



HCP.No.2887 of 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2024

CORAM :

**THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE M.JOTHIRAMAN**

H.C.P.No.2887 of 2024



... Petitioner/mother of the child

Vs.

1.The Chairperson/Member,
Child Welfare Committee,
Kollukattumedu, Lakkapuram Post,
Near RTO Office,
Karur Bye Pass Road,
Erode District.

2.The Officer in Charge,
Helping Hearts Children Home,
Specialized Adoption Agency,
210, Balathandayantham Street,
KAS Theatre Road, Gandhipuram,
Erode District.

3.The Superintendent of Police,
Office of the Superintendent of Police,
Erode District.

4.The State by,
The Inspector of Police,
Gopichettypalayam Police Station,
Erode District.

... Respondents



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PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, to direct the respondents 1 to 4 to produce the person or body of the petitioner's child namely [REDACTED] aged about 1 ½ years and handover custody of the petitioner.

For Petitioner : Mr.John Sathiyar
Senior Counsel for
Mr.S.Washimaraja

For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor

ORDER

(Order of the Court was made by *S.M.SUBRAMANIAM, J.*)

The Habeas Corpus Petition, on hand, has been instituted to direct the respondents 1 to 4 to produce the petitioner's child namely [REDACTED] aged about 1 ½ years and hand over custody to the petitioner.

2. The petitioner got married with [REDACTED] in the year 2004 and not blessed with any child for about 20 years. The husband of the petitioner is presently aged about 54 years and the petitioner is about 47 years. Admittedly, the petitioner and her husband submitted an application, seeking adoption of a child in the Central Adoption Resource Authority



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Ministry of Women and Child Development, Government of India in Reference No.PrTa205418384 dated 10.03.2022. They are waiting for an opportunity to adopt the child.

3. On 20.02.2023, the petitioner along with her husband travelled from Tirunelveli to Erode by train. The petitioner found that a new born female child wrapped in a cloth in the Toilet of the train and both the petitioner and her husband decided to take the female child as their daughter, near about 1 ½ years. The child was with the custody of the petitioner and her husband.

4. The Special Cell attached with the office of the Chief Minister of the State of Tamil Nadu received an information on 04.07.2024 that child racketing was going on at Erode, and during the course of enquiry, it was found that a girl baby was with the custody of the petitioner and her husband. The Child Welfare Committee conducted an enquiry on 19.08.2024. The petitioner along with her husband produced the entire medical records of the child to establish that they are taking care of the child all along for about 1 ½ years, and thereafter, the Collector considered



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the issue and found that the custody of the girl child with the petitioner was illegal and accordingly, the child was taken by the Child Welfare Committee and presently under the custody of the second respondent.

5. Mr.John Sathiyan, learned Senior Counsel appearing on behalf of the petitioner would submit that the petitioner and her husband is taking care of the child for about 1 ½ years and they are emotionally attached to the child and providing all necessary care, medical treatment and facilities. Since the petitioner is issueless, with the consent for her husband, decided to take the child by adoption and submitted an application. During the pendency of the application, the child was taken from the custody of the petitioner and therefore, the present Habeas Corpus Petition came to be instituted.

6. The learned Senior Counsel mainly relied on the order passed by a Division Bench of this Court dated 27.01.2022 in H.C.P.No.2086 of 2021. In the said order, the Division Bench, by way of an interim order dated 07.01.2022, declared Mr.Ramesh and Smt.Tamizhselvi, the petitioners in the said petition as foster parents of the child, which was aged about 4 ½



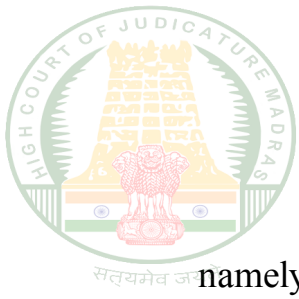
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years during the relevant point of time. The said foster parents named the child as Sivanya. The Court declared that those parents are foster parents since the case of the minor child Sivanya in the said child, would fall within the ambit of Section 4 of the Hindu Adoptions and Maintenance Act, 1956 (hereinafter referred to as "HAM Act" in short) since her parentage was not known to anyone, including the declared foster parents.

7. The Court in the above said order declared that Mr.Ramesh and Smt.Tamizhselvi are foster parents and guardians of the child Sivanya and the date of birth of the child was also fixed by the Court as 14.04.2017 by getting consent from the foster parents. The Court, further, directed that the couple shall approach the Principal District Court, Erode under Section 9(5) of the HAM Act. The Competent Authority under the Registration of Births and Deaths Act, 1969 was directed to enter the date of birth of Sivanya in their records as 14.04.2017.

8. A persual of the judgement relied on by the learned Senior Counsel for the petitioner would reveal that certain mitigating factors existed during the relevant point of time with referece to the said child



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namely Sivanya, was taken into consideration and question arises, whether the said judgement can be followed as a precedent by this Court in the context of the facts in the present Habeas Corpus Petition.

9. We are bound to consider the maintainability of the Habeas Corpus Petition at the first instance. Admittedly, the petitioner had not informed about the child, which was taken from the Toilet in a running train, when the petitioner was travelling from Tirunelveli to Erode. The petitioner along with her husband had unilaterally decided to take custody of the child and maintained the child as their daughter. No doubt, they would have emotionally attached and provided all facilities, including medical attention to the child. But that alone would not provide entitlement to the petitioner to claim the child as an adopted child.

10. Regarding the maintainability of the Habeas Corpus Petition, the child, at present, is not under illegal detention and with the custody of the State. Admittedly, it was an abandoned child and on receipt of information from the Chief Minister Cell, the Child Welfare Committee conducted an enquiry and took custody of the child. Therefore, the custody of the child is



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with the Government, and at present, is in accordance with law. However, the custody of the child with the petitioner cannot be construed as legal, since the procedures as contemplated under the relevant statutes were not followed. Mere submission of an application seeking an adoption would not confer any right to take custody of a child unilaterally and declare the said child as an adopted daughter. Pertinently, the High Court cannot deliberate on these issues, since it involves the "best interest of the child". The assessment of the couple seeking adoption, their capacity, mind set, family setup, circumstances, all to be examined scrupulously by the committee constituted for the purpose of making such assessment. Therefore, the procedures as contemplated under the relevant statutes are to be scrupulously followed for the purpose of adoption of a child.

11. The learned Additional Public Prosecutor appearing for the respondents would submit that the initial custody of the child by the petitioner was not in accordance with law though the petitioner was taking care of the child. They are not eligible at that point of time to take custody of the child, since the child was recovered from the Toilet in a running train and the petitioner ought to have informed the same to the competent



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authority for initiation of appropriate action and to protect the child.

However, on information, the Child Welfare Committee stepped in and conducted an enquiry and thereafter, took custody of the child and that being so, the further adoption, if any to be granted, must be done in accordance with law and by following the due procedures.

12. The learned Additional Public Prosecutor would submit that the authorities are still in the process of searching the biological parents of the child. After completion of the said exercise, a declaration has to be made under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015. Only after declaration, the authorities have to consider for giving adoption to eligible parents, by making proper assessment and by following the procedures.

13. High Court cannot undertake the said procedures in a Habeas Corpus Petition since there is a possibility of resulting in adverse consequences. The best interest of the child includes its future, which has to be assessed by following the procedures and taking into consideration, various factors including the status, capacity, mind set etc., of the parents



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who are seeking adoption of a child.

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14. Rights of the child are globally recognized, rights of the children are of paramount importance. The wishes, better environment and other aspects are to be taken into consideration before dealing with minor children and in the present case, the child is presently aged about 1 ½ years and incapable of expressing emotions and feelings. That being so, it would be inappropriate for the High Court to declare the petitioner as a foster parent or pave way for direct adoption, without undergoing the procedures as contemplated under the statutes. However, the applications submitted, if any seeking adoption by the petitioner, has to be considered by following the procedures and considering the other factors.

15. The Habeas Corpus Petition is not maintainable *per se* in view of the fact that the child is not under illegal detention. The order relied on by the learned counsel for the petitioner cannot be followed as a precedent, since it was decided considering the particular facts and circumstances. The said order is to be confined only with reference to the facts of that case and need not be extended to other cases and in the event of extending the



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said order in other cases, it will lead to an anomalous situation and would nullify the procedures contemplated under various statutes for adoption of a child.

16. The respondents shall take care of the child and initiate all necessary actions to trace out the biological parents and thereafter, follow the procedures by declaring the child fit for adoption and after such declaration, the child can be considered for giving adoption to any eligible parents, as per the procedures as contemplated under the HAM Act.

17. Accordingly, this Habeas Corpus Petition stands dismissed.

[S.M.S., J.]

[M.J.R., J.]

15.11.2024

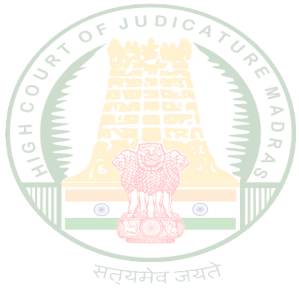
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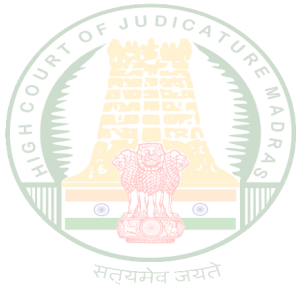
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- 5.The Public Prosecutor,
Madras High Court.



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