



W.P(MD)No.4809 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 03.04.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.4809 of 2024

1.A.Kalaiarasi

2.A.Ambalini

3.Minor.A.Vishal Thankasivam
[P.3 represented by his guardian /
mother, the first petitioner herein]

... Petitioners

Vs.

1.Union of India,
Represented by its Secretary,
Ministry of Health Department,
Union of India,
Nirmal Bhawan,
New Delhi – 110 011.

2.The State of Tamil Nadu,
Represented by its Secretary,
Department of Health and Family Welfare,
Secretariat, Fort St.George,
Chennai – 600 001.

3.The District Collector,
Kanniyakumari District,
District Collector Office,
Nagercoil.



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4.The Dean,
Medical College,
Government Hospital,
Asaripallam, Nagercoil,
Kanniyakumari District.

5.The District Registrar,
Kanniyakumari District,
Nagercoil.

6.The Tahsildar,
Agasteeswaram Taluk,
Kanniyakumari District,
Nagercoil.

7.The Sub Registrar,
Rajamangalam Sub Registrar Office,
Rajamangalam,
Nagercoil,
Kanniyakumari District.

8.The Branch Manager,
State Bank of India,
Peyodu Branch,
Kanniyakumari District.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Declaration, declaring the first petitioner herein as a guardian of her husband who is in comatose condition to protect his interest, to act as manager of his properties including to operate his bank accounts, to sell immovable properties (annexed along with the writ petition) standing in the name of the petitioner's husband in order to use the proceeds towards the medical expenses of her husband, educational expenses for her children and other family welfare expenses.



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For Petitioners : Mr.M.P.Senthil

For Respondents : Mr.K.Govindarajan
Deputy Solicitor General of India
for R.1

Mr.K.Balasubramani
Special Government Pleader
for R.2 to R.7

No Appearance for R.8

ORDER

Heard the learned counsel appearing for the writ petitioners, the learned Deputy Solicitor General of India appearing for the first respondent and the learned Special Government Pleader appearing for the respondents 2 to 7.

2.The first petitioner A.Kalaiarasi got married to Arunagiri Nathan on 20.01.2002. The petitioners 2 and 3 were born through the wedlock. The third petitioner is a minor. Arunagiri Nathan met with a major accident on 27.08.2022. He is presently in comatose condition. The Dean, Kanyakumari Government Medical College Hospital, Asaripallam had certified the aforesaid condition of Arunagiri Nathan.



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3.The writ petitioners in the affidavit filed in support of the writ petition had stated that so far a sum of Rs.70 Lakhs was spent towards treatment. The family is in a desparate condition and they are obliged to raise further funds to fund Arunagiri Nathan's care and also to facilitate the education of the petitioners 2 and 3. Unless the first petitioner is appointed as guardian for the person as well as properties of Arunagiri Nathan, the family will have to face irreparable hardship. This writ petition has been filed seeking the aforesaid relief.

4.The facts set out in the affidavit filed in support of the writ petition are beyond controversy. The expert committee report enclosed with the Certificate issued by the Dean clearly indicates the present condition of Arunagiri Nathan. The operative portion of the report is to the effect that Arunagiri Nathan has severe cognitive impairment and he is not in a position to understand or to make independent decisions. It has been further stated that Arunagiri Nathan needs supportive care symptomatic medications and passive physiotherapy.

5.The learned counsel appearing for the petitioners has relied on a catena of case laws. He draws my attention to the order dated



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17.03.2021 made in W.P.No.6926 of 2021 (Dr.Vijailakshmi Archarya & Others Vs The State of Tamil Nadu & Others). A learned Judge of this Court in exercise of writ petition declared the patient's wife as the guardian for movable and immovable assets and also bank accounts maintained by the patient.

6.I am inclined to adopt the very same approach in this case also. I declare the first petitioner herein, namely, A.Kalaiarasi as the guardian for movable and immovable assets including the bank accounts maintained by her husband Arunagiri Nathan. I am not inclined to stipulate any further condition. That would amount to questioning the loyalty and love of the first petitioner. The second petitioner / her daughter had already attained majority. The third petitioner is also aged about 16 years. If any modification or recall of this order is warranted, it is always open to any interested person to move this Court. It is open to the petitioners to deal with the properties mentioned in the annexure to this order. I am certain that the first petitioner will act as a prudent person having in mind the paramount interest of the family, in particular the educational interest of the children and the medical care of her husband.



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7.This writ petition is allowed accordingly. There shall be no order as to costs.

03.04.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
MGA

Note : Issue order copy on 08.04.2024.

To

- 1.The Secretary,
Union of India,
Ministry of Health Department,
Union of India,
Nirmal Bhawan,
New Delhi – 110 011.
- 2.The Secretary,
State of Tamil Nadu,
Department of Health and Family Welfare,
Secretariat, Fort St.George,
Chennai – 600 001.
- 3.The District Collector,
Kanniyakumari District,
District Collector Office,
Nagercoil.
- 4.The Dean,
Medical College,
Government Hospital,
Asaripallam, Nagercoil,
Kanniyakumari District.



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5.The District Registrar,
Kanniyakumari District,
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G.R.SWAMINATHAN,J.

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