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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-32896-2021

Date of decision : 17.08.2021

Ashish Uppal

...Petitioner

Versus

Child Welfare Committee and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Dhananjay Mittal, Advocate for the petitioner.

Mr. Sunil Kohli, Chairperson, CWC Gurugram alongwith
Ms. Upasna Sachdev, in person for respondent No.1.

Mr. Tarun Seth, Advocate for respondent Nos.2 and 3.

(Through Video Conferencing)

VIKAS BAHL, J. (ORAL)

This is a petition filed under Section 482 Cr.P.C. for quashing of Memo No.1219/CWC/GGM dated 09.08.2021 issued by the Child Welfare Committee (hereinafter to be referred as "CWC"), Gurugram by which minor Verushka has been sent to Child Care Institute, Gurugram (Annexure P-9) and the transfer order dated 09.08.2021 (Annexure P-10).

The case of the petitioner is that the petitioner is blood brother of minor Verushka's father. The parents and grand parents of minor Verushka contracted COVID-19 and unfortunately passed away. The minor Verushka had been residing with the petitioner since 24.04.2021. The

petitioner had filed a petition under Section 7/15/16 of the Guardians and Wards Act, 1890 (hereinafter to be referred as “the Act of 1890”) dated 15.06.2021 before the competent Court and the same is pending. It is further the case of the petitioner that on the asking of respondent Nos.2 and 3, respondent No.1 sought the production of the child and ultimately, was produced before respondent No.1-CWC on 09.08.2021 and on the said date itself, CWC had ordered that the child be sent into the custody of Child Care Institute by the name of “Shelter Progetto”. The same has been done by virtue of the impugned orders (Annexures P-9 and P-10).

It is the case of learned counsel for the petitioner that the petitioner and his family members have great love for the minor child and for the said purpose, they even filed a petition under the Act of 1890. It is submitted that the petitioner has a four year old son and the minor child was very happy in his company. Learned counsel for the petitioner has referred to a petition filed by the petitioner under Sections 7/15/16 of the Act of 1890 to highlight the fact that they were seeking only an order with respect to personal custody/guardianship of minor Verushka and had stated that the respondents are trying to forcibly abduct her. Further reference has been made to the civil suit filed by respondent Nos.2 and 3 before the Civil Judge (Senior Division), Gurugram, Haryana, to state that respondent Nos.2 and 3 have filed the petition for appointment as Guardian and the custody of Verushka and also of her property. Clause 4 of the table appearing at page 31 of the paper book has been highlighted to show that even as per the said petition, it has been stated that child is in the custody of the present petitioner and his wife. Clause 4 of the table appearing at page 31 of the

paper book, is reproduced as under:-

4	The name and residence of the person having the custody or possession of the person or property of the minor	The minor child is in unlawful custody of respondent Nos.2-5, at Flat No.D 416, Tulip Grand, near Phoenix Mall, Pilibhit Bye Pass Road, Bareilly, UP
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It has been submitted that the said petition was filed on 21.07.2021 and thus, on the said date, custody being of the petitioner and his family members has been admitted, although it has been stated that same is illegal custody. It has further been argued that respondent No.1 i.e. Child Welfare Committee would only come in case where the child is in need of care and protection and the said expression has been defined in Section 2 (14) of The Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter to be referred as “the Act of 2015”) and it has been stated that it is only where the child does not have any home or place of abode or is covered by the other expressions as mentioned in Section 2(14) of the Act of 2015 that question of sending the child to the custody of respondent No.4 would arise. None of the conditions as mentioned in Section 2(14) of the Act of 2015 are even remotely met in the present case inasmuch as the petitioner and his family members have great love and affection for the minor child and the minor child is residing with them and in fact, the minor child was studying in Vyas World School in Bareilly. It has further been argued that in fact, respondent No.1 at Gurugram did not even have jurisdiction to proceed in the matter as in accordance with Section 27(1) of the Act of 2015, the State Government had notified in every District one Child Welfare Committee would be constituted and since the child was residing in Bareilly, thus, only CWC at Bareilly could have initiated the

action and that too in an appropriate case, and thus, the whole act of the minor child being taken away from the petitioner is illegal and has caused great hardship and harassment to the minor child and the petitioner.

Learned counsel for the petitioner has further submitted that the property which the minor is to inherit shall stay with her and the petitioner only wants the custody of the child.

On the other hand, learned counsel appearing for respondent Nos.2 and 3 has submitted that respondents Nos.2 and 3 are real paternal Aunt and Uncle of the said child, Verushka. It has been stated that they also have extreme love for Verushka. It has further been stated that even respondent Nos.2 and 3 have filed custody case in the competent Court in Gurugram and the same is pending. He has stated that the property which the said Verushka would inherit shall stay with her and respondent Nos.2 and 3 also want only the custody of the said Verushka as they have lot of love and affection for her. It is stated that respondent Nos.2 and 3 had contracted COVID-19 and, therefore, minor child Verushka was sent to their in-laws house which is also in Bareilly and it is from the said house that in the month of April, 2021, that the child was taken by the petitioner on the promise that after taking care of her for a few days, he would return the child to the in-laws who would in turn return the child to respondent Nos.2 and 3.

Today, Mr. Sunil Kohli, Chairperson, CWC Gurugram as well as Ms. Upasna Sachdev, have appeared through Video Conferencing in person, representing respondent No.1 and have stated that they have no objection in case the minor child Verushka is sent to either of the parties as

apparently it seems that both of them have love and affection for the child.

This Court has considered the entire matter and is of the opinion that impugned orders dated 09.08.2021 (Annexures P-9 and P-10) deserve to be set aside and the custody of the minor child deserves to be handed over to the petitioner. The facts of the present case would clearly show that although both the parties had shown their great love and affection towards the minor child but the fact which has not been disputed is that child Verushka has been residing with family of the petitioner. In the family of the petitioner, there is a minor four years old boy who would be very good company to Verushka. In the petition filed by the petitioner under the Act of 1890, it is stated that the petitioner has the custody of minor child and even in the petition filed before the Civil Court by respondent Nos.2 and 3, as is apparent from the relevant portion of the same, which has been reproduced hereinabove, it is clear that custody of the minor child was with the petitioner before the same was taken by respondent No.1. It is not a case of either of the parties that any harm, mental torture was being caused to the minor child or that she was not been taken care of or any other act was being done so as to bring it within the provision of Section 2(14) of the Act of 2015. In fact, the case of both the parties is that they both have love and affection for the minor child and that they have better right to have the custody of the minor child. The paramount consideration for this Court is the welfare of the minor child Verushka. Her continuance in the shelter home would cause great mental and psychological harm to the child, moreso, when there are two close relatives and both are wanting to take care of the child and have sufficient means to do the same. The minor child

deserves to live in a friendly and familiar environment which can be best provided by the petitioner or by respondent Nos.2 and 3 and not by respondent No.1 or any shelter home. Since, the minor child was admittedly residing with the family of the petitioner when her custody was taken by respondent No.1, thus, this Court feels that till the time the matter is not adjudicated by the Guardian Court/Civil Court with respect to custody of the minor child, the custody of the minor child should be given to the petitioner so as to observe status quo ante as it was prevailing before the impugned act/action, challenged in the present petition, took place.

This Court is also of the view that in the present case, it cannot be stated that the provision of Section 2(14) of the Act of 2015 are attracted so as to say that minor is in need of care and protection and even the initiation of the impugned proceedings at the behest of respondent Nos.2 and 3 in Gurugram when the minor child was admittedly residing in Bareilly cannot be justified and thus the impugned act and the impugned orders are set aside. During this COVID pandemic, the child could not have been made to travel from Bareilly to Gurugram. Respondent No.1, is thus directed to hand over the custody of the minor child to the petitioner and for the said purpose, the petitioner would approach respondent No.1 on 20.08.2021 at 11:00 AM and on the said date itself, the custody of the minor child Verushka would be handed over by respondent No.1 to the petitioner. The petitioner is directed to take proper care of the said Verushka till the time she is in his custody.

It is made clear that the present order has been passed solely on the basis of the fact that the said minor child was residing with the petitioner

last. No expression of opinion on the merits of the case as to who would be entitled to the custody has been made by this Court. The aspect of custody would be decided independent of the observations made by this Court, in the custody petition/petitions filed by the respective parties.

It would also be open to the petitioner and respondent Nos.2 and 3 to move applications for interim custody or any other application in accordance with law in the Courts where the custody case is pending and it would be open to the Guardian Court/Civil Court to pass necessary orders in accordance with law independent of the observations made in the present order.

This Court hopes that the petitioner as well as respondent Nos.2 and 3 would stand firm on their undertaking that they would not sell the property which would come in the share of the said Verushka after the death of her parents and grand parents and would put it in her name once she attains majority.

In view of what has been observed above, the present petition is disposed of in the abovesaid terms.

17.08.2021*Pawan***(VIKAS BAHL)
JUDGE****Whether speaking/reasoned:-****Yes/No****Whether reportable:-****Yes/No**