

WP(C).No.19137/2024

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2024:KER:66791

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

TUESDAY, THE 3RD DAY OF SEPTEMBER 2024 / 12TH BHADRA, 1946

WP(C) NO. 19137 OF 2024

PETITIONER:

NOORA
AGED 35 YEARS
D/O MUHAMMED ABDUL KHADER, POKKAKILOTH HOUSE,
NATTIKA P.O, THALIKKULAM VILLAGE, THALIKKULAM
DESOM, THRISSUR DISTRICT - 680566, REP BY HER
MOTHER AND POWER OF ATTORNEY HOLDER ARIFA
MUHAMMED ABDUL KHADER, AGED 58 YEARS, W/O
MUHAMMED ABDUL KHADER POKKAKILOTH HOUSE, NATTIKA
P.O, THALIKKULAM VILLAGE, THALIKKULAM DESOM,
THRISSUR DISTRICT,
PIN - 680566

BY ADVS.
ANAND KALYANAKRISHNAN
C.DHEERAJ RAJAN

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RESPONDENTS :

- 1 UNION OF INDIA
REP BY SECRETARY TO GOVERNMENT OF INDIA, MINISTRY
OF EXTERNAL AFFAIRS, JAWAHAR LAL NEHRU BHAVAN,
SHASTRI BHAVAN, PATIALA HOUSE, ISIL BUILDING, NEW
DELHI, PIN - 110001

- 2 REGIONAL PASSPORT OFFICER
REGIONAL PASSPORT OFFICE, SHIHAB THANGAL ROAD,
NEAR IDBI CORPORATE BRANCH, PANAMPILLY NAGAR,
ERNAKULAM, PIN - 682036

- 3 MOHAMMED NIZAM
AGED 38 YEARS
S/O MUSTHafa, KALAPPARAMBATH HOUSE, KOOLIMUTTAM
P.O, KOOLIMUTTAM VILLAGE, THRISSUR DISTRICT,
PIN - 680691

BY ADV R.PADMAKUMARI

OTHER PRESENT :

DSGI IN CHARGE T.C. KRISHNA.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
02.08.2024, THE COURT ON 03.09.2024 DELIVERED THE
FOLLOWING:



V.G.ARUN, J

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W.P.(C).No.19137 of 2024

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Dated this the 3rd day of September, 2024

JUDGMENT

A hapless mother of two minor girls aged 11 and 8 years is seeking permission to take the children to the United Arab Emirates where she is presently working. The circumstances that compelled the petitioner to approach this Court are as under:-

2. The marriage between the petitioner and the 3rd respondent was solemnised on 09.07.2011. Two children, Mehreen Mohammed Nizam and Haya Mohammed Nizam were born out of the wedlock. Among the children, Mehreen is diagnosed with autism and Haya has learning disability. The petitioner is working in UAE and the 3rd respondent is working at Mohammed Bin Zayed City, Abudhabi. Marital discord with



her husband has resulted in the petitioner filing a criminal complaint against him, alleging commission of offences under Sections 498A and 323 of IPC. The children had resided with the petitioner in the UAE on a tourist visa, valid for only 60 days and had to return on expiry of the visa period. The petitioner intends to educate the children in a good school in UAE, for which Residency visa is essential. On enquiry, the petitioner was informed that, in order to obtain Residency visa in UAE, No Objection Certificate (NOC for short) from the 3rd respondent is mandatory or else, the petitioner should produce an order from a competent court permitting her to have custody of the children. Although petitioner requested the 3rd respondent to issue the NOC, the request is not acceded to. Hence, this writ petition seeking the following reliefs:-

“Issue a writ of mandamus or any other appropriate writ, order or direction permitting the petitioner to have the custody of the children namely Mehreen Mohammed Nizam and Haya Mohammed Nizam, aged 11 and 8 years respectively and consequentially to permit the petitioner to take the children to United Arab Emirates, wherein the petitioner is now working and residing.”



3. Learned counsel for the petitioner submitted that, considering the difficult situation in which the petitioner is placed, this Court may pass an order permitting the petitioner to have custody of her children. It is further submitted that the money required for sustaining the petitioner and the children can be raised only by the petitioner joining for employment in the UAE. Only the petitioner will be able to provide the special care and protection needed by the children. To educate the children in the UAE, Residency visa is essential. As per the UAE laws, either consent of the father or a valid court order is required, when the mother on her own applies for Residency visa. As the 3rd respondent is refusing to grant consent, this Court should exercise its *parens patriae* jurisdiction and permit the petitioner to take the children to the UAE and apply for Residency visa.

4. Learned Counsel for the 3rd respondent contended that the writ petition is not maintainable and the petitioner's



remedy is to approach the jurisdictional Family Court. It is submitted that the children are physically and mentally healthy. They are studying in the Model High School, Puthiyangad and shifting to the UAE will only upset their studies. While the petitioner was residing along with the children, she went abroad without the 3rd respondent's consent and managed to secure a job there. While returning to the UAE, she took the children along with her. When the petitioner requested the 3rd respondent to issue NOC, he had informed her that NOC can be granted on reaching agreement regarding the custody of the children and their maintenance. Such an agreement was insisted upon, since the petitioner was not permitting the third respondent to visit and interact with the children. The 3rd respondent also apprehends that after obtaining NOC from him, the petitioner may initiate legal action, seeking maintenance for herself and the children.

5. In reply, learned Counsel for the petitioner submitted that his client has no objection in the 3rd respondent visiting the



children and has not initiated any legal action for maintenance so far, even though the petitioner is paying only meager amounts towards maintenance, that too, irregularly.

6. No doubt, the right to custody of children is to be decided by the jurisdiction of the Family court. Here, the question is whether a direction, permitting the mother to take the children to her place of employment abroad, can be granted, keeping in the best interest of the children. In this context, it is relevant to note that the 3rd respondent has not specifically objected to the children staying with the petitioner and pursuing their studies in UAE. His grievance is that the petitioner had taken the children abroad without consent. The 3rd respondent also apprehends that the petitioner may not allow him to visit the children at UAE. The said apprehension stands allayed by the undertaking made on behalf of the petitioner that she would not prevent the 3rd respondent from visiting his children. The other concern expressed by the 3rd respondent viz; the petitioner may initiate legal proceedings



claiming maintenance, has no relevance now, since the petitioner has not initiated any such proceedings till date.

7. The ancillary question to be decided is whether this Court can step into the shoes of the father and permit/grant consent to the petitioner for taking her children to the UAE. The precedents on the point indicate that in circumstances like the one at hand, the court can exercise its *parens patriae* jurisdiction. The Constitution of India makes it imperative for the State to secure to all its citizens the rights guaranteed by the Constitution and where the citizens are not in a position to secure and assert their rights, the State must come into picture and protect and fight for those rights. Likewise, when circumstances warrant, the constitutional courts should also invoke the *parens patriae* jurisdiction for safeguarding the interest of vulnerable adults and minors. As the interest of the minors in this case will be best subserved by the children being permitted to reside with their mother and pursue their studies in the UAE, the permission sought by the petitioner ought to be



granted.

8. The writ petition is hence allowed and the petitioner is permitted to take her minor children (Mehreen Mohammed Nizam and Haya Mohammed Nizam) to the UAE, subject to the following conditions:-

i) The petitioner shall not prevent the 3rd respondent from visiting or interacting with the children.

ii) The petitioner shall abide by the orders/directions, if any, passed by the Family Court in relation to the custody of the children.

iii) If the petitioner fails to abide by the above conditions, the 3rd respondent will be at liberty to seek reopening of this matter.

sd/-

V.G.ARUN, JUDGE



APPENDIX OF WP(C) 19137/2024

PETITIONER EXHIBITS

- Exhibit P1 THE TRUE COPY OF THE MARRIAGE
CERTIFICATE DATED 02.08.2011 ISSUED BY
THE LOCAL REGISTRAR OF THALIKKULAM
GRAMA PANCHAYAT
- Exhibit P2 TRUE COPY OF THE RELEVANT PAGE OF THE
PASSPORT OF THE PETITIONER
- Exhibit P3 THE TRUE COPY OF THE RELEVANT PAGE OF
THE PASSPORT OF MEHREEN MOHAMMED NIZAM
- Exhibit P4 THE TRUE COPY OF THE RELEVANT PAGE OF
THE PASSPORT OF HAYA MOHAMMED NIZAM
- Exhibit P5 TRUE COPY OF THE DISTRICT DISABILITY
BOARD CERTIFICATE DATED 12.10.2017
ISSUED BY THE GENERAL HOSPITAL,
THRISSUR EVIDENCING THE FACTUM OF
AUTISM TO MEHREEN MOHAMMED NIZAM
- Exhibit P6 TRUE COPY OF THE FIR IN CRIME 316/2024
DATED 01.04.2024 OF VALAPPAD POLICE
STATION, THRISSUR DISTRICT
- Exhibit P7 TRUE COPY OF THE TOURIST VISA ISSUED BY
THE FEDERAL AUTHORITY FOR IDENTITY,
CITIZENSHIP CUSTOMS AND PORT SECURITY
OF UAE IN FAVOR OF MEHREEN MOHAMMED
NIZAM DATED 27.03.2024



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Exhibit P8 TRUE COPY OF THE TOURIST VISA ISSUED BY THE FEDERAL AUTHORITY FOR IDENTITY, CITIZENSHIP CUSTOMS AND PORT SECURITY OF UAE IN FAVOR OF HAYA MOHAMMED NIZAM DATED 27.03.2024 IS PRODUCED

RESPONDENT EXHIBITS

Exhibit R3(1) The true copy of the intimation dated 12-7-2024 given by the headmaster of puthiyangadi Model High school rejecting the application of the 3rd respondent

Exhibit R3(2) The true copy of the circular dated 1-9-2015 issued by the General Education Department

Exhibit R3(3) The true copy of the Thalaq notice dated 1-2-2024