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WPA 9103 of 2020

**Shadab Humayun
Vs.
State of West Bengal & Ors.**

Mr. Debanjan Mukherjee,
Mr. Shuvajit Bose .. for the petitioner.

Md. Zeeshan Uddin,
Ms. Amreen Khatoon ... for respondent no.4 and 5.

This petition has been filed by the writ petitioner seeking for issuance of a writ of habeas corpus on the ground that the whereabouts of his three minor children are not known to him. The petitioner's wife is no more and three minor children are under the care and protection of the maternal grand-parents, who are the respondent nos.4 and 5 in the writ petition.

We have perused the materials placed on record, more particularly, the order no.17 dated 15th February, 2020 in an application filed by the respondent nos.4 and 5 for grant of guardianship of the minor children. It is the submission of the learned counsel appearing for the petitioner that such application has been dismissed and the respondent nos.4 and 5 are not entitled to be the guardian of the minor children and the petitioner is entitled to have the custody of the minor children as he is the father and natural guardian.

Firstly, we need to point out that the jurisdiction of this Court to issue a writ of habeas corpus would arise only in a case where there is an unlawful detention of a person. From the facts, it is clear that the children are under the care and custody of the maternal grand-parents, respondent nos.4 and 5 herein and it appears that the said position was so ever since the death of the mother of the children. Therefore, if at all, the petitioner seeks for custody, his remedy lies elsewhere and not before this Court by way of a habeas corpus petition. Furthermore, on seeing the representation given by the petitioner, it is seen that what he seeks, is for custody and guardianship of the children and such relief cannot be granted to the petitioner in this writ petition.

Therefore, the prayers sought are thoroughly misconceived and hence, the writ petition is dismissed.

However, taking note of the fact that the children should also have an opportunity to know, who their father is, we give liberty to the petitioner to make a request to the respondent nos.4 and 5 to give an opportunity to the petitioner to meet the children for a brief time in a common place. However, if the children are not willing to meet, then it is open to the petitioner to approach the appropriate forum in accordance with law.

(T. S. Sivagnanam, J.)

(Hiranmay Bhattacharyya, J.)