

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2018

CORAM:

THE HONOURABLE MR. JUSTICE T.RAJA

W.P.No.16819 of 2018 and

W.M.P.No.20010 of 2018

1. S.Hamsavathyvaralakshmi

2. S.Krishanth

... Petitioners

Vs

1.State of Tamil Nadu
rep. by its Secretary,
Department of Health and Family Welfare,
Secretariat, Chennai-9.

2.The District Collector,
Office of the District Collector,
62, Rajaji Salai,
Chennai-1.

3.The Tahsildar,
Taluk Office,
No.28, Ground Floor,
Pasumpon Muthuramalingam Road,
Raja Annamalaipuram,
Chennai-28.

4. The Secretary to Government,
Commercial Taxes, Registration and Stamp
Act Department, Government of Tamilnadu,
Secretariat, Fort St. George,
Chennai-9.

5. S.Sekaran

6. The Tahsildar,
Mylapore Taluk Office,
Chennai.

7. The Dean,
Rajiv Gandhi Medical College Hospital,
Chennai-3.

... Respondents

(R6 and 7 are suo motu impleaded as per
order dated 6.7.2018)

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents 1 to 4 to recognise the 1st petitioner herein as a Legal Guardian of the 5th respondent, namely, Mr.S.Sekaran, Son of Late K.Subba Rao, residing at New No.184, Old No.180, Indira Gardens, Peters Road, Royapettach, Chennai-14 and as the Manager of his properties including the 1/9th of his share over the property bearing Old No.3, New No.7, Govardhan Singh Street, Royapettah, Chennai-14 comprised in Old Survey Nos.3045 and 3046, R.S.No.133/9 of Mylapore Village and to further direct the respondents 1 to 4 to permit the 1st petitioner to execute and register deeds of conveyance and other deeds over the properties of the 5th respondent, particularly, the property comprised in 1/9th of his share over the property bearing Old No.3, New No.7, Govardhan Singh Street, Royapettah, Chennai-14, comprised in Old Survey Nos.3045 and 3046, R.S.No.133/9 of Mylapore Village.

For Petitioners:Mr.Richardson Wilson

For Respondents:Mrs.P.Rajalakshmi,
Addl. Govt. Pleader for R 1to3, 6 &7
Mr.T.M.Pappiah,
Spl. Govt. Pleader for R4

O R D E R

This Writ Petition has been filed seeking to issue a Writ of Mandamus, directing the respondents 1 to 4 to recognise the 1st petitioner herein as a Legal Guardian of the 5th respondent, namely, Mr.S.Sekaran, Son of Late K.Subba Rao, residing at New No.184, Old No.180, Indira Gardens, Peters Road, Royapettach, Chennai-14 and as the Manager of his properties including the 1/9th of his share over the property bearing Old No.3, New No.7, Govardhan Singh Street, Royapettah, Chennai-14 comprised in Old Survey Nos.3045 and 3046, R.S.No.133/9 of Mylapore Village and for further direction, directing the respondents 1 to 4 to permit the 1st petitioner to execute and register deeds of conveyance and other deeds over the properties of the 5th respondent, particularly, his 1/9th share over the property bearing Old No.3, New No.7, Govardhan Singh Street, Royapettah, Chennai-14, comprised in Old Survey Nos.3045 and 3046, R.S.No.133/9 of Mylapore Village.

2. This Court after repeatedly hearing both sides, passed an order on 06.07.2018 which is extracted here under :

'Mr.V.Jayaprakash Narayanan, learned Special Government Pleader takes notice for respondents 1 to 4 and 6 and 7.

2.The first petitioner is the wife and the second petitioner is the son of one Sekaran, who is the fifth respondent herein. He has been mentally incapacitated on account of suffering from Coma and full paralysis for the past 1½ years and he has been undergoing treatment in ICCU at St. Isabel's Hospital, Chennai. He neither response nor able to speak or move because of the total paralysis. The doctors have now issued a certificate dated 04.04.2018 stating that he has been in a comatose state for the past sixteen months and is totally paralysed. The petitioners have already spent huge amount for his treatment and are liable to incur more expenditure since the condition of the husband of the first petitioner remains the same. However, the first petitioner's husband and 11 others had already executed a Deed of General Power of Attorney in favour of one Mr.J.Raghuram and one Mr.S.Siddharth on 26.09.2016. They had also executed a Deed of Joint Development Agreement on 26.09.2016 in favour of M/s.Sree Krishna Foundations for developing and selling the immovable property. While so, now the petitioners are completely drained financially and in need of financial help to continue giving medical support to her husband and father. The grievance of the petitioners is that as the fifth respondent is not able to re-execute the general power of attorney and the joint development agreement, it is imperative that the first petitioner be appointed as the legal guardian of the fifth respondent to re-execute the deeds.

3.In support of his claim, learned counsel for the petitioners relying on an order dated 06.01.2016 passed by this Court in W.P. No.28435 of 2015 appointing the petitioner therein as guardian of her husband Mr.Mohammed Rafi, who was in a comatose state, for the purpose of dealing with his immovable properties and also for the purpose of operating his bank accounts after obtaining a report from the jurisdictional Tahsildar and also Chief Civil Surgeon, Government Hospital, Mayiladuthurai, would pray for a similar relief.

4.Learned Special Government Pleader appearing for respondents 1 to 4 and 6 and 7 would submit that the said order cannot be relied on by the counsel for the petitioners as the same was passed only considering the peculiar facts and circumstances of the case.

5.A prima facie perusal of the order passed by this Court in W.P. No.28435 of 2015 dated 06.01.2016 shows that the said case also appears to be similar to that of this case. Considering the fact that the fifth respondent has been in comatose state for the past 1 ½ years in spite of effective treatment given at a heavy cost, this Court is inclined to appoint the first petitioner as a legal guardian of the fifth respondent namely Mr.S.Sekaran subject to a report from the competent authority so that the further treatment can be continued.

6.In view of the above, this Court finds that the Tahsildar, Mylapore Taluk Office, Chennai and the Dean, Rajiv Gandhi Medical College Hospital, Chennai-600 003 are the necessary and proper parties to be impleaded as respondents 6 and 7. Therefore, the Tahsildar, Mylapore Taluk Office, Chennai and the Dean, Rajiv Gandhi Medical College Hospital, Chennai-600 003 are hereby suo motu impleaded as respondents 6 and 7.

7.Accordingly, the Tahsildar, Mylapore Taluk Office, Chennai, the sixth respondent herein is hereby directed to visit the place where the fifth respondent is being given treatment and to verify his identity on the basis of the Ration card, Adhar card and other relevant documents and to file a report on or before 19.07.2018, along with the Dean, Rajiv Gandhi Medical College Hospital, Chennai-600 003, the seventh respondent herein, who shall depute a Chief Civil Surgeon or any other equivalent medical officer, Rajiv Gandhi Medical College Hospital, Chennai-600 003.

8.The Chief Civil Surgeon or any other equivalent medical officer, Rajiv Gandhi Medical College Hospital, Chennai is hereby directed to examine the fifth respondent and satisfy himself with the condition of the fifth respondent and file a report."

3. Pursuant to the direction given by this Court dated 06.07.2018, both the Tahsildar and Executive Magistrate, Mylapore Taluk, Chennai and Prof.Dr.M.Jawahar, MD.,DM(Neuro), NV Unit Chief, Institute of Neurology, Rajiv Gandhi Government General Hospital, Chennai jointly visited Mr.S.Sekaran, son of late K.Subba Rao at his house at New No.184, Old No.180, Indira Gardens, Peters Road, Royapettah, Chennai-14 who is bedridden for the past one and a half years and conducted a detailed clinical examination on him and submitted a report dated 17.7.2018. The observation of the Prof.Dr.M.Jawahar confirms that the 5th respondent Sekaran is in a persistent vegetative state due to cortical and pontine lesions in the brain. He is not able to talk and respond to questions.

4. In view of the joint report submitted by the Tahsildar and Executive Magistrate, Myalpore Taluk Office, Chennai and Prof.Dr.M.Jawahar, MD. DM (Neuro), NV Unit Chief, Institute of Neurology, Rajiv Gandhi Government General Hospital, Chennai, the 1st petitioner, who is the wife of the 5th respondent, is hereby appointed as a Legal Guardian of the 5th respondent, namely, Mr.S.Sekaran, S/o.Late K.Subba Rao residing at New No.184, Old No.180, Indira Gardens, Peters Road, Royapettah, Chennai-14. Therefore, the respondents 1 to 4 are hereby directed to recognize the 1st petitioner as a Legal Guardian of the 5th respondent and also to execute and register a deed of Conveyance and other deeds on the properties belonging to the 5th respondent, particularly, in respect of his 1/9th share over the property bearing Old No.3, New No.7, Govardhan Singh Street, Royapettah, Chennai-14, comprised in Old Survey Nos.3045 and 3046, R.S.No.133/9 of Myalpore Village. The said exercise shall be completed within a period of two weeks from the date of receipt of a copy of this Order.

5. With the above directions, the Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Secretary,
State of Tamil Nadu
Department of Health and Family Welfare,
Secretariat, Chennai-9.
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5. The Tahsildar,
Mylapore Taluk Office,
Chennai.

6. The Dean,
Rajiv Gandhi Medical College Hospital,
Chennai-3.

+ 1 cc to MR. Government Pleader Sr.52406

+ 1 cc to MR. Richardson Wilson, Advocate Sr.52162

W.P.No.16819 of 2018

KAN(CO)
EU(13/08/2018)



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