

13.09.2022

Court No.32
rpan/02

WPA (H) 55 of 2022
Agnidipa Das & Another
– Versus –
The State of West Bengal & Others

Mr. Kishore Dutta,
Mr. Dwarik Nath Mukherjee,
Mr. Abhijit Basu,
Mr. Rajdeep Majumdar,
Mr. Sourav Chatterjee,
Mr. Mayukh Mukherjee,
Mr. Anish Kumar Mukherjee
... for the Petitioners.
Mr. Sirsanya Bandopadhyay,
Mr. Arka Kumar Nag
... for the State.
Mr. Prajnadeepta Roy
... for the Private Respondent no.5.

The mother and the grand-mother of a female child, aged about five years, have approached this Court seeking a writ of *habeas corpus* to rescue and produce the child and to hand over her custody to them.

Shorn of unnecessary details, the facts are that the petitioner no.1 married the respondent no.5 on 6th September, 2015. They were blessed with a female child on 2nd July, 2017. Subsequent thereto, there was a matrimonial dispute between them and as such, the petitioner no.1 started residing separately along with the child at her own house at 30/F, Hara Mohan Ghosh Lane, Police Station – Beliaghata, Kolkata – 700 085 on and from the month of January, 2021. The respondent no.5 used to occasionally meet the child at the residence of the petitioner no.1. On 6th September, 2022, the respondent

no.5 took the child to the school stating that he would drop her back in the evening. However, as the child was not returned, the petitioner no.1 went to the residence of the respondent no.5 at F/3/6, Karunamoyee Housing Estate, Salt Lake, Sector – II, Police Station – Bidhannagar (East), Kolkata – 700 097 to bring her back but the respondent no.5 denied to hand over the child. Prior thereto, on 5th September, 2022, the respondent no.5 filed an application under Act VIII and the same is pending before the competent forum.

Heard Mr. Dutta, learned senior advocate appearing for the petitioners, Mr. Bandopadhyay, learned Junior Standing Counsel, appearing for the State respondents and Mr. Roy, learned advocate appearing for the respondent no.5.

Habeas corpus proceedings are not to justify or examine the legality of the custody. It is a medium through which the custody of the child is addressed to the discretion of the Court. It is true that in child custody matters, a detailed inquiry is required but there is nothing which can stand in the way of this Court in exercising its *parens patriae* jurisdiction.

However, we may not be understood to have expressed any opinion on the merits of the guardianship application pending before the competent court and the same shall be considered on its own merits. Any interlocutory application filed in connection with the guardianship proceedings shall also be considered by the

competent Court on its own merits without being influenced by the observations made in this order.

Prima facie, the child is residing with her mother continuously since the month of January, 2021. She had been admitted in a school, namely, Bhavan's Gangabux Kanoria Vidyamandir at FA/III, Salt Lake, Kolkata – 700 097. She is attending her classes in the said school and is also attending her private tuitions at her mother's residence. The child is only about 5 years of age and she requires the love, care and affection of her mother. It appears that the respondent no.5 used to occasionally visit the child and such access was not denied by the petitioners. The child crossed her age of five years in the month of July, 2022 and the guardianship application was filed by the respondent no.5 on the date prior to the date of the alleged incident.

In such circumstances and in the best interest of the child, we are inclined to invoke our jurisdiction and direct that the child should be united with her mother. However, the respondent no.5, being the father should also be given the access to meet with the child and to interact with her.

Accordingly, the present *habeas corpus* petition, being WPA (H) 55 of 2022 is disposed of with the following directions:

- a) The respondent no.5 shall hand over the custody of the child to the petitioner no.1 at her residence by 16th September, 2022.

- b) The petitioners shall provide access through video conferencing on every Monday, Wednesday and Friday to the respondent no.5 for conversation and interaction with the child during the period from 08:00 p.m. to 09:00 p.m.
- c) The respondent no.5 would also be at liberty to visit the child on every Saturday at the residence of the petitioner no.1 from 07:30 p.m. till 09:00 p.m. and during such visit, the petitioners shall ensure the comfort of the said respondent no.5.
- d) The respondent no.5 would also be at liberty to take the child on every Sunday from the residence of the petitioner no.1 at 11 a.m. and shall drop her at school at 07:00 a.m. on Monday and on the said day the petitioner no.1 shall pick up the child from the school.
- e) The respondent no.5 would also be at liberty to visit the child at the residence of the petitioner no.1 on the days of festivals of '*Durga Puja*', '*Kali Puja*' and '*Diwali*' from 12 noon till 8 p.m. and during such visit, the petitioners shall ensure the comfort of the said respondent no.5.

Needless to observe that the respondent no.5 would also be free to present gift items to her child.

In the event the custody of the child is not handed over to the petitioner no.1 by the respondent no.5, the State respondents shall provide necessary aid to the petitioner no.1.

Similarly, in the event the visitation rights, as granted to the respondent no.5 by this order are denied, the State respondents shall provide necessary aid to the said respondent no.5.

As no affidavit has been called for from the State authorities, the allegations made against them in the present *habeas corpus* petition shall be deemed to have been denied.

Before parting with the case, we cannot but express our deep anxiety over the matter. During infancy and impressionable age, the care and warmth of both the parents are required for the welfare of the child and we do hope that in this case, the petitioner no.1 and the respondent no.5, who are both qualified doctors, would realise what their responsibility should be and set right their broken home for the sake of their child.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)