



2024:KER:94086

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

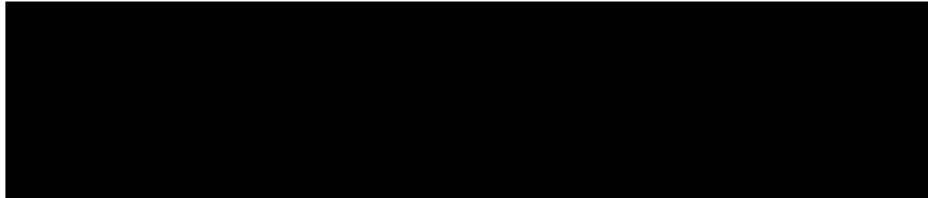
THE HONOURABLE MR.JUSTICE C.S.DIAS

THURSDAY, THE 12TH DAY OF DECEMBER 2024 / 21ST AGRAHAYANA,

1946

WP (C) NO. 35830 OF 2024

PETITIONER/S:

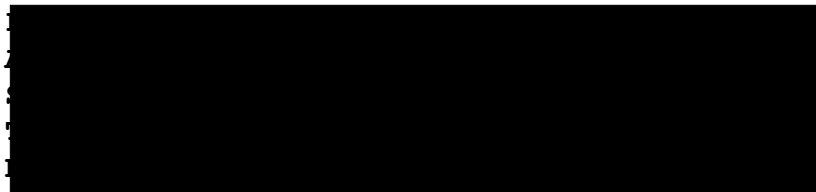


BY ADV AKHIL VIJAY

RESPONDENT/S:

- 1 CHAIRPERSON, CHILD WELFARE COMMITTEE, KOTTAYAM
AYARKUNNAM-THIRUVANCHOR RD, THIRUVANCHOR P.O.,
KOTTAYAM, PIN - 686019
- 2 STATION HOUSE POLICE OFFICER, CHANGANASSERY POLICE
STATION, CHANGANCHERRY P.O., KOTTAYAM, PIN -
686101

3



GP.SRI.SUNILKUMAR KURIAKOSE
SMT.M.U.VIJAYALAKSHMI SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 12.12.2024, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



2024:KER:94086

“CR”**C.S.DIAS,J**

WP(C) No.35830 of 2024

Dated this the 12th day of December, 2024**JUDGMENT**

The petitioner is the estranged wife of the 3rd respondent. They have a son born in their wedlock. The petitioner has filed O.P.No.59/2023 before the Family Court, Kottayam at Ettumannor, to dissolve her marriage with the 3rd respondent. The 3rd respondent has filed O.P.No.576/2024 before the same Court for the custody of his child. During the pendency of the above proceedings, the 3rd respondent has filed O.P.No.411/2024 before the Child Welfare Committee — the 1st respondent. Surprisingly, by Ext.P2 order, the 1st respondent has directed the Station House Officer — the 2nd respondent, to produce the child and the petitioner before them. The 1st respondent has not even permitted



the petitioner to raise a preliminary objection regarding the maintainability of the petition. The 3rd respondent's sole intention is to harass and vex the petitioner and the child. The petition is an abuse of the process of law. Ext.P2 order is erroneous and unsustainable in law. Hence, the writ petition.

2. Heard: the learned counsel for the petitioner and the learned Government Pleader.

3. The marital relationship between the petitioner and the 3rd respondent is strained. There are matrimonial litigations between the parties, including a petition for the custody of their child, pending before the Family Court. During the pendency of the proceedings before the Family Court, the 3rd respondent has parallelly filed O.P.No.411/2024 before the 1st respondent for an identical relief.

4. On scrutinising the averments in O.P.No.411/2024, it shows that that the 3rd respondent



does not have a case that his child is a child in need of care and protection so as to attract the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015. Even otherwise the respondent in the petition is the biological mother of the child. Furthermore, the filing of a second petition for an identical relief is unwarranted because the Family Court is the Court of competent jurisdiction to decide on the interim and permanent custody of the child. The Family Court has concurrent jurisdiction with the 1st respondent in matters concerning the welfare of children. Since the 3rd respondent has elected the Family Court, his subsequent endeavour to approach the 1st respondent for identical reliefs seems to be with an intention to harass the petitioner. Unmindful of the above legal question, the 1st respondent has ordered the 2nd respondent to produce the child before them, when the matter is sub-judice before the Family Court.

5. In a case of identical nature, a Division Bench



of this Court in ***Shaiju S and others v. Child Welfare Committee and others*** [2021 (6) KHC 573] has held as under:

“11. We must at the outset note that the Committee committed grave error in ordering custody to the mother when the matter is pending before the Family Court. The Committee ought to have restrained from entertaining a dispute which is a subject matter of lis between the parties. We must also note that wrangling between the spouses in regard to custody will not confer any power on the Committee to interfere in such matters and give custody to one of them. Going by various provisions, including Section 2(14)(v) of the Act, the Committee's role would arise only when none of the parents is in a position to take care or protect the child or children. The Committee can step into at a stage to protect a child when parents are not in a position to protect the child. The role of the Committee commences from the stage where both parents are not in a position to take care and protect the child. The parens patriae principle to intervene is to protect the child and act as a parent of the child when parents fail to take care and protect the child. So also is the matter of dispute between spouses. The Committee would be justified in interfering with the custody of child with one of the parent, if that parent is incapacitated or failed completely to take care of the child.

12. The Committee cannot voluntarily interfere with the custody of the children except on a circumstance where it forms an opinion that the child requires care and protection. Merely because the children are isolated from the mother by the father, Committee cannot interfere with the legal custody of the children by the father”.



6. In the above factual and legal background, I am of the view that the petitioner ought to be granted an opportunity to raise a preliminary objection before the 1st respondent regarding the entertainability of the petition. I also hold that Ext.P2 order passed by the 1st respondent is unjustifiable. Shuttling the child between the two Forums will cause inconvenience to the child and is detrimental to its paramount welfare.

Consequentially, the writ petition is allowed in the following manner:

- (i) Ext.P2 order is set aside.
- (ii) The petitioner is permitted to appear before the 1st respondent, either in person or through Counsel, on or before 06.01.2025 and file her preliminary objection regarding the entertainability of O.P.No.411/2024.
- (iii) If such preliminary objection is filed by the petitioner, the 1st respondent shall consider the same, in accordance with law, after affording the parties an opportunity of being heard.
- (iv) Until such time orders are passed on the preliminary objection, the 1st respondent



shall not insist on the production of the child.

- (v) Notwithstanding the above directions, it is made clear that the petitioner shall abide by the orders passed by the Family Court in O.P.No.576/2024 regarding the custody of the child.

Sd/-

C.S.DIAS, JUDGE

rkc/11.12.24



APPENDIX OF WP (C) 35830/2024

PETITIONER EXHIBITS

- | | |
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| Exhibit P1 | A TRUE COPY OF THE PETITION FILED BY THE
THIRD RESPONDENT BEFORE THE HONORABLE
FAMILY COURT, KOTTAYAM AT ETTUMANOOR IN
G&W O.P. NO. 576 OF 2024 |
| Exhibit P2 | A TRUE COPY OF THE ORDER NO. 2542/2024 IN
CWC/KTM/OP NO. 411/24 PASSED BY THE FIRST
RESPONDENT DATED 09/10/2024 |