

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Wednesday, the Twenty Sixth day of October Two Thousand and Sixteen

PRESENT

The Hon`ble Mr.Justice S.NAGAMUTHU
and
The Hon`ble Mr.Justice M.V.MURALIDARAN

WP(MD) No.20895 of 2015

CHANGEINDIA

REP. BY ITS DIRECTOR A.NARAYANAN

... PETITIONER

Vs

- 1 THE PRINCIPAL SECRETARY
DEPARTMENT OF SOCIAL WELFARE,
GOVERNMENT OF TAMILNADU, SECRETARIAT, FORT.ST.GEORGE,
CHENNAI 9
- 2 THE DEPUTY SUPERINTENDENT OF POLICE -CB CID,
ANTI HUMAN TRAFFICKING CELL (ANTI VICE SQUAD), FIRST FLOOR,
BLOCK-3, ELECTRONIC COMPLEX, SIDO INDL.ESTATE, GUINDY,
CHENNAI 32
- 3 THE DISTRICT COLLECTOR
COLLECTORATE, COLLECTOR OFFICE ROAD, TRICHY 620 001
- 4 THE COMMISSIONER OF POLICE
COMMERCIAL TAX BUILDING, RACE COURSE ROAD,
KAJAMALAI, TRICHY 620 020
- 5 THE DISTRICT SOCIAL WELFARE OFFICER,
COLLECTORATE BUILDING,
TRICHIRAPPALLI DIST 620 001
- 6 THE CHILD WELFARE COMMITTEE GOVT.OBSERVATION HOME,
NO.34, EAST BOULEWARD ROAD, TIRUCHIRAPPALLI 2
- 7 THE DIRECTOR
CENTRAL BUREAU OF INVESTIGATION (CBI)
ANTI HUMAN TRAFFICKING UNIT, PLOT NO.5-B, 6TH FLOOR,
CGO COMPLEX, LODHI ROAD, NEW DELHI 110 003
- 8 THE UNION SECRETARY
MINISTRY OF HOME AFFAIRS, GOVT. OF INDIA,
NORTH BLOCK, NEW DELHI 110 001
- 9 PASTOR GIDEON JACOB MOSE MINISTRIES COMPLEX,
RANGANAGAR, SUBRAMANIAPURAM, TRICHY

10 THE REGIONAL PASSPORT OFFICER,
TRICHIRAPPALLI.

(R10 SUO MOTU IMPLAED VIDE COURT
ORDER DATED 11.12.2015 IN WP(MD)

Nos.16273 and 20895 of 2015 by VRSJ & NKKJ) ... RESPONDENTS

Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus directing the 7th respondent Central Bureau of investigation to investigate into the trafficking and illegal confinement of 89 girl children by the 9th Respondent and consequently direct the 1st Respondent to restore the children living in the custody of 9th Respondent to their respective parents.

ORDER : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and the earlier order of this Court and upon hearing the arguments of M/S.D.GEETHA, Advocate for the petitioner and of MR.M.GOVINDAN, Special Government Pleader, on behalf of the Respondents 1 to 6, and of Mr.S.JEYAKUMAR, Special Public Prosecutor for CBI- 7th respondent, and of MR.N.SHANMUGASELVAM, Advocate for the 8th respondent, and of MR. ISAAC MOHANLAL Senior Counsel for MR.R.BASKARAN, Advocate for the 9th respondent, the court made the following order:-

[Order of the Court was made by S.NAGAMUTHU, J]

From the records available before us and from the submissions made by the learned counsel on either side, we find that Mose Ministries is not a registered Child Care Institution in terms of Section 41 of the Juvenile Justice (Care and Protection of Children) Act, 2015. Though it is stated that the said institution was functioning even before coming into force of the said Act of the year 2015, there was no registration of the same under the Juvenile Justice (Care and Protection of Children) Act, 2000.

2.The learned senior counsel Mr.Isaac Mohanlal appearing for the institution would submit that as a matter of fact, a registration was made under Orphanages Act on 30.01.2008. He would further submit that they would pay Rs.5 lakhs to the institution for maintenance of the children. The said statement is recorded.

3. As per Sub Section 3 of Section 34 of the Juvenile Justice (Care and Protection of Children) Act, 2000, no institution to take care of the children will be conducted without a licence, notwithstanding anything contained in the other law for the time being in force. Thus, it is crystal clear that the Home in question has got no right to be as a Child Care Institution either under Section 41 of the Juvenile Justice (Care and Protection of Children) Act of 2015 or under the Juvenile Justice (Care and Protection of Children) Act of 2000. Therefore, in our considered view, since the Institution is an unregistered one, the children cannot be kept in the same. As per the Juvenile Justice (Care and Protection of

Children) Rules, 2007, there are several specifications prescribed for registering such a Home, such as Medical Aid, Safety, Security, etc. Since it is doubtful as to whether these facilities are available satisfying the specifications and since it is not a registered Child Care Institution, in our considered view, it may not be appropriate to allow the children to be kept in the same Home. It is needless to state that even for the Government to run such a Home, the Registration is absolutely necessary.

4. During the course of argument, it has been brought to our notice that barring 11 children, the others have already attained majority and many of them even crossed 20 years of age. One female child is now aged 27 years. Thus, barring 11, others are major and they are no more children. They have got freedom to decide about their future and no one can compel them to reside at a particular place viz., Home. It is also brought to our notice that 34 parents have approached the authorities for DNA examination claiming parentage of the children. The results are still awaited.

5. At any rate, in respect of the major girls, since they have got freedom to decide about their future, we deem it appropriate to ascertain their willingness either to continue to remain in the Home for Women or to be freed. For that purpose, we are inclined to issue a direction to the learned Presiding Judge of the Children Court at Tiruchirapalli to visit the Institution (Mose Ministries), record the statement of all the inmates, including 11 children, who have not attained 18 years of age and ascertain the willingness of those who have completed 18 years of age already, as to whether they like to be in any Women Home or they want to be freed. In respect of the children, who have not completed 18 years of age, the Presiding Judge shall ascertain as to whether they are willing to stay in a Home known as Annai Ashramam, which is situated at Tiruchirapalli near the School where they are studying. While ascertaining the views of these inmates, the Presiding Judge shall maintain absolute confidentiality and they shall not be examined in the presence of others. The Presiding Judge shall ensure that inmates, while under examination by her, are free to speak according to their volition. The Presiding Judge shall submit a report, along with the statement of the inmates, to this Court on or before 09.11.2016.

6. The CBI may conduct the investigation and submit an appropriate final report either positively or negatively before the competent jurisdiction Court.

7. List this matter on 10.11.2016.

Sd/-

Assistant Registrar (AE)

/ TRUE COPY /

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

- TO
- 1 THE PRINCIPAL SECRETARY DEPARTMENT OF SOCIAL WELFARE,
GOVERNMENT OF TAMILNADU, SECRETARIAT, FORT.ST.GEORGE, CHENNAI 9
 - 2 THE DEPUTY SUPERINTENDENT OF POLICE -CB CID,
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NORTH BLOCK, NEW DELHI 110 001
 - 9 THE REGIONAL PASSPORT OFFICER,TRICHIRAPPALLI.
 - 10 THE PRESIDING JUDGE OF THE CHILDREN COURT, TIRUCHIRAPPALLI.

COPY TO: THE SECTION OFFICER,
WRIT SECTION
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI
(For Watching Report)

ORDER DATED: 26/10/2016

HEARING DATE:10/11/2016

ORDER

WP(MD) No.20895 of 2015

Giving direction and etc.,
as stated within.

AM/EM MPA/SAR-3/02.11.2016/4P/12C