

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2016

CORAM:

THE HON'BLE MR. JUSTICE SATISH K. AGNIHOTRI
and
THE HON'BLE MR. JUSTICE M. VENUGOPAL

W.A. No.224 of 2016 and C.M.P. No.3531 of 2016

Angel New Life Home Trust
represented by its Founder and
Managing Trustee
S. Dhanalakshmi
No.215, D.D.R. Complex
Mandharakuppam
Neyveli - 2,
Cuddalore District

Appellant

vs.

The District Social Welfare Officer
Cuddalore District

Respondent

Writ Appeal preferred under Clause 15 of the Letters Patent challenging the order dated 12.02.2013 passed in W.P. No.3397 of 2013. Writ petition filed under article 226 of the constitution of India praying for issuance of a writ of certiorarified Mandamus calling for the records pertaining the impugned proceedings in letter No. Na.Ka. 8894/A-4/2012 dated 05.02.2013 passed by the respondent and quash the same and consequently direct the respondent not to take custody of the child from Angel New Life Home Trust

For appellant Mr. B. Sundara Pandian
for M/s. M.V. Muralidaran

For respondent Mrs. A. Srijayanthi
Special Government Pleader

JUDGMENT

(delivered by SATISH K. AGNIHOTRI, J.)

With consent, the writ appeal is taken up for final disposal.

2 This writ appeal arises from the order dated 12 February 2013 passed in W.P. No.3397 of 2013.

3 To avoid prolixity, the parties are referred to as per their arraignment in the instant writ appeal.

4 The appellant preferred the instant writ petition questioning the legality of the communication dated 05 February 2013 issued by the respondent and further, for a direction to the respondent not to take custody of the male child from the appellant Trust.

5 The respondent, on examination of the complaint lodged by Deossul Pawanradja Antony Rajesh and Palaniammal, who claimed to be the biological parents of the male child that the appellant is declining to hand over possession of the male child to them, directed the appellant to entrust the custody of the male child either to the respondent or the District Child Welfare Committee or the police station. Feeling aggrieved by the said order dated 05 February 2013 passed by the respondent, the appellant filed the instant writ petition.

6 The learned Single Judge, examining all the facts of the case and also relying on the factum of dispute, held as under:

"5. Admittedly, the petitioner is a private trust run for the betterment of the abandoned, orphan and neglected children. The male child which was abandoned in front of the petitioner's Home on 20.10.2012 has been taken care of well by this Home. However, on the complaint given by the persons who claim themselves to be the biological parents of the baby, the respondent has taken action and given directions to the petitioner to hand over the baby. The respondent admittedly is the competent authority to look into the complaints of such matters. When the competent authority calls upon the petitioner home to hand over the baby, the petitioner has not choice excepting to comply with their request/order. The petitioner has no manner of right over the baby, who is said to have been abandoned on 20.10.2012. Therefore, I do not find any illegality nor infirmity in the impugned order passed by the respondent on 05.02.2013 and the petitioner is hereby directed to hand over the said male baby which was abandoned on 20.12.2012 and now in the care and custody of the petitioner home to the Social Welfare Board or the District Superintendent of Police, Cuddalore immediately without any further delay. If not, the respondent is at liberty to take the baby from the petitioner home with the aid of police."

7 The questions that arise for consideration of this Court are as to whether the appellant, which is intended to take care of abandoned, neglected or orphan children or children whose custody is given by parents, can seek a direction from the Court for handing over custody of a child from the persons, who have been identified as the parents by the authorities concerned and secondly, whether the parents are entitled to custody of their child.

8 Pursuant to our notice, the Superintendent of Police, Cuddalore, has filed an affidavit clearly stating therein that a proper enquiry was conducted about the parentage of the child; the parents are willing to take custody of the child; the appellant has no right to retain custody of the child when its parents are ready and willing to undertake his care and custody; and the appellant has no locus to question the order of the respondent to hand over custody of the child either to the respondent or the District Child Welfare Committee or the police station.

9 We have examined the facts of the case from all angles.

10 Indisputably, the appellant is a private Trust. The District Child Welfare Committee is constituted to take care of the neglected, unattended and abandoned orphan children. In the case on hand, all agencies have taken steps in coordination to identify the child's parents. The Superintendent of Police, Cuddalore, has examined the parentage of the child properly and thereafter handed over custody of the child to his parents. The appellant, being a private Trust, has no right to claim custody of the child from its parents. The parents are entitled to custody of the child, being the natural guardian and also natural custodian of the welfare of the child. In the case on hand, as aforestated, on proper identification, the parents have been handed over the custody of the child and there is no grievance in respect of their obligation and responsibility towards their child.

Resultantly, we do not find any merit in the appeal. This writ appeal stands dismissed. Costs made easy. Connected W.M.P. is closed.

Sd/-
Assistant Registrar(AS)

//True Copy//

Sub Assistant Registrar

vvk

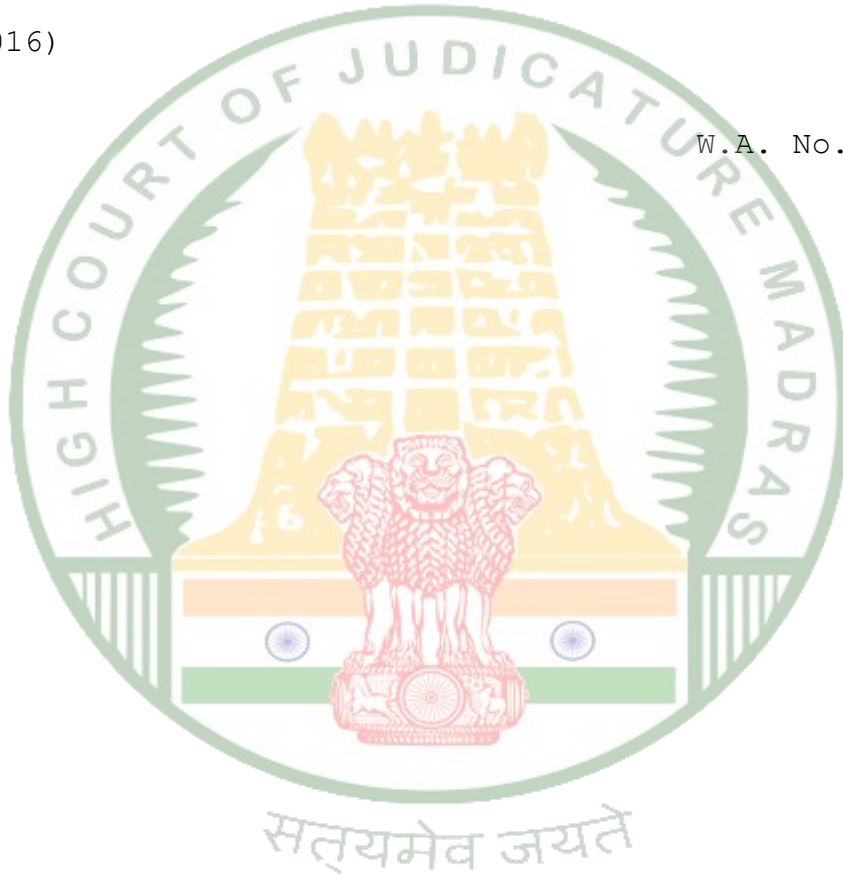
To

The District Social Welfare Officer
Cuddalore District

+1cc to Mr.M.V.Muralidharan, Advocate, S.R.No.19935

KGK (CO)
EU (7/04/2016)

W.A. No.224 of 2016



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