

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.07.2020

C O R A M

THE HONOURABLE MR.JUSTICE M. GOVINDARAJ

C.R.P.(PD) No.615 of 2020

and

C.M.P.No.3229 of 2020

1.M.Govindaraj

2.Radha

3.Dr.G.Kanniga Prashanth

4.B.Indulekha

... Petitioners

1.K.Vijayakumar

2.S.Premalatha

3.S.Vijayalakshmi

[The respondents 2 and 3 are only
formal parties and given up]

... Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India to strike off the Petition in M.H.O.P.No.39 of 2019 pending on the file of the Hon'ble District Judge, Coimbatore.

For Petitioners : Mr.A.E.Ravichandran

For Respondents : Mr.I.Abrar Md.Abdullah

ORDER

Learned counsel for the petitioner would submit that Mental Healthcare Act, 1987, has been repealed and the Mental Healthcare Act, 2017 has come into force. It is further submitted that as per Rule 5 of Tamil Nadu Rights of Persons with Disabilities Rules, 2018, the District Collector is the Designated Authority to decide the matter. Rule 5 of the Amended Act, reads as follows:

“5. Limited Guardianship.

(1) Appointment of designated authority and appellate authority:-

(i) The District Collector shall be the designated authority for the purpose of sub-section (1) of Section 14 of the Act.

(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.

(2) Appointment of limited guardian.---

(i) 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. A person with disability may also directly apply for appointment of limited guardian for himself.

(ii) Any registered organization shall also make an application, in Form-I in Schedule-I to the designated authority for appointment of a limited guardian for a person with disability:

Provided that no such application shall be entertained by the designated authority unless the consent of the parent of the person with disability is also obtained.

(iii) While considering the application for appointment of a limited guardian, the designated authority shall consider,-

(a) whether the person with disabilities needs a limited guardian;

(b) the opinion of the person with disability if such person is in a position to give such opinion; and

(c) the purposes for which the limited guardianship is required for persons with disabilities.

(iv) While taking a decision for the appointment of limited guardianship, the designated authority shall ensure that the person whose name has been suggested for appointment as limited guardian,---

(a) is not of unsound mind;

(b) does not have a history of criminal conviction;

(c) is not dependent on others for his own living; and

(d) has not been declared insolvent or bankrupt.

(v) The designated authority shall take a decision preferably within a period of one month from the date of receipt of an application regarding grant of limited guardianship or from the date of coming to his notice of the need of such limited guardianship.

(vi) The confirmation of appointment of limited guardian on such application shall be made in Form-II in Schedule-I:

Provided that while making appointment of a limited guardian, the designated authority shall provide for the obligations which are to be fulfilled by the limited guardian and it shall be ensured that any decision taken by the limited

guardian shall follow a system of joint decision making between the person with disability and the limited guardian based on mutual trust and understanding.

(vii) The designated authority shall send to the Commissioner for Welfare of the Differently Abled, the particulars of the applications received by him and orders passed thereon at the interval of once in six months.

2. A submission is made by both the parties that the jurisdiction is vested with the District Collector / the Designated Authority under Rule 5 Tamil Nadu Rights of Persons with Disabilities Rules, 2018, and the matter may be referred to the Designated Authority viz., the District Collector under Rule 5 of the Rights of Persons with Disabilities Rules, 2018.

3. Considering the submissions, this petition is transferred to the Designated Authority for consideration. Parties shall approach the Designated Authority for further remedies. Till the Designated Authority takes cognizance of the matter, the properties of the so called mentally ill person shall not be alienated.

4. To give effect to the above order, the District Court, Coimbatore, is directed to return the papers and other original documents to the petitioner to be presented before the Designated Authority. The petitioner shall present the petition before the Designated Authority within a period of two weeks from the date he receives the papers from the District Court, Coimbatore. On presentation of the above petition, the Designated Authority is directed to dispose of the same as early as possible.

With the above direction, this Civil Revision Petition is disposed of. Consequently, connected miscellaneous petition is closed.

सत्यमेव जयते

21.07.2020

bri

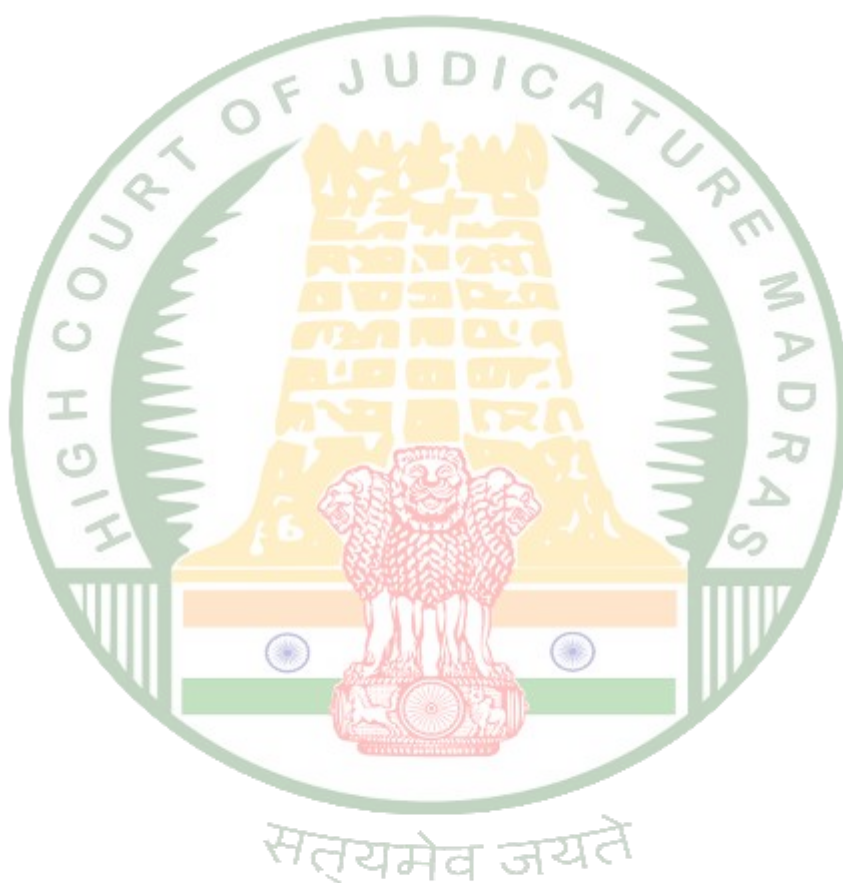
Index: Yes/No

Internet: Yes/No

Speaking Order / Non-Speaking Order

To

The District Judge,
Coimbatore.

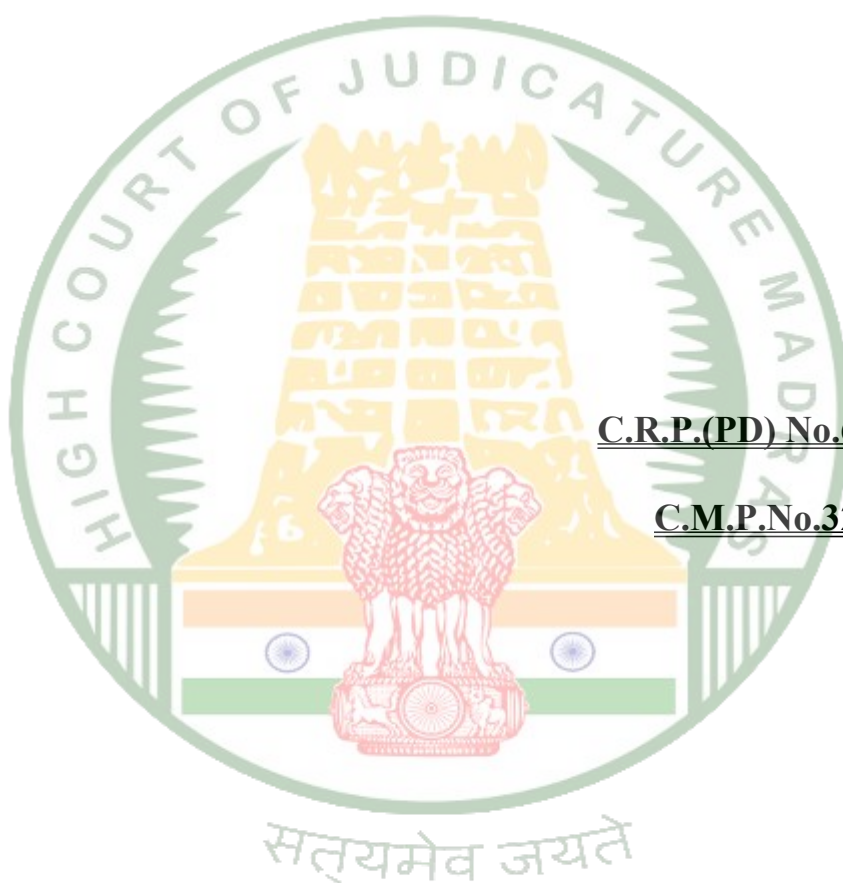


WEB COPY

C.R.P (PD) No.615 of 2020

M.GOVINDARAJ, J.

bri



C.R.P.(PD) No.615 of 2020
and
C.M.P.No.3229 of 2020

WEB COPY 21.07.2020