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**(2022) 05 PAT CK 0042**

**Patna High Court**

**Case No:** Criminal Writ Jurisdiction Case No. 133 Of 2022

Anjali Raut @ Anjali

APPELLANT

Vs

State Of Bihar

RESPONDENT

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**Date of Decision:** May 20, 2022

**Acts Referred:**

- Guardians And Wards Act, 1890 - Section 7
- Hindu Minority And Guardianship Act, 1956 - Section 6

**Hon'ble Judges:** Ashwani Kumar Singh, J; Harish Kumar, J

**Bench:** Division Bench

**Advocate:** Mirityunjay Kumar, Bishwa Bibhuti Kumar Singh, Ajay Kumar Sinha, Mallika Majumdar

**Final Decision:** Disposed Of

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### **Judgement**

1. Heard Mr. Mirityunjay Kumar, learned counsel for the petitioner, Mr. Ajay Kumar Sinha, learned senior counsel for the respondent no.7 and Ms.

Mallika Majumdar, learned counsel for the respondent no.5. We have also heard Mr. Bishwa Bibhuti Kumar Singh, learned counsel for the State.

2. In the instant habeas corpus writ application, the petitioner has prayed for directing the respondent-authorities to release the minor son of the petitioner from illegal detention of the private respondents.

3. The private respondent nos. 5, 6 and 7 are father-in-law, brother-in-law and sister-in-law of the petitioner respectively.

4. The contention of the petitioner is that she lost her husband on 27.04.2021. She is blessed with a son namely, Aditya Kumar aged about ten years.

The child is in the custody of the in-laws of the petitioner. The further contention of the petitioner is that prior to the death of her husband, she

was thrown away from her marital house by the in-laws on 28.12.2020. The private-respondent nos. 5 and 6 and 7 have illegally retained the custody of her minor child.

5. Mr. Mritunjay Kumar, learned counsel for the petitioner submitted that in-law of the petitioner threatened her not to dare come back otherwise she would face uncalled repercussion after she was thrown out of her matrimonial home. He contended that the petitioner is being denied her right to have the custody of her child who has illegally been detained by the private respondents.

6. A counter affidavit has been filed on behalf of the respondent no.7 wherein it has been stated that the relationship of the petitioner with her husband was estranged and because of differences, she was residing at her naihar and never sought custody of the child during the lifetime of her husband and only after the death of her husband on 28.04.2021, she is seeking custody of the child, who is being brought up and looked after in the joint family of his father since birth

7. It has further been stated in the counter affidavit that on 10.06.2021, the petitioner along with some unknown persons came to the residence of respondent no.7. They threatened to take away the child from the custody of respondent no.7 and her husband. The entire incident was reported to the police by filing a complaint on 09.06.2021 and again on 11.06.2021. Subsequently, the respondent no.7 came to know that the Child Welfare Committee had passed an order on 01.06.2021 to rescue Master Aditya Kumar from the custody of respondent no.7. Thereafter, the respondent no.7 filed a statutory appeal against the order of the Child Welfare Committee (Respondent No.4) before the Collector, Darbhanga in Misc. Appeal No.168 of 2021, which is pending for adjudication.

8. In paragraph no.13 of the counter affidavit filed on behalf of respondent no.7, it has been stated that a petition under Section 7 of the Guardians and Wards Act was filed in the court of District Judge, Darbhanga being Guardian Case No.4 of 2021 to declare the respondent no.7 as guardian of the person and property of Aditya Kumar in the interest and welfare of the Child in which the petitioner has appeared and filed her objection on 18.02.2022.

9. In paragraph no.14 of the counter affidavit, it has been stated that apprehending any forceful dispossession of the child Aditya Kumar, the respondent no.7 filed a writ petition vide W.P.A. No.19706 of 2022 before the Kolkata High Court and vide order dated 11.01.2022 the High Court has been pleased to dispose of the writ petition directing that the custody of the child will not be disturbed for the time being and shall abide by any order that may be passed by competent court, Darbhanga in Guardian Case No.4 of 2021 vide order dated 24.01.2022.

10. The contentions made in the counter affidavit filed on behalf of respondent no.7 have not been controverted by the petitioner by way of filing any rejoinder.

11. Mr. Ajay Kumar Sinha, learned senior counsel for the respondent no.7 contended that the claim of a natural guardian by virtue of Section 6 of the Hindu Minority and Guardianship Act cannot supersede consideration as to what is conducive to the welfare of the minor. He contended that the welfare of the minor child is in the interest of his grand-mother, who is personally looking after the welfare of the child.

12. Ms. Mallika Majumdar, learned counsel appearing for respondent no.5 has also supported the contentions advanced in the counter affidavit filed on behalf of respondent no.7. She has adopted the submissions made on behalf of respondent no.7.

13. In view of the order passed by the Kolkata High Court in W.P.A. No.19706 of 2022, as contained in Annexure-R/2 filed on behalf of respondent no.7, it cannot be held to be a case of illegal detention of a minor child. The High Court has directed the parties not to disturb the custody of the child for the time being and abide by any order that may be passed in Guardianship and Wards Act Case No. 4 of 2021.

14. Under the circumstance, no direction can be issued to the respondent authorities to release the minor son of the petitioner and hand over his custody to the petitioner after being produced before the court.

15. Moreover, the petitioner has an equally efficacious statutory remedy available under the Guardianship and Wards Act for the redressal of her grievance. The pleadings made on behalf of the parties would make it clear that an application under the Guardianship and Wards Act has already

been filed before the competent court and is pending adjudication.

16. In that view of the matter, we are not inclined to entertain the present application. It is disposed of accordingly, with liberty to the petitioner to agitate her claim before the competent court at Darbhanga under the Guardianship and Wards Act.