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H.C.P. No.368 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.368 of 2023

N.Marie Claude

... Petitioner/
Father of the detenu

Vs.

1. State of Tamil Nadu
Rep. By the Commissioner of Police
Tambaram Police Commissionerate
Tambaram

2. State of Tamil Nadu
Rep. By the Inspector of Police
T-19, Kelambakkam Police Station
Pallikaranai Police District
Tambaram City

3. Marie Wilson. N ... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus directing the respondents to produce the person and body of the petitioner's minor daughter namely 'xxx', aged about 2 years, who is under the illegal custody of Respondent No.3 and



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hand over her to the petitioner.

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For Petitioner : Mr.B.Satish Sundar
for Mr.N.Balaji

For Respondents : Mr.R.Muniyapparaj
Addl. Public Prosecutor for R1 & R2

Mr.R.John Sathyan, Senior Counsel
and Mr.V.Raghavachari, Senior Counsel
for Ms.Reshmi Christy for R3

ORDER

[Order of the Court was made by M.SUNDAR, J.,]

This order will now dispose of the captioned matter.

2. This order has to be read in conjunction with and in continuation of earlier proceedings made in the previous listings on 10.03.2023, 21.03.2023, 03.04.2023, 11.04.2023 and 17.04.2023, which read as follows:

Proceedings dated 10.03.2023

'Mr.R.Muniyapparaj, learned Additional Public Prosecutor takes notice on behalf of Respondents 1 and 2.

2. M/s.Reshmi Christy, learned counsel accepts notice on behalf of the 3rd respondent.

3. It is submitted that the 3rd respondent is having the custody of the child which was given in adoption through process of Court.



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4. Hence, the 3rd respondent is directed to appear before this Court along with the minor child Baby M.Anna Amirthim aged about 2 years before this Court on 17.03.2023.

Post on 17.03.2023.'

Proceedings dated 21.03.2023

'In continuation to the earlier order passed by this Court on 10.03.2023, the matter was listed for hearing today. The petitioner and his spouse Mrs.Careline Claude were present. The third respondent was also present along with the child xxx (we are masking the name).

2. For proper appreciation of the case, we deem it fit to present it by way of dates and events herein below:

Sl.No.	Date	Event
1.	15.01.1978	Date of Birth of the petitioner (45 years)
2.	09.10.1979	Date of Birth of the third respondent (43 years)
3.	13.10.2019	Petitioner and his spouse were blessed with twin children (Sebastian Paul and Saara Marilyn)
4.	05.11.2019	The date on which the birth certificate was given by the Chennai Corporation for the twin children
5.	29.01.2021	Date of Birth of the child xxx
6.	24.06.2021	The deed of handing over the child xxx to the petitioner and his spouse
7.	24.06.2021	Pre-Adoption Foster Care undertaking given by petitioner and his spouse in which third respondent also stood as one of the witness.



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Sl.No.	Date	Event
8.	31.08.2021	<i>Petition filed before the learned Principal District Judge, Salem under Section 58(3) of the Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016) read with Regulations 12(2) of the Adoption Regulations in Adoption O.P.No.214 of 2021.</i>
9.	16.03.2022	<i>Fair and Decreetal order passed by the learned Principal District Judge, Salem allowing the O.P.</i>
10.	03.12.2022	<i>The date of the alleged abduction of the child xxx by the third respondent from petitioner and his spouse from Marina Mall, E.C.R. Road.</i>
11.	23.02.2023	<i>Complaint given by the petitioner to the Inspector of Police, T-19, Kelambakkam Police Station, taken on file in C.S.R.No.181 of 2023.</i>
12.	03.03.2023	<i>Filing of the captioned Habeas Corpus Petition</i>

3. We heard the learned counsel for the petitioner and also the learned Senior Counsel appearing on behalf of the third respondent. Before going into the merits of this case, we are inclined to call for the report of the Probation Officer. This in view of the fact that when the Adoption O.P. was allowed, one of the condition that was imposed is as follows:

'4. that the concerned Probation Officer has to submit his report with regard to bring up of the Child by the Prospective Adoption Parents once in 6 months for two years;'

4. Registry is directed to call for the reports filed by the



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Probation Officer before the learned Principal District Judge, Salem and the same shall be placed before us during the next date of hearing.

5. Let the petitioner, his spouse and the third respondent be present before this Court along with the child xxx.

6. Registry to requisition the records sought for from the learned Principal District Judge's Court, Salem forthwith.

7. List on 29.03.2023.'

Proceedings dated 03.04.2023

'Read this in conjunction with and in continuation of earlier proceedings made in the listing on 21.03.2023 which reads as follows:

'In continuation to the earlier order passed by this Court on 10.03.2023, the matter was listed for hearing today. The petitioner and his spouse Mrs. Careline Claude were present. The third respondent was also present along with the child xxx (we are masking the name).

2. For proper appreciation of the case, we deem it fit to present it by way of dates and events herein below:

<i>Sl.No.</i>	<i>Date</i>	<i>Event</i>
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<i>2.</i>	<i>09.10.1979</i>	<i>Date of Birth of the third respondent (43 years)</i>
<i>3.</i>	<i>13.10.2019</i>	<i>Petitioner and his spouse were blessed with twin children (Sebastian Paul and Saara Marilyn)</i>
<i>4.</i>	<i>05.11.2019</i>	<i>The date on which the birth certificate was given by the Chennai Corporation for the twin children</i>
<i>5.</i>	<i>29.01.2021</i>	<i>Date of Birth of the child xxx</i>
<i>6.</i>	<i>24.06.2021</i>	<i>The deed of handing over the child xxx to the petitioner and his spouse</i> <i>Pre-Adoption Foster Care undertaking given by</i>



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Sl.No.	Date	Event
7.	24.06.2021	<i>petitioner and his spouse in which third respondent also stood as one of the witness.</i>
8.	31.08.2021	<i>Petition filed before the learned Principal District Judge, Salem under Section 58(3) of the Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016) read with Regulations 12(2) of the Adoption Regulations in Adoption O.P.No.214 of 2021.</i>
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3. We heard the learned counsel for the petitioner and also the learned Senior Counsel appearing on behalf of the third respondent. Before going into the merits of this case, we are inclined to call for the report of the Probation Officer. This in view of the fact that when the Adoption O.P. was allowed, one of the condition that was imposed is as follows:

'4. that the concerned Probation Officer has to submit his report with regard to bring up of the Child by the Prospective Adoption Parents once in 6 months for two years;'

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the Probation Officer before the learned Principal District Judge, Salem and the same shall be placed before us during the next date of hearing.

5. Let the petitioner, his spouse and the third respondent be present before this Court along with the child xxx.

6. Registry to requisition the records sought for from the learned Principal District Judge's Court, Salem forthwith.

7. List on 29.03.2023.'

To be noted, there was a listing on 29.03.2023 but that was not a productive hearing and the matter got re-notified.

2. Today, with the consent of both sides i.e., petitioner, petitioner's spouse and third respondent, we deem it appropriate to refer the matter to mediation. Mediation shall be by Ms.D.Nagasaila, Advocate {Old No.123, New No.255, 3rd Floor, Hussaina Manzil, Angappan Naicken Street, Parrys, Chennai 600 001. (Mobile No:94440 83494) (E-mail: nagasailad@gmail.com)}. It is open to the learned Mediator to hold sittings either in her office or in the Tamil Nadu Mediation and Conciliation Centre under the aegis of this Court ('TNMCC' for brevity) or any other neutral venue subject to the convenience of all concerned. If there is any cost factor in this regard, the same shall be paid/absorbed in equal moieties by the petitioner and the third respondent.

3. Be that as it may we deem it appropriate to fix an initial honorarium of Rs.1,00,000/- for the learned mediator which shall be paid in equal moieties (Rs.50,000/- by the petitioner and Rs.50,000/- by



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the third respondent).

4. *The aforementioned earlier order dated 21.03.2023 captures the crux and gravamen of the issue on hand and therefore that shall form basis for the mediation. However, we hasten to add that it is open to both sides to participate in the mediation and produce anything in their support as we notice that multiple documents/agreements have been placed before us by way of typed set of papers by both sides. Suffice to say that elements of settlement are sighted.*

5. *We request the learned mediator to send a mediation report by a fortnight from today i.e., by 17.04.2023.*

6. *Be that as it may, as regards the GAWA Court order i.e., Salem District Judge's order advertent to clause 4 of the operative portion paragraph, learned counsel for petitioner submits that the Probation Officer is now calling upon the petitioner and his spouse to produce xxx (to be noted we have masked the name). Considering the trajectory the matter is taking before us, we deem it appropriate to say that the Probation Officer shall lay her hands off in this regard till the listing of captioned matter on 18.04.2023.*

7. *We also direct the learned Additional Public Prosecutor to produce the CC TV footage regarding the alleged incident on 03.12.2022 at the Marina Mall, Old Mahabalipuram Road, Chennai or any other material in this regard. While we have requested for mediation report by a fortnight hence, this Bench makes it clear that listing of this matter one week hence will be solely for the Prosecutor to respond in this regard and the listing thereafter will be on 18.04.2023.*



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8. *List on 10.04.2023.'*

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Proceedings dated 11.04.2023

'Read this in conjunction with and in continuation of earlier proceedings made in the previous listing on 03.04.2023.

2. *Today, adverting to earlier proceedings, learned Prosecutor submits that complaint itself was given on the eighty first day of the alleged occurrence and there is difficulty in getting the CCTV footage.*

3. *Let Prosecutor file this by way of a report and place it before us in the next listing.*

4. *Registry to send a copy of the earlier proceedings dated 03.04.2023 and the proceedings made today to the learned Mediator today forthwith.*

List on 17.04.2023.'

Proceedings dated 17.04.2023

'Read this in conjunction with and in continuation of earlier proceedings made in the previous listing on 11.04.2023.

2. *Today, Mr.B.Satish Sundar, learned Counsel representing the counsel on record for petitioner, Mr.R.Muniyapparaj, learned State Additional Public Prosecutor for respondents 1 and 2 (official respondents) and Ms.Reshmi Christy, learned counsel for third respondent are before us.*

3. *As regards learned Prosecutor, a further status report dated*



17.04.2023 together with typed set of papers running to 8 pages has been placed before us. This will be considered in due course. To be noted, learned Prosecutor is instructed by second respondent.

4. As regards the Mediation, we are informed that learned Mediator was feeling under the weather and has now fixed first sitting on 20.04.2023. We request the learned Mediator to send a report to this Court by 26.04.2023.

5. List on 27.04.2023. '

3. As regards the mediation exercise which was explored with the consent of the parties, learned Mediator has sent a report to this Court dated 26.04.2023 and a perusal of this terse and simple report makes it clear that mediation was held on two days, namely 20.04.2023 and 24.04.2023 but no settlement could be arrived at though the first sitting lasted the whole day (11.00a.m to 07.00p.m). Therefore, the captioned matter is back in this Court and a legal drill has become inevitable.

4. The chronology captured by this Bench in the proceedings dated 21.03.2023 is not disputed by both sides i.e., petitioner and third respondent. However, there might be some other dates and events that happened on such dates which may be of relevance and there will be



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reference to the same elsewhere infra in this order.

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5. The aforementioned proceedings made in previous listings of captioned HCP have captured the crux and gravamen of the issue before this Habeas Corpus Court and it is also telltale qua the trajectory the matter has taken before this Bench.

6. Before plunging into the Habeas Corpus legal drill, we deem it appropriate to remind ourselves of *Tejaswini Gaud* case [*Tejaswini Gaud and others Vs. Shekhar Jagdish Prasad Tewari and Others* reported in *2019 SCC OnLine 713*] which also on facts pertains to custody of a minor child as between guardians at loggerheads wherein Hon'ble Supreme Court held that Habeas Corpus Petitions in cases of this nature are maintainable. It was held that Habeas Corpus proceedings is a medium through which the custody of the child is addressed to the discretion of a Court and Habeas corpus is a prerogative writ which is an extraordinary remedy and the writ is issued in the circumstances of a particular case.

7. At the outset we need to make it clear that as captured in the proceedings made in the 21.03.2023 listing (extracted and reproduced supra) a petition was filed by petitioner herein and his spouse on the file of



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the learned Principal District Judge, Salem under Section 58(3) of the 'Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016)' read with Regulations thereunder being '2017 regulations', which shall hereinafter be referred to as 'JJ Act' and 'JJ Adoption Regulations' respectively for the sake of brevity and convenience. After an exhaustive examination of oral and documentary evidence and after an assessment of suitability of the petitioner and his spouse, the JJ Court has given the absentee in adoption to the petitioner and his spouse and has declared the petitioner and his spouse as parents of the child 'xxx' which is the fulcrum of the exercise on hand.

8. To be noted, Date of Birth of the child 'xxx' is 29.01.2021 and as on date, the child is two years and three months old.

9. Mr.B.Satish Sundar, learned counsel for petitioner took us through the proceedings which culminated in the 16.03.2022 order of JJ Court and submitted that online application made to 'Central Adoption Resource Authority' ['CARA' for the sake of brevity], Ministry of Women and Child Development, Government of India, by the petitioner and his spouse led to appointment of a 'Specialized Adoption Agency' ['SAA' for the sake of



brevity and convenience], namely 'Cluny Childrens Home, Pondicherry' and a thorough study of suitability of the petitioner and his spouse was made.

Learned counsel drew our attention to a report where application of 'Prospective Adoptive Parents' ['PAP' for the sake of brevity] was scrutinized. In this report, SAA has strongly recommended the petitioner and his spouse for adoption. The relevant portion of this report to which our attention was drawn reads as follows:

'Yes, I strongly recommend this couple for adoption. They are physically mentally and financially strong for adoption. They are very understanding towards each other and very loving couples. They adjust and adopt themselves to any situations, life and people. They are very jovial but very patient and kind in their dealings with others. They are very confident and happy in their decisions and prepared to take any risk that come on the way and the whole family is in full support to them. They have seen other parents who have adopted children while going for adoption and they know the difficulties that would come on the way. They are very positive in their plan and feel that the child will grow up well as their child and the child will get enough love and affection as their child from them and all family members. The while family is eagerly waiting for the child, to have a new life in their family. The family is a happy family. So, I recommend Mr.Marie Claude.N and Mrs.Gareline Claude to bless them with a child from the age group of 0-2 years of any gender who



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is physically and mentally sound.'

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10. Learned counsel further pointed out that the third respondent has signed as first witness in the Deed of Handing Over and Taking Over of Minor Child (dated 24.06.2021) between Trust concerned and petitioner/his spouse. It was also pointed that even in the Pre-adoption Foster Care undertaking dated 24.06.2021 signed by the petitioner and his spouse, the third respondent has signed as a witness. Therefore, the third respondent was privy to the proceedings before JJ Court and he is fully aware of the proceedings as well as orders of the JJ Court is his say. It was also submitted that the petitioner, petitioner's spouse and third respondent were all one happy family till about August 2022 when certain issues touching upon immovable properties and a family Trust erupted. It was pointed that there is a civil suit also in this regard but it may not necessary to delve into those facts, dilate and be detained by those facts owing to the nature of the exercise on hand and it will suffice to say that relationship between the siblings (petitioner and third respondent) turned sour in August of 2022. Some time in August 2022, the petitioner and his spouse moved out (from



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the common roof with third respondent) along with the minor child 'xxx' is learned counsel's say. It was pointed out that the issue between the petitioner/petitioner's spouse on one side and third respondent on the other side pertain to immovable property, Trust etc., and it has nothing to do with the minor child.

11. Learned counsel for petitioner asserted that as per the orders of JJ Court, the petitioner and his spouse are parents of the minor child and they continue to have rights. On 02.12.2022, a program was organized by CARA, photographs taken therein with the petitioner/petitioner's spouse and child 'xxx' as participants have been placed before us to demonstrate that 'xxx' minor child was with petitioner/petitioner's spouse even as of 02.12.2022. Photographs showing petitioner/petitioner's spouse with 'xxx' minor child addressing gathering as adoptive parents was shown to the Bench and it was emphasized that (a) the child is happy, (b) petitioner/petitioner's spouse are successful adoptive parents even according to 'CARA' Government of India and (c) all this is even after August 2022 i.e., after relationship with third respondent turned sour and petitioner/petitioner's spouse moved out separately.



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12. When things stood as above, on 03.12.2022, when the petitioner and his wife had taken the minor child to a Mall in Chennai, the third respondent compelled them to let him take the minor child for two days on the promise that he would bring her back home. The petitioner and his wife felt pressurized and agreed but thereafter the third respondent did not honour the promise resulting in the petitioner lodging a police complaint on 23.02.2023 (after much persuasion and efforts) is learned counsel's further say. To be noted, this police complaint in T-19 Kelambakkam Police Station is pending vide C.S.R.No.181 of 2023.

13. As regards the official respondents, learned Additional Public Prosecutor has placed before us a status report pursuant to our earlier proceedings and submitted that they are unable to retrieve the CCTV footage from the Mall concerned on 03.12.2022.

14. As regards the third respondent, counsel on record was led by two Senior counsel Mr.V.Raghavachari who was physically present in Court and Mr.R.John Sathyan, who joined on a video-conferencing platform. To be noted, this is a hybrid hearing.

15. Learned Senior counsel for the third respondent submitted that



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entire exercise before the JJ Court was undertaken for the purpose of adoption of minor child 'xxx' by the third respondent as there was an apprehension that third respondent may not be eligible to be a PAP (Prospective Adoption Parent) in the light of Section 57(4) of JJ Act, which says that a single male is not eligible to adopt a girl child. Pausing here for a moment, it is necessary to capture another undisputed fact which emerged in the hearing. Learned Senior counsel for third respondent submitted that third respondent was married in 1999 and divorced through a Court order in 2012, from the third respondent's wedlock (between 1999 and 2022), two girl children were born in 2000, 2003 and from 2012 i.e., from the date of divorce, two children who were then minors were in the custody of third respondent's former wife with visitation rights to the third respondent. It is pointed out that both the daughters are now majors.

16. In this view of the matter, it is the categoric and emphatic submission of learned counsel for third respondent that the petitioner and his spouse, being petitioners in JJ Court was devised only to enable the third respondent to become an adoptive parent of minor child 'xxx' as it was believed that there is a bar for third respondent i.e., legal bar qua adoption



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of a girl child owing to Section 57(4) of JJ Act which reads as follows:

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'57.Eligibility of prospective adoptive parents.

(1) xxxxx

(2) xxxxx

(3) xxxxx

(4) A single male is not eligible to adopt a girl child.'

17. Learned Senior counsel submitted that aforementioned device is by consent and therefore, there cannot be any illegal custody. Learned Senior counsel also placed before us certain documents which according to third respondent demonstrate the care given to the minor child 'xxx' from 24.06.2021 to 19.02.2022 but these documents are disputed by the petitioner's counsel. A video clipping regarding Baptism and Baptism certificate is also placed before us but this is also disputed by the petitioner counsel. It was contended by learned Senior counsel that the petitioner is now trying to monetize the situation i.e., make money out of the exercise as the good relationship between the petitioner and third respondent, who are siblings, had fallen apart owing to immovable properties and family Trust disputes. In this view of the matter, learned Senior counsel pressed into service *Syed Saleemuddin case* [*Syed Saleemuddin Vs. Dr.Rukhsana and*



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Others reported in **(2001) 5 SCC 247]** to say that in a writ of Habeas

Corpus for custody of minor children, the principal consideration for the Court is to ascertain whether the welfare of the children requires that the present custody should be changed and children should be left in the care and custody of someone else.

18. Mr.R.John Sathyan, the other Senior counsel placed before us two unreported orders in H.C.P.No. 2085 of 2021 [***S.Mohanapriya Vs. The Chairperson/member, Child Welfare Committee and Others***] and H.C.P.No.2086 of 2021 [***R.Tamilselvi Vs. The Chairperson/member, Child Welfare Committee and Others***] both dated 27.01.2022 to say that even this Court (HCP Court) can declare guardianship and in a matter of custody of children in a habeas corpus legal drill welfare of the children is paramount consideration.

19. By way of reply, learned counsel for petitioner stoutly disputed the allegation of demand of money by the petitioner and his spouse to allow the third respondent to continue to have the custody of the minor child. It was also pointed out that the petitioner and his spouse have twin biological



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children born on 13.10.2019 and all the three children i.e., twin biological children and minor child 'xxx', have been living happily as siblings under the care and custody of petitioner/petitioner's spouse.

20. We carefully considered the rival submissions and the case laws.

The following points emerge:

(i) There is an order of a competent Court (JJ Court) which declares the petitioner and petitioner's spouse as parents of (now) two years and three months old minor child 'xxx';

(ii) The petitioner and his spouse were working as Professors in a College and are now having their own business. As regards the welfare of the child there is nothing to suggest that petitioner/petitioner's spouse with their twin biological children have fallen short of any requirement;

(iii) In continuation of above, to be noted, one limb of the operative portion of the order of the JJ Court reads as follows:

'4.that the concerned Probation Officer has to submit his report with regard to bring up of the Child by the Prospective Adoption Parents once in 6 months for two years.'



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(iv) Owing to the provisions of JJ Act, third respondent

appears to be not eligible to adopt a girl child [Section 57(4)]. This is a statutory bar. As would be evident from proceedings made in earlier listings (extracted and reproduced supra), this Bench called for records from JJ Court and there is nothing adverse therein. We find that even as regards welfare of the child, we do not find anything averse or unacceptable for the minor child being with the petitioner and his wife. To be noted, petitioner, petitioner's wife and their two biological twin children come across as a happy family i.e., a couple and twin children and they are supported by a Court order which declares them as parents. Therefore, on a demurrer, even if the allegation of petitioner and his spouse demanding money to leave the child in the custody of third respondent is true, this Court cannot endorse such a course as it is contrary to the statute. Equally, that cannot be a ground to allow the minor child to be in the custody of third respondent when there is no contra indicia that welfare of the child will be compromised if it is with the petitioner and his spouse.



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(v) The entire issue that has unfurled before us is clearly a product of disputes between two siblings i.e., petitioner and third respondent as regards immovable property, a Trust etc., which has nothing to do with the minor child but the minor child appears to have been caught in the crossfire;

(vi) As regards **Tejaswini Gaud** case reported in **2019 SCC OnLine 713**, we respectfully follow the Hon'ble Supreme Court which says that a Habeas Corpus Petition is maintainable in such child custody matters. As regards the unreported orders in **S.Mohanapriya** case and **R.Tamilselvi** case, both are dated 27.01.2022, we find that those cases are clearly distinguishable on facts as those are not cases where there was any order from a competent JJ Court unlike the case on hand. In this regard, we remind ourselves of declaration of law in **Padma Sundara Rao** case law [**Padma Sundara Rao Vs. State of Tamil Nadu** reported in **(2002) 3 SCC 533: 2002 SCC OnLine SC 334**] and the most relevant paragraph is paragraph 9, which reads as follows:

'9.Courts should not place reliance on decisions without discussing as to how the factual situation fits in



with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in Herrington v. British Railways Board [(1972) 2 WLR 537 : 1972 AC 877 (HL) [Sub nom British Railways Board v. Herrington, (1972) 1 All ER 749 (HL)]] . Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases'

To be noted, ***Padma Sundara Rao*** is a judgment rendered by Hon'ble Constitution Bench and therefore we choose to use the expression 'declaration of law' in place of a simple 'ratio';

(vii) As regards ***Syed Saleemuddin*** case reported in (2001) 5 SCC 247 pressed into service by the Senior counsel for third respondent, we only say that by applying ***Padma Sundara Rao*** principle, we find that ***Syed Saleemuddin*** case is not one where custody in the hands of one party was illegal. ***Syed Saleemuddin*** on facts was a case of tussle between two biological parents. In any event, in paragraph 11 of ***Syed Saleemuddin***, Hon'ble



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Supreme Court has clearly laid down that in a habeas corpus drill, the principal consideration for the Court is to ascertain whether the custody of the children can be said to be unlawful or illegal and whether the welfare of the children requires the present custody to be changed and the children being left in the care and custody of somebody else has been set out an option. In the case on hand, custody by third respondent is clearly illegal and therefore, if ***Syed Saleemuddin*** principle is applied also, it is clear that third respondent should hand over the custody to the petitioner and his spouse. We have taken into account welfare of the child and we have already found that the welfare of the child is not impaired if the child is with the petitioner and his spouse (together with their two twin biological children). This Bench finds that there are adequate reasons for not allowing custody in the hands of third respondent as it is (a) clearly illegal on the teeth of orders of a competent JJ Court (it is even contemptuous) (b) petitioner/petitioner's spouse have not in any matter failed to provide for welfare of minor child and (c) there is a statutory bar



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for third respondent to be a adoptive parent of a girl child [Section 57 (4) of JJ Act] and accepting the argument that JJ Court proceedings were devised to circumvent this bar will tantamount to endorsing an exercise to circumvent law.

21. This Bench is of the considered view that when there is an order by a Competent Court declaring the petitioner and his spouse as parents of the minor child 'xxx', the custody of the minor child 'xxx' with the third respondent cannot but be construed as custody which is not legal. To be noted, the judgment and decree of the competent JJ Court is now operating. This Bench finds the argument that an OP was filed as a method devised to get over a legal bar of adoption qua third respondent in the light of Section 57(4) of JJ Act is clearly unacceptable. There is a faint mention in the counter affidavit of third respondent that a Kancheepuram Court has been moved but the averments are bare and bald. Therefore, this Bench finds that such an argument cannot be sustained.



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22. In the light of the narrative, discussion and dispositive reasoning

supra, we make the following order:

(a) This Habeas Corpus Petition is allowed and custody of Minor child 'xxx' (name masked) {which is subject matter of judgment and decree dated 16.03.2022 made in Adoption O.P.No.214 of 2021 on the file of Principal District Judge, Salem}, which is now two years and three months old, shall be with the petitioner and petitioner's spouse and third respondent shall handover the child forthwith to petitioner and petitioner's spouse who are present in Court. To be noted, third respondent and minor child are also present in Court;

(b) The jurisdictional police and law enforcing authorities shall do the needful to ensure that custody of minor child 'xxx' is handed over to petitioner/petitioner's spouse forthwith by third respondent.



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(c) From the earlier proceedings made in the listing on 03.04.2023 (extracted and reproduced supra), more particularly paragraph 6 thereat, it will be clear that we had granted an interim protection saying that Probation Officer shall lay his/her hands off for the present as the Probation Officer had been pursuing the matter with the petitioner for a report. This interim protection is now lifted and the Probation Officer will proceed in accordance with law as per the order of competent Court.

(M.S.,J.)

(M.N.K.,J.)

28.04.2023

Index : Yes
Speaking order
Neutral Citation : Yes
gpa



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To

WEB COPY

1. The Commissioner of Police
Tambaram Police Commissionerate
Tambaram
2. State of Tamil Nadu
Rep. By the Inspector of Police
T-19, Kelambakkam Police Station
Pallikaranai Police District
Tambaram City
3. The Public Prosecutor
Madras High Court, Chennai



WEB COPY



H.C.P. No.368 of 2023

M.SUNDAR, J.,
and
M.NIRMAL KUMAR, J.,

gpa

H.C.P.No.368 of 2023

28.04.2023