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H.C.P.No.1165 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.09.2022

Coram

The Honourable Mr. Justice **P.N.PRAKASH**
and
The Honourable Mr. Justice **RMT.TEEKAA RAMAN**

H.C.P.No.1165 of 2022

J.Sumini

.. Petitioner

Vs.

1.The Commissioner of Police,
O/o.Commissioner of Police,
Greater Chennai,
No.132, E.V.K.Sampath Road,
Veppery, Periyamet,
Chennai – 600 007.

2.The Inspector of Police
(Law & Order),
G-3, Police Station,
Kilpauk, Chennai – 600 010.

3.The Chair Person,
O/o.The Chair Person,
Central Child Welfare Committee (CWC),
No.300, Kellys, Purasawalkam High Road,
Chennai – 600 010.

4.Fathima
(R4 impleaded vide order of this Court dated
06.09.2022 passed in Crl.M.P.No.13967 of 2022)

.. Respondents



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WEB COPY Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus directing the Commissioner of Police, Greater Chennai and the Inspector of Police (Law and Order), G-3, Police Station, Kilpauk, Chennai - 600 010, 2nd and 3rd respondents herein, to produce the detenues of the petitioner's minor foster children Deva @ Abel Francis, S/o.Fathima, aged about 5 years and Arularasi @ Abila Teresa, D/o.Fathima, aged about 2½ years, from the illegal custody of the authority concerned of the Central Welfare Committee (CWC), Office at No.300, Kellys, Purasawalkam High Road, Chennai - 600 010, 3rd respondent before this Court and set them at liberty and hand over the detenues to the petitioner herein on the basis of the petitioner's reminder representation dated 06.06.2022.

For Petitioner	: Mr.Dalit Tiger C.Ponnusamy
For RR 1 and 2	: Mr.R.Muniyapparaj, Addl. Public Prosecutor
For R4	: Ms.Shaikh Mehrunnisa Kasim



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ORDER

[Made by *P.N.PRAKASH, J.*]

This habeas corpus petition has been filed by the petitioner seeking a direction to produce her foster children viz., Deva @ Abel Francis, S/o.Fathima, aged about 5 years and Arularasi @ Abila Teresa, D/o.Fathima, aged about 2½ years, from the illegal custody of the third respondent and hand over them to her.

2. The minimum facts that are necessary to decide this habeas corpus petition are as follows:

2.1 One Fathima gave birth to a son viz., Deva @ Abel Francis, who was born on 29.09.2015 and a daughter Arularasi @ Abila Teresa, who was born on 31.01.2017. It appears that the matrimonial life of Fathima ran into a rough weather, on account of which, she got estranged from her husband and went into depression.

2.2 It is seen from the records that the two children were found roaming around Pulianthope area, which was noticed by that area police and they were rescued, produced before the Child Welfare Committee



(hereinafter “the CWC”), Chennai and was handed over to Maria Mercy Mission Terasa Charitable Trust (hereinafter “the trust”), which is run by the petitioner, on 29.11.2019. On the same day, Fathima was also handed over to the trust, so that, the mother and children could be together and Fathima was treated for her depression.

2.3 Alleging that on 14.02.2022, the CWC, Chennai, forcibly took away the two children from the custody of the petitioner's trust, this habeas corpus petition has been filed.

3. On notice, A.Tamilselvi, Chairperson, Central Child Welfare Committee, has filed a detailed affidavit dated 29.06.2022, wherein, in paragraph nos.2 to 4, it has been stated as follows:

“2. I respectfully submit that I deny all the averments contained in para 3 of the affidavit that on 28.11.2019 P4 Basin Bridge Police Station, Pulianthope apprehend one mentally ill woman Mrs.Fathima along with her children due to her public nuisance with her louder shout in the public place. For the welfare of the children, the concerned police handed over the children to the child helpline namely Don Bosco Anbu Illam Social Service Society, No.25, Dr.Kuzhanthai Street, Park Town, Chennai – 3, child helpline. Subsequently, the aforesaid police kept the aforesaid woman in the aforesaid 'Maria Mercy Mission Terasa Charitable Trust' under its memo. Further, I submit



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that the abovesaid child helpline produced the children rescued before the Child Welfare Committee (CWC), No.300, Purasawalkam High Road, Kellys, on the same day 28.11.2019. The CWC passed a temporary order on 28.11.2019 to Balamandir Children trust, T.Nagar, Chennai, to provide the need of care and protection to the aforesaid children Deva and Arul Arasi. Mother of the children got married in two times with different persons in which the boy born with first husband and the girl born with second husband. However, the aforesaid trust approached and written a requisition letter to the CWC on 29.11.2019 to be handed over the said children to them and represented that the mentally ill mother of the children is not taking food until she see her children and continuously crying to see their children. On the basis of their written requisition the CWC ordered the same in a short term placement pending enquiry for the welfare of the children and mother and the CWC did not intend to separate them and handed over the children to the aforesaid trust.

3. I further respectfully submit that the mother of the children had subsequent to the children kept in the said trust, due to her mental illness, ran away from the said trust on 30.11.2019 which is disclosed from the complaint filed by the said trust before P6 Kodungaiyur Police Station and left the children in the concerned trust. The said trust functions only for the adults, in such circumstances, the said trust should hand over the aforesaid children before the CWC. However, the petitioner was not handed over the children, instead, she retained the said children in a different name viz., Deva @ Abel Francis and Arularasi @ Abila Terasa. The petitioner is the managing trustee of the said trust, she was unlawfully without the consent of their mother and children, she changed their hindu name into Christian name and got admission in St.Thomas Higher Secondary School, Madhavaram Milk Colony, Chennai – 31, for UKG



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and LKG. The practice of the petitioner is absolutely malpractice and committed fraudulent activity instead of handed over the said children before the CWC. Even though, she is not a foster mother in the absence of the order of the foster care and it is not a children trust.

4. I respectfully submit that I deny all the averments contained in para 4 of the affidavit that on 14.02.2022, the mother of the child requested orally the CWC to hand over her children. However, the aforesaid petition informed the CWC that the mother of the children frequently left the children in the trust and ran away elsewhere, and further stated on 14.02.2022 that she is mentally ill and she is unfit to take care of her children custody. Nevertheless, the CWC directed the said petitioner to hand over the aforesaid children before CWC due to the reasons that the trust is not registered children trust but the petitioner refused to hand over the aforesaid children. In such circumstances, the CWC directed the child helpline to rescue the aforesaid children from petitioner's trust and produced before the CWC. The child helpline rescued and produced before the CWC and the CWC passed a temporary order on 14.02.2022 to keep the said children in Kalaichelvi Karunalaya Social Welfare Society, Specialized Adoption Agency, No.PP1, 3rd Block, Mogappair West, Chennai – 600 037.”

4. Fathima, on coming to know about the pendency of this petition, has filed an impleading petition in Crl.M.P.No.13967 of 2022 in H.C.P.No.1165 of 2022, which was allowed by this Court today i.e. 06.09.2022 and she has been joined as a party respondent.



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5. Today, P.Raj Kumar (Mobile No.94981 43555), Sub-Inspector of Police, P-4, Basin Bridge Police Station, Chennai and Ms.Lalitha (Mobile No.91766 63898), Member, Central CWC, Chennai, are present.

6. Heard Mr.Dalit Tiger C.Ponnusamy, learned counsel for the petitioner, Mr.R.Muniyapparaj, learned Additional Public Prosecutor for first and second respondents, Ms.Lalitha, Member, CWC Central, for third respondent and Ms.Shaikh Mehrunnisa Kasim, learned counsel for fourth respondent.

7. It is the grievance of the learned counsel for the petitioner that without a valid order and giving any opportunity to the petitioner, the two children were snatched away from the custody of the petitioner and therefore, the petitioner had no other option, but, to approach this Court with this petition.



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8. On the contrary, we find from the counter affidavit that has been filed by the Chairperson of the CWC, about which, we have adverted to above, that the CWC had to take away the two children from the custody of the trust, as the said trust is only for adults and was not a registered one under the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter “the JJ Act”). We also find that the CWC has passed two distinctive orders in C.W.C.No.749 of 2019 dated 22.04.2022 handing over Deva to Fathima and in C.W.C.No.750 of 2019 dated 22.04.2022 handing over Arularasi to Fathima.

9. Therefore, the custody of the two children with their mother Fathima cannot be said to be *per se* illegal for the issuance of a writ of habeas corpus. That apart, if the petitioner is aggrieved by any order passed by the CWC, an appeal remedy is provided under Section 101 of the JJ Act before the Children's Court.

10. At this juncture, the learned counsel for the petitioner submitted that the orders passed by the CWC were not furnished to him.



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11. Hence, we furnished a photocopy of the orders dated 22.04.2022 passed in C.W.C.Nos.749 & 750 of 2019 to the learned counsel for the petitioner across the bar, which can be used as a basis for preferring an appeal under Section 101 of the JJ Act within 30 days from today, if so advised. For the purpose of calculating limitation for preferring an appeal under Section 101, *ibid.*, today may be taken as the date on which the petitioner came to know of the orders dated 22.04.2022 passed by the CWC in C.W.C.Nos.749 & 750 of 2019.

With the above observations, this habeas corpus petition stands closed.

(P.N.P.,J.) (T.K.R.,J.)
06.09.2022

nsd



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P.N.PRAKASH,J.
and
RMT.TEEKAA RAMAN,J.

nsd

To

- 1.The Commissioner of Police,
O/o.Commissioner of Police,
Greater Chennai,
No.132, E.V.K.Sampath Road,
Veppery, Periyamet,
Chennai – 600 007.
- 2.The Inspector of Police
(Law & Order),
G-3, Police Station,
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- 3.The Chair Person,
O/o.The Chair Person,
Central Child Welfare Committee (CWC),
No.300, Kellys, Purasawalkam High Road,
Chennai – 600 010.
- 4.The Public Prosecutor,
High Court, Madras.

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