

09.07.2021

Ct. No.13

Sl. No.57

pk/akd

W.P.A. 11071 of 2021 [via video conference]

[Sri Shankar Das -Vs- The Child Welfare Committee & Ors.]

Mr. Srijib Chakraborty
Mr. Subhasis Chakraborty
Mr. Suryaneel Das
Mr. Suvrnil Saha

... .. for the petitioner

Ms. Sutapa Sanyal
Mr. Pinaki Bhattacharyya

... .. for the State

The writ petitioner is a 60 years old person who has a mentally unsound daughter called Parbati Das. The petitioner claims to have discovered that his daughter was five months pregnant. It is further stated that since the petitioner's daughter is unsound mentally, the child-delivery was organized at home. A male child is stated to have been born.

Upon receiving information of the child which the petitioner claims was born to his daughter, the District Social Welfare Officer, Hooghly had approached the Chairperson of Child Welfare Committee, Hooghly and a request was made to rescue the newborn. The authorities suspected that the child may have been procured illegally by the petitioner. The District Social Welfare Officer had averred before the Child Welfare Committee that the child was illegally adopted by the writ petitioner.

Based on the above, the authorities at Hooghly under the Juvenile Justice (Care and Protection) Act, 2015 confronted the petitioner and asked him to hand over the child which he had declined. The authorities thereafter rescued the child from the

custody of the petitioner and the child is in the care of Sri Pradip Kumar Matabbar, Social Worker, Specialised Adoption Agency, namely Satya Bharati and Smt. Bulu Pal, associated with an NGO called Satya Bharati, the respondent no.2.

Learned counsel for the petitioner submits that the procedure adopted for taking away his grandchild from his custody is in violation of the provisions of the Act of 2015. It is further submitted that the Child Welfare Committee may conduct an enquiry but the child should be handed over back to his client forthwith.

This Court has heard the learned counsel for the petitioner as well as the State respectively.

Learned counsel for the State produces instructions given by the Inspector-in-charge, Chinsurah Police Station, Chandannagar Police Commissionerate dated 8th July, 2021. Detailed documents showing that the procedure adopted by the Child Welfare Committee in taking custody of the child was as per law. Let a copy of this instructions and annexures thereto be made available to the learned counsel for the petitioner.

This Court notes that the procedure for taking custody and welfare of a child are, inter alia, indicated under the aforesaid Act of 2015 particularly from Sections 31 to 38.

Even without any formal communication or representation from the Child Welfare Committee, this Court is of the view that any small infraction of any procedure by the authorities of the Child Welfare Committee in taking custody of the child should be ignored in view of the fact that the welfare and care of the child

holds primacy over any other right of any individual claiming parentage and guardianship.

In the above circumstances, the prayer of the petitioner for being handed over custody of the child is rejected at this stage.

The child shall remain under the care of the persons authorised by the Child Welfare Committee. The writ petitioner shall however, have access to the child only to visit and see the baby. The petitioner shall not be allowed to touch the child. Proceedings have also been instituted by the petitioner and are pending before the District Judge, Hooghly under the Guardians and Wards Act.

The writ petitioner has already made a representation dated 30th June, 2021 to the Child Welfare Committee for custody of the child. The Child Welfare Committee shall decide the application of the petitioner in accordance with the procedure laid down under the Act of 2015 and strictly within the time period specified therein. The period of 15 days shall commence from the next date of receipt of a copy of this order.

The respondent authorities are restrained from putting up the child for adoption for a period of 45 days from any order that may be passed by them on the writ petitioner's application, if it goes against him.

The writ petitioner shall be furnished all documents, excepting confidential documents, by the Child Welfare Committee that they may have in their custody which prompted them to take the child away from the writ petitioner.

With the aforesaid directions, the writ petition is disposed of.

There will be no order as to costs.

All parties are to act on a server copy of this order duly downloaded from the official website of this court.

(Rajasekhar Mantha, J.)