

(2000) 12 DEL CK 0084

In the Delhi High Court

Case No : CW. No. 3926 and CM. 7785 of 1999

Pratidhi

APPELLANT

Vs

NCT of Delhi and Others

RESPONDENT

Date of Decision : 11-12-2000

Acts Referred:

Constitution of India, 1950 — Article 226
Guardians and Wards Act, 1890 — Section 3, 7
Juvenile Justice Act, 1986 — Section 16, 7(3)

Citation : (2002) 1 RCR(Civil) 85

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : Sukumar Pattjoshi, Neeraj Kaul, amices Curiae and Gita Mittal, Adv N.S. Dalal, Adv Manoj Chatterjee, Adv Sudershan Pathak, Chair perso, for the Appellant;

Judgement

Manmohan Sarin, J.—Petitioner Pratidhi, a non-Government Organization has filed this writ petition assailing the order dated 31.5.1999, passed by the Additional District Judge. By the impugned order, the learned Additional District Judge allowed the appeal, filed by respondent No. 3 housekeeper of minor and set aside the order of eviction and sealing of the premises bearing No. D-66, Dayanand Block, Shakar Pur, New Delhi, passed by the Juvenile Welfare Board dated 20.3.1999.

2. The Juvenile Welfare Board had passed the order dated 20.3.1999, on an application of the petitioner, who claimed that the minor was being ill-treated and exploited by respondent No. 3. It was claimed that House No. D-66, Dayanand Block, was attempted to be sold by respondent No. 3 to the detriment of the minor. The appeal of respondent No. 3 housekeeper, had been allowed by the Additional District Judge, holding that the Juvenile Justice Act 1986, did not empower, the Board to deal with the property of minor juvenile or to pass such an order.

3. The present writ petition raised only a short legal question regarding the power and jurisdiction of the Juvenile Welfare Board to pass the order dated 20.3.1999, which had been set aside by the impugned order dated 31.5.1999 passed by Additional District Judge. The writ petition could have been simply disposed of by deciding the above question. However, the sight of the diminutive, hapless 15 years orphan minor girl, sitting in Court with prospect of continuing in Nirmal Chaya Remand Home of the Juvenile Welfare Board looming large, impelled me to depart from the usual legal procedure and norms to travel beyond the scope of the relief sought in the writ petition and to act as "parents patria to the minor by giving directions for her rehabilitation, education and for control and management of her property.

4. The irony and misfortune of Geeta's case is that despite the house and other assets devolving upon her and her natural father being alive, yet she is abandoned and forsaken. The natural father of the minor Sh. Uma Shanker was also directed to appear in Court to enquire if he would assume any responsibility for the minor. He submitted that he is re-married and has children and has had no contact with the minor. Further, he is not in a position to assume any responsibility.

5. Let me notice the factual matrix of the case. Minor Geeta was born to Uma Shanker and Raj Bala on 25.9.1985. Within a week of child birth, Geeta's mother expired. Her father, Uma Shanker at that point of time left with a small infant, decided to give her in adoption to distant relatives of his, namely, Itwari Lal and his wife Mansho Devi. Itwari Lal was stated to be employed in the Horticulture department of municipality. Things went of well for minor girl, who blossomed in the care of her adoptive parents. This was not to continue for long. On 10.7.1992, Itwari her adoptive father died. This was followed in November, 1995, by the death of her adoptive mother, Mansho Devi. The girl was left an orphan. Respondent No. 3 had been a domestic help working with Mansho Devi. She moved into the house at D-66 Dayanand Block, Shakar Pur, New Delhi with her three sons ostensibly to take care of minor. Respondent No. 3, as per the petitioner, came into control of the minor's property. As per the petitioner, an attempt was made by respondent No. 3 and her sons to illegally transfer and sell the house. However, this did not materialize. Parties involved in the illegal transaction fell off fighting on the sharing of booty. There are allegations of ill-treatment of the minor girl by respondent No. 3 and her family. She was withdrawn from the School in the year 1989 and it is alleged that she was mostly made to do household work. As per the petitioner Society, whose counselors spent quite sons time with the minor girl, respondent No. 3 unsuccessfully even attempted to persuade Geeta to get married to one of the some of respondent No. 3. Respondent No. 3 also inducted tenants in the first and second floor portions of the house and was realizing rent also.

I have mentioned these aspects somewhat in detail because they are relevant to understand the family background, emotional stress, undergone by minor and

her psyche. Based on evaluation of these factors, appropriate decisions for her rehabilitation, education and living arrangements can be made.

6. Petitioner Society, had earlier moved the Juvenile Welfare Board for directions for taking the minor into custody. It is on the petitioner's application that an order was passed, taking the minor into custody of the Juvenile Welfare Board and order of eviction of respondent No. 3 from the premises was passed. Directions were also issued for sealing of the premises. The minor was admitted by the Juvenile Welfare Board in Chandra Arya Vaidhya Mandir School. It appears that the minor left the Chandra Arya Vaidhya Mahdir School with one of the sons of respondent No. 3. She was traced and since then she has been in the remand home at Nirmal Chaya.

7. Coming to the question of validity of the order dated 20.3.1999, passed by the Juvenile Welfare Board. Mr. Sukumar Pattjoshi, counsel for the petitioner, submitted that while the order passed by the Juvenile Welfare Board may not find support from any of the provisions of the Act, it was necessary to pass the same to sub-serve and advance the ends of justice and protect the minor and her property. The Juvenile Justice Act undoubtedly empowers the Board to pass order relating to the person of the minor, but there does not appear to be any provision to pass orders with regard to the property of the minor juvenile. This court has concurrent powers as that of the Juvenile Welfare Board by virtue of Section 7(3) of the Juvenile Justice Act 1986.

8. The order passed by the Juvenile Welfare Board was necessitated in the facts and circumstances then prevailing. Even if the order dated 20.3.1999, of Juvenile Welfare Board cannot be sustained under the provisions of the Juvenile Justice Act 1986, this Court in exercise of powers under Article 226 of the Constitution of India can pass orders and give such directions, as are necessary for sub-serving the ends of justice or to protect the minor's person or property. As regards the scope and ambit of the directions that can be given by this Court in exercise of powers under Article 226 of the Constitution of India, reference in this connection may be usefully invited to the judgment of the Apex Court in U.P. State Coop. Land Development Bank Ltd. v. Chandra Bhan Dubey, , wherein the Court observed as under :-

"Besides the prerogative writs, Article 226 of the Constitution also speaks of directions and orders which can be issued to any person or authority concluding, in appropriate cases, any Government. In view of Article 367(1), subject to the provisions of Article 372, the General Clauses Act, 1897 applies for the interpretation of the Constitution. "Person" u/s 2(42) of the General Clauses Act shall include any company or association or body of individuals, whether incorporated or not. The Constitution is not a statute. It is a fountainhead of all the statutes. When the language of Article 226 is clear, one cannot put shackles on the High Courts by putting an interpretation on the words which would limit their jurisdiction. When any citizen or person is wronged, the High Court will step in to protect him, be that wrong be done by the State, an instrumentality of the

State, a company or a cooperative society or association or body of individuals. Whether incorporated or not, or even an individual. Right that is infringed may be under Part III of the Constitution or any other right which the law validly made might confer upon him. But then the power conferred upon the High Courts under Article 226 of the Constitution is so vast, the Supreme Court has laid down certain guide-lines and self-imposed limitations have been put there subject" to which the High Courts would exercise jurisdiction, but those guide-lines cannot be mandatory in all circumstances. The High Court does not interfere when an equally efficacious alternative remedy is available or when there is an established procedure to remedy a wrong or enforce a right."

9. However in view of subsequent developments, as noted below, it is not necessary for this court to pass any directions on this aspect. On 10.11.2000, it was enquired from counsel for respondent No. 3 if he had any submission to make with regard to the rights of respondent No. 3 in the property, learned counsel for respondent No. 3, on instructions from respondent No. 3, who was present in Court, stated that respondent No. 3 used to work for late Sh. Mansho Devi and after her death had moved into the property only to look after the minor. He submits that Meera/respondent No. 3 is attached to the child as she had brought up the minor/child as her own and had been looking after her. He further states on instructions that Meera/respondent No. 3 does not claim any right in the property and she is interested only in the welfare of the child. Respondent No. 3 has already moved out of the house and has made her own arrangement for living.

10. In view of this position, respondent No. 3 is no longer aggrieved and does not press her challenge to the order of eviction and sealing by Juvenile Welfare Board. Accordingly, order dated 31.5.1999 and the cost of Rs. 20,000/- imposed on respondent No. 2 Board, in these circumstances, are set aside.

11. Regarding the power and jurisdiction of this court to appoint a guardian of the minor or of a neglected juvenile, the scope of power under Article 226 of the Constitution of India, as well as the inherent power of this court has already been noticed in para 8 above. Reference is invited to the provisions of Sections 3 and 7 of the Guardian and Wards Act, 1890. Section 7 enables the court to appoint a guardian of minor's person or property or both under the provisions of the Act. Reference is also invited to Sub Section 3 of Section 7 and Section 16 of Juvenile Justice Act, 1986. The former provides that the High Court may exercise all the powers of the Juvenile Board under the Act. Section 16 enables the Board of put the neglected juvenile under the care of parent guardian or to a person considered fit and issue necessary directions.

12. In view of the enabling provisions of law, as noticed above, and in exercise of powers under Article 226 of the Constitution of India and the inherent powers, Ms. Gita Mittal, advocate, is appointed as the guardian of the minor's property and her assets.

Direction for protection and management of the property of Late Itwari Lal and Mansho Devi, which devolved upon minor Geeta.

During the course of this writ petition, this Bench has directed the personal presence of tenants to ascertain from the tenants the rents, which were due from them. Directions were also issued for payment of the amounts admittedly due. An amount of Rs. 34,500/- has been deposited in an account Registrar, High Court of Delhi account Minor Geeta. Premises were also directed to be de-sealed and cleaned. Certain expenses were incurred in the repair of the booster pump and the water tank to restore the water supply to first floor, where tenants are located. An expense of Rs. 5950/- is stated to have been incurred by Mr. Vinay Kumar, one of the tenants. There are also electricity dues. Notice had been issued to Mr. N.S. Dalai, counsel for the Delhi Vidyut Board. The electricity bill had been raised on provisional basis and not based on meter readings. Mr. Dalai will take steps to have the bill revised. The payment of electricity charges has been paid by the petitioner Society. The amount paid by the petitioner Society will be reimbursed to the petitioner Society from the rents received from the tenants. The expenses by Mr. Vinay Kumar, tenant on repair of Booster pump etc. as approved by Ms. Gita Mittal may be adjusted out of the rent due.

(i) The Sub-Registrar, Asaf Ali Road, New Delhi, shall produce the certified copy of Will, said to have been executed by Mansho Devi, registered at S. No. 94 vide registration No. 7110/3 receipt No. 53 dated 26.7.1995, on 17.1.2000. The original records relating to its registration shall also be produced by the Sub-Registrar either himself or through a representative on 17.1.2001.

(ii) The Manager, Syndicate Bank, Preet Vihar branch, shall produce on record a copy of the FDR in the sum of Rs. one lac or any other amount deposited by Mansho Devi, in the year 1993 on 17.1.2001.

(iii) Directions given to the tenants with regard to the payment of the rent vide order dated 10.11.2000 shall be duly complied with. The tenants shall be bound by the statements made regarding payment and continue to make the payment of rents, as due in future. The tenants shall not hand over the possession of the premises in their occupation to anyone else except Gita Mittal, advocate. This order be communicated to the tenants by Ms. Gita Mittal Advocate.

(iv) Ms. Gita Mittal, advocate, may move the Court for such directions as may be necessary.

Ms. Mittal will take necessary steps for letting out the premises and any offer in this regard that she receives would be put up before the Court. She is authorised to lease out the said premises with permission of the Court. Ms. Gita Mittal may nominate any of her associates or other authorised representative to do any ministerial act relating to the management of the property/assets of the minor.

Directions with regard to the minor's custody and person I find upon enquiry that respondent No. 2 Juvenile Justice Board has so far not prepared any scheme

for care and management of the minor. Upon a careful consideration of the social background, her past life, education and schooling, her emotional state and the changes which she has undergone in the last 3-4 years, the following options were considered :-

1. Letting the minor continue in the custody of the Juvenile Welfare Board at Nirmal Chaya ;
2. Getting the minor admitted to a residential hostel of a School in Delhi;
3. Putting the minor in custody and care of an organisation such as SOS Children Village of India.

13. Considering that the minor in this case is not totally bereft of means and assets as also the fact that she has for at least 11 years of her life been brought up by her adoptive parents, it was felt that a remand/care home where other juvenile delinquents are placed at Nirmal Chaya may not be the appropriate place. The option of putting her into a residential hostel at Queen Mary School was also considered. In this regard a meeting was also held with the Principal of Queen Mary School. After discussing the matter, the conclusion reached was that it may not be possible on account of the family and educational background of the minor and the disparities, for her to adjust in the residential hostel with other students at Queen Mary School as of present, Besides, it cannot be over-looked that the minor has lost 2 to 3 years of her schooling. She would be overage for her class and in a public School, may feel isolated and segregated. Besides, the question of accommodating the minor during vacations does pose a problem.

14. The next option of placing the minor with the SOS Village Society was considered. To have first hand knowledge of the working and living conditions at a SOS Children Village of India, a visit was made by me along with Mr. Neeraj Kaul, amicus curiae, Ms. Gita Mittal, Mr. Manoj Chatterjee Advocate to the SOS Children Village near Badkal, Haryana. The living conditions at the village were seen. It was an enlightening experience to see the abandoned children living like brother and sisters in a family. This fulfills to the extent possible the emotive need of the children. One of the encouraging factors, noticed and seen at SOS Children Village, was the creation of a home atmosphere for the orphan/abandoned children. This also generates the feeling of brother-hood and love, among the children, who live in the care of a mother. An educated lady generally, a widow or spinster called "Mother" is put in charge of 6 to 8 to 10 children. She is given a cottage, where she lives with children assigned to her. She looks after their needs, monitors their education and they all live like a family sharing domestic and household chores.

15. Mr. Manoj Chatterjee, counsel for the SOS Children Village of India after discussions with the National Director of SOS Children Village of India conveyed that it would be possible to rehabilitate the minor and admit the minor in the residential hostel at Bhimtal (Uttar Pradesh). Further they would get the minor admitted to SOS Harmangne Minor School, at Bhimtal. The SOS Children Village

of India would also locate a home and family with whom the minor could stay during the weekends or other holidays she can reside. This arrangement appears to be the best in the circumstances for the minor with an endeavor to provide her schooling and education, nurture in her self confidence by independent living in a hostel under specialised care and monitoring. It would also take the minor away from the present surroundings from which she needs a break and the influence exerted by respondent No. 3 and her sons. Respondent No. 3 or her sons shall not disturb the minor or meet her except with per mission of the Court.

16. Mr. Pradeep Singh, the National Director of SOS Children Village of India, on account of his education, background and vocation, is a fit person to be appointed as the guardian of the person of the minor. In view of the enabling provisions of law, as noticed in paras 8 and 11 above, and in exercise of powers under Article 226 of the Constitution of India and the inherent powers, Mr. Pradeep Singh, National Director of SOS Children Village of India, is appointed the guardian of the person of minor Geeta. He will take all necessary steps for arranging the boarding and lodging and other arrangements for her admission to the SOS Harmangne Minor School. A report with regard to the minors admission and the particulars of the family with whom the minor is to be accommodated during vacations would be furnished to this Court within two weeks.

17. The timely action by the Pratidhi, petitioner Society, in this case has benefited the minor. I would also like to record my appreciations of the role and assistance given by Mr. Neeraj Kaul, amicus curiae, Ms. Gita Mittal, advocate and Mr. Manoj Chatterjee, counsel for the SOS Children Village of India and the petitioner's counsel, Mr. Sukumar Pattjoshi without whose help and cooperation, it would not have been possible to endeavour, the rehabilitation of minor.

The writ petition stands disposed of. However, for reporting compliance with various directions given in this order, the matter be listed before this Bench on 17.1.2001.