

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11337 OF 2025

Aparna Ninad Warekar

.....Petitioner

Vs.

Union of India & Ors.

.....Respondents

Mr. Rudresh Jagdale, i/b Mr. Rohit Mangsule, for the Petitioner.
Mr. S.P. Kamble, AGP for Respondent-State.

CORAM : REVATI MOHITE DERE &

DR. NEELA GOKHALE, JJ.

DATE : 2nd SEPTEMBER 2025.

P.C.:-

1. The Petitioner seeks to be appointed as the guardian of the Respondent No.3 and seeks further direction to the authorities and banks described in Schedule 1 to the petition to allow her to operate and deal with the financial affairs of the Respondent No.3.

2. Heard Mr. Rudresh Jagdale, learned counsel for the Petitioner. Mr. S.P. Kamble, learned AGP was present on advance notice by the Petitioner.

3. Mr. Jagdale submitted that the Petitioner is the cousin sister of the Respondent No.3; that the Respondent No.3 lost her

mother when she was only one and half years and was looked after by her maternal aunts and their two daughters namely, Ashalata Chavan and the Respondent No.3 herein. After the death of maternal aunts, Ms. Ashalata Chavan and the Respondent No.3, both unmarried lived together. Ashalata Chavan is now deceased. The Petitioner is married and lives with her husband. After the death of Ashalata, the Respondent No.3 was living alone.

4. Mr. Jagdale argued that the Petitioner was unable to regularly meet the Respondent No.3 on account of Covid pandemic and thereafter was further prevented from visiting her owing to her own son being challenged. It was only in December 2024 that it was brought to her notice by the neighbours of Respondent No.3 that the Respondent No.3 was being taken care of by the said neighbours. The neighbours informed her that she was unable to speak on phone and she was not in good health condition. After a few months, the Petitioner went to see the Respondent No.3 and found that she was in a deplorable condition and was not being looked after properly.

5. Mr. Jagdale brought to our attention the averments in the petition that the neighbours had sold certain properties owned by the

Respondent No.3 and were using her money. The Petitioner also found that the neighbours had transferred certain immovable properties of the Respondent No.3 by creating fabricated documents and have also used her money. Mr. Jagdale thus, prays that the Petitioner be appointed as the legal guardian of the Respondent No.3 and be allowed to look after her financial affairs.

6. At the very outset, we asked Mr. Jagdale as to when the Petitioner last visited and met the Respondent No.3. The Petitioner had met the Respondent No.3 a few years ago. When we enquired with Mr. Jagdale as to the reason why the Petitioner failed to visit the Respondent No.3 frequently since she was now desirous of being appointed as her legal guardian. The answer was that the Petitioner herself has a challenged son whom she has to look after and that during the pandemic, it was not possible for her to visit her cousin.

7. The next logical question that followed was as to how the Petitioner will now be able to look after and care for the Respondent No.3 in view of the dedicated time that she was required to give to her own son. Mr. Jagdale candidly replied that the Petitioner was desirous of being appointed as the legal guardian as prayed because the

neighbours had alienated the properties of the Respondent No.3 and had played fraud on her. It was necessary for the Petitioner to therefore initiate legal proceedings to seek cancellation of various documents in respect of the properties of the Respondent No.3, executed fraudulently and forged by the neighbours, by instituting appropriate proceedings in appropriate Courts/forums.

8. We heard arguments of Mr. Jagdale, who vehemently urged us to appoint the Petitioner as legal guardian of the Respondent No.3. We also perused very carefully the averments in the petition. A plain reading of the averments clearly demonstrates that the matter involves mixed question of facts and law, which the High Court is unable to adequately deal within its Writ jurisdiction, particularly, in the facts of the present matter. We also found that Mr. Jagdale's arguments were contrary to the averments in the petition. Ordinarily this Court is amenable to constituting a Medical Board in order to ascertain the medical condition of a person in respect of whom a relative, a friend or a next of kin seeks to be appointed as a legal guardian. However, in view of the statements made by Mr. Jagdale as well as the averments in the petition, we must exercise due caution

before proceeding to grant relief as prayed by the Petitioner.

9. Mr. Jagdale has invited our attention to the oral judgment dated 12th January 2024 passed by a Division Bench of this Court in the matter of *Mayuresh Dipak Nadkarni v. Union of India & Ors.*¹ where this Court held that in case of a legal vacuum created by non-availability of adequate provisions under the Mental Health Care Act of 2017 as also under the Hindu Minority and Guardianship Act, 1956, the Guardian and Wards Act, 1890 and other laws, the High Court shall exercise the doctrine of *parens patriae* and pass appropriate orders to protect the interest of a person suffering from major cognitive disorders in the exercise of its writ jurisdiction. We have combed through the said decision. The facts in that matter are completely distinct to that in the present matter. The person in respect of whom a legal guardian was sought to be appointed in that case, was a 71 years old patient suffering from Alzheimer's disease and totally dependent on his father and brother. He was suffering from memory impediments, as well and required constant nursing care and assistance in daily activities. It was in those circumstances that this Court protected his interest and appointed the son as legal guardian of his

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father. Undoubtedly, human suffering is integral to one's life and when it crosses human confines, the ordeal can only be imagined. In the facts of the present case, however, the High Court is not equipped to adequately deal with the averments made in the petition as well as ascertain the authenticity and genuineness of the property documents annexed to the petition as the matter requires recording of evidence and appreciation of the same by a Court of competent jurisdiction. We are thus, not inclined to entertain the present petition. In any case, appropriate efficacious and alternate remedy is available to the Petitioner under the provisions of other related enactments.

10. In view of aforesaid discussion, the petition is dismissed and accordingly disposed off.

11. Needless to state, that the Petitioner is at liberty to file appropriate proceeding before appropriate Court/forum and seek appropriate relief. In the event that the Petitioner approaches a Court of competent jurisdiction seeking necessary reliefs, the said Court/forum shall decide the matter on its own merits without being influenced by the observations made in the present order.

12. All parties to act on an authenticated copy of this order.

(DR. NEELA GOKHALE, J.)

(REVATI MOHITE DERE, J.)

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signed by
SHAMBHAVI
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