

necessary parameters of caring for the child, including her vaccination and naming ceremony of the child by organising a celebration where all the family members, relatives and villagers participated, she was accepted as a member of the family.

2] On 09.06.2024 when the child was retrieved from their custody by the officials of Crime Branch, Unit II, it was revealed to them that one crime was registered with Vikhroli Police Station and it is in connection with this CR, the child was removed from their custody.

It is the claim of the Petitioners that, they cared for the child since she was 6 days old i.e. from 17.11.2023 till 09.06.2024 for a period of about 8 months, but in a most cruel manner the child was snatched from them and was given in the custody of Respondent No.2. Though on multiple occasions they made repeated requests to Respondent Nos.1 and 2 to establish contact with the child, but they were prevented from doing so, which has resulted into grave mental and emotional duress to them.

3] It is in these circumstances, the Petitioners have approached this Court, seeking issuance of writ in the nature of Habeas Corpus for production of the child by the CWC and for handing over of the custody to the Petitioners as they had nurtured the child for last 8 months.

4] We had dealt with similar Petition a few days back which revolved around same CR, which was registered with Vikhroli Police Station to find that there is some racket which is in operation in luring the parents who are desirous of having a child, being unable to bear their own child and through some intermediary, they are being taken to the mother and by scribing some documents on the pretext of it

being the legal document, which would suffice for the child being placed in their custody and being introduced in their family, the child continued to be under their shelter.

In the present case, though we have observed that there is no legal manner in which the child has been adopted or the parents have been appointed as guardian, there is no denial by the Respondents, that the child was in their custody.

5] In the earlier proceedings, we had requested Ms. Singhania who was representing the Specialized Adoption Agency in whose care the child was given, to assist us as a 'Amicus Curie'.

In the peculiar circumstances of this case, we specifically asked her to throw light on the provisions of The Juvenile Justice (Care and Protection of Children) Act, 2015, and to find out whether there exist any mechanism to see that the child is legally adopted by following the due process of law and whether despite a specific method of adoption being specified in Chapter VI of the Act of 2015, whether the custody of this child can be handed over to the Petitioners.

She has invited our attention to Section 37 (1), which pertain to the orders to be passed regarding a child in need of care and protection, which contemplate that the Committee i.e. CWC, on being satisfied through the inquiry that the child before the Committee is a child in need of care and protection, may on consideration of the Social Investigation Report and taking into account the child's wishes, in case the child is sufficiently mature to take a view, pass distinct orders, which include placement of the child with fit person for long term or temporary or foster care under Section 44 or under sponsorship Orders under Section 45.

A fit person is defined in Section 2 (28) of the Act of 2015, to mean any person who is prepared to own the responsibility of a child, for a specific purpose, and such person is identified after inquiry made in this behalf and recognized as fit for the said purpose, by the Committee, to receive and take care of the child.

6] The provisions in Chapter VIII of the Act have set out a mechanism for adoption to be resorted to for ensuring right to family for the orphan, abandoned and surrendered child in terms of the provisions of the Act and the Rules made thereunder and the adoption regulations framed by the Authority.

The procedure being adopted by the Indian Prospective adoptive parents living in India is specifically carved out in Section 58 and Section 63 has put a seal on the effect of adoption.

Section 65 of the Act of 2015 specifically provide for Specialised Adoption Agencies, whereas, under Section 67, the State Government is competent to set up State Adoption Resource Agency for dealing with adoptions and related matters in the State under the guidance of Authority.

The Central Adoption Resource Authority (CARA) is deemed to have been constituted as the Central Adoption Resource Authority, to perform the functions prescribed in Section 68 which include facilitation of in-country adoptions and inter-state adoptions in co-ordination with State Agency. It is this Committee, which is now entrusted with the responsibility of implementing the adoption procedure in respect of those children who are declared by the CWC as fit for adoption.

7] Considering the peculiar situation with which we are confronted, being the girl child has been nurtured by the Petitioners for 8 months,

upon examination of the statutory scheme contained in the Act of 2015 alongwith the Rules, we prima-facie express that upon the child being declared as fit for adoption, which is not yet done by CWC, CARA, deviating from its faceless procedure, can consider the fitness of the Petitioners to be adopted parents and after following the regulations prescribed by CARA, the present Petitioners shall adopt the girl child, since they already have cared for her since last 8 months.

8] We consider it to be the most feasible mechanism in the fitness of things and welfare of the child, since the child was in care and protection of the Petitioners and they have expressed willingness and readiness to continue to care for the child, but in absence of any recognized mode by which they took the child into custody, the child was required to be moved to CWC.

On the last date of hearing, we had requested CWC to obtain necessary instructions from the Commissioner of Women and Child Welfare to ascertain as to in what manner this can be implemented, but unfortunately there is acute silence at the end of the Commissioner, as the learned APP Mr. Gavand has informed that the Commissioner could not be contacted.

9] Today before us, Ms.Anusha Amin, representing Union of India state that the CARA be added as Respondent and she has submitted before us that the Additional Solicitor General is desirous of appearing in the matter and for which we can have no objection as we would get assistance from the learned ASG.

However, we, in the fitness of things, expressed ourselves by way of prima facie view by referring to the statutory provisions under the Act of 2015 and if this is a mode which is available, the Petitioners

are also not deprived of the child and child is also handed over to them, who are in a position to shower all love and affection upon the child.

This according to us, would ultimately work out in the interest of the child and since the interest of the child is a focal point of Act of 2015, we deem it appropriate to renotify the proceedings to 14.08.2024.

To be listed at 10.00 a.m.

[MANJUSHA DESHPANDE, J.]

[BHARATI DANGRE, J.]