



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.08.2018

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THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.(MD)No.21175 of 2017

UR.Kudil @ Sivasakthi Ashramam
rep. by its founder and Managing Trustee,
Mr.S.Jothi Loganathan
S/o Subramanian
Maruthanallur, Kumbakonam,
Thanjavur District.

... Petitioner

Vs.

1.The District Child Welfare Committee,
rep. by its Chairman,
Government Child Home Campus,
V.O.C. Nagar,
Thanjavur - 7.

2.The District Child Welfare Committee,
rep. by its Chairman,
No.38, G.M.Nagar,
Ukkadam,
Coimbatore,
Coimbatore District.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents to return the custody of a child viz., Gajanani to the petitioner Ashramam in the light of the order passed by the Commissioner of Social Defence dated 27.06.2017.

For Petitioner : Mr.V.Vijayashankar

For Respondents : Mr.B.Pugalenth

Addl. Advocate General assisted by
Mr.A.Muthukaruppan
Addl. Govt. Pleader

O R D E R

The petitioner seeks for a direction to the respondents to return the custody of a child viz., Gajanani to the petitioner Ashramam in the light of the order passed by the Commissioner of Social Defence dated 27.06.2017.

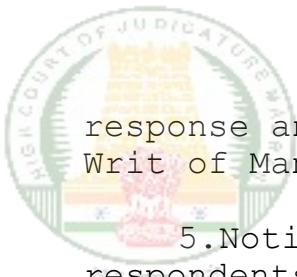


2.The case of the petitioner is as follows:-

The petitioner Ashramam was established in the year 1994 and was also registered under the Orphanages and other Charitable Homes Act, 1960 (hereafter referred to as OCH Act) vide Registration No.319/2003, dated 16.10.2003. The object of the Ashramam also provides aid to the orphaned and neglected children in order to ensure their better future prospects. The petitioner Ashramam was also over a period of time earned a reputation in the District, where it is established and functioned. The petitioner Ashramam however not registered under the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereafter referred to as JJ Act) and on the basis of the *bone fide* impression that the registration under OCH Act was sufficient to run the Ashramam. According to the Ashramam officials, the Ashramam was subjected to the periodical inspection by the authorities including the Child Welfare Committee.

3.While so, it appears that on 24.09.2009, a show cause notice was issued by the Child Welfare Committee Authority, as to why the custody of the children under 7 years of age should not be taken over by the authorities to be transferred to other institution. In response of to the show cause notice, a reply was given by the petitioner on 30.09.2009 and simultaneously, the petitioner moved this Court in W.P(MD)No.10076 of 2009. The writ petition was disposed of by directing the authorities to pass orders on the basis of the inspection carried out by the officials of the board expeditiously. Subsequently, in 2014, the officials inspected the petitioner Ashramam and took custody of five children with less than 5 years of age. Therefore, the petitioner Ashramam once again constrained to approach this Court in W.P(MD)No.15902 of 2014 seeking to quash the order dated 16.09.2014 and directing to release the custody of 5 children. Notice was ordered in the writ petition. During the pendency of the writ petition, steps were taken to register the Ashramam under the JJ Act and this fact was also informed to this Court. Taking note of the submission, an interim order was passed by this Court directing the authority concerned to pass appropriate orders on the proposal submitted by the petitioner Ashramam within the stipulated time. Thereafter, it appears that the petitioner Institution was registered under the JJ Act by the Commissioner of Social Defence, Chennai, on 27.06.2017. After registration, the custody of the children was also taken over and was handed over to the petitioner Ashramam except one child, Gajanani, who was placed in the custody of the second respondent.

4.According to the petitioner, in altogether, 28 children were returned to the petitioner Ashramam and they were all living like one family and they have been attending the local school in the neighbourhood. According to the petitioner, the local schools were willing to admit these students for further studies. In view of the registration of the petitioner Ashramam under the JJ Act, there was no legal impediment for return of the one child to the petitioner. In this regard, a representation was made and that there was no



response and therefore, the present writ petition is filed seeking a Writ of Mandamus.

5. Notice was ordered to the respondents and on behalf of the respondents Mr. B. Pugalenthir, learned Additional Advocate General appeared.

6. During the course of the hearing, the learned Additional Advocate General was directed to ascertain the present status of the child whose return is also subject matter of the present litigation. On ascertaining the factual position, the learned Additional Advocate General reports before this Court that the child Gajanani is willing to come back to the petitioner Ashramam and the second respondent has also no objection to send her back from their custody.

7. According to the learned Additional Advocate General, he had personally verified with the child concerned and other well-wishers of the child of both from the petitioner Ashramam as well as the second respondent and the learned Additional Advocate General being fully satisfied about the intention of the child and he would submit before this Court that the child may be returned to the petitioner Ashramam and an order may be passed to that effect.

8. In fact, the child was brought before this Court and the learned Additional Advocate General personally impressed upon this Court about the child who is eager and willing to go back to the petitioner Ashramam.

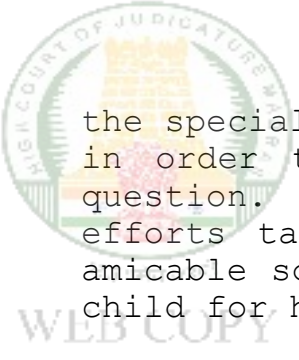
9. Mr. V. Vijayshankar, learned counsel appearing for the petitioner would submit that since the child has to be admitted in the local school in order to pursue her studies without any hindrance to her academic activities, he would therefore request the Court to pass the orders on the basis of the submission by the learned Additional Advocate General.

10. Considering the submission made on behalf of the counsels and particularly the submission made on behalf of the learned Additional Advocate General, this Court passes the following directions:-

(a) The second respondent is directed to return the child named in the affidavit viz., Gajanani to the petitioner Ashramam by handing her over to the custody of the petitioner Ashramam on or before 06.09.2018.

(b) The petitioner Ashramam is directed to take back the child and provide all the facilities as enjoyed by her when she was in the custody of the petitioner and before she was taken over by the respondent.

11. This order is passed by this Court on being satisfied with



the special efforts taken by the learned Additional Advocate General in order to safeguard and protect the interest of the child in question. This Court therefore places its appreciation for the efforts taken by the learned Additional Advocate General to find amicable solution in order to protect the paramount interest of the child for her welfare in future.

11. With the above directions, this Writ Petition is allowed. No costs.

Sd/
Assistant Registrar (CS-II)

/True copy/

Sub Assistant Registrar (CS-IV)

To

1. The Chairman,
The District Child Welfare Committee,
Government Child Home Campus,
V.O.C. Nagar,
Thanjavur - 7.

2. The Chairman,
The District Child Welfare Committee,
No.38, G.M.Nagar,
Ukkadam,
Coimbatore,
Coimbatore District.

+2cc to Mr.V.KARTHIKEYAN, Advocate, SR.No. 80913

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