

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 23.07.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. No.1752 of 2019

Anbagam Rehabilitation Center,
run and registered by name "TERDOD",
(Trust for Education and Rehabilitation of
Disabled, Orphans and Destitutes)
represented by its Founder Trustee
M.P.Mohammed Rafi
Perianna Mudaliar Street,
Seven Wells, Chennai-600 001. Appellant

-vs-

1.V.Ramakrishnan
2.D.Anuradha

(R1 and R2 suo motu impleaded
as party respondents vide Court
order dated 22.04.2019 made in
C.M.A. No.1752 of 2019 by MGRJ)

3.The District Collector,
Perambalur.

(R3 suo motu impleaded as a party of
respondent vide Court Order dated
21.06.2019 made in C.M.A. No.
1752 of 2019 by TRJ)

4.The State Bank of India,
Bhavani, 735, Mettur Road,
Erode District.
Pincode-638 302.

... Respondents

(R4 suo motu impleaded as per Order
dated 22.07.2019 passed by this Court
in C.M.A. No.1752 of 2019 by TRJ)

Prayer: Civil Miscellaneous Appeal filed under Section 76 of
Mentally Retarded Act and Section 151 of C.P.C. against the
order dated 21.12.2018 by the City Civil Court, Chennai in
M.H.O.P. (SR) No.65564 of 2018.

For Appellant : Mr.P.Subba Reddy

For Respondents : No appearance for R1 and R2

Mr.N.Manikandan,
Government Advocate for R3

Mr.S.Sethuraman for R4

JUDGMENT

Anbagam Rehabilitation Center, run and registered by name "TERDOD", the Trust for Education and Rehabilitation of Disabled, Orphans and Destitute, represented by its Founder Trustee M.P.Mohammed Rafi has come to this Court challenging the correctness of the order dated 21.12.2018 passed in Mental Health Original Petition in M.H.O.P. (SR) No.65564 of 2018 by the City Civil Court, Chennai.

2.Mr.P.Subba Reddy, learned counsel appearing for the petitioner would submit that the petitioner institution is running a mentally retarded home to help the mentally ill persons, who are wandering in the streets or public places, for more than 20 years and the same is having three homes situated at Thirunilai Village, Chennai-103, Otteri, Chennai-12 and also at Thiruvottiyur-Tondiarpet, Chennai-81 and thus, maintaining men, women, children and also old age home. When any mentally ill person, who was rescued by voluntary organisation from the street or public place, was handed over to the petitioner organisation, such persons are being given necessary psychiatric treatment and after recovery, the petitioner organisation send them to their native places by following due procedure. While so, one Dr.A.Shanmuga Priya, mentally ill person, who was formerly holding the post of Director of Medical Education and having the qualification of MD., DGO., FICMCH, was abandoned by her relatives by taking her entire pension. While she was found roaming around the arrival hall of the domestic Airport at New Delhi on 23.08.2016, the volunteers put her in the Old Age Home at Bindapur, New Delhi. Thereafter, she has been shifted from New Delhi to Chennai with the interference of the Director of Social Welfare and she has been in the petitioner organisation since 30.08.2018 at A.Kulandaivel-Nachammal Nagar, Thirunilai Village, Chennai-103.

3.According to the learned counsel appearing for the petitioner, the Principal Resident Commissioner wrote a letter to the Principal Secretary to the Government, Health and Family Welfare Department, Secretariat, Fort. St. George, Chennai-98 as early on 25.08.2018 about her mental status for which she

requires some person as to be appointed as Manager to decide of her own treatment and accommodation. Since she sacrificed her life only for service to the people and many of her colleges respect her with devotion and if she is shifted to SCARF, it will be great help to her, as the SCARF will take care of her with medical care. As her only income is pensionary benefits for which her relatives are fighting themselves to receive the money, Dr.Sharada Menon, one of the colleagues of the mentally ill person and also founder of SCARF felt it will be proper to have inquisition and to appoint a guardian for her, so that, her pensionary benefits can go to the organisation, who are taking care of her, but, not to the relatives as they abandoned her.

4. According to the learned counsel appearing for the petitioner, the Mental Health Original Petition in M.H.O.P. (SR) No.65564 of 2018 filed by the petitioner under Sections 50 and 54 of the Mental Health Act, 1987 for a direction that the mentally ill person may be taken to Government Mental Hospital for doing inquisition of the mental status of Dr.A.Shanmuga Priya and after examination to forward the report to the Court for consideration and to appoint a Manager to take care of her and manage the property/the estate of Dr.A.Shanmuga Priya under the supervision of the Court, was rejected as not maintainable citing a reason that though the petitioner was a recognised institution to take care of mentally ill persons, the same was not appointed as a custodian of the mentally ill person under the Indian Succession Act, 1925 as per the provisions of Section 50(1)(b) of the Act.

5. Referring to Section 50(1) of the Mental Health Act, 1987 (Old Act) and comparing with Section 3(5) of the Mental Health Care Act, 2017, (New Act), learned counsel appearing for the petitioner would submit that as per old Act, where an alleged mentally ill person is possessed of property, an application for holding an inquisition into the mental condition of such person may be made either by any of his relatives or by a public curator appointed under the Indian Succession Act, 1925 or by the Advocate General of the State in which the alleged mentally ill person resides or where the property of the alleged mentally ill person comprises land or interest in land, or where the property or part thereof is of such a nature as can lawfully be entrusted for management to a Court of Wards established under any law for the time being in force in the State, by the Collector of the District in which such land is situate, to the District Court within the local limits of whose jurisdiction the alleged mentally ill person resides. Whereas, as per new Act, the determination of a person's mental illness shall alone not imply or be taken to mean that the person is of unsound mind unless he has been declared as such by a competent Court. Therefore, the impugned order passed by the Court below without

making reference to Section 3(5) is liable to go and the petitioner under this circumstance prayed that this Court may appoint a Manager to take care of her and manage the property/the estate of Dr.A.Shanmuga Priya under the supervision of the Court, alternatively a direction be issued that the mentally ill person may be taken to Government Mental Hospital for doing inquisition of the mental status of Dr.A.Shanmuga Priya and after examination, the report may be forwarded to this Court for consideration.

6.In reply, learned counsel appearing for the third respondent would submit that when the petitioner herein is a reputed institution represented by its Founder Trustee, the petition filed by them under Sections 50 and 54 of the Mental Health Act, 1987 (old Act) seeking the above direction is no longer in force since New Act came into effect from 29.05.2018. Although the same was passed on 07.04.2017, it came into effect on 29.05.2018 and therefore, the Court below rightly indicated that the petition was not maintainable under Sections 50 and 54 of the Mental Health Act, 1987.

7.Learned counsel appearing for the third respondent would further submit that as per Section 14(4)(e) of the New Act, namely, the Mental Health Care Act, 2017, if no such person is available to be appointed as a nominated representative, the Board shall appoint the Director, Department of Social Welfare or his designated representative, as the nominated representative of the person with mental illness. As per Section 73 of the said Act, the State Authority shall, by notification, constitute Boards to be called the Mental Health Review Boards, for the purposes of the Act and the location and the jurisdiction of the boards shall be specified by the State Authority in consultation with the State Government and as per Section 74, till the State Government by notification constitutes the Board, the petitioner institution may be appointed temporarily to discharge the duties of the board.

8.Learned counsel appearing for the third respondent drew the notice of this Court to Section 102 of the Mental Health Care Act, 2017 and submitted that when the petitioner approaches before the Judicial Magistrate having jurisdiction, the concerned Magistrate may order in writing that the person is conveyed to a public mental health establishment for assessment and treatment, if necessary and the mental health establishment shall deal with such person in accordance with the provisions of the Act.

9.Both the learned counsel would fairly submit that Dr.A.Shanmuga Priya may be given suitable treatment by taking her to a specialised hospital or Institute and the petitioner

institution may also do the needful.

10.Learned counsel appearing for the third respondent would submit that there is a confusion with regard to the jurisdiction of the Judicial Magistrate. Therefore, Dr.A.Shanmuga Priya may be produced before the Chief Judicial Magistrate.

11.On the other hand, learned counsel appearing for the petitioner submitted that since the petitioner institution is situated within the jurisdiction of Metropolitan Magistrate, Chennai, for the sake of convenience of the petitioner and the patient namely, Dr.A.Shanmuga Priya, she may be produced before the Metropolitan Magistrate, Chennai.

12.Admittedly, in the present case, Dr.A.Shanmuga Priya, who was handed over by the Helpage India to the petitioner herein, requires treatment.

13.A perusal of Section 14(4)(e) of the Mental Health Care Act, 2017 would show that if no such person is available to be appointed as a nominated representative, the Board shall appoint the Director, Department of Social Welfare or his designated representative, as the nominated representative of the person with mental illness. It is useful to extract the same as under:

'If no such person is available to be appointed as a nominated representative, the Board shall appoint the Director, Department of Social Welfare or his designated representative, as the nominated representative of the person with mental illness.'

14.Though private notice was served on respondents 1 and 2, they have not chosen to appear before this Court. Learned counsel appearing for the petitioner would submit that when Dr.A.Shanmuga Priya, a retired Director of Medical Education has been under the care and custody of the petitioner, the respondents 1 and 2 or her any other relatives have not visited even during the last two years and they are only bothering about the withdrawal of the monthly pension credited in the fourth respondent bank and therefore, no purpose would be served by issuing notice to them. I agree with this submission.

15.In the light of the above and accepting the submission made by the learned counsel appearing for the petitioner, this Court hereby directs the petitioner to produce Dr.A.Shanmuga Priya before the Director, Institute of Mental Health, Kilpauk, Ayanavaram, Chennai for taking care and treatment within a period of one or two days from the date of receipt of a copy of this order and after completion of treatment, she shall be produced before the Metropolitan Magistrate, Chennai, having jurisdiction along with a report regarding her health.

16.It is made clear that the expenditure incurred for giving treatment to Dr.A.Shanmuga Priya, can be collected by the Institute of Mental Health directly from the fourth respondent Bank, who shall disburse the expenses on proper receipt or voucher from the Institute of Mental Health.

17.At this stage, learned counsel appearing for the fourth respondent bank would submit that as and when any bill or voucher is sent by the Director, Institute of Mental Health, the fourth respondent Bank shall honour the same.

18.With the above directions, the appeal stands disposed of. No costs.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

vga

To

1.The Principal Judge,
The City Civil Court,
Chennai.

2.The District Collector,
Perambalur.

Copy To

The Director,
Institute of Mental Health,
Kilpauk, Ayanavaram,
Chennai.

+1cc to Mr.P.Subba Reddy, Advocate, S.R.No. 62830
+1cc to the Special Government Pleader, S.R.No. 62946

C.M.A. No.1752 of 2019

VG I(CO)
GN(16/08/2019)