



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP-20162-2024 (O&M)
Reserved on: 13.09.2024
Pronounced on: 18.09.2024**

Gurpreet Kaur Maini

....Petitioner

Versus

UT of Chandigarh and Others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE ARUN PALLI
HON'BLE MR. JUSTICE VIKRAM AGGARWAL**

Present: Mr. Anand Chhibbar, Senior Advocate, with
Mr. Mahir Sood, Advocate,
Mr. Tarun Aggarwal, Advocate,
Mr. Kartik Sachdeva, Advocate,
Mr. Utrkarsh Khatana, Advocate, and
Ms. Garima Kuthiala, Advocate,
for the petitioner.

Mr. Jaivir Chandail, Addl. Standing Counsel, and
Ms. Shubpreet Kaur, Jr. Panel Counsel,
for the respondents-UT, Chandigarh.

VIKRAM AGGARWAL, J.

1. The petitioner assails the communication dated 23.07.2024 (Annexure P-12) issued by respondent No.2 vide which, with reference to the request made by the petitioner to sell house No.42, Sector 11-A, Chandigarh (50% of which is owned by the petitioner and 50% by her husband-Jivtesh Singh Maini and who is mentally and physically unfit) (hereinafter referred to as the 'subject property'), she has been advised to approach the competent Court under Order XXXII of the Code of Civil Procedure (for short 'CPC') for seeking permission to sell 50% share of her husband. She further prays for the issuance of a mandamus to the respondents to accord the necessary permission to her in terms of the judgment dated 31.05.2024 passed by the Court of Principal District and Sessions



Judge, South District, Saket Courts, New Delhi (for short 'Delhi Court') under Section 14 of the Rights of the Persons with Disabilities Act, 2016 (for short '2016 Act'). Stay of the communication dated 23.07.2024 has also been prayed for.

2. The petitioner-Smt. Gurpreet Kaur Maini lives in Delhi alongwith her husband-Jivtesh Singh Maini. The petitioner is 71 years of age whereas her husband is 74 years old and is a patient of advanced Alzheimer's disease and vascular dementia. He has been under the medical supervision of Dr. Col. J.D. Mukherji at Max Healthcare Institute of Neurosciences, New Delhi. The medical certificate dated 29.11.2013 issued by the Doctor has been placed on record as Annexure P-1. In the evening of her life, the petitioner is now running from pillar to post to sell 50% share of her husband in the subject property of which the other 50% share is held by the petitioner. The reason for the husband of the petitioner not being able to participate in the sale proceedings is his disease i.e. Alzheimer's with vascular dementia. It is the case of the petitioner that her husband forgets his basic day to day activities and is on heavy medications for the last 12 years and his condition is deteriorating by each passing day. He is on strict bed rest and is not permitted to go out of home as he had multiple falls in the past and any mental or physical exertion can lead to a seizure.

3. The subject property devolved upon the petitioner and her husband in terms of the will dated 18.08.1996 (Annexure P-2) executed by the mother-in-law of the petitioner Late Mrs. Pritam Kaur Maini. The rights were transferred in favour of the petitioner and her husband vide communication dated 06.05.1998 (Annexure P-2/A). The petitioner and her husband had also executed a joint will dated 14.01.2008 vide which the subject property was to be bequeathed in favour

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of the surviving testator with absolute rights to enjoy, sell or otherwise dispose of any of the properties during his or her lifetime.

4. A request dated 26.12.2023 (Annexure P-3) was made by the petitioner to the District Magistrate, Chandigarh seeking permission to sign on behalf of her husband as a legal guardian. Vide communication dated 12.03.2024 (Annexure P-4), respondents No.3 and 4 asked the petitioner to get a guardianship certificate from the Civil Court under the provisions of the 2016 Act. Accordingly, the petitioner preferred a petition under Section 14 of the 2016 Act before the concerned Court at Delhi and the same was allowed vide judgment dated 31.05.2024 (Annexure P-7). The petitioner was held to be entitled to take necessary decisions for daily maintenance and upkeep of her husband, to operate and manage the funds on behalf of her husband in order to use the same for his benefit and to take all legal and financial decisions on his behalf.

5. Armed with the judgment dated 31.05.2024, the petitioner submitted an application dated 03.06.2024 (Annexure P-8) before respondents No.3 and 4 for transfer of the subject property by permitting the petitioner to sign on behalf of her husband. A no objection was given by respondent No.3 on 07.06.2024 (Annexure P-9) and it was stated that the application moved by the petitioner had been considered and the Office of the Estate Officer, UT, Chandigarh had no objection to her request on the basis of judgment dated 31.05.2024. She was accordingly requested to approach the Office of respondent No.2 i.e. the Sub-Registrar, UT, Chandigarh. Accordingly, application dated 11.06.2024 (Annexure P-10) was moved by the petitioner for issuance of directions from the District Magistrate, Chandigarh. She also approached respondent No.2 for transfer of the property vide application dated 13.06.2024 (Annexure P11). However, vide



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communication dated 23.07.2024 (Annexure P-12), respondent No.2 stated that she should approach the competent authority and move a petition under the provisions of Order XXXII CPC to sell 50% share of her husband.

6. It has been averred in the petition that the petitioner and her husband had taken loans from IIFL Home Finance Limited in which litigation had arisen and ***CWP No.13744 of 2023*** titled as '***Gurpreet Kaur Maini and Others Vs. IIFL Home Finance Limited and Others***' was also moved which was disposed of by a Co-ordinate Bench vide judgment dated 11.08.2023 (Annexure P-14) and auction of the subject property was kept in abeyance giving liberty to the petitioner to approach the competent authority under Section 14 of the 2016 Act or the competent Court under Order XXXII CPC. It has been averred that the subject property is free from all encumbrances as the loan amounts have been settled and no objection certificate (Annexure P-15) has also been issued. Under the circumstances, the present writ petition has been filed.

7. The writ petition has been opposed by the respondents. In the written statement filed by respondent No.2, the basic stand taken is that vide judgment dated 31.05.2024 passed by the Delhi Court, only limited guardianship has been awarded to the petitioner and in terms of the legal opinion given by the Legal Remembrancer-cum-Director of Prosecution, Chandigarh Administration on 19.07.2024 (Annexure R-1), the petitioner would have to move a petition under Order XXXII CPC seeking permission to dispose of 50% share of her husband. It has also been averred that in fact no occasion has arisen for the petitioner to file the writ petition because the Sub-Registrar has not refused to register any document as contemplated under Section 71 of the Indian Registration Act, 1908 (for short 'the Registration Act') because no document was presented for



registration and only a communication dated 23.07.2024, which is essentially a response to the representation dated 13.06.2024, is being challenged.

8. Learned counsel for the parties were heard.

9. Mr. Anand Chhibbar, learned Senior counsel representing the petitioner strenuously urged that the action of the respondents is palpably illegal. Reference was made to the provisions of Section 14 of the 2016 Act, Order XXXII CPC, the judgment dated 31.05.2024 passed by the Delhi Court, the judgment dated 11.08.2023 passed by a Division Bench of this Court in ***CWP No.13744 of 2023*** titled as '***Gurpreet Kaur Maini and Others Vs. IIFL Home Finance Limited and Others***', the medical certificates annexed with the petition, the advice earlier given to the petitioner to file a petition under Section 14 of the 2016 Act and the current impugned communication and submitted that once the competent Court had appointed the petitioner as the guardian for all legal and financial decisions, it would not lie in the mouth of respondent No.2 to say that now that the petitioner should file a petition under Section XXXII CPC. It was submitted by learned Senior counsel that the petitioner was being harassed by the authorities in her old age for no fault of hers. Learned Senior counsel submitted that it is always the satisfaction of the Court in such matters and there is no occasion for the authorities to make the petitioner run from one Court to the other on purely hyper technical grounds. Learned Senior counsel has also referred to the affidavits (Annexures P-16 to P-18) sworn by the sons of the petitioner giving their no objection to the disposal of 50% share of their father by their mother. Affidavits dated 04.09.2024 have also been placed on record as Annexures P-20 and P-21) which have been sworn by Tridivesh Singh Maini and Gurpreetesh Singh Maini, both sons of the petitioner and her husband in which they have



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submitted that they would have no objection if their mother transfers 50% share of their father. It was submitted that, under the circumstances, the petition deserves to be allowed. It was also submitted that the husband of the petitioner served the Government as the Chief Secretary of Punjab and was a Senior Bureaucrat for a number of years and despite that, the petitioner is having to face such issues.

10. On the other hand, Mr. Jaivir Chandail, learned counsel representing the respondents submitted that the writ petition is not maintainable because there has been no refusal by respondent No.2 to register any document of title and it is only a communication which has been challenged by the petitioner. Learned counsel maintained the stand that the petitioner would have to prefer a petition under Order XXXII CPC.

11. We have considered the submissions made by learned counsel for the parties.

12. It is quite sad and disappointing and in fact shocking that despite the old age of the petitioner, the debilitating illness that the husband of the petitioner is struck with and the circumstances that the couple are facing, the petitioner is having to face the all famous 'red tapism' at the hands of the respondents who are tossing her from one office to the other, being totally insensitive to her difficult circumstances and *bona fide* intentions. The action of the respondents, at the outset, is deprecated. It is time that authorities come out of this 'red tapism' and deal with issues with sensitivity and compassion, apart from the rules and regulations which are to be construed for the benefit of the public at large and not to their detriment. Procedure, it is said, is the handmaid of justice and, therefore, the rules of procedure should be used to promote justice and prevent miscarriage of justice. In the instant case, in the considered opinion of this Court, there has



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been a total miscarriage of justice resulting into the petitioner knocking the doors of different Courts for the last almost one year. It is hard to imagine the mental state of the petitioner who, apart from fighting her own physical and mental issues, is fighting with the disease her husband is struck with and while taking care of him, she is somehow managing to take care of herself.

13. The ordeal of the petitioner, as regards the transfer of the subject property began with her request dated 26.12.2023 which she made to the District Magistrate, Chandigarh seeking permission to transfer 50% of the share of her husband in the subject property. She was advised vide communication dated 12.03.2024 that her request could not be acceded to in the absence of a guardianship certificate from the Civil Courts as required in the provisions of the 2016 Act;

“Reference with Application dated: 26.12.2023 on the subject cited above.

It is informed to you that your request for permission to sign on behalf of your husband as his legal guardian for selling his share (50%) cannot be acceded to in the absence of Guardianship Certificate from the Civil Court required under the Rights of the Person with Disability Act, 2016 for this purpose.”

14. Being a responsible and compliant citizen who has spent her life seeing her husband working for the system, she filed a petition before the Courts at Delhi under the provisions of the 2016 Act. Before proceeding further, it would be apposite to refer to Section 14 of the 2016 Act and Order XXXII CPC;

“Section 14 of the 2016 Act:-

Provision for guardianship.—(1) Notwithstanding anything contained in any other law for the time being in force, on and from the date of commencement of this Act, where a district court or any designated authority, as notified by the State Government, finds that a person with disability, who had been provided adequate and appropriate support but is unable to take legally binding decisions,



may be provided further support of a limited guardian to take legally binding decisions on his behalf in consultation with such person, in such manner, as may be prescribed by the State Government:

Provided that the District Court or the designated authority, as the case may be, may grant total support to the person with disability requiring such support or where the limited guardianship is to be granted repeatedly, in which case, the decision regarding the support to be provided shall be reviewed by the Court or the designated authority, as the case may be, to determine the nature and manner of support to be provided.”

Explanation. —For the purposes of this sub-section, "limited guardianship" means a system of joint decision which operates on mutual understanding and trust between the guardian and the person with disability, which shall be limited to a specific period and for specific decision and situation and shall operate in accordance to the will of the person with disability.

(2) On and from the date of commencement of this Act, every guardian appointed under any provision of any other law for the time being in force, for a person with disability shall be deemed to function as a limited guardian.

(3) Any person with disability aggrieved by the decision of the designated authority appointing a legal guardian may prefer an appeal to such appellate authority, as may be notified by the State Government for the purpose

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“Order XXXII CPC:-

SUITS BY OR AGAINST MINORS AND PERSONS OF UNSOUND MIND

1. Minor to sue by next friend-Every suit by a minor shall be instituted in his name by a person who in such suit shall be called the next friend of the minor.

2. Where suit is instituted without next friend, plaint to be taken off the file—(1) Where a suit is instituted by or on behalf of a minor without a next friend, the defendant may apply to have the plaint taken off the file, with costs to be paid by the pleader or other person by whom it was presented.

2) Notice of such application shall be given to such person, and the Court, after hearing his objections (if any) may make such order in the matter as it thinks fit.

2A) Security to be furnished by next friend when so ordered.-(1) Where a suit has been instituted on behalf of the minor by his next friend, the Court may, at any stage of the suit, either of its own motion or on the application of any defendant, and for reasons to be recorded, order the next friend to give security for the payment of all costs incurred or likely to be incurred by the defendant.

2) Where such a suit is instituted by an indigent person, the security shall include the court-fees payable to the Government.

(3) The provisions of rule 2 of Order XXV shall, so far as may be, apply to a suit where the Court makes an order under this rule directing security to be furnished.

3. Guardian for the suit to be appointed by Court for minor defendants.—(1) Where the defendant is a minor the Court, on being satisfied of the fact of his minority, shall appoint a proper person to be guardian for the suit for such minor.

2) An order for the appointment of a guardian for the suit may be obtained upon application in the name and on behalf of the minor or by the plaintiff.

(3) Such application shall be supported by an affidavit verifying the fact that the proposed guardian has no interest in the matters in controversy in the suit adverse to that of the minor and that he is a fit person to be so appointed.

(4) Order shall be made on any application under this rule except upon notice to any guardian of the minor appointed or declared by an authority competent in that behalf, or, where there is no such guardian [upon notice to the father or where there is no father, to the mother, or where there is no father or mother, to other natural guardian] of the minor, or, where there is (no father, mother or other natural guardian), to the person in whose care the minor is, and after hearing any objection which may be urged on behalf of any person served with notice under this sub-rule.

(4A) The Court may, in any case, if it thinks fit, issue notice under sub-rule (4) to the minor also.)

(5) A person appointed under sub-rule (1) to be guardian for the suit for a minor shall, unless his appointment is terminated by retirement, removal or death, continue as such throughout all proceedings arising out of the suit including proceedings in any Appellate or Revisional Court and any proceedings in the execution of a decree.

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**4. Who may act as next friend or be appointed guardian for the suit**

—(1) Any person who is of sound mind and has attained majority may act as next friend of a minor or as his guardian for the suit: Provided that the interest of such person is not adverse to that of the minor and that he is not, in the case of a next friend a defendant, or, in the case of a guardian for the suit, a plaintiff.

(2) Where a minor has a guardian appointed or declared by competent authority, no person other than such guardian shall act as the next friend of the minor or be appointed his guardian for the suit unless the Court considers, for reasons to be recorded, that it is for the minor's welfare that another person be permitted to act or be appointed, as the case may be.

(3) No person shall without his consent [in writing] be appointed guardian for the suit.

(4) Where there is no other person fit and willing to act as guardian for the suit, the Court may appoint any of its officers to be such guardian, and may direct that the costs to be incurred by such officer in the performance of his duties as such guardian shall be borne either by the parties or by any one or more of the parties to the suit, or out of any fund in Court in which the minor is interested (or out of the property of the minor); and may give directions for the repayment allowance of such costs as justice and the circumstances of the case may require.

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[15. Rules 1 to 14 (Except rule 2A) to apply to persons of unsound mind.-Rules 1 to 14 (except rule 2A) shall, so far as may be, apply to persons adjudged, before or during the pendency of the suit, to be of unsound mind and shall also apply to persons who, though not so adjudged, are found by the Court on enquiry to be incapable, by reason of any mental infirmity, of protecting their interest when suing being sued.] "

15. The petition filed by the petitioner was allowed by the Delhi Court vide judgment dated 31.05.2024 holding as under;

“20. A bare reading of above mentioned provisions provides that a person can be appointed as legal guardian only for a limited purpose. The petitioner herein has sought to be appointed as legal guardian of Sh. Jivtesh Singh Maini, who is her husband to take all the legal and financial decisions on his behalf. Petitioner has stated that since the condition of Sh. Jivtesh Singh Maini is degrading with time due to his ailments, for all legal and business decisions, she be appointed as his legal guardian to make those decisions.



21. It has been proved on record that Sh. Jivesh Singh Maini is mentally and physically unfit to live life on his own and this fact is duly supported by Disability Certificate, Ex.PW1/4 issued by IBHAS, as per which Sh. Jivtesh Singh Maini is suffering from 56.0% of Locomotor Disability which has affected his brain and his condition is non progressive and not likely to improve. Moreover, respondents no.2 and 3, Sh. Gurpreetesh Singh Maini and Sh. Tridivesh Singh Maini, respectively, who are sons of Sh. Jivtesh Singh Maini and the petitioner, have also filed their separate No Objection Certificates wherein they have no objection if their mother get the guardianship certificate to be the Legal Guardian of their father and further to take all the decisions on his behalf. They have also stated that they shall be bound by all the decisions she will take in pursuance of taking care of their father and will never raise any objection to the same in any manner whatsoever. In view of these facts and circumstances and no objection being given by respondents no.2 and 3, this court is satisfied that Ms. Gurpreet Kaur Maini, who is wife of Sh. Jivtesh Singh Maini and is prime caregiver of her husband, is eligible to be appointed as his Limited Guardian. Accordingly, petitioner Ms. Gurpreet Kaur Maini is appointed as Limited Guardian of Sh. Jivtesh Singh Maini for a period of 3 years from today i.e. 31.05.2024, under Section 14 of RPWD Act read with Rule 7 of Delhi RPWD Rules. Ms. Gurpreet Kaur Maini shall be entitled to following :

- i) take necessary decisions for daily maintenance and upkeep of Sh. Jivtesh Singh Maini ;
- ii) operate and manage funds on behalf of Sh. Jivtesh Singh Maini in order to use the same for his benefit;
- (iii) take all the legal and financial decisions on behalf of Sh. Jivtesh Singh Maini.”

A perusal of the aforesaid findings recorded by the Delhi Court shows that the petitioner had prayed that she be appointed as a legal guardian of her husband to take all legal and financial decisions on his behalf. It was also averred that since her husband is degrading with time due to his ailments, she was to be appointed as his legal guardian for all his legal and business decisions. The Court considered the disability of the husband of the petitioner, the no objections submitted by the



sons of the petitioner namely Tridivesh Singh Maini and Gurpreetesh Singh Maini who filed their separate no objection certificates before the Court and stated that they would be bound by all the decisions that their mother would take in pursuance of taking care of their father, the Court appointed the petitioner as the limited guardian of her husband for a period of 03 years w.e.f. 31.05.2024 and the petitioner was held entitled to take necessary decisions for daily maintenance and upkeep of her husband, operate and manage funds on his behalf in order to use them for his benefit and to take all legal and financial decisions on his behalf. In the considered opinion of this Court, all legal and financial decisions would definitely cover the execution of a sale deed as regards the share of the husband of the petitioner.

16. Armed with the judgment and decree passed by the Courts at Delhi and optimistic that she had succeeded, the petitioner moved another request dated 03.06.2024 seeking permission to sell the share of her husband and to her good luck, vide communication dated 07.06.2024, the Estate Officer, UT, Chandigarh informed her that her application had been considered and the office of the Estate Officer had no objection to her request;

“Reference with Application dated: 03.06.2024 on the subject cited above.

It is informed to you that your application has been considered and this office has no objection to your request on the basis of Court order dated 31.05.2024 submitted by you. You are therefore requested to approach the office of Sub-Registrar, U.T. Chandigarh along with the Court order.”

17. However, being unaware of what was in store for her, she moved an application dated 13.06.2024 to respondent No.2 making the same request.

Respondent No.2 vide the impugned communication dated 23.07.2024 intimated her that a legal opinion had been sought from the Legal Department, Chandigarh



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as per which, she would have to approach the Court concerned under Order XXXII CPC;

“Reference your application dated 13.06.2024, on the subject cited above.

It is intimated that a legal opinion in the matter has been sought from the Legal Department, Chandigarh Administration and the operative part of the legal opinion is reproduced as under:-

"Administrative Department is informed that since it is proved on record that Sh. Jivtesh Singh Maini, being mentally and physical unfit, is not in a position to participate in any consultative process in terms of provision contained under section 14 of RPWD Act, with his wife, who has already been appointed as limited guardian by the Ld. Principal District & Sessions Judge, South District, Saket, New Delhi vide judgment dated 31.05.2024, as such, in the light of observations made by the Hon'ble High Court in CWP No. 13744 of 2023, his wife is required to move an appropriate application under the provisions of Order 32 of the CP before the competent Court of law, seeking permission, to sell the share of her husband i.e. Sh. Jitesh Singh Maini."

Accordingly, you are advised to approach the Competent Court of Law for seeking permission the sell 50% share of her husband i.e. Sh. Jivtesh Singh Maini in H.No. 42, Sector 11-A, Chandigarh under Order 32 of the Civil Procedure Code.

18. The legal opinion has also been annexed with the written statement as Annexure R-1/1. It is incomprehensible as to why different wings of the same department cannot work in coordination and in tandem. On one hand, the office of Estate Officer says that the petitioner can be permitted to transfer the share of her husband in view of the judgment passed by the Courts at Delhi but the Sub-Registrar says that the same cannot be done. If this was the case, the petitioner should have been advised to move a petition under Order XXXII CPC in the first instance rather than advising her to move a petition under Section 14 of the 2016



Act. The non-participation of Sh. Jivtesh Singh Maini in any consultative process would not affect the merits of the case because admittedly, he is incapable of participating in any consultative process and, therefore, the Court concerned would have to record its satisfaction that the act being done is not detrimental to the interests of the person concerned.

19. For the authorities have failed and that too miserably and with complete insensitivity, this Court takes upon itself, the duty to render justice to a hapless, old, infirm litigant who is an educated senior citizen facing the wrath of 'red tapism'. The petitioner has been placing on record the affidavits of her sons where they say that they have no objection if their mother deals with the subject property. Before this Court also, the affidavits submitted earlier have been placed on record as Annexures P-16 to P-19. Fresh affidavits dated 04.09.2024 have also been placed on record as Annexures P-20 and P-21, the relevant portion of which reads as thus;

"4. That I have no objection if my mother sells her share as well as share of my father in capacity of his wife cum caretaker cum guardian in the aforementioned residential house in favour of Sh. Preet Mohinder Singh Sandhu, S/o Late Sh. Satnam Singh Sandhu, R/o House No. 27-A, Ranjit Avenue, Amritsar.

5. That I equivocally affirm and warrant that neither me nor my legal heirs shall arise and dispute or claim, regarding the sale of the house in question in favour of Sh. Preet Mohinder Singh Sandhu.

6. That I will extend full cooperation and sign and execute all documents that may be required for the release of the documents of the property in question, as well as for seeking the requisite permission from the competent court/ authority for appointment of my mother i.e. Gurpreet Kaur Maini as guardian for sale of the share of my father in the aforementioned property and further for registration of sale deed and conveyance of the property in favour of Sh. Preet Mohinder Singh Sandhu. The Hon'ble Court of Ms. Madhu Jain, Principal District & Sessions Judge, South District, Saket Courts, New Delhi has already passed a decree dated



31.05.2024 regarding the same and rightly and legally has appointed my mother Smt. Gurpreet Kaur Maini as guardian of my father.

7. That I had earlier also given affidavit dated 21.03.2024 before the Court of Ms. Madhu Jain, Principal District & Sessions Judge, South District, Saket Courts, New Delhi giving No Objections on appointment of my mother Smt. Gurpreet Kaur Maini as the guardian of my father Dr. Jivtesh Singh Maini and had also filed affidavit dated 25.06.2023 before the Hon'ble Punjab & Haryana High Court in CWP No. 13744 of 2023 titled as "Gurpreet Kaur Maini & Ors. Vs. IIFL Finance Limited & Ors." giving No Objections on appointment of my mother Smt. Gurpreet Kaur Maini as the guardian of my father Dr. Jivtesh Singh Maini and proceed with the sale of the aforementioned residential house.

20. It, therefore, emerges that the petitioner has a judgment dated 31.05.2024 in her favour passed by the Delhi Court alongwith affidavits submitted by her two sons and the no objection given by the Estate Officer, UT, Chandigarh on 07.06.2024. This Court is, therefore, fully satisfied that the petitioner is duly entitled to transfer the 50% of the share of her husband in the subject property and the same is not in any manner detrimental to the interests of Sh. Jivtesh Singh Maini and under the circumstances, the communication dated 23.07.2024 issued by respondent No.2 is totally illegal and arbitrary and is, therefore, quashed. In a matter titled as '***N.A. and Others Vs. Government of NCT of Delhi and Others, 2023 SCC OnLine Del 41***', the Delhi High Court was seized of a similar situation where the question before it was whether the High Court can appoint a legal guardian under Section 14 of the 2016 Act. The High Court held that the solemn nature of the jurisdiction under Article 226 of the Constitution of India which had repeatedly been recognized by the Supreme Court of India, the parents patrie jurisdiction was vested in the constitutional Courts and holding the case to be falling in the category of exceptional circumstances, it held that the High Court had the power to entertain the petition seeking appointment of a guardian. We are



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in agreement with the decision rendered by the Delhi High Court and in the present case, in fact, as has already been noticed, the petitioner already has a judgment in her favour under Section 14 of the 2016 Act. In the considered opinion of this Court, there would be no requirement of the petitioner filing a petition under Order XXXII CPC in view of the judgment passed under Section 14 of the 2016 Act and no objections given by the sons of the petitioner as also the no objection given by the Estate Officer. This Court records its satisfaction that being the legal guardian of her husband, having been appointed by the Competent Courts at Delhi, the petitioner would be authorized to alienate 50% share of her husband in the subject property as has been prayed for in the petition.

In view of the aforementioned facts and circumstances, the present writ petition is allowed. The communication dated 23.07.2024 (Annexure P-12) issued by respondent No.2 is quashed and the petitioner is permitted to transfer the share of her husband-Jivtesh Singh Maini in the subject property and to act as his “signing authority” being his legal guardian.

(ARUN PALLI)
JUDGE

(VIKRAM AGGARWAL)
JUDGE

Pronounced on: 18.09.2024

Prince Chawla

Whether speaking/reasoned :

Yes/No.

Whether reportable :

Yes/No.