

THE HON'BLE SRI JUSTICE D.RAMESH

WRIT PETITION No.9210 of 2023

ORDER:

The Writ Petition is filed under Article 226 of the Constitution of India seeking to declare the action of the 3rd respondent taking the custody of the minor children to their home is without jurisdiction is illegal, arbitrary and consequently direct the 3rd respondent to handover the minor children i.e. M.Sharmitha Sai and M.Yokshitha Sai to the petitioner and pass such other order or orders.

2. Heard learned counsel for the petitioner and learned Assistant Government Pleader appearing for respondents.

3. Learned counsel for the petitioner submitted that the petitioner is the aunt of the minor children i.e. M.Sharmitha Sai, aged 14 years and M.Yokshitha Sai, aged 12 years. Previously, after demise of their father i.e. since 2020, both the children are under the custody of the petitioner. The mother of the minor children i.e. 4th respondent herein has filed F.C.O.P.No.236 of 2021 before the Judge, Family Court-cum-V Additional District Judge, Tirupati under Section IX of the Guardians and Wards Act, for custody of the minor children. Said F.C.O.P was disposed on

25.8.2022 holding that the 4th respondent herein who is the natural guardian/mother of the minor children is entitled to their custody. Subsequent to the disposal of the said F.C.O.P, the 4th respondent instead of taking the children along with her, she has handed over the children to 3rd respondent and left for Bengaluru in the month of November, 2022. Since then the children are in the custody of the 3rd respondent. Knowing the said fact, the petitioner immediately approached the concerned Family Court and filed interim applications vide I.A.No.1159 of 2022 and 1160 of 2022 in the said F.C.O.P seeking interim custody of the minor children. While pending the applications, considering the factual position, the present writ petition filed.

4. After hearing learned counsel for the petitioner, the Court ordered for appearance of the 3rd respondent along with children. Accordingly today i.e. on 02.5.2023 the minor children were produced before the Court by the 3rd respondent. The Court interacted with the minor children in the Chambers. The minor children are not willing to continue in the home as the schools are also closed for Summer Vacation and they intends to go to their aunt's house.

5. 3rd respondent who is the Chairman of the Child Welfare Committee is present and submitted that since the Family Court-cum-V Additional District Judge's Court has passed an order giving custody to the natural guardian/mother and when the children are not willing to go along with the mother, at the request of the mother, the Committee had decided to take the minor children into their custody. Further submitted that they are willing to obey the orders, if any, passed by either the competent Civil Court or by this Court.

6. 4th respondent and her counsel are not present before the Court.

7. Considering the submissions made by the learned counsel for the petitioner and on perusal of the averments made in the writ petition and also after interacting with the children as well as the 3rd respondent i.e. Chairman of the Child Welfare Committee, this Court is of the opinion that when the children are not willing to go with their natural mother, and the other close relatives i.e. grandmother are willing to take custody of the minor children and as per the wish of the children, the minor children may be sent to the custody of the petitioner for the time being and in the meanwhile, Judge, Family Court-cum-V Additional District Court, Tirupati is

directed to consider the application filed by the petitioner herein i.e. I.A.No.1159 of 2022 and 1160 of 2022 in F.C.O.P.No.236 of 2021 expeditiously and pass appropriate orders as per the provisions of the Act. Till the disposal of the above said applications, the 3rd respondent is directed to handover the custody of the minor children i.e. M.Sharmitha Sai, aged 14 years and M.Yokshitha Sai, aged 12 years to the petitioner.

8. With the above directions, the writ petition is disposed of.
No costs.

As a sequel miscellaneous applications, pending, if any, shall also stand closed.

JUSTICE D.RAMESH

Date: 02.5.2023
RD

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Dated 02.5.2023

RD