

the same on lame excuse that the Deputy Registrar was elsewhere. Therefore, the Application is deemed to have been given on 17 April 2008.

19. The Fifth Respondent has not indicated anything about the non receipt of the Application on 17 April 2008. The statutory Application was rejected only on the ground that it was made beyond thirty days. The background facts clearly indicate that the Application was made within time. Refusal on the part of the office of the Fifth Respondent to receive the Application on 17 April 2008 cannot be used against the Petitioner to reject his Application. Therefore, I am of the view that the Fifth Respondent was not justified in rejecting the Application on the ground of delay.

*Disposition:*

20. Accordingly, the order dated 25 April 2008 on the file of the Deputy Registrar of Co-operative Societies, Namakkal is set aside. The Fifth Respondent is directed to entertain the Application filed by the Petitioner under Rule 128 of the Tamil Nadu Co-operative Societies Rules and dispose of the same on merits and as per law, as expeditiously as possible and in any case, within a period of twelve weeks from the date of receipt of copy of this order.

21. In the upshot, I allow the Writ Petition. No costs. Consequently, connected M.P. is closed.

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**2011 (3) CTC 368**

**IN THE HIGH COURT OF MADRAS**

**C. Nagappan & P.R. Shivakumar, JJ.**

M.P. No.1 of 2011 in H.C.P. No.55 of 2011 & M.P. No.1 of 2011 in H.C.P.  
No.1033 of 2010

22.7.2010

A. Ruby w/o Ayyachamy

.....*Petitioner*

Vs.

The State by its Inspector of Police, Maruvathur Police Station, Perambalur  
District

.....*Respondent*

**Juvenile Justice (Care and Protection of Children) Act, 2000 (56 of 2000), Section 2(d) — Constitution of India, Article 226 — Practice and Procedure — When victim of crime is a child under 18 years and is willing to join parents/guardian and they are also willing, Judicial Magistrate shall hand over custody of child to parents/guardian — When child is not willing to join parents or guardian or if parents or guardian are not inclined to take child then child becomes a child in need of care and protection — Judicial Magistrate shall immediately**

**forward child to Child Welfare Committee who shall deal with child in accordance with provisions of Act — High Court exercising power under Article 226 is also at liberty to send a child to Child Welfare Committee.**

**Facts :** Mother of child, a minor seeking production of the child and custody. The child is produced and expresses unwillingness to join the mother. The High Court directed the child to be kept in Government Children's Home. The mother sought for restoration of custody.

**Held :** It is needless to say that in the Habeas Corpus jurisdiction, this Court exercises its power under Article 226 of Constitution of India and depending on the facts and circumstances of the case, this Court issues necessary directions in the nature of Writs including direction to keep the child in Children's Homes. It is also open to this Court to send a child to the Child Welfare Committee, in case, during enquiry it is found to be a child in need of care and protection. *[Para 10]*

**Interpretation of Statutes — Juvenile Justice (Care and Protection of Children) Act, 2000 (56 of 2000) — Object and scope of Act — Special enactment overriding all other laws except to extent saved expressly — Special procedure to deal with children whether juvenile or children needing care and protection — Judicial Magistrate not empowered to send juvenile or child to Observation or Special Home directly — Juvenile Justice Board alone competent to hold enquiry and pass orders.**

**Held :** Being a special enactment, the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 shall have overriding effect with other laws except to the extent expressively saved under the said Act. It contemplates a special procedure for dealing with children whether the child in question is a juvenile in conflict with law or a child in need of care and protection. *[Para 7]*

The victim of crime who happens to be a child, who has not completed 18th year of age, when produced or appears before any Magistrate, an enquiry has to be conducted by the Magistrate and if it expresses willingness to join the parents or the guardian and the parents/lawful guardian are willing to take the child, the custody has to be given to them. In the event of the child expressing apprehension about the parents/lawful guardian and refuse to go with them, the child becomes a child in need of care and protection contemplated under Section 2(d) of the Act. In such an event, the Judicial Magistrate shall immediately forward the child to the Child Welfare Committee through any one of the persons mentioned in Section 32 of the Act. The same shall apply in a case in which the parents/lawful guardian are disinclined to take the child with them or none of them is available to take the child. Thereafter, it is for the Child Welfare Committee to deal with the child in accordance with the provisions of the Act. *[Para 9]*

**M. Palanimuthu, Advocate for Petitioner.**

**Mr. P. Kumaresan, Public Prosecutor for Respondent No.1.**

**PETITIONS DISPOSED OF ACCORDINGLY**

**JUDGMENT**

**C. Nagappan, J.**

1. The mother of minor Deepa, namely Mrs. Jyothi, filed Habeas Corpus Petition in H.C.P. No.55 of 2011 seeking production of the minor girl before the Court and for handing over the custody of the minor to her. The said minor Deepa was produced before this Court on 08.01.2011 and during enquiry in the Court, she said she was not willing to go with her mother, namely the Petitioner and this Court directed minor Deepa be kept in Government Children's Home, Purasaiwalkam High Road, Kellys, Chennai till she attains majority. Thereafter, her mother Jyothi has filed the present Miscellaneous Petition (M.P. No.1 of 2011 in H.C.P. No.55/2011) seeking for restoration of the custody of the minor girl with her.

2. The mother of minor Ishwarya, namely Mrs. A. Ruby filed Habeas Corpus Petition in H.C.P. No.1033 of 2010 seeking production of minor Ishwarya in the Court and for handing over the custody of minor Ishwarya to her. Minor Ishwarya was produced before this Court on 22.7.2010 and during enquiry minor Ishwarya said she was not willing to go with her mother, namely the Petitioner. Consequently, this Court directed minor Ishwarya to be kept in Government Children's Home, Purasaiwalkam High Road, Kellys, Chennai till she attains majority. Thereafter, her mother Ruby has filed the present Miscellaneous Petition (M.P. No.1 of 2011 in H.C.P. No.1033/2010) seeking visitation rights during the minor's stay at the said home.

3. We heard the learned Counsel appearing for the Petitioners in both the Miscellaneous Petitions and Mr. P. Kumaresan, learned Public Prosecutor representing the state.

4. Time and again we have come across orders passed by the learned Magistrates directly sending the juvenile in conflict with law to Observation Homes. We have also noticed a number of orders of the learned Magistrates directing the victims, who happened to be minors to be kept in the Observation Homes or Children's Homes.

5. In the Habeas Corpus Petitions also where the production of a minor is sought for and on being produced, in the event of the minor not willing to go with the parents/lawful guardians, this Court sends the minor to Children's Homes. The Petitions now filed seek for restoration as well as visitation rights of the minors who have been ordered to be kept in Homes.

6. In the light of the above, we considered it appropriate to highlight the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 and the Rules thereunder and for that purpose we heard the learned Public Prosecutor at length. The Director of Social Defence, Chennai has filed a report dated 5.4.2011.

7. Being a special enactment, the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 shall have overriding effect with other

laws except to the extent expressly saved under the said Act. It contemplates a special procedure for dealing with children whether the child in question is a juvenile in conflict with law or a child in need of care and protection.

8. The following procedure is contemplated under the Act with regard to juvenile in conflict with law, who is alleged to have committed offence and has not completed 18th year of age, as on the date of commission of the offence. Section 6 of the Act gives exclusive power to the Juvenile Justice Board, to deal with all proceedings relating to juveniles in conflict with law. The Juvenile Justice Board comprises of a Metropolitan Magistrate or Judicial Magistrate of the First class and two social workers, of whom one shall be woman. Section 4 contemplates constitution of one or more Juvenile Justice Board for every District. According to the Public Prosecutor, each one of the Districts of Tamil Nadu has a Juvenile Justice Board and at present no district has more than one Board. It is needless to say that as on today, there is only one Magistrate in each District who is empowered, as a member of the Board, to exercise the powers of the Board. Section 7 stipulates that when any Magistrate who is not empowered to exercise the power of a Board is of the opinion that a person brought before him is a Juvenile or the child, he shall record such opinion and without delay forward the juvenile or child to the Competent Authority having jurisdiction over the proceeding. The Competent Authority prescribed in Section 7, in relation to a juvenile is the Juvenile Justice Board, which shall hold the enquiry. In view of the above, no Judicial Magistrate other than the member of the Board shall send the juvenile or child directly to Observation Homes or Special Homes contemplated under Section 8 and Section 9 of the Act. As stated earlier, it is the duty of such Magistrates, who are not empowered to exercise the powers of the Board under the Act, to send the juvenile immediately to the Juvenile Justice Board.

9. The victim of crime who happens to be a child, who has not completed 18th year of age, when produced or appears before any Magistrate, an enquiry has to be conducted by the Magistrate and if it expresses willingness to join the parents or the guardian and the parents/lawful guardian are willing to take the child, the custody has to be given to them. In the event of the child expressing apprehension about the parents/lawful guardian and refuse to go with them, the child becomes a child in need of care and protection contemplated under Section 2(d) of the Act. In such an event, the Judicial Magistrate shall immediately forward the child to the Child Welfare Committee through any one of the persons mentioned in Section 32 of the Act. The same shall apply in a case in which the parents/lawful guardian are disinclined to take the child with them or none of them is available to take the child. Thereafter, it is for the Child Welfare Committee to deal with the child in accordance with the provisions of the Act.

10. It is needless to say that in the Habeas Corpus jurisdiction, this Court exercises its power under Article 226 of Constitution of India and depending

on the facts and circumstances of the case, this Court issues necessary directions in the nature of Writs including direction to keep the child in Children's Homes. It is also open to this Court to send a child to the Child Welfare Committee, in case, during enquiry it is found to be a child in need of care and protection.

11. So far as the present Petitions are concerned, in view of the above discussions, suffice to observe that it is open to the Petitioners to approach the Child Welfare Committee, Chennai for seeking restoration as contemplated under Section 39 of the Act, which will also include visitation right and the Petitions are disposed of accordingly.

**2011 (3) CTC 372**

**IN THE HIGH COURT OF MADRAS**

**Vinod K. Sharma, J.**

W.P. Nos.12613 & 24522 of 2001

7.4.2011

1. N. Adikesavan 2. Chinnayan 3. Jayaraman 4. Mangaliammal 5. Paneerselvam 6. Doss 7. Muthian 8. Muthulakshmi 9. Kannan 10. Parvathiammal 11. Ravi 12. Rukmani 13. Gowri 14. Mohan 15. Valmurthy 16. Dilipkumar 17. Neelakandan 18. Logammal 19. Sakunthala 20. Ravayammal 21. Santhanammal 22. Saraswathi 23. Omprakash 24. Sundararaj 25. Sivaraj 26. Kalaivani 27. Muruges 28. Lingaganapathy (All rep. by the General Power of Attorney, B. Balakrishnan) [Petitioners in W.P. No.12613 of 2001] 29. Thirunavukkarasu 30. Killiammal 31. Madurai Muthu 32. Karunakaran 33. Mahalingam 34. Ramadoss [Petitioners in W.P. No.24522 of 2001 (P22 to P26 are proposed parties as legal heirs of deceased P19) (P27 & P28 are proposed parties as legal heirs of deceased P20) (P5, P7 to P9, P15, P16 & P17 were deleted as per order of this Court dated 17.02.2011)] .....*Petitioners*

Vs.

1. The Commissioner of Land Administration, Chepauk, Chennai-600 005. 2. The Commissioner and Director of Survey and Settlement, Chennai-600 005. 3. The Settlement Officer, Thanjavur 4. The Assistant Settlement Officer, Tiruvannamalai 5. Sri Krishna Tiles Potteries (Madras) Private Limited, No.25, 4th Street, Abirama Puram, Chennai-600 018 [Respondents in W.P. Nos.12613 and 24522 of 2001] 6. B. Balakrishnan [Respondent in W.P. No.24522 of 2001 (R2 to R11 impleaded as per order of this Court dated 10.09.2003) (R12 impleaded as per order of this Court dated 16.12.2010)] .....*Respondents*

**Tamil Nadu Estates Abolition and Conversion into Ryotwari Act, 1948 (T.N. Act 26 of 1948), Sections 12(a)(i), 12(b)(ii), 15, 13, 14, 11, 5(2), 1(4) — Suo moto power of Revision Authority — Appeal filed before**