

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.31211 of 2015
and
M.P.Nos.1 & 2 of 2015

Angel New Life Children's Home,
rep. by its Managing Trustee S.Dhanalakshmi,
No.7, Serakuppam Village,
Vadalur Town Panchayat,
Kurinchipadi Taluk,
Cuddalore District. ... Petitioner

Vs.

- 1.The District Collector,
Cuddalore District,
at Cuddalore.
- 2.The Commissioner of Social Welfare,
O/o.the Commissioner of Social Welfare,
No.58, Arunachalam Street,
Chindadripet, Chennai-600 002.

Office functioning at
Old Sidco Office Building, 2nd floor,
Thiru.Vi.Ka.Industrial Estate Campus,
Guindy, Chennai-600 032.
- 3.The Home Inspection Committee,
Cuddalore,
Cuddalore District.
- 4.The District Social Welfare Officer,
Cuddalore District,
at Cuddalore.
- 5.The District Children Protection Officer,
Cuddalore,
Cuddalore District.

6.The Chairman of Child Welfare Committee,
Cuddalore, Cuddalore District.

7.The Member of District Child Welfare Committee,
Cuddalore, Cuddalore District. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records relevant to the order dated 30.08.2015 passed by the respondents 3 to 7 and to quash the same as illegal, improper unreasonable, arbitrary against the natural justice and thereby, to direct the respondents to handover the custody of the 9 numbers of children and male baby 3 years old to the petitioner's trust, those children and baby were forcibly taken by the respondents authorities on 30.08.2015 from the petitioner's trust.

For Petitioner : Mr.A. Rajeshkanna

For respondents : Mr.P.Sanjay Gandhi, AGP

ORDER

This writ petition has been filed by the petitioner challenging the order dated 30.08.2015 passed by the respondents, whereby the custody of the 10 children was taken by the respondents from the petitioner-children's home.

2.In the affidavit filed in support of the writ petition, it has been averred by the petitioner, inter alia, as follows:-

2.1.The petitioner Trust viz., Angel New Life Children's Home Trust is a registered Trust under the Tamil Nadu Societies Registration Act and also registered under Section 34 (3) of Justice Juvenile (Care and Protection of Children) Act 2000. The authorities under the Act also periodically visited the Home and satisfactory certificate was also issued by the 4th respondent and his subordinate officials. The petitioner-Home takes care of abandoned, orphanage and neglected children by giving proper case and protection. The petitioner-Home is being run with 30 orphanage students and provided all facilities like shelter, food, recreation, education and periodical medical checkup to the children. The licence was issued by the Director, Social Welfare Department from 01.10.2010 and it expired on 30.09.2013. The petitioner has approached the 4th respondent, who is the forwarding authority, to forward the application for renewal of licence to the competent authority ie., 2nd respondent. The 4th respondent directed the petitioner to submit the renewal application with all other necessary

documents. Accordingly, the petitioner also submitted all the required documents and presented the application dated 11.09.2013 before the 4th respondent. The 4th respondent on 19.09.2013 returned the renewal application for compliance of certain correction and enclosure of documents, such as building certificate (Form A, B and C) from the Public Works Department, certificate from the Children's Welfare Committee regarding production of children before the said Committee, and certificate regarding Child Track System.

2-2. After receipt of the letter dated 19.09.2013 issued by the 4th respondent, the petitioner approached the Public Works Department for obtaining Structural Stability Certificate; apart from that, on 23.04.2013 the petitioner has also approached the Children's Welfare Committee for getting Child Track System Certificate and the same was also issued. After getting all those documents, the petitioner produced the same before the 4th respondent for renewal of registration. The petitioner has produced the following documents -

- a. Building Licence -
- b. Structural Stability Certificate
- c. Sanitary Certificate
- d. Fire Service Certificate
- e. Rental Agreement
- f. Old Social Welfare Certificate
- g. Building Drawing Certificate

But, inspite of production of the said documents, no renewal certificate was issued by the respondents to the petitioner. Hence, the petitioner had earlier filed a writ petition in W.P.No.1191/2014 seeking to direct the respondents to consider the petitioner's application dated 11.09.2013. The said writ petition was disposed of by this Court on 23.09.2015 with a direction to the respondents to consider and to pass orders on the the petitioner's application for renewal of licence.

2-3. It is further stated by the petitioner that earlier on 20.10.2012, a male baby about eight months old was found near the gate of the Home and on the same day, it was informed to the respondents and the Police authorities for information. Thereafter, the said baby was named as Ebenser David Samuel and it got registered in all the records. While so, all of a sudden, during the month of November-2012, one Mr. Dussol Paquiaraj A. Antonic Rajesh and Ms. Palaniammal came from Pondichery and approached the petitioner-Home, claiming that the said baby belongs to them and they are the biological parents. Immediately, the petitioner enquired them, but, they did not properly reply; then, the petitioner refused to hand over the child to them. Thereafter, the petitioner lodged a police complaint to 01.11.2012 to the Deputy Superintendent of Police, Neyveli. The Police conducted enquiry and the petitioner appeared and submitted all the documents for verification.

2-4. Thereafter, on 16.11.2012, the officials of the

Child Welfare Committee, Cuddalore served a notice dated 14.11.2012, directing the petitioner to appear for an enquiry with regard to handing over the said child. Thereafter, the petitioner sent a telegaram on 17.11.2012 to the Chairman, Child Welfare Committee, Cuddalore, intimating reasons for not appearing for the enquiry.

2-4. It is further stated by the petitioner that on 30.08.2015 at about 1.00 pm, the respondents along with 8 police constables attached to the Vadalur Police Station, furnished the impugned order to the petitioner and forcibly entered into the Home and forcibly took 10 children, including a three year old baby, from the petitioner Home; when the same was questioned by the member of the petitioner-Home, he was severely beaten up by the police officials. The impugned order dated 30.08.2015 reflects that all those 10 children, including three year old baby, were rescued from the petitioner-Home. Hence, the present writ petition has been filed by the petitioner before this Court seeking to direct the respondents to handover the custody of the said children to the petitioner-Home by quashing the impugned order dated 30.08.2015.

3. When the matter is taken up for consideration, the learned counsel for the petitioner, by reiterating the averments in the affidavit, submitted that the petitioner-Home is having valid documents to run the Home; thus, he sought for quashing the impugned order and to direct the respondents to handover the custody of the children to the petitioner-Home.

4. Per contra, the learned Special Government Pleader, appearing for the respondents, by filing a detailed counter, submitted that all the children (10 members) in the petitioner-Home were rescued by the Home Inspection Committee Member and District Child Protection Officer and handed over to the Child Welfare Committee for the rehabilitation as the children were in illegal custody of the petitioner-Home, which is an unregistered Home. On 28.08.2015, the Inspection Committee entered the premises of the petitioner-Home with the Police Escort and asked the petitioner to handover the child named E.D.Samuel, who was in the illegal custody of the petitioner; but, the petitioner refused to handover the child. Thereafter, the Committee members informed the same to the District Collector on the same day at 7.00 p.m.

5. It is further submitted by the learned Special Government Pleader that after giving two show cause notices, on 30.08.2015 the Inspection Committee took the custody of the children according to the Rule 56(A) 4(d) of the Tamil Nadu Juvenile Justice (Care and Protection of Children) Rules, 2001. All the 10 children who were rescued by the Committee were handed over to

the Child Welfare Committee and the parents of the children were also informed about the same; subsequently, the Child Welfare Committee handed over the custody of the children to their parents; however, the child E.D.Samuel was handed over to the Child Welfare Committee. The children were taken into the custody by the Inspection Committee only in accordance with the Rule 56(A) 4(d) of the Tamil Nadu Juvenile Justice (Care & Protection) Rules, 2001. Hence, the question of handing over the custody of the children to the petitioner-Home, which is an unregistered one, does not arise. Thus, the learned Special Government Pleader sought for dismissal of the writ petition.

6.Considering the factual aspects of the case and submissions made on either side, this Court is not inclined to quash the impugned order. The petitioner prayed for a direction to the respondents to hand over the custody of children. But, under the factual aspects of this case, such a positive direction could not be given by this Court. However, the petitioner is at liberty to give fresh representation to the 5th respondent with regard to the custody of the children, within a period of one week from the date of receipt of a copy of this order. On receipt of such representation, the 5th respondent is directed to consider the same and pass appropriate orders, on merits and in accordance with law, within a period of four weeks thereafter.

With the above terms, the writ petition is disposed of. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

ssv

To

- 1.The District Collector,
Cuddalore District,
at Cuddalore.
- 2.The Commissioner of Social Welfare,
O/o.the Commissioner of Social Welfare,
Old Sidco Office Building, 2nd floor,
Thiru.Vi.Ka.Industrial Estate Campus,
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3.The Home Inspection Committee,
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4.The District Social Welfare Officer,
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5.The District Children Protection Officer,
Cuddalore,
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6.The Chairman of Child Welfare Committee,
Cuddalore, Cuddalore District.

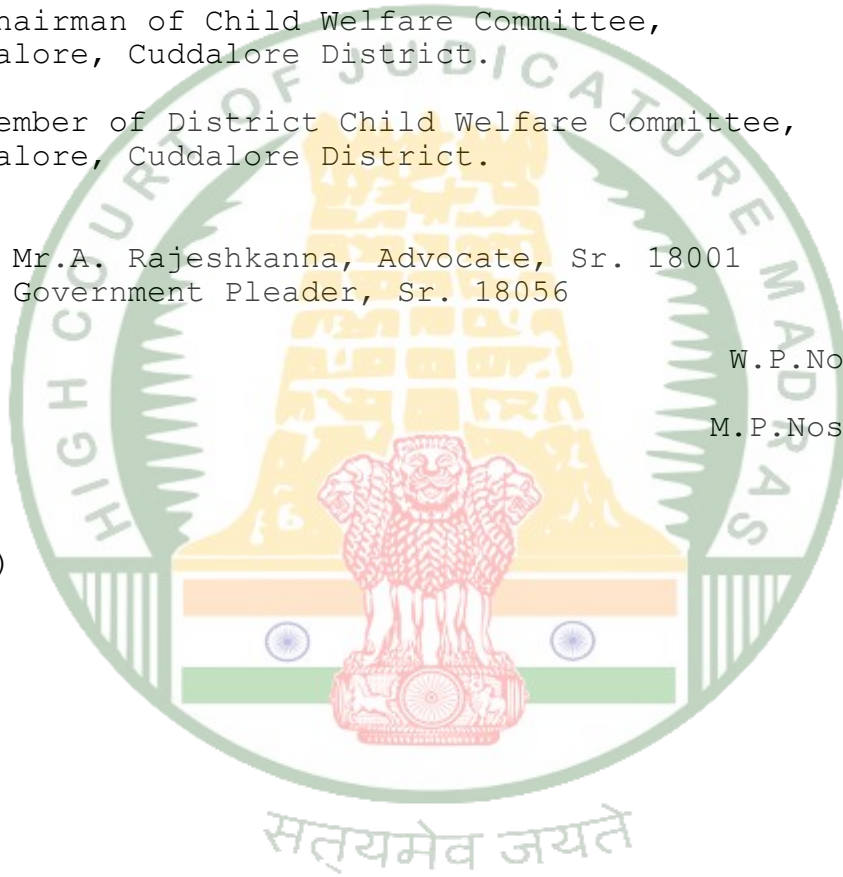
7.The Member of District Child Welfare Committee,
Cuddalore, Cuddalore District.

1 cc to Mr.A. Rajeshkanna, Advocate, Sr. 18001

1 cc to Government Pleader, Sr. 18056

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and
M.P.Nos.1 & 2 of 2015

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