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CRP(PD)No.1981 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.06.2022

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THE HONOURABLE MS. JUSTICE R.N.MANJULA

CRP(PD).No.1981 of 2022

V. Padmini

... Petitioner

Civil Revision Petition filed under Section 227 of the Constitution of India to set aside the Docket order dated 21.02.2022 passed in O.P.S.R.No.5126 of 2021 by the District Judge, Chengalpet by allowing this CRP.

For Petitioner : Mr.B.Balaji for
Mr.R.Chellamuthu

For Respondent : Nil

ORDER

This Civil Revision Petition has been filed challenging the written endorsement made by the learned District Judge, Chengalpet dated 21.02.2022.

2. The revision petitioner is the petitioner who has filed the original petition before the District Court, Chengalpet to appoint herself as a guardian



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for the person and property of her mentally retarded son Mr.Ambaresh Varathan. The learned District Judge has returned the plaint on 21.02.2022 with the following endorsement:

"As per Mental Health Act, 2017 (10 of 2017) when came into force with effect from 07.07.2018 and Mental Health Act 1987 has been Repealed. Hence this petition is returned".

3. The learned counsel for the revision petitioner submitted that "The Mental Health Act, 1987" was repealed and was replaced by the Mental Healthcare Act, 2017 which came into effect from 07.07.2018 and in the new Act there is no specific provision available in the special Act for appointment of guardian for the mentally ill person. Since the gap has to be filled up only by way of filing an appropriate original petition before the jurisdictional Court, the revision petitioner had filed the petition before the District Court, Chengalpet. In this connection it is relevant to refer the order passed by this Court dated 27.01.2022 made in OP.No.731 of 2021 in which Hon'ble Mr.Justice Abdul Quddhose has held as follows:-

12. Section 53 of the repealed Mental Health Act 1987 reads as follows:-

53. Appointment of guardian of mentally ill person (1) Where the mentally ill person is incapable of taking care of himself, the



District Court or, where a direction has been issued under sub-section (2) of Section 54, the Collector of the District, may appoint any suitable person to be his guardian.

(2) In the discharge of his functions under sub-section (1) the Collector shall be subject to the supervision and control of the State Government or of any authority appointed by it in that behalf.

*13. The Mental Health Act, 1987 was repealed and was replaced by the Mental Healthcare Act, 2017 which came into effect from 07.07.2018. As seen from the Mental Healthcare Act, 2017, there is no provision available for appointment of a guardian of a mentally ill person, which was very much available under the repealed Mental Health Act, 1987. Though the National Trust for Welfare of persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 under Section 14 empowers the Local Level Committee to appoint a legal guardian for a mentally retarded person, the said legislation has not curtailed the powers of this Court to appoint a legal guardian for a mentally retarded person exercising its powers under Clause 17 of the Letters Patent. The decision rendered by a learned Single Judge of this Court in *G.Nithyanandam Vs. Tmt.D.Saritha and others* reported in 2013 3 LW 412 which is the basis for the return of the Original Petition by the Registry of this Court is in the context of a petition filed under the Guardians and Wards Act and not under Clause 17 of the Letters Patent. The only reason for holding that the said petition was not maintainable by the learned Single Judge in the reported decision of *G.Nithyanandam's**



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case referred to supra was that under the Guardians and Wards Act, a person cannot be appointed as a legal guardian for a mentally retarded person. Therefore, I am of the considered view that the reason for return of the Original Petition filed by this petitioner under Clause 17 of the Letters Patent seeking for appointment of a legal Guardian for a mentally retarded person by the Registry is erroneous.

4. The case involved in the above order is a petition for appointment of guardian. Since it had occurred within the jurisdiction of Chennai, it is found to be maintainable under Clause 17 of the Letters Patent Act, 1865. The impugned written order dated 21.02.2022 has been passed on a petition filed by the revision petitioner under the territorial jurisdiction of Chengalpet. Since the maintainability of such petition in High Court is upheld as per the above referred order in O.P.No.731 of 2021, similar such petition filed in the District Court also maintainable. Hence the written endorsement dated 21.02.2022 is liable to be set aside.

5. In the result civil revision petition is allowed and the order dated 21.02.2022 in O.P.S.R.No.5126 of 2021 is set aside and the learned District Judge, Chengalpattu is directed to take the case on file if it is otherwise in order and dispose of the same in accordance with law.



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6. Registry is directed to return the Original Petition to the learned counsel for the petitioner for the purpose of presenting it before the lower Court, within two weeks from the date of receipt of a copy of this order.

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Speaking order/Non-speaking order

Index : Yes/No

Internet : Yes/No

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To

The District Court,
Chengalpet.



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R.N. MANJULA, J.

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