

Court No. - 81

Case :- HABEAS CORPUS WRIT PETITION No. - 170 of 2023

Petitioner :- Smt. Reena And Another

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Bhaskar Bhadra, Santosh Kumar Giri

Counsel for Respondent :- G.A., Amit Kumar Verma, Manvendra Nath Singh, Vipin Gangwar

Hon'ble Mrs. Jyotsna Sharma, J.

1. Heard Sri Santosh Kumar Giri, learned counsel for the petitioner, Sri Amit Kumar Verma, learned counsel for respondent nos.4 and 5 and learned A.G.A. for the State.

2. This habeas corpus petition has been filed on behalf of the corpus Km. Aradhya through her mother against respondent no.5, who happens to be husband of petitioner no.1 and father of petitioner no.2.

3. It is submitted on behalf of the petitioners that minor daughter of petitioner no.1 is in illegal detention of respondent no.5. It is further submitted that petitioner no.1 being natural mother and guardian of the corpus, is entitled to take her into custody. It is further submitted that respondent no.5 is presently residing with another woman (respondent no.4) without entering into any formal marital bond and, therefore, interest of the corpus is not protected with her father.

4. On the other hand the contention of respondent no.5 is that he stands in the capacity of natural guardian and de facto father of Km. Aradhya. Her custody with her father cannot be construed as illegal from any angle. Further my attention has been drawn to Section 6 of the Hindu Minority and Guardianship Act, 1956.

Section 6 in The Hindu Minority and Guardianship Act, 1956 reads as under:-

"6. Natural guardians of a Hindu minor.—The natural guardian of a Hindu minor, in respect of the minor's person as well as in respect of the minor's property (excluding his or her undivided interest in joint family property), are
(a) in the case of a boy or an unmarried girl—the father, and after him, the mother: provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother;
(b) in case of an illegitimate boy or an illegitimate unmarried girl—the mother, and after her, the father;

(c) in the case of a married girl—the husband:

Provided that no person shall be entitled to act as the natural guardian of a minor under the provisions of this section—

*(a) if he has ceased to be a Hindu, or
(b) if he has completely and finally renounced the world by becoming a hermit (vanaprastha) or an ascetic (yati or sanyasi).*

Explanation.—In this section, the expression "father" and "mother" do not include a step-father and a step mother."

5. On the basis of above provisions of law it is argued that the corpus is presently about 11 years old and, therefore, her custody with father is absolutely legal.

6. It is further pointed out by learned counsel for respondent no.5 that petitioner no.1. has failed to disclose relevant facts and circumstances under which custody of their daughter has fallen into hands of her father and not with her mother. It is further argued that corpus is staying with him since long and there are litigations pending between the parents.

7. In my view, the petitioner has failed to show that the detention of her daughter with father is illegal from any angle. Further the remedy as provided under the Hindu Minority and Guardianship Act, 1956 is available to her.

8. In this view of the matter, as proper remedy lies under the Hindu Minority and Guardianship Act, 1956, this habeas corpus writ petition is **dismissed**.

Order Date :- 31.10.2023

Asha