



HCP.No.2881 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE M.JOTHIRAMAN

H.C.P.No.2881 of 2024

Thulasiraman

... Petitioner

Vs.

1. Superintendent of Police,
Ranipet, Ranipet District.
2. Inspector of Police,
Walajapet Police Station,
Ranipet, Ranipet District.
3. Selvi
4. Seenu @ Srinivasan
5. Hari
6. Kesavan

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, directing the 1st and 2nd respondent to secure and produce the person or body of the petitioner's children namely Sabarish S/o. Thulasiraman and Lohit S/o. Thulasiraman, aged 7 and 5 years



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respectively from the illegal custody of 3 to 6 respondents and handover the custody to the petitioner.

For Petitioner : Mr.N.Sivaraman
For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor
[For R1 and R2]
: Mr.N.Udayakumar
[For R3 to R6]

ORDER

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

The writ of habeas corpus petition has been instituted to direct the respondents 1 and 2 to secure and produce the minor children *viz.*, Sabarish and Lohit, aged about 7 years and 5 years respectively.

2. The marriage between the petitioner and Smt.Vaideeswari was solemnized on 05.12.2016, as per the Hindu rights and customs. From and out of the wedlock, two male children born namely Sabarish and Lohit. Unfortunately, the mother of the minor children died due to Kidney failure. Soon after the death of the mother of the children, the children were taken care by the maternal grand mother. The maternal grand mother is taking care of the children right from their birth. The elder boy is aged about 7 years and his brother is aged about 5 years.



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3. The elder boy namely Sabarish is able to understand the happenings inside the Court and the proceedings. We have interacted with the minor boy. He is capable of expressing his willingness in an uninterrupted manner. He is capable of speaking in the open Court and stated that all along he has been looked after by his maternal grand mother and he is willing to go along with the maternal grand mother, who is taking care of himself as well as his younger brother. He has spontaneously stated that he is not willing to live along with his father, since his father has not turned back for many years, after the death of this mother.

4. The maternal grand mother of the children, who also present before this Court made a submission that the petitioner is not looking after the minor children and he has not even turned back to see the children in order to provide any financial assistance for the educational and livelihood of the children. The maternal grand mother is getting assistance from her sons, who all are living with her.



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5. Courts while dealing with custody of minor children of tender age has to consider the "best interest of the child." The best interest theory globally recognised and the wishes of the children are also be considered along with the best interest. The minor boy *viz.*, Sabarish is able to express his willingness. His younger brother has also made a statement before this Court that he is willing to live with his maternal grand mother and his uncle.

6. When both the minor boys have expressed their willingness to live along with the grand mother and uncle, we are not inclined to forcibly disturb them, merely on the ground that the petitioner is the biological father of the children.

7. Even today, when the matter is taken up for hearing, the petitioner is not present.

8. Though it was made clear that the children will be present before this Court, the petitioner remained absent.



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9. The learned Counsel for the petitioner would submit that the petitioner hereinafter will provide financial assistance to the education and livelihood of the children.

10. In the event of any such assistance, the same may be accepted by the maternal grand mother for providing better education and livelihood to the minor children. The petitioner is at liberty to approach competent Court for seeking visitation right in the manner known to law.

11. With the above observations, the Habeas Corpus Petition stands disposed of.

[S.M.S., J.] [M.J.R., J.]
27.11.2024

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No
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To

WEB COPY

1. Superintendent of Police,
Ranipet, Ranipet District.
2. Inspector of Police,
Walajapet Police Station,
Ranipet, Ranipet District.
3. The Public Prosecutor,
Madras High Court,
Chennai - 104.



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