
(2021) 01 TEL CK 0003
In the Telangana High Court
Case No : Writ Petition No. 9591 Of 2020

Kommuri Srinivas And another	Vs	APPELLANT
State Of Telangana And Ors		RESPONDENT

Date of Decision : 05-01-2021

Acts Referred:

Hindu Adoptions And Maintenance Act, 1956 — Section 3, 16, 56

Citation : (2021) 01 TEL CK 0003

Hon'ble Judges : Challa Kodanda Ram, J

Bench : Single Bench

Advocate : Vani, Eswar, Ram Mohan, N. Rajeshwar Rao

Final Decision : Allowed

Judgement

Challa Kodanda Ram, J

The petitioners assail the action of 2nd respondent-Child Development Project Officer (CDPO) in taking forcible custody of the child and sending to

Shishu Gruha, Sangareddy as illegal and arbitrary, and consequently seek a direction to release the child to the care and custody of the petitioners.

Brief averments in the writ affidavit are that the petitioners are husband and wife and they have no children; that they got registered with Central

Adoption Resource Authority (CARA) for adopting a child; that through their in-laws who live in Kamaram village, they got acquainted with

respondents 5 and 6; that respondents 5 and 6 have two sons and were expecting another child, however, due to poverty, they expressed their inability

to raise one more child and therefore respondents 5 and 6 expressed to offer their third child to the petitioners in adoption so that the child can receive

better care; that after the child was born, the petitioners adopted the child by performing the rituals of 'Datta Homam'; that even as per the

Hindu Adoptions and Maintenance Act, 1956 which governs the case on hand, the petitioners are entitled to adopt the child in question; that on account of some misinformation spread by some people in the Thanda (Tribal area), the 2nd respondent had mistakenly come to the conclusion that respondents 5 and 6 have sold the child for rupees three lakhs to the petitioners; that when the petitioners took the child for vaccination, the 2nd respondent took the child and sent to Shishu Gruha, Sangareddy, on the ground that the respondents 5 and 6 have illegally sold the child to the petitioners and that the petitioners have not followed the due process for adopting the child; that the action of 2nd respondent in taking away the child and keeping the child with the custody of Shishu Gruha, Sangareddy, is illegal and arbitrary.

On notice being ordered, the 2nd respondent-CDPO filed counter affidavit on behalf of respondent Nos.2, 5 and 7. The sum and substance of the counter affidavit is that respondent Nos.5 and 6 were blessed with a male child on 19.10.2019; that the officials received information that respondents 5 and 6 have sold the child for money to the petitioner; that the officials went and counseled the respondents 5 and 6 and educated them about the need of mother's milk and love to the child and instructed to keep the child with respondents 5 and 6 only to ensure maternal care; that when the Anganwadi staff directed the respondents 5 and 6 to produce the child for vaccination on 28.10.2019 and on 05.11.2019, they gave incoherent replies; that the ICDS staff went to the Thanda and enquired and came to know that respondents 5 and 6, being poor, sold away the child to the petitioners through a middleman for Rs.3,00,000/-; that the ICDS staff rescued the child and admitted in Shishu Gruha, Sangareddy, on 28.11.2019, and an FIR also came to be registered on 29.11.2019 against respondents 5 and 6 under the Juvenile Justice Act; that respondents 5 and 6 decided to surrender the child to the Chairperson, Child Welfare Committee, Sangareddy; that a Deed of Surrender dated 07.01.2020 was executed by respondents 5 and 6; that due to alleged threats from the middleman, the petitioners left the place and their whereabouts are not known; that there is a process of registering with CARA and waiting as per seniority list for adopting a child; that the petitioners failed to register themselves with CARA and follow due process for adoption of child and therefore the writ petition is liable to be dismissed.

Respondent No.5-Banoth Naresh, who is the biological father of the child, and the husband of respondent No.6, filed counter affidavit stating that they agreed to give the child in adoption to the petitioners as agreed to before delivery; that on 08.11.2019 a function and puja was performed at the house of petitioners in which they had permanently handed over the child to the petitioners in the presence of all their relatives and the baby was also named as Karthikeya by the petitioners (adoptive parents); that on 17.11.2019, some local ladies came to the house of respondent No.5 and 6 for vaccination, and respondents 5 and 6 called the petitioners who came and handed over the child to the respondents 5 and 6 for vaccination, and the child was taken away by the officials; that the respondents 5 and 6 have given the child Karthikeya to the petitioners in adoption and they have no objection if the child Karthikeya is handed over to the petitioners.

Respondent No.7-CARA has filed counter affidavit essentially stating that no relief was sought against respondent No.7 in the present writ petition; that CARA deals with adoptions processed under the Juvenile Justice Act, 2015 only; that as the adoption in the instance case has taken place through a Datta Homam ceremony and an adoption deed was also filed under the Hindu Adoption and Maintenance Act, 1956, the provisions of Juvenile Justice Act, 2015, do not apply to the instance case; and therefore CARA has no role in the adoption which took place as per the Hindu Adoption and Maintenance Act, 1956; and therefore the writ petition may be dismissed against the respondent No.7-CARA.

Heard the learned counsel for the petitioner Smt. Vani, and Sri Eswar for respondent Nos.5 and 6, Sri S.Ram Mohan, Assistant Government Pleader for Home, Sri N. Rajeshwar Rao, learned Assistant Solicitor General appearing on behalf of respondent No.7-CARA.

At the outset, certain admitted and undisputed facts may be noted. The respondents 5 and 6 are the biological parents and respondent No.6 gave birth to a male child on 19.10.2019, and the child was claimed to have been given in adoption to the petitioners on 25.10.2019, and a Datta Homam ceremony was conducted on 08.11.2019, at 10 a.m, and child was named as Karthikeya. The child was taken away by the respondent No.2 alleging that the child was sold and as the biological parents did not choose to take back the child within the specified period under the guidelines, the child was

enrolled in CARA for adoption legally. Presently the child is with the 4th respondent.

The question which falls for consideration in the present writ petition is whether the action of respondents in taking away the child is valid and

sustainable, and whether the adoption claimed by the petitioners and respondents 5 and 6 is liable to be ignored? And whether in the facts of the

present case the provisions of Juvenile Justice Act and CARA Guidelines apply and override the Hindu Adoption and Maintenance Act (HAMA),

1956.

Smt. S. Vani while drawing the attention of the Court to the provisions of the Juvenile Justice Act, and more specifically by drawing attention to Sub

Section 3 of Section 56 would submit that the adoption of the child Karthikeya by the petitioners under the HAMA Act, is outside the purview of

Juvenile Justice Act and thus the action of respondents is totally arbitrary and illegal. By drawing attention of the Court to the judgments in Lakshmi

Kant Pandey v. Union of India AIR 1984 SC 469 ,Anokha v. State of Rajasthan (2004) 1 SCC 382, Sivarama K. S/o Venkattaramana Bhat v. The

State of Kerala 2020(1) KLJ 641 and judgment of Punjab and Haryana in Jasmine Kaur v. Union of India 2020 SCC OnLine P&H 1056, would assert

that the issue is no longer res integra and the law is well settled to the effect that the adoptions made under HAMA Act are outside the purview of the

Juvenile Justice Act and CARA Regulations.

On the other hand, learned Assistant Government Pleader Sri S. Ram Mohan by drawing attention to the counter affidavit strenuously contends that it

is well known fact that certain tribal communities in Telangana Area are known to sell the children and in many cases also abandon the girl child apart

from committing female infanticide. Taking into consideration of these social evils, and on account of the observations of the Supreme Court in

Laxman Pandey's case, the Juvenile Justice Act came into force and further amendments were made in 2015. Relevant portions of CARA

Guidelines of 2015 and 2017, and Juvenile Justice Act definitions, are extracted hereunder:

Guidelines Governing Adoption of Children, 2015:

2. "abandoned" means an unaccompanied and deserted child who is declared abandoned by the Child Welfare Committee after due inquiry;

10. "child legally free for adoption" means an orphan, abandoned and surrendered child declared free for adoption by the Child Welfare

Committee;

23. "orphan" means a child (i) who is without parents or legal guardian; or (ii) whose parents or legal guardian is not willing to take, or capable of

taking care of the child;

ADOPTION REGULATIONS, 2017:

Section 2 (6) "Child Study Report" means the report which contains details about the child, including his date of birth and social background as per

the format provided in Schedule II;

12. "in-country adoption" means adoption of a child by a citizen of India residing in India;

4. Child eligible for adoption.- The following shall be eligible for adoption, namely:- (a) any orphan or abandoned or surrendered child, declared legally

free for adoption by the Child Welfare Committee; (b) a child of a relative defined under sub-section (52) of section 2 of the Act; (c) child or children

of spouse from earlier marriage, surrendered by the biological parent(s) for adoption by the step-parent

* Procedure relating to orphan or abandoned child.- (1) The provisions relating to the process of declaring an orphan or abandoned child, as legally

free for adoption are laid down in sections 31, 32, 36, clauses 1. to (c) and clause (h) of sub-section (1) of section 37 and section 40 of the Act, as well

as under the relevant provisions of the rules made thereunder.

2. An orphan or abandoned child received by a Child Care Institution, including a Specialised Adoption Agency, directly without the involvement of

Child Welfare Committee, shall be produced before the Child Welfare Committee within twenty-four hours (excluding the journey time) along with a

report as per the format given in Form 17 of Juvenile Justice (Care and Protection of Children) Model Rules, 2016 and a copy of such report shall be

submitted by the Child Care Institution or the Specialised Adoption Agency, as the case may be, to the local police station within the same period.

Section 7.

Procedure relating to a surrendered child.-

3 A parent or guardian wishing to surrender a child under subsection 1. of

section 35 of the Act, shall apply to the Child Welfare Committee in the Form 23 of Juvenile Justice (Care and Protection of Children) Model Rules, 2016.

2. For parents or guardians who are unable to give an application, due to illiteracy or any other reason, the Child Welfare Committee shall facilitate the same through the legal aid counsel provided by the Legal Services Authority.

3. The Deed of Surrender shall be executed as per Schedule V.

4. If the surrendering parent is an unmarried mother, the Deed of Surrender may be executed in the presence of preferably any single female member

of the Child Welfare Committee.

5. If a child born to a married couple is to be surrendered, both parents shall sign the Deed of Surrender and in case one of them is dead, death

certificate is required to be furnished in respect of the deceased parent.

6. If a child born to a married couple is to be surrendered by one biological parent and the whereabouts of the other parent are not known, the child

shall be treated as abandoned child and further procedures in accordance with regulation 6 of these regulations shall be followed.

7. In case of a child born out of wedlock, only the mother can surrender the child and if the mother is a minor, the Deed of Surrender shall be signed

by an accompanying adult as the witness.

8. If the surrender is by a person other than the biological parents who is not appointed as a guardian by a court of law, the child shall be treated as

abandoned child and further procedures in accordance with regulation 6 shall be followed.

9. The Specialised Adoption Agency and the Child Welfare Committee shall ensure that a copy of the Deed of Surrender is given to the surrendering

parents or person.

10. The details of the child along with his photograph shall be entered online in the Child Adoption Resource Information and Guidance System by the

Specialised Adoption Agency within three working days from the time of receiving the child.

11. To discourage surrender by biological parents, efforts shall be made by the Specialised Adoption Agency or the Child Welfare Committee for

exploring the possibility of parents retaining the child, which shall include counselling or linking them to the counselling center set up at the Authority or

State Adoption Resource Agency, encouraging them to retain the child and explaining that the process of surrender is irrevocable.

12. The Specialised Adoption Agency and the Child Welfare Committee shall ensure that the surrendering parents or the legal guardian is made aware

that they can reclaim the surrendered child only within a period of sixty days from the date of surrender.

13. Due regard shall be given to the privacy of the surrendering parents and the surrendered child by the authorities and agencies involved in the process.

14. No public notice or advertisement shall be issued in the case of a surrendered child.

15. In case the surrendering biological parent has not claimed back the child during the reconsideration period, the same shall be intimated by the

Specialised Adoption Agency to the Child Welfare Committee on completion of sixty days from the date of surrender.

16. The reconsideration period for the biological parents is specified in sub-section (3) of section 35 of the Act and no further notice shall be issued to the surrendering parents.

17. The Child Welfare Committee shall issue an order signed by at least three members declaring the surrendered child as legally free for adoption

after the expiry of sixty days from the date of surrender, in the format at Schedule I.

18. The Child Study Report and Medical Examination Report of the surrendered child shall be prepared and posted in the Child Adoption Resource

Information and Guidance System by the Specialised Adoption Agency, within ten days from the date the child is declared legally free for adoption, in

the format at Schedule II and Schedule III of these Regulations respectively.

19. The Child Study Report and Medical Examination Report shall be made available in English (apart from the local language) and the District Child

Protection Unit shall facilitate the Specialised Adoption Agency in uploading the Child Study Report and Medical Examination Report in Child

Adoption Resource Information and Guidance System, in case the Specialised Adoption Agency is facing any technical difficulty.

20. Strict confidentiality shall be maintained in cases of all documents pertaining to biological parents in all circumstances unless the surrendering

parents have expressed their willingness for divulging the same.

21. The surrender of a child by an unwed mother before a single woman member of the Child Welfare Committee shall be considered as surrender of the child before the Committee as envisaged under section 35 of the Act, and her right to privacy has to be protected.

22. The surrender of a child before Child Welfare Committee shall be in camera.

23. The surrender of child or children by the biological parents for adoption by the step-parent shall be before the Child Welfare Committee, for

adoption, on the ground of emotional and social factors as envisaged under subsection (1) of section 35 of the Act, in the format given at Schedule

XXI. 8. Availability of child for adoption.- As soon as a child is declared legally free for adoption by the Child Welfare Committee, such child shall be

allowed to be given in adoption to a resident Indian or non-resident Indian parents: Provided that such child shall be allowed to be given in inter-country

adoption.- (a) after sixty days, if the child is below five years of age; (b) after thirty days, if the child is above five years of age or is a sibling; (c) after

fifteen days, if the child has any mental illness or physical disability as listed in Schedule XVIII. Explanation.- For the purposes of this regulation, it is

clarified that the time limits specified in the proviso shall be calculated from the date, the certificate issued by the Child Welfare Committee declaring

the child as legally free for adoption, is uploaded in Child Adoption Resource Information and Guidance System.

CHAPTER III ADOPTION PROCEDURE FOR RESIDENT INDIANS

9. Registration and home study of the prospective adoptive parents.-

1. The Indian prospective adoptive parents irrespective of their religion, if interested to adopt an orphan or abandoned or surrendered child, shall apply

for the same to Specialised Adoption Agencies through Child Adoption Resource Information and Guidance System by filling up the online application

form, as provided in Schedule VI, and uploading the relevant documents thereby registering themselves as prospective adoptive parents.

2. The prospective adoptive parents shall opt for desired State or States by giving option for those particular States at the time of registration.

3. Registration on Child Adoption Resource Information and Guidance System would be a deemed registration in all Specialised Adoption Agencies of

the State or States they have opted for.â??

These guidelines regulate the method and manner of adoptions, both inter-country and intra-country. Learned counsel further adds that if the petitioners so desire to adopt a child are required to register themselves under the regulations with CARA and their applications would be processed as per the priority assigned. On enquiry being conducted in the village where the respondents 5 and 6 are residing, it came to light that the respondent No.5 who was habituated to vices of drinking and tobacco consumption, and was known to neglect his wife and children, was suddenly found to have acquired Television, Motorcycle and living a luxurious life not commensurate to their known income sources, and having found that the newborn child was missing, and on further enquiries it came to light that the newborn child was sold by the respondents 5 and 6 to the petitioners for a sum of Rs.3,00,000/-. After registering FIR and after counseling by the District Child Protection Unit (DCPU) and others, the respondents had in fact initially agreed to take back the child, however, thereafter had expressed their inability to bring up the child and further surrendered the child for adoption by executing a Deed of Surrender.

The stand of the learned counsel for the 7th respondent-CARA is categorical to the effect that the claim of the petitioners being the adoption under HAMA Act, they have nothing to do with the case and further the learned counsel pointed out that no relief as such is being claimed against the respondent No.7, and the writ petition may be disposed of on merits.

Learned counsel Sri Eswar appearing for respondents 5 and 6 would submit that the respondents 5 and 6 had in fact voluntarily given their third child in adoption as they were not sure about their ability to bring up the child due to poverty and further having been convinced that the child will have a bright future with the petitioners who are childless couple and they have no objection for the writ petition being allowed.

At the outset, it may be mentioned the applicability or inapplicability of the Juvenile Justice Act and CARA guidelines is no longer res integra. The

Honâ??ble Supreme Court after tracing the history of enactment of Juvenile Justice Act, and the Rules made there under, and after analyzing the

judgments rendered up to the date in Anokha case, in paragraph 8, had noted the matters relating to adoptions and categorized them into three classes

viz., (i) children who are orphaned or destitute or whose biological parents

cannot be traced; (ii) children whose biological parents are traceable but have relinquished them or surrendered them for adoption, and (iii) children living with their biological parents. The above classification though was made in the context of adoptions of children to outside country couples, the classification would throw light with respect to the scope and ambit of the Juvenile Justice Act and CARA guidelines. In the same judgment, the Supreme Court further held that the third category was expressly excluded from consideration in Lakshmi Kanth Pandey's case further recognizing the right of the biological parents to give their child in adoption to foreign parents. Observations made in the said judgment would squarely apply even with respect to the adoptions within the country so long as the adoptions are being made among the consenting parties and subject to their personal laws. In other words, the judgment of the Supreme Court is categorical and in unequivocal terms laid down that the CARA guidelines apply to "aforesaid observations only pertain to children who have been or are sought to be relinquished or surrendered for adoption in general to a placement agency or other institution where there is no contact between them and the adoptive parents at all and not to cases where the child is living with his/her parent/parents and is agreed to be given in adoption to a particular couple who happen to be foreign."

To give effect to the judicial pronouncements, the JJ Act came to be enacted and Adoption Regulations of 2017 also were made further modifying the Regulations initially made in 2015. It may be noted that while 2015 Regulations dealt with adoptions exclusively of Indian children by foreign parents, the 2017 Regulations covered adoption procedures for Resident Indians as well. However, it may be noted that essentially the Adoption Regulations were for children falling within definition of "abandoned children" Section 2(1); Children in need of protection" Section 2(14); Children in conflict with law" 2(14)(iii); Orphans" Section 2(42); Surrendered children" Section 2(60). The relevant sections of Juvenile Justice Act, 2015, with respect to the different categories of children are as follows:

Section 2 (1) "abandoned child" means a child deserted by his biological or adoptive parents or guardians, who has been declared as abandoned by the Committee after due inquiry;

13 "child in conflict with law" means a child who is alleged or found to have

committed an offence and who has not completed eighteen years of age on the date of commission of such offence;

14 "child in need of care and protection" means a child—

1. who is found without any home or settled place of abode and without any ostensible means of subsistence; or

2. who is found working in contravention of labour laws for the time being in force or is found begging, or living on the street; or

3. who resides with a person (whether a guardian of the child or not) and such person—

1. has injured, exploited, abused or neglected the child or has violated any other law for the time being in force meant for the protection of child; or

2. has threatened to kill, injure, exploit or abuse the child and there is a reasonable likelihood of the threat being carried out; or

3. has killed, abused, neglected or exploited some other child or children and there is a reasonable likelihood of the child in question being killed,

abused, exploited or neglected by that person; or

& who is mentally ill or mentally or physically challenged or suffering from terminal or incurable disease, having no one to support or look after or

having parents or guardians unfit to take care, if found so by the Board or the Committee; or

& who has a parent or guardian and such parent or guardian is found to be unfit or incapacitated, by the Committee or the Board, to care for and

protect the safety and well-being of the child; or

& who does not have parents and no one is willing to take care of, or whose parents have abandoned or surrendered him; or

& who is missing or run away child, or whose parents cannot be found after making reasonable inquiry in such manner as may be prescribed; or

& who has been or is being or is likely to be abused, tortured or exploited for the purpose of sexual abuse or illegal acts; or

& who is found vulnerable and is likely to be inducted into drug abuse or trafficking; or

& who is being or is likely to be abused for unconscionable gains; or

& who is victim of or affected by any armed conflict, civil unrest or natural calamity; or

& who is at imminent risk of marriage before attaining the age of marriage and whose parents, family members, guardian and any other persons are likely to be responsible for solemnisation of such marriage.

42. "orphan" means a child" (i) who is without biological or adoptive parents or legal guardian; or (ii) whose legal guardian is not willing to take, or capable of taking care of the child;

60. "surrendered child" means a child, who is relinquished by the parent or guardian to the Committee, on account of physical, emotional and social factors beyond their control, and declared as such by the Committee."

As a matter of fact, the Regulation 9, Chapter 3 under the Heading

" 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 128 1Further the Delhi High court in PKH v.

Central Adoption Resource Authority 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.