

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

256

CWP-5770-2023

Date of decision: 26.02.2024

SANDEEP SINGH GREWAL

.....Petitioner

VERSUS

STATE OF PUNJAB AND OTHERS

.....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: - Mr. Abnash Singh, Advocate
for the petitioner.

Mr. T.P.S. Chawla, Sr. DAG, Punjab
for respondent No.1.

Mr. Harjot Singh Bedi, Advocate
for respondents No.2 and 3.

VINOD S. BHARDWAJ, J. (Oral)

1. Challenge in the present writ petition is to the order dated 07.10.2021 (Annexure P-4) passed by the Additional District Judge, Fatehgarh Sahib under Section 53-54 of Mental Health Act, 1987 in petition No. CM No. 115-2020 instituted on 19.09.2020.

2. Learned counsel appearing on behalf of the petitioner *inter alia* contends that the respondent No.2 had filed a Civil Suit bearing No. 143/2019 for declaration on behalf of respondent No.3 and challenging the

transfer deed executed by respondent No.3 in favour of the petitioner in the year 2014. The said suit have been filed by her in a capacity as a guardian for and on behalf of respondent No. 3 which such declaration had been decreed in her favour by the Additional District Judge, Fatehgarh Sahib in CM No. 115-2020 under Section 53-54 of Mental Health Act, 1987 instituted on 19.09.2020 in case titled "*Gurbakshish Kaur versus General Public*".

3. Learned counsel appearing on behalf of the petitioner contends that the above said proceeding could not have been instituted under Section 53 and 54 of the Mental Health Act, 1987 since the said Act has already been repealed by the Mental Health Care Act, 2017. He further submits that as per provisions of Section 116 of the Act, 2017, the jurisdiction of the Civil Court is already barred to entertain any suit or proceeding in respect of any matter which the authority or Board is empowered by or under the Act to determine. It is thus contended that the jurisdiction for assessing and ascertaining the mental health care of an individual lies with the Board and not with the Civil Court.

4. Learned counsel for the respondent is not in a position to rebut that the instant Civil Suit was instituted on 19.09.2020 whereas the Act already stood repealed by the Mental Health Care Act, 2017 and further that after the coming into force of the Mental Health Care Act, 2017, the jurisdiction of the Civil Court to entertain any suit or proceeding in respect of any matter was barred and no injunction could be granted by the authority. The above said statute is paved way for creation of Central/State mental health authority and for the Mental Health Review Board. It is contended that after the notification of the aforesaid act, the procedure

stipulated thereunder should be followed before any such declaration could have been issued.

5. Since the counsel for respondent No.3 is not in a position to controvert that the Mental Health Act of 1987 was no more in force that the jurisdiction of the Civil Court was barred under the Mental Care Health Act, 2017, hence, the Additional District Judge, Fatehgarh Sahib had no jurisdiction to entertain the said suit as on the date of its institution under a repealed statute. The proceedings thus suffered from lack of jurisdiction and statutory authority. The said illegality is fundamental and goes to the root of the matter.

6. The impugned order dated 07.10.2021 passed in petition No. CM No. 115-2020 by the Additional District Judge, Fatehgarh Sahib wherein proceedings under Section 53-54 of Mental Health Act, 1987 are hereby set aside, and the present writ petition is accordingly allowed.

7. Needless to mention that the present writ petition is being allowed solely on the ground of the competence of the Additional District Judge to pass any such order/judgment and this Court is not commenting on the merits of the evidence adduced. The parties may, if so advised, pursue their appropriate remedy before a competent forum as per law.

FEBRUARY 26, 2024
Vishal Sharma

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No