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W.P.(MD)NO.14027 OF 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.07.2022

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.14027 of 2022

Selvi

... Petitioner

Vs.

1. The District Collector,
Virudhunagar District, Virudhunagar.
2. The District Social Welfare Officer,
Virudhunagar District,
Virudhunagar.
3. The Chief Person,
Child Welfare Committee,
Virudhunagar District, Virudhunagar.
4. The Protection Officer,
District Child Protection Office,
Virudhunagar District, Virudhunagar.
5. The Superintendent/Warden,
MMSSS Reception Unit Under
Madurai Multi Purpose Social Service Society.
Virudhunagar District,
Virudhunagar.
6. The Sub-Inspector of Police,
Rajapalayam North Police Station,
Virudhunagar District.

7. xxxx

(R-7 is suo motu impleaded vide Order dated 04.07.2022)

... Respondents



Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to direct the 2nd respondent to appoint the petitioner as a fit person and hand over temporary custody of child Gobiraj to her within the stipulated period which this Court may deem fit.

For Petitioner : Mr. Jothi Basu

For R-1 to R-6 : Mr.M. Sarangan,
Additional Government Pleader.

* * *

ORDER

Heard the learned counsel appearing for the writ petitioner and the learned Additional Government Pleader appearing for the official respondents.

2. The seventh respondent herein had a love affair and gave birth to a male child on 27.06.2021 at a private hospital in Rajapalayam. She was not in a position to bring up the child. The petitioner got married to one Paramasivam in the year 2007. Even though a child was born, due to certain complications, it died within one week from the date of birth. The second child also died in the womb itself. In these



circumstances, the doctors had told the petitioner that there was remote possibility for her getting pregnant or give birth to another child. Since the petitioner knew the seventh respondent already, the petitioner and her husband offered to bring up her child as their own child. Since the seventh respondent was also not in a position to bring up the child, she voluntarily and on her own handed over the child to the petitioner herein. The petitioner had been bringing up the child ever since.

3. While so, complaint was received through the child help line that without complying with the adoption formalities, the petitioner had taken a baby. Hence Crime No.120 of 2022 was registered on the file of Rajapalayam North police station / sixth respondent herein. Pursuant to the registration of the First Information Report, the child was also taken away from the petitioner. Seeking custody of the child, this writ petition has been filed.

4. Since I wanted to hear from the biological mother, she was *suo motu* impleaded as the seventh respondent. The



jurisdictional police and the other officials made arrangements so that I could contact the seventh respondent through Whatsapp video call. The seventh respondent spoke to me and she clarified that after handing over the child to the petitioner herein, she got married to some other person and through the said wedlock, she is also now five months pregnant. She made it clear that she had not sold the child to the petitioner and she would be happy if the child is brought up by the petitioner as her adopted child.

5. In such cases, what is most important is only the welfare of the child. It is true that the petitioner and her husband did not adhere to the adoption formalities. But considering the embarrassing situation in which the seventh respondent was placed, she was obviously not in a position to follow the statutory procedure. The child was born on 27.06.2021; it was taken away by the state officials on 17.05.2022. It is for almost 11 months the child was with the petitioner herein. Obviously, a great bonding must have developed between the petitioner and the child. The state officials will not be in a position to bestow motherly care on



the child. The interests of the child require that the petitioner is granted custody. In this case, the parties are Hindus. The seventh respondent is the biological mother of the child. The petitioner and her husband do not have any male child. The child in this case is a male. Therefore, the essential provisions of the Hindu Adoptions and Maintenance Act are more than fulfilled. The child in question can very well be considered as the adopted child of the petitioner and her husband. It is open to the petitioner and her husband on the one hand and the seventh respondent on the other to even execute and register a deed of declaration recording the adoption. I also permit the petitioner to move the competent Court to recognise the adoption. This writ petition stands allowed. Crime No.120 of 2022 is quashed as continuance of the prosecution would not be in the interest of justice. No costs.

11.07.2022

Index : Yes / No
Internet : Yes/ No

PMU



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G.R.SWAMINATHAN,J.

PMU

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