

wadhwa

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8454 OF 2023**

M (*name withheld for privacy*) ...Petitioner
Versus
Navi Municipal Corporation through its
Commissioner & Anr ...Respondents

Dr Uday Warunjikar, i/b Suddhesh Pilankar, for the Petitioner.
Mr Tejas Dande, for the Respondents.

**CORAM G.S. Patel &
Kamal Khata, JJ.**
DATED: 12th September 2023

PC:-

1. **Rule.** Rule made returnable forthwith.
2. All names are concealed for privacy and confidentiality.
3. There is a further Affidavit 11th September 2023 of one **B**. It comes to be filed in the following circumstances.
4. The Petition is directed against the Navi Mumbai Municipal Corporation. It seeks a mandamus directing the Municipal Corporation to issue a birth certificate of a minor **V**, born on 10th July 2020 showing his father's name as **B**.

5. The facts in this case are exceedingly peculiar. The Petitioner is one *M*. She converted from Islam to Hinduism before her marriage. That conversion was prior to 8th March 2017, when *M* married one *P*. *M* and *P* lived together as husband and wife until June 2018. There were differences between them. They filed a petition for divorce by mutual consent. The divorce decree is dated 8th February 2021. However, it seems that after she separated from *P*, and until the decree was passed, *M* was not only living separately but had a relationship with *B*. From that union, *M* conceived. She delivered a male child, *V* on 10th July 2020. As is obvious at the time of the delivery, she was still married to *P* but he was not the biological father of her child. She and *P* had already separated and filed for divorce by mutual consent.

6. Despite the differences between them it seems that it was *P* who admitted *M* to the Apollo Hospital at CBD Belapur, Navi Mumbai. While there, and presumably in the resultant situation of stress, it was *P* who entered his name with the hospital records and this led to his name being entered on *V*'s birth certificate. *M* came across this birth certificate and applied to the Municipal Corporation to change the name of the father. The application is of 14th December 2021, i.e., after the divorce decree. The response was that there was no provision to change the name of the father. She then went to the Court of the Judicial Magistrate First Class at CBD, Belapur, with a Miscellaneous Petition requesting an order for a change in the name. The Magistrate passed an order on 29th April 2023 but declined to grant relief.

7. Dr Warunjikar for the Petitioner draws our attention to the Judgment of the Supreme Court in *ABC v State (NCT of Delhi)*.¹ The Supreme Court said that whenever a single parent or an unwed mother applies for a birth certificate the only requirement should be that she should furnish an affidavit to that effect. The corrected birth certificate must then be issued.

8. Reference is also made to a decision of this Court in *ABC v MCGM*² a copy of which is at page 54. There again the Court directed the Corporation to delete the name of the father from the birth certificate. Reliance was placed on the Supreme Court Judgment in *ABC v State*.

9. We confess we are unable to understand the approach of the Municipal Corporation and, for that matter, that of the JMFC. This is the binding law declared by the Supreme Court and the Bombay High Court. The Municipal Corporation is not at liberty to say “there is no law.” There is indeed a law. It is the law declared by the Supreme Court and the High Court and it binds the Navi Mumbai Municipal Corporation as much as it binds us. This surely could not have been overlooked.

10. On the last occasion we asked Dr Warunjikar, for completeness and to avoid all ambiguity, to file an Affidavit of *B*. That Affidavit is tendered. This is the one we referred to above. He

¹IS(2015) 10 SCC 1 : (015 SCC OnLine SC 609.

²Writ Petition No. 723 of 2017.

states clearly that he is the biological father of *V* and supports the plea of the *M*, the Petitioner.

11. Having regard to these circumstances, we have no hesitation in making Rule absolute and directing the Navi Mumbai Municipal Corporation to immediately issue a birth certificate in the name of *V* showing his father's name as *B*.

12. It goes without saying that all copies of the previous birth certificates obtained by the Petitioner will have to be surrendered to the Navi Mumbai Municipal Corporation before the fresh certificate is issued.

13. The Petition is disposed of in these terms.

14. The Registry will ensure that in the online filing and physical papers, the names of the parties in the cause title are properly masked.

15. The Municipal Corporation will act on production of an authenticated copy of this order. It will not refuse to act only because in this order we have masked the names. It is to follow this order by reference to the Writ Petition number above.

16. No orders as to costs.

(Kamal Khata, J)

(G. S. Patel, J)