kinathukadavu Taluk,
Coimbatore.

2.The District Protection Officer,
Coimbatore District,
Coimbatore.

+1cc to the Government Pleader sr.76429 to 76438

+11ccs to Mr.R.Nandhakumar, Advocate Sr.76415

W.P.Nos.31848 to 31858 of 2016

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srg + Eu 21/02/2017



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