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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION (L) NO. 293 OF 2018

Ms. Bhavika Jaywant Lohar ... Petitioner
Versus
The Mumbai Municipal Corporation at Gr. ... Respondents
Mumbai & Anr.

Mr. Uday Warunjikar, for the Petitioner.
Mr. S.S Pakale & Ms. Vandana Mahadik for Respondent – BMC.

**CORAM: A.S. OKA AND
RIYAZ I. CHAGLA, JJ.**
DATED: 4TH APRIL 2018.

ORAL JUDGMENT (Per A.S. Oka, J.)

1. On the earlier date, the parties were put to notice that this Petition will be taken up for final disposal at the admission stage. Accordingly, we issue Rule. The learned counsel appearing for Respondents waive service.

2. Considering the controversy involved in this Petition, we direct that the name of the Petitioner in this judgment and order shall be masked and the Petitioner shall be described as “**ABC**”.

3. The Petitioner claims that she is unmarried. Her case is that she delivered a female child on 20th August 2016. The Petitioner served a notice dated 13th December 2017 to the

Municipal Commissioner of the first Respondent – Municipal Corporation. In the said notice, the Petitioner relied upon a decision of the Apex Court in the case of ***ABC Vs. The State (NCT of Delhi)***.¹ By relying upon the said decision, the Petitioner contended that the birth certificate of the child be issued without incorporating the name of father of the child. By this Petition under Article 226 of the Constitution of India, the Petitioner is seeking a Writ of Mandamus directing the Respondents to issue birth certificate of her female child without mentioning the name of the father of the child.

4. There is a reply filed by Dr. Gulnar Khan, Medical Officer of Health, Public Health Department of P / North ward. To the said reply on page 38, a copy of Form 1 prescribed in terms of Rule (5) of the Maharashtra Registration of Births and Deaths Rule, 2000 (for short “the said Rules of 2000”) has been annexed. The Rules have been framed by the State Government under the provisions of the Registrar of Births and Deaths Act, 1969 (for short “the said Act”). In the legal information which is a part of Form 1, the informant giving information of the birth of a live child is required to mention the names of the parents of the child. It is not in dispute that on the said Form, the present Petitioner had signed and that

¹ Civil Application No. 5003 of 2015 dated 6th July, 2015.

the said Form specifically mentions the name of the father (which we are describing as “XYZ”. Even in the other part of Form 1 which is the statistical information, the father's occupation and father's education has been mentioned.

5. The submission of the learned counsel appearing for the Petitioner is that as per the directions issued by the Apex Court, the birth certificate has to be issued without mentioning the name of the father of the child. He invited our attention to the amended portion of the Petition, wherein the Petitioner has claimed that she approached IVF clinic and an agreement of maintaining secrecy was entered into with IVF service provider. It is claimed that sperms of unknown donor were availed and fertilization took place in the laboratory. Therefore, he submitted that it is surprising that Form 1 mentions the name of the alleged father of the child. He submitted that no such information has been furnished by the Petitioner though her signature appears as informant below information filled in which is styled as legal information in Form 1. He submitted that there was no occasion for the Petitioner to mention the name of the father of the child. He submitted that the information regarding the educational qualifications and occupation of the father of the child has not been filled by the Petitioner. He submitted that the Petitioner's signature was taken

on blank Form 1. The Petitioner was not aware as to who filled in Form 1. He would, therefore, submit that the name of the father will have to be deleted from the record. The learned counsel appearing for the Respondents relied upon the decision of this Court in the case of **ABC Vs. MCGM and others**² and submitted that the information entered into the register of births cannot be corrected as the information is furnished by the Petitioner herself.

6. We have considered submissions. We have perused the legal notice dated 13th December 2017. All that the Petitioner has mentioned in the said legal notice is that she is unwed mother or a single parent. She has stated that she has been told that the name of the father of the child is mentioned in the record of the Municipal Corporation. Therefore, by the legal notice, the Petitioner called upon the Respondents to issue birth a certificate without mentioning the name of the father of the child. Thus, in the said legal notice, the Petitioner has not made out a case that she approached IVF clinic and on the basis of an agreement of maintaining secrecy that the sperms from unknown donor were availed. This contention is not raised in the Petition as originally filed and the said contention is raised by carrying out amendment.

7. Therefore, it is not possible for a Writ Court to adjudicate

² Writ Petition No. 723 of 2017 dated 13th March 2018.

upon the said factual issue and to record a finding that what is averred in the amended part of the Petition (paragraph 4A and 5A) is correct. If according to the case of the Petitioner, the name of the father of the child mentioned in Form 1 is incorrect, the remedy of the Petitioner is to approach Civil Court.

8. In the aforesaid decision dated 13th March 2018, this Court had an occasion to examine the scope of the said Act and said Rules of 2000. After considering section 15 of the said Act along with Rule 11 of the said Rules of 2000, this Court has held that power to correct or cancel entries in the register of birth is vesting in the Registrar is a limited power which could be exercised when he is satisfied that the entry is erroneous in form or substance or has been fraudulently or improperly made. In the present case, the legal information in the prescribed Form is signed by the Petitioner herself which discloses the name of the father of the child. The issue whether the said information is written by somebody else cannot be gone into in Writ jurisdiction as the decision on the said issue will involve disputed questions of fact. It is for the Petitioner to approach appropriate Civil Court and seek appropriate relief in this behalf.

9. Nevertheless, as held in the aforesaid judgment dated 13th March 2018, this Court will have to follow the law laid down by the

Apex Court not to include the name of the father of the child while issuing birth certificate of the child.

10. Therefore, we dispose of this Petition by passing the following order:-

- a) the Birth certificate of the child annexed to the Affidavit of Dr. Gulnar Khan (Exhibit R2) shall be detached from the Affidavit and shall be kept on record in a sealed envelop, which shall not be opened without permission of this Court;
- b) We direct the Mumbai Municipal Corporation that whenever a copy of the birth certificate of the said child is issued in Form 5 of the said Rules, the name of the father of the child shall not be incorporated and that the same shall be kept blank;
- c) If the Mumbai Municipal Corporation has already issued birth certificates and if the record of the persons to whom the birth certificates have been issued is available, the Municipal Corporation shall recall the said certificates by addressing necessary communication to the concerned persons and issue fresh birth certificates as directed above;
- d) We make it clear that we have made no adjudication on the contentions raised in paragraphs 4A, 5A and ground DD

in paragraphs 6. The remedies of the Petitioner to approach Civil Court for seeking appropriate declaration is kept open.

e) Rule is made partly absolute on the above terms.

(RIYAZ I. CHAGLA J.)

(A.S. OKA, J)