



W.P(MD)No.6738 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 15.04.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.6738 of 2024

1.M.Latha Devi

2.P.Balakumar

3.P.Venkatesan

Represented through their
Guardian 1st petitioner

... Petitioners

Vs.

1.The State represented by
The Secretary,
Health and Family Welfare
Department,
Secretariat,
Chennai – 09.

2.The District Collector,
Madurai District.

3.The Tahsildar,
East Taluk,
Madurai District.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Declaration, to declare the first petitioner as the



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guardian of P. Balakumar and P. Venkatesan who are in the mental retardate condition presently in a vegetative state of mind to protect his interest, administer bank accounts etc., and in the event of necessity, to handle the movable and immovable properties standing in the name of parents of Balakumar and Venkatesan and family welfare expenses.

For Petitioners : Mr.M.S.Senthil Kumar
For Respondents : Mr.T.Villavan Kothai
Additional Government Pleader

ORDER

Heard both sides.

2.One Palaniandavar and Dhanalakshmi got married. Through the said wedlock, the petitioners 2 and 3 were born. Both the children suffer from mental retardation. It is a congenital condition. Palaniandavar passed away on 03.02.2002. Dhanalakshmi passed away on 05.11.2013. The said Dhanalakshmi is none other than the first petitioner's sister-in-law. The first petitioner's husband was taking care of the petitioners 2 and 3 and also managing their properties. Manoharan, husband of the first petitioner also passed away on 10.01.2022.



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3.In these circumstances, the first petitioner requires to be formally appointed as a legal guardian to take care of the properties. The learned counsel appearing for the petitioners states that without source of income the first petitioner is finding it very difficult to taking care of the petitioners 2 and 3 and that is why the present writ petition came to be filed.

4.The averments set out in the affidavit filed in support of the writ petition and as regards the petitioners 2 and 3 are not in dispute. The jurisdictional Village Administrative Officer conducted a field visit and also submitted a report before this Court. It is seen therefrom that the petitioners 2 and 3 are mentally retarded and they are now in the care and custody of the first petitioner.

5.In such circumstances, the parties concerned can either approach the District Collector or invoke the writ jurisdiction of this Court. Both the courses of action are open. In such cases, the Court has to invoke its parens patriae jurisdiction. Taking note of the uncontested facts regarding the medical condition of the petitioners 2 and 3, the first petitioner M.Latha Devi, W/o.Manoharan is declared as the legal



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guardian for the petitioners 2 and 3. The first petitioner shall act as legal guardian both in respect of the persons as well as their properties. It is however made clear that without leave of this Court, the immovable properties standing in the name of the petitioners 2 and 3 cannot be sold or alienated. No encumbrance can be created. The first petitioner is of course at liberty to collect the rental income etc and spend the same for the welfare and benefit of the petitioners 2 and 3. The first petitioner can also administer and operate bank accounts in the names of the petitioners 2 and 3. Declaration as sought for by the first petitioner is granted. If the first petitioner encounters any difficulty in implementing this order, it always open to the first petitioner to file a Miscellaneous petition in this regard.

6.This writ petition is allowed in the above terms. There shall be no order as to costs.

15.04.2024

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

Note: Issue order copy on 18.04.2024.



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G.R.SWAMINATHAN,J.

MGA

To

- 1.The Secretary,
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Department,
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- 3.The Tahsildar,
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