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24.09.2024
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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 21378 of 2024

Manas Sarkar & Anr.
Vs.
State of West Bengal & Ors.

Mr. Sourav Bose,
Mr. Kaustav Bose
...for the petitioners

Mr. V.K. Shahi,
Ms. Pratiti Das
...for the State

Ms. Nibedita Chakraborty,
Mr. Muktakesh Das,
Ms. Sonali Bag
...for the respondent no. 4

Affidavit of service filed today be taken on
record.

The petitioners have prayed for an order directing the respondent police authorities to recover the child from the custody of the fourth respondent and to hand over the child to them. The petitioner no. 1 claims to be the father of a male child, who was born on June 16, 2021. The wife of the petitioner no. 1 died on October 06, 2023. The learned Advocate appearing for the petitioners submits that the child is in illegal custody of the fourth respondent, who is the maternal uncle of the child.

The learned Advocate appearing for fourth respondent submits that the Child Welfare Committee by an order dated June 19, 2024 directed the child to be placed under his supervision, subject to the conditions as mentioned in the said order.

After hearing the learned Advocates for the parties, this Court finds that the dispute between the petitioners and the 4th respondent is with regard to the custody of a minor child. As rightly argued by the learned Advocate for the 4th respondent that the custody of the child with the 4th respondent cannot be said to be an illegal one as the Child Welfare Committee placed the child under his supervision.

The welfare of the minor is to be taken into consideration while deciding the issue as to whether the father or the maternal uncle in the instant case should be given custody of the minor. Such a dispute cannot be decided in a writ petition by way of exchange of affidavits.

The petitioners will be at liberty to approach the civil court for appropriate reliefs.

With the above observations and directions, the writ petition stands disposed of.

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

Urgent photostat certified copy of this order, if applied for, be made available to the parties upon compliance of necessary formalities.

(Hiranmay Bhattacharyya, J.)