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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 10658/2017**

MILA TULI

..... Petitioner

Through Mr J.P. Sengh, Senior Advocate with
Ms Zubeda Begum, Ms Sana Ansari, Ms Udit
Sharma, Ms Manisha Mehta and Ms Mrigna
Shekhar, Ms Vaishali Tanwar, Advocates.

versus

UOI & ORS

..... Respondents

Through Mr Sanjay Kumar, Advocate for UOI.
Mr Ankur Chhibber, Advocate for Respondent
No. 2.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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01.12.2017

CM 43630/2017

1. Allowed, subject to all just exceptions.
2. The application is disposed of.

W.P.(C) 10658/2017 & CM 43629/2017

3. Issue notice. Learned counsel for the respondents accept notice.
4. The petitioner has filed the present petition, *inter alia*, praying as under:-

“a) Allow the petition and appoint the petitioner, Mrs. Mila Tuli W/o Sunil Batra as guardian of person and property of Sunil Batra Respondent no.6 and as Guardian to operate his Bank accounts, manage control and deal with all his movable and immovable assets in the manner that she deems fit and in

the interest of Respondent No.6 including to execute all necessary documents that may be required to manage and control the same.

b) To repay the Home loan A/c No. 561806650000273, Union Bank, MotiBagh, New Delhi as from the moneys in the bank account of Respondent no.6.

c) Allow the Petitioner to act as trustee for and on behalf of Respondent no.6 and take all necessary decisions in the Trust titled Shikhsharth Trust for education.”

5. Insofar as the prayer (c) is concerned, Mr Sengh, the learned Senior Counsel appearing for the petitioner withdraws the same

6. Briefly stated, the relevant facts as stated in the petition are as under:

6.1 The petitioner is the wife of respondent no.6 and respondent no.4 is the daughter of petitioner and respondent no.6. It is stated that respondent no.6 is an educationist and a child counsellor who was gainfully employed at Shikhantar School, Gurgaon.

6.2 It is stated that respondent no.6 was a fitness enthusiast and was taking a walk in the evening of 18.03.2016 near his residence, when he suffered a cardiac arrest and collapsed on the footpath. He was given certain medical aid to gain consciousness and thereafter, he was taken to a nearby nursing home - Pentamed Hospital at Gujranwala Town, across Model Town.

6.3 When he was brought to the hospital (Pentamed Hospital), the doctors found no heart beat or pulse and took immediate steps to revive him. Although, the doctors were successful in reviving him, the entire exercise took close to 20 minutes and during the said period, respondent no.6

suffered severe brain injury due to lack of oxygen supply to the brain. Thereafter, respondent no.6 was shifted to Sir Ganga Ram Hospital on the night intervening between 18th and 19th March, 2016 and was admitted to the ICU. He continued to remain in the ICU from 19.03.2016 to 19.04.2016 and was shifted to a private ward thereafter. He remained in the private room from 19.04.2016 till 21.06.2016.

6.4 The discharge summary from the ICU at Sir Ganga Ram Hospital reads as under:-

“CLINICAL SUMMARY

Patient admitted to the ICU at SGRH on 19/3/2016 after return of spontaneous circulation following a cardiac arrest. Supportive management in the form of mechanical ventilation, I/V fluids, and nutrition was given. ECG and 2 D Echo was suggestive of inferior wall myocardial infarction. Procedures during the stay were bed side percutaneous tracheostomy (19/3/2016) and Percutaneous Endoscopic gastrostomy (PEG) done on 1/4/2016. Post procedure he developed PEG site infection which was treated with antibiotics, MRI brain was suggestive of hypoxic ischemic encephalopathy. Presently, he continues to be unresponsive, breathing normally on room air and haemodynamically stable. He is being discharged on request.”

7. Respondent no. 6 was discharged from Sir Ganga Ram Hospital on 21.06.2016 with advice of nursing care at home.

8. Respondent no.6 was, thereafter, shifted to All India Institute of Medical Sciences (AIIMS). The examination report submitted by the attending doctors at AIIMS, which is annexed with the petition reads as under:-

“Dr. ASHIMA NEHRA

Pt. Communicated that they were referred by Prof. R. Bhatia

19 April, 2017 Self Referral

The patient was accompanied with his wife and sister. He was not cooperative or communicative. Eye contact was not sustained. Rapport could not be established.

The Pt. failed to respond to questions, formal cognitive and language functioning assessment could not be done.

Patient is referred to Prof. Rohit Bhatia for consultation.

Home based NR begun

To F/u after neurological opinion counseling

Sd/-

19.4.2017”

9. The National Institute of Mental Health & Neuro Sciences had also issued a certificate dated 14.07.2017 which reads as under:-

“TO WHOM SO EVER IT MAY CONCERN

This is to state that Mr Sunil Batra s/o late Shri H.L. Batra, 54 yrs male is a case of Hypoxic Ischemic Insult wwith sequelae since March, 2016. He has severe cognitive and motor impairments along with Neuropsychiatric behavioural issues. He is in total dependent state and needs help for ~~maximum~~ all activities. He has global aphasia and is unable to read and write.

Dr. Anupam Gupta,
Professor and Head,
Dept of Neurological Rehabilitation,
NIMHANS - Bengaluru.”

10. The petitioner states that the condition of respondent no.6 is such that he requires a constant care and he cannot take care of his own affairs. Respondent no. 6 is confined to his room under constant nursing care. He does not have motor coordination and has limited comprehension.

11. It is in the aforesaid context that the petitioner has filed the present petition, *inter alia*, praying that she be appointed as a guardian to take care of his affairs.

12. Mr J.P. Singh, learned Senior Counsel also referred to a decision of a Division Bench of the Bombay High Court, whereby, the Court has appointed a guardian in similar circumstances. In that case, the Bombay High Court had following an earlier decision of the Madras High Court in ***Sairabanu Mohammed Rafi v. State of Tamil Nadu & Ors., (MAD) 2016 1 185***, held as under:-

“6 Taking into consideration, the facts and the aforesaid opinion of the Expert Committee, we find ourselves in agreement of the view taken by the Madras High Court in the case of Sairabanu Mohammed Rafi Vs. State of Tamil Nadu & Ors., (reported in LAWS (MAD) 2016 1 185 Writ Petition NO. 28435 of 2016 decided on 6th January 2016, wherein in similar circumstances, the Division Bench in paras 4 and 5 has observed thus:-

“4. In view of the above, there appears to be no dispute on facts. The petitioner's husband is in come. 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.”

7. In these circumstances, accepting the medical opinion we hereby appoint the petitioner as guardian of his father Rohidas Deshmukh residing at Survey No. 97/A/5/4, Deshmukhwadi, Shivane, Taluka Haveli, Dist. Pune and allow the petition in terms of amended prayer clauses (a) and (b) which read as under:-

(a) The writ, order or direction, mandamus be issued to appoint petitioner as guardian of Rohidas Deshmukh with right to enter into further transaction or complete the transaction as per the development agreement executed and registered on 5th July 2008 in respect of the land bearing Survey No.97/A/5/2 admeasuring 10 R and Survey No. 97/A/5/4.

(b) The writ, order or a direction like Mandamus may be issued directing the State of Maharashtra to mutate the names of other co-owners namely the petitioner and respondent No.6 to 11 as owners to all the properties in the name of Rohidas Deshmukh especially Survey No. 97/A/5/4 admeasuring 10 R, Survey No.97/A/5/4 admeasuring 12 R situated at Shivane, Taluka Haveli, Dist. Pune and Survey No. 97/A/1 admeasuring 36R, Survey No.97B both at Shivane Taluka Haveli, Dist. Pune as well as Survey No.160/1 out of 25/29 out of + 167/2/26 plot No.14 admeasuring 110 sq.mtr at Kothrud Pune.”

13. Mr Sengh also submits that the petitioner's prayer is supported by other family members as well, including respondent no. 4.

14. Given the peculiar circumstances of this case, this Court is of the view that the petitioner's request to be appointed as a guardian of respondent no.6 is ought to be allowed. The present petition is allowed in terms of prayer (a) and (b) which have been set out hereinabove.

15. The petition and the pending application are disposed of.

16. Order *dasti* under signatures of the court master.

VIBHU BAKHRU, J

DECEMBER 01, 2017

pkv