



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.06.2020

CORAM

THE HONOURABLE MR.JUSTICE **C.V.KARTHIKEYAN**

W.P. (MD)No.6076 of 2020

A.Ambika

... Petitioner

vs.

1. The Child Welfare Committee,
through its President/Chairman,
Pandian Nagar, Virudhunagar,
Virudhunagar District

2. The Inspector of Police,
Appayanayakanpatti Police Station,
Virudhunagar District.

3. Gomathi

4. Sundaralingam

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the 1st and 2nd respondents to pass an order so that custody of the petitioner's minor child Kathiresan to the petitioner on the basis of her representation dated 27.01.2020.

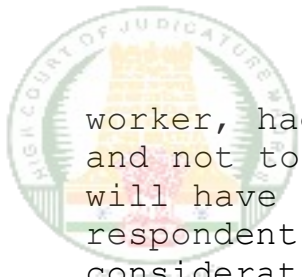
For Petitioner :Mr.G.Mariappan

For Respondents : Mrs.J.Padmavathi Devi,
Special Govt.Pleader for R1 and R2
Mr.K.M.Karunakaran for R3 and R4

O R D E R

The writ petition is filed by A.Ambika, w/o.Annamalai, residing in Puthur Post, Salem district, seeking a Mandamus directing the 1st and 2nd respondents namely the Child Welfare Committee, at Virudhunagar district and the Inspector of Police, Appayanayakanpatti Police Station of Virudhunagar district, to pass orders with respect to the custody of the minor child Kathiresan, whom the petitioner claims was born to her on 09.10.2019.

2. The young infant Kathiresan is hardly seven months old. In this very very short span of his life time, he has been subjected to much torture, harassment and neglect. Initially, the petitioner herein and her husband who is said to be a contract



worker, had taken a conscious decision not to have child with them and not to bring up the child by them. There are allegations which will have to be established during the course of enquiry by the 1st respondent that the petitioner and her husband had received consideration of around Rs.40,000/- from the 3rd and 4th respondents, namely Gomathi and her husband Sundaralingam and had handed over the child to them. In this connection, the version of the petitioner is that, this amount was received towards medical and other expenses, since the petitioner was in penury circumstances. The petitioner had already begotten two children and it is claimed that bringing up the 3rd child would be an economic burden on the petitioner. The petitioner claimed that it was in the welfare of the child that she had handed over the child to the 3rd and 4th respondents.

3. However, by some fortunate circumstance, which have to be examined during the course of enquiry by the Child Welfare Committee, the child was rescued and finally handed over to the 1st respondent namely the Child Welfare Committee. In this connection, a complaint was also forwarded to the 2nd respondent, Inspector of Police, Appanayakanpatti Police Station, at Virudhunagar district. Since the two agencies, namely the Child Welfare Committee and the Inspector of Police are examining the issues before them, it may not be appropriate on the part of this Court to give any view on the said issues. At the present stage, as seen in the counter of the 1st respondent, the child has been handed over to Grace Kennet Foundation, Mazhalai Illam, at Madurai for temporary care. The said foundation is said to be a Specialized Adoption Agency. The child is under care of the said agency from 23.12.2019.

4. Heard the learned counsel for the petitioner at quite some length. Learned counsel for the petitioner took pains to impress upon this Court that the intentions of the petitioner were very honest and that it was only towards the medical and other expenses that she had to depend on the 3rd and 4th respondents. The learned counsel stated that the petitioner had given all requisite documents including the hospital records to prove that she is the biological mother of the child and had also appeared before the 1st respondent for enquiry and had cooperated with the 1st respondent in all manner.

5. The learned counsel also pointed out the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015, as amended and stated that the child is a child who needs care and protection, but was emphatic in his submissions that since the biological mother is available, the child cannot be termed as an abandoned or surrendered child. Learned counsel state that the petitioner herein is willing to take the child back into custody and also stated that any undertaking as required would be



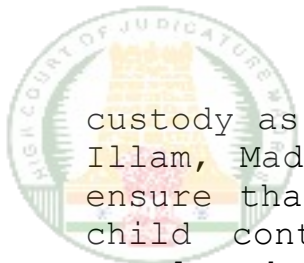
furnished that the petitioner would take care of the child in the future also.

6. Mrs.J.Padmavathi Devi, the learned Special Government Pleader, who also presented the counter filed by the 1st and 2nd respondents, stated that enquiry had been commenced and is on going. The writ petition has been filed for a direction to complete the enquiry. The learned Special Government Pleader stated that to determine the parentage of the child, a DNA test is required, since, the child has been recovered from the 3rd and 4th respondents and statements have been recorded from the 3rd respondent that sum of Rs.40,000/- had been paid to the petitioner herein. It is under these circumstances, the learned Special Government Pleader insisted that the enquiry should continue in its own course and also stated that even though medical records have been produced for the birth of the child, still it would be only in the interest of the child in future, that the DNA test is conducted to establish the parentage.

7. The learned counsel for the 3rd and 4th respondents submitted that they have no objection for the child being handed over either to the petitioner herein or to the Child Welfare Committee. It is therefore clear that they have decided to wash their hands off from any responsibility of taking care of the child.

8. In cases like this, the onus is on the Child Welfare committee which is the 1st respondent, and which is the authorized agency under the Juvenile Justice (Care and Protection of Children) Act, 2015, to examine the circumstances surrounding abandonment if it is a case of abandonment, and the circumstances surrounding the rescue of the child and also enquire the parents to determine their financial viability to take care of the child and their actual intention. In this connection, since the child had been handed over to the 3rd and 4th respondents at a very very early stage of less than two months, even though the medical records have been produced, the 1st respondent is justified in requesting that a DNA test be conducted, since it is beyond comprehension that a mother would hand over an infant of two months to stranger parents. I hold that the enquiry should continue in its own course.

9. The learned counsel for the petitioner stated that a time limit can be fixed. That may not be possible at the present stage, particularly because the mother of the child will have to subject herself for DNA examination and the samples will have to be verified at the State Forensic Laboratory and it is common knowledge that result of any test regarding DNA will take quite a considerable period of time. The child at present is in the



custody as stated above with the Grace Kennet Foundation, Mazhalai Illam, Madurai. A responsibility is cast on the 1st respondent to ensure that the said Foundation takes care of the child. Let the child continue to be in such custody till the enquiry is completed, particularly with respect to parentage. Thereafter, the 1st respondent may again call the petitioner and her husband to determine whether they are interested in taking back the child. At that point of time, the 1st respondent may counsel the petitioner and her husband and also examine the economic position of the petitioner and her husband. The petitioner must cooperate during the enquiry.

10. The fear of the learned counsel for the petitioner that the child may be given in adoption to some third party stranger family has to be allayed since, even if it is so given in adoption, naturally any Court which presides over such adoption procedure, will assess the economic and other capabilities of the parents, who take the child in adoption. Therefore, the learned counsel may assure the petitioner that no untoward incident may happen owing to any such adoption.

11. It would be appreciable if the 3rd and 4th respondents had come to this Court with a definite stand stating that they have the financial capacity to look after the child and that they will take responsibility of the child. They have not done so. At any rate, if the parentage of the child is established, then, the 1st respondent after conducting due enquiry, may take a considered decision either to hand over the child to the petitioner or depending on the circumstances, continue to have the child at Grace Kennet Foundation, Mazhalai Illam. If the child is handed over to the petitioner herein, then the mother/petitioner can exercise her options, either to bring up the child or to give the child in adoption following due procedure as enunciated under the Hindu Adoption and Maintenance Act, 1956. Any decision taken will have to be a considered decision taking the welfare of the child into consideration.

12. At this stage, the limited prayer in the writ petition being that some order should be passed by the 1st respondent, the 1st respondent is directed to continue with their enquiry and the petitioner is also directed to participate in the enquiry. The petitioner is informed that the result of the DNA test will take its own time and the 1st respondent cannot be faulted on that aspect. After completion of the enquiry and after establishment of the DNA test, the 1st respondent may take a considered decision either to hand over the child to the petitioner or to hand over to the Specialized Adoption Agency.



13. The decision is to be taken in accordance with the provisions contained in the Juvenile Justice (Care and Protection of Children) Act, 2015 and in accordance with the financial, economic and other conditions of the petitioner herein. The 1st respondent may take the petitioner into confidence and inform the petitioner once every three weeks about the welfare of the child. The learned counsel for the petitioner states that the petitioner would like to visit the child at the Grace Kennet Foundation. The petitioner may make necessary application through the 1st respondent to the said Foundation and in the presence of the officials of the 1st respondent, the petitioner is always permitted to visit the child.

14. With these observations, the writ petition is disposed of. No Costs.

Sd/-

Assistant Registrar (RECORDS)

// True Copy //

/ /2020

Sub Assistant Registrar (CS)

Pkn
To

1. The Child Welfare Committee,
through its President/Chairman,
Pandian Nagar, Virudhunagar,
Virudhunagar District
2. The Inspector of Police,
Appayanayakkanpatti Police Station,
Virudhunagar District.

+1 CC to SPL GP (SR-13136[F] dated 05/06/2020)

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