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Kiran Chava v.Usha Kiran Anne, 2023 PLRonline 0004, (2023-1)209 PLRIJ 059 (Mad.)

MADRAS HIGH COURT

Before: Justice P.N.Prakash and Justice N. Anand Venkatesh

KIRAN CHAVA ALIAS KIRAN KUMAR CHAVA – Petitioner

versus

USHA KIRAN ANNE and others – Respondents.

HCP No.1689 of 2022

Reserved On:22.12.2022, Pronounced On :03.01.2023

Habeas Corpus Petition has been filed under Article 226 of Constitution of India , by father seeeking for an issue of a Writ of Habeas Corpus to secure the minor sons from the illegal custody of the mother and to produce the bodies of the minor children and hand over the custody of the said minor childrens to him , so that they can be taken to the United States of America where they were living and studying in school since they are the citizens of the said country.

Best Interest of Child – Scope of

Habeas Corpus Petition – Is maintainable and High Court can invoke its extraordinary jurisdiction for the best interests of the children

Children in question are now aged about 14½ years and they are naturalised US citizens with an American passport and their parents are also holders of American citizenship – Children are also slowly losing touch with the petitioner-father and we shudder to think as to what impression they will be carrying about the petitioner, since they are in the grips of their mother – The continuance of the present status, will damage the progress of these children, not only in terms of academics, but more on their emotional quotient – The children are now living in an environment, which is alien to them, since the best part of their life, for nearly 13 years, was spent only in the USA – Best interest of the children can be ensured only if the children return back to their native country viz., USA – The children, who are naturalised American citizens, were brought up in the social and cultural value milieu of USA and they are accustomed to the lifestyle, language, customs, rules and regulations of their native country and they will have their better avenues and prospects only if they return back to USA – The

children have not developed roots in India and hence, no harm will be caused to them if they return back to USA – Respondent-Wife is directed to take immediate steps to ensure that the children return back to USA and this process be completed within a period of six weeks

[Para 12, 13, 14, 16]

We had an opportunity to interview the children and we realised that the children are under the complete control of the 1st respondent and they were willing to let go of all those facilities which they enjoyed and were expressing their intention to continue with online classes. In matters of this nature, the Court does not decide based on what the children say, since they are in the midst of a huge turmoil in their life and hence, the duty is cast upon this Court to decide based on best interest of the children. [Para 12]

This Court also takes into consideration the order passed by the competent Court at USA granting permanent custody to the petitioner. The 1st respondent, who submitted herself to the jurisdiction of the concerned Court, for reasons best known to her, has started initiating variety of proceedings in India and her faint attempt to initiate custody proceedings in India, also met its waterloo, when her petition got dismissed. Hence, the 1st respondent cannot be permitted to disregard the order passed by a competent Court in USA and hold the children in her custody in India.[Para 15]

ForPetitioner : Mr.G.Rajagopalan, Senior Counsel, for Ms.Sunithakumari . ForRespondents: Mr.M.Muthappan for R1 toR5. R.Muniyapparaj, Additional Public Prosecutor for R9

HCP No.1689 of 2022

ORDER

N. ANAND VENKATESH, J.

“The Child is father of the Man” is a famous quote fromWilliam

§Wordsworth’s poem “My Heart Leaps Up”. The popular understanding of this phrase is that the behaviour and activities of a person’s childhood go a long way in building his personality. Children used to be enchanted with the joys of childhood and those thoughts evoke nostalgia when the child becomes a man. For Wordsworth, a rainbow in the sky made his heart leap. Alas, gone are the days when children used to enjoy their childhood and they are now helplessly made to witness the fight between their father and mother, because of their petty egos and it is painful to notice that in most of those fights, it is the children who are used as a pawn. The mental health of such a child takes a beating and how such a child is going to grow into a man and manage relationships, is a million dollar question. We were constrained to start this judgment with such a poignant note since we encounter two or three such cases on a daily basis while dealing with Habeas Corpus Petitions. This is yet anothercasewhichfallsunderthiscategoryandwehavetodealwithitkeeping in mind the best

interest of the children involved in this case.

The father of Tanush Chava and Tarun Chava, twin boys, has knocked the doors of this Court seeking for handing over the custody of the children and to take them back to the United States of America(USA) in order to continue their living and education atUSA.

The brief facts of the case are asunder:

2.1. The petitioner got married to Usha Kiran Anne (1st respondent herein) on 21.04.1999 according to Hindu rites and customs. Even before marriage, the petitioner and the 1st respondent were citizens of USA and naturally, both of them left India after 10 days of their marriage and started their matrimonial life in Virginia. Through the marriage, the twin boys were born on 16.04.2008 and they also acquired American citizenship bybirth.

2.2. The children were raised and educated in USA and this continued till December 2020. The children came along with their mother to India on 27.12.2020 to meet their grandparents and to stay with them. By then,therewas friction in the relationship between the petitioner and the 1st respondent.

2.3. The grievance of the petitioner is that the stay of the children in India was extended from time to time upto May 2021. Even thereafter, the 1strespondent was not returning back to USA. As a first step, the petitioner caused a legal notice on 23.09.2021 calling upon the 1st respondent to return back to USA along with the children. The 1st respondent issued a reply notice dated 22.10.2021, which mostly gave her justification to stay away from the petitioner, in India. The reconciliation process did not fructify and ultimately, an action was initiated by the petitioner during October 2021 for divorce and custody of the children before the appropriate Court at Virginia. The 1strespondent submitted herself to the jurisdiction of the said Court and moved a motion to transfer the jurisdiction from Virginia and this motion was denied by the Circuit Court of Fairfax County through order dated 27.01.2022 and the matter was set for trial for the custody of thechildren.

2.4. The 1st respondent moved O.P.No.719 of 2021 before this Courtseekingforthereliefofpermanentcustodyoftheminorchildren.Thepetitioner filed a petition in Application No.384 of 2022 seeking for the rejection of the petition and this Court by an order dated 21.03.2022 rejected the petition in O.P.No.719 of 2021 and gave liberty to the 1st respondent to work out her remedy before the Circuit Court of Fairfax County, USA. The 1st respondent, aggrieved by the same, filed O.S.A.No.102 of 2022 and this Appeal was dismissed as withdrawn on 12.07.2022.

2.5. The petition that was moved by the petitioner was taken up by the Circuit Court and an order was passed on 21.07.2022, giving the sole custody of the children to the petitioner and directing the 1st respondent to handover the children on or before 12.08.2022. The 1st respondent moved an Application to suspend the order passed on 21.07.2022 and accordingly, a suspension order was passed on 29.07.2022. Ultimately, a final order was passed on 18.10.2022 lifting the suspension order dated 29.07.2022 and thereby, the earlier order that was passed on 21.07.2022 was restored.Thetrial for the divorce and equity distribution was scheduled to 4th and 5th of April2023.

3. In the meantime, the 1st respondent enrolled the children with an online High School and the education of the children was continued through online mode and the children are now stay put with the 1st respondent in India. Parallelly, the 1st respondent started initiating various proceedings against the petitioner viz. O.P.No.2788 of 2022 seeking for the relief of restitution of conjugal rights before the 2nd Additional Family Court, Chennai, proceedings under the Domestic Violence Act in D.V.C.No.116 of 2022 before the Additional Mahila Court, Egmore and it was also brought to our notice that a criminal complaint has been given against the petitioner and his family members for alleged offence under Section 498A of IPC. Thus, the 1strespondent has paved way for further complications in an already tumultuous relationship prevailing between the petitioner and the 1strespondent.

4. It is under these circumstances, the Habeas Corpus Petition came up for hearing before us and we heard Mr.G.Rajagopalan, learned Senior Counsel for the petitioner, Mr.M.Muthappan, learned counsel forR1to R5 and R.Muniyapparaj, learned Additional Public Prosecutor for R9. We carefully considered the submissions made on either side and the materials placed before us.

5. At the outset, this Court has to make it abundantly clear that the dispute between the petitioner and the 1st respondent will not be gone into and we will focus our attention only on those facts which directly concern the best interests of thechildren.

6. There is no dispute with regard to the fact that the petitioner, the 1strespondent and the children are American citizens. There is also no dispute with regard to the fact that the parties concerned are Overseas Citizen of India (OCI) card holders. The OCI card is more in the nature of a long time visa and it does not confer any domiciliary right to the card holder and the card holder for all purposes is considered to be a foreigner as envisaged under the Foreigners Act, 1946. We must also bear in mind that this Court must give due regard to the order passed by the Circuit Court of Fairfax County and the implementation of thesame.

7. Before we go into the essential facts to decide on the relief sought for by the petitioner, it will be more appropriate to take note of the legal position with regard to the jurisdiction of this Court to entertain this petition and the manner in which the interest of the children must be determined, considering the fact that they are Americancitizens.

8. The co-ordinate Bench of this Court (in which one of us Justice P.N.Prakash was a party) dealt with a very similar issue in H.C.P.No.654 of 2021 in the case of ***Girish Arunagiri v. Mahalakshmi Senthil Nathan and Others***. The relevant portions in the judgment are extractedhereunder:

“14. The preliminary question is whether a habeas corpus petition is maintainable to secure the custody of the two children and direct their return to the United States. We find that this issue is no longer res integra, and is settled by a decision of the Supreme Court in ***Yashita Sahu*** *(supra), wherein, it is observed thus:*

“10. It is too late in the day to urge that a writ of habeas corpus is not maintainable if the child is in the custody of another parent. The law in this regard has developed a lot over a period of time but now it is a settled position that the court can invoke its extraordinary writ

jurisdiction for the best interest of the child. This has been done in Elizabeth Dinshaw v. Arvand M. Dinshaw [Elizabeth Dinshaw v. Arvand M. Dinshaw, (1987) 1 SCC 42 : 1987 SCC (Cri)13], Nithya Anand Raghavan v. State (NCT of Delhi) [Nithya Anand Raghavan v. State (NCT of Delhi), (2017) 8 SCC 454:(2017) 4 SCC (Civ) 104] and Lahari Sakhamuri v. Sobhan Kodali[Lahari Sakhamuri v. Sobhan Kodali, 2019) 7 SCC 311 : (2019) 3 SCC (Civ) 590] among others. In all these cases, the writ petitions were entertained. Therefore, we reject the contention of the appellant wife that the writ petition before the High Court of Rajasthan was notmaintainable."

15. WealsonoticethatthebasisofourjurisdictionunderArticle 226 of the Constitution of India, in a case of this nature, is essentially predicated on the best interests of the children. We have, therefore, consciously refrained from being sidetracked into the matrimonial allegations levelled by the spouses against each other in their respective affidavit and counteraffidavit.

16. In cases of child custody, the jurisdiction of the Court is essentially parens patriae. The welfare and best interests of the children must be the pre- dominant consideration. In ***Elizabeth Dinshaw*** *(supra), the Supreme Court has observed asunder:*

"Whenever a question arises before a court pertaining to the custody of a minor child, the matter is to be decided not on considerations of the legal rights of parties but on the sole and predominant criterion of what would best serve the interest and welfare of the minor."

When a writ of habeas corpus is sought to direct the return of a child to another country, the Court would also examine which of the two Courts (the domestic or foreign) would have the most intimate connect with the minor for the purposes of securing the child's safety and well-being. In ***Surinder Kaur Sandhu vs****.* ***Harbax Singh Sandhu [(1984) 3 SCC 698]****, the Supreme Court dealt with anidentical case of spouses who had set up their matrimonial home in England. Their child was a British citizen. The Court, speaking through Chief Justice Y.V.Chandrachud, opinedthus:*

Ordinarily, jurisdiction must follow upon functional lines. That is to say, for example, that in matters relating to matrimony and custody, the law of that place must govern which has the closest concern with the well-being of the spouses and the welfare of the offsprings of marriage. The spouses in this case had made England their home where this boywas born to them. The father cannot deprive the English Court of itsjurisdiction to decide upon his custody by removing him to India, not inthe normal movement of the matrimonial home but, by an act which was gravely detrimental to the peace of that home.The fact that the matrimonial home of the spouses was in England, establishes sufficient contacts or ties with that State in order to make it reasonable and just for the courts of that State to assume jurisdiction to enforce obligations which were incurred therein by thespouses."

(emphasis supplied by us)

17. Keeping in mind the best interests of the minor children and the "most intimate connect" principle, the line of enquiry in a case of this nature has been set out by the Supreme Court in ***V. Ravi Chandran (Dr.) (2) vs. Union of India and others [(2010) 1***

***SCC 174]**, in the followingpassage:*

"29. While dealing with a case of custody of a child removed by a parent from one country to another in contravention of the orders of the court where the parties had set up their matrimonial home, the court in the country to which the child has been removed must first consider the question whether the court could conduct an elaborate enquiry on the question of custody or by dealing with the matter summarily order a parent to return custody of the child to the country from which the child was removed and all aspects relating to the child's welfare be investigated in a court in his own country. Should the court take a view that an elaborate enquiry is necessary, obviously the court is bound to consider the welfare and happiness of the child as the paramount consideration and go into all relevant aspects of welfare ofthe child including stability and security, loving and understanding care and guidance and full development of the child's character, personality and talents. While doing so, the order of a foreign court as to his custodymaybegivendueweight;theweightandpersuasiveeffectofa foreign judgment must depend on the circumstances of eachcase.

30. However, in a case where the court decides to exercise its jurisdiction summarily to return the child to his own country, keeping in view the jurisdiction of the court in the native country which has the closest concern and the most intimate contact with the issues arising in the case, the court may leave the aspects relating to the welfare of the child to be investigated by the court in his own native country as that could be in the best interests of the child. The indication given in McKee v. McKee [1951 AC 352 : (1951) 1 All ER 942 (PC)] that there may be cases in which it is proper for a court in one jurisdiction to make an order directing that a child be returned to a foreign jurisdiction without investigating the merits of the dispute relating to the care of the child on the ground that such an order is in the best interests of the child has been explained in L (Minors), In re [(1974) 1 WLR 250 : (1974) 1 All ER 913 (CA)] and the said view has been approved by this Court in Dhanwanti Joshi [(1998) 1 SCC 112] . Similar view taken by the Court of Appeal in H. (Infants), In re[(1966) 1 WLR 381 (Ch & CA) : (1966) 1 All ER 886 (CA)] has been approved by this Court inElizabeth Dinshaw [(1987) 1 SCC 42 : 1987 SCC (Cri)13]."

9. *To complete the picture, we also notice a mild jurisprudential shift in **Nithya Anand Raghavan** (supra) and **Kanika Goel v. State (NCT of Delhi) [(2018) 9 SCC 578]**, wherein, it was held that the doctrine of "intimate and closest concern" are merely of persuasive relevance when the child is uprooted from its native country andtakentoaplacetoencounteralienenvironment,language,custom, etc. with the portent of mutilative bearing on the process of its overall growth and grooming; the adjudicative mission in such cases has the obligationtosecuretheunreservedwelfareofthechildastheparamount consideration. These principles have been cited and reiterated in **Lahari Sakhamuri** (supra). In its recent decision in **Nilanjan Bhattacharya v. State of Karnataka [2021 SCC Online SC 928]**, the Supreme Court opined that where a child has been removed from its native country to India, it would be in the best interests of the child to return to its native country if the child has not developed roots in India and no harm would be caused to the child on such return. It was held that where one parent had acted with sufficient promptitude, the Court is only*

required to conduct a summary inquiry to ascertain whether there is any harm if the child returns to the United States, where he was born and has been brought up. The Court is required to engage in an elaborate inquiry on the merits of the case, only if a considerable time has passed since the child has been removed and if the child has developed roots in India. In either event, the primary consideration of the Court is to ascertain the welfare of thechild."

10. It will also be pertinent to take note of the recent judgment of the Apex Court in ***Rohit Thammana Gowda v. State of Karnataka and Others*** in Civil Appeal No.4987 of 2022, dated 29.07.2022. This judgment becomes very relevant since the facts therein are very similar to the facts of the present case. Hence, the relevant portions are extractedhereunder:

*"**8.**At the outset we may state that in a matter involving the question of custody of a child it has to be borne in mind that the question 'what is the wish/desire of the child' is different and distinct from the question 'what would be in the best interest of the child'. Certainly, the wish/desire of the child can be ascertained through interaction but then, the question asto'what would be in the best interest of the child' is a matter to be decided by the court taking into account all the relevant circumstances. When couples are at loggerheads and wanted to part their ways as parthian shot they may level extreme allegations against each other so as to depict the other unworthy to have the custody of the child. In the circumstances, we are of the view that for considering the claim for custody of a minor child, unless very serious, proven conduct which should make one of them unworthy to claim for custody of the child concerned, the question can and shall be decided solely looking into the question as to, 'what would be the best interest of the child concerned'. In other words, welfare of the child should be the paramount consideration. In that view of the matter we think it absolutely unnecessary to discuss and deal with all the contentions and allegations in their respective pleadings and affidavits.*

11. To answer the stated question and also on the question of jurisdiction we do not think it necessary to conduct a deep survey on the authorities This Court in Nithya Anand Raghawan v. State (NCT of Delhi) [(2017) 8 SCC 454], reiterated the principle laid in V. Ravi Chandran v. Union of India [(2010) 1 SCC 174] and further heldthus:—

*"In exercise of summary jurisdiction, the court must be satisfied and of the opinion that the proceedings instituted before it was in **close proximity** **and filed promptly after the child was removed from his/her native state** and brought within its territorial jurisdiction, **the child has not gained roots here and further that it will be in the child's welfare to return to his native state** because of the difference in language spoken or social customs and contacts to which he/she has been accustomed or such other tangible reasons. In such a case the court need not resort to an elaborate inquiry into the merits of theparamountwelfare of the child but leave that inquiry to the foreign court by directing return of the child. **Be it noted that in exceptional cases the court can still refuse to issue direction to return the child to the native state and more particularly in spite of a pre-existing order of the foreign court in that behalf, if it is satisfied that the child's return may expose him to a grave risk of harm**".*

12. (Emphasis added)

*13. In **Ravi Chandran's** case (supra), this Court took note of the actual role of the High Courts in the matter of examination of cases involving claim of custody of a minor based on the principle of parens patriae jurisdiction considering the fact that it is the minor who is within the jurisdiction of the court. Based on such consideration it was held that even while considering Habeas Corpus writ petition qua a minor, in a given case, the High Courts may direct for return of the child or decline to change the custody of the child taking into account the attending facts and circumstances as also the settled legal position. In Nitya Anand's case this Court had also referred to the decision in Dhanwanti Joshi v. Madhav Unde [(1998) 1 SCC 112] which in turn was rendered after referring to the decision of the Privy Council in Mckee v. Mckee [[1951] A.C. 352]. In Mckee's case the Privy Council held that the order of the foreign court would yield to the welfare and that the comity of courts demanded not its enforcement, but its grave consideration. Though, India is not a signatory to Hague Convention of 1980, on the "Civil Aspects of International Child Abduction", this Court, virtually, imbibing the true spirit of the principle of parens patriae jurisdiction, went on to hold in Nithya Anand Raghavan's case thus:*

"40. ... As regards the non-Convention countries,the law is that the court in the country to which the child has been removedmustconsiderthequestiononmeritsbearingthewelfareof the child as of paramount importance and reckon the order of the foreign court as only a factor to be taken into consideration, unless the court thinks it fit to exercise summary jurisdiction in the interests of the child and its prompt return is for its welfare. In exercise of summary jurisdiction, the court must be satisfied and of the opinion that the proceeding instituted before it was in close proximity and filed promptly after the child was removed from his/her native state and brought within its territorial jurisdiction, the child has not gained roots here and further that it will be in the child's welfare to return to his native state because of the difference in language spoken or social customs and contacts to which he/she has been accustomed or such other tangible reasons. In such a case the court need not resort to an elaborate inquiry into the merits of the paramount welfare of the child but leave that inquiry to the foreign court by directing return of the child. Be it noted that in exceptional cases the court can still refuse to issue direction to return the child to the native state and more particularly in spite of a pre-existing order of the foreign court in that behalf, if it is satisfied that the child's return may expose him to a grave risk of harm. This means that the courts in India, within whose jurisdiction the minor has been brought must "ordinarily" consider the question on merits, bearing in mind the welfare of the child as of paramount importance whilst reckoningthe preexistingorderoftheforeigncourtifanyasonlyoneofthefactors and not get fixated therewith. In either situation – be it a summary inquiry or an elaborate inquiry – the welfare of the child is of paramount consideration. Thus, while examining the issue the courts in India are free to decline the relief of return of the child brought within its jurisdiction, if it is satisfied that the child is now settled in its new environment or if it would expose the child to physical or psychological harm or otherwise place the child in an intolerable position or if the child is quite mature an objects to its return. We are in respectful agreement with the aforementioned exposition."

14. Having taken note of the position thus settled in the said decisions we will now consider the question whether such an exercise had been undertaken properly in this case. This is because in this case foreign Court, as noted above, passed orders for the return of the child to USA. There is nothing on record to show that such an order passed on the second occasion was also vacated subsequently. True that the first order to that effect passed on 26.10.2020 was subsequently vacated at the instance of the third respondent on 30.10.2020. However, going by the records the subsequent order passed in March 2021 Superior Court of Washington, County of King for the return of the child owing to non-compliance led to further order for contempt on 29.4.2021. The High Court, obviously, observed that though the U.S Court subsequently suspended the order of spousal support did not pass any order regarding the custody of the child and hence, custody of the child is continuing with respondent No. 3. We have referred to those aspects solely for the purpose of pointing out that the High Court was aware of the existence of order for the return of the child by the USCourt.

15. Be that as it may, we will now consider the question whether consideration was bestowed by the High Court in the matter in terms of the position settled by this Court in the aforementioned decisions i.e., by giving predominant importance to the welfare of the child. A scanning of the impugned judgment would reveal that the High Court had rightly identified the vital aspect that paramount consideration should be given to the welfare of the child while considering the matter.

We have stated earlier that the question 'what is the wish/desire of the child' can be ascertained through interaction, but then, the question as to 'what would be the best interest of the child' is a matter to be decided by the court takingintoaccount all the relevant circumstances. A careful scrutiny of the impugned judgment would, however, reveal that even after identifying the said question rightly the High Court had swayed away from the said point and entered into consideration of certain aspects not relevant for the said purpose. We will explain the raison d'etre for the saidremark.

16. The High Court, after taking note of the various proceedings initiated by the appellant before the US Courts formed an opinion that he had initiated such proceedings only with an intention to enhance his chance of success in the Habeas Corpus Writ Petition and to pre-empt any move by the wife (respondent No. 3) for custody by approaching the Indian Courts. In other words, the initiation of proceedings before the US Court was motivated and definitely not in good faith and was also not in the best interests of the son. In this context, it is relevant to note that US Court concerned had, admittedly, ordered for the return of the child and owing to the non- compliance with the said order initiated action for contempt. The spousal support order passed by the US Court was also suspended for the reason of non-compliance with the order for return of the child. When US Court was moved and the court had passed orders the above mentioned observation can only be regarded as one made at a premature stage and it was absolutely uncalled for and it virtually affected the process of consideration of the issue finally. When the US Court passed such orders and not orders on the custody of the child it ought not to have been taken as permission for respondent No. 3 to keep the custody of the child. At any rate, after the order for return of the child and orders for contempt such a plea of the respondent No.

3 ought not to have beenentertained.

Considering the fact that the marriage between the appellant and respondent No. 3 was conducted in Bengaluruinaccordance with Hindu rites and ceremonies, the High Court held that the US Courts got no jurisdiction to entertain any dispute arising out of the marriage. This conclusion was arrived at without taking into account the efficacy of the order passed by the US Court. It was not strictly for the return of respondent No. 3 but was an order intending to facilitate the return of a naturalised citizen of America holding an American Passport. Paragraph 85 of the impugned judgment would reveal that the High Court had enquired about the desire and comfort of the child with respect to his schooling and stay during the interaction. The court found that the child expressed no difficulty in his schooling or his stay in Bengaluru and ultimately satisfied that the child is comfortable and secure with staying with his mother.

The child in question is a boy, now around 11 years and a naturalised US citizen with an American passport and his parents viz., the appellant and respondent No. 3 are holders of Permanent US Resident Cards. These aspects were not given due attention. So also, the fact that child in question was born in USA on 03.02.2011 and till the year 2020 he was living and studying there, was also not given due weight while considering question of welfare of the child. Merely because he was brought to India by the mother on 03.03.2020 and got him admitted in a school and that he is now feeling comfortable with schooling and stay in Bengaluru could not have been taken as factors for considering the welfare of the boy aged 11 years born and lived nearly for a decade in USA. The very fact that he is a naturalised citizen of US with American passport and on that account he might, in all probability, have good avenues and prospects in the country where he is a citizen. This crucial aspect has not been appreciated at all. In our view, taking into account the entire facts and circumstances and the environment in which the child had born and was brought up for about a decade coupled with the fact that he isanaturalised American citizen, his return to America would be in his best interest. In this case it is also to be noted that on twooccasions American courts ordered to return the child to USA. True that the first order to that effect was vacated at the instance of respondent No. 3. However, taking into account all aspects, we are of the view that it is not a fit case where courts in India should refuse to acknowledge the orders of the US Courts directing return of the minor child to the appellant keeping in view the best interests of the child. In our view, a consideration on the point of view of the welfare of the child would only support the order for the return of the child to his native country viz., USA. For, the child is a naturalised American citizen with American passport. He has been brought up in the social and culture value milieu of USA and, therefore, accustomed to the lifestyle, language, custom, rules and regulations of his native country viz., USA. Further, he will have better avenues and prospects if he returns to USA, being a naturalised Americancitizen.

In this case during the course of the arguments the learned counsel for the appellant on behalf of the appellant submitted that in case respondent No. 3 wants to return and stay in US with her parents so as to have proximity to and opportunity to take care of the child the appellant is prepared to do the needful, if the respondent No. 3 so desires. It is further submitted that the appellant is also prepared to find suitable accommodation for them in

thatregard."

It is pellucid from the above judgments that the Habeas Corpus Petition is maintainable and this Court can invoke its extraordinary jurisdiction for the best interests of the children. There is alsosufficientindication in the above judgments as to how to deal in cases where the child is a naturalised foreign citizen and has grown and lived in a foreign soil for a sufficiently longtime.

9. The children in question are now aged about 14½ years and they are naturalised US citizens with an American passport and their parents viz. the petitioner and the 1st respondent are also holders of American citizenship. During their early years, they were sent to a Montessori school system and thereafter, they joined Grace Episcopal School and studied there till 4thstandard and thereafter joined St.Albans School where they continued till their 7th standard. It is also seen from records that the children were exposed to various extra-curricular activities like swimming, basketball, music, chess etc. and they both are Gold medallists in the Science Olympiad. Infact, Tanush Chava even qualified for Junior Olympics in swimming while he was training with St. Albans School swimming team. All this was going well till the end of2020.

10. The children travelled to India and they are staying herefrom27.12.2020 onwards, in the custody of the 1st respondent. Unfortunately, the children are now made to undergo online schooling and from one of the messages that was sent by the 1st respondent, we are able to see that the children, in order to meet the timelines, have to attend classes sometimes at wee hours at 1.30 a.m./ 2.30 a.m. IST.

11. We had an opportunity to interview the children and we realised that the children are under the complete control of the 1st respondent and they were willing to let go of all those facilities which they enjoyed and were expressing their intention to continue with online classes. In matters of this nature, the Court does not decide based on what the children say, since they are in the midst of a huge turmoil in their life and hence, the duty is cast upon this Court to decide based on best interest of the children.

12. As on today, the children are undergoing online schooling with George Washington University. The maximum interaction that takes place is with the teachers for a couple of hours, 4 days a week. That apart, all the other activities in which these children were involved till 2020, has come to a grinding halt. The children have lost physical contact with other children and their physical activities have also virtually stopped. The children are also slowly losing touch with the petitioner and we shudder to think as to what impression they will be carrying about the petitioner, since they are in the grips of their mother. The continuance of the present status, will damage the progress of these children, not only in terms of academics, but more on their emotional quotient. The children are now living in an environment, which is alien to them, since the best part of their life, for nearly 13 years, was spent only in the USA.

13. In our considered view, the best interest of the children can be ensured only if the children return back to their native country viz., USA. The children, who are naturalised

American citizens, were brought up in the social and cultural value milieu of USA and they are accustomed to the lifestyle,language, customs, rules and regulations of their native country and they willhave their better avenues and prospects only if they return back to USA. The children have not developed roots in India and hence, no harm will be caused to them if they return back toUSA.

14. This Court also takes into consideration the order passed by the competent Court at USA granting permanent custody to the petitioner. The 1strespondent, who submitted herself to the jurisdiction of the concerned Court, for reasons best known to her, has started initiating variety of proceedings in India and her faint attempt to initiate custody proceedings in India, also met its waterloo, when her petition got dismissed. Hence, the 1st respondent cannot be permitted to disregard the order passed by a competent Court in USA and hold the children in her custody in India. We also take into consideration the offer made by the learned Senior Counsel to the effect that the 1st respondent can also accompany the children to USA and that the petitioner is willing to accommodate the 1st respondent along with the children.

15. In the light of the above discussion, we allow this Habeas Corpus Petition in the following terms:

a) The 1st respondent is directed to take immediate steps to ensure thatTanushChavaandTarunChavareturnbacktoUSAandthis

process shall be completed by the 1st respondent within a period of **six weeks** from the date of uploading of this order in the High Court website. The custody of the children shall be handed over to the petitioner within a period of **eight weeks** from the date of uploading of this order in the High Court website.

b) It is left open to the 1st respondent to accompany the children to USA and in which case, the petitioner shall accommodate the 1strespondent and provide her with all facilities andmaintenance.

c) If the 1st respondent is not willing to stay at USA, there shall be a direction to the 1st respondent to accompany the children to USA and handover custody of the children to thepetitioner.

d) The petitioner shall make immediate arrangements to get the children relieved from the present school and admit the children in a regular school and shall provide them with all facilities/opportunities which they used to enjoy earlier.

e) If the 1st respondent requires custody or visitation rights of the children, it is left open to the 1st respondent to work out her remedy before the appropriate Court in USA and;

f) Insofar as the matrimonial dispute between the petitioner and the 1st respondent is concerned, it shall be agitated independently in the manner known to law and the observations made in this judgment shall not come in the way of the 1strespondent.