

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2016

CORAM

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH

W.P. No. 28435 of 2015

Sairabanu Mohammed Rafi

..Petitioner

Vs.

1. State of Tamil Nadu,
rep. by its Secretary,
Department of Health &
Family Welfare,
Secretariat,
Chennai - 600009.

2. District Collector,
Nagapattinam District Collectorate,
Nagapattinam 611 001.

3. Tahsildar,
Taluk Office,
Mayiladuthurai.

..Respondents

Prayer: Petition under Article 226 of the Constitution of India praying to appoint the petitioner as a guardian of Mr.Mohamed Rafi, No.12, Nachimuthu Nagar, Kurai Nadu, Mayiladuthurai, Near Rotary School, Nagapattinam District - 6090 002, and also to appoint the petitioner as the manager of his properties, and to permit the petitioner to sell the immovable properties at Block No. 31(10, Ward No.3, TS No. 1101, to an extent of 263 sq.ft.,at Mayiladuthurai

Town and TS No. 1102 to an extent of 144 sq.ft and additional area to an extent of 407 sq.ft bearing Door No. 74 at Mayiladuthurai Town and to use the proceeds from the same towards the upkeep and treatment of petitioner's husband, Mr.M. Mohamed Rafi.

For Petitioner :: Mr.Suhrith Parthasarathy

For Respondents :: Mr.P. Sanjay Gandhi
Addl. Govt. Pleader

O R D E R

The petitioner, being the wife of one Mohammed Rafi, has come forward with the prayer aforesaid, though appears to be rather unusual.

2. The petitioner is seeking a direction from this Court to appoint her as a guardian of her husband for the purpose of managing and selling the immovable properties as her husband is stated to be in a condition of coma.

3. When the matter came up before this Court on 16.11.2015, this Court was pleased to pass the following order:

"This writ petition has been filed by the petitioner on the factual premise that her husband is in a state of coma. Thus, this Court directs the third respondent to visit the residence of the petitioner, satisfy himself with the condition of her husband and file a report within a period of two

weeks from the date of receipt of a copy of this order. Such a report shall be filed by the 3rd respondent by making due inspection of the residence of the petitioner along with the Government Medical Practitioner."

Accordingly, the 3rd respondent has filed a report with enclosures before this Court dated 16.12.2015 and the relevant portion is extracted hereunder:

"3. It is submitted that in this Writ Petition, this Hon'ble Court passed interim orders on 16.11.2015 directing the 3rd respondent to visit the residence of the petitioner, satisfy himself with the condition of her husband and file a Report within a period of two weeks from the date of receipt of a copy of this order and such a report filed by the third respondent by making due inspection of the residence of the petitioner along with the Government Medical Practitioner.

4. It is submitted that the 3rd respondent along with the Chief Civil Surgeon, Government Hospital, Mayiladuthurai, on 14.12.2015, inspected the following address as found in the original affidavit of the petitioner.

No.12, Nachimuthu Nagar,

Koranad, Mayiladuthurai.

It is further submitted that the 3rd respondent has also verified the identity of the said Mohammed Rafi, husband of the writ petitioner as mentioned below:

Family Ration Card No. 20/G 0233282

Electoral Photo Identity: CXZ4815080

It is submitted that the petitioner was also present during the course of

inspection made by the third respondent. The Government Doctor N. Sivakumar, M.D., Chief Civil Surgeon Mayiladuthurai has also made physical check up of the petitioner's husband and the Doctor finally certified as follows:

"From the above findings, it is certified that he cannot take decision on his own, unable to make signature and is depending on others. The original Medical Certificate issued by the Chief Civil Surgeon, Government Hospital, Mayiladuthurai, Nagapattinam District is submitted herewith in original.

5. *It is submitted that the petitioner's husband is bedridden and at coma stage. The 3rd respondent submit the following documents along with this status report.*

1. *Medical Certificate issued by the Chief Civil Surgeon, Government Hospital, Mayiladuthurai, dt, 14.12.2015 in original (duly attested the photo)*
2. *Copy of Family Ration Card bearing No. 20/G 0233282 duly attested.*
3. *Copy of Electoral Photo Identity CXZ4815080. Duly attested.*
4. *Spot inspection report of the 3rd respondent."*

4. In view of the above, there appears to be no dispute on facts. The petitioner's husband is in coma. Neither under the Mental Health Act nor under the Guardian and Wards Act, 1890, there is any provision for

appointment of a guardian in such a situation. Though the petitioner could have approached the jurisdictional Civil Court by way of common law remedy, in view of the report of the 3rd respondent and the urgency expressed, coupled with the fact that there is no dispute on facts, this Court is inclined to consider the prayer sought by the petitioner.

5. Accordingly, while accepting the report of the 3rd respondent, it is hereby ordered that the petitioner is appointed as guardian of her husband Mr.Mohammed Rafi, residing at NO.12, Nachimuthu Nagar, Koranad, Mayiladuthurai, for the purpose of dealing with his immovable properties and also for the purpose of operating his bank accounts. It is made clear that this order is passed considering the peculiar facts and circumstances of the case and this order will not stand in the way of the legal heirs of the petitioner's husband questioning the transaction of the petitioner on behalf of her ailing husband. The writ petition is disposed of accordingly. No costs.

06.01.2016

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(Note to Office: Issue order copy by

11.01.2016)

To

1. The Secretary,
Department of Health &
Family Welfare,
Secretariat,
Chennai - 600009.

M.M. SUNDRESH,J.

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2. District Collector,
Nagapattinam District Collectorate,
Nagapattinam 611 001.
3. Tahsildar,
Taluk Office,
Mayiladuthurai.

W.P. No. 28435 of 2015

