

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 02.01.2019	Delivered on 04.01.2019
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CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.1126 of 2015
and
M.P.No.1 of 2015

Nivashini.M

Rep.by her Power Agent E.Mohan,
2/394, 1st Main Road,
Venkatesapuram,
Vandalur,
Chennai-600 048.

...Petitioner

.Vs.

1.The Secretary to Government,
Revenue Department,
Government of Tamil Nadu,
Fort St.George,
Chennai-600 009.

2.The District Collector,
Kancheepuram District,
Kancheepuram.

3.The Tahsildar,
Sholinganallur Taluk Office,
Old Mahabalipuram Road,
Chemmenjeri,
Chennai-600 109.

4.R.Nivendran

..Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus and call for the records pertaining to the impugned proceedings in Na.Ka.No.2023/2010 A2 dated 04.01.2010 and Na.Ka.No.2023/10/A5 dated 26.04.2010 as recorded in the alleged fabricated birth certificate issued in the name of Nilay Karthik dated 27.04.2010, on the file of the 3rd respondent and quash the same and consequently direct the respondents 1 to 3 to cancel the fabricated birth certificates issued under the guise of the alleged impugned proceedings in the name of Nilay Karthik under the alleged C.A.No.86/2010 A5 dated 27.04.2010 for the

child born on 30.06.2007 at Life Line Hospital registered as No.33, on 02.07.2007 in the Birth and Death Register of Palavakkam Village with father's name as Nivendran and mother's name as Nivashini.

For Petitioner : Mr.C.T.Mohan
Mr.R.Vijayaraghavan

For R 1 to R3 : Mr.M.Mohamed Riyaz,APP

For R 4 : Mr.Thomas T.Jacob
Mr.T.Arun Kumar

ORDER

This writ petition has been filed challenging the Birth Certificate issued by the 3rd respondent by his proceedings dated 26.04.2010, to the 4th respondent.

2. The petitioner got married to the 4th respondent on 02.07.2006, and a child was born on 30.06.2007. According to the learned counsel for the petitioner, the male child was named Thajeev. His Birth Certificate was registered by the hospital on 02.07.2007 in the Birth Register maintained at Palavakkam Panchayat Office at Kancheepuram District. The relationship between the petitioner and the 4th respondent got strained which resulted in the 4th respondent filing a petition for divorce in HMOP No.311 of 2018, before the Principal Family Court, Chennai. This petition was dismissed, and the judgment was confirmed on appeal by this Court in CMA No.3502 of 2009, and the SLP filed by the 4th respondent was also dismissed on 17.09.2012.

3. The grand father of the child approached the Tahsildar Tambaram, during the 2nd week of February 2010, and he was instructed to approach the Taluk Office, Sholinganallur, in view of the trifurcation of the Taluk Office. The grand father approached the Taluk Office, Sholinganallur and made necessary application before the Tahsildar to make necessary entry in the birth register regarding the name of the child. Accordingly, the necessary entry was made and a Birth Certificate showing the name of a child as Thajeev was also issued on 13.04.2010, by the concerned Tahsildar. The child was in custody of the petitioner and she admitted the child in the school. Subsequently, the petitioner took the child to United States of America, and the child continued his studies at New Jersey, USA.

4. During this point of time, the 4th respondent seems to have made an application before the Taluk Office, and got a Birth Certificate for the child in the name of Nilay Karthik. This certificate was issued by the 3rd respondent by his proceedings dated 27.04.2010.

5. It is the case of the petitioner that the 4th respondent intimated this development to the school in USA where the child is studying, and it has now caused a confusion in USA since the petitioner is being questioned as to how the child can have two different names with two different Birth Certificates. Left with no other option, the present writ petition has been filed, challenging the subsequent Birth Certificate granted by the 3rd respondent.

6. The learned counsel for the petitioner would submit that the 4th respondent has intentionally concealed about the earlier Birth Certificate given in the name of Thajeev and he has obtained a new Birth Certificate in the name of Nilay Karthik, only with an intention to harass the petitioner and to force the petitioner to give custody of the child. The learned counsel would further submit that the subsequent Birth Certificate given by the 3rd respondent is totally illegal, and it is not in accordance with Section 15 of the Registration of Births and Deaths Act, 1969. The learned counsel for the petitioner further submitted that based on the petition filed under the Right to Information Act, and the information received from the Taluk Office, there is a serious doubt on the very genuineness of the proceedings said to have been conducted by the 3rd respondent. For this reason, the petitioner has also filed the Criminal Original Petition No.5090 of 2017, before this Court for a direction to the Police to conduct an enquiry to find out the genuineness of the document.

7. The learned Additional Public Prosecutor appearing on behalf of the respondents 1 to 3 submitted that the 4th respondent obtained the Birth Certificate by suppressing the earlier Birth Certificate. If the 4th respondent had informed about the earlier Birth Certificate, the 3rd respondent would not have given the 2nd Birth Certificate to the 4th respondent.

8. In this regard, the 3rd respondent has also filed a counter affidavit before this Court, and the relevant portion is extracted hereunder:

3.The factual aspect involved in this case is the writ petition married one R.Nivendrand and out of wedlock male child was born on 30.06.2007 at Palavakkam, Chennai. Due to difference of opinion the fourth respondent filed Divorce Petition against the writ petitioner herein. The said divorce petition was dismissed and the dismissal order reached finality at the apex Court. Because of this dispute the earlier birth certificate obtained by grand father on 13.4.2010 under C.A.No.73/2010/A5 in the name of Thajeer was suppressed by the

fourth respondent and obtained second birth certificate on 18.9.2012 under CA/327/2015/A5 dated 18.9.2012 in the name of Nilay Karthik.

9. The learned counsel appearing for the 4th respondent would submit that the 4th respondent is the father of the minor child and the child was always called as Nilay Karthik. The learned counsel further submitted that the 4th respondent was not aware about the earlier Birth Certificate issued in the name of Thajeev. The learned counsel also submitted that the 4th respondent followed the procedure scrupulously and thereafter only the Birth Certificate was issued by the 3rd respondent in the name of Nilay Karthik. The learned counsel also submitted that the petitioner has obtained the Birth Certificate without following any of these procedures, and therefore the Birth Certificate issued in the name of Thajeev is not in accordance with law.

10. This Court has carefully considered the rival submissions made by the counsel representing the parties. This Court does not want to go into the inter se dispute between the parties, and the only issue that needs to be considered by this Court is as to whether the 2nd Birth Certificate given by the 3rd respondent in the name of Nilay Karthik, is sustainable and is in accordance with the provisions of the Registration of Births and Deaths Act, 1969.

11. For this purpose, it will be relevant to extract Section 15 of the Act.

15. Correction or cancellation of entry in the register of births and deaths. -- If it is proved to the satisfaction of the Registrar that any entry of a birth or death in any register kept by him under this Act is erroneous in form or substance, or has been fraudulently or improperly made, he may, subject to such rules as may be made by the State Government with respect to the conditions on which and the circumstances in which such entries may be corrected or cancelled, correct the error or cancel the entry by suitable entry in the margin, without any alteration of the original entry, and shall sign the marginal entry and add thereto the date of the correction or cancellation."

12. It will also be relevant to extract Rule 11 of the Tamil Nadu Registration of Births and Deaths Rules, 2000.

11. Correction or cancellation of entry in the register of births and deaths under Section 15.-- (1) If it is reported to the

Registrar that a clerical or formal error has been made in the register or if such error is otherwise noticed by him and if the register is in his possession, the Registrar shall enquire into the matter and if he is satisfied that any such error has been made, he shall correct the error (by correcting or cancelling the entry) as provided in section 15 and shall in the case of local authorities specified in column (1) of the Table below, send an extract of the entry showing the error and how it has been corrected to the officer specified in column (2) thereof.

TABLE	
Local Authorities (1)	Officers (2)
Village Panchayat	Village Panchayat President
Town Panchayat	Executive Officer
Cantonment	Do
Municipality	Commissioner
Corporation	Do
Neyveli Lignite Corporation	Chief Health Officer

(2) In the case referred to in sub-rule (1) if the register is not in his possession, the Registrar shall make a report to the officer specified in the Table in sub-rule (1) and call for the relevant register and after enquiring into the matter, if he is satisfied that such error has been made, make necessary correction.

(3) Any such correction as mentioned in sub-rule (2) shall be countersigned by the officer specified in the Table in sub-rule (1) in this behalf when the register is received from the Registrar.

(4) If any person asserts that any entry in the register to births and deaths is erroneous in substance, the Registrar may correct the entry in the manner prescribed under section 15 upon production by that person a declaration setting forth the nature of the error and true facts of the case made by two credible persons having knowledge of the facts of the case.

(5) Notwithstanding anything contained in sub-rules (1) and (4), the Registrar shall make a report of any correction of the kind

referred to therein giving necessary details to the officer specified in the Table in sub-rule (1).

(6) If it is proved to the satisfaction of the Registrar that any entry in the register of births and deaths has been fraudulently or improperly made, he shall make a report giving necessary details to the officer authorised by the Chief Registrar by general or special order in this behalf under section 25 and on hearing from him take necessary action in the matter.

(7) In every case in which an entry is corrected or cancelled under this rule, intimation thereof should be sent to the permanent address of the person who has given information under section 8 or section 9.

13. On a combined reading of the above provisions, it is clear that the correction of error or cancellation of entry in the Register of Births and Deaths can be made only in accordance with Section 15 of the Act. There is no scope for issuing a 2nd Birth Certificate for the same child without the cancellation of the earlier Birth Certificate. This procedure has not been followed in the present case. The 4th respondent has filed a fresh application for Birth Certificate for the child in the name of Nilay Karthik, and the 3rd respondent has proceeded to conduct an enquiry and granted the 2nd Birth Certificate to the 4th respondent.

14. Now the 3rd respondent has taken a specific stand that the 4th respondent suppressed the earlier Birth Certificate granted in the name of Thajeev. If the 3rd respondent had been informed about the earlier entry made in the register and the issuance of the Birth Certificate in the name of Thajeev, probably the 3rd respondent would not have entertained the fresh application made by the 4th respondent. In any case the certificate issued by the 3rd respondent to the 4th respondent by showing the name of the child as Nilay Karthik by his proceedings dated 26.04.2010, is totally illegal and is not in accordance with the above provisions. Therefore, the 2nd Birth Certificate issued by the 3rd respondent has to be necessarily interfered by this Court.

15. In view of the above, the impugned proceedings in Na.Ka.No.2023/2010 A2 dated 04.01.2010, and Na.Ka.No.2023/10/A5 dated 26.04.2010, as recorded in the alleged fabricated Birth Certificate issued in the name of Nilay Karthik dated 27.04.2010, on the file of the 3rd respondent, is hereby quashed and the 3rd respondent is directed to cancel the relevant entry made in the register of Births and Deaths. If

the 4th respondent wants to correct any error or cancel the entry made in the register of Births and Deaths maintained in the office of the 3rd respondent, the 4th respondent is at liberty to workout his remedy in accordance with Section 15 of the Act and Rule 11 of the Rules, and the concerned authorities shall take a decision on the same only after affording opportunity to the petitioner in that regard.

In the result, this writ petition is allowed. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

KP

To

- 1.The Secretary to Government,
Revenue Department,
Government of Tamil Nadu,
Fort St.George,
Chennai-600 009.
- 2.The District Collector,
Kancheepuram District,
Kancheepuram.
- 3.The Tahsildar,
Sholinganallur Taluk Office,
Old Mahabalipuram Road,
Chemmenjeri,
Chennai-600 109.

+1cc to Mr.Thomas T.Jacob, Advocate, S.R.No.695
+2ccs to Mr.C.T.Mohan, Advocate, S.R.No.764

W.P.No.1126 of 2015

RV(CO)

rrs 25/01/2019