



W.P. No.39430/2025

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 25.10.2025

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THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO.39430 OF 2025

A.Kannan

.. Petitioner

- Vs -

1. The Union Territory of Puducherry  
Rep. By its Chief Secretary  
Secretariat, Puducherry.

2. The Commissioner  
Puducherry Municipality  
Puducherry.

3. The Sub Registrar  
Registrar of Birth & Death  
Office of the Registrar of Birth & Death  
Puducherry.

.. Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus to call for the records of the 3<sup>rd</sup> respondent in his proceedings No.348PM/RB&D/2024 dated 19.02.2024 and quash the same and consequently direct the 3<sup>rd</sup> respondent to issue birth



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certificate mentioning the child name as K.S.Saatvika with the petitioner's name as A.Kannan and mother name as K.Sheela.

For Petitioner : Mr. D.Ravichander

For Respondents : Mr. V.Vasanthkumar, AGP (P)

### **ORDER**

Aggrieved by the impugned order in and by which the 3<sup>rd</sup> respondent rejected the plea of the petitioner to record his name and that of his wife K.Sheela as the father and mother of the child Saatvika, who was taken on adoption from Vijayalakshmi, the present writ petition has been filed.

2. It is the case of the petitioner that he married one K.Sheela on 27.1.2006 as per Hindu Rights and Customs and they have been living as husband and wife ever since. However, out of the matrimonial wedlock, as they were not blessed with a child, they decided to adopt a child and upon coming to know that one Vijayalakshmi had delivered a child on 26.4.2022 at Cluny Hospital, Puducherry and that the said Vijayalakshmi was in absolute penury and expressed her inability to take care of the child, the petitioner, along with his wife, K.Sheela, expressed his desire and willingness adopt the said child from the



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said Vijayalakshmi, to which the said Vijayalakshmi consented to give the child on adoption.

3. It is the further case of the petitioner that the said Vijayalakshmi was only 18 years old and, therefore, the grandparents of the child, viz., P.Sakarapani and S.Sudha also came forward to give the child in adoption as per Hindu Rites and Customs and, accordingly, after performing “Datta Homam”, which was done by one Dhandapani Sharma, a Prohidar of Shri Selva Vinayagar Temple, Danakodi Nagar, Dharmapuri at Puducherry on 5.5.2022, the child was given in adoption by Vijayalakshmi to the petitioner and his wife K.Sheela.

4. It is the further case of the petitioner that the biological mother along with her parents had given the child in adoption to the petitioner and his wife and pursuant to the performance of the Hindu Rites and Customs, the petitioner and his wife took the child in adoption and the said act of adoption was also validated by means of a registered Adoption Deed dated 7.9.2022 registered on the file of the Sub Registrar, Puducherry in Doc. No.1595/2022, whereinafter naming ceremony of the child was performed by the petitioner and his wife in the



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presence of their relatives on 2.10.2022 and the child was christened as 'K.S.Saatvika' and she became the adopted child of the petitioner.

5. It is the further case of the petitioner that he owns immovable property to the extent of  $\frac{3}{4}$  grounds and also built a residential house on the said land and, therefore, imposed upon the petitioner to execute a Will or Deed in favour apprehending that the said property will not go to his share. Therefore, the petitioner filed a suit in O.S. No.189 of 2023 on the file of the Principal District Munsif, Puducherry, for declaration that the adopted child, K.S.Saatvika is the lawfully adopted daughter of the petitioner and his wife, K.Sheela and also sought for an injunction restraining his brother in any manner disputing the status of their adopted daughter so that after the lifetime of the petitioner and his wife, the property will devolve on the adopted daughter and that there would be no question of her status as our daughter. The suit was contested by the brother of the petitioner and also the biological mother and grand-parents of the adopted daughter of the petitioner and the suit, after contest, was decreed in favour of the petitioner by judgment and decree dated 30.11.2023 and no appeal has been filed against the said decree and the same has attained finality and,



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therefore, there is no iota of doubt that the child is the adopted daughter of the petitioner and his wife K.Sheela.

6. It is the further case of the petitioner that the child, which has since been adopted, was born in Cluny Hospital, Puducherry on 26.4.2022, did not bare any name when the certificate was registered and it had only the name of the biological mother. In view of the subsequent developments, the petitioner approached the 3<sup>rd</sup> respondent to issue birth certificate mentioning the name of the child, viz., his adopted daughter and also to incorporate his name and his wife's name as adopted parents. On receipt of the application, the 3<sup>rd</sup> respondent rejected the same vide the impugned order, aggrieved by which the present petition has been preferred by the petitioner.

7. Learned counsel appearing for the petitioner submitted that the impugned order has been passed on the premise that the petitioner should have approached the Juvenile Justice Authority and ought to have obtained orders on the adoption, as it is only the District Magistrate, who alone is empowered to issue adoption orders and not the civil court.



8. It is the further submission of the learned counsel that the impugned order of the 3<sup>rd</sup> respondent is against the provisions of the Act, as under Section 2 (13) of the Juvenile Justice Act defines the child, which is in conflict with law and it does not speak of a child, which is not in conflict with law. It is the further submission of the learned counsel that the child, which has since been adopted by the petitioner and his wife, has been adopted by following the Hindu Rites and Customs and, therefore, only the provisions of the Hindu Adoptions and Maintenance Act, (for short 'HAM' Act') would be applicable.

9. It is the further submission of the learned counsel that the provisions of Juvenile Justice Act is in no way connected with the present case, as the provisions of the HAM Act alone would be applicable and the child in the present case is not a child in conflict with law and, therefore, the adoption orders of the District Magistrate would not be required in the present case and if there is compliance of Section 6 of the HAM Act, then the adoption is complete.



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10. It is the further submission of the learned counsel that the civil court had even decreed the suit filed by the petitioner declaring that the child is the adopted child of the petitioner and his wife and the biological mother has also deposed that she had given the child in adoption to the petitioner and his wife and the adoption being governed by the HAM Act, the decree passed by the civil court alone is valid and binding and there is no necessity to obtain an adoption order from the District Magistrate. However, without advertng to the provisions of law and the decree, the impugned order has come to be passed, which deserves to be set aside with a direction to the 3<sup>rd</sup> respondent to incorporate the name of the child and the name of the petitioner and his wife as the adopted parents of the child in the birth certificate.

11. In support of the aforesaid submissions, learned counsel relied on the decision of this Court in ***K.Heerajohn – Vs – The District Registrar & Anr. (W.P. (MD) No.27615/2025 – Dated 17.10.2025).***

12. Per contra, learned Addl. Government Pleader appearing for the respondents, placing reliance on the counter affidavit filed on behalf of the 2<sup>nd</sup>



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respondent, submitted that on the date of birth of the child, viz., 26.4.2022, the biological mother was aged only 18 years and 6 months, which would clearly establish that at the time of conception, the biological mother was a minor and, therefore, the provisions of POCSO Act would stand attracted.

13. It is the further submission of the learned Addl. Government Pleader that as per Section 9 of the HAM Act, a child can be given in adoption only by the father or mother or guardian and in the present case, the adoption has been given by the grandparents and not by the mother, which casts a doubt on the adoption process. It is further submitted that the mother also cannot give the child in adoption without the consent of the father and in the absence of the same, the court permission has to be obtained and in the absence of an order of the court, the so called 'Datta Homa' conducted for adoption is wholly doubtful.

14. It is the further submission of the learned Addl. Government Pleader that Regulation 40 of the Adoption Regulations, 2022 clearly mandates that the birth certificate in favour of a child incorporating the names of the adoptive parents shall be issued based on the adoption order issued by the District





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Magistrate. In the present case, no adoption order having been issued by the District Magistrate, the 3<sup>rd</sup> respondent has rightly rejected the application which does not require any interference.

15. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

16. The short point that arises for determination as to the legality of adoption in the present case is *whether the provisions of the HAM Act would be applicable or the provisions of the Juvenile Justice Act would be applicable.*

17. Before proceeding to analyse the issue based on the provisions of the HAM Act and the Juvenile Justice Act, the relevant provisions, which are necessary for determination for applicability of the Act requires to be adverted to.



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18. Section 6 of the HAM Act relates to the requisites of a valid adoption, while Section 9 deals with persons capable of giving in adoption. For better appreciation, Section 6 and 9 of the HAM Act are quoted hereunder :-

***“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.*

***9. Persons capable of giving in adoption :-***

*(1) No person except the father or mother the guardian of a child shall have the capacity to give the child in adoption.*

*(2) Subject to the provision of [sub-section (3) and sub-section (4)], the father, if alive, shall alone have the right to give in adoption, but such right shall not be exercised save with the consent of the mother unless the mother has completely and finally renounced the world or has ceased to be a Hindu has been declared by a court of competent jurisdiction to be of unsound mind.*



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(3) The mother may give the child in adoption if the father is dead or 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.

[(4) Where both the father and mother are dead or have completely and finally renounced the world or have abandoned the child or have been declared by a court of competent jurisdiction to be of unsound mind or where the parentage of the child is not known, the guardian of the child may give the child in adoption with the previous permission of the court to any person including the guardian himself.]

(5) Before granting permission to a guardian under sub-section (4), the court shall be satisfied that the adoption will be for the welfare of the child, due consideration being for this purpose given to the wishes of the child having regard to the age and understanding of the child and that the applicant for permission has not received or agreed to receive and that no person has made or given or agreed to make or give to the applicant any payment or reward in consideration of the adoption except such as the court may sanction.

Explanation: For the purposes of this section-

(i) the expression "father" and "mother" do not include an adoptive father and an adoptive mother;

[(ia) "guardian" means a person having the care of the person of a child or of both his person and property and includes-



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*(a) a guardian appointed by the will of the child's father or mother; and*

*(b) a guardian appointed or declared by a court: and]*

*(ii) "court" means the city civil court or a district court within the local limits of whose jurisdiction the child to be adopted ordinarily resides."*

19. The respondents advert to Regulation 69 of the Adoption Regulations, 2022 to reject the claim for correcting the birth certificate under Regulation 40 as the compliance of Section 9 (2) of the HAM Act is to be validated by the Adoption Regulations, as it safeguards the interests of the adopted child. For better appreciation, the same is quoted hereunder :-

***"69. Adoption process.-*** *(1) The parties to an adoption concluded under the Hindu Adoptions and Maintenance Act, 1956 (78 of 1956) shall jointly present the deed of adoption to the Sub-Registrar's office in the district with copy to District Magistrate.*

*(2) Based on such copy of the deed, the District Magistrate shall conduct such inquiry, as he may deem fit, to satisfy that all the provisions of Hindu Adoptions and Maintenance Act, 1956 (78 of 1956), and the stipulations under the regulations have been followed and such inquiry shall be completed within a period of thirty days.*



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*(3) In case the District Magistrate fails to complete the inquiry within thirty days, he shall be bound to give reasons along with verification certificate for failing to provide the inquiry report within thirty days and the parties may register the adoption deed with the Sub-Registrar concerned under the Registration Act, 1908 (16 of 1908), indicating the details of application made and that inquiry from District Magistrate has not been received within the stipulated time referred to in sub-regulation (2).*

*(4) The District Magistrate shall thereafter forward the verification certificate in the format in Schedule XXXV along with the checklist provided in Schedule XXXVI to the Central Adoption Resource Authority certifying the following that-*

*(a) the adoption recorded in the deed of adoption has been made in accordance with the provisions of the Hindu Adoptions and Maintenance Act, 1956 (78 of 1956), including the sourcing of the child, the eligibility and suitability of the adoptive parents;*

*(b) the adopted child or the biological parents are not under any duress while giving the child in adoption;*

*(c) the adoption has been concluded with mutual consent of all parties concerned;*

*(d) there has been no monetary consideration involved in the adoption process and the adoption is in the best interest of the child.*



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**40. Birth certificate issuing Authority.**-The local Registrar notified under the Registration of Births and Deaths Act, 1969 (18 of 1969) shall issue birth certificate within five days in favour of an adopted child on an application filed by the Specialised Adoption Agency or adoptive parents, incorporating the names of the adoptive parents as parents and the date of birth of the child as mentioned in the adoption order issued by the District Magistrate, in accordance with circulars issued from time to time by the Registrar General of India:

*Provided that no physical presence of the adoptive parents shall be required for issue of such certificate.*

20. There could be no quarrel with the fact that in respect of an adoption concluded under the HAM Act for which a deed is presented before the Sub Registrar for registration, a copy of the same to be forwarded to the District Magistrate for satisfying that all the provisions of HAM Act and stipulations under the regulations have been followed, which clearly spells out that the District Magistrate is to only record his satisfaction as to the following of the provisions and it is not for the purpose of clearing the adoption process undertaken under the HAM Act, as HAM Act is a self-contained code, which provides the manner in which adoption is to take place between two Hindus and the persons, who are



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eligible for entering into such adoption. However, it is the stand of the petitioner that the adoptions made under the HAM Act stands excluded from the provisions of the Juvenile Justice Act by virtue of Section 56 (3) of the Juvenile Justice Act.

21. Be that as it may. The Adoption Regulations, 2022 clearly prescribes the children, who are fit for adoption under Regulation 4, which for clarity is quoted hereunder :-

***“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 clause (52) of section 2;*

*(c) child or children of spouse from earlier marriage, surrendered by the biological parents for adoption by the step-parent.”*

22. Regulation 4 provides the child, who is eligible to be given in adoption and clause (a) thereof clearly spells out that any orphan or abandoned or surrendered child, which is declared legally free for adoption by the Child Welfare



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Committee. This clearly shows that children, who are governed only by the provisions of the Juvenile Justice Act and not covered by any personal laws relating to adoption are to be brought within the ambit of the Adoption Regulations, as those child alone would come within the purview of the Child Welfare Committee, which monitors the welfare of such children and it cannot be expanded to a child, who is given for adoption on the free will of the parent or guardian under the personal law like the HAM Act, as the said Act provides not only for adoption of the child but also for the safeguards with regard to child given on adoption.

23. It is definitely not the case of the respondents that the child, which has been given in adoption to the petitioner is a child which falls under Regulation 4 of the Adoption Regulations, 2022. The plea of the respondents is premised on Regulation 69, which prescribes the adoption process and clause (1) therein speaks of the registration of an adoption deed presented before the Sub Registrar, which is to be done only after receipt of report of enquiry by the District Magistrate. However, Regulation 69 does not curtail the Sub Registrar from registering the adoption deed as Regulation 69 runs counter Section 56 (3),





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which bars interference with adoption made under the HAM Act. Further, in the present case, the adoption deed has also been registered.

24. Chapter II of the Adoption Regulations, 2022 deals with the procedure relating to children for adoption and Regulation 6 relates procedure for adopting a child, which an orphan or an abandoned child and Regulation 7 details the procedure for adopting a surrendered child. In the present case, the child, which has been given for adoption to the petitioner falls under neither of the above two categories and it is not a child, which is in conflict with law and, therefore, would not come within the ambit of the Juvenile Justice Act. Though it is the claim of the respondents that the mother was aged 18 years and 6 months at the time of birth of the child, which only reveals that on the date of conception, the mother was a minor and, therefore, the rigors of POCSO Act is attracted, the rigors could at best be enforced upon the person, who is alleged to have committed the offence on the biological mother of the child, which has been given in adoption, and it would not have any effect on the child, which has been given in adoption to be brought within the ambit of the Juvenile Justice Act, as the child is not in conflict with law.



25. Regulation 40 which is relied on by the respondents to claim that rightly the corrections in the birth certificate have not been carried out as it is not accompanied with the adoption order issued by the District Magistrate, is an erroneous interpretation of the legal provision under the Adoption Regulations.

26. As discussed above, the child is neither an orphaned nor an abandoned or surrendered child and that the child is not in conflict with law. In the present case, there could be no quarrel that the petitioner as well as the biological mother of the child are eligible to take and give adoption. However, the case of the respondents is that the adoption deed had been given by the grandparents and not by the mother of the child and, therefore, the said adoption is invalid.

27. Though Section 9 of the HAM Act prescribes the persons, who could give a child for adoption, which takes within its fold a father or mother or guardian, however, there is a rider that the right shall not be exercised by either of the father or mother without the explicit consent of the other, which is the



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straw, which is being clutched by the respondents to claim that the adoption is not legally valid.

28. It is the specific case of the respondents even that on the date of conception the biological mother of the child was not a major and, therefore, the rigors of POCSO Act would stand attracted. From the above, it is even the case of the respondents that the details of the biological father is not known. If such be the admitted case, as no case has been registered against any individual under the POCSO Act, advertent to proviso to sub-section (2) of Section 9 would only be an exercise in futility, as without the father of the child being known, seeking the consent of the father would not arise.

29. Useful reference can be had to the decision of a learned single Judge of this Court in *Heerajohn case (supra)*, wherein, the applicability of the Juvenile Justice Act vis-à-vis the HAM Act, more particularly with reference to Section 56 (3) of the Juvenile Justice Act was discussed by the learned Judge, wherein, a categorical finding has been rendered that the Juvenile Justice Act will not apply to adoption of children made under the HAM Act. Even a perusal of Section 56



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(3) of the Juvenile Justice Act, to which this Court's attention was drawn by the learned counsel for the petitioner reveals that the said provision provides that *"Nothing in this Act shall apply to the adoption of children made under the provisions of the Hindi Adoption and Maintenance Act, 1956 (78 of 1956)"*.

30. From the above, it is abundantly clear that the Juvenile Justice Act would not have any overriding effect over the Hindu Personal law in view of Section 56 (3) of the Juvenile Justice Act and any adoption made under the HAM Act would not be hit by the provisions of the Juvenile Justice Act and there is no necessity for obtaining an Adoption Order from the District Magistrate as mandated under the Juvenile Justice Act, as it would be applicable only in respect of children who are either *"abandoned child"*, *"child in conflict with law"*, *"orphan"* and *"surrendered child"*, who are covered under the Adoption Regulations, 2022 and it is not relatable to a child, which does not fall under any of the aforesaid categories.

31. In the present case, the child, which has been given in adoption to the petitioner is not a child, which falls under any of the clauses as mandated under



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sub-sections (1), (13), (42) and (60) of Section 2 of the Juvenile Justice Act. When the Juvenile Justice Act is not applicable to adoptions made under the HAM Act and that the child does not fall under sub-sections (1), (13), (42) and (60) of Section 2, necessarily, the impugned order passed by the 3<sup>rd</sup> respondent imposing upon the petitioner to submit an adoption order passed by the District Magistrate is wholly flawed, as the adoption in the present case is made under the HAM Act and is not guided by the provisions of the Juvenile Justice Act.

32. Further, the biological mother had given the child in adoption to the petitioner and his wife, which would be evident from the deposition of the biological mother, who was shown as a defendant in the suit in O.S. No.189/2023, wherein the civil court had captured her deposition, which runs in line with the averments in the present case and in such a backdrop, the mere fact that the grandparents of the child had executed the adoption deed alone cannot make the adoption deed invalid so long as the adoption deed was executed with the concurrence of the mother of the child, who is none other than the daughter of the grandparents of the child.



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33. It should also not be lost sight of that with regard to the adoption, a suit in O.S. No.189/2023 was filed by the petitioner apprehending that the status of the child at a later point of time would be besmirched by persons interested in the property and moreso, to safeguard the interests of the child to the property of the adoptive parents in which the civil court had decreed the suit granting the declaration and injunction as prayed for.

34. The respondents contend that in the suit, the petitioner, his wife, the elder brother of the petitioner, the biological mother, grandfather and grandmother of the adopted child are only made as parties, which is only collusive in nature as the said persons have been arrayed only for getting an injunction from the Court and that the official machinery, viz., the Government or the Municipality, which looks after the interests of the child under the Juvenile Justice Act had not been made a party, which if made, would have objected to the adoption. However, the Government or the Municipality would be deemed to be necessary parties only if the child falls under (1), (13), (42) and (60) of Section 2 of the Juvenile Justice Act and they would not necessary parties to an adoption made under the HAM Act. Further, the suit has been laid only to



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protect the interests of the child by the petitioner at a later point of time to safeguard its interests to the successory benefits, which it would reap from its adoptive parents as the legal heir of the petitioner and not for any other reason and that being the case, this Court is at a loss to understand as to how a stand, as absurd as the above could be taken by the respondents to claim the suit to be a collusive one, as the collusion and fraud, contemplated by the filing of the suit has not been narrated by the respondents, except to allege collusion. Allegation of collusion cannot be the basis for the court to interfere with the adoption proceedings, when the civil court, after trial and after hearing the witnesses has decreed the suit as prayed for, which is nothing but an act aimed at protecting the interests of the child.

35. When the civil court has granted the relief of declaration and injunction as sought for by the petitioner in the suit, which has attained finality, the respondents are bound by the decree passed in the suit and the decree passed in the suit cannot be set at naught by means of an administrative order passed by the 3<sup>rd</sup> respondent declining to issue a birth certificate incorporating the name of the child as also the names of the adoptive parents. The



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administrative orders cannot nullify a decree passed by the court of law and the said order of the 3<sup>rd</sup> respondent is clearly an administrative overreach, which cannot be permitted to continue.

36. Further, it is to be pointed out that the Adoption Regulations, 2022, the Agency created and the machinery provided for the purpose of going ahead with the process of adoption is only to safeguard the interests of the adopted child and not to sabotage its interests. The Juvenile Justice Act as also the HAM Act are benevolent legislations, which are aimed at providing shelter for the children, which otherwise are not available to a child on account of very many factors, including societal scars on the child. The concept of adoption, either at birth or at a later point of time in childhood is only to facilitate the permanent care and protection of the child within the walls of a family so that the child's physical, emotional, relational and educational needs are safeguarded and that the child is protected from possible traumatic experiences which it has faced does not surface at a later point in life. Therefore, the authorities at the helm of affairs are to see that the interests of the child are met and so long as the same are met, the intricacies in the process should be best oiled to the benefit of the





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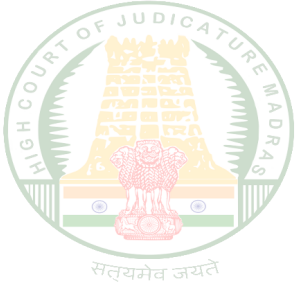
child so that the adoption process is free and does not suffer blockage due to administrative lacunae as such delay would have a hampering effect on the welfare of the child. This is one such classic case of the authorities trying to block the interests of the child, which was not the intention of the benevolent piece of legislation, either under the HAM Act or the Juvenile Justice Act.

37. For the reasons aforesaid, the impugned order passed by the 3<sup>rd</sup> respondent is contrary to law and the same is set aside and the 3<sup>rd</sup> respondent is directed to issue a fresh birth certificate incorporating the name of the child and the name of the petitioner and his wife, K.Sheela as the adoptive parents of the child and the said exercise shall be completed and birth certificate shall be issued to the petitioner within a period of four weeks from the date of receipt of a copy of this order. There shall be no order as to costs.

**25.10.2025**

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1. The Chief Secretary  
Union Territory of Puducherry  
Secretariat, Puducherry.
2. The Commissioner  
Puducherry Municipality  
Puducherry.
3. The Sub Registrar  
Registrar of Birth & Death  
Office of the Registrar of Birth & Death  
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**M.DHANDAPANI, J.**

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