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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment pronounced on: 6 March, 2018

+ W.P.(C) 10870/2016

MAHENDER SINGH

..... Petitioner

Through Mr. Rahul Kadyan, Adv.

versus

STATE (GOVT OF NCT OF DELHI) AND ANR.

....Respondents

Through Mr. Santosh Kr. Tripathi, ASC
for R-1 & 2.

Ms. Vibha Mahajan Seth, Adv.
for R-3.

CORAM:-

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J. (ORAL)

1. This is a writ petition in which a direction is sought that respondent no.2/Child Welfare Committee should hand over the custody of Jyoti, Yuglesh and Jatin to the petitioner, i.e., their father.

2. It appears that the petitioner and his wife, one, Ms. Sarita/respondent no.3 had a matrimonial dispute; resultantly, the children were put in custody of children's home by the name 'Sweet Home' pursuant to an order passed by respondent no.2/Child Welfare Committee. This order was passed by respondent no.2/Child Welfare Committee in the best interest of the children as according to its assessment they required care and protection. The respondent

no.2/Child Welfare Committee, it appears passed an admittance order qua the children as there was history of domestic violence and parental acrimony.

3. Learned counsel for the petitioner says that the relationship between the petitioner and his wife Sarita/respondent no.3 has improved since then and, therefore, the children would be handed over to one or the other parent. It is the contention of the learned counsel for the petitioner that the decision in this behalf could be left to respondent no.2/Child Welfare Committee.

4. Ms. Vibha Mahajan who appears on behalf of the wife, i.e., Sarita/respondent no.3 submits that this Court could remand the matter to respondent no.2/Child Welfare Committee which could then pass a suitable order in the matter after ascertaining what is in the best interest of the children.

5. Mr. Tripathi, who appears for respondent no.2/Child Welfare Committee says that the aforesaid suggestion made by parties would be best course in the given circumstances.

6. Having heard the learned counsel for the parties and after perusing the record, in my view, the best course would be to ascertain two things. First what is the wish and desire of children as to the parent in whose custody they wish to remain. Second, what would be in the best interest of the children. Respondent no.2/Child Welfare Committee in my opinion is ideally positioned to make this determination.

6.1 Accordingly, respondent no.2/Child Welfare Committee is directed to release the children to the custody of one or the other parent for the moment, since I am given to believe that they are living separately, though, their relationship has improved over a period of time.

7. The respondent no.2/Child Welfare Committee while carrying out this exercise will interface both the children as well as parents.

8. The petition is disposed of in the aforementioned terms.

RAJIV SHAKDHER, J

MARCH 6, 2018

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