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HCP No.1837 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.09.2023

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THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.1837 of 2023

P.Sivasami
S/o.Periyasami Gounder

.. Petitioner

Vs.

1. The Superintendent of Police
Erode District
Erode.
2. The Deputy Superintendent of Police
Bhavani Police Station
Bhavani, Erode District.
3. The Inspector of Police
Anthiyur Police Station
Erode District.
4. M.Chandrasekaran
S/o.Muniappan
5. Mrs.Pushpavathi
The Inspector of Police
All Women Police Station
Bhavani, Erode District.

..Respondents



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Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus directing the Respondents herein to produce the body and person of the petitioner's granddaughter 'xxxxx' aged about 4 years before this Honorable Court and hand over her under custody to the petitioner.

For Petitioner	:	Mr.E.P.Senniyangiri
For Respondents	:	Mr.E.Raj Thilak
		Additional Public Prosecutor
		For R1 to R3 & R5

ORDER

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

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

2. Factual matrix in a nutshell is that HCP petitioner's daughter Ms.Suganya married fourth respondent [Mr.M.Chandrasekaran, son of Thiru.Muniappan] and from this wedlock, a girl child 'xxxxx' [we are masking the name of girl child and we shall be referring to this girl child as 'absentee' for the sake of convenience, brevity and clarity] was born on 11.02.2019; that this Court is informed by learned counsel for HCP petitioner that Suganya died in December 2019 / January 2020; that an FIR has been



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lodge in this regard is learned counsel's further say; that it is to be noted that the date of demise of Suganya or FIR details have not been mentioned in the HCP case file but a statement was made by learned counsel at the bar; that thereafter, there was a tussle between petitioner along with his wife (grandparents of the absentee) on one side and fourth respondent (father of the absentee) on the other side as regards custody of absentee; that this resulted in the matter being carried to 'Child Welfare Committee' ['CWC' for the sake of brevity] Erode, which made an order dated 05.07.2023 vide Case No.297 of 2023 *inter alia* under Section 37(1)(b) of 'the Juvenile Justice (Care and Protection of Children) Act, 2015' [hereinafter 'JJ Act' for the sake of convenience and clarity] saying that the absentee will be with grandparents; that it is the complaint of the petitioner that on the teeth of such order, absentee has been taken away by fourth respondent and therefore, custody of the absentee now with fourth respondent is illegal.

3. Issue notice to official respondents.

4. Mr.E.Raj Thilak, learned State Additional Public Prosecutor accepts notice for respondents 1 to 3 and 5 (official respondents) and learned



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Prosecutor is instructed by Ms.A.Rani, Sub-Inspector of Police, Bhavani, All Women Police Station and Mr.M.Thangaraju, Sub-Inspector of Police, Velli Thirupur Police Station. To be noted, Inspector of Police of All Women Police Station, Bhavani, Erode District has been arrayed as fifth respondent by name (personal capacity).

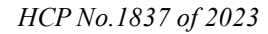
5. As regards the custody of the absentee, while learned counsel for petitioner submits that absentee was taken away from petitioner and handed over to fourth respondent by fifth respondent, it is submitted, on instructions that petitioner's son one Sampath had handed over the custody of absentee to fourth respondent. To this, learned petitioner's counsel submitted that petitioner's son is an alcoholic and he is not dependable. This is a factual disputation and therefore we refrain from expressing any opinion or view on this aspect of the matter more so when petitioner's son and fifth respondent are neither before us nor heard. Another disputation point is, legally speaking father is no doubt legal guardian qua absentee but it is submitted that this is a fit case for giving custody to grandparents.



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6. As regards the aforementioned 05.07.2023 order of CWC vide Case No.297 of 2023, we find that there is a provision for an appeal under Section 101 of JJ Act besides a revision provision under Section 102 of JJ Act. To be noted, revision lies to this Court but it is statutorily imperative to give a reasonable opportunity qua fourth respondent (for being heard) vide proviso to Section 102 of JJ Act.

7. In the aforesaid backdrop, we are informed that fourth respondent has already moved the jurisdictional GAWA Court. To be noted, 'GAWA' stands for 'Guardians and Wards Act, 1890'. Fourth respondent has moved jurisdictional GAWA Court vide O.P.No.178 of 2023 arraying HCP petitioner Mr.P.Sivasamy, his spouse Sambooranam, one Nanjayammal (we are informed that Nanjayammal is HCP petitioner's mother), one Chandrasekaran and Inspector of Police, All Women Police Station, Anthiyur as five respondents. From E-Courts Official Website of District Courts, we find that next hearing is on 03.10.2023 and the purpose of hearing reads 'service pending - notice'. A scanned reproduction of daily status as regards this O.P.No.178 of 2023 on the file of Principal District Court, Erode (jurisdictional GAWA Court) from E-Courts Official website is as follows:



8. Considering the facts and circumstances of the case on hand, more so as the matter turns heavily on facts, we deem it appropriate to say that GAWA Court is the most appropriate Forum to decide about the custody of absentee by applying parameters which are of relevance.

9. We, therefore make the following order:

(i) HCP petitioner as well as aforementioned four co-respondents in GAWA Court shall enter appearance on 03.10.2023;

(ii) It is open to HCP petitioner and fourth respondent to make any prayer including prayer for interim custody;

(iii) GAWA Court shall deal with the matter including



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interim prayer, if any, on its own merits and in accordance with law *de hors* this order i.e., untrammelled by this order of this Court which has been made for the limited purpose of a habeas legal drill;

(iv) All questions, disputations and contestations (both factual and legal as regards guardianship of minor absentee) are left open for being raised before GAWA Court;

10. Captioned HCP disposed of with the aforementioned directives, observations and preservation of rights.

(M.S.,J.) (R.S.V.,J.)
21.09.2023

Index : Yes / No
Speaking / Non-speaking
Neutral Citation : Yes / No

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M.SUNDAR, J.,
and
R.SAKTHIVEL, J.,

mk

To

1. The Superintendent of Police
Erode District, Erode.
2. The Deputy Superintendent of Police
Bhavani Police Station
Bhavani, Erode District.
3. The Inspector of Police
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5. The Public Prosecutor
High Court, Madras.

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