



H.C.P.No.2085 of 2021

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P.N.PRAKASH, J.  
AND  
R.HEMALATHA, J.

(Order of the Court was made by P.N.PRAKASH, J.)

For the sake of convenience, the *dramatis personae* will be referred to by their respective names.

2. One Anil Kumar Majhi, aged about 26 years, a native of Mothihari village, Bihar District, came to Tamil Nadu as a migrant labour and was working in a poultry farm in Palladam, Tiruppur District. He got married to one Rajini Kumari, aged about 22 years, who also hails from Mothihari village. Both of them do not speak Tamil but only Bhojpuri.

3. When enquired by us with the help of an interpreter, they were not able to tell us the exact month and date on which they got married. However, they stated that they got married in their house in which they are living in Tiruppur District, before COVID-19. Through the wedlock, a girl baby was born to them on 09.01.2021 in the Primary Health Centre, Pongalur, *vide* Birth Certificate issued by the Registrar of



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Births, Pongalur Primary Health Centre, which shows the registration no.

as B-2021:33-11848-000002. The child has been named as Riya Kumari. Since the Anil Kumar Kajhi-Rajini Kumari couple were not able to bring up the child, they appear to have given the child in adoption to one Sundarraaj-Mohanapriya couple on 10.02.2021. Since then, the child is being brought up by the Sundarraaj-Mohanapriya couple.

4. While that being so, the child helpline received a complaint on 25.03.2021 that the Sundarraaj-Mohanapriya couple have illegally adopted a child without following the due process of law. Therefore, the Child Welfare Committee, Erode, conducted a thorough enquiry and during the enquiry, the Sundarraaj-Mohanapriya couple appeared before them and explained to them that they were childless for the last more than 10 years and that, they validly took the child on adoption from the Anil Kumar Majhi-Rajini Kumari couple. Since the Child Welfare Committee found that the child was being well taken care of by the Sundarraaj-Mohanapriya couple, interim custody of the child was handed over to them pending detailed enquiry.



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5. In the meanwhile, the Sundarraj-Mohanapriya couple filed a suit in O.S.No.51 of 2021 in the Court of the District Munsif, Bhavani, against the Anil Kumar Majhi-Rajini Kumari couple, for a declaration that the child Riya Kumari @ Devamitraa was validly given in adoption to them. The Child Welfare Committee, Erode, passed an order under Section 36(1) of the Juvenile Justice (Care and Protection of Children) Act, 2015, stating that Sundarraj and Mohanapriya are the fit persons to bring up the child. However, the Probation Officer of Social Defence Department, conducted an enquiry with regard to the adoption and gave a report to the District Collector, Erode that the Sundarraj-Mohanapriya couple have not properly taken the child on adoption. Based on this report, the District Collector, Erode, passed an order dated 30.10.2021 directing the child to be removed from the custody of the Sundarraj-Mohanapriya couple and be kept in a Special Adoption Agency (2<sup>nd</sup> respondent herein), pending further action. Since the child was removed from their custody, Mohanapriya has filed the present Habeas Corpus Petition.

6. On our directions, today, Mr.J.Subash (mobile no.94981 78899), Inspector of Police, Kavindapadi Police Station, Erode District,



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Dr.E.M.Ashok (mobile no.98425 36217), Chairperson, Child Welfare Committee, Erode, Mr.R.Karnan Kamaraj (mobile no.94437 52690), Member, Child Welfare Committee, Erode, Mr.D.Kamal Babu, Project Co-ordinator of the 2<sup>nd</sup> respondent and Ms.T.Beulah, Social worker of the 2<sup>nd</sup> respondent, are present before us. Ms.Renuka Devi, Probation Officer is also present before us *via* video conferencing. The Sundarraj-Mohanapriya couple and the Anil Kumar Majhi-Rajini Kumari couple are also present before us. We requested Ms.Geeta Ramaseshan, Advocate, to be an *Amicus Curiae* in this case to assist us.

7. It appears that the authorities smelt a rat because, there was no proper documentation with the Sundarraj-Mohanapriya couple for the adoption and that apart, the name and Aadhaar card particulars of the Anil Kumar Majhi-Rajini Kumari couple were also improper. Dr.Ashok submitted that, in the absence of satisfactory records, it may not be proper to come to a conclusion that the child was born to the Anil Kumar Majhi-Rajini Kumari couple and therefore, a DNA test would settle the issue, once and for all. We agree with this submission.



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8. When we enquired the Anil Kumar Majhi-Rajini Kumari couple, they stated that they had given their child voluntarily to the Sundarraj-Mohanapriya couple and that they have absolutely no objection to the Sundarraj-Mohanapriya couple to bring up the child.

9. We gave our anxious consideration to the aforesaid submission. Pertinent it is to state here that the baby Riya Kumari @ Devamitraa is neither an orphan nor a child in need of care and protection. It has both its biological parents and the adoptive parents for taking care of it. The biological parents state that they have voluntarily given the baby to the Sundarraj-Mohanapriya couple and just because they had not done proper documentation, that, by itself, cannot be a reason, to take away the custody of the baby and lodge it in the Specialised Adoption Agency (2<sup>nd</sup> respondent herein).

10. We are of the view that the best interest of the child would be served, if it grows up with the Sundarraj-Mohanapriya couple. However, a DNA test has to be performed as submitted by Dr.Ashok. It is brought to our notice that the Child Welfare Committee, Erode, has obtained FTA cards in a sealed cover from the Tamil Nadu Forensic



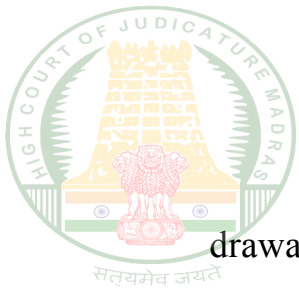
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Sciences Department, which was produced to us *vide* DNA/FTA/375/21.

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Therefore, we direct the Inspector of Police, Kavindapadi Police Station, Erode District and the Child Welfare Committee, Erode, to take the Anil Kumar Majhi-Rajini Kumari couple and the baby to the Government Erode Medical College and Hospital, Perundurai to draw blood samples in the FTA cards. The Dean, Government Hospital, Perundurai, is directed to arrange for drawal of blood samples for the aforesaid three persons in the FTA cards and send the same in a sealed cover through a police officer nominated by the Inspector of Police, Kavindapadi Police Station, to the Tamil Nadu Forensic Sciences Department, for DNA profiling. Thereafter, the Tamil Nadu Forensic Sciences Department is directed to conduct the DNA profiling and submit a report to this Court as well mark a copy of the report to the District Collector, Erode and the Child Welfare Committee, Erode.

11. In view of the above, we set aside the order in No.190/2021 dated 30.10.2021, passed by the District Collector, Erode and direct the 2<sup>nd</sup> respondent to hand over the child *viz.*, Riya Kumari to Sundarraaj and Mohanapriya, who, in turn, shall cooperate with the Inspector of Police, Kavindapadi Police Station and the Child Welfare Committee, Erode, for



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drawal of blood samples as directed by us, for DNA profiling. In the meanwhile, it is open to them to regularise the adoption in the manner known to law.

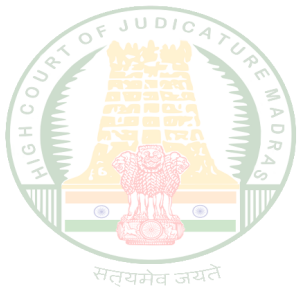
12. We place on record our appreciation to Ms.Geeta Ramaseshan, learned *Amicus Curiae*, the officials of the Child Welfare Committee, Erode, the officials of the Helping Hearts Children Home, Specialised Adoption Agency, the Probation Officer, Erode District and the Inspector of Police, Kavindapadi Police Station, Erode, for the able assistance rendered by them.

Post the matter on 22.12.2021.

(P.N.P., J.) (R.H., J.)  
15.12.2021

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*Note: Issue Order copy by 15.12.2021*



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AND  
R.HEMALATHA, J.

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To

1. The Inspector of Police  
Kavindapadi Police Station  
Erode District

2. The Chairperson/Member  
Child Welfare Committee  
Kollukattumedu, Lakkapuram Post  
Near RTO Office, Karur bypass Road,  
Erode

3. The District Collector  
Erode  
2021

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4. The Dean  
Government Erode Medical College and Hospital  
Perundurai

5. The Director  
Tamil Nadu Forensic Sciences Department  
Chennai

6. The District Child Protection Officer  
2<sup>nd</sup> Floor, Jawan Bhavan  
Gandhiji Road, Erode

15.12.2021