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Crl.RC.No 925 and 933 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2022

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THE HON'BLE MR.JUSTICE P.VELMURUGAN

CRL.RC Nos. 925 and 933 of 2020

AND

CRL.MP. No. 6507 of 2020

S.Balasundari
D/o. Subramaniam

... Petitioner in both petitions

vs.

1.Subash

2.Child Welfare Committee,
Matt Children's Home,
57 Kamarajar Nagar, Vanniyapalayam,
Cuddalore -607001.

... Respondents in both petitions

Common Prayer: Criminal Revision Petition filed under Sections 397 r/w. 401 CrPC to call for the records of the 2nd respondent in Letter No. 78/CWC/2020, dated 17.07.2020 and Letter No. 14/OU/2019, dated 23.12.2019 and set aside the same.

For Petitioner : M/s. V.Chethana
(in both petitions)
For Respondents : M/s.S.C.Viswanath – R1
Mr. R.Murthi, GA (Crl.Side) - R2
(in both petitions)

COMMON ORDER

Challenging the impugned orders dated 23.12.2019 and 17.07.2020 by the 2nd respondent/Child Welfare Committee, Cuddalore, the

<https://www.mhc.tn.gov.in/judis> present revision petitions are filed.



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2. Since the issue involved in both the criminal revision petitions and the parties are one and the same, they were heard together and disposed of by a common order.

3. The learned counsel for the petitioner would submit in brief is that the petitioner is the wife and the 1st respondent is the husband, both got married in the year 2007, due to their wedlock they gave birth to two children namely Akash Subash and Anusha Subash, aged about 12 years and 10 years respectively. The petitioner has filed cases before the All Women Police Stations at Cuddalore and Sirkazhi for dowry harassment and cruelty inflicted by the 1st respondent and his family members. The 1st respondent approached the 2nd respondent/Child Welfare Committee for the care and protection of the children. Subsequently, the 2nd respondent by its orders dated 23.12.2019 and 17.07.2020 passed orders directing the 1st respondent to take the minor children along with him and retain custody. Challenging the same the present revision petitions are filed.

4. The learned counsel for the petitioner would further submit that ever since the order passed by the 2nd respondent, the 1st respondent has been taking advantage of the same and has been illegally separating the petitioner from her minor kids. The learned counsel for the petitioner would further submit that the 2nd respondent/Child Welfare Committee has no

<https://www.mhc.tn.gov.in/> authority to pass order against natural guardian, therefore the order passed



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by the 2nd respondent is without authority and the same is illegal. Further the learned counsel for the petitioner would submit that the petitioner has approached the competent Court for custody of the children and the same is pending in the stage of examination of witnesses. Therefore, the impugned orders passed by the 2nd respondent is liable to be set aside.

5. The learned counsel for the 1st respondent has no words to say though he supported the impugned orders passed by the 2nd respondent.

6. Heard both sides and perused the materials available on record.

7. Admittedly, the petitioner is the wife and the 1st respondent is the husband, out of their wedlock they have two children. There is no dispute with regard to the relationship between the petitioner and the 1st respondent. Though the learned counsel for the 2nd respondent contended that the children are not willing to go with the petitioner/mother, the fact remains that the petitioner and the 1st respondent are the natural as well as legal guardian to their children.

8. It is a settled law that a Child Welfare Committee constituted under Juvenile Justice (Care and Protection of Children) Act, 2015, has no power to hand over the custody of a minor to either parent when the issue of custody is pending before the family Court under the provisions of the Guardians and Ward Act, 1890. The committee cannot be permitted to usurp



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the jurisdiction of the competent Court exercising powers under the provisions of the Guardians Act. The said jurisdiction conferred by law cannot be taken away by the committee which is a statutory body. Further, even if the committee was of the opinion that the children were in need of care and protection, it ought to have referred the matter for consideration before the family Court where the issue with regard to the custody of the minor is pending. The usurpation of jurisdiction by the committee in a matter which is sub-judice before the Court of competent jurisdiction under the Guardians Act cannot be sustained in the eye of law.

9. In view of the above proposition of law, and taking note of the fact that the petitioner has approached the competent Court for custody of the children and the same is pending, the impugned orders passed by the 2nd respondent/Child Welfare Committee which is not a competent authority, is liable to be set aside as illegal.

10. In the result, the impugned orders dated 23.12.2019 and 17.07.2020 passed by the 2nd respondent are set aside and the criminal revision petitions are allowed. Consequently, connected Miscellaneous Petition is closed. It is for the parties to work out their remedy in the manner known to law.

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: Yes / No

P.VELMURUGAN, J.

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