

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2017

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition No.31685 of 2017

and

W.M.P.Nos.34829 to 34832 of 2017

Palaniyammal.D

.. Petitioner

Vs.

1. The District Collector,
Cuddalore.

2. The Child Welfare Committee,
Cuddalore.

3. Rajesh Kanna,
Child Line,
Cuddalore.

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

5. Ezhumalai,
Angel New Life Children's Home,
No.7, Serakuppam Village,
Varalur Town Panchayat,
Kurinchipadi Taluk,
Cuddalore District.

6. The Child Welfare Committee,
Ariyankuppam, Puducherry.

.. Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus C to call for the records relating to the impugned order passed by the 2nd respondent in her proceedings in No.49/CWC/2016 dated 5-10-2016 and quash the same and consequently direct the 2nd respondent not to interfere with the custody of the petitioner's son along with that of the petitioner.

For Petitioner : Mr.Stalin Abhimanyu
for Mr.M.Govindaraju

For Respondents : Mr.R.Govindasamy,
Special Government Pleader

ORDER

The petitioner is aggrieved against the order passed by the second respondent dated 05.10.2016, wherein the child by name, E.D.Samuel was directed to be kept in the custody of Child Welfare Committee pending decision to be made by the competent Court, since the so called parents on one hand and the 5th respondent/ Home which maintained the child all along in another hand are making claim to maintain the child.

2. Learned counsel appearing for the petitioner submitted that the petitioner being the mother of the child is entitled to the custody of the child

and therefore, the Child Welfare Committee is not justified in passing the impugned order.

3. Upon considering the facts and circumstances of the present case as well as the order passed by the second respondent, it is evident that the petitioner herself has already approached this Court and filed a Habeas Corpus petition in HCP No.2173/2016 for issuing a Writ of Habeas Corpus to produce the said child and set him at liberty. It is further seen that by an order dated 09.01.2017, the Division Bench of this Court, while dismissing the above Habeas Corpus Petition as withdrawn in pursuant to the endorsement made by the petitioner has also observed at paragraph No.2 as follows:

“Hence, this Habeas Corpus Petition stands dismissed as withdrawn. However, in the given facts and circumstances of the case, we find it appropriate to direct that the minor child, namely, Samuel @ Dussol Alpha Krish, shall be kept in the safe custody of the fourth respondent until an appropriate order has been passed, by an appropriate forum or a Court, in the manner known to law. It is also made clear that it would be open to the petitioner to seek her reliefs, if any, before the appropriate forum or authority, in the manner known to law.”

K.RAVICHANDRABAABU,J

vsi

4. Going by the order passed by the Division Bench of this Court and the findings rendered by the second respondent in the impugned order, this Court is of the view that the petitioner has wrongly chosen the Forum under Article 226 of the Constitution of India for resolving the dispute with regard to the child's custody, especially, when she has already chosen to withdraw the Habeas Corpus Petition filed before this Court. Therefore, it is for the petitioner to approach the Competent Civil Court and establish her right. Granting such liberty, this Writ petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

07.12.2017

Speaking/Non Speaking
Index : Yes/No
vsi

To

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Cuddalore.
2. The Child Welfare Committee,
Cuddalore.
3. The Child Welfare Committee,
Ariyankuppam, Puducherry.

W.P.No.31685 of 2017