



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.06.2021

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

WRIT PETITION NO.12675 OF 2021

Srividhya S.

... Petitioner

.Vs.

The District Collector,
Chennai District,
Rajaji Salai,
Chennai - 600 001.

... Respondent

PRAYER:-

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondent to consider the petitioner's application No.TCMAU8632159443 for appointing the petitioner as the legal guardian of Minor Mr.V.Shyamal Kumar and to his estate under National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 and dispose of the same within a reasonable time in the manner known to law.

For Petitioner : Mr.T.Balaji

For Respondent : Mr.Stalin Abimanyu
Government Advocate

ORDER

This writ petition has been filed to issue a mandamus, directing the respondent to consider the petitioner's application No.TCMAU8632159443 to be appointed as the legal guardian to the estate of her son by name Shyamal Kumar, who is suffering from autism spectrum disorder.

2. According to the petitioner, she is a widow and a mother of a daughter and a minor boy aged 16 years, who is suffering from Autism spectrum disorder right from his birth. Her husband was passed away on 03.11.2019. The petitioner is working as a teacher and is earning a meagre sum of Rs.20,000/- per month.



Owing to her son's condition and being the sole lawful guardian, on 17.05.2021, she applied to be appointed as the legal guardian of her son Shyamal Kumar to the respondent under the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999, which was numbered as TCMAU8632159443. However, no action was taken on the said application. It is the grievance of the petitioner that she is struggling to meet the daily needs of herself and her son and the immovable properties belonging to her husband are now bestowed upon his legal heirs viz., the petitioner and her children and hence, she is required to be appointed as the guardian to the estate of her son. In this regard, she made an application to the respondent. Since the said application has not been considered till date, the petitioner has come up with this writ petition for the aforesaid relief.

3. Today, when the matter was taken up for consideration, the learned counsel appearing for the petitioner submitted that in R.Usha and others v. State of Tamil Nadu, [WP.No.13060 of 2020, dated 05.02.2021], this Court after following the decisions of the various High Courts, has appointed the petitioner therein as guardian in respect of the movables and immovables owned by her husband, who is a coma patient. For better appreciation, the relevant portion of the said order is extracted hereunder:

"8.As seen from the medical report, it is clear that Dr.K.Ramasubramanian is now in stage of coma. The petitioners cannot be left remediless when there is no statutory provision available for appointment of a guardian to administer the movable and immovable properties of a coma patient. The doctrine of parens patriae will come into play and hence, this Court cannot shut its eyes when there is undisputed evidence placed before it to show that the properties both movable and immovables belonging to a coma patient could not be administered due to non-availability of a statutory provisions enabling one of his family members to be appointed as his guardian for the said purpose that too when the family requires money to support his medical treatment. Hence, this Court is of the considered view that a guardian will have to be necessarily appointed on his behalf. The first petitioner is admittedly the wife of Dr.K.Ramasubramanian and therefore, she will be the most suitable person to be appointed as guardian for Dr.K.Ramasubramanian.



WEB COPY

9. For the foregoing reasons, this Court declares that Mrs.R.Usha, the first petitioner herein, is the guardian for the movable and immovable assets and estate including bank accounts maintained by Dr.K.Ramasubramanian. However, the guardian appointed by this Court shall act as a true guardian for Dr.K.Ramasubramanian and anything detrimental to his interest should not be done by the guardian. This Court deems it fit to impose certain conditions which shall be necessarily fulfilled by the guardian, which are incorporated hereunder:

(a) The guardian appointed by this Court shall disclose the particulars of the properties both movable and immovables owned by Dr.K.Ramasubramanian, the Coma patient before the Registry of this Court within a period of four weeks from the date of receipt of a copy of this order.

(b) Dr.K.Ramasubramanian, the coma patient shall be examined by a Government Doctor and a report to that effect from the said Government Doctor shall be filed before the Registry of this Court every four months.

(c) The guardian appointed by this Court shall file a statement before the Registry of this Court every six months, disclosing the bank balances of Dr.K.Ramasubramanian, the coma patient available with various banks/financial institutions.

(d) The guardian appointed by this Court shall render true accounts of the funds belonging to Dr.K.Ramasubramanian, the coma patient and shall file a report before the Registry of this Court every six months.

(e) If it is brought to the notice of any Court/any statutory authority about misuse of funds belonging to Dr.K.Ramasubramanian, the coma patient, the said Court/authority is empowered to cancel the guardianship after holding a proper enquiry.

(f) The transactions in respect of the property of the person lying in coma state by the guardian shall be strictly in accordance with the



WEB COPY

relevant provisions of law.

(g) If the guardian appointed by this Court is found to be abusing the power or neglects or acts contrary to the best interest of Dr.K.Ramasubramanian, the coma patient, any relative or next friend may apply to before the appropriate Court for removal of such guardian.

10. With the aforesaid directions, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed."

Thus, in the light of the aforesaid order, the claim of the petitioner may be considered by this Court, according to the learned counsel.

4. On the other hand, Mr.Stalin Abhimanyu, learned Government Advocate, taking notice for the respondent fairly submitted that the respondent would consider the petitioner's application and pass orders, in the light of the aforesaid order passed by this Court, within a time frame to be stipulated by this Court.

5. Considering the facts and circumstances of the case and having regard to the submissions made by the learned counsel on either side, this court directs the respondent to consider the application of the petitioner dated 17.05.2021 and pass appropriate orders, declaring her as the guardian of her son Shyamal Kumar, who is suffering from autism spectrum disorder, in the light of the earlier order dated 05.02.2021 passed in WP.No.13060 of 2020, after affording an opportunity of personal hearing to the petitioner, within a period of six weeks from the date of receipt of a copy of this order.

6. Accordingly, this writ petition stands disposed of. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

kj/rk



To

The District Collector,
Chennai District,
Rajaji Salai,
Chennai - 600 001.

WEB COPY

+1cc to Mr.T.Balaji, Advocate, S.R.No.30011
+1cc to the Government Pleader, S.R.No.30228

W.P.NO.12675 OF 2021

JPL(CO)
PBS/16/09/2021