

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.395 of 2017

=====

Vishist Duttak Grahan Shansthan having its registered office at VIP Colony, Balbhadrapur, Leheriasarai, P.S. Laheriasarai, District-Darbhanga (Bihar) through Tribhuwan Nath Mishra S/o Braj Kishore Mishra, resident of village and Post Dhanauli, P.S. Baheri, District-Darbhanga. Appellant/s

Versus

1. Kuljinder Singh Khaila S/o Kewal Singh resident of 49, Vetoni Road, East Cotton Part, Rudhi, C.V.-23, O.F.B, United Kingdom.
2. Harkirn Kaur Khaila W/o Kuljinder Singh Khaila resident of 49, Vetoni Road, East Cotton, Part, Rudhi, C.V.-23, O.F.B, United Kingdom.at Present residing at A/151, 3rd Floor, Defence Colony, New Delhi- 110024.

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Umesh Prasad Singh, Sr. Adv.
Mr. Nilanjan Chatterjee, Adv.
Mrs. Chhaya Kirti, Adv.

For the Respondent/s : Mr. Abhimanyu Vatsa, Adv.
Mr. Sunil Dutta Mishra, Amicus Curiae, Member
Secretary, Bihar State Legal Services Authority
Mr. Kishor Kunal, OSD, BSLSA.

=====

CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 04-04-2017

Heard Mr. Umesh Prasad Singh, learned senior counsel appearing on behalf of the petitioner and Mr. Sunil Dutta Mishra, the Member Secretary Bihar State Legal Services Authority who has appeared as amicus curiae in the matter.

The present matter relates to the proposed inter-country adoption of an abandoned child where the prayer for adoption order as envisaged under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 and Adoption Regulations, 2017 has been tuned down by order dated 08.02.2017 passed in Misc. (adoption) Case No. 05 of



2017 by the Principal Judge, Family Court, Darbhanga Bihar.

The prayer in this application under Article 227 of the Constitution of India has been made for quashing the said order and in the facts and circumstances of the case pass an order for adoption allowing the prospective adoptive parents to take the child in adoption in accordance with law/rules/regulations.

The petitioner in the present application is a Specialized Adoption Agency which is said to have been registered under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 in the manner prescribed therein.

A newly born female child was found lying near railway track in the District of Muzaffarpur by the team member of Childline Services, Muzaffarpur on 08.08.2015. The said child was brought to the primary health centre in the locality for medical treatment and a Sanha of recovery/getting of the child was lodged in the police station of the locality on the same day. The said child was then produced before the Child Welfare Committee, Muzaffarpur in accordance with the provision of Section 31 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as the 'J.J. Act, 2015'), and on the direction by the Committee, the said child was placed in the care of Vishist Duttak Grahan Sansthan, Khabara, Muzaffarpur. After registration, the said child was named as Shalu



Kumari and now it has been stated that after the proposed adoption, her new name is Jeo Kaur Khaila.

However, after de-recognition of the said Agency (Vishist Duttak Grahan Sansthan Khabara, Muzaffarpur), the Child Welfare Committee passed order dated 01.12.2015 directing the said child Shalu Kumari along with other similar children to be placed in the care of the petitioner which as abovementioned, is a registered Specialized Adoption Agency at Darbhanga. Accordingly, the said child Shalu Kumari has been placed in the care of the petitioner. The Child Welfare Committee, Muzaffarpur subsequently by Certificate dated 13.07.2016 (Annexure-P/3), in accordance with the provision of Section 38 (4) of the J.J. Act, 2015 declared the child Shalu Kumari, placed in the care of the petitioner Agency, legally free for adoption and permitting the petitioner Agency to post the said certificate in Child Adoption Resource Information and Guidance System (CARINGS). The copy of the said Certificate was also given to the District Child Protection Officer, Muzaffarpur. The petitioner-Agency thereafter prepared the Child Study Report (CSR) and Medical Examination Report (MER) of the child Shalu Kumari for facilitating her adoption and posted the same on the Centralized Adoption Portal of the Central Adoption Resource Authority (CARA) constituted under Section 68 of the J.J. Act, 2015.



The proposal of the prospective adoptive parents namely Mr. Kuljinder Singh Khaila and Harkirn Kaur Khaila citizens of United Kindom (as apparent from the No Objection Certificate by CARA at Annexure-B/4) who have got themselves registered in accordance with law/Rules expressing their intention to adopt a child was considered by the Central Adoption Resource Authority (CARA) which issued the No Objection Certificate to the placement of the child Shalu Kumari with the said prospective adoptive parents subject to completion of the legal procedure as envisaged under Section 59 of the J.J. Act, 2015.

After the receipt of the No Objection Certificate from Central Adoption Resource Agency (CARA), the coordinator of the petitioner-Agency filed the petition before the Principal Judge, Family Court, Darbhanga in accordance with Section 59 (7) of the J.J. Act, 2015 which was registered as Misc. (adoption) Case No. 05 of 2017. The Principal Judge, Family Court, Darbhanga, however, has dismissed the Misc. (adoption) Case No. 05 of 2017 by the impugned order.

The importance of child welfare in a civilized society needs no highlight. It however assumes utmost significance in the case where an orphan, surrendered or abandoned child is proposed to be given in adoption to a foreigner adoptive parents. There was no prescribed norms and procedure to be followed in such a case till the



decision by the Apex Court in **Laxmi Kant Pandey Vs. Union of India, 1984 (2) SCC 244** where their lordships for the first time laid down the principles, norms and the procedure to be followed before giving such a child in adoption to a foreign parent. The statutory recognition to those principles and norms to be followed, however, was given in the year 2000 when the parliament stepped in and enacted the Juvenile Justice (Care and Protection of Children) Act, 2000. This Act was, however, extensively amended in the year 2006 and thereafter in pursuance to Section 68 of the said Act, the Rules were also made stipulating fundamental principles to be applied in the administration of juvenile justice. With regard to a child in need of care and protection, the said Act and Rules envisaged constitution of a Child Welfare Committee in every District, empowering the said Committee, besides others, with the power to declare a child legally free for adoption, and emphasizing the primacy of the guidelines issued by the Central Adoption Resource Agency (CARA) in all matters relating to adoption. This Act, however, was repealed by the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter, in short, as J.J. Act, 2015).

In the facts and circumstances of the present case, we are presently concerned with the provisions of the J.J. Act, 2015 which has been brought into force on 15.11.2016. But noticeable before this,



the Guidelines Governing Adoption of Children was notified on 17.07.2015 providing the manner and procedure of adoption of orphan, abandoned or surrendered children. Subsequently, on 4th January 2017, the Adoption Regulations 2017 as framed by the Central Adoption Resource Authority (CARA) under the powers conferred under Section 68 (c) and Section 2 (3) of the J.J. Act, 2015 has been notified in suppression of the Guidelines, 2015.

It is demonstrably clear from the perusal of the provisions as contained in the J.J. Act, 2015, Guidelines 2015 and Adoption Regulations 2017 that an elaborate procedure, with direct involvement of the institutions and bodies established under the J.J. Act, 2015 with specified roles and powers, has been laid down regulating the procedure for adoption of an abandoned, surrendered or orphan child. The introduction of the statutory institutions and bodies in the process of such adoption has evidently been made to provide special safeguards and care including appropriate legal protection and also to stop private adoptions through unauthorized individuals or agencies. The Child Welfare Committee of the District has been entrusted the primary responsibility for care and protection of an abandoned, surrendered or orphan child brought before it and has been placed under the supervision of the District Magistrate who has been made the grievance redressal authority for the committee. Such Committee



has also been empowered to declare such a child legally free for adoption in accordance with the provisions of Section 37 of the J.J. Act, 2015. Such Committee has also been given the authority under Section 29 of the said Act to dispose of cases for the care, protection, treatment, development and rehabilitation of children in need of care and protection which includes the exclusive power to deal with all proceedings under the J.J. Act, 2015 relating to children in need of care and protection. The functions and the responsibilities of the Committee have been further extensively delineated in Section 30 of the said Act. Further, it may also be significantly noted that under Section 27 (9) of the said Act, the Child Welfare Committee is authorized to function as a Bench having the powers conferred by the Code of Criminal Procedure, 1973 on a Metropolitan Magistrate or as the case may be a Judicial Magistrate of first class.

Besides the Child Welfare Committee having the jurisdiction to declare the child legally free for adoption, J.J. Act, 2015 also envisages recognition/registration of institutions or organizations as Specialized Adoption Agencies, setting up of a State Adoption Resource Agency (SARA) and constitution of a Central Adoption Resource Authority (CARA) for facilitating and regulating the process of rehabilitation of an orphan, abandoned or surrendered child through adoption. The constitution, powers, functions and



responsibilities of these Agencies and Authorities have been well defined in the Act as well as the Guidelines 2015 and Adoption Regulations 2017 manifestly for safeguarding the interest of such a child and to provide him/her the most suitable rehabilitation. The provisions have also been made for recognition, inspection and monitoring of the function of the Agencies and the Statutory Bodies related to the adoption process. Even after the completion of the adoption procedure and the child leaving the country with the adoptive parents, the process of continuous monitoring of the welfare of the child has been prescribed which includes the specified role of Indian Diplomatic Missions in this regard.

But the process of adoption of a child in need and care of protection is not completed without the order of the Court in accordance with Section 59 (7) of the J.J. Act, 2015 requiring the Specialized Adoption Agency to obtain the adoption order from the court by filing an application in the prescribed manner. Section 61 of the said Act prescribes the court procedure in this regard as follows:-

“61. Court procedure and penalty against payment in consideration of adoption.-

(1) Before issuing an adoption order, the Court shall satisfy itself that-

(a) the adoption is for the welfare of the child;



(b) due consideration is given to the wishes of the child having regard to the age and understanding of the child; and

(c) that neither the prospective adoptive parents has given or agreed to give nor the specialized adoption agency or the parent or guardian of the child in case of relative adoption has received or agreed to receive any payment or reward in consideration of the adoption, except as permitted under the adoption regulations framed by the Authority towards the adoption fees or service charge or child care corpus.

(2) The adoption proceedings shall be held in camera and the case shall be disposed of by the court within a period of two months from the date of filing.”

Though in the present case, the application as required under Section 59 (7) was filed on behalf of the petitioner-Specialized Adoption Agency before the Court on 12.01.2017 when the Guidelines Governing Adoption of Children 2015 was in force but within a week of filing of the said application, the central government notified the Adoption Regulations 2017 which came into force from 16th January 2017. It is clear from the perusal of the Adoption Regulations 2017 that the procedure and norms prescribed in the Guidelines 2015 have been substantially and more elaborately



reiterated. It is also explicit from the provisions therein that the Adoption Regulations, 2017 as framed by the Central Adoption Resource Authority (CARA) in exercise of the power conferred by Section 68 (c) of the J.J. Act, 2015 would govern the present case. This significant aspect, has however, escaped the notice of the learned court below while deciding the Misc. (adoption) Case No. 05 of 2017.

One of the salient features introduced by the Adoption Regulations 2017 is the stipulation as contained in Regulation 12 (5) requiring an adoption case to be non-adversarial in nature where the petitioner-Specialized Adoption Agency is not to make any party as respondent in the adoption petition. The territorial jurisdiction of the court has also been prescribed in Regulation 12 (1) as the court having jurisdiction over the place where the Specialized Adoption Agency is located. In the present case apparently the petitioner-Specialized Adoption Agency is located within the territorial jurisdiction of the learned court below where the application as envisaged under Section 59 (7) of the J.J. Act, 2015 has been filed. Though, the child Shalu Kumari was found abandoned in another district i.e. Muzaffarpur and was initially placed in the care of the Specialized Adoption Agency at Muzaffarpur by the order of the Child Welfare Committee, Muzaffarpur but subsequently by order dated 01.12.2015, after cancellation of the recognition of the said Specialized Adoption



Agency, Muzaffarpur, the Child Welfare Committee, Muzaffarpur directed the transfer of the child Shalu Kumari along with other children to the care and custody of the petitioner-Specialized Adoption Agency, Darbhanga. This apparently has been done in pursuance to the direction as contained in the letter dated 23.11.2015 issued by the Director Social Welfare Department, Patna which fact is apparent from the order dated 1.12.2015 (Annexure-P/2) of the Child Welfare Committee. This fact has further found reiteration in the Certificate dated 13.07.2016 (Annexure-P/3) of the Child Welfare Committee declaring the child Shalu Kumari legally free for adoption. The learned court below while recording the finding on territorial jurisdiction, in the impugned order, against the petitioner has ignored these facts on record and has apparently been swayed by the only fact that the child Shalu Kumari was found abandoned in the District of Muzaffarpur.

As aforesaid, the jurisdiction, power and function of a Child Welfare Committee, Specialized Adoption Agency and Central Adoption Resource Authority have been statutorily prescribed and recognized by the J.J. Act, 2015, the subsequently notified Adoption Regulations 2017 has also the statutory flavour and sanction. As such, in view of the provision of Section 114 of the Indian Evidence Act, a legal presumption that the official acts done by these Committee, Agencies and Authorities have been regularly performed in



accordance with law can be raised. Such presumption can only be nullified by clear and cogent evidence to the contrary on record. Apparently, there is no such material on record or strong circumstance to lead to the inference that the order/certificate of the Child Welfare Committee or the actions/steps taken by the petitioner-Specialized Adoption Agency or the No Objection Certificate by the Central Adoption Resource Authority (CARA) have been actuated by mala fides. This Court, therefore, is unable to align with the findings and observations of the learned court below at so many places in the impugned order that the certificate granted by the Child Welfare Committee declaring the child to be legally free for adoption has been procured by the petitioner-Specialized Adoption Agency. In view of the materials on record indicating that the child Shalu Kumari was placed in the care of the petitioner-Specialized Adoption Agency by the order of the Child Welfare Committee, this Court is again unable to uphold the finding that the petitioner-Specialized Adoption Agency knowingly and deliberately brought the said child with malafide intention for wrongful gain and with a view to misguide the biological parent of the said child. In this regard, the learned court below has also ignored the Guidelines No. 6 (11), which was in force on 30.07.2016 when the Child Welfare Committee declared the child Shalu Kumari legally free for adoption, providing presumption of the



report of the non-traceability of the biological parents after expiry of two months in the case of an abandoned child less than two years of age.

The learned court below has also found concavity in the action of the petitioner-Specialized Adoption Agency in handing over the child Shalu Kumari to prospective adoptive parents and on that basis has held that the intention of the petitioner-Specialized Adoption Agency was malafide from the beginning. But before coming to this conclusion, the learned court below has ignored the Guidelines No. 17 (2) as well as Adoption Regulation No. 16 (2) stipulating that the prospective adoptive parents may take the child in pre-Adoption Foster Care for a temporary period, after issuance of No Objection Certificate by the Central Adoption Resource Authority, by furnishing an undertaking to the Specialized Adoption Agency in the prescribed format. As the child Shalu Kumari was handed over to the prospective adoptive parents after the issuance of the No Objection Certificate by the Central Adoption Resource Authority (CARA) and in accordance with the prescribed procedure, this Court again is unable to uphold the conclusion by the learned court below that the petitioner-Specialized Adoption Agency acted with malafides in handing over the said child to the prospective adoptive parents.

At this juncture, it would be apposite to take into notice



the preamble of the J.J. Act, 2015 precisely stipulating the object and the purpose of the Act emphasizing 'adopting the child friendly approach in the adjudication and disposal of matters in the best interest of children and for their rehabilitation through processes provided, and institutions and bodies established hereunder'. Further Section 40 of the J.J. Act, 2015 also recognizes that the restoration and protection of the child being the prime objective of any Specialized Adoption Agency will include restoration of such child to adoptive parents. The power and function of the Central Adoption Resource Authority (CARA) has also been prescribed in detail in Section 68 of the J.J. Act and in regulation no. 37 of Adoption Regulations 2017 which include the functions in cases of inter-country adoptions besides issuing No Objection Certificate. The petitioner-Specialized Adoption Agency has brought on record the documents, as prescribed, by annexing the same with the main application as well as supplementary affidavit. It is clearly reflected from those documents that all the procedure prescribed for facilitating inter country adoption of the child Shalu Kumari to the prospective adoptive parents namely Mr. Kuljinder Singh Khaila and Harkirn Kaur Khaila have been followed. Besides there is also an affidavit annexed with the supplementary affidavit sworn by the chief functionary/authorized person of the petitioner-Specialized Adoption



Agency in support of the adoption of the child Shalu Kumari stating the relevant facts. There is nothing appearing from the documents/orders/certificates annexed with this application and the supplementary affidavit filed therein that the Institutions, Bodies and Authorities under the J.J. Act, 2015 have not discharged their duties and functions as prescribed under the J.J. Act, 2015 or Adoption Regulation 2017. There is also nothing mentioned in the impugned order to lead to such inference or conclusion.

In view of the aforesaid facts and discussions, it is limpid that the prescribed procedure in the J.J. Act, 2015, Guidelines Governing Adoption of Children 2015 and Adoption Regulations 2017 has been followed by the institutions and bodies including the petitioner-Specialized Adoption Agency as established under J.J. Act, 2015. The findings by the learned court below are demonstrably based upon surmises, conjectures and assumptions and there is total absence of material on record to support those findings.

Ex consequenti, this Court holds that the impugned order is erroneous and not legally acceptable. This application is, accordingly, allowed and the impugned order is quashed.

This Court, after quashing the impugned order would have normally remanded the matter for fresh consideration. However, after



considering the submissions on behalf of the petitioner and keeping in view the avowed object underlined in the J.J. Act, 2015 as well as Adoption Regulations 2017 for adopting the child friendly approach in the adjudication and disposal of the matter in the best interest of children and for their rehabilitation through prescribed processes, this Court is of the well considered opinion that remanding the matter back for fresh consideration before the learned court below would not subserve the best interest of the child Shalu Kumari as it will deprive her the opportunity to grow up under the loving care and attention of the parents and to lead life of basic human dignity. This Court, in view of the aforesaid facts, reasons and discussions is inclined to accept the proposed adoption of child Shalu Kumari. As held by a Bench decision of this Court in **Bihar Rajya Bhumi Vikas Bank Samiti Vs. The State of Bihar, 2017 (1) P.L.J.R. 285**, this Court, in exercise of its jurisdiction under Article 227 of the Constitution of India, apart from annulling a proceeding in question, can also substitute the impugned order by the order which the inferior tribunal should have made.

Thus, in the ultimate eventuate, after allowing the present application and quashing the impugned order, the Misc. (adoption) Case No. 05 of 2017 is allowed and the necessary order giving the child Shalu Kumari now named as Jeo Kaur Khaila in adoption to the proposed adoptive parents as mentioned in the said miscellaneous



case is passed. The concerned Institutions and Bodies under the Act are directed to proceed accordingly.

This application, accordingly, stands allowed in the above terms.

(V. Nath, J)

Devendra/-

U			
---	--	--	--

