

(2020) 11 DEL CK 0221

In the Delhi High Court

Case No : Criminal Writ Petition No. 1409 Of 2020

Bijender

APPELLANT

Vs

State & Anr

RESPONDENT

Date of Decision : 27-11-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 97

Citation : (2020) 11 DEL CK 0221

Hon'ble Judges : J.R. Midha, J;Brijesh Sethi, J

Bench : Division Bench

Advocate : Mohit Mathur, Sumit Choudhary, Rahul Mehra, Chaitanya Gosain, Vikas Pahwa, Arun Khatri, Varun Bhati

Final Decision : Disposed Of

Judgement

J.R. Midha, J

1. The petitioner has filed this habeas corpus petition seeking production of his uncle, Godhay alias Bhurey (hereinafter referred to as "Godhay")

to ascertain his welfare. The sole prayer made by the petitioner in this writ petition is as under:-

a) Issue a writ in the nature of Habeas Corpus thereby directing the production of Sh. Godhay @ Bhure before this Hon'ble Court

and ascertain his welfare, in the interest of justice;

2. The petitioner has filed this writ petition on the averments that he was taking good care of Godhay who was staying at village Nangal Thakran;

Godhay's wife passed away on 22nd October, 2019 and since then petitioner's family has been looking after Godhay's daily and his

medical needs; respondent No.2 is the niece of Godhay's deceased wife; the petitioner and his family members never knew respondent No.2 as

she never visited Godhay's house in village Nangal Thakran; Godhay is an illiterate person and not keeping well for past couple of years;

respondent No.2 forged or fraudulently got a gift deed dated 08th October, 2018 executed from Godhay in respect of his property; the petitioner and

his family were shocked to find that Godhay's land was mutated in favour of respondent No.2 by virtue of a gift deed dated 08th October, 2018;

Godhay has filed a civil suit seeking cancellation of the gift deed dated 08th October, 2018 which is pending before the Rohini Courts; respondent No.2

on becoming aware of the filing of the civil suit visited village Nangal Thakran on 26th August, 2020 and sought access to Godhay's house

whereupon the petitioner and his family told respondent No.2 that Godhay has filed a legal suit against the respondent No.2 seeking cancellation of the

gift deed dated 08th October, 2018; since respondent no.2 refused to leave, petitioner's family members made a PCR call upon which respondent

no.2 reluctantly left; on 27th August, 2020, respondent No.2 visited Godhay's residence along with police and a search warrant issued by Id. SDM,

Narela and Godhay was taken to Sant Soham Hospital, Bawana where he remained admitted till 28th August, 2020 on the directions of Id. SDM,

Narela; Godhay was produced before SDM, Narela on 28th August, 2020 in an ambulance; and Id. SDM, Narela passed an order dated 28th August,

2020 handing over the custody of Godhay to respondent No.2.

3. Respondent No.2 has filed her reply dated 13th September, 2020 in which she has disputed the averments made by the petitioner. According to

respondent No.2, Godhay was staying with her for the last 15 years; the biological mother of respondent No.2 passed away when she was six months

old and she was adopted and raised by Godhay and his wife as they did not have any biological child of their own; Godhay's wife was the real

sister of the biological mother of the respondent No.2; Godhay alias Bhurey alias Ran Singh is one and the same person; the petitioner has made false

averments in the petition that respondent No.2 never visited Godhay at village Nangal Thakran whereas respondent No.2 lived with Godhay until her

marriage; respondent No.2 has filed various photographs of Godhay with her and her family as Annexures R-9 to R-15; after marriage respondent

No.2 started residing with her husband at Sonipat and she often visited Godhay at village Nangal Thakran along with her children during school

vacation of her children; Godhay also visited and stayed with respondent No.2; respondent No.2 has filed the photographs during Godhay's stay with respondent No.2 as Annexures R-16 to R-25; about 15 years ago, Godhay and his wife expressed their inability to stay in the village whereupon respondent No.2 invited them to stay with her; since then, Godhay and his wife have been living with respondent No.2 who was taking care of their medical needs; respondent No.2 has filed the medical records of Godhay as well as his wife Kamla Devi as Annexures R-26 to R-29; Godhay has a house in the village Nangal Thakran which comprises of one room on the ground floor, one room upstairs, verandah with a small storage room and no washroom facility being an old construction, the photograph of the village house is Annexure R-25; respondent No.2 shifted from Sonipat to Chandigarh in 2008 but shifted back in 2013; during this period, both Godhay and his wife accompanied the respondent No.2 and they were acquainted with the neighbors of respondent No.2 whose affidavits have been filed as Annexures R-30 to R-33; Godhay's wife suffered a paralytic attack on 02nd February, 2017 and after a few days, respondent No.2 brought her to Sonipat; in April, 2017, respondent No.2 shifted to Panipat; in October, 2018, Godhay executed a gift deed in respect of his land in favour of respondent No.2 of which notice was given to the petitioners who did not raise any objections; in 2019, Godhay developed knee problem whereupon a part time care taker was kept by respondent No.2 whose affidavit has been filed as Annexures R-38; in September, 2019, Godhay was diagnosed with dementia; Godhay was hospitalised from 09th October, 2019 to 22nd October, 2019; on 22nd October, 2019, Godhay's wife Kamla Devi expired and respondent No.2 performed the last rites in the village; on 28th June, 2020, Godhay went to the village to find out the status of his properties and stayed in his house along with the driver and caretaker of respondent No.2; on 02nd August, 2020, the husband of respondent No.2 visited the village to bring back Godhay when the petitioner and his family members threw him and the caretaker out of the house and forcibly confined Godhay; on 04th August, 2020, respondent No.2 visited village Nangal Thakran to bring back Godhay but the petitioner did not allow Godhay to go with respondent No.2; on 23rd August, 2020 and 26th August, 2020, respondent No.2 again visited Godhay and found his health deteriorating; the respondent No.2 made a complaint to the police on 27th August, 2020, in pursuance to

which FIR was registered on 03rd September, 2020; respondent No.2 filed an application before SDM on 27th August, 2020 under Section 97 CrPC

for issuing search warrants to find Godhay and to provide him medical relief in pursuance to which the Id. SDM issued a search warrant; Godhay was

produced before Id. SDM via video conference and was thereafter, admitted in the hospital by the order of the Id. SDM; the custody of Godhay was

handed over to respondent no.2 by the order of the Id. SDM.

4. The petitioner has filed the rejoinder dated 19th November, 2020 to the reply of respondent No.2 in which the petitioner admitted that the biological

mother of respondent No.2 passed away when respondent No.2 was quite young and she was brought to the village of Godhay and his wife where

she stayed for some time and was taken away by her biological father. The petitioner disputes that respondent No.2 was brought up by Godhay. The

petitioner again stated that the respondent No.2 never visited village Nangal Thakran in the knowledge of the petitioner and his family members and

the petitioner and his family never attended any marriage, birthday etc. hosted by respondent No.2 or her family members. The petitioner also disputes

that Godhay and his wife ever stayed with respondent No.2.

5. This petition was taken up for the first time on 07th September, 2020, when this Court passed directions to ascertain the medical condition and

welfare of Godhay. This Court directed Godhay to be admitted to Primus Hospital for complete medical checkup. Relevant portion of the order dated

7th September, 2020 is reproduced herein under:

â??3. Issue notice. Mr. Rahul Mehra, learned Standing Counsel, accepts notice. Mr. Arun, Advocate, accepts notice on behalf of

respondent No.2.

4. The petitioner is seeking production of Godhay alias Bhure alias Ran Singh aged about 90 years. His wife has already pre-deceased him

and he has no issue. Godhay was staying with the petitioner till 27th August, 2020 when respondent No.2 took the custody through the

warrants issued by the SDM in a petition filed by respondent No.2.

5. Before going into the merits of this case, this Court is concerned with the present medical condition and welfare of Godhay.

6. The petitioner claims to be the nephew of Godhay whereas respondent No.2 claims to be the adopted daughter of the Godhayâ??s wife.

7. This Court put a query to the petitioner's counsel as well as counsel for respondent No.2 with respect to the value of assets of

Godhay. Learned counsels for both the parties submit that the value of the assets of the Godhay is approximately Rs.6 Crores. Let an

affidavit be filed by both the parties with respect to the particulars of all the assets of Godhay as well as their present market value along

with supporting documents. The affidavit shall also disclose what all documents has been executed by Godhay in their favour and the

original documents be filed along with affidavit within 3 days from today. If any document is executed after today's hearing, the same

shall also be placed on record before the next date of hearing.

8. Taking the value of the present assets of Godhay as Rs.6 Crores, this Court has asked learned counsels for both the parties as to how

much amount they are willing to deposit for the medical checkup of Godhay.

9. Learned senior counsel for the petitioner as well as counsel for respondent No.2 submit on instructions that petitioner as well as

respondent No.2 are agreeable to deposit Rs.2 Lakh each for the medical checkup and necessary tests of Godhay in the best medical

hospital in Delhi.

10. Mr. H. S. Phoolka, Senior Advocate, is appointed as amicus curiae to assist this Court in this matter. Mr. H. S. Phoolka, amicus curiae,

is requested to take up the matter with NGO, Bachpan Bachao Andolan. Mr. H. S. Phoolka, amicus curiae, shall ensure a representative of

NGO's look into the welfare of the Godhay during his treatment at the Primus Hospital.

11. The petitioner as well as respondent No.2 shall initially deposit Rs.1 Lakh each with the Medical Superintendent of Primus Hospital

whereupon the hospital shall depute an Ambulance to visit the residence of respondent No.2 to bring Godhay to Primus Hospital where he

will be kept in a private room and all necessary medical checkups shall be conducted.

12. The petitioner as well as respondent No.2 shall furnish the complete medical record of Godhay to the Medical Superintendent of Primus

Hospital at the time of deposit of Rs.1 Lakh each.

13. The Medical Superintendent of Primus Hospital is requested to ensure that all

necessary precautions are taken considering the COVID pandemic.

14. Learned counsels for petitioner and respondent No.2 submit that hospital be requested to provide the medical checkup and treatment at

reasonable charges. Mr. Rahul Mehra, learned senior standing counsel for the State is given liberty to take up the matter with the Medical

Superintendent in this regard and learned counsel for the parties shall approach this Court for modification if they want to take Godhay to

some other hospital of their choice.

15. SHO, P.S. Chanakyapuri (within whose jurisdiction the Primus Hospital is situated) shall send the police constable along with an

Ambulance for safe journey of Godhay from the residence of respondent No.2 to Primus Hospital.

16. The Primus Hospital shall permit the petitioner or one member from petitioner side as well as respondent or one member from

respondent side to meet Godhay, in presence of the attendant in the hospital, twice a day for half an hour each, subject to the medical

advice.

17. In the event of any apprehension expressed by Godhay, the SHO P.S. Chanakyapuri shall provide the necessary assistance to ensure

safety of Godhay during his stay in the hospital.

18. Since the petitioner and respondent No.2 have agreed to deposit Rs.2 Lakh each and they are presently being directed to deposit only

Rs.1 Lakh each, the balance Rs.1 Lakh each shall be deposited by both the parties with the Registrar General of this Court within three

days.

19. The record of the SDM, Narela, relating to the case filed by respondent No.2 be requisitioned before the next date of hearing.

20. Primus Hospital shall submit a detailed report with respect to the present medical condition of Godhay in a sealed cover to this Court

which shall be considered on the next date of hearing.â??

6. This petition was again taken up on 14th September, 2020 when Primus Hospital filed the report with respect to the medical condition of Godhay.

As per the report of Primus Hospital, Godhay is suffering from dementia, old age

problems and is hard of hearing. Considering that the parties had taken up totally contradictory pleas, namely - according to the petitioner Godhay was always staying with him whereas respondent No.2 claimed that Godhay was staying with her, this Court directed DCP (Crime), Delhi Police to conduct an inquiry under his supervision into the averments made by the parties before this Court. Relevant portion of the order dated 14th September, 2020 is reproduced herein under:

â??2. The petitioner is seeking the production of Godhay alias Bhure alias Ran Singh aged about 90 years.

3. According to the petitioner, Godhay was staying with the petitioner till 27th August, 2020 when respondent No.2 took the custody through the warrants issued by SDM in a petition filed by respondent No.2.

4. This petition was taken up on 07th September, 2020 when this Court was concerned with the medical condition and the health of Godhay.

This Court directed Godhay to be taken up to the Primus Hospital for his complete medical check up. Both the parties deposited Rs.1 lakh each with Primus Hospital and Rs.1 lakh each with the Registrar General of this Court in terms of the order dated 07th September, 2020.

5. The Primus Hospital has filed the report with respect to the medical condition of Godhay. Primus Hospital has also filed the video recordings of Godhay which have been seen by this Court.

6. As per the report of the Primus Hospital, Godhay is suffering from dementia and old age problems. He is also hard of hearing. In the video recording, it was put to Godhay where he was staying and where he wants to stay, to which Godhay has replied he was staying with the Chotu (Narenderâ??s son) and he wants to go back to his village Nangal.

7. Mr. H.S. Phoolka, learned amicus curiae, has filed the report in which he has stated that Godhay wants to stay in his own house at village Nangal where he claims to have stayed throughout.

8. After perusing the report of the Primus Hospital and the report of the amicus curiae, the hearing of this case was deferred to enable the learned counsel for both the parties to make an endeavour to amicably resolve the matter. The matter was again taken up at 4.00 P.M. when learned counsels for the parties submitted that they are unable to resolve the matter and the matter be heard and decided on merits.

9. According to the petitioner, Godhay was altogether staying with him whereas respondent No.2 claims that Godhay was staying with her.

These are totally contradictory pleas set up by both the parties. The same stand was taken up by the parties before the learned SDM who

passed an order in favour of respondent No.2 without conducting an enquiry, which was necessary. This Court is of the view that it would

be appropriate to direct an enquiry to be conducted in this matter.

10. Both the parties are claiming that Godhay was continuously staying with them. There would be ample evidence as to where Godhay was

staying. Dr. Joy N. Tirkey, DCP (Crime), Delhi Police is directed to have an enquiry conducted under his supervision into the averments

made by the parties before this Court as well as the averments made by the parties before the learned SDM.

11. Godhay has executed a Gift Deed in favour of respondent No.2 and a Will in favour of the petitioner. The Investigating Officer shall

also conduct an enquiry into the circumstances under which the aforesaid documents were executed by Godhay considering his medical

condition and more particularly, the dementia.

12. Both the parties shall cooperate into the aforesaid enquiry and they shall produce all documents executed by Godhay in their favour as

well as all other documents. The petitioner has filed some original documents before this Court. The Registry shall furnish the digitalized

copy of the entire record of the petition to Mr. Rahul Mehra, learned Standing Counsel, who shall forward the same to the DCP, Crime

Branch.

13. The preliminary enquiry report be placed before this Court on 21th September, 2020 in a sealed cover along with the statements of the

persons recorded and the other evidence collected by the Investigating Officer.

14. Learned senior counsels for both the parties agree on instructions that till the preliminary enquiry report is submitted by the

Investigating Officer, Godhay can be kept at a neutral place where he should be taken care of by a nursing attendant as well as a domestic

help/cook and they will equally bear the expenditure for his stay till then.

15. Mr. Rahul Mehra, learned Standing Counsel and Mr. H.S. Phoolka, learned amicus curiae, shall assist this Court in identifying a

neutral place as well as identifying a nursing attendant and domestic help/cook for stay of Godhay till the next date of hearing.

16. The appropriate order with respect to the shifting of Godhay from the Primus Hospital shall be passed on 15th September, 2020 after

considering the appropriate place being identified.

17. List on 15th September, 2020 at 12.30 P.M.

18. List for considering the preliminary enquiry report of the DCP, Crime Branch on 21st September, 2020.â??

7. Delhi Police constituted a SIT headed by DCP (Crime). The SIT recorded the statement of Godhay on 15th September, 2020 and 09th October,

2020. The SIT visited Village Nangal, Sonipat, Panipat, Gurgaon and Garh Ganga and examined 71 witnesses mentioned in the report. On 12th

October, 2020, the police filed the status report with respect to inquiry directed by this Court. After considering the inquiry report, this Court observed

that further inquiry was necessary and the DCP (Crime) was directed to conduct further inquiry and submit the status report. The relevant portion of

the inquiry report is reproduced hereunder:-

â??Discussion of evidence

During enquiry, a large number of persons (71 including Godhay) have been examined from both sides by the SIT. A large number of

documents have also been verified, obtained and perused

Part 1 - Statement of Godhay

Sh. Godhay is about 90 years old. He is suffering from old age problems like dementia and incontinence. He is most comfortable with

Haryanavi language. He is illiterate. He still uses his thumb print to operate his Corporation Bank Account. He has learnt to sign in Urdu

as â??Ran Singh?. He says that he has also used names like Rattan Singh and Bhure.

His wife, Kamla Devi, passed away on 22.10.2019. The couple did not have any children of their own. Kamla Devi and her sister Vidya

Devi has brought Babli (Asha Rani) to Village Nangal Thakran when she was in infant. Smt. Asha Rani, the respondentâ??s mother Shanti

Devi w/o Albel Singh, had passed away when she was 6 months old. Her mother, Shanti Devi, Kamla and Vidya were real sisters. Smt. Asha

Rani spent part of her childhood (till class 5) with Kamla Devi and Godhay. Thereafter, Smt. Asha Rani lived with her real father and step

mother for some time (Class 6 to 8) before leaving for Bahadurgarh to continue her studies and live with her father's sister (class 9 to

BA). Right after she completed her BA she married Jagwant Singh Rana.

Godhay's statement clarifies the following important issues.

(i) That Godhay is attached with Smt Asha Rani, since the time she lived in his house as an infant.

(ii) That he has had no children of his own.

(iii) That Godhay is also known as Ran Singh, Rattan Singh and Bhure.

(iv) That Godhay signs his name as Ran Singh in urdu.

(v) That he claims to have adopted Smt Asha Rani,

(vi) That he says that he has given away his land to Asha Rani.

Part 2 - Statements in favour of the petitioner

Almost all the persons who were examined in Village Nangal Thakran have stated on the following common lines. That they do not know

Godhay as Ran Singh. They only know Godhay @ Bhure. None of them was aware of Godhay and his late wife Smt. Kamla had ever

adopted Babli (Asha Rani). They agree that Kamla and Vidya (elder sister of Kamla) had brought Babli (Asha Rani) to Village Nangal

Thakran when her mother Shanti Devi had passed away. At that time Babli was about 6 months old. Babli stayed with Kamla and Godhay

during her early years and thereafter she returned to her real father Sh. Albel Singh. It was true that Godhay and his wife used to visit Asha

Rani at her home in Sonapat and Panipat and would stay with her for long durations, but their permanent residence has always remained

their old house at Village Nangal Thakran, Bawana.

Part 3 - Statements in favour of the respondent

Almost all the persons who have spoken in favour of the respondents have stated on the following common lines.

That Godhay and his wife Kamla Devi have been staying with Smt. Asha Rani at Sonapat, Panchkulla and Panipa. That Smt Kamla Devi

had adopted Smt Asha Rani as her daughter.

That Smt. Asha Rani took care of the old couple as her real parents and ensured proper medical attention whenever required.

That when Smt. Kamla Devi passed away, Smt. Asha Rani took care of her cremation and last rites.

That Sh. Godhay had gifted his property to Smt. Asha Rani as she was his adopted daughter.â??

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63.(iv) According to available medical records, Godhay and his late wife Kamla Devi had been staying with Asha Rani at her house in

Panipat since 2017. Godhay arrived in Village Nangal Thakran in the month of June, 2020 along with his caretaker, Kiran. After the

altercation with other family members, Smt Asha Rani took Godhay back to Panipat on 28.08.2020.

Conclusion

This is not the first time that Godhay has willingly given away his property to Asha Rani. He has already done it, at least once, in the past.

In the year 2013 - 2014, he had sold his 1000 square yards of prime land in Sonapat (paper value Rs. 1.12 crore â?? actual value much

more) and had given away all proceeds of the sale to Asha Rani and her son Parth Rana. His wife Kamla was alive during that time.

He has now given away his property to Asha Rani once again and says that she is his adopted daughter.â??

(Emphasis Supplied)

8. DCP (Crime) submitted the final report dated 21st October, 2020 according to which Godhay requires constant medical care. As per the report,

Godhay requires proper accommodation, temperature control appliances, round-the-clock nursing facility, cook/cleaner, company of family members

and access to medical facility in case of emergency. Both the parties are willing to take care of Godhay. Godhay has desired to stay in Village Nangal

but the accommodation there does not appear to be convenient for his stay. As per the report, respondent No.2 had been taking good care of Godhay.

The relevant portion of inquiry report is reproduced hereunder:-

â??Q.18 What can be done to improve his living conditions?

Ans Godhay wishes to live in Village Nangal Thakran. His house has only one room on the ground floor and one room upstairs and

verandah with a small storage room. The house has no washroom facility or separate kitchen being a very old construction. It would be

extremely difficult for Godhay to live in his old house given his age and medical condition. To improve his living condition, he needs the

following.

- (i) Proper accommodation
- (ii) Air conditioning and room heater
- (iii) Round the clock nursing facility
- (iv) Cook
- (v) Cleaner
- (vi) Company of loved ones
- (vii) Access to car with driver at all times for medical emergencies

Q.19 Who will take care of Godhay if he wishes to live in Village Nangal Thakran?

Ans Since the petitioner and his family live in Village Nangal Thakran, they could take care of Godhay if he lives in his old house.

The Respondent No.2 may also take care of Godhay while he lives in Village Nangal Thakran. However, the respondent is based in Panipat

and will be unable to directly supervise the arrangements and would have to rely on the services of hired help.

However, the old house of Godhay is inconvenient because it does not have washroom facilities. The option of arranging for better

accommodation for Godhay in Village Nangal Thakran may be explored.

Q.20 Is the petitioner ready to take care of Godhay?

Ans As per the reply of the petitioner, Sh. Godhey has all along been living at Village Nangal Thakran, Delhi; and was being looked after

by the undersigned and his family members and further since Sh. Godhey himself wants to live in Village Nangal Thakran, it would be

conducive for his medical condition and overall well being, if Sh. Godhey lives in Village Nangal Thakran. The undersigned and his family

members have all along been looking after Sh. Godhey and would continue to do that in future also.

Q.21 Is the respondent ready to take care of Godhay?

Ans As per the reply of the respondent, Asha Rani being (Adopted) daughter of

Sh. Rann Singh @ Godhey @ Bhure is responsible for take care and expenses. She is ready and willing to bear all his expenses and provide best medical facilities like in past. She has kept the attendant Kiran Kumar on hold who is being regularly paid in the interregnum on standby. Kiran Kumar has been attending to needs of Sh. Rann Singh @ Godhey @ Bhure for past one year now (and is well aware of his medical needs and temperament including food pattern. Further, he has no communication barrier with Sh. Rann Singh @ Godhey @ Bhure. Thus, Asha Rani has ready and sufficient means to cater to the needs of Sh. Rann Singh @ Godhey @ Bhure with utmost love and affection. Also, Asha Rani had been attending to the medical needs of Sh. Rann Singh @ Godhey @ Bhure and he is regularly in need of doctor visits. The medical records as submitted by Asha Rani and verified by inquiry official abundantly reflect the fact that Asha Rani has taken good care of Sh. Rann Singh @ Godhey @ Bhure. The hospital is just across the road from the current residence of Asha Rani and doctors easily pay home visits. The doctors at Panipat are well versed with medical history of Sh. Rann Singh @ Godhey @ Bhure. Further, frequent hospitalization in aloof environment is only resulting in deterioration of health and further susceptibility to secondary infections. Even arrangements at independent place are not viable because it has twice shown relapse in past months and mere paid attendant and cook with no monitoring are apparently not sufficient because they do not know about peculiarities of his tastes and lifestyle. The continuous monitoring and affection of Asha Rani is required as she fully understands the needs of her father having been taken care of him for more than a decade. Asha Rani can ensure best medical facilities with homely care while making an endeavor for his speedy recovery which would minimize the causes of any fatal infections and further suffering.

Q.22 Does Godhay need a formal mental state evaluation? Ans Yes, Godhay needs a formal mental state evaluation. This is important for the reason that treatment of dementia or other mental disorders depend on the cause. In the case of most progressive dementias, including Alzheimer's disease, there is no cure and no treatment that slows or stops its

progression. However, there are drug treatments that may temporarily improve symptoms. Non-drug therapies can also alleviate some symptoms of dementia.

Q.23 Godhay needs constant medical care. Who will take care of the expenses?

Ans Both parties agree to take care of Godhay's medical and other expenses.

Q.24 Who has taken care of Godhay in the recent past?

Ans According to available medical records, Godhay and his late wife Kamla Devi had been staying with Asha Rani at her house in Panipat

since 2017. Godhay arrived in Village Nangal Thakran in the month of June, 2020 along with his caretaker, Kiran. After the altercation

with other family members, Smt Asha Rani took Godhay back to Panipat on 28.08.2020.

(Emphasis supplied)

9. Mr. Mohit Mathur, Id. Senior Counsel for the petitioner, urged at the time of the hearing that Godhay was always staying at village Nangal Thakran

and he never stayed with respondent No.2 as alleged by respondent No.2. It is submitted that respondent No.2 had illegally taken custody of Godhay

by the orders dated 26th August, 2020 and 28th August, 2020 passed by the SDM. It is further submitted that SDM did not conduct any inquiry before

handing over the custody of Godhay to respondent No.2 and the order dated 28th August, 2020 is absolutely illegal. It is further submitted that Godhay

has clearly expressed his desire before the Police that he wants to stay at village Nangal Thakran. It is further submitted that respondent No.2 is the

niece of Godhay's wife which she has admitted in the gift deed dated 8th October, 2018. It is submitted that respondent No.2 is falsely claiming

herself to be the adopted daughter of Godhay.

Submissions of Respondent No.2

10. Respondent No.2 objects to the maintainability of this petition. The biological mother of respondent No.2 expired when she was six months old

whereupon she was adopted and brought up by Godhay and Kamla Devi at Village Nangal Thakran; Godhay has been staying with respondent No.2

at Panipat; Godhay went to Village Nangal on 28th June, 2020 for few days but the petitioner did not allow him to return back; on 02nd August, 2020,

husband of respondent No.2 went to Village Nangal when petitioner and his

family members misbehaved with him; on 04th August, 2020 respondent No.2 visited Village Nangal, when the petitioner demanded the return of the land gifted by Godhay to her by way of a gift deed; respondent No.2 filed the application under Section 97 CrPC before the Id. SDM in which the Id. SDM issued search warrants on 27th August, 2020 and after ascertaining the medical condition, the Id. SDM handed over the custody of Godhay to respondent No.2 vide order dated 28th August, 2020. The police conducted an inquiry pursuant to the directions of this Court and submitted the report according to which respondent No.2 is the adopted daughter of Godhay and Godhay was staying with her at Panipat. Respondent No.2 was in lawful custody of Godhay by virtue of order dated 28th August, 2020 passed by the Id. SDM which has not been challenged by the petitioner till date. The inquiry reports submitted by the police have also confirmed that Godhay was staying with respondent No.2 at least since 2017 and the welfare of Godhay is to stay with respondent No.2. It is further submitted that the petitioner has made various false statements in the writ petition more particularly that the petitioner and his family members never knew respondent No.2; and Godhay had been continuously staying with the petitioner at the Village Nangal. It is further submitted that the petitioner is guilty of concealment of relevant and material facts in the writ petition inter alia that respondent No.2 was brought up by Godhay at Village Nangal since the age of six months; and Godhay came to the petitioner on 28th June, 2020. It is further submitted that Godhay is aged about 90 years and is suffering from dementia and other old age problems and is unable to take care of himself and his medical needs. It is further submitted that Godhay's house in the village comprises of an old construction with one room on the ground floor and no washroom and no kitchen facility. It is further submitted that respondent No.2 had kept a caretaker for Godhay and the hospital is just across the residence of respondent No.2. It is further submitted that the petitioner has not challenged the order dated 28th August, 2020 passed by the Id. SDM in this petition. It is further submitted that the petitioner is only seeking direction from this Court for production of Godhay to ascertain his welfare.

Findings

10. The parties have taken absolutely contradictory and inconsistent pleas. According to the petitioner, Godhay had always stayed at village Nangal

Thakran and the petitioner was taking care of Godhay whereas respondent No.2 claims that Godhay has been staying with her. This Court, therefore, considered it necessary to direct the Delhi Police to conduct an inquiry into the contrary averments made by the parties.

11. The Delhi Police has conducted a very detailed inquiry into the matter and has filed inquiry reports dated 12th October, 2020 and 21st October, 2020. As per the inquiry reports, Godhay had been staying with respondent No.2 at least for the last three years till 28th June, 2020 when he came to the village Nangal Thakran. This finding of Delhi Police is corroborated by the various documents filed by respondent No.2. The contrary averments made by the petitioner in the writ petition on this aspect are incorrect.

12. This Court is of the prima facie view that the petitioner has not approached this Court with clean hands. The petitioner appears to be guilty of making false statements in the writ petition that the petitioner never knew respondent No.2; respondent No.2 never took care of Godhay in the past and respondent No.2 never visited Godhay at village Nangal Thakran. The petitioner is also guilty of concealment that Godhay came to village Nangal Thakran on 28th June, 2020. The stay of Godhay with respondent No.2 since 2017 is supported by the medical records of Godhay and his late wife filed by respondent No.2.

13. Godhay is aged 90 years, is suffering from dementia, old age problems and is hard of hearing. Godhay is not in a position to take a decision with respect to his welfare. This Court therefore directed the Police to conduct a detailed inquiry to examine the welfare of Godhay. As per the report dated 21st October, 2020, Godhay has been staying with respondent No. 2 since 2017; respondent No.2 has been taking good care of Godhay and it is in the welfare of Godhay to continue to stay with respondent No.2.

14. This Court is satisfied that it would be in the interest and welfare of Godhay to continue to stay with respondent No.2 considering that he is aged about 90 years, is suffering from dementia, old age problems, is hard of hearing and is unable to take any decision in respect of his welfare.

15. Respondent No.2 is directed to keep round-the-clock nursing attendant to take care of Godhay. Respondent No.2 shall also ensure that a competent doctor examines Godhay at least once a week. Respondent No.2 shall ensure that the formal mental state evaluation of Godhay by an

expert doctor is conducted as suggested by the Delhi Police. In case of any emergency, respondent No.2 shall ensure that Godhay is shifted to the hospital. The petitioner is permitted to talk to Godhay via video call once a day between 04:00 PM to 05:00 PM. The respondent No.2 is directed to pick the video call of the petitioner and connect the same to Godhay on daily basis. The petitioner is also permitted to visit Godhay once in a week, after taking due precautions considering the COVID-19 pandemic.

16. The sole prayer made by the petitioner in this writ petition is production and welfare of Godhay which has been done by this Court by directing Godhay to be admitted in the Primus Hospital to ascertain his medical condition whereupon he was admitted there and all the necessary medical tests and investigations have been conducted and the medical reports are on record.

17. The petitioner has made submissions with respect to the order dated 28th August, 2020 passed by Id. SDM. However, there is no prayer in the present writ petition relating to order dated 28th August, 2020. The sole prayer of the writ petitioner is to ascertain the welfare of Godhay which has been considered by this Court. In that view of the matter, no further directions are warranted.

18. The interim order dated 23rd October, 2020 is confirmed. This petition is disposed of in terms of the interim order dated 23rd October, 2020.