



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.07.2021

Coram

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

Writ Petition No.8822 of 2021

T. Thilagavathi

.. Petitioner

Versus

1. State of Tamil Nadu
represented by its Secretary
Department of Health and Family Welfare
Secretariat, Fort St. George
Madras
2. District Collector
Coimbatore District Collectorate
Coimbatore
3. Tahsildar
Coimbatore North Taluk Office
Coimbatore

.. Respondents

Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ mandamus of directing the third respondent to declare the petitioner as the guardian of her husband M.Vadivelan with the authority over the property to deal with it in the manner which she feels feasible or beneficial to her husband and to her family.

For Petitioner : Ms.RK.Sekina Reshma

For Respondents R1-R3 : Mr.G.Krishnaraja, Government Advocate

COMMON ORDER

The petitioner seeks to issue a Writ of Mandamus directing the third respondent to pass an order declaring the petitioner as the guardian of her husband M. Vadivelan so as to enable her to deal with the property of her husband in a manner she decides it as being appropriate and beneficial to the family.

2. The petitioner's case is that she along with her husband Vadivelan, her minor daughter Devesana, aged 11 years and her parents-in-law were happily residing in the matrimonial



house at Kalapatti, Coimbatore. While so, on 03.04.2019, when her husband was returning home after having darshan in a temple near Senjeermalai Petrol Bunk, Udumalpet in his two wheeler, he had an accidental fall at about 4.00 pm. When the petitioner came to know about the accident, she rushed to the spot and admitted her husband at Raja Hospital, B.R. Puram, Coimbatore at 5.30 pm from where he was referred to Kovai Medical Centre. After initial treatment, the husband of the petitioner was discharged, only to be re-admitted within a short time. It is stated that the petitioner's husband was repeatedly hospitalised for his ailment after successive discharge from the hospital. According to the petitioner, her husband suffered severe injuries on his head. It is stated by the petitioner that inspite of repeated treatment, the husband of the petitioner did not respond and he is not conscious-oriented till this date. In other words, the husband of the petitioner slipped to coma and the petitioner is hopeful that her husband would recover soon. The grievance of the petitioner is that for the purpose of treatment to her husband, she had drained all her wealth and she is not resourceful enough to meet the further expenditure for the treatment of her husband. The petitioner therefore decided to alienate or encumber the properties of her husband which were let out for rent. It is also stated that one of such property was purchased by the petitioner's husband on 26.02.2019, two months prior to his ill-fated accident. Therefore, unless the petitioner is declared as the guardian for her husband, who is in comatose stage with cessation of brain activity since 03.04.2019, the petitioner could not deal with the property of her husband and to mobilise the required amount for his treatment. In such circumstances, the petitioner has come up with this writ petition.

3. The learned counsel for the petitioner would contend that neither under the Mental Health Act nor Guardian and Wards Act, 1980, there is any provision for appointment of a guardian in a situation of this nature. The husband of the petitioner is in comatose stage and the petitioner as well as the Doctors are hopeful that the petitioner's husband may recover, but they are not definite about the period within which he would recover. The learned counsel for the petitioner also brought to the notice of this court the Certificate dated 13.07.2021 issued by the third respondent certifying that the petitioner, her minor daughter and mother-in-law of the petitioner are the family members of M. Vadivelan, Son of Mr. Marimuthu. Further, the learned counsel for the petitioner also invited the attention of this Court to the order dated 06.01.2016 passed by this Court in identical in WP No. 28435 of 2015 wherein also, the husband of the petitioner therein met with a road accident and slipped to comatose stage. This Court, after satisfying with the averments made in the affidavit filed in support of the writ petition as



well as the documents filed therewith, appointed the petitioner therein as guardian of her husband. The learned counsel for the petitioner therefore prayed this Court to issue a Mandamus as prayed for by the petitioner.

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4. On the above contention, this Court heard the learned Government Advocate appearing for the respondents and perused the materials placed.

5. There is no dispute about the ill-fated accident occasioned to the husband of the petitioner M. Vadivelan on 03.04.2019 as it is borne out of medical records. The petitioner, along with the typed set of papers has filed the discharge summaries dated 04.05.2019, 18.07.2019 and 02.08.2019 to substantiate that her husband was frequently discharged from hospital and again re-admitted. The medical certificates issued by the Doctors at Kovai Medical Centre and Hospital, Coimbatore as well as the Certificate of Dr. S. Varadharajan of Rajah Hospital, Coimbatore reveal that the husband of the petitioner is not conscious oriented and he had slipped into a comatose stage with cessation of brain activity. The petitioner also enclosed the various medical bills for Rs.9,93,178/- on 04.05.2019 and another medical bill for Rs.13,12,602/- issued by the Kovai Medical College Hospital, Coimbatore for having treated her husband. Thus, the petitioner has satisfied this Court that she has no wherewithal and she is not resourceful enough to meet the hospital expenses of her husband and the necessity to appoint her as Guardian so as to enable her to deal with the property of her husband in a manner she wishes. Having regard to the above, this Court is of the view that the petitioner has made out a case for issuing a Mandamus as prayed for.

6. Accordingly, the writ petition is disposed of with a direction to the third respondent to pass appropriate order declaring the petitioner as the guardian of her husband M. Vadivelan, who is in comatose stage with cessation of brain activity, with the authority to her to deal with the property of her husband in a manner which will be beneficial for her and her family. The third respondent is directed to pass such an order forthwith. No costs.

Sd/-

Assistant Registrar(CO-IV)

//True Copy//

Sub Assistant Registrar

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To

1. State of Tamil Nadu
The Secretary
Department of Health and Family Welfare
Secretariat, Fort St. George
Madras

2. District Collector
Coimbatore District Collectorate
Coimbatore

3. Tahsildar
Coimbatore North Taluk Office
Coimbatore

+1cc to Ms. RK. Sekina Reshma, Advocate, S.R.No.36104

+1cc to the Government Pleader, S.R.No.36237

WP No. 8822 of 2021

PL (CO)
CT (23/08/2021)