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IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS, DEORI
(Presided over by Mr. S. A. Ingley)

Misc. Cri. Case. No. 01/2018

CNR : MHGO07-000015-2018

Exh.No.16

Rajesh Purandas Raut,
Aged About 39 years, Occ:- Agriculture,
R/o Salai, Tal. Deori, Dist. Gondia.

.... Applicant

--Versus--

Gram Panchayat Office, Shedepar,
Tah. Deori, Distt. Gondia.

....Non-Applicant

APPLICATION UNDER SECTION 13(3) OF THE REGISTRATION OF
BIRTH, DEATHS AND MARRIAGES ACT, 1969 FOR GIVING
DIRECTION TO THE NON APPLICANT FOR REGISTRATION OF
BIRTH OF APPLICANT.

Ku. A. T. Bhajipale learned Advocate for the Applicant.

ORDER

(Delivered on this 19th March 2018)

This is an application under section 13(3) of The Registration of Birth, Deaths and Marriages Act, 1969 for giving direction to non applicant for registration of birth of applicant.

2. The applicant submitted that he resides at Salai, Tah. Deori, Distt. Gondia. The applicant was born on 19.03.1979. The applicant further submitted that due to unavoidable circumstances his birth could not get registered within one year as contemplated in section 9(3) of the Registration Of Birth, Deaths And Marriages Act, 1969. The applicant needs the birth certificate in order to prepare essential documents for education of his son. The applicant further submitted that he has filed on record all the essential documents required for grant of direction to the non applicant for issuance of birth certificate.

3. The applicant submitted in consonance to his application and further submitted that he is in urgent need to obtain birth certificate from non applicant hence, he was constrained to file the instant application for seeking necessary directions to non applicant from court.

4. The non applicant did not appear and contest the case. Hence, the matter was proceeded ex-parte against non applicant.

5. In case of *Karimabibi Wd/o Gulam Mohammad Vs. Ankleshwar Municipality And Others*, AIR 1998 Gui 42 = (1997) 2 GLR 1174 Hon'ble Gujarat High Court has held in para 9, 10 and 12 as under:-

Para 9 :- “ *If the above provision of sub-section (3) of Section 13 are considered. then it would be quite clear that it is the duty of the learned*

Judicial Magistrate to verify the correctness of the date of birth before allowing the application filed before him. When the law expects that he has to verify correctness of the birth, it is expected from him that he must hear the persons who would be interested in disputing or supporting the said application. No doubt the said Act of 1969 does not lay down any procedure as to how and in what manner the application is to be presented by the petitioner to the learned Judicial Magistrate. Not only that, the said Act of 1969 is not making any provision for the proceeding for filing such an application, but no procedure is also laid down by any rules framed under the said Act or by any other specific provisions of any Act. Therefore, in these circumstances, when any application is presented under Section 13 of the said Act after a period of 1 year from the date of birth or date of death, it would be incumbent on the applicant to state the reasons/grounds in his application as to why the earlier entry in the death or birth register could not be made and why he could not give the information regarding the same to the competent authority. He must justify his late action in filing such an application by making necessary averments in his petition. It is also further necessary for him to state the purpose of which he wants the entry in the birth register or the death register. He must also state in the said application as who are likely to be affected by the said entry in the birth register or death register. For example, if suppose the applicant is a person employed and he wants the entry in the birth register to correct his service record, then he must state in his application that purpose for which he has filed the application. He must give address of his employer where he is working because the order as regards his birth date will be affecting his employer and therefore, his employer will be interested in disputing the said claim by showing certain material before him which might have been produced by the

applicant himself. Similarly the applicant must also state the name of both the parents of the person whose birth date is to be entered in the Birth Register. If the said person has got brothers and sisters (even step brothers and step sisters), then their names, their address in his application must be given because they will be also interested in disputing or supporting his claim and therefore, they must have an opportunity to meet the claim of the applicant. In case of entry in birth register as regards the birth date, it is also necessary for the applicant to state the place where the birth of the person took place. The applicant must also give the name of the hospital or the maternity home or place where the birth of that person had actually taken place. He must also state the name of the person who had performed the delivery. In case, if the delivery was performed by any doctor or any nurse or Aaya, then he must also produce the evidence of the said person, if the said person is alive to support his claim. But merely on saying that he was born on such date without giving above indicated details, the application filed under sub-section (3) of Section 13 of the said Act could not be entertained by the Magistrate. But in case of an orphan child (deserted child) the names of father and mother need not be disclosed or stated. Similarly it is not necessary to state whether the child has got brothers or sister. Because as the child is an orphan/deserted, the information in these respects could not be available. Similarly in case of an orphan/deserted child the information regarding the place of birth, who performed the delivery and where the delivery took place could not be available. Therefore, such informations need not be given in case of an application filed to record the birth date of an orphan/deserted child.”

Para 10:- “When all the above stated details are given in the application, it is also incumbent on the Magistrate to issue notice to those persons who are

likely to be affected by his order. He should also insist on issuing a proclamation as is required while issuing a succession certificate. Without following the above stated procedure the Magistrate should not proceed to dispose of such an application because the granting of such relief is going to create a right in favour of the applicant and obligation against certain persons. When the obligations are created against such persons, they must have a reasonable opportunity to challenge the said act of the petitioner. ”

Para 12 :- *“ If the provisions of Section 13 of the Act of 1969 are considered, then it would be quite clear that the said provisions do not lay down that the Magistrate is to give direction to the Municipal Authorities. It is not his business to direct the other officer to make entries in their public record. It is for the party to approach the Municipal Authorities and to get the necessary relief on the strength of the order passed by the Magistrate.”*

6. The publication notice was issued in daily newspaper namely “Daily Lokjan” dated 03-01-2018 calling objections from the public regarding the instant application for issuing necessary directions to issue birth certificate in the name of Rajesh Purandas Raut. None appeared or raised any objection for the claim of applicant.

7. The applicant has filed following documents as per list Exh.3 & Exh.9 which are as under:-

1. Original Copy of Namuna No. 10-A. (Exh.11).
2. Original copy of Residence Certificate of applicant. (Exh.12).
3. Verified copy of Aadhaar Card of applicant. (Exh.13).
4. Xerox copy of Leaving Certificate of applicant. (Article A)
5. Paper Publication in “Daily Lokjan” newspaper dated 03-01-2018 (Exh.14).

8. Following points arise for determination and I have recorded my findings with reasons to be followed thereon:-

<u>Sr.No.</u>	<u>Points</u>	<u>Findings</u>
1)	Whether the applicant is entitled for relief as sought for?	Yes.
2)	What order?	As per final order

REASONS

9. I have heard Ku. A. T. Bhajipale learned counsel for applicant. In order to prove his claim, applicant has himself entered into witness box and has adduced evidence (Rajesh Purandas Raut) by filing affidavit of his examination in chief at Exh.10 and has also filed certain documents to prove his claim.

10. **As to Point Nos.1 and 2 :-** In the present case applicant has filed affidavit of his examination in chief at Exh.10 and has deposed in consonance to it and through his documents filed on record at Exh.11 to Exh.14 came to be proved at his instance. Ku. Bhajipale learned counsel for the applicant submitted in consonance with the instant application. Ku. Bhajipale learned counsel submitted that from perusal of documents filed on record, it is ambit clear that the applicant is entitled for seeking necessary directions to non applicant, for issuing birth certificate in name of Rajesh Purandas Raut from this court. Ku. Bhajipale also submitted that documents filed on record at Exh.11 to Exh.14 prove her bonafide claim. Ku. Bhajipale submitted that the application is on affidavit (Solemn Affirmation) and no one

has raised objection to present application, hence, she prayed to allow the instant application.

11. On perusal of testimony of applicant with eagly eyes, it reveals that applicant has proved his stand to the hilt. On perusal of documents and testimony of applicant, the date of birth of applicant Rajesh Purandas Raut is 19.03.1979 and it seems to be correct. Also, no one has raised objections to it. It is pertinent to mention that applicant has mentioned all necessary details in his application. On the basis of documents and arguments canvassed before me, it transpires that the applicant has adduced evidence and proved his entitlement. Hence, I concur with the submissions of Ku. Bhajipale and hold that the applicant is entitled to receive necessary orders from this court regarding issuing birth certificate by non applicant from this court, accordingly, I answer point no.1 in the affirmative. In the result, I am inclined to pass the following order.

ORDER

- 1) The application is hereby allowed.
- 2) The concerned authority i.e. Secretary, Gram Panchayat, Shedepar, Tah. Deori, District Gondia is hereby directed to register the date of birth i.e. 19.03.1979 of the applicant namely Rajesh Purandas Raut in the concerned register, after receiving necessary fee/charges.

Date : 19.03.2018

Sd/-
(S. A. Ingley)
Judicial Magistrate First Class,
Deori.