

HIGH COURT OF AZAD JAMMU & KASHMIR

*Writ Petition No. 165 of 2019.
Date of Institution. 10.10.2019.
Date of Decision. 23.01.2024.*

Kh. Zahid Mir S/o Muhammad Hussain caste Butt R/o Dudyal Behari
Chalyat District Mirpur AJ&K.

...Petitioner.

VERSUS

1. Judge Family Court Kotli.
2. Shama Sagheer D/o Muhammad Sagheer caste Malik R/o Mandi
Tehsil & District Kotli.

... Respondents.

WRIT PETITION

Before:- ***Justice Syed Shahid Bahar, J.***

In the presence of:

Raja Arshad Latif, Advocate, for the petitioner.

Yasir Hussain Chaudhry, Advocate, for the respondents.

Writ petition No.165 of 2019 is meritless, issuance of writ declined.

JUDGMENT:-

The instant writ petition under Article 44 of the AJ&K Interim Constitution, 1974, has been filed to set aside the order passed by Judge Family Court Kotli dated 17.09.2019 as well as to issue a direction to respondent No.1 to accept the application of the petitioner and to record the remaining evidence of witnesses.

The controversy between the parties relates to different dates of birth of the minor. According to the petitioner the minor was born at her grandmother's home on 09.06.2006 which was also endorsed alongwith her name by grandmother in the office of Secretary Municipal Corporation Kotli on 22.07.2006, but mother of minor,

respondent No.2, made “Form B” from the office of NADRA Kotli where she endorsed a different date of birth of the minor as 04.04.2009 which is entirely contradictory to the birth registration certificate issued on the request and application of the minor’s grandmother on 22.07.2006. The petitioner moved an application before the Family Court for guardianship and permission to submit birth certificate of the minor on 10.01.2018, whereas respondent No.2 also filed an application for guardianship in the Court of Judge Family Court Kotli on 14.09.2017. The Court below after taking objections upon the rival applications as well as hearing the rival parties dismissed the application filed by the petitioner herein vide order dated 17.09.2019, hence, the instant writ petition.

Arguments on behalf of the parties heard and record perused. The learned counsel’ for the parties reiterated the grounds taken in their pleadings, so, there is no need to produce the same in black and white.

The record reveals that both the parties filed applications for guardianship of the minor in the Court below. It reveals that petitioner, for the purpose of obtaining guardianship of the minor opted to produce birth certificate of the minor according to which minor was born on 09.06.2006 but her date of birth was shown different by her mother/respondent No.2 as 04.04.2009 in the birth certificate issued on her application. The Court below decided the matter in detail after taking thorough probe into the matter. It reveals that respondent No.2

obtained birth certificate on 24.09.2018 which has been issued by Secretary Union Council Kotli, whereas the produced “Form B” was issued by NADRA which has a presumption of truth. In these circumstances, the application filed by respondent No.2 in the Court below was accepted and the application filed by the petitioner herein before the Court below was rejected.

It also seems that two different dates of minor’s birth were claimed by the parties in the Court below. The Court below has rightly dismissed the application filed by the petitioner herein. The matter relates to correction of entries in the birth certificate and the Family Court is not vested with the powers to correct any of the same. However, presumption of correctness is attached to the record of NADRA unless contrary proved or same is nullified by any Court of law. If the petitioner wants to seek declaration that which one of both is correct and which one is fake, he can approach the Civil Court by filing a suit in this regard. Disputed question of fact requiring evidence cannot be resolved by this Court while exercising extra ordinary jurisdiction conferred under Article 44 of the Interim Constitution, 1974. Writ jurisdiction can be invoked in extra ordinary circumstances when no other adequate remedy under the umbrella of General Law is not provided, that too by indicating any violation of law. Writ jurisdiction is not akin to civil suit. It carries set protocols and limits. Thus, indulgence is declined, interlocutory order of the Family Court merits no interference. The writ is not maintainable. Thus, in this view of the matter, it can safely be said that the Court below arrived at a just

conclusion. In view of above discussion, the writ petition in hand is dismissed with no order as to the costs. File shall be consigned record accordingly.

(Order announced).

Circuit Bench Kotli
Jan 23, 2024. (RA)

JUDGE