2026:AHC:227846-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

SPECIAL APPEAL DEFECTIVE No. - 760 of 2026

Smt. Aruna Kumari and another

.....Appellant(s)

Versus

State of U.P. and 2 others

.....Respondent(s)

Counsel for Appellant(s)	:	Nipun Singh (Sr. Advocate), Naman Agarwal, Sumit Suri
Counsel for Respondent(s)	:	C.S.C., Riyajuddin Ansari, Ms. Shama Khatoon

Chief Justice's Court

HON'BLE ARUN BHANSALI, CHIEF JUSTICE
HON'BLE KSHITIJ SHAILENDRA, J.

1. Heard Shri Nipun Singh, learned Senior Counsel assisted by Shri Naman Agarwal for the appellants, learned Standing Counsel for respondent no. 1 and Shri Riyajuddin Ansari learned Counsel for respondents no. 2 and 3.

2. The present special appeal raises challenge to the order dated 30.09.2026, whereby learned Single Judge has disposed of Habeas Corpus Writ Petition No. 1102 of 2025 filed by respondents no. 2 and 3 handing over custody of minor corpus, namely, Master Divyam Kumar (respondent no. 2) to his father-respondent no. 3 (‘the respondent’) and also granting visitation rights to the appellants.

3. Brief facts of the case are that, out of the wedlock between the respondent and one Bimla Kumari, a son (‘corpus’) was born on 12.10.2020. The corpus was residing with his parents, however, as per the pleadings contained in the writ petition, when, in the mid of year 2022, mother of the corpus was diagnosed with kidney problem, her parents-in-law, namely, Smt. Ramdhin Mahto and Smt. Champa Devi, residents of Ghaziabad, took their daughter and her minor son with them on the pretext that they would take proper care of both of them. After the child was taken away by his maternal grand parents, the respondent started living alone and, unfortunately, his wife Bimla Kumari died on 31.05.2023 due to kidney failure. At that time, the corpus was aged about 2.5 years.

4. The writ petition was filed sometime in November, 2025 stating that since July, 2023, the child was in illegal custody of the appellants, who are, respectively, *Mausi* and *Mausa* of the corpus and a petition under Section 25 read with Section 10 of the Guardian and Wards Act, 1890 ('G & W Act') filed by the appellants seeking custody of the corpus was pending before the Principal Judge, Family Court, Ghaziabad. Terming the said proceedings as not maintainable and raising a plea that the father of the corpus being his natural guardian working as HR Manager in a company, namely, Randstad Company and earning month salary of Rs. 40,176/-, he was able to take care of his child and, thus, the petition was filed claiming custody of the corpus.

5. When the matter came up before the learned Single Judge on 30.07.2026, visitation rights were granted to the father as indicated in second paragraph of the final order passed by the learned Single Judge and, after exchange of affidavits *inter se* parties, the writ petition was disposed of, as indicated herein-before. Being aggrieved of handing over custody to the father, *Mausi* and *Mausa* of the corpus have filed the present special appeal.

6. Counter and rejoinder affidavits in the present special appeal have been exchanged between the parties and, therefore, the same is being decided finally.

7. Learned Senior Counsel appearing for the appellants has made submissions that there was no trigger to file habeas corpus petition after a period of more than two years since when the corpus was living with the appellants in their safe custody and, therefore, the petition was not maintainable, particularly when it was not indicated in the petition as to how the custody was unlawful or illegal. It is further submitted that the Additional Principal Judge, Family Court, Ghaziabad has already passed an order dated 22.04.2026 in proceedings under the G & W Act granting visitation rights to the respondent; the said proceedings being pending and the respondent having not even cared to visit the house of the appellants exercising his visitation rights, the same reflects that he has no affection with the child and, for this reason, the learned Single Judge was not justified in granting custody to the respondent.

8. It is further submitted that merely because the respondent happens to be father of the corpus, who is now aged about 6 years, the same was not sufficient to grant him custody as welfare of the corpus being of paramount consideration, the record reflects better financial status of the appellants in comparison to the respondent who has indicated himself as HR Manager in the writ petition but, in Annexure-4 to the writ petition, i.e., the pay slips filed by the respondent himself, his designation has been indicated as Senior Executive-Help Desk in a Company located at Delhi, which shows that the respondent did not come with clean hands before the writ court.

9. It is further submitted that the respondent has, after the custody of the corpus was handed over to him by the learned Single Judge, handed over the corpus to his brother, who is living in Dhanbad, State of Jharkhand which reflects that the custody was taken only for the name-sake and, for this reason also, the order passed by the learned Single Judge is liable to be interfered with. By referring to various medical reports on record in relation to mother of the corpus as well as the corpus, submissions have been made that the appellants were taking proper care of the corpus and there being no occasion to interfere with the custody, particularly in view of the pendency of proceedings under the G & W Act, learned Single Judge should not have allowed the writ petition.

10. Placing reliance on judgment of Hon’ble Supreme Court in **Jose Antonio Zalba Diez Del Corral Alias Jose Antonio Zalba Vs. State of Best Bengal and others: (2024) 12 SCC 419**, it is contended that in child custody matters, the remedy lies only under Hindu Minority and Guardianship Act or the Guardian and Wards Act, as the case may be, and when there is no extraordinary or exceptional circumstances, the above remedies being appropriate, interference should not be made in habeas corpus writ petitions.

11. Placing reliance on a recent decision of this Court in **Special Appeal No. 1109 of 2026: Ashok Kumar Mishra Vs. State of U.P. and 3 others**, decided on 12.10.2026, it is contended that the mere fact that custody is sought by the father of the corpus, is not sufficient to handover custody and in the cited case also, when the writ court handed over

custody of the corpus to his father, the special appeal was allowed and custody was restored in favour of the maternal grand parents of the corpus.

12. On the other hand, learned counsel for the respondent has made submissions that mere pendency of proceedings under G & W Act cannot be ground to deny reliefs claimed in habeas corpus petition, particularly when the custody is sought by the father of the corpus, i.e., his natural guardian. Submissions have been made with reference to various medical reports to indicate that the medical condition of the corpus has never been good with the appellants and, pursuant to the order passed by the learned Singe Judge, when the custody was handed over to the respondent, the medical condition of the corpus is continuously improving and since the corpus has also been admitted by the respondent in a good school, there is no ground to interfere with the order passed by the learned Single Judge.

13. It is further argued taking aid of the judgments in **Tejaswini Gaud Vs. Shekhar Jagdish Prasad Tewari: (2019) 7 SCC 42, Gautam Kumar Das Vs. NCT of Delhi: (2024) 10 SCC 588, Vivek Kumar Chaturvedi Vs. State of U.P.: 2025 INSC 159, Smt. Manju Malini Seshachalam Vs. Vijay Thirugnanam: 2018 SCC OnLine KAR 353, Nirmala Vs. Kulwant Singh: 2024 INSC 370 and Col. Ramneesh Pal Singh Vs. Sugandhi Aggarwal: 2024 INSC 397**, that welfare of the corpus being of paramount consideration, remedy under the G & W Act is not an absolute bar and since in the present case, the said proceedings were initiated not by the respondent but by the appellants immediately after the death of mother of the corpus, the same reflects that the appellants somehow wanted to indefinitely keep the corpus away from his father and, hence, retainment of corpus by the appellants amounts to his illegal detention and, therefore, the writ petition was filed and has rightly been disposed of in favour of the respondent and granting visitation rights to the appellants.

14. It is lastly contended that the mere fact that the writ petition was filed two years after the child was taken away by the appellants or his maternal grand parents, would not be a ground to deny custody to the respondent, inasmuch as the respondent was diligently defending the proceedings

under G & W Act instituted in 2023 itself and since he is father of the corpus, his right to claim custody through a writ of habeas corpus petition was an appropriate remedy, rightly availed by him and, therefore, once the learned Single Judge has given a thoughtful consideration to the issues raised and has directed handing over custody of the corpus to the respondent, no interference is warranted in the order.

15. We have considered the submissions made and have perused the material available on record.

16. Admittedly, the appellants are respectively *Maus*i and *Mausa* of the corpus, who is presently aged about 6 years. There is no dispute about the fact that since after the death of mother of the corpus, which occurred on 31.05.2023, the corpus was residing with his maternal grand parents and/or the appellants. The mere fact that the habeas corpus writ petition was filed in 2025, in our opinion, would not be fatal to the cause of the respondent in view of the fact that he was contesting the proceedings under G & W Act and even passing of an order on 22.04.2026 in those proceedings granting visitation rights to the respondent, one year after filing the writ petition, would be not an event to defeat his claim for custody of the corpus. We may note that visitation rights were granted to the respondent, also by Writ Court on 30.07.2026 on almost the lines of the order passed by Family Court.

17. Though it is true that remedy under the G & W Act may be relevant and have a bearing on the claim for custody raised through petitions of habeas corpus, there is no absolute proposition that every such matter where proceedings under the G & W Act are pending, the Court has to dismiss the habeas corpus writ petition on that ground. Each case depends upon the facts and circumstances which arise before the writ court and the position of law being settled to the effect that in such matters, discretion of the writ court under Article 226 of the Constitution of India plays a vital role.

18. Coming to the facts of this case, the respondent may be working in Delhi and that his two addresses have been indicated in his counter affidavit, i.e. one of Delhi and the other of Dhanbad (State of Jharkhand), it is not in dispute that in Dhanbad also at least family of the brother of

the respondent resides. The respondent may or may not be having his own residence at Dhanbad and there may be a dispute as to whether the respondent is working from home or by physically going to his office, the fact remains that he is father of the corpus and being his natural guardian, coupled with the fact that he is not out of job and is not only contesting the proceedings under G & W Act but also pressed his claim for custody through writ petition, we find that the learned Single Judge has given a thoughtful consideration to the working status of the respondent, his earning and also the fact that he is not facing any criminal prosecution in connection with untimely death of his wife.

19. Though in paragraph-6 of the order, the learned Single Judge has observed that from the demeanor and conduct of the corpus, it is apparent that he has developed sufficient emotional bonding with the appellants (which, in our opinion, is a natural circumstance due to living of the corpus with the appellants over a period of more than 3 years) and although the corpus had stated that he did not want to reside with his father, the learned Single Judge took note of grant of visitation rights to the respondent vide order dated 30.07.2026 and also perused some video recording reflecting spending of happy moments by the corpus with his father.

20. Learned Single Judge has also considered the tender age of the corpus and arrived at a conclusion that handing over custody of the minor corpus to the respondent would be conducive to overall welfare of the corpus and would also facilitate his continued emotional bonding with his parents (infact father).

21. Once an opinion has been formed by the learned Single Judge based upon the material available on record of the writ petition and, we too, after perusing the documents filed by the parties in this special appeal, are of the view that the appellants' defence in habeas corpus petition as against the pleas raised by the respondent is quite weak in the sense that unless a definite conclusion based upon the evidence in the proceedings under the G & W Act is arrived at by the Family Court concerned, handing over custody of the corpus to his father cannot be said to an error, much less the error which may warrant interference in the discretion

exercised by the learned Single Judge.

22. In the facts and circumstances of the case, we are not inclined to interfere with the order impugned in this appeal otherwise it would also result in change of custody from father to *Mausi* and *Mausa* of the corpus so as to treat the corpus as an object by moving him from one place to another, which may disturb him in multiple ways.

23. The special appeal has no substance; the same is, therefore, **dismissed** with an observation that the adjudication made by the learned Single Judge or by this Court in these proceedings would not prejudice the rights and contentions of the parties before the Family Court in proceedings pending under G & W Act and the same shall be decided based upon the material available before the Family Court and in accordance with law.

(Kshitij Shailendra,J.) (Arun Bhansali,CJ.)

November 2, 2026
AKShukla/-

Digitally signed by :-
ANIL KUMAR SHUKLA
High Court of Judicature at Allahabad