

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 258 OF 2019

SAA MATRUCHHAYA, SHRI SHANTADURGA

PRASAD, THR. ITS AUT. SIGN.,

KALINDI JOSHI AND 2 ORS.,

... Petitioners

Versus

THE CORPORATION OF CITY OF PANAJI,

THR. THE COMMISSIONER AND ANR.,

... Respondents

Shri Gaurish N. Agni, Advocate for the petitioners.

Coram:- NUTAN D. SARDESSAI, J.

Date :- 1st March 2019

P.C.:

Heard Shri G. Agni, learned Advocate for the petitioners.

2. Since a query was raised on the jurisdiction of this Court to issue orders in the nature of a writ of mandamus, Shri Agni, learned Advocate placed reliance in a Division Bench judgment of this Court in **Bhaskar s/o. Govind Deshpande (Since deceased) By Lts Smt. Wasundharabai w/o. Bhaskar Deshapande and others v/s. Madhududansingh s/o. Laxmansingh Chouhan and another** [1988 3 BomCR 57] wherein it was held by the Division Bench at paragraph 10 and 11 thus :

"10. It is next contended that the learned Single Judge has erred in issuing the writ of mandamus by grant of permission, for the first time, and the proper course for him, after quashing the order, would have been to remand the matter to the Rent Controller for fresh decision in the light of the findings arrived at by the learned Single Judge. It is difficult to accept this fallacious submission. A writ of mandamus is a necessary adjunct to a writ of certiorari. If the High Court is satisfied that a writ of certiorari has to be issued to quash the impugned order, two courses are open: (i) to issue a writ of mandamus to hear the matter afresh or (ii) to issue a writ of mandamus to grant the relief claimed. Which is the proper course to adopt will depend upon each case. But there are certain basic features which draw the line. In this connection, reference may be made to a Division Bench decision of this Court, to which one of us (Mohta, J) was a party, in the case of (Chandrashekhar Roller Flour Mills Pvt. Ltd. v. Union of India)³, Writ Petition No. 2230 of 1982, Date of Decision : 3rd December, 1982. It is observed there:

"It is true that where there is some scope for exercise of discretion in the authority, normal direction should be to ask the authority to reconsider the matter if the direction is properly exercised. Affirmative direction can thus be issued only on being satisfied that the authority in whom the discretion is vested has no option whatsoever but to exercise it in a particular manner and no other. After all discretion of a public authority is never absolute and is always coupled with a duty and or obligation. Once satisfaction is reached on this aspect nothing prevents the

Courts from issuing a writ of mandamus. After all, the nature of the relief depends upon exigencies of each case and can always be moulded to meet the ends of justice, for, our Courts are not confined by the technical rules relating to issuing of writs by the English Courts. The courts are not supposed to indulge in empty formalities and to delay unnecessarily the receipt of benefits of the successful litigation.

11. In the instant case, remand would have been an empty formality and unnecessary exercise. On quashing the order for the reasons stated, the only ultimate order that can be passed was to grant the permission sought for. Thus the learned Single Judge was quite right in issuing the writ of mandamus in the form in which it was issued.”

The learned Single Judge was justified in issuing a writ of mandamus in the form in which it was issued.

3. Having dealt with and satisfied the Court on the aspect of the jurisdiction of this Court to deal with the petition, Shri Agni, learned Advocate next invited attention to the provisions of the Juvenile Justice Act, definition of the “Court” contained in Section 2 sub-section 23 thereof which would take within its sweep a Civil Court, which has jurisdiction in the matters of adoption and guardianship and may include the District Court, Family Court and City Civil Courts. In that context, it was his contention that the learned Trial Court was not correct in recording a finding that it had no

jurisdiction in the matter to deal with the case of adoption. He next invited attention to Section 59 of the Juvenile Justice Act which deals with the procedure for inter-country adoption of an orphan or abandoned or surrendered child and sub section (1) in particular which enables the Specialised Adoption Agency to move an application in the Court for obtaining the adoption order in the manner as provided in the Adoption Regulations framed by the authority. He next invited attention to the Adoption Regulations, 2017 issued by the Ministry of Women and Child Development and its other facets dealing with the legal procedures as contained in Regulation 12, Registration and home study report for prospective adoptive parents for inter-country adoption contained in Regulation 15 amongst others and submitted that the learned Trial Court had the jurisdiction to deal with the matter of adoption.

4. It is apparent from a consideration of these Regulations and the records of the file that all the requisite formalities have been complied with by both the prospective adoptive parents in the manner to process the application for adoption and so also by the Specialised Adoption Agencies and the authorized Foreign Adoption Agencies. A detailed examination of the record would substantiate his contention in that regard. Having thus examined the records, there is no basis in the finding recorded by the learned Trial Court

that the Digital Signature Certificate was required in terms of Section 65B of the Indian Evidence Act, the documents having been processed by the Foreign Adoption Agency. The question of the admissibility of the documents in evidence would also not arise as recorded by him in the said order. The findings rendered by the learned Senior Civil Judge cannot be sustained and in view thereof, the impugned order dated 20/12/2019 is quashed and set aside. As a consequence thereof, the petitioners No.2 and 3 are secured with the relief of declaration as parents of the child for all legal formalities, that the petitioners No.2 and 3 are permitted to change the name accordingly as claimed in the relief clause 'c' which reads thus:

“(c) For an order that the said Pablo Avila Alonso i.e. petitioner No.2 and his wife Mrs. Beatriz Arribas Sanchez i.e. petitioner No.3 may be permitted to change the name of their daughter from “Mruga” to “Sara Mruga Avila Arribas” and register her birth accordingly”

The consequential reliefs are granted to the petitioners No.2 and 3 in terms of prayer clause 'd' and 'e' which reads thus:

“(d) For an order directing the birth certificate issuing authority, i.e. The Registrar of Births, The Corporation of City of Panaji – Goa may please be directed to issue Birth

Certificate for the said child forthwith as per the provisions of Sub- Regulation (5) of Regulation 18 and 36 and as mentioned in Para 17 of the original application.

(e) For an order directing the regional passport office may be directed to issue passport for the said child forthwith as per Sub Regulation (5) of the Regulation 18 and 36 and as mentioned in Para 17 of the original application”.

5. The petition accordingly stands disposed off.
6. The parties to act on the authenticated copy of the order.

NUTAN D. SARDESSAI, J.

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