

WPA (H) 57 of 2023

(Shalini Sarkar Vs. The State of West Bengal & Ors.)

Mr. Ankit Agarwala
Mr. Abhishek Dutt
Ms. Rupa Singh
Ms. Priyanka Sharma

..... For the petitioner

Mr. Debabrata Chatterjee
Ms. Amrita Panja Moulick

..... For the State

Mr. Vivekananda Bose
Ms. Afreen Begum
Mr. Ankani Biswas @ Ankan

..... For the respondent no. 12

This *habeas corpus* writ petition has been filed primarily praying for the following:-

“(a) A writ in the nature of Mandamus commanding the habeas corpus directing the respondent authorities, to recover the said child from detainment of the respondent no. 12.”

Mr. Agarwala, learned advocate appearing for the petitioner submits that the present petitioner is a single mother. Due to some unavoidable reasons, she was not in a position to nurture her child and hence, as a temporary measure, she handed over the custody of the child to the respondent no. 12 who happens to be married lady having no children. At that time, the respondent no. 12 insisted her to execute an instrument to avoid any complication to take custody of the child. Consequently, on good faith and belief, she put her signatures on some blank documents. Subsequently, when the petitioner being biological mother of the child

approached the respondent no. 12 to get back her child, then the respondent no. 12 refused to do the same on the pretext that the petitioner by executing one 'Deed of Adoption' had handed over the child to her and by virtue of the deed of adoption, the child has become the adopted child of the respondent no. 12 for all purposes. He further submits that the moment the respondent no. 12 refused to give back the child to the petitioner, the custody of the respondent no. 12 became illegal. Hence, the detention of the child by the respondent no. 12 is to be treated as an illegal detention. He prays for issue of writ of *habeas corpus* to recover the child from the custody of respondent no. 12 and to hand over the child to the petitioner.

Per contra, Mr. Bose, learned advocate representing the respondent no. 12 refutes the claim of the petitioner contending, *inter alia*, that the petitioner out of her own volition by executing a 'Deed of Adoption' handed over the custody of the child to the Respondent no. 12 in August, 2018 and since then, the child is being nurtured and/or reared up by the respondent no. 12. He submits that the child is studying at St. Loreto Convent School. According to him, paramount consideration would be the welfare of the child and considering such aspect, the custody of the child should not be disturbed.

He further submits that the petitioner has instituted a civil suit before a competent court of law challenging

the legality of the deed of adoption. The petitioner prayed for an interim order but the court refused to pass the interim order as prayed for. The petitioner has preferred an appeal against the order whereby her prayer for interim order was refused and the appeal is pending before this court. He submits that the suit is also pending for final adjudication.

He further submits that the petitioner preferred a writ petition but the writ petition has not been entertained. The petitioner assailed the order passed in the writ petition by preferring a mandamus appeal being MAT no. 1422 of 2023 which was disposed of according to permission to the petitioner to withdraw the writ petition and the writ petition was dismissed as withdrawn. However, liberty was granted to the petitioner to work out her remedies in accordance with law.

In response, Mr. Agarwala submits that the petitioner is a Hindu by faith whereas the respondent no. 12 is Christian by religion and hence, such sort of inter-religion adoption of a child can only be done as per the relevant provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 (in short, JJ Act). He submits that there is no legislation by which one person who is Christian by religion, can take adoption of a child.

In reply, Mr. Bose submits that in the deed of adoption itself, the petitioner declared herself to be a Christian by faith and respondent no. 12 is also

Christian and hence, the subject adoption was done in between two Christians. He arduously contends that absence of law governing the incident of adoption for the persons who are Christians by religion does not debar them from giving and taking adoption of a child. He submits that the provision of JJ Act is enabling provision. It is not mandatory in nature and the person who is Christian by religion is free to give and take adoption of a child as per their personal law. In support of his such contention he places reliance upon the judgments delivered in the cases of (2014) 4 SCC 1 (*Shabnam Hashmi Vs. Union of India & Ors.*) and (2020) 13 SCC 711 [*Pharez John Abraham (dead) by legal representatives and Arul Jothi Sivasubramaniam K. & Ors.*].

Ms. Panja Moulick, learned advocate enters appearance on behalf of the State. Report, as produced by Ms. Panja Moulick is taken on record. From the report, it is explicit that the child is residing with the respondent no. 12 since 2018. She submits that there is no inaction on the part of the police authority and the concerned police authority is ready to comply with the order which would be passed by the Hon'ble Court.

Heard the learned advocates appearing for the respective parties and perused the materials placed on 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 records and from the submissions made on behalf of the respective parties it appears that the petitioner by executing one instrument styled as 'Deed of Adoption' handed over the custody of the child to the respondent no. 12 way back in the year 2018. Since then the child is being nurtured and reared up by the respondent no. 12. This is not the appropriate forum to decide the legality and validity of the deed of adoption executed by any of the parties. Unless and until a competent Court of law declares the instrument to be an illegal document, it cannot be concluded that the child has been illegally detained by the respondent no. 12.

In such conspectus, no interference in this writ petition is called for. Consequently, the *habeas corpus* writ petition being **WPA (H) 57 of 2023** is dismissed.

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

Nothing in this order will prevent the petitioner from approaching the competent forum, in accordance with law.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

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