

GAHC010165412018



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C) 5063/2018

1:RAJ KUMAR BUKALSARIA AND ANR.
S/O LT. SATYA NARAYAN BUKALSARIA
A PERMANENT RESIDENT OF RANGAGARA ROAD, P.O. TINSUKIA, P.S.
TINSUKIA, DIST. TINSUKIA, ASSAM,PIN - 786125.

2: SMTI. SUDHA DEVI BUKALSARIA
W/O SRI RAJ KUMAR BUKALSARIA
A PERMANENT RESIDENT OF RANGAGARA ROAD
P.O. TINSUKIA
P.S. TINSUKIA
DIST. TINSUKIA
ASSAM
PIN - 78612

VERSUS

1:THE STATE OF ASSAM AND 5 ORS.
REP. BY THE LEARNED PUBLIC PROSECUTOR, ASSAM, GUWAHATI-1.

2:THE DIRECTORATE OF SOCIAL WELFARE (WOMEN AND CHILD
DEVELOPMENT SECTOR)
GOVT. OF ASSAM

REP. BY THE DIRECTOR
JANATA BHAWAN

DISPUR
GUWAHATI-06.

3:THE DISTRICT CHILD PROTECTION UNIT
TINSUKIA
SOCIAL WELFARE DEPARTMENT
GOVT.OF ASSAM

REP. BY THE DISTRICT CHILD PROTECTION OFFICER
TINSUKIA
ASSAM
PIN - 786125.

4:THE UNION OF INDIA
REP. BY THE SECRETARY TO THE MINISTRY OF WOMEN AND CHILD
DEVELOPMENT
NEW DELHI-110001.

5:SRI RAJEN DHAN
CENTRE-CO-ORDINATOR
CHILDLINE DISTRICT CHILD PROTECTION UNIT
TINSUKIA

DIST. TINSUKIA
ASSAM
PIN - 786125.

6:SMTI. PALLAVI SAIKIA
D/O SRI DILIP SAIKIA

A RESIDNET OF VILL- DOIGRUNG
P.O.MORANGI
P.S. GOLAGHAT
DIST. GOLAGHAT
ASSAM
PIN - 785621

Advocate for the Petitioner : MR. S CHETIA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE UJJAL BHUYAN

ORDER

Date : 06-08-2018

Heard Mr A Goyal, learned counsel for the petitioners.

2. Petitioners are husband and wife residing at Tinsukia. They were childless. Through a registered agreement dated 17.03.2018 between the petitioners on the one hand and respondent No. 6 on the other hand, the male child born to respondent No. 6 on 05.01.2018 was adopted by the petitioners w.e.f. 08.01.2018, after performing the religious ceremonies associated with Hindu adoption. Pursuant to such

adoption, the child is now residing with the adopted parents, i.e., the petitioners. It is submitted that petitioners have bestowed their entire love and affection on their adopted child and in view of Section 12 of Hindu Adoption and Maintenance Act, 1956, the adopted child has been treated by the petitioners as their own child in all respects. However, allegations have been made by Child Line and District Child Protection Unit, Tinsukia, regarding adoption effected by the petitioners by contending that such adoption is violative of Chapter-VIII of the Juvenile Justice (Care and Protection of Children) Act, 2015 as well as the Adoption Regulations, 2017, framed by the Central Adoption Resource Authority (CARA). In this connection, FIR has also been lodged against the petitioners before the Tinsukia Police Station.

3. Learned counsel for the petitioners submits that adoption in question is squarely covered by the Hindu Adoption and Maintenance Act, 1956, where Sections 10 and 11 of the said Act have been fully and completely complied with. There is also presumption as to the validity of the adoption agreement as per Section 16 of the said Act. When the adoption is valid under the Hindu Adoption and Maintenance Act, 1956, the same cannot be questioned by taking recourse to Chapter-VIII of the Juvenile Justice (Care and Protection of Children) Act, 2015 as well as Adoption Regulations, 2017, framed by Central Adoption Resource Authority (CARA).

4. The issue raised in this writ petition is sensitive and would require a detailed deliberation.

5. Issue notice, returnable within 6 (six) weeks.

6. Mr K Konwar, learned Additional Public Prosecutor for the State of Assam, accepts notice on behalf of respondent No. 1, whereas, Ms M Bhattacharjee, learned Government Advocate, accepts notice on behalf of respondent Nos. 2 and 3. Ms A Gayan, learned CGC accepts notice on behalf of respondent No. 4. Extra copies within 3 (three) days.

7. Notice to respondent Nos. 5 and 6 by registered post with A/D. Steps within 3 (three) days.

8. After hearing learned counsel for the parties and keeping in mind the best interest of the child, respondents are directed not to take any coercive action against the petitioners, until further order(s), and also not to remove the child from the custody of the petitioners.

9. However, Secretary, District Legal Services Authority, Tinsukia shall visit the residence of the petitioners and make an assessment regarding the maintenance of the child and care provided by the petitioners to the child, once in a month, whereafter, she shall submit her report in a sealed cover to the Court.

10. List on 17.09.2018.

JUDGE

Comparing Assistant