IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 416 of 2022
With
R/SPECIAL CIVIL APPLICATION NO. 16799 of 2022
With
R/SPECIAL CIVIL APPLICATION NO. 16994 of 2022
With
R/SPECIAL CIVIL APPLICATION NO. 22420 of 2022
With
R/SPECIAL CIVIL APPLICATION NO. 22357 of 2022

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE BIREN VAISHNAV

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	YES
2	To be referred to the Reporter or not ?	YES
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

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KHOJEMA SAIFUDIN DODIYA
Versus
REGISTRAR OF BIRTH AND DEATH/ CHIEF OFFICER, DHORAJI NAGARPALIKA

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APPEARANCE IN SCA NO. 416 OF 2022:
MR S M KIKANI(7596) FOR THE PETITIONER(S) NO. 1,2
MR DEEP D VYAS(3869) FOR THE RESPONDENT(S) NO. 1

APPEARANCE IN SCA NO. 16799 and 16994 OF 2022:
MR TULSHI SAVANI FOR THE PETITIONER(S) NO. 1,2
MR KAUSHAL PANDYA FOR THE RESPONDENT(S) NO. 2
MR ROHAN SHAH FOR THE RESPONDENT(S) NO. 1

APPEARANCE IN SCA NO. 22357 and 22420 OF 2022:
MR JIGNESHKUMAR PANDAV FOR THE PETITIONER(S) NO. 1,2

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MR KAUSHAL PANDYA FOR THE RESPONDENT(S) NO. 2
MR ROHAN SHAH FOR THE RESPONDENT(S) NO. 1

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CORAM:**HONOURABLE MR. JUSTICE BIREN VAISHNAV**

Date : 17/02/2023

COMMON CAV JUDGMENT

1. All these petitions under Article 226 of the Constitution of India are filed raising a question whether the competent authorities can refuse to register a request for change in name of the wards of the respective petitioners on the ground that unless there are orders of a competent court confirming the adoption, mere registered adoption deed is cnot enough for the purposes of recording change in the name in the birth certificates.

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2. Facts of each Special Civil Application are set out hereunder:

Special Civil Application No.22357 of 2022

3. The Petitioner No.1 Alpaben was earlier married

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with one Manishbhai Sankharva. Out of the said wedlock a son “Jems” was born. The Birth was registered. Since matrimonial disputes cropped up, the Petitioner No.1 entered into a divorce on 18.09.2021 and dissolved the marriage.

4. The Petitioner no.1 then married the Petitioner No.2 and then adopted the son “Jems” with the consent of the families and the adoption was finalized by a deed of adoption registered on 06.09.2022.

5. Both the Petitioners then made a request to the respondent authorities to replace the name of the Petitioner No.2 in the “father’s name” in place of the earlier biological father,which request was rejected by communication dated 11.10.2022 stating that the petitioners should produce an adoption decree.

6. This communication is under challenge in this Petition.

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Special Civil Application No.16799 of 2022

7. The Petitioner Nitesh Mangrola married Payalben on 14.02.2019. The marriage was registered on 18.06.2019. Payalben was earlier married to one Vishalbhai Pansuriya in the year 2013 and out of the wedlock they had a daughter named “Pal”. On the death of the father Vishal in the year 2018, Payalben married the present Petitioner.

9. Both the Petitioner and Payalben then by way of a registered deed of adoption adopted daughter “Pal”. Since they were facing difficulties in recording changes in the documents such as Passport,Bank Account etc a request was made to the authorities to change the records by substituting the name by that of the present Petitioner as “father’s name” instead of Vishalbhai. The request was rejected on 11.05.2022 on the ground that a decree of a competent court was necessary.

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Special Civil Application No.416 of 2022.

10. Petitioner No.1 is the brother of Mustafa Dodiya who had a baby girl named “Amatulla”. The Petitioners Nos.1 and 2 who are husband and wife respectively having no issues from their married life decided to adopt the minor girl from their biological parents. The petitioners with consent of families adopted the daughter after all the formalities and also by way of an adoption deed which was registered.

12. After adoption, a need arose to change the name in various records such as passport etc as the name of the father “Khojema Saiffudin Dodiya” in place of “Mustafa Saiffudin Dodiya” was to be entered into and so accordingly in the mother’s name. The request was rejected by a communication dated 03.08.2019 on similar grounds hence the Petition.

Special Civil Application No.16994 of 2022.

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13. The Petitioner Bhareshbhai Jodhani married Naynaben on 01.03.2019. The marriage was registered on 23.10.2020. Before the marriage with the Petitioner, Naynaben was married to one Sureshbhai and out of their wedlock they had a child “Prinsi”. The marriage ran into rough weather and Naynaben and Sureshbhai divorced each other in the year 2006.

14. The Petitioner and Naynaben adopted “Prinsi” by registered deed of adoption and then requested the authorities to change the name of the father which was rejected by a communication dated 25/2/2022. Hence the petition.

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15. Learned Counsels for the respective petitioners contend that it is a settled position of law as set out in various decisions of this Court that on the basis of a registered deed of adoption, the authorities are bound to accept the adoption as valid and change the birth

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records without insisting for a decree of a competent court under the provisions of the Hindu Adoptions and Maintenance Act, 1956.

16. The Petitioners rely on the following decisions.

(I) ***Sukumar Mehta v. District Registrar, Births and Deaths*** reported in ***1993 (1) GLR 93***

(II) ***Amruta Vijay Vora v. Union of India*** reported in ***2003 (3) GLR 2625***

(III) ***Manoj Omprakash Goel v. State of Gujarat Through Secretary*** reported in ***2011 (2) GLR 1734***

(IV) ***Rameshbhai Nathubhai Solanki v. Rajkot Municipal Co. through Registrar reported*** in reported in ***2013 (2) GLR 1535***

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(V) ***Tushar Kanaiyalal Vyas through POA Mr.Kanaiyalal Nandlal Vyas v. State of Gujarat*** rendered in ***SCA No.7864 of 2016***

(VI) A decision rendered in ***Special Civil Application No.15757 of 2021*** in the case of ***Chhayaben Hetalben Asodariya v. The Registrar of Birth and Death.***

(VII)***Akella Lalitha v. Sri Konda Hanumantha Rao*** rendered in ***2022 JX (SC) 732***

(VIII) ***Githa Hariharan v. RBI*** reported in ***1999 (2) SCC 228***

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17. Mr.Kaushal Pandya learned Counsel appearing for the Surat Municipal Corporation has opposed these petitions on the ground that unless the parties approach the appropriate Court under the Hindu

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Adoptions and Maintenance Act, 1956 and obtain decrees of the Civil Court validating adoption, no request for alterations of name in the birth certificates can be entertained.

18. There are several shortcomings in each of the cases of the respective petitioners. Merely because of the deed of adoption it cannot be said that the prescribed procedure of adoption, was set out in detail under the provisions of the Hindu Adoption and Maintenance Act, 1956. He would submit that the judgements of this Court have overlooked the position of law as enunciated by the decisions of the Division Bench of the Bombay High Court and one of the Madras High Court. He would rely on these decisions and submit that instructions given by the authorities by way of circulars or communications would not prevail over the legal provisions and therefore the communications impugned in these petitions are just

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and proper.

19. Mr.Pandya would rely on the following:

(I) The decision of the Bombay High Court of the Division Bench of ***Writ Petition No.13403 of 2016*** in case of ***Parag Rughani & Anr. v. The State of Maharashtra & Ors.***

(II) A decision of Madras High Court in case of ***Mrs.B.S.Deepa v. Regional Passport Officer*** rendered in ***Writ Petition No.29105 of 2014 and M.P.No.1 of 2014***. He would rely on paragraphs 30 and 35 thereof.

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20. Having considered the submissions made by the learned advocates for the respective parties, the question is whether the authorities are right in insisting for a decree of a competent civil court for recognizing adoption in the face of the parties having

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adopted the children in light of the registered deeds of adoption.

21. The decisions cited at the Bar by the respective counsels for the Petitioners and the Respondents may now be dealt with.

22. In the case of ***Amrut Ajay Vora*** (supra), this Court which was a case identical on facts where the court was considering the request for change of name in the Passport as a result of an adoption deed that was registered, the Court observed that as per Section 16 of the Hindu Adoption and Maintenance Act, 1956 when any adoption deed is registered there shall be a presumption for the documents relating to the adoption and the presumption shall be that the adoption has been made in compliance of and with the provisions of the Act unless it is disproved. (emphasis supplied). The factum of registration of marriage was also legal.

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23. In the case of ***Tushar Vyas*** (supra), the Court speaking through Honourable Mr.Justice R.M.Chhaya (as he then was) considered a similar issue and the objection raised by the opponents that the change through a registered deed was an attempt to by-pass the regular procedure. Quoting Section 16 of the Hindu Adoption and Maintenance Act, 1956 ("Adoption Act" for short) the Court opined that a presumption can be drawn under Section 16 of the Act. The Court relied on a decision of this Court in the case of ***Navinkumar Rajnikaben Trivedi versus District Education Officer*** reported in ***AIR 2004 Gujarat 53.***

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24. In the aforesaid decision, the Court held that the presumption as to valid adoption deed will operate as there is no challenge or such presumption is not rebutted by procedure known to law and the adoption had to be held to be valid.

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25. In the case of ***Nayankumar Rajnikant Trivedi v. the District Education Officer*** reported in ***AIR 2004 (GUJ) 53***, this Court in para 7 held as under:

> *"7. In any event, the petitioner is lawfully adopted by a Hindu lady and the Deed of Adoption is registered and therefore the presumption as per the provisions of section 16 of Hindu Adoption and Maintenance Act, 1956 can be drawn in favour of the petitioner also. The said presumption would operate so long as there is no challenge or such presumption is not rebutted by the procedure known to law. It is not the case of any of the respondent that there are facts and circumstances which would not attract such presumption. The said aspect is coupled with the fact that for change of the name of the petitioner by changing his identify, it is also published in the Government Gazette dated 10.4.2003 and therefore a judicial notice can be taken that such adoption is accordingly notified in the government gazette and known to the public at large."*

26. My esteemed brother Mr.Justice A.S.Supheia has in the case of **Chhayaben** (supra) considered the issue of the presumption of registered deeds of adoption and considering the circulars and the past decisions held that once the deed of adoption has

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been registered and the same has not challenged by the parties, the stage of obtaining consent under Section 9 of the Hindu Adoption and Maintenance Act,1956 cannot be invoked at the time of incorporating the adoptive father's name in the birth record after the divorce deed and the adoption deed has been registered and have not been questioned in any court of law or there is no legal embargo and has remained uncontroverted.

27. As against that, the Division Bench of the Bombay High Court has opined that the presumption under Section 16 of the Adoption Act has to be a presumption before the Court and not the Registrar.

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28. This is the only point of difference between the judgements rendered by the Single Judges of this Court and that of the Division Bench of the Bombay High Court.

29. The relevant paras of the decision of this Court in

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Chhayaben (supra) which has considered all the previous decisions of this Court read as under:

> *"7. At this stage, it would be opposite 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*

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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*

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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 non-deliberate. In my opinion, omission being not deliberate

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and not supported by cogent reasons it would not be hazardous to read "implied will of the Legislators" in this provision so as to authorize 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

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(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 of 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*

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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."

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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.

11. In a similar set of facts, this Court, in the Order dated 15.03.2017 passed in Special Civil Application No.7864 of 2016, after examining the provisions of Section 16 of the Adoptions Act has held thus:

> *"11. It further appears that thereafter, a Deed of Adoption came to be registered wherein the petitioner has adopted minor Harsh and such Adoption Deed is duly registered under Registration No.7262 dated 18.11.2015. It is clear from the decree of divorce between respondent no.3 herein and wife of the present petitioner that all rights of minor son Harsh was given to Neelamben, the present wife of the petitioner and thereafter, a registered Deed of Adoption is executed, which is in accordance with law and the Adoption Deed was registered with the competent authority and at present the petitioner and his wife have become*

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parents of minor Harsh.

12. Section 16 of the Hindu Adoptions and Maintenance Act, 1956, provides as under:

> *"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."*

13. In the case on hand, the decree of divorce between the biological parents clearly provides that custody of minor Harsh would be with the wife of the petitioner and respondent no.3 as former husband, has given up all his rights. The Deed of Adoption is a registered deed which is not challenged by anybody. On the contrary, as noted hereinabove, respondent No.3 who happens to be the biological father of the minor child Harsh has expressed by way of an affidavit before this Court in this petition unequivocally that he has no objection if the petitioner's name is substituted as father. Thus, as provided under section 16 of the Hindu Adoptions and Maintenance Act, 1956, minor Harsh is lawfully adopted and the Deed of Adoption is

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registered and therefore the presumption as per the provisions of section 16 of the Act can be drawn in favour of the petitioner as there is no rebuttal by the procedure known to the law. Following the ratio laid down by this Court in the case of N.R. Trivedi v. District Education Officer, Anand, AIR 2004 Guj. 53, thus, from the record of this case, it appears that the presumption as regards adoption by a registered deed would be in favour of the petitioner."

Thus, since the hence a the Deed Coordinate of presumption Bench Adoption as per is the has held that registered provision and of Section 16 of the Adoptions Act has to be drawn in favour of the petitioners since there is no rebuttal to the adoption deed.”

30. The Division Bench of the Bombay High Court in the case of **Parag Rughani** (supra) held as under:

“12. None of the decisions relied upon by the Petitioner are dealing with the issue of the power of the Registrar appointed under the said Act of 1969. We are not entering into a wider issue whether from the Register of Births maintained under the said Act of 1969, an entry of the name of the biological father can be deleted and substituted by the name of the adoptive father. Suffice it so say that only on production of a registered document of adoption, the Registrar under the said Act of 1969 is

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powerless to delete the name of the biological father and to enter the name of the adoptive father in his place. The reasons is that there is no such statutory power vested in the Register under the said Act of 1969 or under the Maharashtra State Rules framed under the said Act of 1969. Moreover, the Registrar has no power of deciding the issue whether the adoption is valid."

31. Though this Court would normally be bound by the Division Bench decision irrespective of the concerned High Court, I would beg to take a view in line with the decisions of this Court especially in the case of **Chhayaben** (supra).

32. The only distinction between the decision of this Court and that of the Bombay High Court is that the Bombay High Court has held that the Registrar has no power to decide whether the deed of adoption is valid and the power to delete the name of the biological father from the birth records is drastic.

33. This needs to be considered in light of the

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decision of the Hon'ble Supreme Court in the case of ***Akela Lalitha*** (supra). Though while considering the prayer of change of surname of the child, in para 19 of the Hon'ble Supreme Court made passing observations that the mother being the only natural guardian of the child has the right to decide the surname of the child and that the child's interest is a primary consideration and it outweighs all other considerations. Relevant paragraph reads as under:

> *"19. Before parting with this subject, to obviate any uncertainty it is reiterated that the mother being the only natural guardian of the child has the right to decide the surname of the child. She also has the right to give the child in adoption. The Court may have the power to intervene but only when a prayer specific to that effect is made and such prayer must be centered on the premise that child's interest is the primary consideration and it outweighs all other considerations. With the above observations the directions of the High Court so far as the surname of the child is concerned are set aside."*

34. Reading the decisions and applying the same to the facts of the case what is apparent here is that the

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marriage with the respective biological fathers have been ended by divorce or in one case the biological father has died. In any case the marriage with the previous father (in context of the child) has been snapped and the child of that wedlock needs an identity in terms of his/her name being entered into the records of the Register.

35. As far as the power of the Registrar under Section 15 of the Registration of Births and Deaths Act,1969 is concerned this Court in the case of ***Sukumar Mehta*** (supra) considered the provisions of Section 15 and observed as to how should one deal with contingencies. Should the court leave the litigant in sheer helpless condition asking him to wait till the legislature cures the defect by providing for the omission, or can the Court escape the responsibility in considering these unforeseen contingencies.

36. In ***Sukumar Mehta*** (supra) the Court held as

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under:

> *"4. 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, i 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 unforseen 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. 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 Section 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.*

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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 non-deliberate. 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."

37. The observations of the Division Bench of the

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Bombay High Court are only passing observations whereas this Court in the case of ***Sukumar Mehta*** (supra) has otherwise considered the same. The Court in the Division Bench of the Bombay High Court has opined that deletion of name of biological father could be drastic. In the opinion of this Court, the refusal to do so and not correcting the birth certificate of the ward post the adoption would lead to multiple hurdles in day to day affairs connecting the dealings with various public or other authorities and the practical difficulties that they would face would be more drastic if the power under Section 15 of the Registration of Birth and Deaths Act is not exercised in favour of the parties.

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38. The question of statutory presumption under Section 16 of the Adoption Act was considered by the Supreme Court in the case of ***Jai Singh vs Shakuntala*** in decision dated 14.3.2002 in ***Appeal***

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(Civil) No.9469 of 1996 where it is held as under:

> *"1. The matter under consideration pertains to the effect of statutory presumption as envisaged under Section 16 of the Hindu Adoption and Maintenance Act, 1956. For convenience sake it would be worthwhile to note the provision for its true purport. Section 16 reads as below:*
>
> > *"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."*
>
> *The Section thus envisages a statutory presumption that in the event of there being a registered document pertaining to adoption there would be a presumption that adoption has been made in accordance with law. Mandate of the Statute is rather definite since the Legislature has used "shall" in stead of any other word of lesser significance. Incidentally, however the inclusion of the words "unless and until it is disproved" appearing at the end of the statutory provision has made the situation not that rigid but flexible enough to depend upon the evidence available on record in support of adoption. It is a matter of grave significance by reason of the factum of adoption and displacement of the person adopted from the natural succession - thus onus of proof is rather heavy. Statute has allowed some amount of flexibility, lest it turns*

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out to be solely dependent on a registered adoption deed. The reason for inclusion of the words "unless and until it is disproved" shall have to be ascertained in its proper perspective and as such the presumption cannot but be said to be a rebuttable presumption."

39. The observations of the Division Bench that only the Court can consider the presumption of the document being legal is with respect not right. The parties to the Registration Deed have consented to take the child in adoption. No objections have come from the biological father with regard to the mode and the manner of adoption and therefore as held that the presumption though being rebuttable no roadblock or dispute has been raised for the adoption of the child, relegating the parties then to undertake the rigmarole of approaching the Court when the deed of adoption is filed before the Registrar would not render the Registrar powerless to make the corrections.

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40. Therefore in all these petitions the communications in the respective petitions by which the authorities have rejected the request of the Petitioners to carry out the corrections in the birth certificates and for insisting for an order of the Civil Court, are quashed and set aside and the petitions are allowed. The concerned Registrar, Birth and Death Registration, is directed to make necessary corrections as prayed for by the respective petitioners herein, in the birth registers as well as their respective birth certificates. Direct service is permitted.

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41. This Petition has no connection with the question decided in the group of petitions above.

42. Here is a case where the Petitioner when born

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had his name registered as “Bhaglesh” and has prayed for issuance of a fresh birth certificate with the name “Dhruv”. A copy of the Passport, Pan Card, Driving License, statement of marks, Aadhar and School leaving record the name.

43. The decision relied on by learned Single Judge in the case of ***Nitaben Nareshbhai Patel v. State of Gujarat & Ors.*** reported in ***2008 (1) Vol 49 GLR 884*** wherein all relevant provisions of various Act, were considered including that of Births, Deaths and Marriages Registration Act, 1886 succeeded by Registration of Births and Deaths Act, 1969, Gujarat Registration of Births and Deaths Rule, 2004 and also Higher Secondary Education Act and Rules made thereunder and even Passport Act and Rules and finally in para 26 it was held as under:

> *“26. Thus, in the nutshell, what emerges from the factual and legal submissions made and conclusions arrived in earlier Paragraph is as under:*

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(A) In view of the provisions of Section 28 of the Repealed Act of 1886 and provisions contained in Sections 29 and 31 of the Act of 1969, by which erstwhile provision of correction/cancellation of entries in the register of birth and death, which is not in derogation, remained alive in Section 15 of the new Act, and therefore, the authority is empowered to correct erroneous entries in the register of birth and death, even in a case where registration was made prior to 1-4-1970 i.e. the date on which new Act of 1969 came into force and correction of error is sought for later on.

(B) Section 15 of the Act of 1969 read with Rule 11 of the State Rules, 2004 along with Chapter 9, Clauses 9.6 and 9.7 of the Handbook of Registrar General, Ministry of Home Affairs, Govt. of India and Clause 5.8 of Chapter 5 of guidelines contained in vernacular Gujarati adequately conferred power upon the authority to correct/cancel erroneous entries and provide for complete mechanism for types of errors to be corrected.

(C) Section 15 of the Act of 1969 empowers Registrar of Birth and Death to correct any erroneous entry in form or substance or any entry which has been fraudulently or improperly made. Rule 11 of Rules, 2004 and particularly Sub-Rule (1) provide for any entry, any error which may be clerical or formal and Sub-Rule (4) of the above Rule 11 mention about any entry which may be erroneous in substance and Sub-Rule (6) of Rule 11 refer to any entry which is fraudulently or improper is to be corrected by the Registrar and an elaborate procedure is provided which prescribe method and manner in

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which such entry to be corrected or cancelled and report to be made to the higher authority, which may rule out in misuse of power by registering authorities. Thus, Clause 9.6 and 9.7 of Chapter 9 of the Handbook of Registrar General, Ministry of Home Affairs, Govt. of India provide for corrections and cancellations of entries and contain clerical or formal error, error in substance or fraudulent or improper entry and once any error in substance is to be corrected, it covers error of such nature which is an error of substance or form. That similar types of errors are mentioned in Clause 5.8 of Chapter 5 of vernacular guidelines published by the State Authorities under the Act.

(D) The above proposition of law stand fortified by the decisions of this Court in two Letters Patent Appeal Nos. 195 of 1999 and 231 of 2001 in the case of Mulla Faizal @ Fazilabanu Suleman Ibrahim and Registrar, Birth and Death, Rajkot Municipal Corporation (supra), there is no doubt that the expression "erroneous in form or substance" in Section 15 of Act of 1969 is an expression of vide amplitude and does not confine to simple typing errors or clerical mistakes and no guidelines or circulars can take away powers of the Register of making correction in entries which are erroneous in form or substance in register as envisaged under Section 15 of Act of 1969 and Rule 11(1) to (7) of the State Rules, 2004.

(E) When the authority empowered to exercise power under Section 15 of the Act and Rule 11 of the State Rules, 2004, refuse to do so, writ petition is maintainable under Article 226 of the Constitution of India for issuing appropriate

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directions to the authority.

(F) The kind and types of directions to be issued to the authority depend on facts and circumstances of the each case and nature of denial of legal right to the aggrieved persons by the authority.

(G) That even Section 27 of the Act of 1969 is pertaining to delegation of powers and Section 32 empowers to concerned Government to remove the difficulties, and therefore, the appropriate Government or any authority upon whom the powers are delegated can act in accordance with scheme of the Act and appropriate directions can be given accordingly.

(H) So far as matters arising out of the Regulation 12(A) of the Gujarat Secondary Education Regulation, 1974 is concerned, law as on date is governed as in the case of Soorat Jessomal Khanchandani (supra) and Thakore Nilesh Shishirbhai (supra).

(I) So far as the matters arising out of the Passport Act, 1967 and Rules, 2000, is concerned, law as on date is governed as in the case of Regional Passport Officer (supra) in view of admission of L.P.A. No. 1673 of 2006 by an order dated 30-7-2007 by which the judgment of the learned single Judge in Special Civil Application No. 2716 of 2006 is stayed."

44. Having considered the submissions made by the learned counsels appearing for respective parties and

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having considered the decision referred to as above, the petition is required to be allowed.

45. Accordingly, the impugned order dated 03.08.2022 passed by the respondent no. 2 is quashed and set aside. The respondent no.2 is directed to change the name of the petitioner as 'Dhruv' by making necessary corrections in the Register of Birth on the basis of the documents available on record and issue new birth certificate showing the name of the petitioner as "**Dhruv**". The entire exercise shall be carried out within a period of eight weeks from the date of receipt of copy of this order. Petition is allowed, accordingly. Direct service is permitted.

(BIREN VAISHNAV, J)

ANKIT SHAH

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