

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :- Hon'ble Justice Amrita Sinha

WPA 88 of 2023
Arpita Chowdhury
v.
Nabadwip Municipality & Anr.

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| For the writ petitioner | :- | Mr. Jayanta Samanta, Adv. Ms. Karunamoyee Samanta, Adv. Mr. Rajdeep Adhikary, Adv. |
| For the Nabadwip Municipality:- | | Mr. Swapan Kumar Majumdar, Adv. Mr. Saptarshi Majumdar, Adv. |
| For the respondent no. 4 | :- | Mr. Dip Jyoti Chakraborty, Adv. |
| For the respondent no. 3 | :- | Md. Sarwar Jahan, Adv. Ms. Tapati Sarkar, Adv. |
| Heard on | :- | 29.02.2024 |
| Judgment on | :- | 29.02.2024 |

Amrita Sinha, J.:-

The petitioner is the mother of a minor child. The child was born out of the earlier wedlock of the petitioner which stood dissolved by order passed by the competent Court on January 28, 2021. The petitioner has thereafter remarried and has moved on to her marital house with her child. The present husband of the petitioner has accepted the child of the petitioner as his own and the child has all along known him as father.

The petitioner intends to replace the name of her erstwhile husband and surname of the child recorded in her child's birth certificate and other documents by incorporating the surname and name of her present husband as the father of her minor child.

The biological father of the child, in no uncertain terms, has given his consent to the prayers made by the petitioner. It has been submitted that both the parties to the erstwhile marriage have moved on in their respective lives. Neither the biological nor the step father has any objection if the above changes are recorded in the birth certificate of the child.

The Municipality is not permitting the same. The Municipality relies upon Section 15 of the Registration of Births and Deaths Act, 1969 and upon the guidelines issued by the Government of India, Ministry of Home Affairs dated December 29, 2014 which mention that once the name of the child is entered in the birth certificate, it cannot be changed.

In support of the prayer made in the writ petition, the parties rely upon the order passed by the Hon'ble Supreme Court in the matter of **ABC v. State (NCT of Delhi)** reported in **(2015) 10 SCC 1** paragraph 28.

Reliance has also been placed on a judgment delivered by the Madurai Bench of the Madras High Court on February 27, 2024 in WP(MD) No. 30055 of 2023 **(Mirunadevi v. The Commissioner, Madurai Corporation, Madurai & Anr.)** paragraph 8.

What is to be decided is whether there is absolute bar to change the entries of the register maintained for recording births and deaths?

I have heard and have given my thoughtful consideration to the submissions made on behalf of all the parties and have perused the materials placed before this Court.

It appears that the child is presently remaining with the petitioner who is her mother and with the step father. The child is of very tender age and is yet to understand the difference or the concept of a biological father and a step

father. The child has all along known and accepted the present husband of the petitioner as father.

Birth certificate of an individual is a very important document in life. The same is an evidence of one's birth and lineage. It also acts as a proof of one's age, identity and citizenship. Various uncomfortable questions may arise in one's mind when the individual becomes mature and notices that the name of a different person is recorded as his/her father. The same may lead to further complications in future and may also result in breakdown of relationships.

The previous marriage of the petitioner stood legally dissolved and the child has been gracefully and unconditionally accepted by the present husband of the petitioner. Though the law relied upon by the Municipality imposes a bar to change of entries in the birth certificate but it cannot be lost sight of the fact that the same is a very archaic Act. When the said Act was conceptualized and it came into effect, incidents of such nature was not anticipated. Stringent and rigid provision of the Act highlights and signifies the importance of a birth certificate. The document is taken as sacrosanct. The very identity of an individual changes with alteration of the details mentioned therein.

True it is. At the same time one cannot deny the fact that with advancement of time there has been a sea change in marital relationship of parties. With awareness of law and financial independence many of the parties are no longer interested to continue with unhappy and unworkable relationship. They choose to dissolve the relationship and move on, however, the baggage of the relationship may pose sticky problems and at time interferes with the privacy of the parties. Law has to be dynamic and ought to evolve to tackle such issues. One cannot be hyper technical while dealing with personal issues with hardly any public law element involved.

There is a provision in the Act to correct or cancel entry in the register if the same is found to be erroneous in form or subject. It is not that there is

absolute total bar to rectify errors. With the change in circumstances, the entry in respect of the father of the minor child has to be taken as improper and liable to be rectified and the records are to be corrected. If the necessary alteration is not done, then the child and her parents may have to face several embarrassing situations in future. Every individual has the right to live with dignity and honour.

It is noted that it is not always necessary to delete the details of the biological parents from the birth certificate and it is alright if the parties agree to retain the details mentioned therein, but if a request is made to effect changes in the register, then such request is to be considered upon application of mind depending upon the facts and circumstances of the case. Law cannot be so rigid so as not to take within its fold the changing need of time. Law is to be applied in the best interest of the parties.

The Hon'ble Supreme Court in the matter of ABC (supra) directed the Municipality to issue birth certificate by incorporating the name of the present husband of the petitioner as the father of the minor child and further directed the surname of the minor child to be replaced with the surname of her present father relying upon an affidavit to be sworn by the mother.

In the matter of Mirunadevi the Court directed the Corporation to issue revised birth certificate by incorporating the name of the step father of the child.

The petitioner herein has already affirmed an affidavit and filed the same before the Municipality mentioning the changes that she intends to incorporate in the birth certificate of the minor child. Keeping in mind the best interest of the child and in line with the decisions mentioned herein above, the Municipality is directed to issue fresh birth certificate in the name of the child by incorporating the name and surname of the step father and incorporating the surname of the step father as the surname of the child at the earliest, but

positively within a period of two weeks from the date of communication of this order.

It is made clear that with the deletion of the name and surname of the biological father, the rights of the child to the property of the biological father will not be extinguished and the same will remain intact for all times to come.

The writ petition stands disposed of.

Urgent certified photocopy of this judgment, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)