



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 31.01.2024

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THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.No.26433 of 2023

& WMP.Nos.25847 & 25848 of 2023

S.Sharmila

... Petitioner

Vs

1 The District Child Protection Officer,
District Collectorate Building,
Erode – 638 011

2 Child Welfare Committee,
Rep., by its Chairman,
SF No.151/2A, Kollukattumedu,
Nanjai Oothukkuli, Lakkapuram Post,
Karur Road, Erode – 638 002

3 The Inspector of Police,
Karungalpalayam Police Station,
Erode – 638005.

4 Mrs.M.Visithra

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India
praying to issue a Writ of Certiorari calling for the records of the impugned order



dated 22.08.2023 passed in Letter no.177/CWC/2023 of the 2nd respondent and quash the same.

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For Petitioner : Mr.S.A.Syed Shuhaibe

For Respondents : Mr.Stalin Abhimanyu (R1 and R2)
Additional Government Pleader
Mr.R.Kishore Kumar (R3)
Government Advocate
Mr.M.Tamil Thendral Arasu (R4)

ORDER

The petitioner has filed this Writ Petition seeking a certiorari challenging order dated 22.08.2023 passed by the second respondent, the Child Welfare Committee (CWC), Erode.

2. The subject matter of the Writ Petition relates to custody of Ridhanya, born on 24.11.2008 and Nishanth, born on 04.09.2011 (in short 'children') to R4 and one Manikandan her husband. There were matrimonial disputes between R4 and her husband.

3. The allegation of the petitioner is that even while they were married, R4 had deserted the matrimonial home as well as the minor children and it is only fortuitous that the children had been found and handed over to them. R4 is stated to have been missing thereafter and a police complaint had also been filed by Manikandan.



4. In the course of the enquiry, R4 is stated to have made a statement before the Inspector of Police, Erode/R3 that she was not willing to live with Manikandan and could also not take care of the children. The petitioner would submit that on and from that date, i.e., 10.05.2018, the children are with the petitioner and her family and are being brought up by them. The husband of R4, ie., Manikandan had committed suicide on 12.08.2023.

5. After his demise, R4 had made a move to take the children with her and when it was resisted by the petitioner, she has made a representation before R2 for custody of the children. It is pursuant to that, that the impugned order has been passed by R2 granting custody of the children to R4.

6. The provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015, (in short 'JJ Act') provides for the identification, care and protection of both, children in conflict with the law, as well as children, generally. The object is to cater to the basic needs of the children through care, protection, development, treatment, and social integration and adopt a child friendly approach in such matters.

7. Section 37 of the Act states that, the orders that are to be passed by the Child Welfare Committee (CWC) would relate to the care and protection that are



to be accorded to a child. The nature of the orders passed relate to the following arenas:

(a) declaration that a child is in need of care and protection;

(b) restoration of the child to parents or guardian or family with or without supervision of Child Welfare Officer or designated social worker;

(c) placement of the child in Childrens Home or fit facility or Specialised Adoption Agency for the purpose of adoption for long term or temporary care, keeping in mind the capacity of the institution for housing such children, either after reaching the conclusion that the family of the child cannot be traced or even if traced, restoration of the child to the family is not in the best interest of the child;

(d) placement of the child with fit person for long term or temporary care;

(e) foster care orders under section 44;

(f) sponsorship orders under section 45;

(g) directions to persons or institutions or facilities in whose care the child is placed, regarding care, protection and rehabilitation of the child, including directions relating to immediate shelter and services such as medical attention, psychiatric and psychological support including need-based counselling, occupational therapy or behaviour modification therapy, skill training, legal aid, educational services, and other developmental activities, as required, as well as follow-up and coordination with the District Child Protection Unit or State Government and other agencies;

(h) declaration that the child is legally free for adoption under section 38.

(2) The Committee may also pass orders for

(i) declaration of fit persons for foster care;

(ii) getting after care support under section 46 of the Act; or



(iii) any other order related to any other function as may be prescribed.”

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8. There is no provision in Section 37 that would enable the authorities under the JJ Act to assume jurisdiction to decide on the question of custody of a child. On the other hand, the subject matter of guardianship of a person, or custody, or access to any minor is a subject that falls within the jurisdiction of the Family Court in terms of Section 7(1)(g) of the Family Courts Act, 1984. Faced with this legal position, the Chairperson of the CWC has revoked the impugned order under communication dated 22.08.2023 and rightly so.

9. Learned counsel for the petitioner also states that R4 has approached the Family Court seeking custody and guardianship of the children. This is the correct course of action and the petition will be decided by the authorities expeditiously and in accordance with law.

10. This Writ Petition and connected Miscellaneous Petitions are closed in terms of this order. No costs.

31.01.2024

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Index : Yes / No

Speaking Order:Yes

Neutral Citation:Yes



W.P.No.26433



DR.ANITA SUMANTH, J.

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