

W.P.(MD)No.8276 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 24.04.2025

CORAM

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

W.P.(MD)No.8276 of 2025
and W.M.P(MD).No.6209 of 2025

L.Caroline Sugirtham

... Petitioner

vs.

- 1.The Chairperson,
Child Welfare Committee,
Annai Sathya Ammaiya Memorial Government
Children Home,
Madurai 625 020.
- 2.The Members No.1 of Child Welfare Committee,
Annai Sathya Ammaiya Memorial Government
Children Home,
Madurai 625 020.
- 3.The Member No.2 of Child Welfare Committee,
Annai Sathya Ammaiya Memorial Government
Children Home,
Madurai 625 020.
- 4.The Members No.3 of Child Welfare Committee,
Annai Sathya Ammaiya Memorial Government
Children Home,
Madurai 625 020.



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5.The Member No.4 of Child Welfare Committee,
Annai Sathya Ammaiyar Memorial Government
Children Home,
Madurai 625 020.

6.The District Child Protection Officer,
District Child Protection Unit,
3rd Floor, Collectorate Additional Building,
Madurai District 625 020.

7.P.Pavithra

... Respondents

(R7 is impleaded vide Court order dated 04.04.2025 in
W.M.P(MD).No.7281 of 2025 in W.P(MD).No.8276 of 2025 by VLNJ)

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, to direct the respondents 1 and 6 to necessary steps being immediately undertaken for ensuring the immediate extension of the Foster Care for a period of two years so as to ensure that there is no disturbance to the continued foster care of Minor XXX, who is under petitioner's care and custody for the past five years based on her representation dated 13.03.2025 and subsequent representation dated 18.03.2025 within a stipulated time that may be fixed by this Court.

For Petitioner

: Mr.Henri Patrick Tiphagne

For R1 to R6

: Mr.M.Muthumanikkam

Government Advocate

For R7

: Mr.Selvakumar



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ORDER

The petitioner seeks for the following relief:-

“to direct the respondents 1 and 6 to necessary steps being immediately undertaken for ensuring the immediate extension of the Foster Care for a period of two years so as to ensure that there is no disturbance to the continued foster care of Minor XXX, who is under petitioner's care and custody for the past five years based on her representation dated 13.03.2025 and subsequent representation dated 18.03.2025 within a stipulated time that may be fixed by this Court. “

2. The petitioner approached the Child Welfare Committee in 2019. The purpose being to be appointed as a foster parent for a child. The petitioner's marriage had hit the rocks and she did not get a child from the wedlock. The Child Welfare Committee at Madurai responded positively to the request of the petitioner. A child named XXX, aged about 4 years, was handed over to the petitioner for foster care. The



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Child Welfare Committee, Madurai, passed an order on 27.01.2020 declaring the petitioner to be fit for foster care. On the date on which the foster care was given, the child had been treated as an abandoned child.

3. The files of the Child Welfare Committee produced before the Court point out that the biological mother of XXX had made a request as early as 2019 for taking the child back. However, for reasons not clear, this request of the biological mother had not been brought to the notice either to the petitioner or to Mr.Rameshkumar, District Legal Service Authority, who had opined positively in favour of the petitioner.

4. Having taken custody of the child, the petitioner admitted the child to Grace Public Nursery and Primary School, Madurai. After the kindergarten education was completed, the child was admitted as a student in the Seventh-day Adventist Matriculation Higher Secondary School, Madurai. The child is said to be pursuing his further education in the said institution.



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5. After having granted foster care, the Child Welfare Committee, Madurai, extended the same by way of three orders dated 27.03.2020, 27.03.2021 and 27.03.2022. In the meantime, the petitioner who was employed, took voluntary retirement from the said employment in order to concentrate on bringing up her foster child. In the last of its orders, the Child Welfare Committee directed the petitioner to produce the child on 27.03.2025 for assessment and if found fit, for further extension.

6. The petitioner pleads that, on account of the love and affection shown by the petitioner, her mother and sister, the child, XXX, was able to get over the initial setbacks and has been developing into a healthy and well-adjusted child in the family of the petitioner. Though certain allegations are made against the seventh respondent-Pavithra-the biological mother of the child, that she parted with custody of the child on some alleged consideration, this issue had been tried before the Judicial Magistrate No.V, Madurai, in CC.No.66 of 2019, and the seventh

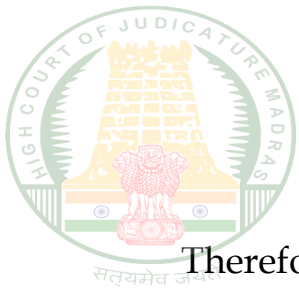


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respondent was acquitted of all charges. This order was passed on 21.04.2021. It has attained finality.

7. The cause of action for the present writ petition is that, the Child Welfare Committee had not acted upon the proceedings of the Executive Magistrate, Madurai, dated 15.11.2022 and had initiated steps to hand over the child to the biological mother. In the meantime, the Central Government framed the Foster Care Guidelines of 2024, enabling the petitioner to seek for adoption. As the five years period had expired on 27.03.2025, and since the Child Welfare Committee, Madurai, sought to take back the child from the petitioner's foster care, this writ petition was moved before this Court.

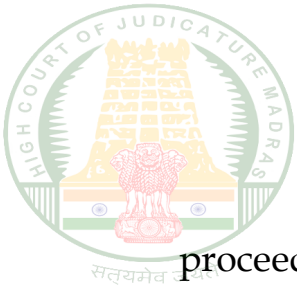
8. When the matter came up for admission, I pointed out to Mr.Henri Patrick Tiphagne that though the order has been passed as early as on 15.11.2022, no Home Study has been conducted on the suitability of foster child continuing in the custody of the writ petitioner.



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Therefore, I gave a direction to the Child Welfare Committee to cause a Home Study and submit a report. I adjourned the matter awaiting the home study. Furthermore, I informed Mr.Henri Patrick Tiphagne that with the advanced age of the petitioner, some measure of financial security should be given for the child by the writ petitioner. In so far as the second aspect is concerned, the writ petitioner readily came up with the fixed deposit for a sum of Rs.30,00,000/- (Rupees Thirty Lakhs only) in the name of XXX on 26.03.2025 (the name of the child was changed from XXX on 09.06.2020).

9. Pursuant to the order of this Court, the Child Welfare Committee directed the District Child Protection Officer to conduct a Home Study and to submit a report. The report dated 28.03.2025 was produced before the Court. A perusal of the same shows that the child is being brought up well and is being given an all round development suitable to his age. On 01.04.2025, Mr.Selvakumar pleaded before the Court that the biological mother wants to intervene in the said



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proceedings. I also queried with Mr.Henri Parick Tiphagne if his client would be willing to permit the biological parent to associate with the petitioner in bringing up the child. Mr.Henri Patrick Tiphagne sought for time and on the request of Mr.Muthu Manickam, matter was adjourned.

10. I took up the matter again on 04.04.2025, on that date, Mr.Selvakumar on instructions from Mrs.P.Pavithra, stated that the biological mother is happy the way the child is being brought up by the writ petitioner. She is not seeking custody of the child. All that she wants is to have visitation right over the child. I granted visitation rights and adjourned the matter.

11. It is not in dispute that the mother had interaction with the child on 05.04.2025 at Kalaignar Centenary Library at Madurai. However, on account of miscommunication between the parties, the visitation was not exercised on 12.04.2025 and 17.04.2025. Mr.Henri



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Patrick Tiphagne pleaded that the writ petitioner is not going to be in Madurai on account of Easter celebration. Hence, I posted the matter today (i.e., 24.04.2025).

12. Heard Mr.Henri Patrick Tiphagne appearing for the petitioner, Mr.M.Muthumanikkam, learned Government Advocate, appearing for the respondents 1 to 6 and Mr.Selvakumar appearing for the seventh respondent.

13. The first grievance of the writ petitioner is that a proper Body has not been constituted by the Government of Tamilnadu. This situation is no longer exists in the light of the order passed by the Government in G.O(D).No.89, Social Welfare and Women Empowerment [SW.5(1)] Department, dated 28.03.2025. By this order, the Child Welfare Committee, Madurai, has been reconstituted. Though the petition is only for a writ of mandamus seeking for extension of the foster care, this court has to remember that it is dealing with a case of a



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minor child. By virtue of the Letter Patent and subsequently by the Constitution of India, it becomes bounden duty of this Court to ensure that infants, children, mentally challenged and idios, who are not in a position to fend for themselves, are protected by the order of this Court. While performing the duty, the Court necessarily have to keep in mind, the best interests of the child. Remembering this principle, I approach this present case.

14. Taking into consideration the report of the District Child Protection Officer (DCPO) and since the biological mother of the child is happy at the manner in which the child is being brought up by the writ petitioner, I am of the view that the best interest of child will be served by allowing the child to continue in the care and custody of the writ petitioner. The Child Welfare Committee should conduct periodical visit to find out whether the child is being taken care of in the same manner as he has been taken care of now. As there is nothing negative in the report that has been filed in the Home Study, the Child Welfare



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Committee shall pass formal orders extending the foster care of Minor XXX in the name of Dr.Caroline Sugirtham.

15. Though the aforesaid paragraph addresses the concerns of the writ petitioner, there remains one issue, namely, the right of the biological mother to visit the child. It is not in dispute that the child, XXX, has been informed about his biological mother. Mr.Henri Patrick Tiphagne points out that the child is facing some trauma on account of his biological mother being introduced into his life all of a sudden. Such a reaction from the child, who is in the third standard, is to be expected, but that cannot be a ground to exclude the mother totally from the society of the child. Instances are not unknown where children given for adoption or abandoned by their parents, come back to this country and make a diligent and fervent search for their biological parents. This is in fact done in order to complete the tracing of the child's roots. By having another person, who will show affection and love for the child, it is not going to affect the interest of child. On the contrary, it will help him to grow into a good individual.



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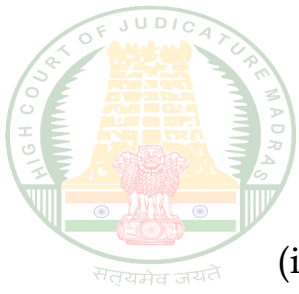
16. I am of the view that it would be in the interest of the child to be under the care and custody of his foster mother, and at the same time, know about the existence of his biological mother, and receive the love and affection from her also. Therefore, the seventh respondent is granted visitation rights on following conditions:

(i) The biological mother-seventh respondent herein, will be entitled to visit the child, XXX on the 3rd Saturday of every Month. The visitation will take place in any one of the following places:

- Vishaal De Mal, Madurai;
- Rajaji Park, Madurai or
- such other public places as may be mutually agreed between the petitioner and the seventh respondent.

(ii) The time of visitation will be between 05.00 pm., to 07.00 pm.,

(iii) In case, the visitation does not take place on Saturday, the mother will be entitled to a compensatory visitation day, on the next day.



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(iv) The mother will also be entitled to visit the child on festival days like Deepavali, Pongal etc.,

(v) I have to record the statement of Mr.Henri Patrick Tiphagne that on important Christian religious days, the child would be taken by the foster mother to Thoothukudi-her native place and therefore, the seventh respondent cannot insist on visiting the child on those days.

(vi) If one of those days happen to be a day, on which, the biological mother has been given visitation rights, needless to add the mother will have compensatory visitation, immediately on the return of child from Thoothukudi.

(vii) The biological mother shall not in any manner create emotional or physical distress for the child. In such an event, the writ petitioner is always at liberty to move this Court by way of an application narrating the circumstances seeking for revocation of visitation right.

(viii) In case the child develops a healthy relationship with the biological mother, the 7th respondent can always move an application



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before this Court seeking increase of her visitation rights.

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(ix) The biological mother shall have free access to the child at the time of visitation.

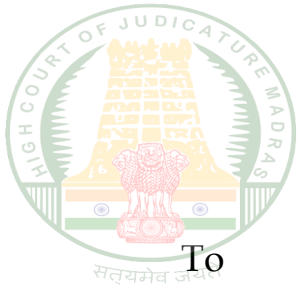
(x) The Child Welfare Committee, Madurai, shall pass order extending the foster care of the child by further period of five years subject to the visitation right set forth above.

(xi) The visitation right is confined only to the biological mother and cannot be exercised by any other person.

17. The Writ Petition is ordered. No costs. Consequently, connected Miscellaneous Petition is closed.

Index :Yes / No
Internet :Yes / No
NCC :Yes / No
Rmk

24.04.2025



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V. LAKSHMINARAYANAN, J.

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