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

+ **CRL.REV. P. 251/2020 and CRL. M.A. 7797/2020, CRL.M.A. 7801/2020, CRL.M.A. 7802/2020 & CRL.M.A. 8206/2020**

TARA TOTS

..... Petitioner

Through: Ms Tara Narula, Advocate along with
Mr Siddharth Satija, Mr Abhinav
Sekhri and Ms Nupur Agarwal,
Advocates.

Versus

STATE & ORS.

..... Respondents

Through: Mr Amit Gupta, APP for State.
Ms Mohini Narain, Advocate for R-2.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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29.06.2020

[Hearing held through videoconferencing]

1. The petitioner has filed the present petition impugning an order dated 15.06.2020 (impugned order) passed by the Child Welfare Committee, South-East District, Kalkaji, Delhi (hereafter 'CWC') in Case No. 895/2019 directing that the child in question (a girl child aged about three and a half years – hereafter the child in question) be restored to the custody of her mother.
2. The petitioner is a charitable organisation. It is submitted on behalf of the petitioner that the impugned order has been passed without application

of mind and without following the requirements of the law.

3. Ms Narula, learned counsel appearing for the petitioner earnestly submitted that prior to restoring the child who has been placed in a child care institution, it would be necessary for CWC to prepare a child care plan and to verify whether the restoration of the child would be in his/her best interest. She submits that the petitioner had made several representations expressing its apprehension whether the mother of the child could provide her with a safe environment. She also drew the attention of this Court to the impugned order and submitted that the same indicates that the child in question was directed to be restored to her mother with the condition that the child must be placed in the care of her mother-in-law (mother of the father of the child), who resides in Village Rudrapur, District Gorakhpur, Uttar Pradesh. She submitted that CWC had not examined whether the paternal grandmother of the child in question was is in a position to take care of the child in question and provide her a safe environment. She stated that no investigation was conducted to ascertain her living conditions and whether the same were suitable for bringing up a child. She also submitted that the child in question had a weak immune system and required a nebulizer several times a day. In the circumstances, it was necessary for CWC to have ensured that a proper child care plan was prepared, which also takes into account the medical condition of the child in question.

4. Mr Gupta, learned counsel appearing for the CWC submitted that one of the objects of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereafter 'the JJ Act') is to ensure that the child is united with the family. He also placed on record a social investigation report which

indicates that both the parents of the child in question reside at A-37, Ganesh Nagar, New Delhi. Both of them are earning and are capable of taking care of the child in question. He submitted that there appears to be some communication gap and the mother of the child in question does not propose to send the child in question to village Rudrapur, District Gorakhpur, Uttar Pradesh to be looked after by the child's paternal grandmother; but it is contemplated that she (the child's paternal grandmother) would come to Delhi and reside with the family and assist in looking after the child in question as both the parents of the child are employed.

5. The child in question was placed in the care of the petitioner in terms of the order dated 04.11.2019 passed by the CWC. It is apparent from the order that the mother of the child was engaged in a prohibited profession and she had consented that the child is placed in the care of the petitioner as the environment in which the child was being brought up was not safe. It is also pointed out that prior to the said order, the petitioner had brought to the notice of CWC that there were two children, including the child in question, who were in need of protection.

6. This Court is of the view that CWC had found that the child in question was at risk and was in need of care and protection. It is, thus, mandatory for CWC to satisfy itself that restoring the child to her family would be in the best interest of the child in question.

7. This Court is informed that the mother of the child has since discontinued the prohibited profession as she was desirous of escaping the

said environment and providing a safe and conducive environment for bringing up the child in question. It is stated that she is now fully employed with an NGO (Kat Katha) and is also drawing salary from the said organisation. This Court is further informed that the father of the child in question is also employed in plying a public transport vehicle.

8. The social investigation report which has been forwarded by Mr Gupta, also indicates that the permanent address of the parents of the child in question has been verified.

9. This Court is also of the view that an individual child care plan is required to be prepared considering that it is reported that the child has a weak immune system and requires special care. This Court is of the view that it would be apposite that CWC also examine the apprehensions expressed by the petitioner in addition to ensuring that an individual child care plan is prepared, before the child is restored to her parents.

10. Insofar as the impugned order is concerned, clearly the same is not sustainable as it was passed on an erroneous premise that the child in question would be sent to her paternal grandmother, who resides in Village Rudrapur, District Gorakhpur, Uttar Pradesh. The said order is, accordingly, set aside.

11. The matter is remanded to the CWC to consider afresh in the light of the observations made above. If considered necessary, CWC shall have the child in question medically examined. The CMO, at the CGHS facility at Delhi High Court shall examine the child in question, if so requested by the CWC.

12. The petition is disposed of in the aforesaid terms. All the pending applications are also disposed of.

VIBHU BAKHRU, J

JUNE 29, 2020
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