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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision:-20th August, 2024.

+ **W.P.(CRL) 2298/2024**

CHINA DEVI

.....Petitioner

Through: Mr. Tara Singh Bisht, Mr. Vijay Datt Gahtori, Mr. Bijender Kumar and Mr. Parth Dixit, Advs. with Petitioner in person.

versus

STATE OF NCT OF DELHI & ORS.

.....Respondents

Through: Mr. Sanjay Lao, Standing Counsel (Crl.) with Ms. Priyam Aggarwal and Mr. Abhinav Kumar Arya, Advs. with SI Chetan Singh PS Swarup Nagar. Respondent Nos.3 to 5 in person.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE AMIT SHARMA

Prathiba M. Singh, J. (ORAL)

1. This hearing has been done through hybrid mode.
2. The present writ petition has been filed on behalf of the Petitioner- Smt. China Devi under Article 226 of the Constitution of India read with Section 528 of Bharatiya Nagarik Suraksha Sanhita ('BNSS') seeking issuance of a writ of *habeas corpus* for production of her two children-Ms. R and Master S, whose date of birth is stated to be 20th June, 2013 and 11th July, 2017 respectively.
3. It is stated in the petition that the Petitioner is the wife of Mr. Mohan Lal who unfortunately passed away on 19th June, 2024. From the wedlock, the Petitioner and Mr. Mohanlal have two children i.e., Ms. R and Master S.



4. According to the Petitioner, her husband hailed from Uttarakhand and had taken both the children with him to Uttarakhand on 16th May, 2024. However, the Petitioner was later informed that her husband had died in an accident. Upon enquiry with regard to her children, Respondent Nos. 3 to 6, who are the first wife of the Petitioner's deceased husband and three children, have refused to return the children to her. As per the Petitioner, the said Respondents do not wish to recognise the Petitioner as the wife of Mr. Mohan Lal in view of certain property disputes.

5. On the last date of hearing i.e. on 31st July, 2024, the Petitioner had appeared and had produced her Aadhar card, reflecting her to be the wife of Mr. Mohan Lal. Relevant paragraph recording the same is set out below:

“7. The Petitioner has produced her Aadhar card which shows and reflects her as the wife of Mr. Mohan Lal with the address in Bashiyo wala Mandir, Jaspur Khurd, Kashipur, Udham Singh Nagar, Uttarakhand, Pin- 244713. She has also produced the original Aadhar cards of both her children, i.e., Ms. R and Master S, which reflect that they are the children of Mr. Mohan Lal with the same aforementioned address in Uttarakhand. The original Aadhar cards are returned to the Petitioner.”

6. Thereafter, notice was issued in the writ petition and it was directed that the children would be produced before the Court. The SSP, Udham Singh Nagar, Uttarakhand was also directed to cooperate in the production of two children. The Respondent Nos. 3 to 6 were also directed to remain present. The relevant portion of the order dated 31st July, 2024 is extracted hereinunder for ready reference:



“8. Issue notice.

9. Let the two children, i.e., Ms. R and Master S be produced in Court on the next date of hearing. The SSP, Udham Singh Nagar, Uttarakhand i.e., Respondent No.2 shall cooperate in the production of the two children

10. Respondent Nos. 3 to 6 are also directed to remain present in Court along with the two children on the next date of hearing.

11. List on 20th August, 2024. In addition notice is issued Dasti to all Respondents to be served through the concerned SHO.”

7. Accordingly, today, the children i.e. daughter Ms. ‘R’, who is 11 years old and the son Master ‘S’, who is 7 years old, have been produced. The Petitioner is also present. Respondent Nos. 3 to 5 namely Ms. Beena Devi, Mr. Shubham and Mr. Sumit are also present.

8. The Court has had an in-chamber interaction with the parties present. The facts that have been gathered after interacting with the entire family is that the deceased Mohan Lal had three wives. He had four sons and one daughter from the first wife i.e., Ms. Beena Devi, who is Respondent No.3. The second wife has two sons and she lives in Kashipur, Uttarakhand. Ms. China Devi, the Petitioner, is the third wife, who has one son and one daughter. Thus, there are a total of nine children, who all are from the deceased. All the three wives are alive. They are residents of Kashipur except the Petitioner, who is living in Delhi with her brother and sister-in-law as also her mausi. The daughter Ms. ‘R’ is studying in 5th standard and the son Master ‘S’ is studying in the 2nd standard. They are currently residing in Kashipur where they study in Government Public School, Jaspur, Kashipur,



Uttarakhand.

9. The further factual matrix of this case which has been gathered from the in-chamber interaction is that, the family has two homes in which the entire family resides, except for the Petitioner, who resides in Swaroop Nagar, Delhi currently. There is also agricultural land. The Petitioner herself lived in Kashipur for 14 years prior to the demise of the husband. Currently, the Petitioner claims that she is working as a labourer and earning Rs.500/- per day. Upon being enquired, she stated that she lives in a one room tenement and on being asked about the schooling arrangement of the children in Delhi and how she would manage the same, she stated that her brother is trying to arrange the schooling for the children.

10. The Court has further interacted with the Petitioner and the Respondent No.3-Ms. Beena Devi. Ms. Beena Devi submits that she has no objection if the Petitioner-Ms. China Devi resides with the entire family in Kashipur itself. However, the apprehension of Ms. China Devi is that there are always disputes with respect to the property left behind by the husband and, therefore, there are continuous fights and tussles between the family members and some of the sons from the first wife. The sons of the first wife i.e., Respondent Nos. 4 and 5 are also married. Their wives and children also live in the same property in Kashipur.

11. In the interaction with the Petitioner's children, the Court has come to a conclusion that the children are comfortable in Kashipur, where the entire family lives. The children stated that they have always been educated in Kashipur and not in Delhi. This is not disputed by the Petitioner who states that they used to visit Delhi.

12. In the overall facts and circumstances and keeping in mind the welfare



and well-being of both the children, i.e., Ms. 'R' and Master 'S', who have been residing continuously in the family home, and undertaking schooling in Kashipur, with the consent of the parties, the following directions are passed in the matter:

- (i) The children of the Petitioner Ms. 'R' and Master 'S' shall continue to live in Kashipur, Uttarakhand. The Petitioner-Ms. China Devi is permitted to join them and live with them in the family home in Kashipur itself.
- (ii) Respondent Nos. 3 to 5 shall ensure that the Petitioner-Ms. China Devi is allowed to stay in an accommodation in the family home in Uttarakhand, which according to her, has been willed in her favour, so that there is no disharmony. Accordingly, at least two to three rooms with a proper kitchen and bathroom shall be immediately handed over to the possession of the Petitioner.
- (iii) Insofar as the alleged will or any property disputes is concerned, this Court has not examined the merits of the same.
- (iv) The Petitioner also demands the death certificate of her husband. The SHO of the concerned area shall arrange for the death certificates and hand over the same to all three wives of the deceased husband.

13. Respondent Nos. 3 to 5 have assured that they would not pick up any quarrel or fight with the Petitioner. The Petitioner has clarified to the Court that she wishes to accompany the children as also Respondent Nos.3 to 5 tomorrow itself. Further, the Petitioner assures the Court that she would not allow any unknown person(s) in the Uttarakhand home, who may create disharmony in the family house.



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14. Let a copy of this order be sent to the SSP, Udham Singh Nagar, Uttarakhand, who shall transmit the same to the concerned SHO so that the SHO can periodically visit the family and ensure there is peace in the family.

15. Insofar as any civil disputes are concerned, this Court has not examined the same. Parties may attempt resolution of their property disputes bearing in mind the overall interest of the various children in the family. If there is no resolution, parties are free to avail of their remedies in accordance with law.

16. The petition is disposed of in the above terms.

PRATHIBA M. SINGH
JUDGE

AMIT SHARMA
JUDGE

AUGUST 20, 2024/dk/rks/Pc