

20.12.2021
Court No.13
Item No.17
AP

WPA 26657 of 2016

**Biplab Malakar
Vs.
State of West Bengal and Ors.**

(Through Video Conference)

Mr. Jamaluddin Ahmed

... For the Petitioner.

Mr. Samrat Sen
Mr. Amitava Mitra

... For the State.

Mr. Billwadal Bhattacharyya
Mr. Anish Kumar Mukherjee
Mr. Amrit Sinha

... For the Respondent No.6.

Despite notice Child Welfare Committee is not represented.

This Court takes a very grim view of the conduct of the Child Welfare Committee. The Secretary, Ministry of Health and Family Welfare shall look into the conduct of the said CWC and take appropriate steps.

It appears from the records that the petitioner is indeed the biological father of one Subha Malakar. The Child was found in a bad condition and custody was taken by the elder uncle, Bijay Malakar. The child is stated to have left on his own will at the age of nine in the year 2016.

The Child Welfare Committee also appears to have given temporary custody of the child to the elder uncle, Bijay Malakar.

The report of the Officer-in-Charge, Chetla Police Station, Kolkata dated 11th December, 2021 is taken on record. It appears from the report that the child is not willing to go back to his father. The child appears to be studying well and is comfortable in a school called Mitra Institution in Class VIth standard and on the verge of promotion to the Class VIIth standard.

In that view of the matter, the Court directs the petitioner to approach the Child Welfare Committee with an appropriate application for return of custody and the Child Welfare Committee shall consider the same and dispose of the matter in accordance with law.

The rights of the petitioner to approach the concerned Court under the provisions of Guardian's and Wards Act are also reserved.

The Child Welfare Committee and the appropriate authorities under the Statute shall consider the above and pass appropriate orders after hearing the petitioner, elder uncle Bijay Malakar, Chetla Police Station and the child himself.

In so far as the case which has been registered at Chetla Police Station vide No.221 dated 4th October, 2016 under Section 363 of the Indian Penal Code on the complaint of the petitioner, the IO has filed a final report to the effect that there is a mistake of fact and it was accepted by the Chief Judicial Magistrate, Alipore on 3rd May, 2017.

Learned counsel for the petitioner prays for visitation rights. It appears from the records that the house of the father is located just behind the house of the uncle where the child is staying. The Child Welfare Committee shall bear the aforesaid in mind while considering the application of the petitioner/father for visitation rights of his child.

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

There shall be no order as to costs.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)