

(2015) 01 MAD CK 0293

In the Madras High Court

Case No : Writ Petition No. 1119 of 2015 and M.P. No. 1 of 2015

S. Priji

APPELLANT

Vs

District Collector and Others

RESPONDENT

Date of Decision : 28-01-2015

Acts Referred:

Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 42

Citation : (2015) 5 CTC 365 : (2015) 3 MLJ 606

Hon'ble Judges : T.S. Sivagnanam, J

Bench : Single Bench

Advocate : Fr. Xavier Arulraj for S.M. Edward Stanley, for the Appellant; V. Jayaprakash Narayanan, Special Government Pleader, Advocates for the Respondent

Final Decision : Disposed off

Judgement

T.S. Sivagnanam, J.

1. Heard Dr. Fr. Xavier Arulraj, learned counsel for the petitioner and Mr. V. Jayaprakash Narayanan, learned special Government pleader appearing for the respondents and perused the materials placed on record. The Chairperson of the District Child Welfare Committee, Krishnagiri District has filed his report and he is present in court during the course of hearing of this petition. The issue which is involved in this petition is as to whether the custody of the minor Anugraha and Mollukutty should be restored to the petitioner who is said to have adopted the child or as to whether such adoption should be regularized under the guidance of the Chairman of the Child Welfare Committee, Krishnagiri.

2. The petitioner married Mr. S. Shyamku-mar and he is working as a tailor in Saudi Arabia. Though the petitioner and her husband were married for 23 years, due to infertility problem they are not blessed with a child. Therefore, they decided to adopt a child and through a common friend, they came in contact with one Johnson and Mr. Johnson identified a 72 days old female baby and on seeing

the child, the petitioner and her husband got attached to her and it being a girl child, the petitioner was very excited to adopt her. So was her husband. The child was handed over to them on 12.12.2012 and they came to their native place in Trivandrum at Kerala on 13.12.2012. The person who arranged for adoption informed them that the child's mother is an unwed mother and the child was disowned by her because if the child was not taken away from her, there was a danger that she may resort to committing suicide. The respondents have now taken an action against the petitioner on the ground that certain allegations have cropped up against the said Johnson and it appears that there is allegation that he is involved in child trafficking. In the background of these facts, the custody of the child was taken over by the 2nd respondent on 29.12.2014. Thereafter, the petitioner has moved this court by way of this writ petition.

3. Even at the first hearing of this petition, the Chairman, Child Welfare Committee, Krishnagiri District was present in court and he was directed to file a status report along with the relevant documents. Accordingly, he filed the same before this court.

4. On a perusal of the status Report filed by the Chairman, Child Welfare Committee, Krishnagiri District. It appears that the child's biological mother has appeared before the 2nd respondent and deposed that she is an unwed mother and she had disowned the child. It further appears that she has stated that she is now married and settled elsewhere. In the light of the statement recorded from the biological mother, it is evident that the biological, mother of the child has disowned the minor child and therefore, it is not a case of child trafficking as was alleged. However, in order to have permanent custody of the child, the adoption of the child should be done in accordance with the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000.

5. The petitioner is ready and willing to comply with the statutory requirements that are to be complied with and that the child having been in her care and custody since December 2012, the petitioner wants to have the interim custody of the child till all the legal formalities are completed.

6. It is relevant to point out that in terms of section 42 of the Juvenile Justice (Care and protection of Children) Act, 2000 read with Rule 20[d] of the Justice (Care and Protection of Children) Rules Foster care can be used for temporary placement for those individuals who are ultimately to be given in adoption. In the light of the peculiar facts of the instant case, this Court is of the view that pending statutory compliance, Foster care can be entrusted to the Petitioner herself since it prima facie appears that she has been taking care of the child since December 2012.

7. In the light of the stand taken by the 2nd respondent in his report and taking note of the fact that the biological mother has disowned the child and there is no adverse report on the petitioner and the adoption appears to be prima facie bona fide, this Court is inclined to pass the following order:

"The petitioner is directed to appear before the 2nd respondent and file appropriate application under the provisions of the Act for the purpose of commencing steps required to be taken to regularise the adoption. At the first stage, the petitioner shall obtain orders from the 2nd respondent that the child is free for adoption and only on such application being filed, the interim custody of the child shall be handed over to the petitioner by the 2nd respondent. Thereafter, the petitioner shall abide by the directions of the 2nd respondent and proceed further in accordance with law so as to obtain appropriate orders from the Competent Forum/Court so as to legalise and regularise the adoption. Till the above procedure are fulfilled, the petitioner shall have the interim custody of the minor child Anugraha a Molukutty and take proper care of the child. It is open to the 2nd respondent to call upon the petitioner to bring and show the child to him with a view to monitor the care bestowed by the petitioner on the child."

The writ petition is disposed of with the above direction. No costs. Consequently, the connected miscellaneous petition is closed.