

*** HON'BLE SRI JUSTICE CHALLA KODANDA RAM**

+ WRIT PETITION No.41101 OF 2014

% 1st May, 2015

Anumolu Srinivasa Rao

... Petitioner

AND

\$ The District Collector and Chairman, Local Level Committee under National Trust Act, 1999, Krishna District at Chilakalapudi, Machilipatnam and three others

... Respondents

! Counsel for the Petitioner : Learned Senior Counsel Sri

Vedula Venkata Ramana

^ Counsel for the respondents 1&2 : Learned Asst.Government

Pleader for Revenue (TS)

^ Counsel for the respondent 2 : Learned Standing Counsel

for Central Government

^ Counsel for the respondent 3 : Sri Y. Ramatirtha

< Gist:

> Head Note:

? Cases referred:

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.41101 of 2014

ORDER:

This writ petition is filed questioning the order dated 29.10.2014 principally on the grounds that the petitioner, being the husband of Anumolu Srilakshmi, is the natural guardian and, without his consent, application under Section 14 of the National Trust For The Welfare Of Persons With Autism, Cerebral Palsy, Mental Retardation And Multiple Disabilities Act, 1999 (in short "Act 44 of 1999") is not maintainable, especially on account of the provision under Section 14 (2) of Act 44 of 1999. In response to the notice received on 18.10.2014 from the 4th respondent, the petitioner filed a detailed representation on 01.11.2014 and the hearing was fixed on 27.10.2014, but no hearing took place on that day. As the petitioner did not have the opportunity of making his submissions, which is a violation of the principles of natural justice, the impugned order is liable to be set aside on that ground alone. Smt. Anumolu Srilakshmi, who is the wife of the petitioner, is not a mentally retarded person, though she may be with slow mental reflexes and there is no determination which is made that she is a mentally retarded person. The impugned order does not record any reasons and as such unsustainable. The action of appointing a guardian amounts to appointment of Court Guardian which is outside the scope of the powers under Act 44 of 1999.

Respondents 1 and 3 have filed counter affidavits.

In the counter affidavit filed by the 3rd respondent, it has been categorically stated that Smt. Anumolu Srilakshmi is no other than her elder sister, and the petitioner himself is the son of her paternal uncle. Petitioner being addicted to vices had got executed a power of attorney in his name and

alienated vast extent of properties of Smt. Anumolu Srilakshmi in collusion with his sister. The petitioner is not taking care of Smt. Anumolu Srilakshmi. It is further averred that herself and her sister by themselves have vast properties and she has no reason to seek her sister's properties and she is only interested in her sister and protect sister's properties from the clutches of the petitioner. The allegation that the petitioner was not given opportunity is far from truth and the enquiry was conducted by the 4th respondent-Mandal Revenue Officer, Kankipadu Mandal and the same is evidenced by video recording made, and the petitioner participated in the enquiry. Though the petitioner claims to be the natural guardian of Smt. Anumolu Srilakshmi, he himself has turned into an enemy and every action of his is inimical to Smt. Anumolu Srilakshmi. During the life time of their grandmother viz., Smt. Lakshmi Vanajakashamma, their grandmother has executed a gift deed in favour of Smt. Anumolu Srilakshmi with respect to the properties situated in R.S.No.190/1 to an extent of Ac.1-20 cents, R.S.No.192/1 to an extent of Ac.0-81 cents, R.S.No.192/2 to an extent of Ac.0-84 cents and R.S.No.192/4 to an extent of Ac.1-15 cents and in all an extent of Ac.4-00 cents and another land in R.S.No.111/4 in an extent of Ac.1-26 cents. It is further contended that her sister Smt. Anumolu Srilakshmi does not know how to read and write but she was only trained by the petitioner and his sister to sign her name and taking advantage of her innocence the properties of Smt. Anumolu Srilakshmi were grabbed by the petitioner and his sister by getting executed a General Power of Attorney dated 24.02.2012. It is further submitted that basing on the said GPA the petitioner approached VGTM UDA for getting approval of a layout plan for the aforementioned land in Ac.4-00 cents and got obtained L.P.No.28/2014 Punadipadu village, Kankipadu Mandal, Krishna District and divided the land into plots and mortgaged required number of plots to VGTM UDA in order to obtain layout plan for the land. In the mean while the petitioner necked out her sister Anumolu Sri Lakshmi from his house. On coming to know about the cheating committed by the petitioner, they got published a notice in Eenadu Telugu Daily on 05.08.2014 informing the public that the transactions, if any, done by petitioner are invalid and the public was warned against such sale transactions. However, the petitioner sold the entire property to 33 persons and pocketed an amount of Rs.5 crores, apart from his sister Velagapudi Madhavi got a sale registered in favour of her son Velagapudi Raja Chand to an extent of

another Ac.1-26 cents. It is further contended that the petitioner never cared about the welfare of the said Sri Lakshmi and the affidavit filed by him is silent with regard to the crucial aspects i.e., how he obtained a G.P.A. from a mentally retarded person, that too, without following due process of law and without getting any permission from the concerned authorities and what are the steps he has taken for safeguarding the rights of his wife and how he is appropriating the amounts which he got as a consideration by alienating the said property and how he is maintaining the accounts for such huge amounts, which clearly shows the *mala fides* on the part of the petitioner in filing the above writ petition. Hence, she prayed for dismissal of the writ petition.

Respondent No.1-District Collector and Chairman, Local Level Committee under national Trust Act, 1999, Krishna District at Machilipatnam filed a detailed counter denying the allegations of the petitioner, including that of not giving an opportunity of hearing.

At the outset it may be noted that neither the Act 44 of 1999 nor The Mental Health Act, 1987 (in short "Act 14 of 1987") defined the word 'guardian'. In the absence of definition of the word 'guardian', the general meaning of the 'guardian' may be taken into consideration. Ramanath Aiyar's law lexicon gives general meaning of 'guardian' as a person who is entrusted by law with the care of the person or property, or both, of another, as a minor or someone legally incapable of managing his or her own affairs. Though the word 'guardian' is defined in the Guardians and Wards Act, 1890, the said definition is not applicable as the same is confined to only cases of 'minor' or his properties. Likewise the word 'guardian' is also defined in Section 4 of the Hindu Minority and Guardianship Act, 1956. It also confines the same to the definition in relation to a 'minor'. For the purposes of Act 14 of 1987 and Act 44 of 1999 a wider meaning is required to be given, keeping in view of the objects and the purposes for which the Acts has been enacted. It is only then, the intention of the purposes of the object of enactment gets served. In view of the same, the power of appointment of a guardian, when the situation warrants under the Act 44 of 1999, can be said to be vesting with the authority who is entrusted with the function under the Act 44 of 1999.

In the facts of the present case, there is no challenge to the authority of 1st respondent that he is not competent or not entitled to exercise power under Section 14 of the Act 44 of 1999. In the absence of challenge to the authority, what is required to be considered by this Court is whether the circumstances of exercise of power and the procedural requirement that are required to be complied with, are complied or not. Practically, there is no denial of various facts which are set out by the respondent No.1 and the allegations made therein in the affidavit with regard to the misappropriation of the properties and the mental status of Smt. Anumolu Sri Lakshmi etc. Further, the authority had taken care to ascertain the mental status of Smt. Anumolu Sri Lakshmi by obtaining necessary medical report from the competent body authorized under the Act. This aspect of the matter has not been denied in any manner and there is absolute silence on the part of the petitioner. As a matter of fact, the Discharge Summary issued by the Government General Hospital and the Investigation Report is placed on record. Investigation was conducted on the orders of the Chairman, Mandal Legal Services Committee-cum-II Additional District Judge for evaluation of Smt. Anumolu Srilakshmi's mental condition. Even in the writ petition, there is no denial of the said fact by filing a reply to the counter affidavit of the 1st respondent or of the 3rd respondent. In the circumstances of the case, so far as the allegation of violation of the principles natural justice, the same is also contrary to the material on record and, particularly, the categorical averment in the counter affidavit filed by the 1st respondent that, as a matter of fact, an opportunity of hearing has also been given and the petitioner, in fact, participated in the hearing. It may also be significant to note that the petitioner himself pleaded in the writ petition that he had made a representation on 01.11.2014.

It is the contention of the petitioner that under Section 14 (2) of Act 44 of 1999, no guardian can be appointed, no such application shall be entertained unless the consent of the guardian of the disabled is also obtained. It is an interesting contention raised by the petitioner, which requires to be considered. For this purpose, it would be relevant to note Sections 14 and 15, which read as under:

“14. Appointment of guardianship –

(1) A parent of a person with disability or his relative may make an application to the local level committee for appointment of any person of his choice to act as a guardian of the persons with disability.

(2) Any registered organisation may make an application in the prescribed form to the Local Level Committee for appointment of a guardian for a person with disability.

Provided that no such application shall be entertained by the local level committee, unless the consent of the guardian of the disabled person is also obtained.

(3) While considering the application for appointment of a guardian, the local level committee shall consider-

- whether the person with disability needs a guardian;
- the purposes for which the guardianship is required for person with disability.

(4) The local level committee shall receive, process and decide applications received under sub-sections (1) and (2), in such manner as may be determined by regulations:

Provided that while making recommendation for the appointment of a guardian, the local level committee shall provide for the obligations which are to be fulfilled by the guardian.

(5) The local level committee shall send to the Board the particulars of the applications received by it and orders passed thereon at such interval as may be determined by regulations.

15. Duties of Guardian –

Every person appointed as a guardian of a person with disability under this Chapter shall, wherever required, either have the care of such persons of disability and his property or be responsible for the maintenance of the person with disability.”

Section 14(1) of Act 44 of 1999 specifically empower a parent or a relative to make an application to the local level committee, whereas Section 14(2) of Act 44 of 1999 empower a registered organization to make an application in the prescribed form for appointment of a guardian for a person with disability. A close reading of Section 14(2) of the Act 44 of 1999 would make it clear that Section 14(2) is not applicable in the present case as, admittedly, the application was made by the 3rd respondent, who is none other than the younger sister of Smt. Anumolu Srilakshmi and, in that view of the matter, the provision under Section 14(2) of the Act 44 of 1999 has no application. In the facts of the present case, the scope of consideration of such application is required to be considered and processed in terms of Sections 3 and 4 of Section 14 of Act 44 of 1999 and the Rules made thereunder. There is no allegation in the writ petition that there is any violation in following the procedure prescribed under Section 14(3) and (4). In the circumstances, it cannot be said that the action of 1st respondent in appointing the 3rd respondent as guardian, in any manner, as arbitrary or illegal or contrary to any of the provisions under the Act 44 of 1999.

Having said the same, it may be borne in mind, interest of the person with disability i.e., Smt. Anumolu Sri Lakshmi, is the prime consideration, which would guide every person, authority and action of the authority under the Act rather than procedural wrangles. In the facts of the present case, I do not find any reason to declare the certificate of appointment of guardianship issued by the 1st respondent vide Certificate No.1 of 2014 dated 29.10.2014 appointing 3rd respondent as guardian of Smt. Anumolu Sri Lakshmi as arbitrary and illegal.

Accordingly, the Writ Petition is dismissed. No order as to costs. Miscellaneous petitions, if any, pending in this writ petition, shall also stand

dismissed.

CHALLA KODANDA RAM, J

Date: 01.05.2015

Note: LR Copy to be marked.

B/o

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