

A.F.R.



2026:AHC-LKO:18371

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

WRIT - C No. - 1456 of 2026

Smt. Deepa Katiyar

.....Petitioner(s)

Versus

State of U.P. Thru. Prin. Secy. Home Lko. another 6 others

.....Respondent(s)

Counsel for Petitioner(s)	: Nripendra Mishra,
Counsel for Respondent(s)	: C.S.C.,

Court No. - 17:

HON'BLE SUBHASH VIDYARTHI, J.

1. Heard Sri Nripendra Mishra, the learned counsel for the petitioner, Sri Vishal Tahlani, the learned Standing Counsel appearing on behalf of the State and perused the records.
2. By means of the instant petition filed under Article 226 of the Constitution of India, the petitioner has sought following reliefs: -

“(1) To issues a writ order or direction in the nature of Mandamus commanding the opposite party no.3 Child Welfare Committee to modify its own order dated 01.08.2022 as to four meetings instead of two meeting and every day to phone calls and video calls to the mother of childe and send the children's to their mother place in vacations.

(II) Issue a writ order or direction in the nature of Mandamus commanding the, opposite party no.5 police of P.S. Kot Ayodhya Ayodhy to comply the order of opposite party no.3 i.e. Child Welfare Committee.

(III) Issue a writ order or direction in the nature of Mandamus commanding the opposite party no.2 i.e. District Magistrate and 3 Child Welfare Committee to take appropriate action representation dated 23.12.2025 and direct to lodge the F.I.R.as J.J.Act 2015.

(IV) To issue a writ order or direction in the nature of Mandamus commanding the opposite party no.6 i.e. Bhavdiya Public School Ayodhya to call the petitioner in parent's teacher meeting and add in WhatsApp group of school groups for parents and also recognized the petitioner as parent in school records.

(V) To issue a writ order or direction in the nature of Mandamus commanding the, opposite party no.7 i.e. Siddhant Kannaujiya to allow to spend the time with minor petitioner children to during school vacation/holiday, birthdays, festivals and other significant personal or emotional occasions.

(VI) To issue a writ order or direction in the nature of CERTIOARI to quash the order dated 30.09.2024 passed by learned Spl. Chief Judicial Magistrate (custom) Lucknow Criminal Misc. case no.646 of 2022 Smt. Deepa Katiyar versus Dr. Siddhant Kannaujiya and other and order 03.10.2025 passed by Additional Session Judge court no.9, Lucknow in Criminal appeal no.160 of 2025, Smt. Deepa Katiyar versus Dr. Siddhant contained as Annexure No.961] Kannaujiya to this affidavit.

(VII) To issue writ order other any direction which this Hon'ble Court deems fit and proper under the circumstance of the case in the interest of justice.

(VIII) To allow the writ petition with costs."

3. The brief facts of the case, as pleaded in the writ petition, are that the petitioner got married to the opposite party no.7 on 02.03.2014. She has alleged that the opposite party no.7 used to ill-treat her for demanding dowry. She delivered a son on 17.02.2015, who has been named Master Shivansh and a daughter was born in the year 2016. The name of the daughter and her date of birth have not been disclosed in the writ petition. The son of the petitioner is suffering from autism disease.

4. Due to certain issues that cropped up between the petitioner and the opposite party no.7 a case arising out of their matrimonial dispute is said to be pending, but neither the nature of the case, nor its particulars have been disclosed in the writ petition. The petitioner has stated that she has filed Miscellaneous Case No. 52 of 2022 stating that the father of the children (the opposite party no.7) is not permitting them to meet their mother (the petitioner). The Child Welfare Committee, Ayodhya has passed an order dated 01.08.2022, treating the children to be children in need of care and protection under Section 2 (14) (iv) and directing the opposite party no.7 to bring the children to one stop center, Darshan Nagar Ayodhya to enable them to meet their mother (the petitioner) and also to make the children talk to their mother, whenever the children express a desire. The order states that upon any other order being passed by the competent court, the order dated 01.08.2022 will stand nullified *ipso facto*.
5. The opposite party no.7 challenged the order dated 01.08.2022 by filing Appeal No. 4343 of 2022 under Section 101 of the Act, which has been dismissed by means of an order dated 27.09.2022 passed by the District Magistrate, Ayodhya, on the ground that the order dated 01.08.2022 passed by the Child Welfare Committee does not fall within the purview of Section 101(1) and, therefore, the appeal was not maintainable.
6. The petitioner thereafter filed Habeas Corpus Writ Petition No. 400 of 2022 on behalf of the children stating that the children were in illegal custody of their father and their custody should be handed over to their mother. The petition was disposed off by an order dated 24.05.2023 passed by a coordinate Bench of this Court holding that the children residing with their natural father are in illegal custody. However, this court observed that if the mother wants custody of her minor children, she has a remedy to approach appropriate forum either by moving an application/petition under the Guardians and Wards Act, 1890. This Court

further observed that regarding visitation rights the order dated 01.08.2022 passed by the Child Welfare Committee, Ayodhya, already exists, which needs no interference and if the petitioner is aggrieved by the said order, she has a remedy under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 (which will hereinafter be referred to as the “Juvenile Justice Act”).

7. The petitioner filed an application under Section 21 of the Protection of Women from Domestic Violence Act bearing Criminal Misc. Case No.4649 of 2022 in the Court of Special Chief Judicial Magistrate (Custom) Lucknow. This application was rejected by means of an order dated 30.09.2024, stating that the Child Welfare Committee, Ayodhya has already passed an order dated 01.08.2022 granting visitation rights to the petitioner. The petitioner challenged the aforesaid order by filing Writ-C No. 9275 of 2022, but it was dismissed for want of prosecution on 24.01.2025. There is no averment that the petitioner has filed any application for recall of the order dated 24.01.2025 dismissing Writ-C No. 9275 of 2022 for want of prosecution. The petitioner has also pleaded that she had filed Suit No.13 of 2025, under Section 7/25 of the Guardians and Wards Act, which is pending in the court of the Additional Principal Judge, Family Court, Ayodhya.
8. Thereafter, the petitioner filed Criminal Appeal No.160 of 2025, challenging the validity of the order dated 30.09.2024, passed by the Chief Judicial Magistrate, Custom, Lucknow and that appeal has also been dismissed by means of a judgment and order dated 03.10.2025 passed by the learned Additional Session Judge, Court No.9, Lucknow.
9. The petitioner has alleged that the opposite party no.7 is not complying with the order dated 01.08.2022, passed by the Child Welfare Committee and she has moved several applications in this regard to U.P. State Commission for Protection of Child Rights, to District Probation Officer and to the District Magistrate.

10. This Petition was taken up on 10.03.2026, on which date this Court had heard the learned counsel for the petitioner and thereafter had observed that it appeared that the children residing with their father cannot be said to be “child in need of care and protection” as defined in Section 2(14) of the Juvenile Justice Act and, therefore, the Child Welfare Board constituted under Juvenile Justice Act has no jurisdiction to entertain any proceeding in respect of children of the petitioner and the opposite party no.7 and the court had granted time to the learned counsel for the petitioner to advance submissions on this point and had passed over the matter.

11. The learned counsel for the petitioner has submitted that the Child Welfare Committee has jurisdiction to pass suitable orders in the “best interest of child” as defined in Section 2 (9) of the Juvenile Justice Act. He has also submitted that the Child Welfare Committee has vast powers as provided in Section 29 of the Juvenile Justice Act.

12. Section 2(14) of the Act defines “child in need of care and protection” as follows: -

2. (14) “child in need of care and protection” means a child—

(i) who is found without any home or settled place of abode and without any ostensible means of subsistence; or

(ii) who is found working in contravention of the provisions of this Act or labour laws for the time being in force or is found begging, or living on the street; or

(iii) who resides with a person (whether a guardian of the child or not) and such person—

(a) has injured, exploited, abused or neglected the child or has violated any other law for the time being in force meant for the protection of child; or

(b) has threatened to kill, injure, exploit or abuse the child and there is a reasonable likelihood of the threat being carried out; or

(c) has killed, abused, neglected or exploited some other child or children and there is a reasonable likelihood of the child in question being killed, abused, exploited or neglected by that person; or

(iv) who is mentally ill or mentally or physically challenged or suffering from terminal or incurable disease, having no one to support or look after or having parents or guardians unfit to take care, if found so by the Board or the Committee; or

(v) who has a parent or guardian and such parent or guardian is found to be unfit or incapacitated, by the Committee or the Board, to care for and protect the safety and well-being of the child; or

(vi) who does not have parents and no one is willing to take care of and protect or who is abandoned or surrendered;

(vii) who is missing or run away child, or whose parents cannot be found after making reasonable inquiry in such manner as may be prescribed; or

(viii) who has been or is being or is likely to be abused, tortured or exploited for the purpose of sexual abuse or illegal acts; or

(ix) who is found vulnerable and has been or is being or is likely to be inducted into drug abuse or trafficking; or

(x) who is being or is likely to be abused for unconscionable gains; or

(xi) who is victim of or affected by any armed conflict, civil unrest or natural calamity; or

(xii) who is at imminent risk of marriage before attaining the age of marriage and whose parents, family members, guardian and any other persons are likely to be responsible for solemnisation of such marriage;”

13. The learned counsel for the petitioner has submitted that son of the petitioner is suffering from autism and, therefore, he would fall within the purview of Section 2 (14) (iv) of the Act. Section 2 (14) (iv)

refers to a child who is mentally ill, or mentally or physically challenged, or suffering from a terminal or incurable disease **having no one to support or look after or having parents or guardians unfit to take care, if found so by the board or the committee.** In the present case, the Child Welfare Committee has not recorded any such finding in the order dated 01.08.2002. In absence of the child having been found to be a child in need of care and protection as defined in Section 2(14) of the Act, the Child Welfare Board has no jurisdiction to pass any order in respect of the child.

14. As is apparent from the pleadings by the petitioner herself in the writ petition, there is a matrimonial dispute going on between the petitioner and her husband-the opposite party no.7. Although the petitioner has pleaded that matrimonial litigation is going on between the parties, the nature of case and its particulars and/or the number of matrimonial cases going on between the parties have not been disclosed in the petition. In case any matrimonial suit is pending between the parties before the Family Court, it is always open to the parties to file an application under Section 26 of the Hindu Marriage Act in the pending suit, which provides as follows: -

***“26. Custody of children.** - In any proceeding under this Act, the court may, from time to time, pass such interim orders and, make such provisions in the decree as it may deem just and proper with respect to the custody, maintenance and education of minor children, consistently with their wishes, wherever possible, and may, alter the decree, upon application by petition for the purpose, make from time to time, all such orders and provisions with respect to the custody, maintenance and education of such children as might have been made by such decree or interim orders in case the proceeding for obtaining such decree were still pending, and the court may, also from time to time revoke, suspend or vary any such orders and provisions previously made:*

Provided that the application with respect to the maintenance and education of the minor children, pending the proceeding for obtaining such decree shall, as far as possible, be disposed of

within sixty days from the date of service of notice on the respondent.”

15. The petitioner has disclosed that she has filed an application under the Protection of Women from Domestic Violence Act claiming custody/visitation of the children. She has filed a suit under Section 7/25 of Guardians and Wards Act for the same purpose. She has also instituted proceedings under the Juvenile Justice Act with the same object. She had also filed a writ petition seeking a Writ of Habeas Corpus for claiming custody of the children from their natural father. In addition to all the aforesaid numerous proceedings, she has also approached the Child Welfare Committee under the Juvenile Justice Act for claiming custody/visitation of the children.
16. Passing orders regarding custody/visitation of children of parents whose matrimonial relations have become estranged and who are pursuing matrimonial cases before the family court does not fall within the scope of the Juvenile Justice Act and it appears that the application filed by the petitioner regarding custody/visitation of her children before the Child Welfare Committee constituted under the Juvenile Justice Act was a gross abuse of the process of law and was designed to multiply the proceedings instituted against her husband-the opposite party no.7 by adding one more forum, while the opposite party no.7 is already facing proceedings instituted by the petitioner before multiple fora i.e. the High Court (habeas corpus writ petition), the Court of Additional Chief Judicial Magistrate (Domestic Violence Act), and the Family Court (matrimonial suit and proceedings under Guardians and Wards Act).
17. The Child Welfare Committee has no jurisdiction to entertain any application regarding custody/visitation of children of parties between whom a matrimonial dispute is going on as the children of such estranged parents residing with one of their natural guardians cannot be said to be children in need of care and protection under the Juvenile Justice Act.

18. In **Ajay Singh v. State of Chhattisgarh**: (2017) 3 SCC 330, the Hon'ble Supreme Court has explained the scope of powers under Section 227 of the Constitution of India, in the following manner: -

“23. Article 227 of the Constitution reads as follows:

“227. Power of superintendence over all courts by the High Court.—

(1) Every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction.

(2) Without prejudice to the generality of the foregoing provisions, the High Court may—

(a) call for returns from such courts;

(b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and

(c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts.

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practising therein:

Provided that any rules made, forms prescribed or tables settled under clause (2) or clause (3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor.

(4) Nothing in this Article shall be deemed to confer on a High Court powers of superintendence over any court or tribunal constituted by or under any law relating to the Armed Forces.”

*The aforesaid Article confers power of superintendence on the High Court over the courts and tribunals within the territory of the State. **The High Court has the jurisdiction and the authority to exercise suo motu power.***

*24. In Achutananda Baidya v. Prafulla Kumar Gayen [(1997) 5 SCC 76] a two-Judge Bench while dealing with the power of superintendence of the High Court under Article 227 has opined that the power of superintendence of the High Court under Article 227 of the Constitution is not confined to administrative superintendence only but such power includes within its sweep the power of judicial review. The power and duty of the High Court under Article 227 is essentially to ensure that the courts and tribunals, inferior to the High Court, have done what they were required to do. Law is well settled by various decisions of this Court that **the High Court can interfere under Article 227 of the Constitution in cases of erroneous assumption or acting beyond its jurisdiction, refusal to exercise jurisdiction, error of law apparent on record as distinguished from a mere mistake of law, arbitrary or capricious exercise of authority or discretion, a patent error in procedure, arriving at a finding which is perverse or based on no material, or resulting in manifest injustice.**”*

19. I am of the considered view that the order dated 01.08.2022, passed by the Child Welfare Committee, Ayodhya, has been passed without jurisdiction and the same is liable to be set aside by taking its cognizance suo motu in exercise of the power of superintendence conferred upon this court by Article 227 of the Constitution of India.
20. Accordingly, the order dated 01.08.2022, passed by the Child Welfare Committee, Ayodhya granting visitation rights to the petitioner is hereby set aside. As a consequence of this order, reliefs 1, 2, and 3 of the petition become redundant. The proper proceeding instituted by the petitioner claiming custody/visitation is the application under Section 7/25 of the Guardians and Wards Act, 1890, filed before the Principal Judge, Family Court, Ayodhya, bearing Suit No. 13 of 2025. However, there is no averment as to whether notices of the aforesaid case have been served on the defendant - opposite party no.7 and whether it is ripe for hearing.
21. Keeping in view the interest of the children, a direction is issued to the Principal Judge, Family Court, Ayodhya, to decide Suit No.13 of 2025, under Section 7/27 of Guardians and Wards Act, 1890

expeditiously in accordance with law, after giving an adequate opportunity of hearing to the parties, but without granting any unnecessary adjournment to any of the parties and by fixing dates at short intervals.

22. It is being left to the discretion of the Family Court that in case numerous proceedings between the parties are pending in the Family Court, the Family Court may consider the efficacy of connecting the cases and deciding them together.
23. With the aforesaid observations/directions, the writ petition stands *disposed off*.

(Subhash Vidyarthi J.)

March 12, 2026
Ram.