



W.P(MD)No.29435 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 14.12.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.29435 of 2023

and

W.M.P.(MD)No.25603 of 2023

Arul Selvi

... Petitioner

Vs.

1.The District Collector,
District Collectorate Campus,
Dindigul District.

2.The District Child Welfare Officer,
Plot No.4, 2nd Cross Street,
SPR Nagar, Collectorate Post,
Near Anjali Rountana,
Dindigul District.

3.The Inspector of Police,
Dindigul Town North Police Station,
Dindigul.

... Respondents

*(R3 is suo motu impleaded vide order dated
14.12.2023 in W.P.(MD)No.29435 of 2023
by GRSJ)*

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, forbearing the



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respondents in any way disturbing the custody of Petitioners adopted son Anto Rai and consequently direct them to consider petitioner's representation dated 04.12.2023 and pass order within the time frame fixed by this Court.

For Petitioner : Mr.T.I.Romeo Roy Alfred

For Respondents : Mr.M.Prakash,
Addl. Government Pleader for R1 & R2.
Mr.A.Albert James,
Government Advocate for R3.

ORDER

Heard both sides.

2.The writ petitioner got married to one Palraj on 25.05.2009. The petitioner could not bear any child. During January, 2020, the petitioner and her husband were entrusted with the custody of a male child by a doctor by name Chithra Priyadharshini of Bhavani Ganesan Hospital, Dindigul. The said doctor is said to have assured the petitioner that adoption formalities can be undergone later. The child has been with the petitioner ever since.



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3. Whiles, a complaint was received by the second respondent in this regard. The second respondent issued notice to the petitioner calling upon her to appear for enquiry. It is at this stage, the present writ petition has been filed.

4. The prayer in this writ petition cannot be granted. The second respondent is a statutory authority discharging statutory functions under the Juvenile Justice (Care and Protection of Children) Act, 2015. Such an authority cannot be prevented by this Court. In this case, admittedly, the petitioner had illegally taken custody of a child. It is not known if the child was an unwanted child born of illicit relationship or if the child was kidnapped. If the child had been illegally taken away from the lawful custody of his parents, then law will have to take its course. Therefore, the second respondent will have to necessarily discharge her role in the matter.

5. At the same time, the equities obtaining in this case cannot be lost sight of. The child had been given to the petitioner's custody in



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January 2020. We are now in December 2023. If the child is forcibly removed from the petitioner's custody, it would certainly cause considerable mental trauma and anguish to the child. That may cause a lasting scar in his mind. Therefore, this writ petition is disposed in the following terms:-

(a) The child can continue to remain in the custody of the petitioner and her husband. For the purpose of this case, the petitioner will be considered as the “fit person” for the child.

(b) The second respondent shall coordinate with the third respondent and find out the actual background of the child. If it turns out that the child was an unwanted child, then the petitioner can continue to keep the child. If the child had been kidnapped, then the child has to be restored to the custody of the parents. Thus, the right of the petitioner to retain the child will depend upon the ultimate outcome of the enquiry to be conducted by the third respondent in coordination with the second respondent.



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(c) The petitioner of course has to undergo usual adoption formalities as prescribed in the statute. The child in question will have to be formally registered. The concerned authority including CARA are directed to relax the usual norms so that the petitioner and her husband can legally adopt the petition mentioned child. This issue will arise only after the outcome of the enquiry to be conducted by the third respondent.

(e) The third respondent shall conclude the enquiry within one year. If they still cannot find out even at the end of one year, the enquiry shall stand terminated and the petition mentioned child shall be notified as fit for adoption. No costs. Consequently, connected miscellaneous petition is closed.

14.12.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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To:-

1.The District Collector,
District Collectorate Campus,
Dindigul District.

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G.R.SWAMINATHAN, J.

ias

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14.12.2023
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