

Ashvini Narwade

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.15636 OF 2023

Janaki Suresh

Age 50 years, Occupation : Housewife

Residing at 551, H-block, 17th Street,

16th Main Road, Anna Nagar West,

District-Chennai, Tamil Nadu-600040

... Petitioner

Versus

1. Union of India

Through the Secretary, Woman and
Child Welfare, Through office of
Law & Justice, New Marine Lines
Mumbai 40020.

2. State of Maharashtra

Through the office of Govt. Pleader

3. Ministry of External Affairs, New Delhi.

Through the Secretary, Woman and
Child Welfare, Through office of
Law & Justice, New Marine Lines,
Mumbai 400 020.

... Respondents

Ms. Kenny Thakkar a/w. Mr. Mehul Rathod, Mr. Laxminarayan Shukla for
the Petitioner.

Ms. S. D. Vyas, Addl. G. P. with. P. J. Gavhane, AGP for Respondent-State.

Mr. Y. S. Bhate a/w. Vaibhav R. Gargade i/b. Rahul Tiwari for Respondent
No.1 (UOI).

CORAM: G. S. KULKARNI &
FIRDOSH P. POONIWALLA, JJ.
DATED: 7th FEBRUARY, 2024

Oral Judgement (Per G. S. Kulkarni J.):

1. Rule. Rule made returnable forthwith. Heard finally by consent of the
parties.

2. This Petition, under Article 226 of the Constitution of India, is filed praying for the relief that the Petitioner-Mrs. Janaki Suresh be declared as the legal Guardian of Mr. Suresh Subramanian Iyer (for short “Mr. Iyer”), who is in comatose condition, and for other consequential reliefs in the nature of direction to the Respondents as also all the concerned Banks, Depository, Financial Institutions to allow the Petitioner to operate/ represent the affairs of Mr. Iyer.

3. The case of the Petitioner as set out in the Petition is that the Petitioner got married to Mr. Iyer on 9th September 1996. It is stated that they have three children, namely, Osho Suresh born on 26th August 1998, Ponni Suresh born on 3rd June, 2000 and Sachi Suresh born on 27th November 2007. The Petitioner has stated that the mother-in-law of the Petitioner, Mrs. Savithri Subramanian, is 78 years old and is currently residing in Thane. The Petitioner has annexed photocopies of her Aadhar Card and also the Aadhar Card of Mr. Iyer.

4. The Petitioner has contended that her husband, Mr. Iyer, has been employed with Abu Dhabi National Oil Company. She states that on or about 8th December 2021, Mr. Iyer was brought to AL Dhannah Hospital in Ruwais, Abu Dhabi, to the emergency department, in an unconscious state. She has described the medical condition of Mr. Iyer at the time when he was admitted in paragraph 5 of the Petition to contend that, since the time he was brought to

the hospital, till the date of filing of this Petition, he was in a vegetative state. Mr. Iyer was shifted to long term acute care for supportive care, physiotherapy and rehabilitation. The Petitioner has stated that, since the date of Mr. Iyer's hospitalization, i.e., from 8th December 2021, he has remained in a vegetative condition and there has been very little progress in his health condition. She has annexed to the Petition as Exhibit-C a Medical Certificate dated 02/08/2023 issued by the doctors confirming the fact that Mr. Iyer still continues to remain in persistent vegetative state and that he is unable to speak or sign or communicate in any manner.

5. The medical report of AL Dhannah Hospital dated 02/08/2023 needs to be noted which reads thus:-

***“AL DHANNAH HOSPITAL
TO WHOM IT MAY CONCERN
MEDICAL REPORT***

Date: 02-08-2023

<i>Name</i>	<i>:</i>	<i>Mr. SURESH SUBRAMANIAN IYER</i>
<i>Medical Record Number</i>	<i>:</i>	<i>MA2200000042612</i>
<i>Nationality</i>	<i>:</i>	<i>Indian</i>
<i>Gender</i>	<i>:</i>	<i>Male</i>
<i>DOB</i>	<i>:</i>	<i>31-05-1966</i>
<i>Registered Contact Number</i>	<i>:</i>	<i>0504925169</i>
<i>Doctor Name</i>	<i>:</i>	<i>Dr. RaSha Sadek Mohamed Shehata</i>

56-year-old male patient admitted on long term care as hypoglycemic encephalopathy, this patient arrested at home by hypoglycemia CPR done return pulse but kept in vegetative state.

Patient on PEG tube and Tracheostomy.

Generalized muscle wasting no movement only spontaneous eye opening.

Hemodynamically stable on room air.

For multidisciplinary Care nursing, physiotherapy, and occupational care.

*Dr. Osman Mohammed Rafi Uz Zaman
Hospital Administrator”*

6. She stated that, due to his health condition, it is not possible for Mr. Iyer to manage his assets, including Bank Accounts. The Petitioner has set out at Exhibit-D the details of two Bank Accounts and a Demat Account of Mr. Iyer. She has further stated in the Petition that Mr. Iyer was the sole earning member of the family and, in the absence of any income support from Mr. Iyer, the Petitioner has to take care of herself and her three children and run the household on her own. She had approached the Banks and also Depository with a request to allow her to sign and comply necessary formalities in place of Mr. Iyer. However, her request has been declined by the Banks and the Depository with a request to get herself appointed as the guardian or get an appropriate order from a competent Court of law, so as to enable her to manage the Bank Account and Demat Account of Mr. Iyer.

7. She has stated that due to sudden ill health and comatose condition of her husband she has to take care of his affairs and their children. She has stated that her husband needs to be given constant medical care under trained paramedics to keep him in a good and dignified condition and to sustain his life. She also stated that she has been incurring huge financial expenses and Mr. Iyer had made some emergency reserves but the same are now almost

exhausted as the same were not with a plan that he will be in a vegetative state, wherein his routine work life would come to a standstill. It is therefore her contention that, due to comatose condition of her husband, she is facing financial constraints for maintenance of herself as also Mr.Iyer and their family, which includes his mother and three children. She also stated that she would be required to spend on the studies of her two children, who intend to pursue higher education, and a minor daughter, but there are constraints due to such limited financial resources. The Petitioner has also contended that the mother of Mr. Iyer is 78 years of age and she has consented to the Petitioner being appointed as the legal guardian of Mr. Iyer. She has annexed the consent affidavits of her three children and also the mother of Mr. Iyer at Exhibit-E to Exhibit-H.

8. It is in these circumstances, the Petitioner is before the Court praying for the following substantive prayers:-

“b. That, this Hon’ble Court be pleased to issue a Writ of Mandamus or any other appropriate writ, order or direction in the nature of Mandamus declaration that the Petitioner Mrs. Janaki Suresh as the guardian of Mr. Suresh Slubramanian Iyer who is in comatose condition;

c. That, the Hon’ble Court be pleased to issue a Writ of Mandamus or any other appropriate writ, order or direction in the nature of mandamus directing the Respondents, as well as all the concerned banks, depository, finance institutes, etc. to allow the Petitioner to operate/represent with the affairs of Mr. Suresh Subramanian Iyer in terms of finance, on such terms and condition as deem fit to this Hon’ble Court.”

9. A co-ordinate bench of this Court, of which one of us (Justice Firdosh P. Pooniwalla) was a member, by an Order dated 21st December 2023, had directed the Dean of All India Institute of Medical Sciences, New Delhi (for short “AIIMS”) to constitute a Medical Board to ascertain the medical condition of Mr. Iyer. The relevant paragraph of the said Order can be noted here, which reads thus.

On 15th December 2023, the learned Counsel for the Petitioner was directed to give notice to the Standing Counsel for the Respondent no.1. Accordingly, Mr.Rahul Tiwari, learned counsel has entered his appearance for Respondent no.1. On instructions, he submits that the Medical Board of Doctors from All India Institute of Medical Sciences, New Delhi can undertake steps to assess the medical condition of the patient through Video Conferencing. To enable this to be done, the Dean, All India Institute of Medical Sciences, New Delhi is requested to constitute a team of Doctors who can take necessary steps to consider the medical state of Mr.Suresh Subramaniam Iyer who is presently taking treatment at Abu Dhabi. Such steps be taken within a period of two weeks from today. This exercise can be undertaken through Video Conferencing and in consultation with local Government Doctors who are treating the said patient. The report indicating the state of health of the said patient be placed on record by the returnable date.

10. Thereafter, the proceedings were listed before us on 22nd January 2024. Considering the report of the AIIMS that it was not possible for the Medical Board constituted by the AIIMS to verify the medical condition of Mr. Iyer by Video Conferencing, this Court was of the opinion that it would be appropriate that the Indian High Commissioner for UAE be directed to ascertain the medical condition of Mr. Iyer by obtaining an appropriate certificate. We note the said Order which reads thus:-

“1. In pursuance of the order dated 21 December, 2023 passed by a co-ordinate Bench of this Court whereby the Dean of All India Institute of Medical Sciences (AIIMS), New Delhi was requested to constitute a team of Doctors to take necessary steps to consider the medical state of

the petitioner's husband Mr. Suresh Subramaniam Iyer, who was being treated at Abu Dhabi and was stated to be in a vegetative state as per the medical report of the AL Dahannah Hospital (Exhibit 'C'). In pursuance thereto, a Medical Board was immediately constituted by AIIMS on 21 December, 2023. A report dated 26 December, 2023 of the AIIMS is placed on record which states that the Medical Board was constituted at AIIMS, New Delhi under the Chairmanship of Dr. Nikhil Tandon, Professor and Head, Department of Endocrinology. It is recorded that as per the preliminary mail received by the Medical Board, it was observed that the patient Mr. Suresh Subramaniam Iyer was diagnosed as "Hypoglycemic Encephalopathy" at AL Dahannah Hospital, AI Dhafra, Abu Dhabi, U.A.E. It is stated that other than the diagnosis, no medical reports nor the contact number of the patient attendants details were shared with the Medical Board members. It is further recorded that the Member Secretary of the Medical Board tried calling Advocate Rahul Tiwari on the numbers as stated to get more details of the patient but all efforts went in vain, as he himself did not have any contact details of the patient's attendant. The report finally records that all the members of the Medical Board opine that it was not possible for them to examine the patient, who is unconscious and in vegetative state, through video call. Hence, the current health condition of Mr. Suresh Subramaniam Iyer cannot be updated as requested.

2. Such report as made by the Medical Board constituting of six doctors was addressed to the Medical Superintendent, New Delhi, who forwarded the report, to be placed on record of this Court vide letter dated 26 December, 2023.

3. In view of the aforesaid report as forwarded by the AIIMS, New Delhi, it appears that although a medical report of the AL Dahannah Hospital is on record to state that Mr. Suresh Subramaniam Iyer is in a vegetative state, his medical could not be appropriately verified by the Medical Board constituted by AIIMS of six doctors.

4. Learned counsel for the petitioner has submitted that the legal representative of Mr. Suresh Subramaniam Iyer, namely, the petitioner, three children as also the mother are all in India. As such, no relative in the family is available with the petitioner. It is stated that the foreign employer is also taking care of the patient.

5. In this view of the matter, in our opinion as now the Ministry of External Affairs is also impleaded as party-respondent, we would have no alternative but to request the Indian High Commissioner for U.A.E. to get certified and affirm the health condition of Mr. Suresh Subramaniam Iyer as recorded in the report of AL Dahannah Hospital, Abu Dabi, U.A.E (Exhibit-C). Learned counsel for the respondent shall immediately forward a copy of the said medical report of the AL Dahannah Hospital, Abu Dabi, UAE, through the Ministry of External Affairs to the Indian High Commissioner, who shall take appropriate steps so that on the adjourned date of hearing on the report of the Indian High Commissioner the medical condition of Mr. Suresh Subramaniam Iyer is placed on record of this Court.

6. We accordingly adjourned the proceedings to **30 January, 2024 (H.O.B.)**.

7. *Parties to act on the authenticated copy of this order."*

11. Thereafter the proceedings were listed before us on 5th February 2024, when on behalf of the Respondents, a Report dated 11th January 2024, was placed before us as forwarded by Dr. R. Balaji, Counsellor (CA&V) Embassy of India, Abu Dhabi, which was a report prior to our Order dated 22nd January 2024. So as to have the latest report, while adjourning the proceedings, we passed the following order:-

"1. Mr. Bhate, along with Mr. Vaibhav Gargade, have today placed on record an e-mail addressed by Dr. R. Balaji, Counsellor (CA&V), Embassy of India, Abu Dhabi and also a trailing mail. The said e-mail is to the following effect:-

Subject: Re !!!URGENT-WP/15636/2023(Civil)

Dear Sir/Madam,

Reference trailing email in respect of order of Hon'ble Bombay High Court WP./15636/2023 (civil) regarding certified medical report of Mr. Suresh Subramanian Iyer (patient MR Number : MA2200000042612),

2. In this regard, please find attached medical report-LTC ward deated 11.01.2024 of Mr. Suresh Subramanian Iyer (patient MR Number : MA2200000042612) who is currently admitted in AL Dhannah Hospital, Al Dhannah City, Abu Dhabi Emirate.

3. This is for your kind information please

Thanks and Regards,

*Dr. R. Balaji
Counsellor (CA&V)
Embassy of India, Abu Dhabi"*

2. There is a Medical Report dated 11th January 2024, titled as "Medical Report – LTC Ward" which, inter alia, describes the physical condition of Mr. Suresh Iyer, the Petitioner's husband, as being in a

vegetative state with spontaneous eye opening and not communicating. A photocopy of the said Medical Report is placed on record.

3. However, the Report is dated 11th January 2024, that is prior to our Order dated 22nd January 2024. Since this Report is prior to our Order, it would be appropriate that Dr. R. Balaji, Counsellor (CA&V), Embassy of India, Abu Dhabi forwards the latest report or a confirmation that the medical condition of Mr. Suresh Iyer, as reflected in the Report dated 11th January 2024, is his condition as on date.

4. Let such report be forwarded immediately by e-mail on or before the adjourned date of hearing. Place the matter on 7th February 2024, on the Supplementary Board.

5. We have taken on record a copy of the letter of Dr. R. Balaji, Counsellor (CA&V), Embassy of India, Abu Dhabi along with the Trailing Mail and the Report, which are marked "X-1", "X-2" and "X-3" for identification."

12. Today, Mr. Bhate as also Mr. Tiwari have appeared before the Court to place on record an e-mail received from Dr. R. Balaji, Counsellor (CA&V) Embassy of India, Abu Dhabi, addressed to the Counsel for the Respondents, enclosing the latest Medical Report of Mr. Iyer who is currently admitted at the AL Dhannah Hospital, AL Dhannah City, Abu Dhabi, Emirates. The report as submitted is a Medical Report titled as "Medical Report -LTC Ward" issued by the AL Dhannah Hospital dated 6th February 2024, describing Mr. Suresh Subramanian Iyer, Patient MR No. MA2200000042612 admitted on 8th December 2021, in a vegetative state. The relevant findings as stated in the Medical Report are required to be noted, which reads thus:-

Primary diagnosis:

Diabetic hypoglycemic comatose

Secondary diagnosis:

DM type 2, IHD, Hypertention, Localization-related (focal) (partial) symptomatic epilepsy and epileptic syndromes with simple partial seizures, not intractable, without status epilepticus.

History of Present Illness:

Patient in vegetative state after ost arrest on tracheostomy and PG tube for long term care.

Physical Examination:

Patient on vegetative stat spontaneous eye opening not communicate.

Hemodynamically stable

Chest clear quail air entry

abdomen lax

There is contracture in both upper and lower limbs and sever muscle wasting, no bed sore”

13. It is thus clear that not only the latest Report dated 6th February 2024 i.e., a day before we are passing this Order, but also the earlier reports as annexed to the Petition by the Petitioner as also the Report dated 11th January 2024 are all consistent to state that Mr. Iyer is in a Comatose state.

14. Considering such condition of the Mr. Iyer, learned Counsel for the Petitioner submitted that this is a fit case where this Court needs to exercise its jurisdiction, and by applying the principles of the doctrine of *parens patriae*, appoint the Petitioner as a legal guardian of her husband Mr. Iyer. In support of her contentions she has referred to a recent decision of this Court in the case of ***Mayuresh Dipak Nadkarni Vs. Union of India & Ors.*** (WPL-140 of 2024) decided on 12th January 2024, wherein this Court had considered not only the principles of the doctrine of *parens patriae*, but also the imperative situation requiring the Court to exercise jurisdiction under Article 226 of the Constitution, in such cases. The Court observed that the relevant legislations, which concern the welfare of persons who are incapable of taking care of themselves, does not provide for a concrete mechanism to cater to such urgent

situations to appoint legal guardian of persons who are medically incapacitated to take their own decisions and manage their properties. The Court observed that such vacuum in law however cannot adversely affect the pressing human needs, not only to cater to the person's medical expenses, but also to the effect that such situation does not prejudicially affect the family members as also the properties of the persons suffering and which needs to be prevented from being wasted and/or not enuring to his own benefit, in such a helpless situation. The Court also observed that, in the circumstances, as in the present case, the Courts has consistently taken a view that the legal vacuum created by non-availability of adequate provisions under the Mental Health Care Act, 2017 the Hindu Minority and Guardianship Act, 1956 and under other laws should be filled in by the Court by exercising its jurisdiction under Article 226 by appoint a legal guardian of a person, who is suffering from serious medical disabilities of such nature. The Court also noted the decisions of this Court and the other High Courts in this regard, to come to a conclusion that it would be fit and appropriate to appoint legal guardian in such cases in exercise of its jurisdiction under Article 226 of the Constitution of India.

15. We are of the clear opinion that the principles, as discussed in the case of *Mayuresh Dipak Nadkarni (supra)*, are clearly applicable to the facts of the present case. We find that the circumstances in the present case are such that the Petitioner would be justified in espousing the cause of her husband who is

lying in a vegetative state. There is no dispute on facts. The medical condition of Mr. Iyer, since 8th December 2021, (which is almost three years), has not changed, at all. In such circumstances, the Petitioner is required to look after the welfare of Mr. Iyer and incur expenditure required in that regard. She also is required to manage his properties and look after her three children and after Mrs. Savithri Subramanian, the mother of Mr. Iyer, who is also a senior citizen and incur expenditure on them.

16. In these circumstances, we are clearly of the opinion that the Petitioner cannot be left helpless and it would be in the interests of justice that the Petitioner is appointed as the legal guardian of her husband, Mr. Suresh Subramanian Iyer. The process of law as discussed above would certainly come to the aid of the petitioner and her family in such a situation. As observed by the Court in the case of *Mayuresh Dipak Nadkarni (supra)* human suffering is integral to one's life, and, when it crosses human confines, the ordeals can only be imagined. We have already noted that her children and mother in law have no objection for the Petitioner to be appointed as legal guardian.

17. Before parting we express our gratitude to Dr. R. Balaji, Counsellor (CA&V) Embassy of India, Abu Dhabi, and the Indian High Commissioner UAE, for the urgent assistance in obtaining the Medical Certification of Mr. Iyer.

18. In the light of the above discussion, we allow this Petition in terms of the following directions:-

- a. The Petitioner, Mrs. Janaki Suresh, shall be treated and accepted as the legal guardian of her husband, Mr. Suresh Subramanian Iyer.
- b. All authorities shall accept the status of the Petitioner, Mrs. Janaki Suresh, as legal guardian of Mr. Suresh Subramanian Iyer, and allow her to operate his bank accounts as also manage his movable and immovable properties, the details of which are set out in the Petition.
- c. The Petition would accordingly stand allowed in the above terms.
- d. Rule made absolute in the above terms. No costs.
- e. All concerned parties to act on an authenticated copy of this Judgement.

(FIRDOSH P. POONIWALLA, J.)

(G. S. KULKARNI, J.)