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H.C.P.No.2778 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2024

CORAM :

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM
AND
THE HON'BLE MR.JUSTICE M.JOTHIRAMAN

H.C.P.No.2778 of 2024

M.Nandhini .. Petitioner

v.

1. State rep by the Commissioner of Police
Greater Chennai Police
Vepery, Chennai 600 007

2. The Inspector of Police
W28, All Women Police Station
Ambattur, Chennai 600 053

3. C.Manikandan .. Respondents

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Habeas Corpus, directing the 2nd respondent to produce the petitioner's child Dakshan Ram, Male, aged about 3½ years from the custody of 3rd respondent and handed over to the petitioner.

For Petitioner :: Mr.S.Ilamvaludhi
For Respondents :: Mr.R.Muniyapparaj



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Additional Public Prosecutor
for R1 & R2
Mrs.AL.Ganthimathi
Senior Counsel for
Mr.AR.Karthik Lakshmanan for R3

ORDER

(Order of the Court was made by S.M.SUBRAMANIAM,J.)

The writ of habeas corpus has been instituted to direct the second respondent to produce the petitioner's child Dakshan Ram, Male, aged about 3½ years from the custody of the third respondent.

2. The petitioner is the mother of the minor boy and the third respondent is the father. The learned counsel for petitioner Mr.Ilamvaludhi would submit that right from birth, the boy was with the petitioner/mother and suddenly, the third respondent had taken away the child forcibly from the custody of the petitioner and for the past about four months, the boy is under the custody of the third respondent at Bangalore. Despite the request made by the mother, she was not even allowed to meet the child, which resulted in institution of the present habeas corpus petition.

3. The learned Senior Counsel Mrs.Ganthimathi appearing for the



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third respondent would oppose by stating that both the petitioner and the third respondent were living together in Bangalore till May, 2024.

4. The learned counsel for petitioner would submit that the petitioner/mother secured admission at Little Kumaran Preschool at Ambattur, Chennai by paying the fees on 04.07.2024. The learned Senior Counsel for the third respondent would submit that the boy was admitted in the school at Bangalore on 09.05.2024. We are not inclined to enter into the said controversy between the parties.

5. However, the fact remains that matrimonial dispute exists between the petitioner and the third respondent and it is for them to take a decision either to resume the matrimonial life or to resolve the issues by approaching the competent Court of law.

6. Regarding the custody, Section 6(a) of the Hindu Minority and Guardianship Act, 1956 states that the custody of minor, who has not completed the age of five years, shall ordinarily be with the mother.



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Admittedly, the minor boy is aged about 3½ years. Even as per the submission made on behalf of the third respondent, the boy was with the joint custody of the petitioner and the third respondent till May, 2024. In view of the said fact, we are of the considered opinion that the custody of the minor boy, aged about 3½ years, must be with the petitioner/mother and in respect of other matrimonial or other disputes, the parties are at liberty to approach the competent Court of law. The minor boy has been handed over to the petitioner/mother forthwith. It is made clear that the third respondent shall not interfere with the custody in an illegal manner and for visitation or other rights, he has to approach the appropriate Court by filing a petition. The habeas corpus petition stands disposed of.

Index : yes/no
Neutral citation : yes/no

(S.M.S.,J.) (M.J.R.,J.)
08.11.2024

SS

To

1. The Commissioner of Police
Greater Chennai Police
Vepery, Chennai 600 007
2. The Inspector of Police
W28, All Women Police Station
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3. The Public Prosecutor
High Court, Madras



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S.M.SUBRAMANIAM,J.

AND

M.JOTHIRAMAN,J.

SS

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