



W.P(MD)No.1353 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.02.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.1353 of 2024

Arunkumar

... Petitioner

Vs.

1.The District Child Protection Officer,
District Child Protection Office,
2/830, V.O.C. Nagar,
Soolakarai Medu,
Virudhunagar District – 626 003.

2.The State represented by
The Inspector of Police,
Sivakasi East Police Station,
Virudhunagar.

3.The Chair Person,
Child Welfare Committee,
No,1/648. Lakshmi Sundaram Theatre Road,
Gandhirajan Street,
Pandian Nagar,
Virudhunagar.

*(R.3 is suo motu impleaded vide
order of this Court dated 23.01.2024)*



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4.The Sub Registrar,
Registration Department,
(*) Sivakasi , Virudhunagar District.

(R.4 is suo motu impleaded vide
order of this Court dated 26.02.2024)

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the first respondent herein to consider the petitioner's representation dated 29.12.2023 and transfer custody of the child, Madhesh, to the petitioner herein, taking into account the best interests and welfare of the child within the specific period fixed by this Court.

For Petitioner : Mr.R.Manoharan

For Respondents: Mr.K.S.Selvaganesan
Additional Government Pleader
for R.1 & R.3

Mr.A.Albert James
Government Advocate for R.2

Mr.S.Shanmugavel
Additional Government Pleader for R.4

ORDER

Heard both sides.

2.The petitioner got married to one Mahalakshmi in the year 2018. Two children (Aadhi Kirthik and Mathesh) were born through the wedlock. The petitioner's wife for reasons that are not clear left the marital home three years ago. She did not take the children with her. She simply abandoned them to the care of



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the petitioner. The petitioner was working in a fire crackers unit. A major accident took place in the said premises and the petitioner suffered burn injuries in his hands. The petitioner found it very difficult to bring up the children.

3.The petitioner came in contact with a couple by name, Selvam and Chandra. They had recently lost their 21 year old only son. They were in deep emotional distress. They told the petitioner that if the petitioner gives one of his children in adoption to them, they would happily and safely bring him up. The petitioner did not have much of a choice. He was not in a position to take care of his two children. His wife had already left him. He had also suffered a major accident. He was in severe financial difficulties. Therefore, the request made by the said couple (Selvam & Chandra) appealed to the petitioner. He entrusted the custody of his child (Mathesh) to them.

4.At this stage, complaint was received by the Child Welfare Officer about this transaction. Crime No.541 of 2023 was registered on the file of Sivakasi East Police Station. The respondents 1 and 3 took action and the aforesaid couple (Selvam and Chandra) were divested of the custody of Mathesh. The child is presently in a Children's Home at Tuticorin. At this stage, this writ petition came to be filed for directing the first respondent to hand over the custody of the child to the petitioner.



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5. There is nothing on record to show that the petitioner had sold the child to the aforesaid couple. The petitioner states that he had given only temporary custody to the said couple.

6. The petitioner as well as the aforesaid couple appeared before me. I enquired them. The petitioner / Arunkumar frankly told me that he has no objection for giving the child in adoption to the said couple. The said couple are also desirous of accepting the child in adoption. They are having reasonably good economic background and I am satisfied that the interest of the child will be better taken care if the child is adopted by them. The child had been in their custody for almost one year. The child was taken away from them only on 21.11.2023. Instead of the child being brought up in a "Children's home", it would be better if he is brought up by the aforesaid loving couple. It is true that ultimately the child will be put up for adoption. When a couple who have already developed an emotional bonding with the child want to take it in adoption, it is just and proper that the paramount interest of the child requires that child is given in adoption to them. The Hon'ble Supreme Court in the decision reported in (2010) 1 SCC 174 (*V.Ravi chandran v. Union of India*) held that whenever a question arises before a court pertaining to the custody of a minor child, matter is to be decided not on



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considerations of the legal rights of the parties but on the sole and predominant criterion of what would best serve the interest of the minor. I would apply the said principle not only in child custody cases but also in any matter pertaining to interests of children.

7.The petitioner is the biological father of Mathesh. Since his wife had already abandoned the child, the question of obtaining her consent will not arise at all. Section 9(1) and (2) of the Hindu Adoptions and Maintenance Act, 1956 reads as follows :

“9.Persons capable of giving in adoption.-(1)No person except the father or mother or the guardian of a child shall have the capacity to give the child in adoption.

(2) Subject to the provisions of sub-section (4), the father or the mother, if alive, shall have equal right to give a son or daughter in adoption:

Provided that such right shall not be exercised by either of them save with the consent of the other unless one of them has completely and finally renounced the world or has ceased to be a Hindu or has been declared by



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a court of competent jurisdiction to be of unsound mind.”

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In *Githa Hariharan vs. RBI* (1999) 2 SCC 228, the expression “after” occurring in Section 6(a) of Hindu Minority and Guardianship Act, 1956 was interpreted not as “after the lifetime” but as “in the absence of”, the word “absence” referring to the father's absence from the care of the minor's property or person for any reason for whatsoever. If the father is wholly indifferent to the matters of the minor, or he is staying away completely, he can be considered to be absent and the mother being a recognized natural guardian can act validly on behalf of the minor as the guardian. This judgment was followed in *ABC vs. State* (2015) 10 SCC

1. The same approach can be adopted while applying Section 9 of the Hindu Adoptions and Maintenance Act, 1956. The father as guardian of the child has the capacity to give the child in adoption. He must however take the consent of his wife if she is alive. When the wife has abandoned the child and her whereabouts are not known, the said requirement can be dispensed with. Of course, such dispensing with cannot be lightly made. The facts must justify and only with the prior leave of the court, it can be done.

8. After hearing the respondents, particularly, the jurisdictional police, I am



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satisfied that a case has been made out for granting relief. The petitioner's wife has abandoned her child. Her consent need not be obtained. The petitioner is permitted to hand over the child (Mathesh) in adoption to the aforesaid couple (Selvam and Chandra). A formal deed of adoption shall be executed and also registered. As and when such a document is presented before the Sub-Registrar, Sivakasi, it shall be registered. These formalities shall be completed within a period of four weeks from the date of receipt of copy of this order.

9.In the meanwhile, the petitioner as well as the aforesaid couple (Selvam & Chandra) shall go to the Francis Fusion Home, Thoothukudi and take custody of the child. The third respondent is requested to inform the person in-charge of the said Home about the passing of this order. After taking custody of the child, the petitioner and the aforesaid couple will appear before the third respondent on **01.03.2024 at 11.30 a.m.** The petitioner and the aforesaid couple shall also file an affidavit before the third respondent undertaking to complete all the adoption formalities under the Hindu Adoptions and Maintenance Act within a period of four weeks.

10.Since the issue has been amicably resolved, the Inspector of Police/second



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respondent is directed to file final report before the jurisdictional Magistrate dropping further action in the matter. The learned trial Magistrate is directed to accept the said final order to be filed by the Investigation Officer. This shall be done as expeditiously as possible.

11.This writ petition is allowed accordingly. There shall be no order as to costs.

Sd/-

Assistant Registrar (CS-I)

(*)Substituted as per order dated 26/03/2024 in WP(MD) No.1353 of 2024

Sd/-

Assistant Registrar(CS I)

// True Copy //

/04/2024

Sub Assistant Registrar
(CS- I/ II / III / IV)

MGA

**(*)To be Substituted in the orders already despatched
on 28.02.2024.**

To

1 The District Child Protection Officer,

<https://www.hmc.tn.gov.in/judis>



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District Child Protection Office,
2/830, V.O.C. Nagar,
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3.The Chair Person,
Child Welfare Committee,
No,1/648. Lakshmi Sundaram Theatre Road,
Gandhirajan Street,
Pandian Nagar,
Virudhunagar.

4.The Sub Registrar,
Registration Department,
(*) **Sivakasi , Virudhunagar District.**

+1 CC to M/s.R.MANOCHARAN, Advocate (SR-7388[F] dated 27/02/2024)

+1 CC to M/s.SPL.GP (SR-7870[F] dated 28/02/2024)

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26.02.2024

MGJ(28.02.2024) 9P 7C

DL(18.04.2024) 9P 7C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17.07.2023