

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 18439 of 2021

KAJALBEN RAKESHBHAI BHADIYADRA

Versus

THE REGISTRAR, REGISTRATION OF BIRTH AND DEATH

Appearance:

KRUPABEN S LIMBACHIYA(7851) for the Petitioner(s) No. 1

MR.CHIRAG B UPADHYAY(6735) for the Petitioner(s) No. 1

NOTICE SERVED for the Respondent(s) No. 1

CORAM:**HONOURABLE MR. JUSTICE A.S. SUPEHIA**

Date : 21/06/2022

ORAL ORDER

1. **RULE.** Though served, the respondent has chosen not to appear.

2. By way of the present petition under Article 226 of the Constitution of India, the petitioner is praying to issue a direction to the respondent authority to change the name of her daughter namely "Nidhi" in the birth certificate.

3. The facts leading to filing of this petition are as under -

3.1 The petitioner got married to one Kiranbhai Bachubhai Chaudhary at Surat as per Hindu rites and rituals. On 19.06.2005 out of the said wedlock, a daughter viz. "Nidhi" has born and a certificate mentioning the date of birth is also issued by the Principal, Kotmunda Primary School, Bardoli, Surat.

3.2 On 08.07.2007, the husband of the petitioner viz., Shri Kiranbhai Bachubhai Chaudhary had passed away. On 19.02.2012, the petitioner remarried with Rakeshbhai Khodabhai Bhadiyadra at Siddhikutir Mandir, Varachha Road, Surat. On 22.05.2019, the petitioner has executed an adoption deed and adopted the daughter "Nidhi" and the same has also

registered at Sub-Registrar, Surat-3 being registration No.5993. On July, 2019, the petitioner applied for the change of name of her daughter and the same is also published in Gujarat Government Gazette dated 15th August, 2019 at Serial No.86.

3.3 On 27.02.2021, the petitioner approached the respondent authority to change the name of the daughter of the petitioner but since the record is not available to the authority, the inaccessible certificate was issued by the authority on 20.03.2021. On 15.03.2021, the petitioner has withdrawn Special Civil Application No. 1986 of 2021 with a view to approach the competent authority.

4. As noticed hereinabove, the respondent has chosen not to appear.

5. Learned Advocate Mr.Updhyay, has submitted that as per the provisions of the Births and Deaths Registration Act, the powers have been vested to the respondent No.2, even though, the respondent No.2 has not been exercised the powers. He has placed reliance on Section 15 of the Act.

5.1 Learned advocate for the petitioner has further submitted that the respondent No.2 has not considered the documents produced on record and straightway, directed the petitioner to get the judicial order from the Hon'ble Court, without application of mind and against the settled principles of law.

5.2 Learned advocate for the petitioner has placed reliance on the judgments in cases of Sukumar Mehta vs. District Registrar, Births And Deaths, 1993 (1) G.L.R. 93, Sejalben Mukundbhai Patel W/o Khodabhai Joitaram Patel, 2019 (3)

G.L.R. 1866 and order dated 15.03.2017 passed in Special Civil Application No.7864 of 2016 (in the case of Tushar Kanaiyalal Vyas (Thru. POA) vs. State of Gujarat & Ors.) and has submitted that the respondent authority is required to issue a certificate in the name of her adoptive father, since the adoption deed is not questioned by anyone.

6. I have heard the learned advocate for the petitioner.

7. A bare perusal of the document at page No.34 (Form No.10) issued by the respondent authority reveals that the birth of the petitioner is registered in the register which is in torn and shabby condition. Thus, instead of issuing a fresh birth certificate in the name of the petitioner incorporating the name of the father, who has adopted her, the respondent authority has very conveniently issued inaccessible certificate. It is the case of the petitioner that she may be issued a birth certificate incorporating the name of Shri Rakeshbhai Khodabhai Bhadiyadra. It is not in dispute that after the death of her formal husband Kirankumar Chaudhary, the petitioner has remarried to Shri Rakeshbhai Khodabhai Bhadiyadra. The petitioner has also executed an adoption deed and adopted the daughter "Nidhi" and the same is also registered at the Sub-Registrar Office, Surat-3 being Registration No.5993. Thereafter, the petitioner applied for change of name of her daughter and the same is also published in Gujarat Government Gazette dated 15.08.2019 bearing the name of her father Rakeshbhai Khodabhai Bhadiyadra.

8. At this stage, it would be apposite to refer to the relevant paragraphs of the judgment of this Court dated 15.06.2022 passed in Special Civil Application No.15757 of 2021, where

this Court has observed thus -

7. At this stage, it would be apposite to refer to the provisions of Sections 14 and 15 of the Registration of Births and Deaths Act, 1969, which are as under:

"14. Registration of name of child.— Where the birth of any child has been registered without a name, the parent or guardian of such child shall within the prescribed period give information regarding the name of the child to the registrar either orally or in writing and thereupon the Registrar shall enter such name in the registrar and initial and date the entry.

15. Correction or cancellation of entry in the register of births and deaths.—If it is proved to the satisfaction of the Registrar that any entry of a birth or death in any register kept by him under this Act is erroneous in form or substance, or has been fraudulently or improperly made, he may, subject to such rules as may be made by the State Government with respect to the conditions on which and the circumstances in which such entries may be corrected or cancelled correct the error or cancel the entry by suitable entry in the margin, without any alteration of the original entry, and shall sign the marginal entry and add thereto the date of the correction or cancellation."

A bare perusal of the aforesaid Sections 14 and 15 of the Registration of Births and Deaths Act, 1969 reveals that the Registrar has to inquire about any entry of the birth and death in any register kept by him under the Act.

8. At this stage, I may with profit refer to the decisions of this Court. In case of Sukumar Mehta (supra), this Court, after examining the provision of section 15 of the Registration Act, has held thus:

"In my opinion, the Act is silent about the contingency for subsequent correction of entry already made in Birth Register by correcting the name of the child at the instance of the parents, his is the case of unmindful legislative omission. This is classic case of casus omissi, i.e., circumstances concerning which an Act is silent. The question is how to deal with such

contingencies ? Should the Court leave the litigant in sheer helpless condition asking him to wait till the legislature curds the defect by providing for the omission ? Can the Court escape the responsibility of considering these unforeseen contingencies? However, I cannot ignore the modern tendency in Courts to take the view that if a case is entirely unprovided for by a Statute, either directly or indirectly, then it must remain nobody's child - a luckless orphan of the law (In re Leicester Permanent Building Society, 1942 Ch. 340). Same was the view of Devlin L. J. in Gladstone V/s. Bower, reported in 1960 (2) QB 384 when he observed "we cannot legislate for casus omiss". This tendency has given rise to inconvenient results. One option left for me is to express regrets for a statutory lacuna and to hope that it will be remedied by legislation and occasionally the hope is fulfilled, even if tardily. However, in my opinion, in this case there is "impalpable line" of distinction which should enable the Court to come out of helplessness. In this case" the caption of Sec. 15 gives general indication to give power to correct the entry in the Birth Register. However, specific case of correction of name of the child already entered is omitted to be provided for. When the entry is erroneous, there is power to correct. When it is factually improperly made, there is power of correction. Question is when entry is rightfully made can it be corrected by resort to this power ? In my opinion, once power to correct an entry already made in the Birth Register is conceded, it should legitimately take within its sweep the correction of entries rightfully made. It is the correction of the name of the child at the instance of the parents or wards. What possible objections can there be in reading such power in the authority if power to correct erroneous entry is conceded ? The omission in the present case appears to be nondeliberate. In my opinion, omission being not deliberate and not supported by cogent reasons it would not be hazardous to read "implied will of the Legislators" in this provision so as to authorise the Registrar to correct the name of the child at the instance of the parents. I, therefore, hold that there is power in the Registrar to correct the entry already made by entertaining the application of the parents. In undertaking this exercise, I am reminded of what

C. K. Alien said in his book "Law in the Making":

"Judges must and do carry out the express will of the legislature as faithfully as they can, but there is a wide margin in almost every statute where the Courts cannot be said to be following any will except their own. The statute then becomes, as to great part of it, not a direct "command" but simply part of the social and legal material which judges have to handle according to their customary process of judicial logic."

Thus, the Coordinate Bench has held that while exercising powers under section 15 of the Registration Act, the Registrar can correct an entry already made in the Birth Register if the same is conceded, and such correction should legitimately take within its sweep the correction of entries rightfully made, since it is the correction of the name of the child at the instance of the parents of wards.

9. In case of *Sejalben Mukundbhai Patel (supra)*, this Court, after considering various judgments of this Court, has enunciated thus:

"21 From the aforesaid statutory provisions and the decisions rendered by this Court, following aspects would emerge:

(a) The expression "erroneous in form or substance" in Section 15 of the Act of 1969 is an expression of wide amplitude and does not confine to simple typing errors or clerical mistakes and no guidelines or circulars can take away powers of the Registrar of making correction in entries which are erroneous in form or substance in register as envisaged under Section 15 of the Act of 1969 and Rule 11(1) to (7) of the State Rules, 2004.

(b) The Registrar appointed under the provisions of the Act of 1969 has got powers for correction in relation to the entries and the name also in the Register/ Birth Certificate and such correction or cancellation also comes within the purview of powers under Section 15 of the Act of 1969.

(c) The competent authority appointed under the

provisions of the Act of 1969 has to consider whether the entry in the Birth Certificate/ Register can be corrected or not, after making inquiry and after going through the relevant material, which may be produced by the concerned applicant or which may be called by competent authority for satisfying itself."

It is held that the Registrar can correct the entries made in the Birth Certificate, after making inquiry and after going through the relevant material, which may be produced by the applicant. Such correction and cancellation in the entries with relation to the name also comes within the purview of powers under section 15 of the Registration Act.

10. I may also refer to Sections 9 and 16 of the Hindu Adoptions and Maintenance Act, 1956, which reads as under:

"Section 9 - Persons capable of giving in adoption. - (1) No person except the father or mother or the guardian of a child shall have the capacity to give the child in adoption.

(2) Subject to the provisions of sub-section 4, the father or mother, if live shall alone have equal right to give a son or daughter in adoption.

Provided that such rights shall not be exercised by either of them, save with consent with other unless one of them has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be unsound mind."

Section 16 : Presumption as to registered documents relating to adoption. - Whenever any document registered under any law for the time being in force is produced before any court purporting to record an adoption made and is signed by the person giving and the person taking the child in adoption, the court shall presume that the adoption has been made in compliance with the provisions of this Act unless and until it is disproved."

9. In such circumstances and in light of the undisputed facts, the respondent authority is directed to issue a birth certificate without insisting decree of any Court with regard to the adoption since as per Section 16 of the Hindu Adoption and Maintenance Act, 1956, a presumption as per the provision of Section 16 of the Adoptions Act has to be drawn in favour of the petitioner since there is no rebuttal to the adoption deed of her daughter "Nidhi".

10. In view of the above, the writ petition is allowed. Thus, the respondent authority is directed to correct the father's name incorporating the name of Rakeshbhai Bhadiyadra and issue a fresh birth certificate within a period of three months on receipt of the writ of the order of this Court. Rule is made absolute.

Direct Service is permitted.

(A. S. SUPEHIA, J)

MAHESH BHATI/51

