



W.P (MD).No.28549 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.11.2024

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THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P (MD).No.28549 of 2024

M.Paramasivam

... Petitioner

Vs.

1.The District Collector,
Virudhunagar District,
Virudhunagar.

2.The Commissioner,
Rajapalayam Municipality,
Virudhunagar District.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the second respondent to consider the representation dated 29.10.2024 and issue a Birth Certificate to Gobiraj within the stipulated time.

For Petitioner	: Mr.M.Jothi Basu
For R1	: Mr.D.Gandhi Raj Special Government Pleader
For R2	: Mr.N.Dilip Kumar Standing Counsel



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ORDER

This writ petition has been filed to direct the second respondent to consider the representation submitted by the petitioner, dated 29.10.2024 seeking issuance of Birth Certificate to Master.Gobiraj.

2. By consent of both parties, the Writ Petition is taken up for final disposal at the admission stage itself.

3. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

4. A male child was born to one 'X' due to love affair on 27.06.2021 in a private hospital at Rajapalayam, Virudhunagar District. The biological mother failed to take care of the child and therefore, the mother of the child and her relatives handed over the male child to the petitioner and his wife since they have no issues. They named the child as Gobiraj. In the meanwhile, the Protection Officer, Child Welfare Office, Virudhunagar lodged a complaint on 18.05.2022 before the Inspector of Police, Rajapalayam North Police Station, Virudhunagar District. Based on the complaint, a case in Cr.No.120/2022 was registered under Section 80 of Juvenile Justice (Care and Protection of



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Children) Act, 2015. Thereafter, the child was taken away from the custody of the petitioner. Therefore, the petitioner's wife approached this Court by filing a writ petition in W.P(MD)No.14027 of 2022. This Court, vide order dated 11.07.2022 has passed the following orders:-

"4. Since I wanted to hear from the biological mother, she was suo motu impleaded as the seventh respondent. The jurisdictional police and the other officials made arrangements so that I could contact the seventh respondent through Whatsapp video call. The seventh respondent spoke to me and she clarified that after handing over the child to the petitioner herein, she got married to some other person and through the said wedlock, she is also now five months pregnant. She made it clear that she had not sold the child to the petitioner and she would be happy if the child is brought up by the petitioner as her adopted child.

5. In such cases, what is most important is only the welfare of the child. It is true that the petitioner and her husband did not adhere to the adoption formalities. But considering the embarrassing situation in which the seventh respondent was placed, she was obviously not in a position to follow the statutory procedure. The child was born on 27.06.2021; it was taken away by the state officials on 17.05.2022. It is for almost 11 months the child was with the petitioner herein. Obviously, a great bonding must have developed between the petitioner and the child. The state officials will not be in a position to bestow motherly care on the child. The interests of the child require that the petitioner is granted custody. In this case, the parties are



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Hindus. The seventh respondent is the biological mother of the child. The petitioner and her husband do not have any male child. The child in this case is a male. Therefore, the essential provisions of the Hindu Adoptions and Maintenance Act are more than fulfilled. The child in question can very well be considered as the adopted child of the petitioner and her husband. It is open to the petitioner and her husband on the one hand and the seventh respondent on the other to even execute and register a deed of declaration recording the adoption. I also permit the petitioner to move the competent Court to recognise the adoption. This writ petition stands allowed. Crime No.120 of 2022 is quashed as continuance of the prosecution would not be in the interest of justice. No costs."

5. Though the petitioner and his wife are not the biological parents of Master.Gobiraj, there are given adoption of the male child, who was born to 'X' due to love affair. Only due to the complaint lodged by the Protection Officer, District Child Welfare Office, Virudhunagar as if there was a child Traffic, FIR was registered and subsequently, it was also quashed by this Court. Further, this Court also specifically recorded that the Master.Gobiraj was born on 27.06.2021 in the private hospital. From the date of his birth, he is in the custody of the petitioner and his wife. Further, stated that the essential provisions of the Hindu Adoptions and Maintenance Act are more than fulfilled by way of taking care of the child by the petitioner and his wife, therefore, the



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child can very well be considered as the adopted child of the petitioner and his wife. Further, permitted the petitioner and his wife to approach the competent Court to recognise the adoption. Now, the male child is aged about 3 1/2 years, in order to get the admission in the school, the petitioner requires the birth certificate of the child. Therefore, the petitioner made a request to the second respondent for issuance of birth certificate. However, it is kept pending on the ground that the petitioner and his wife are not the biological parents and there is no valid adoption deed. Further, the name of the father is not known.

6. In view of the peculiar circumstances, this Court directs the second respondent to register the birth of Master.Gobiraj on 27.06.2021 and issue the birth certificate to the petitioner within a period of two weeks from the date of receipt of a copy of this order by showing the petitioner and his wife as father and mother. It is also made clear that this order will not be precedent for any other case.

7. With the above direction, this writ petition is disposed of. No costs.

Internet : Yes
Index : Yes/No
Speaking/Non Speaking order
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- To
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G.K.ILANTHIRAIYAN, J.

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