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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2022

Coram

The Honourable Mr. Justice P.N.PRAKASH
and
The Honourable Mrs. Justice R.HEMALATHA

H.C.P.No.2085 of 2021

S.Mohanapriya

.. Petitioner

Vs.

1. The Chairperson/member,
Child Welfare Committee,
Kollukattumedu, Lakkapuram Post,
Near RTO Office,
Karur Bye Pass Road,
Erode District.

2. The Officer in Charge,
Helping Hearts Children Home,
Specialized Adoption Agency,
210, Balathandayantham Street,
KAS Theatre Road, Gandhipuram,
Erode District.

3. State represented by
The Inspector of Police,
Kavindanpadi Police Station,
Erode District.

4. Rajinikumari

.. Respondents

Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus directing the respondents to produce the body or person of the petitioner's child viz., Riyakumari, aged about 11 months, before this Court and set her at liberty.

For Petitioner	: Mr.R.John Sathyan for Mr.S.Washimraja
For RR 1 to 3	: Mr.R.Muniyapparaj, Addl. Public Prosecutor
Amicus Curiae	: Ms.Geetha Ramaseshan



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

This habeas corpus petition has been filed seeking a direction to the respondents to produce the body or person of the petitioner's child viz., Riyakumari, aged about 11 months, before this Court and set her at liberty.

2. On 15.12.2021, we passed the following order:

"For the sake of convenience, the dramatis personae will be referred to by their respective names.

2. One Anil Kumar Majhi, aged about 26 years, a native of Mothihari village, Bihar District, came to Tamil Nadu as a migrant labour and was working in a poultry farm in Palladam, Tiruppur District. He got married to one Rajini Kumari, aged about 22 years, who also hails from Mothihari village. Both of them do not speak Tamil but only Bhojpuri.

3. When enquired by us with the help of an interpreter, they were not able to tell us the exact month and date on which they got married. However, they stated that they got married in their house in which they are living in Tiruppur District, before COVID-19. Through the wedlock, a girl baby was born to them on 09.01.2021 in the Primary Health Centre, Pongalur, vide Birth Certificate issued by the Registrar of Births, Pongalur Primary Health Centre, which shows the registration no. as B-2021:33-11848-000002. The child has been named as Riya Kumari. Since the Anil Kumar Kajhi-Rajini Kumari couple were not able to bring up the child, they appear to have given the child in adoption to one Sundarraj-Mohanapriya couple on 10.02.2021. Since then, the child is being brought up by the Sundarraj-Mohanapriya couple.

4. While that being so, the child helpline received a complaint on 25.03.2021 that the Sundarraj-Mohanapriya couple have illegally adopted a child without following the due process of law. Therefore, the Child Welfare Committee, Erode, conducted a thorough enquiry and during the enquiry, the Sundarraj-Mohanapriya couple appeared before them and explained to them that they were childless for the last more than 10 years and that, they validly took the child on adoption from the Anil Kumar Majhi-Rajini Kumari couple. Since the Child Welfare Committee found that the child



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was being well taken care of by the Sundarraj-Mohanapriya couple, interim custody of the child was handed over to them pending detailed enquiry.

5. In the meanwhile, the Sundarraj-Mohanapriya couple filed a suit in O.S.No.51 of 2021 in the Court of the District Munsif, Bhavani, against the Anil Kumar Majhi-Rajini Kumari couple, for a declaration that the child Riya Kumari @ Devamitraa was validly given in adoption to them. The Child Welfare Committee, Erode, passed an order under Section 36(1) of the Juvenile Justice (Care and Protection of Children) Act, 2015, stating that Sundarraj and Mohanapriya are the fit persons to bring up the child. However, the Probation Officer of Social Defence Department, conducted an enquiry with regard to the adoption and gave a report to the District Collector, Erode that the Sundarraj-Mohanapriya couple have not properly taken the child on adoption. Based on this report, the District Collector, Erode, passed an order dated 30.10.2021 directing the child to be removed from the custody of the Sundarraj-Mohanapriya couple and be kept in a Special Adoption Agency (2nd respondent herein), pending further action. Since the child was removed from their custody, Mohanapriya has filed the present Habeas Corpus Petition.

6. On our directions, today, Mr.J.Subash (mobile no.94981 78899), Inspector of Police, Kavindapadi Police Station, Erode District, Dr.E.M.Ashok (mobile no.98425 36217), Chairperson, Child Welfare Committee, Erode, Mr.R.Karnan Kamaraj (mobile no.94437 52690), Member, Child Welfare Committee, Erode, Mr.D.Kamal Babu, Project Co-ordinator of the 2nd respondent and Ms.T.Beulah, Social worker of the 2nd respondent, are present before us. Ms.Renuka Devi, Probation Officer is also present before us via video conferencing. The Sundarraj-Mohanapriya couple and the Anil Kumar Majhi-Rajini Kumari couple are also present before us. We requested Ms.Geeta Ramaseshan, Advocate, to be an Amicus Curiae in this case to assist us.

7. It appears that the authorities smelt a rat because, there was no proper documentation with the Sundarraj-Mohanapriya couple for the adoption and that apart, the name and Aadhaar card particulars of the Anil Kumar Majhi-Rajini Kumari couple were also improper. Dr.Ashok submitted



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that, in the absence of satisfactory records, it may not be proper to come to a conclusion that the child was born to the Anil Kumar Majhi-Rajini Kumari couple and therefore, a DNA test would settle the issue, once and for all. We agree with this submission.

8. When we enquired the Anil Kumar Majhi-Rajini Kumari couple, they stated that they had given their child voluntarily to the Sundarraj-Mohanapriya couple and that they have absolutely no objection to the Sundarraj-Mohanapriya couple to bring up the child.

9. We gave our anxious consideration to the aforesaid submission. Pertinent it is to state here that the baby Riya Kumari @ Devamitraa is neither an orphan nor a child in need of care and protection. It has both its biological parents and the adoptive parents for taking care of it. The biological parents state that they have voluntarily given the baby to the Sundarraj-Mohanapriya couple and just because they had not done proper documentation, that, by itself, cannot be a reason, to take away the custody of the baby and lodge it in the Specialised Adoption Agency (2nd respondent herein).

10. We are of the view that the best interest of the child would be served, if it grows up with the Sundarraj-Mohanapriya couple. However, a DNA test has to be performed as submitted by Dr.Ashok. It is brought to our notice that the Child Welfare Committee, Erode, has obtained FTA cards in a sealed cover from the Tamil Nadu Forensic Sciences Department, which was produced to us vide DNA/FTA/375/21. Therefore, we direct the Inspector of Police, Kavindapadi Police Station, Erode District and the Child Welfare Committee, Erode, to take the Anil Kumar Majhi-Rajini Kumari couple and the baby to the Government Erode Medical College and Hospital, Perundurai to draw blood samples in the FTA cards. The Dean, Government Hospital, Perundurai, is directed to arrange for drawal of blood samples for the aforesaid three persons in the FTA cards and send the same in a sealed cover through a police officer nominated by the Inspector of Police, Kavindapadi Police Station, to the Tamil Nadu Forensic Sciences Department, for DNA profiling. Thereafter, the Tamil Nadu Forensic Sciences Department is directed to conduct the DNA profiling and submit a report to this Court as



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well mark a copy of the report to the District Collector, Erode and the Child Welfare Committee, Erode.

11. In view of the above, we set aside the order in No.190/2021 dated 30.10.2021, passed by the District Collector, Erode and direct the 2nd respondent to hand over the child viz., Riya Kumari to Sundarraaj and Mohanapriya, who, in turn, shall cooperate with the Inspector of Police, Kavindapadi Police Station and the Child Welfare Committee, Erode, for drawal of blood samples as directed by us, for DNA profiling. In the meanwhile, it is open to them to regularise the adoption in the manner known to law.

12. We place on record our appreciation to Ms.Geeta Ramaseshan, learned Amicus Curiae, the officials of the Child Welfare Committee, Erode, the officials of the Helping Hearts Children Home, Specialised Adoption Agency, the Probation Officer, Erode District and the Inspector of Police, Kavindapadi Police Station, Erode, for the able assistance rendered by them.

Post the matter on 22.12.2021."

3. On 07.01.2022, we passed the following order:

"Pursuant to our order dated 15.12.2021, DNA profiling was done and the report dated 29.12.2021 received from the Tamil Nadu Forensic Sciences Department, Chennai, shows that Rajini Kumari is the biological mother of the child Riya Kumari.

2. In view of the above, Rajini Kumari may not have legal hurdle for giving the child Riya Kumari in adoption to the petitioner.

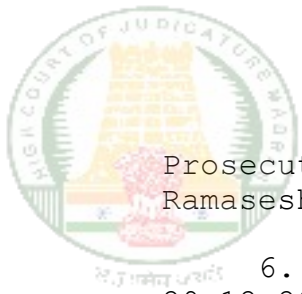
3. Learned counsel for the petitioner submitted that 'Datta Homam' was performed and adoption has also been formally registered.

4. If that is so, the petitioner is directed to file necessary affidavit in this regard.

Call on 27.01.2022."

4. Today Mr.J.Subash (Mobile No.94981 78899), Inspector of Police, Kavindanpadi Police Station, Erode District, is present-in-person before this Court. Ms.Renuka Devi, District Probation Officer, Ministry of Social Defence, Erode, is present before this Court via video conferencing.

5. We heard Mr.R.John Sathyan, learned counsel representing Mr.S.Washimraja, learned counsel on record for the petitioner, Mr.R.Muniyapparaj, learned Additional Public



Prosecutor appearing for the respondents 1 to 3 and Ms.Geetha Ramaseshan, learned Amicus Curiae.

6. We furnished a photocopy of the DNA report dated 29.12.2021 to Mr.R.John Sathyan, learned counsel for the petitioner, so that, the petitioner can have the same with her for her future reference and also to Ms.Renuka Devi, District Probation Officer and Mr.J.Subash, Inspector of Police, Kavindanpadi Police Station, Erode.

7. The petitioner has filed an affidavit dated 24.01.2022, wherein, in paragraph nos.2 and 3, she has stated as follows:

"2. I submit that, I and my husband Sundarraaj with the full consent of the 4th respondent had adopted the child Riyakumari and on 18.12.2021 "datha Homam" was also conducted in Arulmigu Kodumudi Magudeswarar Temple, Erode District and in the ceremony the 4th respondent with will had given the child to us as adoption for the reason that the 4th respondent was not able to bring up the child. I further submit that since I am childless and very along keen in having a child had adopted the child from her birth and as per customary right the "datha Homam" was conducted on 18.12.2021."

3. I further submit that to make the adoption as legal, I and my husband along with the 4th respondent and her husband executed 'Adoption Deed' in Document No.16/BK4/2021 dated 31.12.2021 registered in the SRO, Kavindapadi, Erode District, for the adoption of the child namely Riyakumari (Birth Certificate No.B2021-33-11848-000002 dated 09.01.2021 and now the child namely Riyakumari is growing with me and I will take care of my child with full love and affection as my own and states that my child Riyakumari is also my legal heir in the future and make good to her in all aspects."

8. Rajinikumari, fourth respondent herein, has filed an affidavit dated 24.01.2022, wherein, in paragraph nos.2 and 3, she has stated as follows:

"2. I submit that, I and my husband Anil Kumar Majhi with the full consent and will of us, had given adoption of my child Riyakumari and on 18.12.2021 "datha Homam" was also conducted in Arulmigu Kodumudi Magudeswarar Temple, Erode District and in the ceremony I and my husband also participated and gave adoption of the child to the



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petitioner and her husband since I was not able to bring up the child. I further submit that since the petitioner is childless and very keen in having a child had adopted my child from her birth and as per customary right the "datha Homam" was conducted on 18.12.2021."

3. I further submit that to make the adoption as legal, I and my husband along with the petitioner and her husband executed 'Adoption Deed' in Document No.16/BK4/2021 dated 31.12.2021 registered in the SRO, Kavindapadi, Erode District, for the adoption of the child namely Riyakumari (Birth Certificate No.B2021-33-11848-000002 dated 09.01.2021 and now the child namely Riyakumari is growing with the petitioner and they are taking care of the child with full love and affection as their own and undertakes and stated that, I and my husband Anil Kumar Majhi has not future claim or interest over the child Riyakumari and also states that the legal heirs of mine and my husband also has no legal claim or interest over the child Riyakumari."

9. Thus, from a reading of the above, it appears that "datha Homam" has been performed and the adoption has also been registered via a deed of registration dated 31.12.2021 vide Doc.No.16/BK4/2021 on the file of the Sub-Registrar Office, Kavindanpadi, Erode. The petitioner has also furnished a photocopy of the said adoption deed. Pertinent it is to state here that the Sundarraaj-Mohanapriya couple and the Anil Kumar Majhi-Rajini Kumari couple are Hindus.

10. At this juncture, it may be profitable to extract Section 16 of the Hindu Adoptions and Maintenance Act, 1956 (for brevity "the HAM Act") and Section 56(3) of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for brevity "the JJ Act"):

Section 16 of the HAM Act:

"16.Presumption as to registered documents relating to adoption.-

Whenever any document registered under any law for the time being in force is produced before any Court purporting to record an adoption made and is signed by the person giving and the person taking the child in adoption, the Court shall presume that the adoption has been made in compliance with the provisions of this Act unless and until it is disproved."

Section 56(3) the JJ Act:

"56.Adoption.-.....



(3) Nothing in this Act shall apply to the adoption of children made under the provisions of the Hindu Adoption and Maintenance Act, 1956 (78 of 1956)."

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11. In the light of the aforesaid developments, we find that the adoption of the child Riyakumari has been legalized in terms of the HAM Act and henceforth, there may not be any legal impediment for the petitioner to bring up the child Riyakumari as its adoptive mother.

With the above observation, this habeas corpus petition stands closed. We place on record our appreciation to Ms.Geetha Ramaseshan, learned Amicus Curiae, Mr.R.Muniyapparaj, learned Additional Public Prosecutor, Ms.Renuka Devi, District Probation Officer, Mr.J.Subash, Inspector of Police, Kavindanpadi Police Station, Erode, for their able assistance in this case. We also place on record our appreciation to Dr.N.Mahalakshmi, Deputy Director and Assistant Chemical Examiner and Dr.R.Thanuja Bhanu, Scientific Officer, DNA Division, Tamil Nadu Forensic Sciences Department, for completing the DNA profiling and submitting their report expeditiously.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar

Nsd

To

1. The Chairperson/member,
Child Welfare Committee,
Kollukattumedu, Lakkapuram Post,
Near RTO Office,
Karur Bye Pass Road,
Erode District.
2. The Officer in Charge,
Helping Hearts Children Home,
Specialized Adoption Agency,
210, Balathandayantham Street,
KAS Theatre Road, Gandhipuram,
Erode District.



3. The Inspector of Police,
Kavindanpadi Police Station,
Erode District.
4. The Director,
Tamil Nadu Forensic Sciences Department,
Kamarajar Salai, Chennai-600 004.
5. The District Probation Officer,
Ministry of Social Defence, Erode.
6. The Public Prosecutor,
High Court, Madras.
7. The District Collector,
Erode.
8. The Dean,
Government Erode Medical College and Hospital
Perundurai.
9. The District Child Protection Officer,
2nd Floor, Jawan Bhavan,
Gandhiji Road, Erode.
10. The Child Welfare Committee,
Erode District.

+1cc to Mr.Washim Raja, Advocate SR. No.4641 (02/03/2022)

H.C.P.No.2085 of 2021

SR (CO)
PR (15/02/2022)