



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.07.2021

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P. (MD) .No.11080 of 2021

Minor.Samayah Zaid
Rep by her Father,
Zaid Omar,
No.425, K.K.Nagar,
Madurai City, Tamil Nadu,
Pincode : 625 020.

...Petitioner

Vs

1.The Regional Passport Officer,
Madiurai,
Bharathi Ula Veethi,
Race Course Road, Madurai-625002.

2.The Inspector of Police,
C-3 Police Station,
Anna Nagar (L&O),
Madurai.

... Respondents

Prayer:

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ or direction more so in the nature of Certiorarified Mandamus, calling for the records pursuant to the impugned order of the 1st Respondent dated 12.04.2021 and quash the same and consequently direct the 1st Respondent to return and reissue passport of Minor Samayah Zaid bearing No.P0198737 under the surrender certificate dated 22.04.2021 issued by 1st Respondent in the file No.MD1069401524116.

For Petitioner : Mr.Maimoona Badsha

For R1 : Mrs.L.Victoria Gowri, ASGI

For R2 : Mr.Lingadurai,
Standing Counsel for Government

ORDER

This writ petition has been filed challenging the impugned letter issued by the first respondent, dated 12.04.2021 wherein the first respondent has directed the petitioner's father to surrender the passport issued to the petitioner and to attend an enquiry.



2. It is seen from the records that the father of the petitioner was married to one Sharmeen Yousuf in the year 2010. They did not have a child and hence decided to adopt a child. Accordingly, they approached the Child Welfare Committee at Jalandhar, Punjab and submitted a request for adopting a child. The concerned Welfare Committee informed the parents about the availability of a female child and this child was also given an intermediary custody till a proper permission is granted by a competent Court.

3. A petition was filed before the Guardian Judge at Jalandhar under the Juvenile Justice (Care and Protection of Children) Act, 2000 seeking for permission to adopt the child. This petition was considered by the concerned Court in G.A.case file No.37 of 2015 and final orders were passed on 14.09.2015. The relevant portions in the order are extracted hereunder:

"12.This Court is of the opinion that above named child shall be treated by the petitioners as their own natural born child with no differentiation in terms of treatment care education, affection and matter of inheritance. The adoption will be in the interest and welfare of the minor and she will also receive parental love and affection, good education and upbringing which she may not receive in the respondent Institution. The petitioners have not interest directly or indirectly adverse to that of the minor. Accordingly, this petition is allowed and permission is granted to the respondent to give the above named minor female child subject to follow the provisions of Juvenile Justice (Care and protection of Children) Act of 2000. A deed of adoption may be executed and get the same registered with the office of the Sub Registrar, Jalandhar under Provisions of law and within 30 days of registration of the adoption deed, a certified copy of the adoption deed be provided to the Court for record purposes. It is further ordered that the Adoption In-charge of the respondent shall visit the child every six months to ensure that the child is being looked after and is being taken care of and within 15 days of the visit, a report shall be submitted to this Court and the Child Welfare Committee. It is further ordered that in case the petitioners intend to change their residential adress for any reason, they shall inform the respondent and also this Court about the new address and the address and the same shll be in the form of an affidavit.



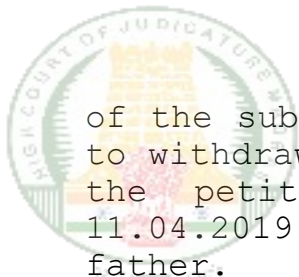
The new address shall be required to be verified by the respondent and the verification be independently communicated to this Court by the respondent for the purposes of record. The visits by the Adoption In-Charge shall be a regular feature till such time that the child attains the age of majority. The expenses for the travel of the Adoption Incharge shall be borne by the petitioners and the Adoption Incharge shall also along with the report furnish the travel documents and other documents regarding his boarding and lodging as proof that he has indeed visited the child. The petitioners shall furnish an affidavit to the effect that they shall allow the Adoption Incharge to visit the child as per the orders of this Court and further that in case they intent to move another place, the new address shall be furnished to this Court as also to the respondent. The parties shall also furnish, in the form of affidavit, an undertaking to abide by the conditions imposed by this Court.

13. The adoption in the present case shall be in consonance with the provisions and objectives of The Juvenile Justice (Care and Protection of Children) Act, 2000 and The Juvenile Justice (Care and Protection of Children) Rules, 2007. File be consigned to Judicial Record Room, Jalandhar."

4. The child was renamed as Samaya Zaid and in accordance with the order passed by the Court, the deed of adoption was executed by the adoption agency on 04.11.2015 and the same was also registered. That apart a birth certificate was also issued by the competent authority on 21.12.2015 wherein the name of the father and mother of the child has been specifically mentioned. By virtue of this birth certificate, the father of the petitioner has been mentioned as Zaid Omar and the mother of the petitioner has been mentioned as Sharmeen Yousuf.

5. The father and mother of the child thereafter applied for the passport in the name of the child and a passport was also issued in the name of the petitioner for the period from 01.06.2016 to 31.05.2021.

6. Thereafter there was some marital discord and the mother of the petitioner started living in Chennai. She filed a petition seeking for appointing her as a legal guardian of the minor and for the custody of the minor child before the Principal Bench of this Court in O.P.No.66 of 2018. During the pendency of this petition, the marriage got dissolved on 29.01.2019 as per Muslim Law. In view



of the subsequent development, the mother of the petitioner decided to withdraw the petition filed in O.P.No.66 of 2018 and accordingly, the petition was dismissed as withdrawn by an order dated 11.04.2019. Thereafter, the child is in the care and custody of her father.

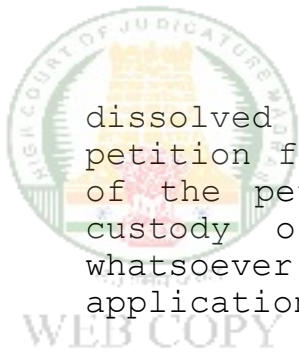
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7.The passport that was issued to the petitioner was to expire on 31.05.2021 and hence the father made an application on 29.03.2021 before the first respondent seeking for re-issue of the passport in the name of the petitioner. On receipt of this application, the first respondent has issued the impugned communication dated 12.04.2021, which has been made a subject matter of challenge in the present writ petition.

8. Heard Mr.S.Maimoona Badsha, learned counsel for the petitioner, Mrs.L.Victoria Gowri, learned Assistant Solicitor General of India appearing for the first respondent and Mr.Lingadurai, learned Standing Counsel for Government appearing for the second respondent.

9.The learned Assistant Solicitor General of India appearing on behalf of the first respondent submitted that while the earlier application was made for issuance of passport in the name of the child, the parents had suppressed the fact that the child was an adopted child and the application was made as if it was born to them. The learned Assistant Solicitor General further submitted that the order passed by the jurisdictional Court at Jalandhar had imposed various conditions by taking into consideration the welfare of the child and hence the subsequent development wherein the marriage has been dissolved, has to be brought to the notice of the Court and an appropriate order must be obtained before submitting the application for re-issuance of passport before the first respondent. The learned Assistant Solicitor General further submitted that ultimately the passport is issued in the name of the child and it must be ensured that the welfare of the child is safeguarded and that is the reason why the first respondent had issued the impugned communication dated 12.04.2021, calling upon the father of the petitioner to attend the enquiry.

10.In reply to the said submission, the learned counsel for the petitioner submitted that there is no separate column provided in the application form to declare that the child is an adopted child. Therefore, the allegation made by the first respondent as if a vital information has been suppressed, is totally unsustainable. The learned counsel for the petitioner further submitted that the parents of the petitioner had complied with all the conditions stipulated in the order passed by the competent Court and after the issuance of the birth certificate, the parents must be treated as if they are the natural parents of the child. In view of the same, there is no occasion for once again approaching the Court. The learned counsel further submitted that the marriage has been



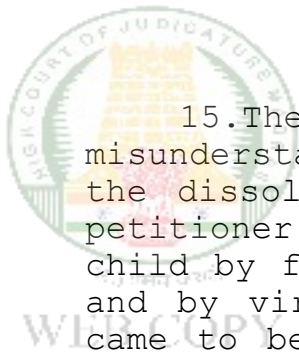
dissolved in accordance with law and that was the reason why the petition filed by the wife was withdrawn and thereafter the father of the petitioner has become the natural guardian and he is in custody of the child. Therefore, there can be no objection whatsoever on the part of the first respondent to entertain the application and re-issue the passport.

11.This Court has carefully considered the submissions made on either side and the materials available on record.

12.There is no dispute with regard to the fact that the parents of the petitioner had followed a proper procedure before adopting the petitioner. The adoption was made from a recognized adoption agency at Jalandhar. Thereafter a petition was filed before the competent Court at Jalandhar and the Court has also passed an order on 14.09.2015 declaring the parents of the petitioner and recognizing the adoption which was subjected to certain conditions. Two important conditions that were imposed by the concerned Court was that a deed of adoption must be executed and registered before the concerned Sub-Registrar Office at Jalandhar. That apart, the Court also directed the concerned adoption agency to visit the child every six months to ensure that the child is being looked after well. The Court had also issued certain incidental directions with regard to informing the Court as and when there is change of address.

13.After the above order was passed by the Court, the parties had sworn an affidavit of undertaking to abide by the conditions imposed by the Court. Thereafter, the adoption deed was properly executed and registered before the Sub-Registrar Office at Jalandhar. Based on the order passed by the Court and after complying with the conditions, an application was submitted before the competent authority and birth certificate was also issued in the name of the petitioner on 04.03.2016. It is clear from the birth certificate that the father of the petitioner is Zaid Omar and the mother of the petitioner is Sharmeen Yousuf. By virtue of this birth certificate, the parents will have to be treated almost like natural parents and thereafter, it is not necessary for the parents to keep announcing to the world that they are the adoptive parents of the petitioner.

14. As rightly contended by the learned counsel for the petitioner, there is no separate column provided in the application to declare whether the child is a natural child or an adopted child. In the absence of any such column in the application form, it cannot be said that the parents of the petitioner had suppressed that the petitioner was an adopted child when the earlier application was made for issuance of the passport in the name of the petitioner. The passport in fact was correctly issued in the name of the petitioner by showing the name of her parents.



15. There was a subsequent development wherein there was some misunderstanding between the parents which ultimately resulted in the dissolution of the marriage on 29.01.2019. The mother of the petitioner had attempted to declare herself as the guardian of the child by filing a petition before the Principal Seat of this Court and by virtue of the dissolution of marriage, this petition also came to be withdrawn on 11.04.2019. Thereafter, the petitioner is taken care by her father who is now the natural guardian and he is in custody of the child. Since the period of the passport issued to the petitioner was expiring, the petitioner had made an application seeking for re-issuance of the passport. The first respondent ought to have taken into consideration all these developments and proceeded to scrutinize the application. No one has complained till now that the parents are acting against the welfare of the child. The order passed by the competent Court at Jalandhar was of the year 2015 and safeguards that have been provided by the Court was only for the initial period when the Court wanted to ensure that the child is properly taken care of. It is not necessary that for every development that takes place in future, the parents will have to knock the doors of the Court. Even otherwise, the first respondent need not have taken pains to enquire into the issue of welfare of the child and it was enough if the first respondent had confined to scrutinizing the records available before him.

16. In view of the above discussion, this Court has no hesitation to interfere with the impugned letter issued by the first respondent on 12.04.2021 and the same is hereby quashed. There shall be a direction to the first respondent to consider the application submitted by the father of the petitioner on 29.03.2021 and re-issue the passport in the name of the petitioner, if it is otherwise in order, within a period of four weeks from the date of receipt of a copy of this order.

17. In the result, the Writ Petition stands allowed with the above direction. No costs.

Sd/-

Assistant Registrar (P&A)

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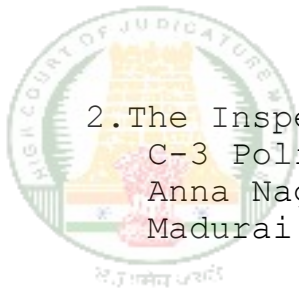
Sub Assistant Registrar (CS)

sbn

To:

1. The Regional Passport Officer,
Madiurai, Bharathi Ula Veethi,
Race Course Road, Madurai-625002.

<https://hcservices.ecourts.gov.in/hcservices/>



2.The Inspector of Police,
C-3 Police Station,
Anna Nagar (L&O),
Madurai.

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+1 CC to M/s.SPL GP (SR-24405[F] dated 29/07/2021)

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