

GAHC010165412018



2026:GAU-AS:6268

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

Case No. : WP(C)/5063/2018

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

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, MR. A GOYAL,MR G KHANDELIA,MR A
CHOUDHURY

Advocate for the Respondent : PP, ASSAM, GA, ASSAM,ASSTT.S.G.I.,MRS. A GAYAN (CGC, R4
& R5),MR. N SHARMA (R6)

:::BEFORE:::

HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR

For the Petitioners : Mr. G. Khandelia, Advocate.

For the Respondents : Ms. M. Bhattacharjee, Addl. Sr. Govt.
Advocate.
Mr. K. Gogoi, P.P., Assam
Ms. A. Gayon, C.G.C.
Ms. N. Sharma, Advocate.

Date on which judgment is reserved : 09.01.2026

Date of pronouncement of judgment : **30.04.2026**

Whether the pronouncement is
of the operative part of the judgment ? : NA

Whether the full judgment has been : Yes
pronounced ?

Judgment and Order (CAV)

Heard Mr. G. Khandelia, learned counsel, appearing for the petitioners. Also heard Mr. K. Gogoi, learned Public Prosecutor, appearing for the respondent no.1; Ms. M. Bhattacharjee, learned Additional Senior Government Advocate, appearing for the respondent nos.2 and 3; Ms. A. Gayon, learned C.G.C, appearing for the respondent no.4; and Ms. N. Sarma, learned counsel, appearing for the Proforma Respondent No.6.

2. The respondent no.5 has filed an affidavit directly to the Registry of this Court, the same is also considered.

3. The petitioners by way of instituting the present writ petition have prayed for the following reliefs;

“(i) a writ in the nature of Mandamus and/or a Writ of like nature not be issued restraining the Respondent No.3 from making any demand to the Petitioners to surrender the child to the Respondent authorities and from taking any coercive steps against the Petitioners who have adopted the child under a valid Deed of Adoption; and

ii) a Writ in the nature of Mandamus and/or a Writ of like nature should not be issued declaring the adoption procedure as undertaken in the instant case to be a valid adoption as it has been executed in compliance of the Hindu Adoption and Maintenance Act, 2015;

iii) a Writ in the nature of Mandamus and/or a Writ of like nature should not be issued declaring the stand taken by the respondent authorities, that the instant adoption is illegal, to be an erroneous one as the instant adoption does not attract the provisions of the Adoption Regulation, 2017 in which the respondent authorities are stuck with;

iv) a Writ in the nature of Mandamus and/or a Writ of like nature should not be issued directing the Respondent Authorities not to give any effect to the F.I.R dated 23.03.2018 and to declare it malafide and not maintainable as the section imposed in the said F.I.R does not attract any offence at all against the petitioners;

v) a Writ in the nature of Certiorari and/or a Writ of like nature should not be issued setting aside and quashing the impugned F.I.R dated 23.03.2018 as the ingredients of section imposed in the said F.I.R does not attract at all against the petitioners;”

4. The facts in brief requisite for adjudication of the issues arising in the present writ petition is noticed, as under ;

The petitioners who are husband and wife, not being blessed with a child even after long lapse of period after their marriage were desirous of adopting a child. On the other hand, the Proforma Respondent No.6, had given birth to a male child on 05.01.2018, and in absence of the father of the child, the Proforma Respondent No.6 had to face much trouble at the time of delivery and thereafter to maintain the child being an unmarried mother. Accordingly, the Proforma Respondent No.6 had desire to give the child in adoption to a good couple. The petitioners, herein, approached the Proforma Respondent No.6 and expressed their willingness to adopt the male child and accordingly, with the consent of the Proforma Respondent No.6 and her family members, the petitioners adopted the male child and brought the child from the hospital on 08.01.2018. Thereafter, religious ceremonies as mandated to be performed for giving and taking in adoption a child including the "Dattak Homan", was performed by the petitioners on 02.02.2018. The child was named Manan Bukalsaria. Subsequently on 17.03.2018, a Deed of Adoption was executed by the petitioners and the Proforma Respondent No.6, in presence of witnesses and the same was registered in the Office of the Sr. Sub-Registrar, Kamrup (Metro) at Guwahati.

While the process for adoption was underway, the CHILDLINE Members from the Office of the Respondent no.3, had visited the house of the petitioners and raised objections with regard to the procedure adopted for adoption of the child. Although the child was not rescued, the CHILDLINE Members who had visited the house of the petitioners had required the petitioners to produce the child before the respondent no.3. It was projected by the CHILDLINE Members that the procedure for

adoption of the child was in violation of the provision of the Adoption Regulations, 2017. As the petitioners had not visited the Office of the Respondent No.3, the Respondent No.5, herein, had lodged an Ejahar before the Tinsukia Police Station on 23.03.2018, *inter alia*, alleging, therein, that the adoption under taken by the petitioners were illegal and a prayer was made for production of the male child along with the petitioners.

The police on receipt of the said Ejahar, registered the same as Tinsukia P. S. Case No. 359/2018, under Section 80 of Juvenile Justice (Care & Protection of Children) Act, 2015. Although the petitioners had produced a copy of a Deed of Adoption executed in the matter before the Respondent No.3, however, the petitioners project that they were continuously being harassed by the Office of the Respondent No.3. The petitioners were also issued with a notice under Sub Section 1 of Section 41 (A) Cr.P.C in connection with Tinsukia P. S. Case No. 359/2018.

The petitioners by contending that the adoption as made by them in the matter being so made under the provisions of the Hindu Adoption and Maintenance Act, 1956, the provisions of the Adoption Regulations, 2017, and the provisions of the said Act of 2015, would not be attracted in their case and the respondent authorities would have no jurisdiction in interfering the adoption so made. With the said contentions, the petitioner have instituted the present writ petition.

5. Mr. G. Khandelia, learned counsel, appearing for the petitioners, by reiterating the facts, noticed, hereinabove, has submitted that the adoption made by the petitioners were so made in due compliance with the provisions of Hindu

Adoption and Maintenance Act, 1956. By referring to the provisions of Section 6 of the said Act, it is submitted that the same was duly complied with and accordingly, a valid adoption had occasioned in the matter. Mr. G. Khandelia, further submits that the provisions of the Act of 2015, along with the Regulations of 2017, would have no application with regard to the adoption made by the petitioners. He submits that the provisions of Sub Section (3) of Section 56 of the Act of 2015, clearly mandates that the Act of 2015, shall not apply to the adoption of children made under the provisions of the Hindu Adoption and Maintenance Act, 1956.

6. Mr. G. Khandelia, further submits that the child after being adopted by the petitioners has been continuously residing with them and a bond has developed between the petitioners and the male child and in the event, the respondent authorities are permitted to have their way in the matter, the same would not be in the interest of the child. Mr. G. Khandelia, has referred to a report submitted in the matter by the Secretary DLSA Tinsukia, in pursuance to directions passed by this Court, wherein, upon an inspection made, it was highlighted that the male child is being raised in a healthy and child friendly environment by the petitioners.

7. Mr. G. Khandelia, has submitted that the Proforma Respondent No.6, has filed an affidavit in the matter and on perusal of the same it would be evident that she was unmarried girl and had given birth to a male child. The father of the male child had left the deponent for living a solitary life and his whereabouts was not known to the deponent or any other person. He further submits that the affidavit filed in the matter by the Proforma Respondent No.6, would bring to the forefront

that the adoption as involved in the present proceedings was made by the petitioners with her due consent including the consent of her parents, inasmuch as, it was projected that the mother of the Proforma Respondent No.6, had signed as a witness in the Deed of Adoption executed in the matter, while her father was projected to be present at the time of execution of the said document. He further submits that the Proforma Respondent No.6, had also projected that the male child has become an inseparable part of the petitioner's family within a short duration and the separation of the child from the petitioners would be against the interest of the child.

8. Mr. G. Khandelia, has further submitted that the criminal proceedings instituted by the respondents against the petitioners is not sustainable, inasmuch as, the same alleges violation of the provisions of the Act of 2015, when the said Act is not attracted to the adoption undertaken by the petitioners.

9. Per contra the learned counsel for the Respondent Nos.4 and 5, has submitted that the male child was born on 05.01.2018, and he was brought from the hospital by the petitioners on 08.01.2018. It is highlighted that the Deed of Adoption was executed only on 17.03.2018 and accordingly, for the period w.e.f., 08.01.2018 to 16.03.2018, the male child was kept by the petitioners illegally. It is submitted that the adoption, accordingly was in violation of the provisions of the Act of 1956, as well as the provisions of the Act of 2015. The respondents have further submitted that the CHILDLINE Members from the Office of the Respondent No.3, during their visit to the house of the petitioners, was furnished with a Notarized Deed of Adoption made on 08.01.2018. It is submitted that the said Notarized Deed of

Adoption carried no value and the same cannot alleviate the adoption to be one made in compliance with the provisions of the Act of 1956. It is submitted that the Respondent No.3 as well as the CHILDLINE Members, had taken steps in the matter only with the view to protect the interest of the male child. Accordingly, it is submitted that the proceedings instituted in the matter against the petitioners under the provisions of the Act of 2015, be permitted to be taken to its logical conclusions and the male child be permitted to be withdrawn from the custody of the petitioners and kept with the CHILDLINE authorities.

10. I have heard the learned counsel for the parties and perused the materials available on records.

11. The respondent authorities having projected the adoption made by the petitioners, herein, to be in violation of the Adoption Regulations, 2017, this Court would examine the provisions of the said Regulations of 2017, to appreciate the submissions made by the learned counsels for the respondents. The Adoption Regulations, 2017, was framed in exercise of powers conferred by Clause (c) of Section 68 read with Clause (3) of Section 2 of the Juvenile Justice (Care & Protection of Children) Act, 2015. Regulation 4 of the said Regulations, being relevant is extracted, hereinbelow;

“4.Child eligible for adoption.- The following shall be eligible for adoption, namely:-

- (a) any orphan or abandoned or surrendered child, declared legally free for adoption by the Child Welfare Committee;
- (b) a child of a relative defined under sub-section (52) of section 2 of the Act,
- (c) child or children of spouse from earlier marriage, surrendered by the biological

parent(s) for adoption by the step-parent.”

12. A perusal of the said provisions would reveal that a child eligible for adoption under the provisions of the Regulations of 2017, is any orphan or abandoned or surrendered child, declared legally free for adoption by the Child Welfare Committee. Further, such child eligible for adoption can be the child of a relative as defined under Sub Section (52) of Section 2 of the Act of 2015, and further such child can also be a child of spouse from earlier marriage, surrendered by biological parent(s) for adoption by the step parents.

A perusal of Regulation 4 of the Regulations of 2017, would reveal that the same stands attracted with regard to a adoption made of children defined, therein.

13. The petitioners in the present proceedings have contended that the child was adopted under the provisions of the Hindu Adoption and Maintenance Act, 1956, Section 6 of the Act of 1956, lays down the Requisites for a valid adoption. Section 6 of the Act of 1956, being relevant is extracted hereinbelow;

“6. Requisites of a valid adoption. - No adoption shall be valid unless -(i) the person adopting has the capacity, and also the right, to take in adoption; (ii) the person giving in adoption has the capacity to do so; (iii) the person adopted is capable of being taken in adoption; and (iv) the adoption is made in compliance with the other conditions mentioned in this Chapter.”

14. One of the requisite conditions for a valid adoption is that the person giving in adoption, has the capacity to do so. Section 9 of the Act of 1956, deals with regard to the issue as to persons capable of giving in adoption. The provisions of

Section 9 (1) and 9 (2) of the Act of 1956, being relevant is extracted, hereinbelow;

“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 the mother, if alive, shall have equal right to give a son or daughter in adoption:

Provided that such right shall not be exercised by either of them save with the consent of the 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 of unsound mind.”

15. As noticed, hereinabove, the child was consented to be given in adoption to the petitioners by the Proforma Respondent No.6, herein, and the consent of the biological father of the male child was not obtained. The provision of Section 6 (b) of the Hindu Minority & Guardianship Act of 1956, mandates that in the case of a illegitimate boy or an illegitimate unmarried girl, the natural guardian would be the mother and after her, the father.

16. It is a settled position of law that the expression “after” as occasioning in the provisions of Section 6 (b) of the Hindu Minority & Guardianship Act of 1956, does not necessarily mean “after the lifetime”, it would mean “in the absence of”, the word absence referring to the father’s absence from the care of the minors property or person for any reason, whatsoever.

17. As projected by the Proforma Respondent No.6, biological father of the child had left her company and renounced the world and his whereabouts were not

known either to her or to any other persons. Accordingly, the Proforma Respondent No.6, can be validly recognized as the natural guardian of the child and she can act validly on behalf of the minor. Accordingly, this Court is of the considered view that the Proforma Respondent No.6 was capable of giving her child in adoption and her such action in voluntarily giving the child in adoption to the petitioners cannot be questioned.

18. This Court on a consideration of the stand of the respondents in the matter finds that the same is to the effect that the adoption of the child as made by the petitioners, was so made in violation of the provisions of the Act of 2015, as well as the provisions of the Adoption Regulations of 2017. A perusal of Sub-Section (14) of Section 2 of the Act of 2015, would reveal that the child taken in adoption by the petitioners would not come within the purview of the said definition "**child in need of care and protection**". Further, in view of the express provisions of Sub Section (3) of Section 56 of the Act of 2015, the adoption involved in the present writ petition having been so done under the Provisions of Hindu Adoption and Maintenance Act, 1956, the Act of 2015, would have no application to the said adoption made by the petitioners. Accordingly, this Court is of the considered view that the steps taken in the matter by the respondent authorities were so taken without jurisdiction. More so when the Proforma Respondent No.6, by way of filing an affidavit in the present proceedings had brought on record that the adoption made by the petitioners was so made withher due consent as well as the consent of her family members.

19. The respondent authorities have also questioned the adoption on account

of the delay occasioning in execution of the Deed of Adoption by the petitioners and the Proforma Respondent No.6. As noticed, hereinabove, on the date of adoption was made, a Notarized Deed of Adoption was executed between the petitioners and the Proforma Respondent No.6. However, subsequently, a proper Deed of Execution was executed by the petitioners and the Proforma Respondent No.6.

20. On a perusal of the said Deed of Adoption, this Court finds that the same was executed on 17.03.2018, and it confirms the valid adoption being made in the matter. The mother of the Proforma Respondent No.6, is found to have signed as a witness in the said Deed of Adoption which further fortifies the contentions of the petitioners that the adoption, in question, was so made with the consent of the Proforma Respondent No.6, and her family members.

Accordingly, in view of the above discussions, this Court holds that the adoption of the child by the petitioners in the matter was an adoption so done under the provisions of the Hindu Adoption and Maintenance Act, 1956, and the same would not be covered by the provisions of the Juvenile Justice (Care & Protection of Children) Act, 2015, as well as the Adoption Regulations, 2017.

21. The delay occasioning in the execution of the Deed of Adoption in the considered view of this Court, can in no way be held to have vitiated the adoption made in the matter, inasmuch as, it is projected that religious ceremonies requisite for the purpose was carried out duly and the child had become a child of the petitioners. In this connection this Court refers to the provision of Section 16 of the Hindu Adoption and Maintenance Act, 1956. The provisions, thereof, being relevant is extracted hereinbelow;

“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.”

22. The execution of the Deed of Adoption having been admitted to by the petitioners as well as the Proforma Respondent No.6, and the Proforma Respondent No.6, having also projected before this Court that the same was executed by her out of her own will and also with the consent of her parents, this Court shall presume that the adoption has been made in compliance with the provisions of the Act of 1956, and a contrary position, thereto, was not established by the respondents, herein.

23. In view of the above conclusions, this Court passes the following directions;

(i) The adoption made in the matter by the petitioners, of the child born to the Proforma Respondent No.6, is held to be a valid adoption made under the provisions of the Hindu Adoption and Maintenance Act, 1956.

(ii) The steps taken by the respondent authorities more particularly the respondent No.3, in the matter and also the institution of criminal proceedings against the petitioners by the respondent No.5, are held to have been so done without jurisdiction.

(iii) This Court further holds that the adoption made by the petitioners

having been held to be an adoption made under the provisions of the Hindu Adoption and Maintenance Act, 1956, the provisions of the Juvenile Justice (Care & Protection of Children) Act, along with the Regulations framed there under, shall not be attracted to such adoption made by the petitioners in the matter.

(iv) The petitioners are at liberty to produce the present order before the competent Court considering the criminal proceedings instituted against the petitioners and pray for dropping of the same.

(v) It is provided that the respondents shall not in any manner disturb the petitioners and the child and shall permit the child to live a normal life with the petitioners, herein.

24. With the above observations and directions, the present writ petition stands disposed of.

JUDGE

Comparing Assistant

Ranu
Boro