

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 16.12.2019
Date of Decision: 24.12.2019

+ **W.P.(C) 4937/2019**

KOMAL GUPTA AND ORS. Petitioners
Through: Mr.Siddharth Mehta &
Mr.Utkarsh Mathur, Advs.

versus

STATE (NCT OF DELHI) AND ANR. Respondents
Through: Ms.Hetu Arora Sethi, ASC with
Mr.Sidharth Agarwal &
Mr.Abhimanyu Verma, Advs.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

1. This petition has been filed by the petitioners *inter alia* praying for the following reliefs:

“(i) Issue an appropriate writ, order or direction in the nature of a mandamus appointing the Petitioner No. 1, Shri Komal Gupta as the guardian of Ms. Mini Gupta in respect of bearing no. KU-50, Second Floor Pitampura, Delhi with power to protect, administer and sell the property.

“(ii) Issue an appropriate writ, order or direction in the nature of a mandamus permitting the Petitioner No.1, Shri Komal Gupta to operate the Bank Account No. 071200101770006 in Corporation Bank, Goodley Public School Building Branch, Shalimar Bagh standing in the name of Ms. Mini Gupta.”

2. The petitioner no.1 is the husband of Dr. Mini Gupta (hereinafter referred to as the 'patient'), while the petitioner nos.2 and 3 are the children born from the wedlock of the petitioner no.1 with the patient.

3. It is asserted by the petitioners that on 22.10.2017, the patient was admitted to Fortis Hospital, Shalimar Bagh with a history of fever for three days, headache and backache. Upon examination, she was diagnosed with Dengue Fever with Dengue Encephalitis with seizures on Tracheostomy and PEG Tube. She was also diagnosed with Secondary Hemophagocytic Syndrome. In the Hospital, she developed grave complications leading to multiple episodes of seizure and loss of consciousness which finally culminated into the patient slipping into comatose state. The patient was discharged from the Hospital on 11.11.2017, however, her prognosis remained poor and she was unable to recover from her comatose state. It is further asserted that since her discharge, the patient is being treated at the residence where a room in the house has been converted into a Ward for her care and comfort, however, she continues to remain in a comatose condition, unable to maintain herself. The petitioner no.1 claims to have employed full time nurses for looking after the patient. It is further asserted that the patient is breathing with the help of Tracheotomy Tubes in throat and is fed by a Percutaneous Endoscopy Gastronomy Tube ("PEG tube"), which has been placed in her stomach. The patient is required to be taken to the hospital for follow-ups at regular interval.

4. It is asserted that a huge expenditure has been incurred for the medical care of the patient, however, the patient is in continues comatose condition for almost two years with little chance of recovery.

5. The learned counsel for the petitioners asserts that the petitioner no.1 is incurring a monthly expenditure of about Rs.65,000/- to Rs.70,000/- for the medical care of the patient.

6. It is further asserted that the petitioner no.1 is presently working in a Media Company at the post of a Consultant and is having a salary of around Rs.4.30 lacs per annum and therefore, is finding it difficult to maintain the family along with the expenditure that is to be incurred for the medical treatment of the patient. The petitioner nos.2 and 3 (the children) are pursuing MBBS course and their annual tuition fee and other expenses are also being taken care of by the petitioner no.1.

7. It is further asserted that prior to her present condition, the patient was a successful Medical Practitioner and was earning significantly well. It is further asserted that the patient owns property bearing No. KU-50, Second Floor, Pitampura, Delhi as also has a bank account bearing No. 071200101770006 in the Corporation Bank, Goodley Public School Building Branch, Shalimar Bagh.

8. It is further asserted that there is no other Class-I legal heir of the patient and it is in the interest of justice that the petitioner no.1 be appointed as a Guardian for the patient in order to operate the above

Bank Account as also transfer the above property in order to generate funds for the medical treatment of the patient.

9. The petitioner annexes therewith the affidavits of the petitioner nos.2 and 3 also in support of the petition.

10. On 08.05.2019, while issuing notice of the petition, this Court was pleased to direct the respondent no.2, that is the Sub-Divisional Magistrate, Saraswati Vihar, to conduct an enquiry as to the condition of the patient and the financial status of the petitioner no.1.

11. The respondent no.2 filed a Status Report dated 03.08.2019 under the signatures of the Tehsildar, Saraswati Vihar, the same was rather cryptic and did not answer the query raised by this Court. The respondent no.2 was therefore, directed to file a fresh Status Report.

12. The respondents thereafter filed another report on 24.10.2019 annexing therewith a certificate issued by Dr. Jeevan Aggarwal from Fortis Hospital as also Income Tax Returns of the petitioner no.1 and the Bank Statements. As this report was not found satisfactory, this Court by an order dated 13.11.2019 granted further time to the respondents to file a detailed Status Report. The same was filed on 12.12.2019.

13. The Status Report confirms the status of the patient of being in a comatose condition. It further confirms that the petitioners herein are the only legal heirs of the patient and it further confirms the income of the petitioner no.1 as also the medical expenses incurred on the patient.

14. This Court in ***Pratibha Pande and Anr. vs. Union of India and Ors.***, (2016) 229 DLT 512, in similar circumstances had held that the High Court exercising power under Article 226 of the Constitution of India is the ultimate guardian of the disabled persons who are *non sui juris*. In light of this, the Court appointed the daughter of the person lying in comatose position as a guardian.

15. Similarly, the High Court of Madras in ***Sairabanu Mohammed Rafi vs. State of Tamil Nadu and Ors.***, 2016 SCC OnLine Mad 8091 and the Bombay High Court in ***Philomena Leo Lobo vs. Union of India and Others***, 2017 SCC OnLine Bom 8836, has appointed guardians of the persons who were in comatose state.

16. In the present case, as noted hereinabove, the patient has been in comatose state since around 22.10.2017. The petitioners are the husband and the children of the patient. From the Status Report, it appears that they are taking care of patient's medical condition and expenses in a proper manner. As noted hereinabove, it further asserts that there is no other Class-I legal heir of the patient except the petitioners herein.

17. Keeping in view the above peculiar circumstances, I appoint the petitioner no.1 as the Guardian of the Dr. Mini Gupta to protect her interest for all necessary purposes including her property, both movable and immovable as also the Bank Accounts and to do all acts, deeds and things for the proper medical treatment, nursing care, welfare and benefit of Dr. Mini Gupta and with power to do all acts, deeds and things with respect to her property bearing no. KU-50,

Second Floor, Pitampura, Delhi and operate the bank account bearing No. 071200101770006 in Corporation Bank, Goodley Public School Building Branch, Shalimar Bagh being the account in her name subject to the following conditions:

- (i) The petitioner no.1 shall furnish administration bond and security bond with one guarantor in the sum of Rs.10 lacs to the satisfaction of the Registrar General of this Court;
- (ii) maintain regular accounts of the dealings of the above-mentioned property as also the bank account of Dr.Mini Gupta;
- (iii) in case the petitioner no.1 proceeds to sell the abovementioned property of Dr.Mini Gupta, he shall keep at least 25% of the sale proceeds received from such sale in a fixed deposit. He shall deal with the said fixed deposit only after obtaining further permission from this Court.

18. Needless to say, such appointment is till Dr. Mini Gupta is able to look after her affairs and subject to revocation in accordance with law.

19. The present petition is allowed in the above terms.

NAVIN CHAWLA, J

**DECEMBER 24, 2019
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