



W.P.No.4370 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.07.2022

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

W.P.No.4370 of 2022

Sudarsanam

... Petitioner

Vs

1. The State of Tamil Nadu,
represented by its Secretary,
Department of Health and Family Welfare,
Secretariat, Fort St.George,
Chennai-600 001.
2. The District Collector,
Singaravelan Maligai,
62, Rajaji Salai, 4th Floor,
Chennai – 600 001.
3. The Tahsildar,
Virugambakkam Taluk Office,
Chennai.
4. The Dean,
Madras Medical College and Rajiv Gandhi
Government General Hospoital,
EVR Salai, Chennai-3
(R.4 Suo Motu impleaded vide order dated
01.03.2022 made in WP No.4370/2022)



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5. The Tahsildar,
Aminjikarai

(R5 Suo Motu impleaded vide
order dated 28.03.2022 made in
WP No.4370/2022)

.. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue Writ of Mandamus to appoint the petitioner as a Guardian of his son Mr.Prasana Kumar and to permit the petitioner to protect the interest, administer and in the event of necessity to sell the immovable property standing in the name of his son and to use the proceed towards treatment of the petitioner's son Mr.Prasana Kumar.

For Petitioner : Mr.P.Prabhu

For Respondents : Mr.K.H.Ravi Kumar
Govt.Advocate

ORDER

A desperate father seeks for his appointment as a Guardian of his son Mr.Prasana Kumar who is in a vegetative state and in a state of coma.

2. The petitioner's son Mr.Prasana Kumar, aged about 39 years is a patient diagnosed with Hypoxic ischemic encephalopathy and Quadriplegia and he is currently in a vegetative coma state for the past ten years ever since 2012 and is unable to carry out on his regular activities like a normal person.



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3. Mr.Prasana Kumar was married to one Ms.R.Radha when he was in his normal self. Ms.R.Radha obtained a divorce decree against Mr.Prasana Kumar under Section 13(1)(iii) of Hindu Marriage Act, 1955 in HMOP No.59 of 2017 before the Sub Court, Mannargudi. Mr.Prasana Kumar is in a vegetative state for the past ten years. According to the petitioner, the monthly medical expenses to be incurred for Mr.Prasana Kumar is Rs.40,000/-. It is submitted by the petitioner that Prasana Kumar has been admitted in the hospital on several occasions and the hospital bills run to several lakh of rupees.

4. The petitioner, who is the father of Prasana Kumar is a retired Central Government employee having earlier worked in Mercantile Marine Department and after retirement, he is drawing a pension of Rs.22,000/-per month and it is not sufficient to take care of the medical needs of his son Prasana Kumar. It is also submitted by the learned counsel for the petitioner that the property Flat No.73, F4, located in the First Floor on the South Western Side of the Staircase with a built up area of 805 sq.ft and 459 sq.ft of undivided share and interest in the entire property of house site bearing Plot No.73, F4 situated in the 2nd Main Road,



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Kumaran Nagar, Chinmaya Nagar, Virugambakkam Chennai-600092 stands in the name of Mr.Prasana Kumar. According to the petitioner, Mr.Prasana Kumar while he was in his normal self had availed loan by mortgaging the said property. According to the petitioner, he only discharged the loan availed by his son Prasana Kumar.

5. To ascertain the veracity of the petitioner's statement in this writ petition about the medical condition of Mr.Prasana Kumar, this Court had directed by its order dated 01.03.2022 to the Dean, Madras Medical College and Rajiv Gandhi Government General Hospital, Chennai to inspect the residence of the petitioner as well as ascertain the condition of the petitioner's son Mr.Prasana Kumar within a period of four weeks from the date of the said order.

6. The Dean of Rajiv Gandhi Government Genal Hospital, Chennai-3 has complied with the said direction and submitted a Report on 05.04.2022 and in the medical examination report of Mr.Prasana Kumar, it has been stated as follows:

“ *MrPrasannakumar* 39 years/Male/S/o



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Thiru,sudarsanan

Aadhaar No.3604 8313 0918

Identification Marks:

1.A black mole on the left little finger

2.A black mole above the umbilicus

On clinical examination

Patient is malnourished and emaciated, on tracheostomy care and getting feeds through ryles tube

Patient is awake, having spontaneous eye opening, not responding to simple oral commands, but responding to deep painful stimuli, both pupils equally reacting to light, dolls eye movement present, muscle tone is increased in all four limbs, with contractures present in both upper and lower limbs, deep tendon reflexes were present in all four limbs, bilateral plantar there was no response.

Startle myoclonic jerk noted.

Decubitus ulcer over the gluteal region

Hypoxic ischemic encephalopathy-persistent vegetative state.”

7. As seen from the aforementioned report, it is clear that Mr.Prasana Kumar is in a vegetative state and his senses are not working properly. The photographs of the patient, Mr.Prasana Kumar, have also been filed along with the



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writ petition, which confirms his present medical condition. The petitioner has also

filed the following documents along with the writ petition:-

1. Copy of Sale Deed dated 02.02.2006, standing in the name of Mr. Prasana Kumar
2. The marriage invitation of Mr. Prasana Kumar
3. Medical History of Mr. Prasana Kumar from 2012 to 2019 dated 12.06.2012.
4. Certificate of Disability issued in 2014 dated 23.06.2014
5. Certificate of Disability issued in 2015 dated 22.12.2015
6. Certificate of Disability issued in 2016 dated 28.06.2016
7. Copy of Divorce order of Prasana Kumar in HMOP No. 59 of 2017 dated 26.07.2017
8. Copy of the order passed in OP No.616 of 2015 dated 20.03.2017
9. LIC Housing Finance Ltd Loan Closure Receipt dated 03.10.2019
10. Bank Statement of Sudarsanam 2014 to 2019
11. LIC Housing Finance Ltd Loan payment receipts
12. Certificate of Disability issued in 2022
13. Photo of Mr. Prasana Kumar

8. This Court has given careful consideration of the above mentioned documents. After giving due consideration to the same, this Court is of the consider view that undoubtedly, Mr. Prasana Kumar is presently in a vegetative state and he



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requires financial means for his medical treatment. The petitioner, who is his father, has also claimed that the average medical expenses to be incurred for his son's treatment is Rs.40,000/-, which, cannot be considered to be excessive. Therefore, the same will have to be accepted.

9. Therefore, this Court is of the considered view that the petitioner, who is the father of Mr.Prasana Kumar, who is presently in a vegetative state and in a state of coma has to be granted the relief sought for in this writ petition viz., to appoint him as a legal guardian for his son Mr.Prasana Kumar. There is no iota of doubt as seen from the documents/medical reports placed on record that Mr.Prasana Kumar is in a vegetative state and is in coma. In a similar matter, involving another similarly disabled person, this Court had appointed a legal guardian by order dated 05.02.2021 in WP No.13060 of 2020. Being similarly placed, the petitioner is also entitled to be appointed as legal guardian and being the father, his case is further strengthened.

10. For the foregoing reasons, the writ petition is allowed and the petitioner is appointed as Guardian for his son Mr.Prasana Kumar and he is



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permitted to protect his interest and administer and in the event of necessity to sell the immovable property standing in the name of his son and to use the proceeds towards treatment of the petitioner's son Mr.Prasana Kumar. However, in case of alienation of the property of Mr.Prasana Kumar by the petitioner, proper accounts shall be submitted to the Registry of this Court within a period of two weeks from the date of completion of the sale. It is made clear that the income from the assets of Mr.Prasana Kumar both from movable and immovable shall be used only for the benefit of Mr.Prasana Kumar. No costs.

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Index: Yes/No

Speaking Order/Non-Speaking Order



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ABDUL QUDDHOSE, J.

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