

(2021) 03 DEL CK 0169

Delhi High Court

Case No: Civil Writ Petition No. 3187 Of 2021

J S & Anr

APPELLANT

Vs

Central Adoption Resource
Authority & Anr

RESPONDENT

Date of Decision: March 15, 2021

Hon'ble Judges: Prathiba M. Singh, J

Bench: Single Bench

Advocate: Samar Bansal, Kartik Nagarkatti, Sachin Mishra, Arnav Kumar

Judgement

Prathiba M. Singh, J

CM APPL. 9663/2021 (for directions)

1. Considering the nature of this matter, the names of the Petitioners as also the child, shall not be mentioned in full and they shall only be referred to by their initials. Accordingly, the application is allowed.

CM APPL. 9664/2021 (for exemption)

2. Exemption allowed, subject to all just exceptions. Application is disposed of.

W.P.(C) 3187/2021 and CM APPL. 9662/2021 (for interim relief)

3. The Petitioners have approached this Court challenging the impugned communication dated 10th July, 2020, issued by the Central Adoption

Resource Authority (hereinafter "CARA"). Vide the impugned order, CARA has rejected the prayer of the Petitioners for issuance of a No

Objection Certificate (hereinafter, "NOC") in order to enable the adoptive parents to obtain a passport for the child.

4. The brief background of this matter is that the Petitioners adopted a minor child, who was born on 11th December, 2014, from Ferozepur Punjab, through the cousin of Petitioner No. 2 who was working as Ferozepur District Coordinator of Social Work in an organisation. The biological parents of the child got the legal formalities done for completion of adoption of the child with the Petitioners by preparing an adoption deed which was signed and executed between the biological and the adoptive parents of the child. The said adoption deed was duly witnessed by the village sarpanch as well as the relative " social worker and was also registered on 18th December, 2014 under the provisions of the Hindu Adoptions and Maintenance Act, 1956.

5. The adoptive parents are US citizens and the family of the adoptive parents resides in Kerala. The child, has since the adoption been living in Kerala, with grandparents, as the adoptive parents have been unable to obtain a passport for the child till date. The child herself is more than 6 years of age and the Petitioners are stated to be visiting her regularly, on an annual basis, and are also in touch with her through electronic platforms

6. Various steps were taken by the adoptive parents for seeking a declaration of parenthood, including the filing of a civil suit, bearing number CS/680/2016, before the Court of the Civil Judge, Senior Division, Ferozepur, seeking a declaration to the effect that the Child is the adopted daughter of the Petitioners. However, the said Court refused to grant the said relief of declaration, as sought for by the Petitioner on the ground that the Hindu Adoptions and Maintenance Act, 1956, does not apply to Christians.

7. The grievance of the Petitioner is that in order to obtain a passport for the child, they were advised to approach CARA, to get an NOC. The application of the Petitioners for obtaining the said NOC was submitted on 27th October, 2016. The said request for NOC has now been rejected by the impugned communication. It is submitted that in addition, apart from rejection of the NOC, the authorities also appear to be taking steps for initiating an action against the adoptive parents, the relative who helped in the adoption, and also the grand parents of the adopted child.

8. Mr. Bansal, Id. Counsel for the Petitioner, submits that the manner in which the authorities are proceedings clearly shows that the same is contrary

to law. He relies upon a judgment of this Court in PKH v. Central Adoption Resource Authority (W.P.(C) 5718/2015, decided on 18th July 2016), to

argue that there has to be a mechanism in place for enabling the adoption of the Christian child, and it is not in dispute that the adoption deed was duly

executed in front of village sarpanch and was also registered. It is submitted that in absence of any other statute governing such adoptions, the

adoption was registered under the provisions of the Hindu Adoptions and Maintenance Act, 1956 ('HAMA'™).

9. He further submits that the mere fact that the adoption deed was registered under HAMA, ought not to be used to invalidate the legality of the

adoption, as the child is happily living with his grandparents and is in complete protection and care of the adoptive parents. He submits that the

initiation of action would cause enormous prejudice to the Petitioners. Accordingly, the Petitioners also seek interim relief to the effect of no coercive

actions during the pendency of this petition.

10. The present petition raises an issue of enormous importance as it relates to a legal vacuum in respect of adoptions carried out prior to the coming

into force of the Juvenile Justice (Care and Protection of children) Model Rules, 2016, framed under the Juvenile Justice (Care and Protection of

Children) Act, 2015, in respect of a child born to Christian parents, as in the present case. Moreover, a perusal of letter dated 2nd March 2020 shows

that an Action Taken Report has been called for, at the behest of CARA, from the District Programme Officer, Ferozepur on the following issues:

a) Any action initiated against RS (Nun) E LFRC of Sh. MS

b) Any action initiated against Mr. JS and Mrs. MS

c) Present status of the child named JJS

d) Whether the Mother Teresa Home still working in your district and Sh. MS

e) Any counselling sessions conducted with biological parents of the child i.e., Mr. M and Mrs. M

11. The above communication has clearly nudged that action ought to be taken by the authorities, in respect of the adoption. The welfare of the child is

paramount in such cases and the validity of the rejection of the NOC by CARA is to be examined by the Court.

12. Issue notice. Mr. Arnav Kumar accepts notice on behalf of Respondent No. 2- Union of India. None appears for CARA, despite advance copy being served.

13. Let notice be served upon CARA through e-mail, as also by a letter by the Id. Counsel for the Petitioner along with a copy of the petition. Let counter affidavit be filed within four weeks. Rejoinder, thereto, if any, be filed within two weeks thereafter.

14. List on 22nd April, 2021. In the meantime, no coercive measures shall be taken pursuant to the letter dated 2nd March, 2020 against the Petitioners, the child, their relatives, or any person who facilitated the adoption of Ms. JJS by the Petitioners.