



W.P.No.11314 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.04.2024

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.11314 of 2024

S.Sasikala

... Petitioner

Vs.

1. The State Of Tamilnadu,
Represented By Its Secretary,
Department Of Health And Family Welfare,
Secretariat, Fort St. George,
Chennai-600009.

2. The District Collector,
Chennai District.

3. The Tahsildar,
Purasaivakkam Taluk,
3, Raja Muthaiah Salai,
Chennai-600003.

4. The Dean,
Government Rajiv Gandhi Hospital,
Poonamallee High Road,
Chennai.

... Respondents



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Prayer :- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Mandamus, to appoint the petitioner as a Guardian of her Husband Mr.Sivakumar and to permit the petitioner to protect the interest, administer his Bank account and in the event of necessity to sell or mortgage the immovable property standing in the name of her Husband M.Sivakumar No.80, Waltax Road, Chennai-600003 and to use the proceed towards treatment of the petitioner's husband Mr.Sivakumar.

For Petitioner : Dr.N.Vijayaraj

For Respondent : Mr.K.Tippu Sulthan,
Government Advocate,
(for R1 & R2);

Mr.L.S.M.Hasan Fizal,
Additional Government Pleader,
(for R3 & R4).

ORDER

The writ of mandamus has been instituted to appoint the petitioner as a guardian of her Husband Mr.M.Siva Kumar and to permit the petitioner to protect the interest, administer his Bank Account in the event of necessity to sell or mortgage the immovable property standing in the name of her husband Mr.M.Siva Kumar, No.80, Walltax Road, Chennai-3,



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and to use the proceed towards the treatment of the petitioner husband

Mr.M.Siva Kumar.

2. The petitioner states that her husband Mr.M.Siva Kumar is presently in vegetative state and the petitioner has no means to meet out the medical expenditure. Therefore, the petitioner filed the present writ petition to appoint her as a guardian of her husband and permit her to protect his interests, deal with the his Bank accounts, properties etc.

4. The learned counsel for the petitioner would submit that the petitioner is not an earning member and her husband was the sole breadwinner of the family. Since he is in vegetative state, the petitioner has to operate the Bank Accounts of her husband to deal with the properties. The petitioner further states that she may be permitted to operate the accounts in order to provide treatment to her husband.

5. In this context, a person can be appointed as a nominated representative under Section 14 of the Mental Healthcare Act, 2017. Procedures are contemplated under Section 14 to appoint nominated representative to provide treatment to the ill person. Section 15 speaks about nominated representative of minor. Section 16 of the Act



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contemplates Revocation, Alteration, etc., of nominated representative by Board.

6. Pertinently Section 17 of the Act denotes Duties of the nominated representative, which is extracted as follows:

“While fulfilling his duties under this Act, the nominated representative shall--

(a) consider the current and past wishes, the life history, values, cultural background and the best interests of the person with mental illness;

(b) give particular credence to the views of the person with mental illness to the extent that the person understands the nature of the decisions under consideration;

(c) provide support to the person with mental illness in making treatment decisions under section 89 or section 90;

(d) have right to seek information on diagnosis and treatment to provide adequate support to the person with mental illness;

(e) have access to the family or home based rehabilitation services as provided under clause (c) of sub-section (4) of section 18 on behalf of and for the benefit of the person with mental illness;



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(f) be involved in discharge planning under section 98;

(g) apply to the mental health establishment for admission under section 87 or section 89 or section 90;,

(h) apply to the concerned Board on behalf of the person with mental illness for discharge under section 87 or section 89 or section 90;

(i) apply to the concerned Board against violation of rights of the person with mental illness in a mental health establishment;

(j) appoint a suitable attendant under sub-section (5) or sub-section (6) of section 87;

(k) have the right to give or withhold consent for research under circumstances mentioned under sub-section (3) of section 99.”

7. The claim of the Act is to protect the mental healthcare of the person and therefore, the nominated representatives are bound to perform the duties as contemplated under Section 17 of the Act. However, a nominated representative, appointed under the Mental Healthcare Act, 2017, cannot inherit the property of a mentally ill person or deal with the financial aspects belonging to the mentally ill person. The duties, as



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contemplated, are well enumerated and relating to the treatment to be provided to the mentally ill persons. Therefore, a writ petition seeking the appointment of guardian under the Mental Healthcare Act, 2017, or inherit the property or to deal with the Bank accounts are not maintainable at all.

8. The practice of filing a writ petition under the Mental Healthcare Act, 2017, to appoint a guardian to deal with the properties of a mentally ill person or to inherit the property, is not maintainable and no such writ petition can be entertained under Article 226 of the Constitution of India. Whenever a person is to be appointed as a guardian to deal with the properties of a minor or mentally ill person, they have to approach the competent Civil Court of law for the purpose of such appointment to deal with the properties.

9. In the present case, if the petitioner wants to deal with the properties of her husband, who is in vegetative state, or to deal with the financial aspects, she has to approach the competent Civil Court of law for securing appropriate relief. Filing a writ petition seeking appointment of a guardian under the Mental Healthcare Act, 2017, to deal with the properties of the mentally ill person is impermissible and beyond the



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scope of the provisions of the Act.

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10. Section 17 of the Act unambiguously stipulates the duties of the nominated representatives. Such nominated representatives, under the provisions of the Mental Healthcare Act, 2017, cannot be equated with the guardian to be appointed under the relevant statutes. The nominated representatives under the Mental Healthcare Act, 2017, can provide treatment and look after the mentally ill person for their welfare but they cannot deal with the properties of the mentally ill persons or inherit the same. Therefore, the writ petition filed seeking appointment of a guardian under the Mental Healthcare Act, 2017, is misconceived and it is not a guardian to be appointed under the Mental Healthcare Act, 2017, but the nominated representatives are to look after the welfare of the mentally ill person.

11. The learned counsel for the petitioner made a submission that orders are passed by this Court appointing guardians under the Mental Healthcare Act, 2017. However, perusal of those orders would reveal that none of the provisions of the Mental Healthcare Act has been discussed nor any finding has been given. In the absence of any discussion on the



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provisions of the Act, the said orders cannot be followed as a precedent for the purpose of granting the relief. Therefore, the petitioner is at liberty to approach the competent Court of law for the purpose of appointing her as a guardian in the manner known to law.

12. However, a writ petition under Section 226 of the Constitution of India, is not maintainable for the purpose of inheriting the property and to deal with the financial aspects of the mentally ill person, but the writ is maintainable strictly under the provisions of the Mental Healthcare Act, 2017, for the purpose of maintaining the well-being of the mentally ill persons.

13. With the above observations, the writ petition stands dismissed. However, there shall be no order as to costs.

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Index : Yes
Speaking Order
Neutral Citation : Yes
(sha)

To

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Represented By Its Secretary,
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S.M.SUBRAMANIAM. J.,

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