



H.C.P.No.1081 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.06.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.1081 of 2023

Sasikala
D/o.Ravi

.. Petitioner

Vs.

State rep. by its

1. The Superintendent of Police
Office of the District Superintendent
Namakkal District.
2. The Inspector of Police
Mohanur Police Station
Namakkal District.
3. Panneer Selvam
S/o.Kuruvan
4. Rajammal
W/o.Kuruvan
5. Vijaybasker
6. Selvi
W/o.Vijayabasker

..Respondents

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Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to direct the respondents 1 and 2 to produce the body or person of the petitioner's minor children namely, (1) xxxxx, s/o.Panneer Selvam, aged about 5 years, (ii) xxxxx, S/o.Panneer Selvam, aged about 3 years, before this Hon'ble Court who is under the illegal custody of 3rd to 6th respondents and hand over them into the petitioner's custody, who is the natural guardian of the children.

For Petitioner	:	Mr.P.Saravana Sowmiyan
For Respondents	:	Mr.E.Raj Thilak
		Additional Public Prosecutor
		For R1 and R2
		Mr.S.Senthilvel
		representing Mr.D.Chandrasekar
		for R3

ORDER

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

This order will now dispose of the captioned 'Habeas Corpus Petition' ['HCP' for the sake of convenience and brevity].

2. Factual matrix is that the petitioner was married to third respondent (to be noted, third respondent is a private respondent) on 29.05.2017; that from this wedlock two children i.e., male children were born; that one child



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was born on 24.05.2018 and the other child was born on 01.04.2020 [we shall be referring to these two children as 'absentees' in plural for the sake of convenience and clarity]; that there was matrimonial discord between the petitioner and third respondent; that the petitioner filed a petition for divorce vide F.C.O.P.No.250 of 2020 on the file of Family Court, Namakkal which after full contest i.e., after full trial, granted divorce in and by judgment and decree dated 14.12.2022; that this judgment and decree has become final; that it is now the case of the petitioner that on 10.06.2023, respondent No.3 along with respondent No.4 (third respondent's mother) and two other relatives namely, respondents 5 and 6 forcibly took away the absentees who were playing in petitioner's house; that the petitioner has lodged a complaint with the jurisdictional police on the same day; that the captioned HCP has now been filed under such circumstances in this Court on 20.06.2023.

3. Issue notice to respondents 1 to 3.

4. Mr.E.Raj Thilak, learned State Additional Public Prosecutor accepts notice for respondents 1 and 2. Mr.D.Chandrasekar, (Enrol. No.1804/2004)

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with address for service at No.9/5, Radial House, Anna Nagar West Extension, Chennai-600 101 (Mobile No.9710555657) accepts notice for third respondent.

5. We find that the captioned HCP can be disposed of without issuing notice to respondents 4 to 6 and therefore, we are taking up the main HCP. To be noted, we will be preserving all the rights and contentions of respondents 4 to 6.

6. Learned Prosecutor submits on instructions that preliminary investigation brings to light that it appears to be a matter of matrimonial discord as between petitioner and third respondent and absentees appear to be caught in this matrimonial discord.

7. Learned counsel for third respondent submitted that third respondent has already filed a petition in jurisdictional GAWA Court vide G.W.O.P.No.131 of 2023 and E-Courts service download in this regard is as follows:

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Case History
PdJ Establishment

Add Note

Case Details

Case Type	OP
Filing Number	1138/2023
Filing Date	21-06-2023
Registration Number	131/2023
Registration Date	23-06-2023
CNR Number	TNSA010029262023

Case Status

First Hearing Date	24-07-2023
Next Hearing Date	24-07-2023
Case Stage	For Further Proceedings
Court Number And	8-III Additional District



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E Courts Services

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Next Hearing Date	24-07-2023
Case Stage	For Further Proceedings
Court Number And Judge	8-III Additional District Judge

QR Code

Petitioner And Advocate

1) Panneerselvam
Advocate - M.W.PRINCE

Respondent And Advocate

1) Sasikala

Under Act(S) Under Section(S)



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ECOS Services

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Case Status

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GUARDIANS & WARDS ACT, 1890 7,10



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8. Aforementioned G.W.O.P.No.131 of 2023 appears to have been filed with a prayer to appoint third respondent as guardian and other reliefs qua absentees but considering the scope of legal drill on hand we do not want to elaborate on the same. It will suffice to say that G.W.O.P.No.131 of 2023 has been filed *inter alia* under Sections 7 and 10 of GAWA. To be noted, 'GAWA' stands for 'Guardians and Wards Act, 1890';

9. As it is a case of a tussle between two parents (who are estranged and divorced by a Court order) i.e., a tussle for custody of two minor children (absentees) and as the jurisdictional GAWA Court has already been moved, we make the following order:

(a) All questions are left open as regards custody of absentees as between the petitioner and third respondent;

(b) All rights and contentions of the petitioner and respondent No.3 are preserved for other proceedings in other Court including GAWA Court;

(c) Learned counsel for third respondent has served one set of papers in G.W.O.P.No.131 of 2023 on the learned



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counsel for the petitioner;

(d) Learned counsel for petitioner accepts notice for the petitioner in G.W.O.P.No.131 of 2023;

(e) We request the learned GAWA Court judge to advance the hearing from 24.07.2023 to 03.07.2023 by consent qua petitioner counsel and 3rd respondent and both sides agree / consent that they waive notice in this regard;

(f) All rights of respondents 4 to 6 are preserved as regards subject matter of captioned HCP including rights when jurisdictional police proceeds with complaint pertaining to episode said to have happened on 10.06.2023;

(g) We make it clear that all questions i.e., all rights and contentions are left open including interim prayer for learned GAWA Court Judge to decide the matter on its own merits and in accordance with law without this order serving either as an impetus or as an impediment as this order has been made for the limited purpose of giving closure to HCP legal drill;

