

MASTER ERIC THIND AND ANR. Vs. UOI AND ORS.

Present: Mr. Gagan Oberoi, Advocate
for the petitioner(s).

Petitioners i.e. Master Eric Thind, aged 3 years, and Harsimren Singh, aged 35 years, have filed present petition under Article 226 of the Constitution of India, *inter alia*, seeking a writ in the nature of *Habeas Corpus*, for permitting petitioner No.2 to take petitioner No.1 to Australia, as he is *de-facto* and *de-jure* guardian of petitioner No.1, and there is no objection to the same to any of the private respondents i.e. respondents No.4 & 5.

Relying upon the DNA report dated 10th March, 2022, counsel submits that petitioner No.2 – Harsimren Singh, is the biological father of petitioner No.1 – Master Eric Thind, as his paternity is matched greater than 99.99999999%.

He further submits that respondent No.4, who is surrogatory mother of petitioner No.1, has neither made any claim nor any objection for taking petitioner No.1 to Australia. In this regard, respondents No.4 & 5, have already furnished their respective affidavits dated 21.06.2022 (appended as Annexures P-8 & P-9, respectively). It is also submitted by counsel for the petitioners that surrogatory child in this case i.e. petitioner No.1, took birth in December 2019, i.e. before enactment of the Surrogacy (Regulation) Act, 2021, which came into force on 25.12.2021, and said Act does not operate with retrospective effect.

Mr. Gagan Oberoi, counsel for the petitioners has pointed out the letter dated 11.06.2022 (Annexure P-10), issued by Australian

Government, Department of Home Affairs, whereby, said officers responded by saying that *“Indian legislation in respect of surrogacy is limited. India legalized commercial surrogacy in 2001, however, it still lacks a regulatory framework for the industry.”*. Counsel also submits that the observation given in the aforesaid letter by the Australian office has necessitated the petitioners to file present petition, and the said observation has been reproduced herein-below:-

“As you were born via a surrogacy arrangement in India with only one commissioning parent the laws in India are unclear. Therefore, a court order should be provided that confirms your commissioning parent (the sponsor) has full legal custody of you, the right to remove you from India and the legal right to determine where you shall live. The court order should also stipulated that no other parties involved in the surrogacy arrangement, including the person who donated the egg, have any legal rights to you.”

Mr. Oberoi, counsel for the petitioners in support of his submissions relies upon judgment of the Apex Court rendered in **Baby Manji Yamada Vs. Union of India and another**, (Law Finder Doc Id # 147336).

Notice of motion.

At this stage, Mr. Gaurav Pathak, Sr. Standing Counsel for Union of India, accepts notice on behalf of respondents No.1 & 2, Mr. J.S. Arora, DAG, Punjab, accepts notice on behalf of respondents No.3 & 6, and Ms. Jaya Kumari, Advocate, accepts notice on behalf of respondents No.4 & 5. She has furnished her Vakalatnama in Court today, which is taken on record.

