



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD) No.9404 of 2019

and

W.M.P. (MD) Nos.7413 and 7414 of 2019

Kokila

... Petitioner

Vs

The Child Welfare Officer,
District Child Welfare Unit,
176, Muthu Surabhi Building,
Mani Nagar,
Palayamkottai Road,
Tuticorin.

... Respondent

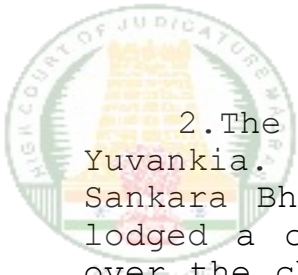
PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records pertaining to the impugned letter issued by the respondent in No.462/Ma.Ku.A/2017, dated 02.01.2018 quash the same.

For Petitioner : Mr.R.Subramanian

For Respondent : Mr.M.Rajarajan
Government Advocate

ORDER

The writ petitioner is residing at Kommadikkottai, Sathankulam, Tuticorin District. She is married to one Anandapal. The petitioner is aged about 46 years. Since they did not have children even after 18 years of marriage, they decided to adopt a child. Through relative, they were introduced to one Murugan and his wife Kalaivani. Murugan is visually challenged. Since they had three children, they were willing to give their third child born on 24.08.2015 in adoption to the petitioner and her husband. The petitioner and her husband as well as the said Murugan and Kalaivani profess Hindu religion. After conducting the usual adoption ceremony, the child was given by the biological parents in adoption on 14.09.2015 to the petitioner and her husband. An adoption deed was also executed.



2.The child was brought to the native place and named as Yuvankia. The child is presently studying Pre.K.G. in Sree Kanchi Sankara Bharathi Vidhyalaya. While so, one Emi a fellow villager lodged a compliant against the petitioner and her husband to hand over the child to the Welfare Committee. It was made clear that in the event of the petitioner failing to do so, action would be taken under the Juvenile Justice (Care and Protection of Children) Act, 2015. This communication is challenged in this writ petition.

3.The petitioner as well as her husband and the child were present before me, when the matter was taken up for hearing. I am satisfied that the child is being brought up well by the petitioner and her husband. The petitioner alleges that her husband is a part time plumber and that one Emi, resident of the village was taking water unauthorizedly from the public water land. Since this was objected by the petitioner and her husband, she lodged the said complaint.

4.The writ petition has to be allowed and the impugned communication has to be set aside on a short ground. The respondent is an authority under Central Act 2, 2015. Therefore, the respondent cannot go beyond the statutory provisions. The biological parents of Yuvanika are Hindus. The petitioner and her husband namely., Anandapal are also Hindus. If the biological parents want to give adoption, it will have to meet the requirements of Section 6 of the Hindu Adoption and Maintenance Act, 1956. It is not the case of the respondent that the adoption of Yuvanika by the petitioner and her husband is not valid under Hindu Adoption and Maintenance Act, 1956. No such stand has been taken. This is because from the materials on record it is seen that the persons adopting the child and the persons giving the child in adoption have the capacity to do so. Thus all the requirements set out in the said Act stand fulfilled. Section 56 (3) of the Juvenile Justice (Care and Protection of Children) Act, 2015 reads as follows:-

"Nothing in this Act shall apply to the adoption of children made under the provisions of the Hindu Adoption and Maintenance Act, 1956."

Since the adoption had taken place under the Hindu Adoption and Maintenance Act, 1956, an authority acting under Central Act 2, 2015 will have no jurisdiction.

5.The impugned order is illegal and without jurisdiction. It is unfortunate that the welfare of the child has not been borne in mind, merely because a complaint has been lodged. From the letter head of Emi, it is seen that she claims to be a member of the ruling party. Yet the authority could not have mechanically acted in the matter. In matters concerning children, one has to be very sensitive. The authority must see if their action will advance the interest of the child or not. In this case, the adoption was made as early as on 14.09.2015. The child was hardly 17 days old then. For



more than 3 ½ years the child is with the petitioner and her husband. The respondent have not borne in mind the consequences of removing the child from the petitioner's custody. Merely because a complaint was made, a direction to hand over the child could not have been issued. Viewed from any angle the order impugned in this writ petition has to be quashed. It is accordingly quashed. The writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

To:

The Child Welfare Officer,
District Child Welfare Unit,
176, Muthu Surabhi Building,
Mani Nagar,
Palayamkottai Road,
Tuticorin.

+1 CC to M/s.R.SUBRAMANIAN, Advocate SR-61307.

+1 CC to SPL GP SR-61610.

W.P. (MD) No. 9404 of 2019
16.04.2019

CS: (06/06/2019) 3P 4C