

(2014) 01 AHC CK 0058
In the Allahabad High Court
Case No : Habeas Corpus No. 51 of 2013

Baby of Neesha

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 06-01-2014

Acts Referred:

Constitution of India, 1950 — Article 12, 226
Criminal Procedure Code, 1973 (CrPC) — Section 482
Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 2, 2(aa),
2(d), 29, 30

Citation : (2014) 1 ADJ 217

Hon'ble Judges : Vishnu Chandra Gupta, J

Bench : Single Bench

Advocate : Ram Kumar Singh, Advocate for the Appellant; H.G.S. Parihar, Shashank Shekhar Parihar, Shiwa Kant Tiwari, Faisal Ahmad Khan and G.A, Advocate for the Respondent

Final Decision : Allowed

Judgement

Vishnu Chandra Gupta, J.—It is a case of abuse of an infant male child belonging to a poor rustic woman by the Superintendent of a Children (Home)/orphanage by misusing the process of Court and of the law. The poor woman, the mother, came for redressal of her grievances before this Court by filing a petition of Habeas corpus to get back her newly born son.

Facts

The factual matrix of this case in brief is that Smt. Neesha is a poor lady whose husband is working as labourer in brick kilns in the State of Gujarat. When Smt. Neesha became pregnant of about seven months, her husband sent her to live with her mother Smt. Sujau Devi, a resident of Village Nau Ka Purwa, Police Station Asandra, District Barabanki. She got a Health Card (Annexure 1 to this petition) from Primary Health Centre (PHC), Siddhaur, District Barabanki. The delivery of child was expected in the month of May, 2012. However in the

intervening night of 19/20th of May, 2012, when her mother and sister were gone on the agricultural field for irrigating of peppermint plants crop, she gave birth to a male child in her house. At that time, she was alone in the house. During the course of giving birth, she became unconscious due to labour pain. A lady of unsound mind Smt. Jagrana who used to live outside the house of her mother, in unconscious state of Smt. Neesha, took the child. Thereafter some resident of the village informed the police that somebody has left her baby with Smt. Jagrana. The police of Police Station Asandra took the custody of infant with the help of villagers. But later on the child was given to Smt. Neesha after intervention of village Pradhan and other villagers. The police also informed Child Help Line. In pursuance thereof the Superintendent, opposite party No. 5-Shriram Audyogik Anathalaya Sector-I, Aliganj, Lucknow, namely, Ms. Ruchi Tripathi came to the village and gave an application (Annexure-2 to this petition) to the police for taking custody of the infant. Sub-Inspector, Sri Satish Kumar Singh, P.S. Asandra, District Barabanki by a memo of handing over the child dated 21.5.2013 (Annexure-3 to this petition) gave the infant to Ms. Ruchi Tripathi after taking the child back from Smt. Neesha. The thumb impression of Smt. Sujau (the grand Maternal mother (Nani) of the infant and mother of Smt. Neesha) was also obtained thereon.

2. The aforesaid incident was published in a newspaper (Annexure-4 to this petition) under the heading of "Pagli Nikali Sayani" giving the details of the incident. Consequently, the Child Welfare Committee, Barabanki (hereinafter referred to as the "CWC-Barabanki") constituted u/s 29 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to the "Act 2000") after exercising its jurisdiction within the territorial limits of District Barabanki, issued a notice for production of the child to Station Officer (for short "S.O.") of Police Station Asandra, District Barabanki alongwith his inquiry report about the child. The S.O. Concerned entrusted the matter to S.I. Satish Kumar Singh to inquire into the same and to submit report before C.W.C., Barabanki. Sub-Inspector Satish Kumar Singh submitted the inquiry report (Annexure-5 to this petition) before C.W.C., Barabanki indicating therein that after going through the news article "Pagli Nikali Sayani" dated 21st of May, 2012, he went on spot and took the child in custody from Smt. Sujau, the grand maternal mother (Nani) of the child and Village Pradhan, Rana Pratap Singh at Police Station after making an entry in general diary of police station at S. No. 37 at 19.30 hours. After getting the information from Child Help Line, the Superintendent Ms. Ruchi Tripathi came to the Police Station and the so called unclaimed child was given her for his better future and to look after the child, however no reference of illness of child was mentioned in the report. It was mentioned in the report that Ms. Ruchi Tripathi was contacted by him on her mobile phone and asked for production of the child on 12.6.2012 but she expressed her inability to come and produce the child. A request has been made in his report by Sri S.K. Singh, Sub-Inspector with C.W.C., Barabanki to give some other date. He also requested to CWC Barabanki that the Superintendent Ms. Ruchi Tripathi be also informed for

producing the child before the C.W.C., Barabanki. The report submitted by opposite party No. 5 and a copy of Supurdginama alongwith two G.D. entries were placed alongwith report before C.W.C., Barabanki on 12.6.2012.

3. Smt. Sujau also moved an application (Annexure 6 to this petition) before C.W.C., Barabanki claiming the child as a child of her daughter Smt. Neesha. On failure to produce the child by Superintendent of Opposite Party No. 5, the President of CWC-Barabanki informed to the Director, Women Welfare, Directorate of Women Welfare Uttar Pradesh vide letter dated 23.6.2012 (Annexure-7 to this petition). It was also informed therein that the biological parent of child are now known. The child was handed over in an unauthorised manner by the police of P.S. Asandra District Barabanki to superintendent of Opposite Party No. 5 and now Ms. Ruchi Tripathi is not producing the child before C.W.C., Barabanki and necessary directions were sought. The C.W.C., Barabanki also issued a letter to Superintendent of Police, Barabanki to take notice of it and asked him to ensure the production of the child on 26.7.2012 before C.W.C., Barabanki. Police of Police Station Asandra by its report (Annexure-9 to this petition) informed C.W.C., Barabanki on 26.7.2012 that Ms. Ruchi Tripathi has informed that the child is seriously ill and it is not possible to take him to any other place. She gave a photo-stat copy of order of Child Welfare Committee, Lucknow (hereinafter referred to the "C.W.C., Lucknow") to show that the child was produced on 25.5.2012 before CWC Lucknow and gave a letter that she has completed all formalities and she took the child in her custody so there is no occasion to produce the child before the C.W.C., Barabanki as the same has no jurisdiction in this matter. When on 26.7.2012, the child was not produced by Ms. Ruchi Tripathi, the C.W.C., Barabanki wrote letters (Annexure-10 to the petition) to the Director, Women Welfare, Uttar Pradesh on 18.8.2012 and 23.8.2012 informing all the events which happened with the child but unfortunately no action has been taken in the matter by Directorate. Thereafter, Smt. Neesha on 22.8.2012 approached the District Magistrate, Barabanki by moving an application (Annexure-11 to this petition) but she got no response.

4. Ultimately, on the failure to get her child back, the mother of the child filed the present petition for a direction to issue a writ of habeas corpus commanding the respondent No. 5 to produce the petitioner child before this Court and to handover the custody of the petitioner-child to her mother Smt. Neesha. A mandamus has also been sought for commanding the opposite parties to pay Rupees one lakh as compensation to the petitioner for illegal detention of her child.

5. When the matter was taken up on 19.2.2013, the following order was passed by this Court:

It has been pleaded that a baby boy was born to Neesha (deponent). The said child was picked up by a lady of unsound mind and was given in orphanage/ respondent No. 5.

By way of this petition, Neesha (deponent) claims the custody of the detainee.

Learned counsel for the petitioner has pointed out that the proceedings are pending before respondent No. 4. No proper enquiry has been conducted so as to establish the parentage of the child and no step has been taken to give the custody of the child to Neesha.

Let respondent No. 4 conclude the enquiry and other proceedings, before the next date of hearing and file report before this Court.

On facts, respondent No. 5 shall also file report before this Court.

Let the report be filed in sealed cover, considering the sensitivity of the matter and the future of the child.

Let copy of this order be conveyed to respondent Nos. 4 and 5 through Registrar of this Court.

List this case on 13.3.2013.

In compliance of the aforesaid order the C.W.C., Barabanki submitted its report with CDs of video recording of inquiry conducted. However Opposite Party No. 5 filed the record.

The record produced by Opposite Party No. 5 and C.W.C., Barabanki with CD of conducted inquiry were form part of the record of this Court. After orders passed by this Court C.W.C., Lucknow also submitted its record.

The record reveals that CWC-Lucknow has no office to conduct its business or to keep the record of proceedings. The original record of CWC Lucknow is prepared, maintained and kept by the Opposite Party No. 5 which is also registered as adoptive agency.

6. The record produced by Ms. Ruchi Tripathi contains the following documents also :

1. Medical prescription of petitioner-child who was medically checked on 22.5.2012 as OPD patient in the Aliganj hospital Lucknow.

2. letter dated 21.5.2012 which was again signed on 25.5.2012 showing therein that child was produced before C.W.C., Lucknow by Ms Ruchi Tripathi on 25.5.2012. In this letter it has been mentioned that doctor assessed the age of male child Pratike about 15 days and the weight 2.25 Kg and child is healthy.

3. She also enclosed form No. X (under Sub-Rule 18 of Rule 27) showing therein the next date of production of child as 22.5.2012 but the child was produced before C.W.C., Lucknow on 25.5.2012. This form was prepared by Ms. Ruchi Tripathi. having following order passed by C.W.C., Lucknow thereon.

(English translation of the order passed by CWC Lucknow dated 25.5.2012)

Information of this matter be given immediately to CWC Barabanki. For the best

interest of the child give shelter in your institution.

4. Prescription of OPD indicating medical examined of child on 26.5.2012 in Aliganj Hospital at Lucknow. No ailment in the child was noticed by doctors.

5. A discharge slip has been filed showing admission of Child Pratik of 18 days in Balrampur Hospital, Lucknow on 31.5.2012 due to septicemia with low GC and discharged on 6.6.2012.

6. Prescription dated 06th July, 2012, showing that the Child was again medically checked by Dr. S. Niranjana of Lucknow and certain investigations were also directed.

7. The form of registration indicating therein all the particulars relating to adoptive parents (Opposite Parties No. 6 and 7). On the basis of which they got them registered on 2.7.2012 with the adoptive agency Shree Ram Audhyogic Orphanage. Thereafter the child Pratik was given by Ms. Ruchi Tripathi on 7.7.2012 to proposed adoptive parents (Soni's) on the pretext of providing better treatment by admitting him in the hospital to save his life. But no record of admitting the child in any Hospital was brought on record after 7.7.2012.

8. A Home Study Report dated 22.7.2012 of proposed adoptive parents by one Manoj Kumar of Shree Ram Audhyogic Orphanage. From psychological study report being part of Home Study report showing therein that they wanted to take a girl child in adoption with a remark that the adoptive parents can bring up the child properly and the future of girl would be bright.

9. A letter dated 26.7.2012 addressed to Station Officer, Police Station Asandra, Barabanki under copy to S.P. Barabanki, written by Ms. Ruchi Tripathi on the letter head of Shree Ram Audhyogic Orphanage. (English Translation of the letter
Letter - 44/Shree. Aio. Aa./12

Dated: 26.7.12

To;

Station Officer, Asandra, Barabanki.

Subject : Information about 15 days old child

Sir,

It is to inform that from your police station on 21.5.12 I was informed that local resident informed an abandoned child of 15 days, consequently after reaching at your police station the abandoned child was handed over by you to Orphanage. The Orphanage in accordance with rules gave shelter to the child came in Orphanage as per orders of CWC Lucknow, the information of which has been given to CWC Barabanki alongwith copy of order of CWC Lucknow. (Take cognizance that under the rules of J.J. Act, child who is abandoned or orphan given in shelter under orders of CWC which has been fully complied with.)

Therefore, it appears that Chairman Sri Angad Singh of CWC Barabanki is harassing the child and Institution for some personal reasons. Therefore, prayed that in view of the above facts take appropriate action.

Copy to : Superintendent of Police, Barabanki

Enclosed: (1) Copy of CWC Lucknow (2) Supurdgi of Asandra Police

Sd- (Seal) Superintendent, Shree Ram Audhyogic Orphanage Sector "I" Aliganj, Lucknow

10. The Child study report dated 27.7.2012 prepared by one Shruti Tripathi Counselor disclosing that orphan child Pratik was also shown with another name "Shiva" having date of birth of 6.5.2012 and taken birth in Barabanki a Hindu male, was admitted in Shree Ram Audhyogic Orphanage on 21.5.2012 after getting it from police. At the bottom of this report consent dated 28.7.2012 at Lucknow of Satendra Soni and Smt. Meenakshi Soni for taking this child in adoption is also mentioned.

11. Form No-XIV [Under Rule 33(3)(c)] was issued by CWC Lucknow on 27.7.2012 declaring the child Pratik free for adoption. The undertaking was also given in this formate by Ms. Ruchi Tripathi to adhere all the provisions of Act, 2000 as contained in Chapter-III and IV.

12. A letter with no date, addressed to Officer In-charge/Additional District Officer, Lucknow by which intimation has been given that meeting of Adoption Committee will take place at 6.00 pm on 28.7.2012.

13. The proceedings of the meeting of that Committee approving the adoptive parents Meenakshi Soni and Satendra Soni fit to take the child in adoption, (appears to be prepared earlier to this meeting with computer, after filing the date therein as 28.7.3012 in hand.) These proceedings on separate sheet were signed by all concern including In-charge/ADO, In-charge member, Doctor and Ruchi Tripathi.

14. Letter dated 28.7.2012 by Ms. Ruchi Tripathi informing the adoptive parents that they were found fit to take child Pratik in adoption alongwith copy of Child Study Report and medical report, asking there consent within ten days.

15. Undated consent letter of adoptive parents with a cheque of Rs. 40000/- given to Opposite Party No. 5. (as encloser)

16. The report from District Crime Record bureau (in short "the DCRB") of Barabanki of dated 25.7.2012 that no report of missing child of 15 days during last two months has been lodged in the police with Barabanki.

7. The perusal of the report of the C.W.C., Barabanki reveals that Smt. Neesha gave birth to the child in question. On the contrary record produced by the opposite party No. 5 indicates that after completing the provisions of the Act, 2000, the child had been given in adoption to Smt. Meenakshi Soni and

Satyendra Soni. Consequently, vide order dated 13.3.2013 the Superintendent of O.P. No. 5 was directed to appear in person before this Court at 2.00 pm on 14.3.2013 alongwith the child and the adoptive parents to whom the child has been given in adoption. Ms. Ruchi Tripathi, Superintendent appeared in Court and informed that after handing over the child by the police on 21st of May, 2012 and after completing necessary formalities she gave the child in adoption to Sri Satyendra Soni and Smt. Meenakshi Soni. As Smt. Neesha is claiming the child being his real mother so the Superintendent was directed to produce all the papers relating to adoption of the child before the Court on 21st March, 2013 and also directed to ensure the presence of adoptive parents alongwith child.

8. The papers were filed by Opposite Party No. 5 in pursuance of the order passed by this Court and the child was also produced. When the case was taken up on 22.3.2013, the statement of Smt. Neesha and Ms. Ruchi Tripathi was recorded on oath before the Court. The relevant portions of the statements recorded in Court of Ruchi Tripathi and Smt. Neesa are as follows:

(English Translation of Relevant portion of Statement on oath of Ms. Ruchi Tripathi, recorded on oath in the Court on 22.3.2013)

.....thereafter I ringed and talked to officer of police station Asandra, which is in Barabanki, whose name is known to me, told that he came to know that a mad woman who used to wander in Village Baburi gave birth to a child and he informed about it to Angad Singh Chairman of CWC of Barabanki. But he after talking with village Pradhan handed over child to a lady of the village. I told to Station Officer, it is wrong, child ought to be sent to some orphanage within 24 hours. But he told as to why and for what reason Angad Prasad Chairman CWC after talking with Village Pradhan handed over child to a lady of village is not known to him. Station Officer also told that in his police station a Child Welfare Officer Sri Satish Kumar is posted. He sent him to see the child and he informed that the child is ill. You may come, I will hand over child to you. Thereafter in year 2012 in some month on 21st day went to Asandra police station. There she met Child Welfare Officer Satish Kumar. He told that the lady with whom child is, has been called. That lady came with her mother Sujau and with Village Pradhan. The child was not handed over to her by that lady but Satish Kumar after taking the child from that lady handed over to me. I can identify that lady. She is the same lady whose statement is recorded today in Court.

.....I did not talk to mother of that child to whom is told to be mad. I did not see her till now. I also did not try to meet her. I do not know whether she is alive or dead? After seeing the lady present in the Court she told that she is the lady whose name is Sujau. [The lady present in the Court admits her name as Sujau]. Sujau, who is present in the Court told her that lady whose statement is recorded today she is her daughter.

(English Translation of Relevant portion of Statement on oath of Smt. Neesha, recorded on oath in Court on 22.3.2012)

.....Ruchi Tripathi who is present at this time in Court has taken away her child. Ruchi Tripathi was taken away my child after getting the thumb impression of my mother..... child was taken away by Ruchi Tripathi after 3 days of his birth. She took the child after telling her that child is not her. Then I told her get my medical check up done. Photograph of my child was taken. We came to Lucknow to took the child back because she told her that when you want to see the child may come. Later on neither child was shown nor permitted her to stay there.

.....Smt. Sujau is my mother and she came today with me. I did not see my child till today after taking away by Ruchi Tripathi

9. The petitioner moved an application for DNA test in the light of specific statement of Ms. Ruchi Tripathi to the effect that Smt. Neesha is not the mother of the child, and in view of the specific statement given by her that the unsound mind lady gave birth to the child in question, this Court vide order dated 22.3.2013 directed for DNA test, which is as under:

Today statements of Smt. Neesha and Ms. Ruchi Tripathi have been recorded on oath before this Court.

The petitioner moved an application for DNA test.

Learned counsel for the petitioner stated that petitioner is not in a position to bear the expenses of DNA test. Ms. Ruchi Tripathi, Superintendent of Shriram Industrial orphanage, Sector I, Aliganj, District Lucknow does not oppose the request for DNA test, to ascertain the fact as to whether the petitioner is natural mother of the child who has given in adoption to Sri Satyendra Kumar Soni and Smt. Meenakshi Soni. However, when they and Ms. Ruchi Tripathi were asked to bear the expenses of DNA test, they also declined for the same.

Learned AGA informed to this Court, after taking information from Director, SGPGI, Lucknow that facility of taking sample for DNA test for ascertaining the maternity of child is available, in SGPGI.

At the request of adoptive parents that they came from Jaipur and if DNA

test is required, they may stay for one more day. So Shri Satyendra Kumar Soni and Smt. Meenakshi Soni who have been given the child in adoption and the petitioner are directed to remain present in SGPGI, Lucknow on 23.3.2013 at 10.00 a.m. The Director, SGPGI, Lucknow is requested to collect the sample of petitioner Smt. Neesha and the child Shiva alias Prateek (now known as Sidharth) for DNA test to ascertain the maternity of the child and will keep the sample intact in safe custody till further orders of this Court.

In case the sample is collected at SGPGI, Lucknow on 23.3.2013, Shri Satyendra Kumar Soni and Smt. Meenakshi and petitioner need not to appear again unless otherwise directed by this Court.

It is requested to the Director, SGPGI that charge for collecting the sample of

DNA test of petitioner and child shall not be charged either from petitioner Smt. Neesha or from Shri Satyendra Kumar Soni, who has adopted the child. The bill of the same may be sent to this Court. The order regarding payment of the bill shall be passed by this Court later on.

Ms. Ruchi Tripathi has given statement that Neesha who has given the statement before this Court is not the mother of the child, who has been given in adoption to Shri Satyendra Kumar Soni and Smt. Meenakshi Soni. Actually the mother of the child is of unsound mind who belongs to Baburigaoni, District Barabanki. This fact is in the knowledge of the police.

Keeping in view the statement of Ms. Ruchi Tripathi, S.O. P.S. Asandra, District Barabanki is directed to produce the lady of unsound mind who gave birth to the child according to Ms. Ruchi Tripathi, before this Court on the next date.

List on 8.4.2013.

Copy of this order be given to the learned AGA for necessary compliance of this order.

Registrar of this Court shall send the copy of this order to the Director, SGPGI, Lucknow through FAX forthwith.

Thereafter, the Court asked for the presence of Smt. Jagrana the alleged lady of unsound mind.

10. In view of the controversy being limited to the extent that whether Smt. Neesha is the mother of petitioner-child, this Court directed for DNA test on the basis of samples collected in pursuance of the order dated 22.3.2013. The report was received and has taken on record. The DNA report reveals that child now known as Siddharth (alias Pratik alias Shiva) is the son of Smt. Neesha and Smt. Neesha is the biological mother of the child.

11. Notices were issued to Ms. Ruchi Tripathi, Superintendent of Opposite Party No. 5 to show-cause as to why she may not be punished for giving false statement on oath in this Court and legal action may not be taken against her and further as to why she may not be directed to deposit a sum of Rs. 25,400/- regarding the expenses of DNA test. Simultaneously notices were also issued to Sri Satyendra Soni and Smt. Meenakshi Soni to whom the child has been given in adoption by Ms. Ruchi Tripathi to show-cause as to why the child may not be handed over to Mother of the child in view of the DNA test report submitted in the Court and the report of C.W.C., Barabanki.

12. The objection was filed by Sri Satyendra Soni and Smt. Meenakshi Soni in pursuance of the notice issued to them supported with their Counter-affidavit.

13. Ms. Ruchi Tripathi in official capacity filed a short reply dated 27.5.2013 against show-cause notice dated 30.4.2013. Again Ms. Ruchi Tripathi filed her objection in personal capacity on 31.7.2013 and thereafter a detailed counter-affidavit has also been filed by the opposite party No. 5 on 13.8.2013. A

rejoinder of the same has also been filed on behalf of the petitioner on the same day.

By order dated 3.10.2013 the adoptive parents were added as Opposite Parties No. 6 and 7 to make the record update though they were already served with notice to show-cause and they also filed detailed objections.

By order dated 9.10.2013 C.W.C., Lucknow was also added as Opposite Party No. 8. C.W.C., Lucknow also produced the documents in pursuance of order dated 9.10.2013. The Chairperson, C.W.C., Lucknow also filed affidavit.

14. The Superintendent of Opposite Party No. 5 informed the Court that Opposite Party No. 5 is registered as an adoptive agency under the amended Act 2000. She further informed that the child was physically handed over to adoptive parents in adoption on 28.7.2012. She filed affidavit to this effect in pursuance of order of this Court dated 3.10.2013.

15. Heard Sri Ram Kumar Singh, learned Counsel for the petitioner, Sri Shiwa Kant Tiwari, Learned counsel for Opposite Party No. 5 and also for Ms. Ruchi Tripathi, Learned Senior Counsel Sri H.G.S. Parihar assisted by Sri Shashanka Shekhar Parihar, learned counsel for adoptive parents Opposite Parties No. 6 and 7, Sri Faisal Ahmad Khan, learned A.G.A. for C.W.C., Barabanki and C.W.C., Lucknow and other Opposite Parties including State and also perused the record of this case.

Submissions of the parties:

16. Counsel for petitioner-child submits that in this case the petitioner-child is not the "child in need of care and protection". This fact is also established as per version of police of P.S. Asandra District Barabanki and version of Opposite Party No. 5.. the petitioner-child admittedly hails from District Barabanki. The petitioner child has not been produced by police or Opposite Party No. 5 before C.W.C., Barabanki as early as possible in view of provisions of Section 32 of the Act 2000. Moreover the petitioner-child was in unauthorised manner handed over to Opposite Party No. 5 and she also unauthorised way has given child to Opposite Parties No. 6 and 7. Moreover after requiring his production by C.W.C., Barabanki the child was not produced by Opposite Party No. 5 as is evident from the record of C.W.C., Barabanki. The Opposite Party No. 5 by deceitful means and twisting the law in fanciful manner played fraud with C.W.C., Lucknow, CWC Barabanki as well as with the parents of petitioner-child. Ms. Ruchi Tripathi, Superintendent of Opposite Party No. 5 did not stop here but also practised fraud with Court and succeeded to mislead this Court by giving false statement with intent to put curtain over her misdeeds giving the colour of law which amounts to trafficking of child and non else. It is also evident from the record that the child was produced by Ms. Ruchi Tripathi before CWC, Lucknow on 25.5.2012 and CWC Lucknow directed to inform CWC Barabanki but neither C.W.C., Lucknow nor Opposite Party No. 5 or Ms. Ruchi Tripathi informed about the order dated 25.5.2012 to C.W.C., Barabanki. Not only this Ms. Ruchi Tripathi did not obey the

order of production of petitioner child passed by CWC Barabanki and rather refused to produce the child. No efforts were made by CWC Lucknow to reintegrate or restore the petitioner-child to the family of the child i.e., the natural parents, the prime object under the Act 2000. It was the duty of CWC Lucknow u/s 38 of the Act 2000 not to proceed further in the matter of petitioner-child and should transfer the petitioner-child to C.W.C., Barabanki and direct the Opposite Party No. 5 to produce the Child before C.W.C., Barabanki for further directions, when it was known to CWC Lucknow that the petitioner-child hails from District Barabanki. In view of the same the order of CWC Lucknow declaring the petitioner-child free for adoption and that too without declaring him abandoned or surrendered in accordance with rule was without jurisdiction and consequently, the order passed by the District Judge, Lucknow for granting permission to give the petitioner-child in adoption was also without jurisdiction. In such circumstances the entire proceedings conducted by CWC Lucknow and District Judge, Lucknow suffer from inherent lack of jurisdiction and can be ignored when they were used and pressed as a defence to defeat the action of the petitioner child.

17. Learned counsel for the petitioner in support of his contention relied upon Urban Improvement Trust, Jodhpur Vs. Gokul Narain and another, and Kiran Singh and Others Vs. Chaman Paswan and Others,

18. According to the learned counsel for the opposite party No. 5 and of Ms. Ruchi Tripathi the child was seriously ill so he could not be produced before CWC within the statutory period. As the child was in the territory of Lucknow District, therefore, CWC Lucknow alone was competent to act as competent authority to regulate the provisions of the Act in respect of care, protection and rehabilitation of the petitioner-child. C.W.C., Barabanki was not having the jurisdiction in respect of the petitioner-child. After handing over the child by the police of District Barabanki, CWC Barabanki loses jurisdiction to order production of petitioner-child. Consequently the CWC, Lucknow and Civil Court/District Judge, Lucknow was having jurisdiction to pass orders in respect of adoption of the petitioner child. The petitioner-child was given in adoption to Opposite Parties No. 6 and 7 in accordance with law, hence this petition deserves to be dismissed.

19. The learned Counsel for the Opposite Parties No. 6 and 7 would submit that Opposite Parties No. 6 and 7 adopted the child after observance of statutory provisions in good faith and by lapse of time they developed the relations with petitioner-child as real son and if they were ordered to handover child, the future of the child would be ruined as the natural parents actually abandoned the child wilfully as they were not capable of keeping the child. The welfare of Child would be a para-mount consideration and the fact on record reveals that the best care and protection of petitioner-child could be taken by the Opposite Parties No. 6 and 7. He further submits that the parents of Petitioner have remedy of filing the appeal or revision under Sections 52 or 53 of the Act, therefore, this petition is not maintainable on the ground of availability of effective and efficacious remedy

to the parents of petitioner-child.

20. Learned counsel for the Opposite Parties No. 6 and 7 in support of his contentions relied upon the decision of Hon"ble Supreme Court in Manubhai Ratilal Patel Tr. Ushaben Vs. State of Gujarat and Others, Saihba Ali Vs. State of Maharashtra and Others, to show that when the custody of a person was transferred under the orders of competent authority or Court the writ of Habeas corpus would not be maintainable. He also relied upon judgment in Rajiv Bhatia Vs. Govt. of Nct of Delhi and Others, to show that in a petition of Habeas corpus validity of adoption deed cannot be looked into. While relying upon the judgment of Apex Court in Shyamal Kumar Sarkar Vs. The State of West Bengal, it has been submitted that unless the specific ground challenging the orders and decree passed by C.W.C., Lucknow and District Judge, Lucknow is taken this petition of Habeas corpus would not be maintainable. He further relied upon the judgment in the case of Dr. Ashish Ranjan Vs. Dr. Anupama Tandon and Another, and Nil Ratan Kundu and Another Vs. Abhijit Kundu, to demonstrate that in the matters of custody of child the paramount consideration should be welfare of child.

Discussion

21. After considering the submissions of the parties the following necessary questions are before this Court for consideration and to decide this lis;

Q. No. 1 Whether the Child was a Child in need of care and protection?

Q. No. 2 Whether Ms. Ruchi Tripathi or Shree Ram Audhyogik Anathalaya Opposite Party No. 5 or Opposite Party No. 5 as Adoptive Agency or C.W.C., Lucknow and District Judge Lucknow acted in accordance with the provisions of the Act 2000 and Rules made thereunder? If not, what would be the effect?

Q. No. 3 Whether remedy available under Sections 52 and 53 of the Act, 2000 in the form of appeal and revision could create bar in exercise the jurisdiction of this Court for issuing the writ of Habeas corpus?

Q. No. 1 Whether the Child was a Child in need of care and protection?

22. As the matter relates to newly born child and both CWC Lucknow as well as Court of District Judge, Lucknow proceeded in this matter assuming that the child found was a child in need of care and protection.

Before further proceeding with the matter, it is necessary to determine in the light of facts of this case, whether the child in question was actually a child in need of care and protection.

The definition of "child in need of care and protection" has been given in Section 2(d) of the Act, 2000, which reads as under:

2(d). "child in need of care and protection" means a child-

(i) who is found without any home or settled place or abode and without any ostensible means of subsistence,

- [(ia) who is found begging, or who is either a street child or a working child,]
- (ii) who resides with a person (whether a guardian of the child or not) and such person-
- (a) has threatened to kill or injure the child and there is a reasonable likelihood of the threat being carried out, or
- (b) has killed, abused or neglected some other child or children and there is a reasonable likelihood of the child in question being killed, abused or neglected by that person,
- (iii) who is mentally or physically challenged or ill children or children suffering from terminal diseases or incurable diseases having no one to support or look after,
- (iv) who has a parent or guardian and such parent or guardian is unfit or incapacitated to exercise control over the child,
- (v) who does not have parent and no one is willing to take care of or whose parents have abandoned [or surrendered] him or who is missing and run away child and whose parents cannot be found after reasonable injury,
- (vi) who is being or is likely to be grossly abused, tortured or exploited for the purpose of sexual abuse or illegal acts,
- (vii) who is found vulnerable and is likely to be inducted into drug abuse or trafficking,
- (viii) who is being or is likely to be abused for unconscionable gains,
- (ix) who is victim of any armed conflict, civil commotion or natural calamity;

To reply the question, the facts of this case have to be scanned. At the very beginning of this case the statement on oath of Ms. Ruchi Tripathi, the Superintendent, Shree Ram Audyogik Anathalaya, Lucknow was recorded on 22.3.2013 and on the same day, the statement on oath of Smt. Neesha (the mother of Child in question) was also recorded in this Court to set at rest the main controversy which ought to have been ascertained whether Smt. Neesha, who is claiming herself the mother of the child, was actually the mother of the child or not and whether she gave birth to the child in question or not?

From the pleadings of parties available in this case and the statements on oath recorded on 22.3.2013 of Smt. Neesha and Ms. Ruchi Tripathi it is undisputed amongst the parties that on 21.5.2012 the child was handed over by the police to Ms. Ruchi Tripathi. At that time, the child was with Smt. Neesha who was present alongwith her mother namely Smt. Sujau. The relevant portion of the statement of Ms. Ruchi Tripathi clearly shows that Smt. Neesha refused to handover the child to Ms. Ruchi Tripathi and actually it was taken by Sub-Inspector Sri Satish Kumar Singh of P.S. Asandra, District Barabanki from Smt. Neesha and thereafter handed over to Ms. Ruchi Tripathi. It is also crystal clear

from the statement on oath of Ms. Ruchi Tripathi that the lady from whom Sub-Inspector Sri Satish Kumar Singh taken the child and handed over to Ms. Ruchi Tripathi, was the same lady whose statement was recorded in this Court in her presence. Ms. Ruchi Tripathi identified that lady in Court but Ms. Ruchi Tripathi was not accepted that lady (whose name is Smt. Neesha) is the real mother of child in question and insisted that a mad lady gave birth to the child in question- Therefore, to cut short the procedure, this Court on the request of learned counsel for the petitioner decided to get DNA test from Sanjay Gandhi Postgraduate Institute of Medical Sciences, Lucknow (in short the SGPGI") to ascertain the relationship between Smt. Neesha and child. The DNA test report clearly shows that the DNA sample of child and Smt. Neesha was tallied and Smt. Neesha is the biological mother of the child in question. This DNA test report has not been challenged by any of the parties to the proceedings as no objection has been filed against the DNA test report. From the aforesaid facts, it is established that the child was with her natural and real mother when the child was handed over to Ms. Ruchi Tripathi with the help of the police.

If a child is not found without any home or settled place and the child is residing with his natural parents (here in this case natural mother) having no complaint to the effect that the parents are unfit or incapacitated to exercise control over the child or they are not capable of taking care of the child, the child cannot be termed as child in need of care and protection.

Hence the question No. 1 is decided in negative and held that the child in question was not the child in need of care and protection when he was taken from Smt. Neesha and handed over to Ms. Ruchi Tripathi by S.I. Satish Kumar Singh of P.S. Asandra District Barabanki.

Q-2. Whether Ms. Ruchi Tripathi or Shree Ram Audyogik Anathalaya Opposite Party No. 5 or Opposite Party No. 5 as Adoptive Agency, C.W.C., Lucknow or District Judge Lucknow acted in accordance with the provisions of the Act and Rules? If not, what would be the effect?

23. For the sake of argument, if it is taken that child in question was in need of care and protection then it has to be seen whether Ms. Ruchi Tripathi or Shree Ram Audyogik Anathalaya or Adoptive Agency or C.W.C., Lucknow acted in accordance with the provisions of the Act and Rules.

Before examining the aforesaid question it would be necessary to look into the scheme enshrined under the Act 2000 and rules made thereunder and the role to be played by the stakeholders to carry out the provisions of the Act 2000.

Child Welfare Committees (CWC) Territorial Jurisdiction of Child welfare committees (CWC)

24. The State Government may by notification in the official gazette, constitute for every district, one or more, Child Welfare Committees for exercising the powers and discharge the duties conferred on such Committees in relation to

child in need of care and protection under this Act. The Committee shall function as a Bench of Magistrates and shall have the powers conferred by the Code of Criminal Procedure, 1973 (2 of 1974) on a Metropolitan Magistrate or, as the case may be, a Judicial Magistrate of the first class (Section 29 of the Act).

The Committee shall have the final authority to dispose of cases for the care, protection, treatment, development and rehabilitation of the children as well as to provide for their basic needs and protection of human rights. Where a Committee has been constituted for any area, such committee shall notwithstanding anything contained in any other law for the time being in force but save as otherwise expressly provided in this Act, has the power to deal exclusively with all proceedings under this Act relating to children in need of care and protection (Section 30 of the Act).

If during the inquiry it is found that the child hails from the place outside the Jurisdiction of the Committee, the Committee shall order the transfer of the child to the competent authority having jurisdiction over the place of residence of the child (Section 38 of the Act).

Functions of CWC

25. Any child in need of care and protection may be produced before the Committee by one of the following persons-

- (i) any police officer or special juvenile police unit or a designated police officer;
- (ii) any public servant;
- (iii) child line, a registered voluntary organisation or by such other voluntary organisation or an agency as may be recognised by the State Government.
- (iv) any social worker or a public spirited citizen (omitted 33 of 2006); or
- (v) by the child himself.

Provided that the child shall be produced before the Committee without any loss of time but within a period of twenty-four hours excluding the time necessary for the journey as provided in Section 32. On receipt of a report u/s 32, the Committee shall hold an inquiry in the prescribed manner and the Committee, on its own or on the report from any person or agency as mentioned in sub-section (1) of Section 32, may pass an order to send the child to the children's home for speedy inquiry by a social worker or child welfare officer.

After the completion of the inquiry, if, the Committee is of the opinion that the said child has no family or ostensible support or is in continued need of care and protection, it may allow the child to remain in the children's home or shelter home till suitable rehabilitation is found for him or till he attains the age of eighteen years.

Restoration of and protection to a child shall be the prime objective of any children's home or the shelter home as provided in Section 33.

The children's home or a shelter home, as the case may be, shall take such steps as are considered necessary for the restoration of and protection to a child deprived of his family environment temporarily or permanently where such child is under the care and protection of a children's home or a shelter home, as the case may be. The Committee shall have the powers to restore any child in need of care and protection to his parent, guardian, fit person or fit institution, as the case may be, and give them suitable directions.

Restoration of and protection of a child means restoration to (a) Parents; (b) adopted parents; (c) foster parents; (d) guardian; (e) fit person or (f) fit institution.

The rehabilitation and social reintegration of a child shall begin during the stay of the child in a children's home or special home and the rehabilitation and social reintegration of children shall be carried out alternatively by (i) adoption, (ii) foster care, (iii) sponsorship, and (iv) sending the child to an after-care organisation.

The primary responsibility for providing care and protection to children shall be that of his family as provided in Section 39.

Rehabilitation By Adoption

28. Adoption shall be resorted to for the rehabilitation of the children who are orphan, abandoned or surrendered through such mechanism as may be prescribed.

Keeping in view the provisions of the Act and the various guidelines for adoption issued from time to time, by the State Government, or the Central Adoption Resource Agency and notified by the Central Government, children may be given in adoption by a Court after satisfying itself regarding the investigations having been carried out, as are required for giving such children in adoption.

The State Government shall recognise one or more of its institutions or voluntary organisations in each district as specialised adoption agencies in such manner as may be prescribed for the placement of orphan, abandoned or surrendered children for adoption in accordance with the guidelines notified under sub-section (3) of Section 40 of the Act.

The children's homes and the institutions run by the State Government or a voluntary organisation for children in need of care and protection, who are orphan, abandoned or surrendered, shall ensure that these children are declared free for adoption by the Committee and all such cases shall be referred to the adoption agency in that district for placement of such children in adoption in accordance with the guidelines notified under sub-section (3) of Section 40 of the Act. No child shall be offered for adoption (a) until two members of the Committee declare the child legally free for placement in the case of abandoned children, (b) till the two months period for reconsideration by the parent is over in the case of surrendered children, and (c) without his consent in the case of a

child who can understand and express his consent.

29. Role of the Court in case of rehabilitation by Adoption

Children may be given in adoption by a Court after satisfying itself regarding the investigations having been carried out, as are required for giving such children in adoption.

The Court, having jurisdiction, may allow a child to be given in adoption. In view of the scheme of the Act the Court situated in the area, the child hails from the place shall only have jurisdiction. If the child hails from the place outside the jurisdiction of the Court, the Court must order to direct the petitioner by returning the petition for taking the child in adoption, for presentation of the petition to the Court having jurisdiction over the place of residence of the child, children may be given in adoption by a Court after satisfying itself regarding the investigations having been carried out, as are required for giving such children in adoption.

Under the provisions of the Act the Court shall also ensure the compliance of statutory requirement as contained in sub-section 5 of Section 40 of the Act that no child shall be offered for adoption (a) until two members of the Committee declare the child legally free for placement in the case of abandoned children, (b) till the two months period for reconsideration by the parent is over in the case of surrendered children, and (c) without his consent in the case of a child who can understand and express his consent.

The Court may allow a child to be given in adoption (a) to a person irrespective of marital status; or (b) to parents to adopt a child of same sex irrespective of the number of living biological sons or daughters; or (c) to childless couples.

Adoption as a legal concept was available only among the members of the Hindu community except where custom permits such adoption for any sections of the polity. But in Chapter VI of the Act dealing with rehabilitation and social re-integration of children I find the legislature accepting the concept of secular adoption whereby without any reference to the community or the religious persuasions of the parents or the child concerned, a right appears to have been granted to all citizens to adopt and all children to be adopted. It is in this context that Act 33 of 2006 was introduced under which the concept of adoption was defined by enacting Section 2(aa) of the Act which reads as follows:

Adoption" means the process through which the adopted child is permanently separated from his biological parents and become the legitimate child of his adoptive parents with all the rights, privileges and responsibilities that are attached to the relationship.

Prescribed Mechanism for Adoption

28. The Ministry of Social Justice and Empowerment, Government of India has decided to issue common Guidelines for the procedure that needs to be

undertaken by adoption Homes/institutions before filing adoption petitions under Hindu Adoption and Maintenance Act, 1956 (HAMA), Juvenile Justice (Care & Protection of Children) Act, 2000 (JJ Act) and also Guardianship Petitions under Guardian and Wards Act, 1890. These Guidelines do not affect the provisions in the existing Acts and laws but serve to provide a procedure for processing adoption cases before they are actually brought before the competent authorities/Courts under the aforementioned Acts for orders. The Guidelines will also ensure that the best interests of the child are protected and all adoptions are legally processed through licensed Homes/Institutions only. These guidelines are now incorporated by the Central Government in the Central Rules of 2007 known as The Juvenile Justice (Care and Protection of Children) Rules, 2007 (for short "Rules").

In view of the above if the child belongs to Hindu Religion, the Court shall also ensure the compliance of provisions of Hindu Adoption and Maintenance Act, 1956 apart from the provisions of the Act.

Adoption shall be resorted to for the rehabilitation of the children who are orphan, abandoned or surrendered through such mechanism as may be prescribed.

The mechanism of adoption is provided in Rule 33 of The Juvenile Justice (Care and Protection of Children) Rules, 2007 (for short "Rules").

In case of pre-adoption foster care, as per Rule 36 the provisions contained in subsection (1) of Section 42 and the corresponding guidelines notified under sub-Section (3) of Section 41 of the Act, shall apply.

29. Now this Court has to examine whether Ms. Ruchi Tripathi, O.P. Nos. 5, 6, 7, 8 and District Judge Lucknow in fact acted in accordance with the provisions of amended Act 2000 and Rules of 2007.

The child was actually produced by Ms. Ruchi Tripathi before C.W.C., Lucknow on 25.5.2012 i.e., on the fifth day of taking the child in custody by Ms. Ruchi Tripathi. The CWC Lucknow noticed this fact that the child hails from District Barabanki and then instead of passing an order of transfer made an order that information be sent to CWC Barabanki, but it is strange that CWC Lucknow on his own sources did not send any information in respect of the child to CWC Barabanki. Moreover, nothing was brought on record to show that Ms. Ruchi Tripathi or the adoptive agency complied the order of CWC Lucknow to inform CWC Barabanki. The record reveals that Ms. Ruchi Tripathi wrote a letter on 26.7.2012 to S.O., P.S., Asandra, District Barabanki with intend to inform that CWC Barabanki has no jurisdiction over the child in question and she will not produce the child before CWC Barabanki. In this letter for the she alleged that the Chairman of CWC Barabanki is harassing her as well as the child for some oblique motive and asked for action against the Chairman, CWC Barabanki.

The story does not end here. Ms. Ruchi Tripathi instead of producing the child

before CWC Barabanki in terms of Section 38 of the Act, 2000 proceeded to get a declaration in respect of the aforesaid child with CWC Lucknow that the child is "free for adoption" on 27.7.2012 without complying with the mandatory requirements as contemplated in Sections 40, 41 read with Rules 32 and 33 of the Act, 2000, which are quoted below :

Rehabilitation and Social Reintegration

Section 40. Process of rehabilitation and social reintegration.--The rehabilitation and social reintegration of a child shall begin during the stay of the child in a home or special home and the rehabilitation and social reintegration of children shall be carried out alternatively by (i) adoption, (ii) foster care, (iii) sponsorship, and (iv) sending the child to an after-care organisation.

Section 41. Adoption.--(1) The primary responsibility for providing care and protection to children shall be that of his family.

(2) Adoption shall be resorted to for the rehabilitation of the children who are orphan, abandoned or surrendered through such mechanism as may be prescribed.

(3) In keeping with the provisions of the various guidelines for adoption issued from time to time, by the State Government, or the Central Adoption Resource Agency and notified by the Central Government, children may be given in adoption by a Court after satisfying itself regarding the investigations having been carried out, as are required for giving such children in adoption.

(4) The State Government shall recognise one or more of its institutions or voluntary organisations in each district as specialised adoption agencies in such manner as may be prescribed for the placement of orphan, abandoned or surrendered children for adoption in accordance with the guidelines notified under sub-Section (3):

Provided that the children's homes and the institutions run by the State Government or a voluntary organisation for children in need of care and protection, who are orphan, abandoned or surrendered, shall ensure that these children are declared free for adoption by the Committee and all such cases shall be referred to the adoption agency in that district for placement of such children in adoption in accordance with the guidelines notified under sub-section (3).

(5) No child shall be offered for adoption.-

(a) until two members of the Committee declare the child legally free for placement in the case of abandoned children,

(b) till the two months period for reconsideration by the parent is over in the case of surrendered children, and

(c) without his consent in the case of a child who can understand and express his consent.

(6) The Court may allow a child to be given in adoption -

(a) to a person irrespective of marital status; or

(b) to parents to adopt a child of same sex irrespective of the number of living biological sons or daughters; or

(c) to childless couples.

Rule 32. Rehabilitation and Social Reintegration.--The primary aim of rehabilitation and social reintegration is to help children in restoring their dignity and self-worth and mainstream them through rehabilitation within the family where possible, or otherwise through alternate care programmes and long-term institutional care shall be of last resort.

Rule 33. Adoption.--(1) The primary aim of adoption is to provide a child who cannot be cared for by his biological parents with a permanent substitute family.

(2) For all matters relating to adoption, the guidelines issued by the Central Adoption Resource Agency and notified by the Central Government under sub-section (3) of Section 41 of the Act, shall apply.

(3) In case of orphaned and abandoned children the following procedure shall apply, namely :

(a) Specialised Adoption Agencies shall produce all orphaned and abandoned children who are to be declared legally free for adoption before the Committee within twenty-four hours of receiving such children, excluding the time taken for journey;

(b) a child becomes eligible for adoption when the Committee has completed its inquiry and declares the child legally free for adoption;

(c) such declaration shall be made in Form XIV;

(d) a child must be produced before the Committee at the time of declaring such child legally free for adoption;

(e) whenever intimation is received by the police about an abandoned infant, the police shall take charge of the infant and arrange to provide immediate medical assistance and care;

(f) subsequently, the child shall be placed in a specialised adoption agency or recognised and certified children's home or in a paediatric unit of a Government hospital followed by production of the child before the Committee within twenty-four hours;

(g) procedure for declaring a child abandoned and certifying him legally free for adoption:

(i) in case of an abandoned child, the recognised agency shall within twenty four hours, report and produce the child before the Committee with the copy of the

report filed with the police station in whose jurisdiction the child was found abandoned;

(ii) the Committee will institute a process of inquiry, which shall include a thorough inquiry conducted by the Probation Officer or Child Welfare Officer, as the case may be and who shall give report in Form XIII to the Committee containing the findings within one month;

(iii) there shall be a declaration by the specialised adoption agency, stating that there has been no claimant for the child even after making notification in at least one leading national newspaper and one regional language newspaper for children below two years of age and for children above two years, an additional television or radio announcement and notification to the missing persons squad or bureau shall be made;

(iv) the steps stated in (iii) shall be taken within a period of sixty days from the time when the child is found in case of a child below two years of age and in case of children above two years of age, this period shall be four months;

(v) the period of notification shall run concurrently with the inquiry to be conducted and report submitted under clause (ii) of this sub-Rule; (vi) the Committee shall declare the child legally free for adoption on completion of the process of inquiry, including declaration of the specialised adoption agency made under clauses (ii) and (iii) of this sub-rule;

(vii) no child above seven years who can understand and express his opinion shall be declared free for adoption without his consent.

(4) In case of surrendered children the following procedure shall apply, namely:

(a) a surrendered child is one who had been declared as such after due process of inquiry by the Committee and in order to be declared legally free for adoption, a "surrendered" child shall be any of the following:

(i) born as a consequence of nonconsensual relationship;

(ii) born of an unwed mother or out of wedlock;

(iii) a child in whose case one of the biological parents is dead and the living parent is incapacitated to take care;

(iv) a child where the parents or guardians are compelled to relinquish him due to physical, emotional and social factors beyond their control;

(b) serious efforts shall be made by the Committee for counselling the parents, explaining the consequences of adoption and exploring the possibilities of parents retaining the child and if, the parents are unwilling to retain, then, such children shall be kept initially in foster care or arranged for their sponsorship;

(c) if the surrender is inevitable, a deed of surrender in Form XV shall be executed on a non-judicial stamp paper in the presence of the Committee;

(d) the adoption agencies shall wait for completion of two months reconsideration time given to the biological parent or parents after surrender;

(e) in case of a child surrendered by his biological parent or parents, the document of surrender shall be executed by the parent or parents before the Committee;

(f) after due inquiry, the Committee shall declare the surrendered child legally free for adoption in Form XIII as the case may be after a sixty days' reconsideration period as per Central Adoption Resource Agency guidelines.

(5) For the purposes of Section 41 of the Act, "Court" implies a Civil Court, which has jurisdiction in matters of adoption and guardianship and may include the Court of the district judge, family Courts and city Civil Court.

30. When the child was produced before CWC Lucknow or was in custody of any children's home then first of all every efforts ought to have been made by them to restore the child to his family which is mandatory in terms of scheme of the Act 2000 and Section 40 and Section 41(1) of the Act, 2000 as amended in 2006.

31. In this case the fact reveals that Ms. Ruchi Tripathi not only acted contrary to the scheme of the Act but also violated the mandatory provisions of the Act and Rules. For the reason best known to her she despite complying with the scheme of the act being a superintendent of an agency which works under the provisions of the Act, has taken a child forcefully by making a false representation with the help of police of P.S. Asandra District Barabanki from the custody of natural mother of the child. From the conduct, act and omissions of Smt. Ruchi Tripathi, it clearly emerged out that at all stages she concealed this fact from the authorities and Court therefore knowingly she did not make any efforts to restore the child to his family. This also reflects from the statement given by her on oath before this Court on 22.3.2013 wherein she clearly stated that a mad lady gave birth to this child though she could not have personal knowledge of it. She categorically stated in her statement that she did not talk to the mother of the child. She further stated that she never saw her and never tried to contact her and did not know whether she is alive or dead. She did not utter a single word with regard to any efforts to restore the child to the family to which he belongs.

33. It is also worth notice that she not only managed the chairman and other members of the CWC Lucknow but also the police personnel to get this child in her custody which is evident from the statement given by her before this Court on 22.3.2013. In statement on oath she categorically stated that she came to know that a mad lady resident of Baburi gaon gave birth to a child. Station House Officer, Asandra Police Station gave this information to Angad Singh-Chairman, CWC, Barabanki who after talking with the Village Pradhan handed over the child to the lady resident of the same village. After knowing it Ms. Ruchi Tripathi told to Station House Officer, Police Station Asandra that it is wrong and the child should have been sent to orphanage within 24 hours. It appears that Station House Officer believing the statement of Ms. Ruchi Tripathi as true

assured her to call the Child Welfare Officer posted in the police station, namely, S.I. Satish Kumar Singh who will manage to handover the child to her. In pursuance of that she managed to take the child from that lady (the biological and natural mother) with the help of the police with oblique motive as evident from the facts of this case. This shows that Ms. Ruchi Tripathi twisted the law in her own ways and desires with the help of other statutory functionaries and managed to handover the child in an unauthorised manner without observing the provisions of Act 2000 to the alleged adoptive parents i.e. opposite parties No. 6 and 7 and that too after obtaining the declaration to the effect that the child is free for adoption from CWC Lucknow by concealing the true facts knowingly and without declaring the child abandoned or surrendered.

32. It is also worth notice that earlier to it, the child was also given in custody on 7.7.2012 to opposite parties No. 6 and 7. No permission has been taken either from CWC Lucknow or CWC Barabanki. According to the opposite parties the child was given in pre adoption foster care to O.P. Nos. 6 and 7 as provided under the Act to protect the child's life. To examine the plea raised by the opposite parties with regard to pre-foster-care, the relevant provisions in Act and Rules are reproduced herein below :

Section 42. Foster care.--(1) The foster care may be used for temporary placement of those infants who to be given for adoption.

(2) In foster care, the child may be placed in another family for a short or extended period of time, depending upon the circumstances where the child's own parent usually visit regularly and eventually after the rehabilitation, where the children may return to their own homes.

(3) The State Government may make rules for purposes of carrying out the scheme of foster care programme of children.

Rule 34. Foster Care.--(1) For children who cannot be placed in adoption, order shall be issued by the competent authority in Form XVII for carrying out foster care, as given in sub-section (2) of Section 42 of the Act and Rule 35 (1) of these rules, under the supervision of a probation officer or case worker or social worker, as the case may be, and the period of foster care shall depend on the need of the child.

(2) Every State Government shall design its own foster care programme so as to reduce institutionalisation of children and enable a nurturing family environment for every child.

(3) The State Government shall consult the Boards or Committees, non Governmental organisations, academicians and organisations working on alternative care for children in developing the foster care programme.

Rule 35. Criteria for selection of families for foster care.--(1) In case of the children covered under Rule 34 of these rules, the following criteria shall apply for selection of families for foster care, namely :

- (i) foster parents should have stable emotional adjustment within the family;
- (ii) foster parents should have an income in which they are able to meet the needs of the child and are not dependent on the foster care maintenance payment;
- (iii) the monthly family income shall be adequate to take care of foster children and approved by the Committee;
- (iv) medical reports of all the members of the family residing in the premises should be obtained including checks on Human Immune Deficiency Virus (HIV), Tuberculosis (TB) and Hepatitis B to determine that they are medically fit;
- (v) the foster parents should have experience in child caring and the capacity to provide good child care;
- (vi) the foster parents should be physically, mentally and emotionally stable;
- (vii) the home should have adequate space and basic facilities;
- (viii) the foster care family should be willing to follow rules laid down including regular visits to paediatrician, maintenance of child health and their records;
- (ix) the family should be willing to sign an agreement and to return the child to the specialized adoption agency whenever called to do so;
- (x) the foster parents should be willing to attend training or orientation programmes; and
- (xi) the foster parents should be willing to take the child for regular (at least once a month in the case of infants) checkups to a paediatrician approved by the agency.

(2) There shall be no discrimination in selection of foster-parents on the basis of caste, religion, ethnic status, disability, or health status and the best interest of the child shall be paramount in deciding foster-care placement.

(3) The foster parents shall be declared "fit persons" by the Committee before placing the child as per the provisions laid down in clause (i) of Section 2 of the Act after thorough assessment done by the Child Welfare Officer or Social Worker as per Form XVI.

Rule 36. Pre-adoption Foster Care.-- In case of pre-adoption foster care, the provisions contained in sub-section (1) of Section 42 and the corresponding guidelines notified under sub-section (3) of Section 41 of the Act, shall apply.

33. If the child was given in foster care or pre adoption foster care even then orders from competent authority were required which in this case has not been taken by Ms. Ruchi Tripathi, adoptive agency, orphanage or by the adoptive parents. Moreover, without completing necessary mandatory requirements of

adoption child cannot be handed over physically to the adoptive parents and that too before the permission of the competent Court in terms of the provisions contained in sub-section (6) of Section 41 of the Act, 2000 read with Rule 33(5).

34. According to Ms. Ruchi Tripathi, the child was unclaimed. If it is so then in that situation, it was mandatory on the part of the CWC Lucknow before declaring the child free for adoption, to follow the procedure to declare the child as abandoned or surrendered as the case may be. Unless the child is declared abandoned in accordance with Rule 33(3) or surrendered as required under Rule 33(4), the child cannot be declared free for adoption. It would be necessary to mention here that neither the CWC Lucknow nor Ms. Ruchi Tripathi made any effort to trace out the parents of so called child or abandoned child even if a mad lady gave birth to the child as stated by Ms. Ruchi Tripathi. It was incumbent upon Ms. Ruchi Tripathi to ascertain whether that mad lady was married or unmarried and if, married, who was her husband and whether her husband was alive or dead. Rather performing her job in terms of the Act, she did not try to meet even with that lady who according to her gave birth to the child. It is also worth notice that no inquiry has been conducted either by CWC Lucknow or by Ms. Ruchi Tripathi to ascertain as to who was the real parents of the child.

35. Ms. Ruchi Tripathi in this regard finished her job only by taking a report from District Crime Record bureau (in short "the DCRB") of Barabanki on 25.7.2012 that no report of missing child of 15 days during last two months has been lodged in the police with Barabanki. Ms. Ruchi Tripathi obtained this report before declaring the child free for adoption from DCRB Barabanki on 25.7.2012. This was obtained on the basis of letter issued by opposite party No. 5 on 24.7.2012 wherein information was sought about missing of a 15 days old child for last two months. The DCRB, Barabanki submitted its report on 25.7.2012 that for last two months no missing report of a child of 15 days has been received.

36. This clearly depicts that it was Ms. Ruchi Tripathi who not only mislead CWC Lucknow in achieving her illegal goal but also the DCRB, Barabanki. It is also worth notice that DCRB, Barabanki, which is a police wing for come related to children, is not aware of the child who was handed over to Ms. Ruchi Tripathi on 21.5.2012 and the news in this regard was flashed in several newspapers. It is very disturbing to this Court that DCRB Barabanki ignoring the aforesaid facts gave a report in terms of the desires and wishes of Ms. Ruchi Tripathi. After this report she could be able to obtain the declaration of the child free for adoption by saying that the child is unclaimed in the absence of any report of missing of a child of 15 days.

37. In this regard it is also worth notice that there are certain manipulations which appear to have been made by Ms. Ruchi Tripathi as is evident from the record. Form the record, it reveals that child was a newly born child and according to Smt. Neesha she gave birth to the child in question in the night of 19/ 20.5.2012 but when the child was medically examined in Aliganj Hospital on 22.5.2012 his age was mentioned as 15 days in the prescription issued by the

Hospital. Ms. Ruchi Tripathi in her pleadings placed before this Court by way of affidavit submits that the doctor assessed the age of the child about 15 days on 22.5.2012. But such assessment of doctor is neither mentioned in the prescription nor in any document placed on record to this effect. Contrary to it, discharge certificate filed in Court by Ms. Ruchi Tripathi showing therein that the child was admitted in the hospital on 31.5.2012 and was discharged from hospital on 6.6.2012 and the age of the child was mentioned therein as 18 days. This shows that the age of the child on the date of discharge was about 18 days which tallies with the statement of Smt. Neesha, the real mother of the child. She in the declaration form mentioned the date of birth of the child as 6.5.2012. This is a clear manipulation made by Ms. Ruchi Tripathi to put the dust in the eyes of members and chairman of C.W.C. as well as other authorities of police and State.

38. The records produced by Ms. Ruchi Tripathi or by CWC Lucknow reveal that no proceedings of declaring the child free for adoption were reduced in writing. Neither the CWC Lucknow nor Ms. Ruchi Tripathi produced any record of inquiry conducted by CWC Lucknow before declaration. A printed proforma on Form-XIV signed on 27.7.2012 by the Members and President of CWC Lucknow, in the shape of certificate has been placed on record by Ms. Ruchi Tripathi.. Thereafter, a letter has been issued by Ms. Ruchi Tripathi to ADM, Lucknow, who is also the In-charge of Shree Ram Audyogik Anathalaya, requesting him that a meeting of committee for giving the child in adoption is to take place on 28.7.2012 at 6.00 pm in the premises of Adoptive Agency. The extract of meeting dated 28.7.2012 is also placed on record which is a computer typed copy leaving the blank space for mentioning the date wherein the date has been filled up by hand and the proceedings were signed by ADM Om Pathak, Dr. S.D. Pandey In-charge Member and Ms. Ruchi Tripathi. The name of Dr. Sudhanshu Upadhyay is printed in this form but his signature is absent. It is not mentioned in it as to who was present in this meeting and whether the coram of meeting was sufficient to conduct the proceedings. It shows that this all has been prepared by Ms. Ruchi Tripathi and no one else. It further proves that the signatories simply signed on this document without applying their mind. It was further noticed by this Court that a letter dated 28.7.2012 to obtain the consent was issued by Ms. Ruchi Tripathi to the adoptive parents i.e. opposite parties No. 6 and 7, who were resident of Jaipur. In this letter it has been informed to them that they should submit their consent within 10 days. It is not known when this letter reached to the adoptive parents. Nothing is not available on record to this effect. Neither Ms. Ruchi Tripathi in her affidavit when this notice was dispatched by her or received by O.P. Nos. 6 and 7 nor the O.P. Nos. 6 and 7 disclosed in their affidavit about the receipt of this notice. It is strange that Smt. Meenakshi Soni and Satyendra Soni alleged to have signed the child status report on 28.7.2012 which was prepared on 27.7.2012. It is also important to note that Ms. Ruchi Tripathi in their affidavit and the statement given before this Court stated that the child was given in physical possession of the adoptive parents on 28.7.2012. It is strange when a

letter was issued on 28.7.2012 for asking consent within 10 days, how this letter reached at Jaipur and the adoptive parents arrived at on the same day. It is also established on record from the statement given by Chairperson, CWC Lucknow, namely, Gulzar Ibrahim on 2.12.2013 that Form-XIV, the declaration of child "free for adoption" and Form-X to obtain the order of keeping the child in the institution were prepared by adoptive agency i.e. opposite party No. 5 and were produced before CWC Lucknow by Ms. Ruchi Tripathi.

39. One thing is also important to note that Ms. Ruchi Tripathi applied for permission for giving the child in adoption to Opposite Parties No. 6 and 7 in the light of Section 41(6) of the Act, 2000 read with Rule 33(5) before District Judge, Lucknow and not before the District Judge, Barabanki. The Court of District Judge Lucknow granted permission for adoption on 21.10.2012, within the period of less than 3 months from the date of handing over child to O.P. Nos. 6 and 7 and from the date of declaring the child free for adoption. The certified copy of permission granted on 21.10.2012 has been issued to the parties on 1.12.2012 but the document alleged to be the adoption deed was executed by Ms. Ruchi Tripathi in favour of adoptive parents on 21.10.2012 and was placed for registration of adoption deed before the Sub-Registrar at 1.55 p.m. on the day on which the judgment was delivered by the Court. This also shows that everything was pre planned with opposite parties No. 6 and 7 and Ms. Ruchi Tripathi played the dominant roll in handing over the child in unauthorised manner and by violating the law to O.P. Nos. 6 and 7. It is admitted to the parties, specially O.P. No. 5, 6, 7 and 8, that after execution and registration of adoption deed no actual and physical handing over and taking over of child in question has taken place.

40. It is also worth notice that Opposite Parties No. 6 and 7 were interested in getting a female child in adoption as is evident from psychological report prepared by adoptive agency. It has not been brought on record as to why they gave up their idea and agreed to take a male child in adoption. It is also not brought on record by the adoptive agency as to how many persons were already registered who are interested in adoption of children in her orphanage or there was any female child available for adoption to O.P. Nos. 6 and 7 in the orphanage. It was also not brought on record by the adoptive agency or by O.P. Nos. 5 why a wide publication was not made in the print or electronic media for inviting the applications of persons interested in adoption of the child in question and why only O.P. Nos. 6 and 7 were dealt with for the purpose of giving this child in adoption when they were interested in getting a female child in adoption.

41. The entire facts show that Ms. Ruchi Tripathi was interested in giving the child in adoption to opposite parties No. 6 and 7 hurriedly and for that Ms. Ruchi Tripathi was having no hitch to flout the law and take the law in her own hand. The entire proceedings appear to be collusive. This collusion was in between opposite parties No. 5 and Opposite Parties No. 6 and 7 which clearly appears from the record. The role of police authorities were also not fair in dealing with

this child. It seems that the entire proceedings which have been conducted by CWC Lucknow were without jurisdiction and are result of fraud practice upon authorities including CWC Lucknow and other functionaries who are the part and partial of completing the legal formalities.

42. This matter ought to have been dealt with by CWC Barabanki, if the child was a child in need of care and protection, and not by CWC Lucknow and all instructions regarding declaration of child "free for adoption" or giving the child in adoption or giving the child in foster care must be obtained from CWC Barabanki. If these proceedings would have been conducted by CWC Barabanki then this Court is of firm view that the child should certainly be restored to the family of the child wherein he took birth and Ms. Ruchi Tripathi could not be able to manipulate the things in respect of child in question by which she succeeded in handing over the child to the adoptive parents by twisting the law in her own way by committing fraud with the statutory authorities.

43. In this case, the police ought to have produced the child before CWC Barabanki, if according to police the child was an unclaimed one. The Police of District Barabanki did not produce the child before CWC Barabanki but decided to handover the child without permission or obtaining orders or directions of the competent authority i.e. CWC Barabanki, to Ms. Ruchi Tripathi and that too after taking the child from the custody of his natural parents.

44. It has been submitted by learned counsel for the opposite parties No. 6 and 7 that they are not anyhow concerned with the proceedings conducted either before the CWC Lucknow or before the CWC Barabanki or before the Court and they are in bona fide believed that whatever done in this matter before CWC Lucknow or in the Court of District Judge Lucknow have been done in accordance with law. Therefore, the child cannot be said to be in illegal custody nor they in any unauthorized way keeping the child with them. Therefore, the writ of Habeas corpus cannot be issued against them and the same is liable to be dismissed.

45. So far as this contention of opposite parties No. 6 and 7 is concerned, in view of the fact and circumstances discussed above by this Court in forgoing paragraphs of the judgment, it cannot be said that the opposite parties No. 6 and 7 are acting in bonafide manner in getting the child in physical custody or taking the child in adoption either on 7.7.2012 or on 28.7.2012 and the same cannot in any way be said to be in conformity with the law even if the child was child in need of care and protection.

46. In the entirety of the facts and circumstances it appears that Satish Kumar S.I. who was designated as a Child Welfare Officer of P.S. Asandra District Barabanki, Ms. Ruchi Tripathi, the superintendent of opposite party No. 5, the adoptive parents i.e. opposite parties No. 6 and 7 were in collusion with each other and were anyhow wanted the child by hook or by crook. Ms. Ruchi Tripathi, S.I. Satish Kumar Singh and the adoptive parents, prima facie, after hatching the criminal conspiracy and by misusing the process of law and Court virtually

succeeded in their design in grabbing and handing over child in question to Opposite Parties No. 6 and 7.

Consequently it is established on record that O.P. Nos. 5, 6, 7, 8, SI Satish Kumar Singh, Incharge DCRB Barabanki have not acted in accordance with law. The CWC Lucknow and District Judge, Lucknow were not having any jurisdiction in this matter to deal with the child who hails from District Barabanki and as such this is a case of inherent lack of Jurisdiction. On the basis of the discussions made herein above the Q. No. 2 is also decided in negative.

Q. No. 3 Whether remedy available under Sections 52 and 53 of the Act, 2000 in the form of appeal and revision could create bar in exercise the jurisdiction of this Court for issuing the writ of Habeas corpus?

47. Another contention of Opposite Parties No. 6 and 7 is that under the Act there is a provision to prefer an appeal u/s 52 or to prefer a revision u/s 53, therefore, in view of the alternative remedy available to the parents of the child, writ of habeas corpus cannot be issued.

Now the question arises; whether the adoption could be validly made in accordance with the provisions of the Act 2000 as amended from time to time and Rule made thereunder in respect of the child in question?

In view of the findings recorded on Q. No. 1 the child in question was not the child in need of care and protection. Therefore under the provisions of the Act 2000 child could not be given in adoption.

Even otherwise It is well-settled that an adoption could not take place without the consent of parents of minor child. In this case it is not in dispute that natural parents are known but no efforts were made to trace them out at any stage of the proceedings before CWC Lucknow or during the course of granting permission by District Judge, Lucknow. The concept of consent of natural parents is also inbuilt in definition of adoption introduced in Section 2(aa) of the Act which reads as follows:

Adoption" means the process through which the adopted child is permanently separated from his biological parents and become the legitimate child of his adoptive parents with all the rights, privileges and responsibilities that are attached to the relationship.

When the biological parents of a child are known the question of separation of child without their consent is not possible under the Act 2000 except where the child is declared as surrendered or abandoned by competent authority. There is total absence of it in this case.

The ignorance of law is no excuse. If any person pleaded ignorance of law in performing any act which otherwise would be illegal or without jurisdiction cannot take plea that he was acting in bona fide manner. The manner in which the child was taken in adoption by adopting the unfair means under the garb of

law, is nothing but amount to misuse of child rather it amounts to trafficking of child. This act of O.P. No. 5, 6 and 7 alongwith police of P.S. Asandra District Barabanki is an abuse of the process of law.

48. It is well-settled that If a child is taken from the custody in an illegal manner from the parents of the child and thereafter treating that child as unclaimed child then the entire proceedings conducted by any authority under the Act 2000 would be a nullity and the outcome of those proceedings would also be a nullity. When such proceedings or their outcome have been put as defence to protect the actions committed by wrongdoers, the law will not extend any help to them. Therefore, in any way, it cannot be said that the child in question is in custody of adoptive parents in accordance with established procedure under the law. They have no authority to keep the child with them in any manner. They are bound to return the child to his natural mother who was wilfully prevented to participate in the proceedings conducted before CWC Lucknow or before the Court of District Judge, Lucknow, from whom the child was taken in an unauthorised manner.

49. So far as, remedy of appeal or revision is concerned, I am of the view that where the entire proceedings conducted under the Act, 2000 are without jurisdiction, the question of availability of alternative remedy to the parents of the child under the Act 2000 cannot be an impediment in seeking the relief by means of writ of Habeas corpus petition.

50. Section 52 provides appeal against an order passed by competent authority to Court of sessions within 30 days. Here in this case no information of proceedings conducted before C.W.C., Lucknow were ever given to the parents of the child in question. Therefore, the parents were prevented to participate in such proceedings and they not being the parties to the proceedings could not file the appeal or revision within the prescribed period of limitation. So far as the order passed by District Judge is concerned, no appeal is provided. The remedy of Revision in such situation can be availed before the High Court but the fact is that the parents are not the party to the proceedings before District Judge also. Even if they are treated to be aggrieved parties, they may file the appeal or revision with an application to condone the delay.

51. Moreover, even if it is taken to be true that there is an alternative remedy then by itself the jurisdiction of writ Court cannot be ousted unless it is established that the alternative remedy is efficacious and effective. If in the aforesaid facts and circumstances at this stage the parents of the child are directed to take the course of alleged alternative remedy of filing an appeal or revision, it will violate the fundamental rights of a newly born child, who has been deprived from the care and protection of his parents by illegal means. It is the rule of nature that the child would be best cared by his biological parents. This rule of nature has been en-grafted by the legislature in statutory provisions contained in the Act, 2000 as amended in 2006 and Rules of 2007 which is evident from the scheme of rehabilitation and reintegration of child in need of care and protection as discussed in the foregoing paragraphs of this judgment.

52. The writ of Habeas corpus is the only writ which can be issued against a private person who does not fall within the ambit of Article 12 of Constitution of India because the question of liberty of a citizen is involved. Therefore if the custody of a citizen in the hands of other is illegal or the person is continuing in unauthorised custody or the custody of an individual has been given to or is detained under the orders of an authority or Court having no jurisdiction to order detention or custody or the order so passed is without jurisdiction or where the error, irregularity or illegality touching jurisdiction or procedure committed by an inferior Court or tribunal of the first instance or acts wholly without jurisdiction or patently in excess of jurisdiction or manifestly conducts the proceedings before it in a manner which is contrary to the rule of natural justice and all accepted rules of procedure is so patent and loudly obtrusive that it leaves on its decision an indelible stamp of infirmity and which offends the superior Court's sense of fair play the superior Court may quite properly exercise to its writs even if an appeal to another inferior Court or tribunal subordinate to High Court was available. I fortified my views in this regard with the Judgment of Constitution Bench in *The State of Uttar Pradesh Vs. Mohammad Nooh, and Dr (Smt.) Kuntesh Gupta Vs. Management of Hindu Kanya Mahavidyalaya, Sitapur (U.P.) and Others*,

53. In *Dr. Smt. Kuntesh Gupta v. Management of Hindu Kanya Mahavidyalaya, Sitapur(U.P.) and others*, the Apex Court in para 12 of the judgment held as under :

The next question that falls for our consideration is whether the High Court was justified in dismissing the writ petition of the appellant on the ground of availability of an alternative remedy. It is true that there was an alternative remedy for challenging the impugned order by referring the question to the Chancellor u/s 68 of the U.P. State Universities Act. It is well established that an alternative remedy is not an absolute bar to the maintainability of a writ petition. When an authority has acted wholly without jurisdiction, the High Court should not refuse to exercise its jurisdiction under Article 226 of the Constitution on the ground of existence of an alternative remedy. In the instant case., the Vice-Chancellor had no power of review and the exercise of such a power by her was absolutely without jurisdiction. Indeed, the order passed by the Vice-Chancellor on review was a nullity; such an order could surely be challenged before the High Court by a petition under Article 226 of the Constitution and, in our opinion, the High Court was not justified in dismissing the writ petition on the ground that an alternative remedy was available to the appellant u/s 68 of the U.P. State Universities Act.

In view of specific facts of this case, the case law cited by learned counsel for the opposite parties No. 6 and 7 does not extend any help to him.

54. In the case of *Manubhai Ratilal Patel through Ushahen (supra)*, the Apex Court considered the validity of judicial custody or custody of the police in a matter of Habeas corpus petition. Present one is not a case where the child is in

judicial custody or police custody under the provisions of Cr.P.C. The Apex Court held that when the accused is remanded to custody by the Magistrate after staying the further investigation by the High Court u/s 482 Cr.P.C., the writ of habeas corpus cannot be issued on the ground that the custody of the petitioner is illegal, therefore, this case law is not extending any help to opposite parties No. 6 and 7.

55. In case of Saihba Ali (supra), there was a dispute of custody of a child. This case was filed by the natural mother seeking custody of her child who was in the custody of parental grand mother of the child by virtue of an order of competent family Court. The Court thus find that writ of habeas corpus is not maintainable. Here in this case, this Court finds that the decree passed by the District Court, Lucknow permitting adoption of the child and the proceedings conducted by CWC Lucknow are without jurisdiction and suffering from defect of inherent lack of jurisdiction. Hence, this case law too cannot extended any help to the opposite parties No. 6 and 7.

56. In Rajiv Bhatia's case (supra), the matter was relating to the provisions contained in Hindu Adoptions and Maintenance Act, 1956 for the custody of a child who was given in adoption after executing a valid deed of adoption. It was held in the petition of habeas corpus the validity of adoption deed cannot be considered. As this Court has earlier stated that the adoption deed in the present case is an outcome of the proceedings suffering from inherent lack of jurisdiction, therefore, if it is set up as a defence it can be ignored and cannot be allowed to use as a sword to cut the rights of a natural mother who was admittedly deprived from the custody of her child by illegal means.

57. In Ashish Ranjan's case (supra) and in Nil Ratan Kundu's case (supra), the Apex Court while dealing with the matter of custody of child in between the parties i.e. the member of the family of the child ruled that while considering the question of the custody of the child, the paramount consideration should be the welfare of the child. There is no exception to this Rule but whether the principle will be applied in the present case is an important question to be considered by this Court.

58. The fact disused herein above clearly depicts that how the mother has been deprived from the custody of her own child against the provisions of law and due to gross negligence on the part of police and other statutory functionaries. The child has been grabbed by unfair means, therefore, the fundamental rights of the child to remain with the family (parents), who gave the birth to him, cannot be allowed to be taken away under the garb of principles of paramount consideration of welfare of the child.

The defence taken by opposite parties No. 6 and 7 that they are the bona fide adoptive parents who took the child in adoption after due compliance of the provisions of statute is not at all sustainable in the light of the fact and law discussed here in above. In view of the finding arrived at by this Court, the

custody of the child with opposite parties No. 6 and 7 cannot be said to be legal custody or under due process of law therefore, the same could not be an impediment in issuing the writ of habeas corpus against them.

59. Even otherwise if the child was a child in need of care and protection the proceedings conducted in respect of adoption of the child were without jurisdiction and nullity. As such If those proceedings conducted before CWC Lucknow or permission for adoption given by District Judge or the adoption deed executed in pursuance of such permission, whenever and wherever pressed or enforced or relied upon the same shall be ignored because, the defect of jurisdiction whether it is pecuniary or territorial or whether it is in respect of the subject-matter strikes at the very authority of the Court to pass any decree, and such a defect cannot be cured even by the consent of the parties as held by the Apex Court in Constitution Bench judgment rendered in Kiran Singh and Others Vs. Chaman Paswan and Others, The same view has been propounded by the Apex Court in Urban Improvement Trust, Jodhpur Vs. Gokul Narain and another, While relying upon a case of Supreme Court in Sushil Kumar Mehta Vs. Gobind Ram Bohra (Dead) through his Lrs., their Lordship in Urban Improvement Trust case (Supra) observed in para 15 :

15. The question then is : whether the objections can be raised in execution? This controversy is no longer res integra. In Sushil Kumar Mehta Vs. Gobind Ram Bohra (Dead) through his Lrs., a three-judge Bench of this Court was to consider whether the nullity of a decree can be raised in execution. Under the Haryana Urban (Control of Rent and Eviction) Act. 1973 the building was governed by the provisions of the said Act. The Civil Court granted decree of eviction. When objection was raised in execution the executing Court rejected the same. On appeal, this Court had held that a decree passed by a Court without jurisdiction over the subject-matter or on any other ground which goes to the root of its exercise of jurisdiction or inherent jurisdiction, is a nullity. A decree passed by such a Court is a nullity and is non est. Its invalidity can be set up whenever it is sought to be enforced or is acted upon as a foundation for a right even at the stage of execution or in collateral proceedings. The defect of jurisdiction strikes at the authority of the Court to pass a decree which cannot be cured by consent or waiver of the party In the case in hand this Court finds that the Child was not the child in need of care and protection when taken by Ms. Ruchi Tripathi because at that time the child was with his natural parents and as such the provisions of Act 2000, would not apply and if in that situation the custody of child was dealt with in accordance with that law which is not at all applicable in respect to subject-matter, the order passed by authorities under the Act 2000 would go to the root of the jurisdiction. As such, it is held that the decree passed by Court of District Judge granting permission for adoption of child in question u/ s 41 of the Act 2000 and declaration made in respect of the child free for adoption and approval of giving the child in adoption by CWC Lucknow or committee constituted under the rules, if any, shall be without jurisdiction in regard to the subject-matter. The proceedings conducted by CWC Lucknow or by

District Judge Lucknow are nothing but a nullity. A decree passed by such a Court is also nullity and void. Its invalidity can be set up whenever it is sought to be enforced or is acted upon as a foundation for a right even at the stage of execution or in collateral proceedings.

Consequently the remedy provided in the Act 2000 would not treated to be an alternative remedy. Consequently there is no impediment in issuing the writ of habeas corpus against O.Ps. Q-No. 3 is accordingly decided in negative.

60. On the basis of findings arrived at on the aforesaid questions the following Conclusions are arrived:

1. That handing over child in question to Smt. Ruchi Tripathi by Sri Satish Kumar Singh, S.I., after taking it back from the mother of the child Smt. Neesha was against the provisions of law.
2. The custody of child with Ms. Ruchi Tripathi or with Opposite Party No. 5 from 21.5.2012 onward is illegal and against the procedure established by law.
3. The proceedings conducted by CWC Lucknow in respect of Child in question suffer from inherent lack of jurisdiction and as such are nullity.
4. The Proceedings conducted by District Judge, Lucknow while granting permission also suffer from inherent lack of jurisdiction and as such are nullity.
5. The declaration of child free for adoption made by CWC Lucknow, approval granted by the Adoption Committee for giving the child in adoption to O.P. No. 6 and 7 the deed of adoption executed on 21.10.2012 in respect of the child in question and all other orders or declaration made during the proceedings before CWC and District Judge Lucknow are nullity and are liable to be ignored.
6. The remedy of appeal and revision under Act 2000 is not an impediment in issuing the writ of Habeas corpus by this Court against the O.Ps.

In view of the facts noticed by this Court the Court also thinks it proper to initiate a High Laval enquiry into the matter against the persons who have not perform their duties sincerely and allow to suffer a poor lady on account of non actions or wrong actions of the persons involved in this matter.

This Court is also of the opinion that mere legislate the law by Government is not enough to solve the problem but its implementation in a proper way is necessary, for which certain directions are also required to be issued to the State Government.

61. In view of above, the petition deserves to be allowed with costs. Consequently this petition is allowed. The opposite parties No. 1, 2, 3, 5, 6 and 7 are directed to produce the child, namely, Siddharth alias Pratik alias Shiva before the Chief Judicial Magistrate, Barabanki on 15.1.2014 at 11.00 a.m. The Chief Judicial Magistrate, Barabanki shall handover the child, namely, Siddharth alias Pratik alias Shiva to Smt. Neesha after executing a deed to this effect after

due verification and identification of the child and of Smt. Neesha in the presence of the parties, if any.

62. In case, the child is not produced and handed over to Smt. Neesha on 15.1.2014, the Chief Judicial Magistrate Barabanki shall ensure the compliance of this order by issuing non bailable warrant against superintendent of opposite party No. 5 namely Ms. Ruchi Tripathi, Sri Satendra Soni and Smt. Menakshi Soni for production of the child in question. Opposite parties No. 1, 2 and 3 shall execute the warrant and ensure the production of the child as per directions of this Court. The Chief Judicial Magistrate after complying the order passed by this Court of handing over the child to Smt. Neesha submits a compliance report to this Court within one months from today.

Cost is quantified at rupees one lac against opposite party No. 5 which shall be deposited by Opposite Party No. 5 within a month from today failing of which cost shall be recovered as arrears of land revenue. After recovery of the cost, the same shall be paid to the natural parents of the child i.e. Smt. Neesha. However O.P. No. 5 may recover the cost so paid from Ms. Ruchi Tripathi, the Superintendent.

63. Ms. Ruchi Tripathi shall also pay a cost of Rs. 50,000/-. The same shall be deposited by her in this Court within two weeks from the date of this order failing of which the same shall be recovered as arrears of land revenue by the District Magistrate under the certificate of recovery issued by Registrar of this Court and after recovery of the cost from Ms. Ruchi Tripathi, the amount of Rs. 25,400/- shall be remitted to Director, SGPGI, Lucknow in respect of the expenditure incurred for DNA test against the bill dated 22.4.2013 and rest amount shall be paid to Mediation and Conciliation Centre, Lucknow Bench, Lucknow.

This Court directs the Principal Secretary, Women and Child Welfare, State of Uttar Pradesh to look into the matter and to initiate proceedings for de-recognising the opposite party No. 5 as adoptive agency after giving opportunity of hearing and to submit his action taken report within two months from the date of communication of this order.

This Court further directs the Principal Secretary, Women and Child Welfare, State of Uttar Pradesh to conduct an inquiry himself in the matter against erstwhile District Magistrate Barabanki, Superintendent of Police Barabanki, Director, Woman and Child Welfare, State of Uttar Pradesh, S.I. Shushil Kumar Singh, Child Welfare officer, P.S. Asandra, Ms. Ruchi Tripathi Superintendent O.P. No. 5 and Shree Ram Audhiyogik Anatahlaya, Aliganj, Lucknow for their conduct and actions in dealing with the child in question and to submit his report within two months disclosing therein the action taken against them.

What action should be taken against Ms. Ruchi Tripathi in the light of the notice issued against her shall be decided by this Court after receipt of the report of Principal Secretary Women and child welfare Uttar Pradesh in this matter. This Court is also thinks it proper to issue following directions to Government of Uttar

Pradesh to ensure the compliance thereof and to submit its action taken report within two months from the date of communication of the order:

(1) the State Government shall ensure to provide adequate place to Child Welfare Committees to work in their respective districts with adequate infrastructure and man power to carry out their work.

(2) All President and Members of Child Welfare Committees of district should be imparted training in phased manner so they may be able to implement the provisions of the Act, 2000 in a right prospective.

The copy of this judgment be sent within three days to Chief Secretary of Government of Uttar Pradesh, Principal Secretary, Women and Child Welfare, State of Uttar Pradesh and the Chief Judicial Magistrate, Barabanki for compliance of the order passed by this Court.

Registrar of this Court shall ensure the compliance of the order of this Court

List on 12.3.2014 for further orders.