

03.10.2023
SL-04
Ct.11
(S.R.)

WPA (H) 46 of 2023
Lipika Shyam Chowdhury & Anr.
v.
The State of West Bengal & Ors.

Mr. Sayan Sinha	
Mr. Adil Naser	... for the petitioners.
Mr. Debabrata Chatterjee, APP	
Mrs. Amrita Panja Moulick	... for the State.

The writ petition has been preferred primarily
praying for the following relief:-

‘b. Issue a writ of and/or in the nature of Habeas Corpus commanding the respondent nos.1 to 9 to produce the body of Tanmoy Dey alias Tatan, being the detenu herein and be set at liberty;’

Mr. Sinha, learned advocate appearing for the petitioners submits that the respondent no.13 and one Mamoni Dey are the biological parents of the child. The respondent no.13 and the biological mother of the child are not on good terms and they are living separately from each other. The respondent no.13 handed over the custody of the child to the petitioners when the child was of two months old and since then, the petitioners have been bringing up the child. The child has attained the age of seven years. Suddenly, the respondent no.13 has forcefully taken away the custody of the child from the petitioners and handed over the child to the CWC. He

submits that considering the emotional attachment of the child with the petitioners and considering the welfare of the child, which is a paramount consideration, appropriate order should be passed so that the petitioners can get custody of the child.

In compliance with our earlier order dated 18th September, 2023, the biological father of the child being the respondent no.13 is present in Court. He has stated that he shall not allow the petitioners to take custody of the child and he has made such declaration to the CWC also.

Mr. Chatterjee, learned Additional Public Prosecutor appearing for the State submits that the child is now in custody of the Child Welfare Committee, Kolkata. Let the report, as produced by Mr. Chatterjee, be kept with the record.

A writ in the nature of *habeas corpus* is a prerogative writ by virtue of which the causes and validity of detention of a person are investigated by a summary procedure. From the report and from the submissions made on behalf of the respective parties, it appears that the child is in custody of the CWC, Kolkata. In such conspectus, it cannot be held that the child has been illegally detained by any person or authority.

In view thereof, no further interference is called for in this writ petition.

Consequently, the writ petition is dismissed.

However, it is clarified that this order shall not preclude the petitioners from approaching the appropriate authority, seeking relief, in accordance with law.

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

Urgent certified photocopy of this order, if applied for, be supplied as expeditiously as possible.

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