

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 16.08.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. No.2701 of 2019

R.Yogalakshmi

.. Appellant

vs

The District Collector,
Chennai.

.. Respondent

Sole respondent suo motu impleaded
as a party respondent vide Court
order dated 03.07.2019 made in
C.M.A. No.2701 of 2019 by TRJ

Prayer: Civil Miscellaneous Appeal filed under Section 76 of
Mental Health Act, 1987 against the judgment and decree dated
22.04.2019 made in M.H.O.P. No.18 of 2019 on the file of the
Principal Judge, City Civil Court, Chennai.

For Appellant : Mr.A.Subadra

For respondent : Mr.N.Manikandan,
Government Advocate (C.S.)

JUDGMENT

R.Yogalakshmi, wife of A.R.Ravikumar, the petitioner herein
has come to this Court challenging the impugned decretal order
dated 22.04.2019 passed by the Principal District Judge, City
Civil Court, dismissing her application filed under Sections 50
to 54 of the Mental Health Act to appoint her as the Guardian
and Manager for the mentally ill person Mr.A.R.Ravikumar, who is
the husband of the appellant on the ground that by virtue of
Section 126 of the Mental Health Care Act 2017, the Mental
Health Act 1987 was repealed.

2.Learned counsel appearing for the appellant would submit
that since the appellant's husband has been suffering from
Schizophrernia and he is also having irritable and short tempered
behaviour, irrelevant and incoherent talk, sleeplessness and
during the initial phase of illness, he continued his treatment
at Institute of Mental Health, Chennai from 1993 to 2001 and

from a Private Psychiatrist and also continued his treatment from 2002 to 2004 at SCARF, Anna Nagar, Chennai. Learned counsel appearing for the appellant would further submit that the appellant's husband, who has been assessed with 55% mental disability, suffers from chronic paranoid Schizophrenia in partial remission, for which, he needs to continue psychiatric medications on long term. When Medical Officer from Institute of Mental Health, Chennai has also given Observation Report dated 22.03.2019, a Petition has been filed under Sections 50 to 54 of the Mental Health Act (XIV of 1987) before the Court below. As there was no similar provision prevailing in the new Act namely, The Mental Health Care Act, 2017, the said petition was filed on 04.02.2019, namely, seven months after the new Act come into force on 29.05.2018. When the appellant is the legally wedded wife of Mr. Ravikumar, the Observation Report given by the Medical Officer clearly shows that the appellant's husband needs to continue psychiatric medications on long term, hence, she has to take care and maintain him by taking him to hospital for continuing his treatment and therefore, the appellant wife should be appointed as a guardian. As the only provision Section 50 of the Mental Health Act, 1987 has been repealed and there is no other similar provision available in the new Act, Mental Health Care Act, 2017, this Court may come forward to appoint the appellant as a Guardian of her husband, it is pleaded.

3. Learned Government Advocate appearing for the respondent submitted that by virtue of Section 14 of the Rights of Persons with Disabilities Act, 2016, from the date of commencement of the said Act where a District Court or any designated authority, as notified by the State Government, finds that a person with disability, who had been provided adequate and appropriate support, but, is unable to take legally binding decisions, may be provided further support of a limited guardian to take legally binding decisions on his behalf in consultation with such person, in such manner, as may be prescribed by the State Government. In this regard, the State Government has issued Government Order in G.O. Ms. No.28 Welfare of Differently Abled Persons (DAP 3.1) Department dated 27.07.2018. As per Rule 5 of the said G.O., the District Collector shall be the designated authority for the purpose of Sub Section (1) of Section 14 of the Act. However, as per Rule 5(ii), the Commissioner for Welfare of the Differently Abled shall be the Appellate Authority for the purpose of sub-section (3) of Section 14 of the Act. Besides as per Rule 5(2) of the said G.O., a parent of person with disability or his relative shall make an application in Form-I in Schedule-I to the designated authority for appointment of any person of his choice including himself to act as a limited guardian of the person with disability and as per Rule 5(4), every limited guardian appointed under the Act shall furnish a detailed report to the designated authority within two

months before the expiry of one year or expiry of the limited guardianship period, whichever is earlier, as to how the obligation vested on him has been or is being fulfilled. Therefore, as per the provisions of the old Act, namely, the Mental Health Act, 1987, the appellant is remedyless because the same has been repealed. Now the appellant can move an application before the District Collector, Chennai under Rule 5 (2) of the said G.O. and the District Collector may be directed to consider the request of the appellant, on merits.

4. Agreeing with the submission made by the learned Government Advocate, this Court hereby directs the appellant to move an Application under Rule 5(2) of the said G.O. before the District Collector. On receipt of such application from the appellant along with the Observation Report and other necessary documents, the District Collector, as per Rule 5(2)(v), shall take upon the application and make a decision within a period of one month from the date of receipt of a copy of this order.

5. With the above direction, the appeals stands disposed of. No costs.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

vga

To

The District Collector,
Chennai.

+1cc to Mr. M.Malar, Advocate, S.R.No. 70054
+1cc to the Government Pleader, S.R.No. 70299

C.M.A. No.2701 of 2019

VSN II(CO)
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