



W.P(MD)No.23497 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 17.10.2022

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THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P(MD)No.23497 of 2022

and

W.M.P(MD)No.17581 of 2022

- 1.S.Sivagamasundari
- 2.Pappayee Kulanthaisamy
- 3.K.S.Akshaykumar
- 4.K.S.Shrinidhi

..Petitioners

Vs

- 1.The State of Tamil Nadu,
Represented by its Secretary,
Health and Family Welfare Department,
Secretariat,
Chennai-600 009.
- 2.The District Collector,
Sh-874, First Floor,
Collector Office,
Karur-639 007,
Tamil Nadu.
- 3.The Tahsildar,
Karur Taluk Office,
Jawahar Bazaar Road,
Jawahar Bazaar,
Karur-639 001,
Tamil Nadu.

..Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Declaration to declare the first petitioner Smt.S.Sivagamasundari as the guardian of her husband Shri.K.Sivasamy, who is in a comatose condition, presently in a vegetative state of mind to protect his interest, administer bank accounts, investments, etc., and in the event of necessity, to sell the immovable property standing in the name of her husband and to use the proceeds towards medical treatment of her husband and family welfare expenses.

For Petitioner :Mr.S.M.P.Srivignesh
For Respondents :Mr.D.Sadiw Raja
Additional Government Pleader

ORDER

The petitioner has filed the Writ Petition seeking issuance of a Writ of Declaration to declare the first petitioner Smt.S.Sivagamasundari as the guardian of her husband Shri.K.Sivasamy, who is in a comatose condition, presently in a vegetative state of mind to protect his interest, administer bank accounts, investments, etc., and in the event of necessity, to sell the immovable property standing in the name of her husband and to use the proceeds towards medical treatment of her husband and family welfare expenses.

2.The learned counsel appearing for the petitioner would submit that the the first petitioner K.Sivagamasundari, who is the wife of K.Sivasamy, who is



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in a comatose condition. The first petitioner and her husband had two children I.e., one son K.S.Akshaykumar and one daughter K.S.Shrinidhi residing at D2 Agaram Nest, KK Avenu, Madurai Bye Pass Road, Andankovil East, Karur-639 002, who are the petitioners Nos.3 and 4 and the second petitioner is the mother of K.Sivasamy. On 09.04.2022 at about 05.00 p.m., the said Sivasamy slipped and fell in the living room of his residence and sustained injuries to his head. He was immediately taken to Amaravathi Hospital, Karur and thereafter to Kovai Medical Centre and Hospital (KMCH), Coimbatore for Neuro Surgery to stop the internal bleeding in his brain. After the surgery, he was in the ICU in comatose condition and after few days he was shifted to step down ICU and thereafter, he was shifted to the ward.

3. He would further submit that the CT scan (Trauma Brain and Cervical Brain) report of Mr.K.Sivasamy dated 10.04.2022 issued by the Department of Radiology and imaging of the Kovai Medical Centre and Hospital (KMCH) reveals that he sustained right FTP EDH with mass effect, Diffuse cerebral edema and minimally displaced linear fracture involving right greater wing of sphenoid. Further on 10.05.2022 he was discharged from the hospital in comatose condition with instructions from the doctors to follow the prescribed medication and give physiotherapy. The said Sivasamy was actively running



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his business and personally handling his finances till the date of hospitalisation.

He was the sole bread winner of his family. The expenses of his medical treatment has been met by family savings and taking loans from relatives. The first petitioner is now responsible for his day-to-day medical expenses and nursing care and he has to be taken to hospital for his periodic review. Apart from this, the first petitioner is also responsible for the education of petitioners 3 & 4 and also responsible for the livelihood of the second petitioner, who is the mother of Shri.Sivasamy and the daily household expenses. The first petitioner is also responsible to repay the loans/pay the interest for loans obtained by Sivasamy. Since the bank accounts and properties are in the name of Sivasamy and the petitioners are not in a position to operate the same. The following are loans in the name of Sivasamy to which the petitioners are currently responsible to pay interest/repay:-

(I) Jewel Loan of Rs.5,45,000/- at Karur Vysya Bank,
Vengamedu Branch, Karur (A/C.No.1631953000023031)

(ii)Housing Loan of Rs.53,43,901.90 at Karur Vysya Bank,
Vengamedu Branch, Karur (A/C No.1631753000000376)

(iii) Around Rs.2,54,50,000/- loan from private persons.

4. The petitioners have no other alternative efficacious remedy except to approach this Court seeking for issuance of order of declaration to declare the



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first petitioner Smt.S.Sivagamasundari as the guardian of her husband K.Sivasamy, who is in a comatose condition, presently in a vegetative state of mind.

5. In a similar case, in ***Sailaja -vs- The State of Tamil Nadu and others*** reported in 2016 SCC Online Mad 5171 this Court has held as follows:-

“6. In view of the above, there appears to be no dispute of facts. The petitioner's husband is in coma. Neither under the Mental Health Act nor under the Guardian and Wards Act, 1890, there is any provision for appointment of a guardian in such a situation. Though the petitioner could have approached the jurisdictional Civil Court by way of common law remedy, in view of the report of the third respondent and the urgency expressed, coupled with the fact that there is no dispute on facts, this Court is inclined to consider the prayer sought by the petitioner.”

6. Then in another case, by order dated 31.07.2018 passed in W.P.No. 16819 of 2018, wherein this Court directed the Tahsildar and Executive Magistrate, Mylapore Taluk Office, Chennai and Prof.Dr.M.Jawahar, MD. DM (Neuro) NV Unit Chief, Institute of Neurology, Rajiv Gandhi Government General Hospital, Chennai to recognize the first petitioner as a Legal Guardian of the 5th respondent therein and also to execute and register a deed of conveyance and other deeds on the properties belonging to the 5th respondent.



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7. Further, the Full Bench judgment of the Kerala High Court in the case of ***Shobha Gopalakrishnan-vs-State of Kerala, reported in 2019 SCC Online***

Ker 739 has held as follows:-

“42. Considering the role of this Court, jurisdiction under Article 226 of the Constitution of India springs up, when no remedy is provided under any Statute to persons like patients in 'comatose state'. It is something like 'parens patriae' jurisdiction. A reference to the verdict in *Nothman v. Barnet London Borough Council*, (1978 (1) WLR 220 (at 228) is also relevant. In such cases, it is often said, Courts have to do what the Parliament would have done. A reference to the verdict in *Surjit Singh Karla v. Union of India* (1991 (2) SCC 87 explaining the principle of 'causes omissus' is also brought to the notice of this Court; to the effect that if it is an accidental omission, court can supply/fill up the gap. This Court however does not find it appropriate to “re-write” the provision, as it is within the exclusive domain of the Parliament. This is more so, when the relevant statutes like Mental health Act, 1987 and PWD Act, 1995 came to be repealed, on introducing the new legislations, such as the Mental Health care Act 2017 and The Rights of persons with Disabilities Act, 2016 in conformity with the mandate of U.N.Convention, 2006. This Court does not say anything whether any amendment is necessary, also in respect of the National Trust Act for the Welfare of Persons with Autism, Cerebral Palsy, mental Retardation and Multiple Disabilities Act, 1999 (National Trust Act, 1999) with reference to the U.N.Convention 2006. It is for the Government to



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consider and take appropriate steps in this regard, as it is never for the Court to encroach into the forbidden field. This Court would only like to make it clear that, in so far as the case of a patient lying in 'comatose state' is not covered by any of the statutes, (as discussed above), for appointment of a Guardian, the petitioners are justified in approaching this Court seeking to invoke the power under Article 226 of the Constitution of India. It is declared accordingly.”

8. As seen from the aforesaid decisions, none of the statutes provide for appointment of a guardian for the administration of properties belonging to a coma patient. A perusal of the medical reports reveal that the petitioner's husband suffered comatose and presently in a vegetative state of mind. 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 statutory provisions enabling one of the 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



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behalf. The first petitioner is admittedly the wife of Sivasamy, who is also the nominee for the bank accounts and therefore, she will be the most suitable person to be appointed as guardian for K.Sivasamy.

9. For the foregoing reasons, this Court declares that Smt.S.Sivagamasundari, the first petitioner herein, is the guardian for the movable and immovable assets and estate including bank accounts maintained by K.Sivasamy. However, the guardian appointed by this Court shall act as a true guardian for K.Sivasamy 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 K.Sivasamy, 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) K.Sivasamy, 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



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bank balances of K.Sivasamy, 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 K.Sivasamy, the come 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 K.Sivasamy, 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 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 K.Sivasamy, the coma patient, any relative or next friend may apply 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 petition is closed.

Index :Yes/No

Internet :Yes/No

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17.10.2022



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To

1.The Secretary,
Health and Family Welfare Department,
Secretariat,
Chennai-600 009.

2.The District Collector,
Sh-874, First Floor,
Collector Office,
Karur-639 007,
Tamil Nadu.

3.The Tahsildar,
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V.BHAVANI SUBBAROYAN, J.

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