

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3771 OF 2021

Dr. Sonal Pratapsingh Vahanwala,	]	
An Adult, Indian Inhabitant,	]	
Aged about 44 years, Occu. Doctor,	]	
residing at A-304, Kresshnadeep CHS,	]	
Sathya Sai Complex, Chikuwadi,	]	
Borivali (West), Mumbai – 400 092.	]	Petitioner

Vs.

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| 1. | Deputy District Collector (Encroachment)] | |
| | Dharavi Division, Mumbai City. |] |
| 2. | District Caste Certificate Scrutiny |] |
| | Committee, Mumbai City, Having their |] |
| | Office at Panchsheel M-1, Ground |] |
| | Floor, Siddharth Housing Sanstha, |] |
| | Labour Camp, Valmiki Road, Matunga, |] |
| | Mumbai. |] |
| 3. | State of Maharashtra, |] |
| | Having its office at Mantralaya, |] |
| | Mumbai – 400 032. |] |
| | | Respondents |

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Mr. Pradeep Havnur, for Petitioner.

Mrs. S.S. Bhende, A.G.P., for Respondent-State.

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**CORAM : SUNIL B. SHUKRE AND
G.A. SANAP, JJ.
DATE : 8th MARCH, 2022.**

JUDGMENT: [Per G.A. Sanap, J.]

1. The petitioner challenges the order dated 30th November, 2007 passed by respondent No.2, whereby respondent No.2 confirmed the order dated 3rd September, 2016 passed by respondent No.1 rejecting the application made by the petitioner for issuance of caste certificate of her caste to her son.

2. The petitioner adopted her son Heramb. The petitioner had filed Misc. Petition No.168 of 2009 in the City Civil Court, Mumbai seeking permission for adoption of male child from Children of the World India Trust, Arun Chambers, Tardeo, Mumbai 400 034. Before adopting the male child from the Trust/Orphanage, he was known as "*Pappu*". Identity of his biological parents was not known. At the time of the adoption, he was five years old. It is stated that in terms of the directions issued by the City Civil Court, Mumbai on 24th December, 2009, the petitioner applied for registration of birth in the record of the Municipal Corporation. It was recorded on 13th January, 2010. Birth certificate dated 19th January, 2010 came to be issued.

3. It is the case of the petitioner that she is mother of Heramb, adoptive son. Her caste is “ *Hindu Mahyavanshi*” recognized as a scheduled caste. This caste is recorded in all the documents of her son Heramb. The petitioner applied for issuance of caste certificate to respondent No.1. Respondent No.1 vide order dated 3rd September, 2016 rejected the said application on the ground that documents of the caste of father of Heramb were not submitted and, therefore, the petitioner was not entitled to get a caste certificate. The petitioner being aggrieved by the said order, challenged the same before respondent No.2 – District Caste Certificate Scrutiny Committee, Mumbai City. Respondent No.2 vide order dated 30th November, 2017 dismissed the appeal and confirmed the order passed by respondent No.1.

4. It is the case of the petitioner that she is a single mother. On adoption, her son Heramb would take her caste. Since, he is adopted from orphanage, there was no question of providing details of his biological parents. The same are not known even to the orphanage and ultimately to the petitioner. According to the petitioner, her son Heramb is entitled to take her caste. Order rejecting her application for issuance of caste certificate by

respondent No.1 and the confirmation of the said order by respondent No.2 is illegal.

5. Nayab Tehsildar has filed an affidavit on behalf of respondent No.1 and opposed the claim. It is contended that the petitioner had not submitted permanent residence proof of father/grandfather/great grandfather of Heramb prior to the deem date namely 10th August, 1950. The petitioner had not submitted caste proof of father/grandfather/great grandfather/cousin grandfather of child Heramb prior to the deem date i.e prior to 10th August, 1950. These requirements are mandatory. Since the proof of caste from parental side was not placed on record, the claim was rejected.

6. We have heard Mr. Havnur, learned Counsel for the petitioner and Ms. Bhende, learned A.G.P, for Respondent-State. Perused the record and proceeding.

7. Mr. Havnur, learned Counsel for the petitioner submitted that the order passed by respondent No.1 and confirmed by respondent No.2 in the facts situation reflects sheer non

application of mind. Learned Counsel submitted that all the documents including the order passed by the City Civil Court, Mumbai granting permission for adoption from the orphanage were placed on record. Learned Counsel submitted that since the petitioner is the single mother, the adopted child was entitled to take her caste. In the submission of the learned Counsel, the reasons recorded for rejection of the application for issuance of caste certificate by the petitioner are not at all sustainable. In order to substantiate his submission that in the given set of facts and circumstances, the child is entitled to take caste of the mother, the learned Counsel has placed reliance on the decision in the case of **Rameshbhai Dabhai Naika Vs. State of Gujarat and others, (2012) 3 Supreme Court Cases 425**. The learned Counsel submitted that in view of the ratio laid down in this decision, orders passed by respondents No.1 and 2 cannot be sustained.

8. Ms. Bhende, the learned A.G.P supported the findings and reasons recorded by respondents No.1 and 2 while denying the claim of the petitioner. The learned A.G.P submitted that in terms of the Government Resolution dated 1st November, 2001, one of the mandatory conditions for issuance of caste certificate of

backward class category is that the caste record from father's side be produced. The learned A.G.P submitted that in this case since the caste record on the parental side of Heramb was not produced, the claim was rightly rejected.

9. It is to be noted that the son was adopted from an orphanage namely Children of the World India Trust. Particulars with regard to the biological father and mother and their caste were not available with the Orphanage. Similarly, those particulars could not be provided to the petitioner and as such placed on record before the City Civil Court. Considering the fact that the male child was brought up in the Orphanage, it was not a legal requirement and, therefore, application of the petitioner for seeking permission to adopt the child was granted. Copy of the order passed by the learned Judge of the City Civil Court, Mumbai was placed on record before respondents No.1 and 2. It has come on record that in the orphanage, adopted child was known as "*Pappu*". The petitioner named him as "Heramb". The record reveals that in terms of the directions issued by the City Civil Court, Mumbai recorded in the order granting permission for adoption, the petitioner applied to the Municipal Corporation for

registration of birth of Heramb on 13th January, 2010. It was registered on 13th January, 2010. His recorded birth date is 8th September, 2004 and the petitioner is recorded as his mother. The petitioner has produced on record the documents to show that Heramb is her son. It is undisputed that the petitioner is a single mother. In the backdrop of the above facts, there was no question of either procurement or production of the documents of the caste of biological father of the child. Respondents No.1 and 2 have totally missed this vital aspect in the matter.

10. It is not out of place to mention that the application for permission to adopt the child was made by the petitioner as per the Hindu Adoptions and Maintenance Act, 1956 (for short “Act of 1956”). A perusal of the record shows that on being satisfied that the petitioner has complied with the requisite conditions for a valid adoption, the City Civil Court accorded the permission. It is pertinent to note that as per section 9 of the Act of 1956, particulars of the person capable of giving child in adoption have been provided. As per sub-section 4 where the parentage of child is not known, the guardian of the child may give the child in adoption with the previous permission of the Court to any person

including the guardian himself. It is, therefore, pertinent to note that orphanage namely Children of the World India Trust at the relevant time was the guardian of the child. The inquiry before granting such permission to a guardian has been contemplated under sub-section 5 of section 9 of the Act of 1956. The Court during inquiry is required to be satisfied that the adoption will be for the welfare of the child and the Court has to give consideration to the wishes of the child having regard to the age and understanding of the child. A perusal of the order would show that the learned Judge of the City Court, Mumbai has recorded satisfaction that the adoption of child by the petitioner will be for the welfare of the child. It is further pertinent to note that respondents No.1 and 2 have not taken this provision as well as provision of section 12 of the Act of 1956 into consideration. The effects of adoption have been provided under section 12. In our opinion, section 12 would be relevant in the context of the issue involved in the petition. As per the provisions of section 12 of the Act of 1956, by a deeming fiction the adopted child becomes a child of his or her adoptive father, mother for all purposes with effect from the date of the adoption. The section further provides that from the date of adoption, all the ties of the child in the family

of his or her birth by a deeming fiction get severed and replaced by those created by the adoption in the adoptive family. It is pertinent to note that the consequences after adoption flowing from deeming fiction postulated under section 12 may not be strictly restricted to the cases only when the child is given in adoption by father or mother. The same would equally apply where the child is given in adoption by guardian in terms of section 9, sub-section 4 of the Act of 1956. This analogy is unavoidable on conjoint reading of section 12 and section 9 sub-section 4 of the Act of 1956. It is, therefore, seen that on adoption the child becomes the member of the family of the adoptive parents in all respect. Such a child would also take the caste of the adoptive parents. In our opinion, even if the controversy is looked at from this point of view, it would show that the son of the petitioner on adoption would be entitled to take her caste. There was no reason for insisting the petitioner to make the caste record of his biological parents available inasmuch as the same was not known and available. In our opinion, this is one more ground to find fault with the order.

11. The next important question is whether a child can be permitted to take the caste of his or her mother. In our opinion, this position is settled in the case of **Rameshbhai Dabhai Naika** (supra). Paragraphs 54 and 55 of this decision are relevant for the purpose. We propose to reproduce the same. The same read as follows;

“54. In view of the analysis of the earlier decisions and the discussion made above, the legal position that seems to emerge is that in an inter-caste marriage or a marriage between a tribal and a non-tribal the determination of the caste of the offspring is essentially a question of fact to be decided on the basis of the facts adduced in each case. The determination of caste of a person born of an inter-caste marriage or a marriage between a tribal and a non-tribal cannot be determined in complete disregard of attending facts of the case.

55. In an inter- caste marriage or a marriage between a tribal and a non-tribal there may be a presumption that the child has the caste of the father. This presumption may be stronger in the case where in the inter-caste marriage or

a marriage between a tribal and a non-tribal the husband belongs to a forward caste. But by no means the presumption is conclusive or irrebuttable and it is open to the child of such marriage to lead evidence to show that he/she was brought up by the mother who belonged to the Scheduled caste/Scheduled tribe. By virtue of being the son of a forward caste father he did not have any advantageous start in life but on the contrary suffered the deprivations, indignities, humiliations and handicaps like any other member of the community to which his/her mother belonged. Additionally, that he was always treated a member of the community to which her mother belonged not only by that community but by people outside the community as well”.

12. In our view, the proposition would squarely apply to the facts of the case in hand. We may state that case of the petitioner is on better footing than the cases of the children born to the parents in inter-caste marriage or in the marriage between the triable and non triable. In case of such children, their caste would at least be known. Here, in this case, caste is not at all known. In view of the facts and more particularly the fact that child was

adopted from the orphanage with the permission of the Court, the child would be entitled to take the caste of the mother. In our view, if analogy applied by respondents No.1 and 2 is sustained then it would produce disastrous effects. One of the effects would be that the child would not get identity of mother and particularly caste of the mother. He would be without identity throughout his life. Similarly, very purpose of adopting child by the petitioner being a single mother would stand frustrated. In our opinion, such a situation could not be envisaged by law. In our opinion, respondents No.1 and 2 failed to take note of this fact. The unwarranted emphasis on the Government Resolution, in our opinion, is too far-fetched. In such facts situation, Government Resolution would not be applicable. In view of the facts and enunciation of the law by the Supreme Court, we are of the considered opinion that the petition deserves to be allowed. Son of the petitioner – Heramb is entitled to take caste of his mother. Hence, the following order;

: ORDER :

- [1] The petition is allowed.
- [2] Respondent No.1 is directed to issue caste certificate to the minor son of the

petitioner as belonging to “*Hindu Mahyavanshi*” within a period of two weeks from the date of receipt of the order.

[3] The said certificate which will be issued by Respondent No.1 shall be subject to its being validated in accordance with law by respondent No.2- Scrutiny Committee from the date of receipt of the order.

[G.A. SANAP, J.]

[SUNIL B. SHUKRE, J.]