

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION (st.) NO. 30556 OF 2019

Anmol Kumar Sawlani

... Petitioner.

V/s.

Chaitanya Mental Healthcare Centre ... Respondent.

Mr. Venkatesh Dhond, Senior Counsel a/w. Mr. Rohan Kelkar, Ms. N. Khandeparkar, & Ms. Anushka Shah i/by AZB & Partners for the Petitioner.

Ms. B. V. Reddy, Advocate for the Respondent.

CORAM : UJJAL BHUYAN, J.

DATE : DECEMBER 19, 2019.

PC :

1 Heard Mr. Venkatesh Dhond, learned senior counsel for the Petitioner and Ms. B. V.Reddy, learned counsel for the Respondent.

2 This Petition has been filed under Articles 226/227 of the Constitution of India, seeking a direction to the District Court, Pune under the Mental Health Act, 1987 for appointing the Petitioner as guardian of Ms. Amrata Sawlani, presently undergoing treatment under the Respondent.

3 Petitioner is the brother of Amrata Sawlani. He had filed application for appointing him as her guardian in terms of the Mental Health Act, 1987 ("the Act") before the District Court, Pune which has been registered as Misc. Application No. 631 of 2016 and placed before the learned Adhoc District Judge-6 & Assistant Sessions Judge, Pune.

4 Since there was delay in taking the decision on the subject application, Petitioner had approached this court by filing Writ Petition (st.) No. 33830 of 2018. This court by order dated 22.02.2019 disposed of the Writ Petition, by directing the District Court, Pune, to decide the Misc. Application No. 631 of 2016 as early as possible but in any case on or before 20.04.2019.

5 Learned Ad-hoc District Judge-6 and Assistant Sessions Judge, Pune by his order dated 25.06.2019 declared that Amrita Sawlani is mentally ill and incapable of taking care of herself and managing her property.

6 The above order was passed on the basis of the report submitted by the Committee of Experts constituted pursuant to the order of the court dated 09.04.2019.

7 Grievance of the Petitioner is that while the court below had declared his sister to be mentally ill incapable of taking care of herself and managing her property, it has not passed any order appointing the Petitioner as guardian of Amrita Sawlani.

8 With the above grievance, present Writ Petition has been filed.

9 The Mental Health Act, 1987 (already referred to as “the Act”) was enacted by the Parliament to consolidate and amend the law relating to the treatment and care of mentally ill persons, to make better provisions with respect to their property and affairs and for matters connected therewith or incidental thereto.

10 Chapter-VI of the said Act deals-with judicial inquisition regarding alleged mentally ill person possessing property, custody of his person and management of his property. While section 50 provides for filing of application for judicial inquisition, section 51 deals with issues on which finding should be given by the District Court after inquisition. Section 51 says that on completion of the inquisition, the District Court shall record its findings on, - (i) whether the alleged mentally ill person is in fact mentally ill or not,

and (ii) if such person is mentally ill, whether he is capable of taking care of himself and of managing his property, or incapable of taking care of himself and of managing his property.

10.1 Sections 52 and 53 are relevant. As per subsection (1) of section 52, where the District Court records a finding that the alleged mentally ill person is in fact mentally ill and is incapable of taking care of himself and of managing his property, it shall make an order for the appointment of a guardian under section 53 to take care of his person and of a manager under section 54 for the management of his property.

10.2 As per section 53(1) - where the mentally ill person is incapable of taking care of himself, the District Court or, where a direction has been issued under sub-section (2) of section 54, the Collector of the District, may appoint any suitable person to be his guardian.

10.3 Section 54(1) provides that where the property of the mentally ill person who is incapable of managing it is such as can be taken charge of by a Court of Wards under any law for the time being in force, the District Court shall authorise the Court of

Wards to take charge of such property, and thereupon notwithstanding anything contained in such law, the Court of Wards shall assume the management of such property in accordance with that law.

10.4 Under sub-section (3) where the management of the property of the mentally ill person cannot be entrusted to the Court of Wards or to the Collector under sub-section (1) or sub-section (2), as the case may be, the District Court shall appoint any suitable person to be the manager of such property.

11 At this stage, it may be mentioned that Parliament had subsequently enacted the Mental Healthcare Act, 2017 and under section 126 thereof, the Mental Health Act, 1987 has been repealed. However, under section 126 (2)(f) thereof, it has been clarified that notwithstanding such repeal, any proceeding pending in any court under the repealed Act on the commencement of the Mental Healthcare Act 2017, may be continued in that court, as if the Mental Healthcare Act, 2017 had not been enacted.

12 Therefore, despite repealment of the Mental Health Act, 1987 and coming into force of the Mental Healthcare Act, 2017, the present proceeding in Misc.

Application No.631 of 2016 would continue as a proceeding under the Mental Health Act,1987.

13 Such a proceeding, therefore, is required to be decided expeditiously to ensure welfare of the mentally ill person and proper management of the property.

14 In such circumstances, learned Court below ought to have proceeded further under sections 53 and 54 of the Act, after passing the order dated 25.06.2019.

15 That being the position, learned Ad-hoc District Judge and Assistant Sessions Judge is directed to pass necessary order(s) on the application made by the Petitioner under sections 53 and 54 of the Mental Health Act, 1987 within a period of eight weeks from the date of receipt on an authenticated copy of this order.

16 It is made clear this court has not expressed any opinion on the merit of the application made by the Petitioner for appointing him as guardian.

17 Writ Petition is disposed of.

(UJJAL BHUYAN, J.)

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