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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.04.2024

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.33378 of 2023

and

W.M.P.No.33101 of 2023

Sai Pranav Vimalan, M/A-10 (Minor),
Rep by his natural guardian and father
Mr.S.Vimalan,
Plot No.4, Krishna Nagar 1st Cross Street,
Sembakkam,
Chennai – 600 073.

... Petitioner

Vs.

1.The Regional Passport Officer,
Chennai Royala Towers,
No.2 and 3, IV Floor,
Old No.785, New No.158,
Anna Salai, Chennai – 600 002.

2.R.Karthika

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned notice dated Nov 2, 2023 issued by the 1st respondent and quash the same consequently direct the 1st respondent to process the passport application file No.MA3075445659323, Old PP No.S0998456 dated 07.06.2023, based on the said application for reissuance



of passport for the minor Sai Pranav Vimalan to enable him to travel to U.S.A., to pursue his education.

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For Petitioner	: Mr.V.Govardhanan For Mr.R.Subburaj
For R1	: Dr.D.Simon Central Govt. Standing Counsel
For R2	: Mr.J.Antony Jesus

ORDER

The order passed by the Regional Passport Officer in proceedings dated 2nd November, 2023 rejecting the application of the petitioner for renewal of Passport under the Passport Act, 1967 is under challenge in the present writ petition.

2. The petitioner Sai Pranav Vimalan is a minor aged about 10 years. The writ petition has been instituted through the father of the minor Mr.S.Vimalan.

3. The marriage between Mr.S.Vimalan and R.Karthika was solemnised on 04.03.2012 and they are blessed with a son namely Sai Pranav



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Vimalan. The date of the birth of the minor is 01.11.2013. Matrimonial disputes aroused between the couple. The father of the minor boy filed a Divorce Petition, which is pending. The mother of the minor boy has filed G.W.O.P. seeking custody of the minor boy. The G.W.O.P filed by the mother of the minor boy was dismissed and an appeal was filed, which is pending on the file of the Madurai Bench of Madras High Court. Visitation right has been provided to the mother.

4. The learned counsel for the petitioner would submit that the minor boy is pursuing his education through online in United States of America (USA). The father of the minor boy is working from home and looking after the minor boy. The school at United States insisted for the personal appearance of the boy.

5. The mother of the minor boy raised an objection for renewal of Passport on the ground that she is residing in India and the father of the boy is also working from home at Chennai and she has visitation right also. The objection was considered by the Regional Passport Officer and the impugned order has been passed mainly stating the following reasons:



“In compliance with the order dated 10.08.2023 of the Hon'ble High Court of Madras in WP.No.23488 of 2023, wherein this office was directed to take a call on your application within a period of twelve (12) weeks from the date of receipt of the order copy, your application is considered and scrutinised taking into account of the following facts:

1. The Biological mother of the minor applicant has filed appeal against the dismissal order dated 20.05.2023 issued in her custody petition in GWOP No.91 of 2022 and the same is pending before the Hon'ble Madurai Bench of Madras High Court.

2. she has got visitation rights on the minor vide Child Welfare Committee order dated 24.02.2023 and 14.03.2023, which are not complied by the biological father and was reconfirmed through the discreet enquiry report received from the Superintendent of Police, Thoothukkudi District.

3. The biological mother has again raised objection against the reissue of passport of the minor vide her letter dated 10.07.2023.

4. The Permanent legal custody of the minor



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has not been decided by any Court.”

6. The learned counsel for the petitioner pointed out that the Regional Passport Officer in the impugned order has advised the petitioner to furnish the Court order specifically for issuance of passport to the minor Sai Pranav Vimalan, failing which the application will summarily rejected.

7. The learned Central Government Standing Counsel appearing on behalf of the 1st respondent would oppose the contention by stating that the mother is having visitation right. The Child Welfare Committee has to ensure such visitation right to the mother of the minor boy. The matrimonial issues are subjudiced before the Madurai Bench of Madras High Court. Therefore, in the event of renewing passport, the right of the mother will be infringed. Therefore, the Regional Passport Officer, rejected the application by stating that the passport will be issued after resolving the issues or by obtaining an order from the Competent Court.

8. The learned Central Government Standing Counsel for the 1st respondent would further submit that the biological mother of the boy has



raised an objection against the reissuance of Passport to the minor boy on the ground that the visitation right has been granted vide Child Welfare Committee orders dated 24.02.2023 and 14.03.2023. The father of the boy is reluctant in allowing the mother to have visitation right. Further, the appeal filed by the mother is pending. Permanent legal custody of the minor boy has not yet been decided by any Court.

9. The learned counsel for the petitioner relied on the Passport Rules Schedule III Clause 3, wherein it is stated that a declaration from the parents (Single Parent) who is separated but not formally divorced would be sufficient for the purpose of reissuance of passport. However, such procedures can be adopted in the event of no objection from the biological mother.

10. In the present case, there is an objection from the biological mother of the minor boy. Therefore, the Regional Passport Officer is bound to consider the objections. The Clause can be applied only in the event of no dispute regarding the custody of the child. When the custody of the child is disputed in the present case, the reason furnished by the Regional Passport



Officer is to be tested by this Court.

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11. The minor boy is aged about 10 years. This Court on personal examination of the boy found that he is unable to take a clear decision, since he was brought up by his mother and now on account of matrimonial disputes, the father and the mother are living separately. Therefore, the boy would be psychologically affected due to the absence of his mother, who is now prevented to have visitation right and living separately. Visitation rights as provided by the Child Welfare Committee is to be honoured by the father. However, the learned counsel for the petitioner states that visitation rights has not been denied.

12. This Court is of the considered opinion that the mother is entitled to have continuous visitation rights as ordered by the Child Welfare Committee on 24.02.2023 and 14.03.2023. If the boy is allowed to travel abroad, undoubtedly the mother will be deprived of enjoying the visitation rights during the pendency of the appeal regarding custody of the child. In the event of granting custody of the child to the mother by the Court, it would be difficult for her to implement the same if the boy is allowed to travel



abroad. The procedures to bring back the child from the United States would be cumbersome and it may not be possible for the mother to get back her child even if the permanent custody is granted in her favour. Now the boy being a minor and aged about 10 years, and not clear about his decision. Therefore, this Court is of an opinion that the boy has not hatred his mother and still he is interested in visiting his mother. However, these factors are to be further considered in the appeal pending before the Madurai Bench of Madras High Court in the custody petition.

13. As far as the present writ petition is concerned, the Regional Passport Officer has considered the objections raised by the mother, which seems to be acceptable. The reasonable claim of the mother to have visitation right or to see her son at no circumstances need not be denied by the Courts.

14. In the event of reissuing the passport, the mother will be permanently deprived of seeing her son or it may not be easily possible to bring back her son. Therefore, the issues are to be resolved finally and thereafter, the decision is to be taken in the interest of the minor boy. That apart, there is no difficulty in continuing the education either through online



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or by securing admission in any international school in Chennai. The father of the boy has to make suitable arrangements to provide best education to the boy.

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15. With these observations, this Writ Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

03.04.2024

Jeni
Index : Yes
Speaking order
Neutral Citation : Yes

To

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S.M.SUBRAMANIAM, J.

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