

(2023) 02 TEL CK 0076
In the Telangana High Court
Case No : Writ Petition No. 11941 Of 2022

Dasari Ruthamma

APPELLANT

Vs

State Of Telangana

RESPONDENT

Date of Decision : 22-02-2023

Acts Referred:

Hindu Adoptions and Maintenance Act, 1956 — Section 8, 16, 56(3)

Citation : (2023) 02 TEL CK 0076

Hon'ble Judges : P. Madhavi Devi, J

Bench : Single Bench

Advocate : Indira

Final Decision : Disposed Of

Judgement

1. This writ petition has been filed by the petitioners seeking a Writ of Mandamus declaring the action of the respondent No.2 in taking forcible custody of the child, as illegal, arbitrary, contrary to law and to restore custody of the child by name Dasari Shalem Raju, the biological child of the respondent Nos.5 and 6, to the adopted parents i.e., the petitioners herein in the interest of justice and to pass such other order or orders.

2. Brief facts leading to the filing of the present writ petition are that respondents No.5 and 6 are admittedly the natural parents of a baby boy who was born on 01.05.2019 and it is alleged that they had sold the said baby boy when he was five days old to a couple but the child was rescued from them and after counseling, the child was handed over to the biological parents. It is alleged that subsequently the parents have sold the baby boy again to another couple and when they enquired from them, they were not able to locate the child and therefore, they have given a police complaint to enquire about the whereabouts of the child and during the police investigation, it was found that the child is in the custody of the petitioners. Thereafter, respondents No.1 to 3 have taken custody of the child and have put the child in the custody of respondent No.4. Challenging the action of the respondents in taking away the child from their

possession and keeping the child under the custody of respondent No.4, the present Writ Petition has been filed.

3. Learned counsel appearing for the petitioners, Ms. Indira, submitted that the petitioners being aged 52 and 61 years respectively are a married couple and since they did not have children of their own, they have taken the male child born to respondents No.5 and 6 in adoption and have been taking care of him for the past three years. She submitted that the child was in an under-nourished condition at the time of adoption and he has attained health only due to the personal care and attention of the petitioners. It is submitted that both the petitioners are physically and financially in good condition to take care of the child and prayed for the custody of the child.

4. Learned counsel representing respondents No.5 and 6 submitted that the child was not born out of wedlock of the respondents 5 and 6, but was born due to their live in relationship and therefore, they are unable to bring the child to their care and therefore, they have given the child in adoption to a family which can take care of the child. It is submitted that they are illiterate and therefore, they have signed the papers wherever they have been advised to do so by the Police and denied that they have taken any money for giving the child in adoption nor of having given any police complaint.

5. Learned Government Pleader for Women and Child Welfare, representing respondents No.1 to 4 has relied upon the averments made in the counter affidavit and submitted that though respondents No.5 and

6 are the natural parents, they had sold the child away on an earlier occasion when the child was only 5 days old and that the child was rescued from the illegal custody of the earlier couple and thereafter, after counseling, the child was handed over to the parents, but again they have sold the said child to the petitioners herein and that after receiving a complaint about the same, the investigation was taken up and the child was found in the custody of the petitioners herein. It is submitted that since the petitioners are neither the natural parents nor legal parents of the child, the child has been put in the custody of respondent No.4 and is being taken care of by respondent No.4. It is submitted that the custody has been given to respondent No.4 only on the directions of the Child Welfare Committee which is headed by the Judicial Magistrate of First Class and he, therefore, prayed for dismissal of the writ petition.

6. Having regard to the rival contentions and the material on record, this Court finds that admittedly, the petitioners are not the natural parents of the child and respondents 5 and 6 are the natural parents. Though action has been initiated and the child has been taken away from the custody of the petitioners on the complaint of respondent No.7, in spite of service of notice on respondent No.7, there is no appearance on his behalf. It is case of respondents 5 and 6 that they are not able to take care of their natural born son, as he was not born out of

their wedlock and the relationship does not allow to treat him as their son and therefore they have given him in adoption. It is their case that they have not taken any money for giving the child in adoption. It is the case of the petitioners that they have taken the child in adoption when he was five months old and have been taking care of the child who was in an under-nourished condition at the time of adoption and they have taken all care to see that he gets good treatment and they have been treating him as their own son and therefore they are seeking legal custody of the child.

7. It is the contention of the learned counsel for the petitioners that the petitioners are legally eligible to take the child in adoption and that they have taken the child in adoption as per Hindu customs and rituals and the norms and conventions. In support of her contentions, the learned counsel for the petitioners placed reliance upon a decision of this Court in the case of Kommuri Srinivas and another Vs. State of Telangana through Principal Secretary and others (2021) 2 ALD 160, wherein this Court has considered the legal position under the Hindu Adoptions and Maintenance Act, 1956 and had directed the respondents therein to hand over the child to the adoptive parents in the presence of biological parents. This Court finds that the Court has considered the averments of the petitioners therein and also the allegations of the official respondents that the child has been sold away and also the provisions and guidelines governing adoption of a child in India and has held as under:

"- Adoption Procedure for Resident Indians, is restrictive in its application to the Adoption of Orphans, Abandoned or Surrendered children. The very Juvenile Justice Act in Sub Section 3 of Section 56 categorically excludes the adoptions made under HAMA Act.

In the light of the clear analysis and categorical declaration of law by the Supreme Court as well as the High Court of Delhi, High court of Kerala and the High Court of Punjab and Haryana, in the absence of there being unimpeachable and absolute material for the respondent authorities to say that the adoption claimed by the petitioners to be sham and not acceptable, is totally unreasonable and arbitrary and without there being any basis. The understanding of the authorities that 2017 Regulations would apply with respect to every adoption and the adoptions can be made only under the 2017 Regulations is only on account of misinterpreting the provisions and on account of the improper understanding of the width and scope of the Juvenile Justice Act and Regulations vis-à-vis provisions of HAMA.

Yet another contention of the learned counsel for the respondent No.4 that the adoption deed claimed by the petitioners is not registered and thus the same would have no validity is also liable to be rejected. What all Section 16 of the HAMA Act declares is the effect of registration of adoption deed, and the weight that is required to be given to the same when the same is legally challenged. A close scrutiny of the provisions of HAMA Act does not disclose there being any set procedure, or a ritual or a necessity of a written deed for a valid adoption to

come into existence. These aspects of the matter are also no longer res integra and it is not necessary for this Court to reproduce the same, as the same are available in various legal journals.

The restrictive scope of Juvenile Justice Act, and inapplicability of the same to the adoptions made under the HAMA Act were noticed and elaborately dealt by a Division Bench of Kerala High Court and the Punjab and Haryana High Court, apart from the clear and ample guidance provided in the judgment of the Supreme Court in *M/s Shabnam Hashmi v. Union of India* (AIR 2014 SC 1281). Further the Delhi High court in *PKH v. Central Adoption Resource Authority* (2016 SCC OnLine Del 3918) in categorical terms held that a Hindu child who is offered and accepted in adoption under Hindu Adoptions and Maintenance Act, 1956, by no stretch of imagination, can be termed as a surrendered child.

In those circumstances, this writ petition is allowed and the respondent no.2 is directed to handover the child to the petitioners (adoptive parents) in the presence of respondents 5 and 6 (biological parents). No costs. Miscellaneous petitions, if any pending, shall stand closed."

8. In the light of the above judgment, the adoption of the child by the adoptive parents in this case also has to be accepted provided it is under Section 8 of the Hindu Adoptions and Maintenance Act, 1956. Though in the affidavit filed in support of the Writ Petition, the petitioners claim that they are Hindus and are covered by the provisions of the Hindu Adoptions and Maintenance Act, 1956, as per the report dt.23.08.2021 of the Inspector of Police, Mahabubabad Town PS, the child is born to Hindu parents, but the petitioners have converted to Christianity and are Christians by practice. Therefore, the Hindu Adoptions and Maintenance Act, 1956 would not be applicable to them. They have to approach the authorities under the Guardians and Wards Act, 1890 for legal adoption. Since the petitioners are reportedly not Hindus, the above judgment cannot be applied ipso facto to this case.

9. In view of the same, this Court directs the official respondents to examine whether the child can be given in adoption to the petitioners even if they are not Hindus by practice and to follow the procedure for giving the child in adoption to the petitioners as per the Guardians and Wards Act, 1890 and if it is found to be permissible, then the official respondents shall hand over the child to the petitioners after following the due procedure of legal adoption. Till such time, the child shall remain in the custody of respondent No.4.

10. With the above directions, the Writ Petition is disposed of. No order as to costs.

11. Pending miscellaneous petitions, if any, in this Writ Petition shall stand closed.