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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2476 OF 2017

Dr. Madhu Vijaykumar Gupta	... Petitioner
Vs.	
The State of Maharashtra and Ors.	... Respondents

Mr. S.R. Ronghe for the Petitioner.
Mr. L.T. Satelkar, AGP for the Respondent Nos.1 to 3.

CORAM : A.S.OKA AND
 M.S. SANKLECHA, JJ.

DATE : 30th APRIL 2019.

ORAL JUDGMENT (Per A.S. Oka, J.)

1 Rule. The learned AGP waives service for the respondents.
Forthwith taken up for final disposal.

2 Paragraph 2 of the order dated 2nd April 2019 reads thus :-

“2. The petitioner is seeking a writ or directions from this Court holding that the petitioner is a guardian of Dr. Vijaykumar Gupta (her husband), who is suffering from pontine haemorrhage and is in coma since 6th September, 2013. We may note here that under the order dated 12th October, 2017 a Division Bench of this Court noted the facts of the case and directed the SubDivisional Officer, Bandra (E), Mumbai to visit the place of residence of the petitioner and submit a report

about the condition of Dr. Vijaykumar Gupta with regard to the averments made in the petition. Accordingly, a report has been submitted by the Sub-Divisional Officer, Mumbai, Suburban District. To the said report, a letter dated 18th October, 2017 of Dr. Swapnil Joshi, Assistant Professor of KEM Hospital has been annexed. He has suggested that after examination of history, opinion of neurophysician is advised with further investigation. Therefore, we thought it fit that an opinion of a neurophysician as suggested by Dr. Joshi should be obtained.”

3 By the said order, this Court requested the Dean of B.Y.L. Nair Charitable Hospital to submit an opinion of either a neurophysician or neurosurgeon. Accordingly, along with a letter dated 25th April 2019, the Dean of B.Y.L. Nair Charitable Hospital and Topiwala National Medical College has forwarded a report signed by the Professor and Head of the Department of Neurology, Assistant Professor of the Department of Neurology and Superspecialty Medical Officer, Neurology attached to the said hospital. The medical report notes the history of the case of Dr. Vijaykumar Gupta. The conclusion drawn by the said three Doctors is that the patient is in persistent vegetative state/ minimally conscious state. He is in a bedridden state and needs 24 x 7 assistance for his basic daily needs and cannot take any rational decisions on his own. The report is taken on record and marked ‘R1’ for identification. We had permitted the learned counsel appearing for the petitioner and the learned AGP to peruse the reports submitted by B.Y.L. Nair Charitable Hospital;

4 The petitioner is herself a medical Doctor. As stated earlier, Dr. Vijaykumar is the husband of the petitioner.

5 The petitioner has sought to invoke extraordinary jurisdiction of this Court under Article 226 of the Constitution of India by pointing out that neither the provisions of the Mental Health Care Act, 2017 nor the Guardians and Wards Act, 1890 apply to the situation in which the case of Dr. Vijaykumar Gupta is placed. His present status continues since 6th September 2013. In paragraph 10, the description of movable and immovable properties of Dr. Vijaykumar Gupta has been incorporated. Considering the condition of Dr. Vijaykumar, he is unable to look after the affairs of his property. Therefore, the petitioner has prayed for a declaration that she be declared as a Guardian of Dr. Vijaykumar Gupta. The petitioner has also sought permission to sell certain immovable properties held by Dr. Vijaykumar Gupta. The petitioner and Dr. Vijaykumar Gupta have a daughter Aditi and son Ashutosh. Both of them are adults and they have filed affidavits dated 13th June 2018 consenting to the prayers made by the petitioner.

6 From 6th September 2013, Dr. Vijaykumar Gupta is unable to take any decisions on his own. In fact, his today's status is described as persistent vegetative state. The three senior Doctors attached to the Department of Nneurology including the Professor and Head of the Department, after examining Dr. Vijaykumar Gupta and after conducting EEG have given the aforesaid opinion. B.Y.L.Nair Charitable Hospital is a very well-known Hospital in Mumbai run by the Municipal Corporation. It also runs Topiwala National College which is one of the very well-known medical colleges. There is no reason to discard the opinion expressed by

the Head and Professor, Department of Neurology and Medical College along with his expert colleagues. The opinion supports the case of the petitioner that from 6th September 2013, her husband is in a bedridden state and is not able to take decisions on his own.

7 As the provisions of the Mental Health Care Act as well as the Guardians and Wards Act do not apply to the present case, the petitioner could have always approached Civil Court for appropriate declaration. However, there is no dispute in the present case about the condition of the petitioner's husband. Moreover, the petitioner herself is a medical Doctor. His son and daughter have given no objection on oath. Considering these peculiar facts, it will be unjust to direct the petitioner to take recourse to a remedy before the Civil Court especially when we are dealing with the case where the facts are not in dispute.

8 By way of prayer clause (c), the petitioner has sought permission to sell and/or to dispose of the immovable property of her husband mentioned in the said prayer. The petitioner has set out the reasons as to why she is compelled to take a decision to dispose of the immovable properties described in prayer clause (c). The reasons are recorded in paragraphs 7 of the petition. It is pointed out in paragraph 7 of the petition that the children of the petitioner are staying with her. The present residential flat occupied by them is situated on the second floor of a building to which there is no facility of lift. The area of the flat is only about 325 sq. feet. The petitioner has grown up children. It is obvious that considering the health condition of the petitioner's husband, he will

require a separate room as he needs assistance 24 x 7. Therefore, the case made out by the petitioner that by selling the immovable properties held by her husband, she wants to purchase a larger premises for residence having all proper facilities deserves to be accepted. We are sure that the petitioner, while selling or disposing of the properties held by her husband, will ensure that best possible price is fetched by the properties especially when she will be acting in fiduciary capacity.

9 As and when the petitioner disposes of or sells or transfers in any manner immovable properties held by her husband, she will have to submit a detailed report about the said transaction along with the copies of the documents executed to the Prothonotary and Senior Master who can always seek appropriate directions from the Court, if required.

10 Therefore, in our view, this is a fit case to exercise extraordinary jurisdiction under Article 226 of the Constitution of India. Accordingly, we pass the following order :-

ORDER

- (i) Rule is made absolute in terms of prayer clauses (a) to (c) which read thus :-
 - (a) That this Hon'ble Court may by an appropriate Writ, Order or Direction be pleased to hold and declare that the Petitioner is a Guardian of Dr. Vijaykumar Gupta who is suffering from Pontine Hemorrhage and is in coma since 6.9.2013;

- (b) That this Hon'ble Court may by an appropriate Writ, Order or Direction be pleased to hold and declare that the Petitioner is the Manager of the movable and immovable properties belonging to Dr. Vijaykumar Gupta as indicated in Schedule of para No.10 of the present Writ Petition;
- (c) That this Hon'ble Court may by an appropriate Writ, Order or Direction be pleased to permit the present Petitioner to sell and/or dispose that Flat No.B 202 2nd floor, Mukund Building, Off Nandanvan Complex, Building No.G-7, S.V. Road, Dahisar (E), Mumbai 400068 and Shop premises bearing No.1 on the ground floor having built up area of 360 Sq. ft. (33.46 Sq. mt.) in the society known as Om Ashhirwad CHSL situated Opp. N.K.G.S.B. Bank Ltd., Navghar Road, Bhayandar (E) 401 105 situated on the piece of land bearing Old Survey No.197, New Survey No.175, H. No.18 situated lying and being in the revenue village Khari within the jurisdiction of Meera Bhayandar Municipal Corporation, Bhayandar (W) 401 101 in view of the situation persisting in respect of Dr. Vijaykumar Gupta who is suffering from Pontine Hemorrhage and is in coma since 6.9.2013;"

- (ii) We direct the petitioner to file a detailed report to this Court about the transactions of sale and/or transfer of immovable properties of her husband Dr. Vijaykumar effected by her alongwith true copies of necessary documents of transfer or sale. Such report shall be filed with the Prothonotary and Senior Master of this Court within a period of one month from the date of effecting the transfer or sale. The Prothonotary and Senior Master will examine the report or reports and will seek appropriate directions from this Court, if necessary;
- (iii) Needless to add that while selling the immovable properties or movable properties of her husband Dr. Vijaykumar Gupta, the petitioner will ensure that best possible price or consideration is fetched;
- (iv) In view of declaration granted in terms of prayer clauses (a) and (b), we make it clear that the petitioner will be entitled to operate all Bank Accounts including PPF Accounts and Demat Accounts held in the name of Dr.Vijaykumar in her capacity as the Guardian of Dr.Vijaykumar and Manager of his assets;
- (v) As and when the petitioner is able to sell or transfer the immovable property held by Dr.Vijaykumar, it will be appropriate if she pays a reasonable amount by way of

donation to Dr. B.Y.L. Nair Charitable Hospital;

- (vi) All concerned to act upon an authenticated copy of this judgment and order.

(M.S. SANKLECHA, J.)

(A.S.OKA, J.)