

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2017

CORAM:

THE HONOURABLE MR. JUSTICE RAJIV SHAKDHER

and

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

W.A.No.670 of 2017
and C.M.P.Nos.9443, 17209, 17210,
20279 and 20280 of 2017

Child Welfare Committee
rep. by its Chairman & Members,
Mr.Manikandan,
Government Children Home for Boys,
(Opp. Taluk Office)
GST Road, Chengalpet-603 002.
Kancheepuram District. ... Appellant/5th Respondent

Vs.

1. Franciscan Sisters of St. Joseph
rep. by its President,
FSJ Generalate,
St. Louis Convent,
St. Thomas Mount,
Chennai-600 016.
2. The Director,
Directorate of Social Defence,
No.300, Pursawalkam High Road,
Kellys, Chennai-600 010.
3. The Director,
The Directorate of Social Welfare,
SIDCO Building,
Thiru Vi.Ka Industrial Estate,
Guindy, Chennai-600 032.
4. The District Collector,
Collector's Office,
Kanchipuram Distirct.

5. District Child Protection Officer,
District Child Protection Unit,
No.317, KTS Main Street,
Mamallan Nagar,
Big Kancheepuram 631 502.

.. Respondents/Petitioner/
Respondents 1 to 4

* * *

Prayer : Writ Appeal filed under Clause 15 of the Letters Patent, to set aside the interim order dated 07.06.2017, passed in WMP No.15036 of 2017 in W.P.No.13856 of 2017.

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Prayer in WP.13856/17

Petition Under Article 226 of the Constitution of India praying that in the circumstances stated therein, and in the affidavit filed therewith the high court will be pleased to issue writ of issue a writ of mandamus directing the 5th respondent to consider and pass orders on the recommendation of the 4th respondent date 09.05.2017 in No. 888/Ma.Ku.Pa/ 2017, permitting the petitioner society to continue the custody of the five children namely Mary Sylvia, Sophia Christy, George Mark, Jacob John, Jasmine, in Assis Illam, Magazine Road, St. Thomas Mount, Chennai 600 016

PRAYER IN WMP NO.15036/17

Petition filed to issue an order of interim direction to the 5th respondent, to restore the five children namely Mary Sylvia, Sophia Christy, George Mark, Jacob John, Jasmine, to the custody of the petitioner society in Assis Illam, Magazine Road, St. Thomas Mount, Chennai 600 016, under the same management,

For Appellant : Mr.Shaikh Mehrunisa

For Respondents: Mr.Dhananjayan,
Special Government Pleader
for RR 2 to 5

Dr. Fr.Xavier Arul Raj, Senior Advocate
for M/s.A.Arul Mary for R1

JUDGMENT

[Judgment of the Court was made by RAJIV SHAKDHER, J.]

1. We have interacted with the four (4) out of five (5) children, i.e., except, one, Master George Mark.

2. Our interaction with them has revealed that the children are unhappy, where, they are, presently, residing, i.e., SOS Village, Tambaram (in short, "S.O.S.").

2.1. These children were earlier housed in Assisi Illam, Nethaji Nagar, Tambaram.

2.2. We are informed that the Assisi Illam's facility at Nethaji Nagar, St. Thomas Mount, Chennai, is, presently, registered. Earlier, Assisi Illam facility at Magazine Road, was the only one, which was registered and it was on account this fact, that is, non-registration of their facility at Nethaji Nagar, that children housed therein were removed to S.O.S.

3. We had, in fact, called upon Mr.Raja Srinivas, Deputy Superintendent of Police, Anti-Trafficking Cell, CBCID Cell, to enquire into the matter.

3.1. The Officer has submitted before us a detailed report. We had, in fact, in our directions issued on the last occasion, i.e., on 31.10.2017, asked him to enquire into the activities of Dr.Rexline, with regard to not only the aforementioned children, Baby Mary Sylvia; Baby Spohia Christy, Master George Mark, Master Jacob John and Baby Jasmine Kate, but also with regard to twelve (12) other children. The names of these twelve (12) children and reason that required an enquiry to be made is set out in our order dated 04.10.2017 and 31.10.2017.

3.2. It is in this background that we have also interacted with Mr.Raja Srinivas. The Officer says that the custody of all the five (5) children was handed over to Dr.Rexline, by unwedded mothers. In so far as the remaining twelve (12) children are concerned, their custody was handed over to her, i.e., Dr.Rexline, on account of lack of financial wherewithal of their parents.

3.3. We have specifically asked the Officer as to whether in his assessment, the children were ill-treated, or, abused, while, they were housed in Assisi Illam facility. The Officer, categorically, reported that such incident had not happened as per his investigation in the matter.

3.4. Under these circumstances, we are inclined to direct that the custody of all the four children, who are present before us, will be handed over to respondent No.1- Assisi Illam, Tambaram, Chennai.

3.5. In so far as the fifth child, i.e., Master George Mark is concerned, who, we are told, is in the custody of S.O.S., his custody will also be handed over to respondent No.1 - Assisi Illam, Tambaram, Chennai.

3.6. Consequently, all the four children, i.e., Baby Mary Sylvia; Baby Spohia Christy, Master Jacob John and Baby Jasmine Kate, and Master George Mark, will be housed in the Assisi

Illam, Magazine Road, St. Thomas Road, Chennai.

4. To be noted, in so far as the captioned appeal is concerned, it was directed against the interim order of the learned Single Judge dated 07.06.2017.

4.1. By this order, the following operative directions were issued:

"..... 16. For the reasons stated above, I am of the view that the custody of the 5 children should be given to the petitioner to accommodate them in Assisi Illam, No.4/92-62, Magazine Road, St. Thomas Mount, Chennai - 16, Kancheepuram District, which is a registered children's home run by the petitioner Society. This order is being passed only as an interim measure and taking into consideration the welfare of the minor children.

17. In these circumstances, I direct the 5th respondent to hand over the custody of the five children viz., Mary Sylvia, Sophia Christy, George Mark, Jacob John, Jasmine to the petitioner before 05.00 pm on 08.06.2017."

4.2. Since, the custody of the children has, now, been directed by us to be handed over to the Assisi Illam, according to us, this appeal has been rendered infructuous, as the appellant had preferred the instant appeal resisting the directions issued by the Single Judge. Accordingly, no further orders are called for in the appeal.

5. Before we conclude, we may only note that in our order dated 31.10.2017, we had asked Mr. Selvakumar, Principal District Judge (PDJ), Kancheepuram District, to look into the matter and render a report. Since, the children are, emotionally, disturbed and have in no uncertain terms stated that they are neither comfortable nor happy in their present environment.

6. We have directed that their custody be handed over to Assisi Illam, after having received inputs not only from Mr. Raja Srinivas, but also, from Mr. Lalvena, Director of Social Defence, Government of Tamil Nadu, bearing in mind the best interest of children. Therefore, the report rendered by Mr. Selvakumar, PDJ, Kancheepuram District, can now be placed before the learned Single Judge and if, any further directions are to be issued based on the report, the learned Single Judge will issue necessary directions in that behalf.

7. The appeal is, accordingly, disposed of. Resultantly, pending applications shall stand closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. Thiru.Selvakumar,
Principal District Judge,
Kancheepuram District @
Chengalpet.
2. The Director,
Directorate of Social Defence,
No.300, Puraawalkam High Road,
Kellys, Chennai-600 010.
3. The Director,
The Directorate of Social Welfare,
SIDCO Building,
Thiru Vi.Ka Industrial Estate,
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5. The District Child Protection Officer,
District Child Protection Unit,
No.317, KTS Main Street,
Mamallan Nagar,
Big Kancheepuram 631 502.
6. The Chairman,
child Welfare committee,
Govt. Children Home for Boys,
GST Road chengalpet 603 002.
Kancheepuram district.

+2cc to Mr.Arul Mary Advocate, S.R.No. 83558

W.A.No.670 of 2017

TR(24/11/2017)