

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

GUARDIANSHIP PETITION NO.8 OF 2025

Vahbiz Pervez Dumasia & Niloufer Pervez Dumasia ...Petitioners

**WITH
INTERIM APPLICATION NO.1768 OF 2025
IN
GUARDIANSHIP PETITION NO.8 OF 2025**

Mr. Jahangir Jeejeebhoy with Ms. Nupur Desai i/b M/s Markand Gandhi & Co. for the Petitioners.

**CORAM : ABHAY AHUJA, J.
DATE : 8th MAY 2025**

ORAL JUDGMENT:

1. When the matter is called out, Mr. Jeejeebhoy, learned Counsel appearing for the Petitioners submits that the Interim Application No. 1768 of 2025 is wrongly on board as the same has been disposed of by order dated 24th April, 2025.
2. Accordingly, remove the Interim Application No. 1768 of 2025 from the board.
3. Mr. Jeejeebhoy further submits that as permitted by this Court by order dated 24th April, 2025, the Guardianship Petition has been amended and that this Petition be treated as a Petition under Clause XVII of the Letters Patent.

4. I have heard Mr. Jeejeebhoy, learned Counsel for the Petitioners at length.

5. But before proceeding further, I deem it apposite to set out Clause XVII of the Letters Patent as under:-

“17. Jurisdiction as to infants and lunatics : And We do further ordain that the said High Court of Judicature at Bombay shall have the like power and authority with respect to the persons and estates of infants, idiots and lunatics, within the Bombay Presidency, as that which was vested in the said High Court immediately, before the publication of these presents.”

6. As can be seen under Clause XVII of the Letters Patent, this Court has power and authority with respect to the person and estate of infants, idiots and lunatics within the Bombay presidency.

7. A Letters Patent is the Charter of the High Court (*Vinita M. Khanolkar Vs. Pragna M. Pai and Ors*¹, *Sharda Devi Vs. State of Bihar*²).

A Letters Patent is the specific law under which a High Court derives its powers (*Shah Babulal Khimji Vs Jayaben D. Kania and Anr.*³). It is not a subordinate piece of legislation. Further, it is settled law that until and unless a legislation specifically excludes the applicability of the Letters

1.AIR 1998 SC 424

2.AIR 2002 SC 1357

3.AIR 1981 SC 1786

Patent, the Letters Patent is applicable i.e. it cannot be excluded by implication. Special law will always prevail over general law. A Letters Patent is a special law for the High Court and the Code of Civil Procedure, 1908 in the general law. That in the event of conflict between a special law and a general law, the special law will always prevail.

8. An “idiot” as per the Black’s Law Dictionary as referred to in clause XVII of the Letters Patent means a person who is afflicted with profound mental retardation.

9. Under the Mental Health Act, 1987, which has since been repealed, there was a specific provision under Section 53 of the said Act empowering the District Court to appoint a legal guardian for a mentally ill person. Section 53 of the said repealed Mental Health Act, 1987 reads as under:-

“53. Appointment of guardian of mentally ill person.-(1) Where the mentally ill person is incapable of taking care of himself, the District Court or, where a direction has been issued under sub-section (2) of section 54, the Collector of the District, may appoint any suitable person to be his guardian.

(2) In the discharge of his functions under sub-section (1), the Collector shall be subject to the supervision and control of the State Government or of any authority appointed by it in that behalf.”

10. The Mental Health Act, 1987 was repealed and replaced by the Mental Healthcare Act, 2017, which came into effect from 7th July, 2018. Under the Mental Healthcare Act, 2017, there is no provision available for appointment of a guardian of a mentally ill person, which was very much available under the repealed Mental Health Act, 1987. Though the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999, under Section 14 empowers the Local Level Committee to appoint a parent or a relative as a legal guardian of a person with disability, the said legislation has not curtailed the powers of this Court to appoint a legal guardian for a mentally ill person exercising its powers under Clause XVII of the Letters Patent.

11. “Disability is defined under Section 2(i) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation), Act, 1995 to mean:-(i) blindness; (ii) low vision; (iii) leprosy-cured; (iv) hearing impairment; (v) locomotor disability; (vi) mental retardation; (vii) mental illness.

12. Under the Mental Healthcare Act, 2017, “Mental illness” is defined under Section 2(s) to mean a substantial disorder of thinking,

mood, perception, orientation or memory that grossly impairs judgment, behaviour, capacity to recognize reality or ability to meet the ordinary demands of life, mental conditions associated with the abuse of alcohol and drugs but does not include mental retardation.

13. Section 2(q) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (the “Equal Opportunities Act”) defines mental illness to mean any disorder other than mental retardation or a mentally disabled person.

14. An idiot as per the Black’s Law Dictionary as referred to in Clause XVII of the Letters Patent means a person who is afflicted with profound mental retardation. But that is not what we are concerned with in the facts of this case.

15. In the facts of the present case as recorded earlier, Mr. Pervez Dumasia, who was on the date of the Petition, 72 years old, in July, 2024 suffered from Hypoxia Ischemic Encephalopathy, a brain injury resulting from deprivation of oxygen and blood supply during a cardiac arrest. As a consequence, he has been in a semi-conscious and incapacitated state and is bedridden and is suffering from long term

neurological disability. Pervez is incapable of communication, cannot take care of his basic personal needs and is undergoing treatment at home at 701, Garden Court, 7th Floor, 39 Lallubhai Park Road, Opp. Andheri Telephone Exchange, Andheri (W), Mumbai-400 058, which has been converted into an Intensive Care Unit (ICU) and requires constant care and assistance from nurses and attendants. It has also been pointed out to this Court that the monthly expenses as set out in the Petition are between Rs. 5,24,000/- to 5,54,000/- per month. I have no reason to disbelieve the same.

16. The expert doctors and physicians had certified that Pervez is unable to understand the nature, extent or probable consequences of actions or take informed decisions nor is able to make a rational evaluation of the burdens, risks and benefits of any decisions, while being incapable of communicating as noted above. He is incapable of taking care of his basic personal needs and in fact requires constant care and attention in the performance of even simplest bodily functions. Obviously, therefore, he is not capable of managing his assets and properties.

17. This is, therefore, definitely not a case of mental retardation. Therefore, the condition suffered by Mr. Pervez Dumasia cannot be said to be that of an idiot.

18. However, applying the above definitions to the condition suffered by Mr. Pervez Dumasia, it can be said that his is a case of mental illness although the same may have arisen as a result of a cardiac arrest.

19. Lunacy refers to unsoundness of mind sufficient to incapacitate a person from civil transactions. It can also refer to a mental disorder as described in the definition of mental illness. Mr. Pervez Dumasia suffered Encephalopathy, which is a brain injury resulting from deprivation of oxygen and as a consequence, he has been in a semi-conscious and incapacitated state and is bedridden and is unable to even take care of his basic personal needs requiring constant care and attention even for the performance of simplest bodily functions, although, the incapacity or inability to meet ordinary demands of life has arisen as a result of cardiac arrest. The said disorder is a substantial one with respect to thinking, perception, orientation as well as memory which has impaired his judgment, behaviour, capacity to recognize reality or ability to meet ordinary demands of life. This is certainly not

mental retardation, but a case of mental illness, as also defined under the Mental Health Care Act, 2017. Under the Equal Opportunities Act also mental illness means any disorder other than mental retardation or mentally disabled person. Such mental illness or disorder or disability or incapacity, as discussed above, where the person is incapable of taking care of himself or managing his property, can be said to be a state of lunacy and by virtue of Clause XVII of the Letters Patent this Court would have authority and jurisdiction with respect to the person and the estate of such a lunatic within Bombay Presidency.

20. Mr. Jeejeebhoy has submitted that in the above circumstances, this Petition has been filed by Pervez's two daughters, who have taken upon themselves the moral, ethical and financial duty to look after and care for their father including managing his assets, properties and finances in a fair, transparent and proper manner.

21. As also recorded earlier, Mr. Jeejeebhoy has also drawn this Court's attention to a consent affidavit at Exhibit A to the Petition where Pervez's wife Zenobia and the Petitioners' mother being of advanced age has consented to the appointment of the Petitioners as guardians of Pervez's person and managers of his properties, submitting that she is of advanced age and it is not feasible for her to

independently manage the extensive medical treatment, continuous care of Pervez's person and the affairs concerning his assets, properties and finances.

22. Mr. Jeejeebhoy, learned Counsel for the Petitioners has also drawn this Court's attention to Exhibit-H to the Petition with respect to the movable and immovable properties and assets owned by Pervez. Learned Counsel has submitted that Pervez also holds interests in partnership / LLP firms and private limited company. That the said firms are actively engaged in architectural consultation and real estate development and Pervez 's share in the firms constitute a valuable and essential component of his estate.

23. It has been submitted that there is no other guardian or manager appointed in respect of Pervez's person or property nor is there any other person capable of being appointed as such, except the Petitioners as the two of them are his daughters residing with him and the mother, who is also present in court has given her consent as she is also of advanced age.

24. Mr. Jeejeebhoy would submit that, therefore, this Court appoint the Petitioners as guardians of the person and managers of all the

properties of Pervez and to declare that they are authorised to do all acts, deeds and things necessary for the proper medical treatment, nursing care, welfare and benefit of the person of Pervez and also be authorised to take decisions in accordance with prayer Clause (c).

25. Mr. Jeejeebhoy submits that the Petitioners would apply the assets and properties owned by Pervez towards his ongoing and future medical expenses to ensure his well-being and that an undertaking to that effect has been furnished to this Court by the Petitioners and also that the undertaking to submit statements of accounts to the Prothonotary and Senior Master of this Court setting out the details of the expenses incurred and income received, be on a half yearly basis instead of quarterly basis as directed at the time of the interim order.

26. Mr. Jeejeebhoy has submitted that, therefore, this Court appoint the Petitioners as guardians in terms of prayer Clauses 36(a) to (c).

27. On 23rd January, 2025, after hearing Mr. Jeejeebhoy, learned Counsel for the Petitioners and after considering the submissions made by him and considering the urgent need to meet Petitioners' costs and expenses of specialized care and medical treatment, this Court had granted interim reliefs until further orders as under:-

“Accordingly, until further orders, in the interim, and subject to furnishing undertaking as under, this Court appoints the Petitioners as guardians of the person Pervez Nadir Dumasia and managers of his assets and properties with powers to (jointly and severally) do all acts, deeds and things necessary for his proper medical treatment, nursing care, welfare and benefit as well as to : (i) operate all bank accounts in the name of Mr. Pervez Nadir Dumasia, whether singly or jointly, (ii) invest the monies of Mr. Pervez Nadir Dumasia, (iii) utilize the monies of Mr. Pervez Nadir Dumasia for his proper upkeep and for fulfilling his needs and requirements, (iv) represent Mr. Pervez Nadir Dumasia before all persons, authorities, including civic bodies, (v) sign where required as the guardian(s) of Mr. Pervez Nadir Dumasia, all deeds, documents, cheques and instruments and (vi) to file returns,etc, before the tax authorities.”

28. Since, this Court had expressed its apprehension about granting the final reliefs sought for in this Petition on the basis that the Petition was under the Guardians and Wards Act, 1890, which is an Act under which a guardian can be appointed for the welfare of a minor alone and that a minor would mean a person who under the provisions of the Indian Majority Act, 1875, would be a person who has not attained the age of majority, which is the beginning of the 18th anniversary, Interim Application No. 1768 of 2025 was filed to amend the Petition, so that the Petition could be decided under Clause XVII of the Letters Patent, which Clause XVII of the Letters Patent not only refers to infants but also idiots and lunatics. Accordingly, pursuant to the order dated 24th

April, 2025, the Petition has been amended and therefore, this Court is considering this Petition under Clause XVII of the Letters Patent.

29. I have already held that Pervez's condition as described in the Petition as well as above, is of mental illness, disorder, disability and incapacity and a person in a state of lunacy who is incapable of taking care of himself or managing his property, over whose person and estate, this Court can exercise power and authority under Clause XVII of the Letters Patent.

30. The higher Courts of our country exercise the *parens patriae* jurisdiction as they cannot be mute spectators to a real life situations of the nature before this Court. Since as noted above, Clause XVII of the Letters Patent empowers this Court to exercise jurisdiction over mentally incapacitated persons, in the absence of any statutory or legislative bar and to fill up the vacuum, in the facts and circumstances of this case, I am inclined to allow the Petition as prayed for.

31. My approach is fortified by decisions of two other Chartered High Courts viz. the High Court of Madras as well as the High Court of Calcutta.

32. The Calcutta High Court in the case of *Deepa Asani and Another... Petitioners*⁴ has while considering a similar Petition under Clause XVII of the Letters Patent observed in paragraphs 5 to 8 as under:-

“ 5. Upon hearing learned Counsel and perusing The Mental Health Act, 1987 which was repealed by The Mental Healthcare Act of 2017, this Court is prima facie satisfied that the said enactments did not contain any enabling provision for a family member to apply for declaratory relief in respect of persons exhibiting behavioural patterns which warrant protection.

6. The 2017 Act provides for the rights of persons who are being treated in mental healthcare establishments and guidelines for the functioning of these establishments. Clause 17 of the Letters Patent for the High Court of Judicature at Fort William in Bengal, appears to be the only answer in such cases where High the Court has the authority to intervene in cases in relation to persons and estates of infants, idiots and lunatics within the jurisdiction vested with the High Court. (Clause 17 is set out below:)

“Clause 17: Jurisdiction as to infants and lunatics - And we do further ordain, that the said High Court of Judicature at Fort William in Bengal shall have the like power and authority with respect to the persons and estates of infants, idiots and lunatics within the Bengal Division of the Presidency of Fort William as that which was vested in the said High Court immediately before the publication of these presents.”

7. Since the petitioner is the only legal heir of Deepa Asani, this Court considers it fit to pass appropriate orders upon being satisfied, prima facie, from the material on record that Deepa Asani is indeed in a critical mental condition and requires sufficient protection from the applicant who is her sole surviving legal heir.

8. It is relevant to trace the use of the word ‘Inquisition’ to The Mental Health Act, 1987, under which an application for judicial inquisition could be made by a class of persons for ascertaining the mental condition of a mentally ill, who holds property, for a direction for admission of that person in a psychiatric hospital. Clause 17 of The

4 2021 SCC OnLine Cal 2148

Letters Patent evokes the power of the High Court as a guardian-protector to preserve the rights of those who are disenfranchised – by way of mental incapacity – to approach the courts. Barring the words which are seen as inappropriate in the present times, it is a wonderfully inclusive provision which empowers the High Court to take up the cause of persons on the periphery of society.”

33. The Madras High Court also in the case of *C. Raghuraman Vs. Nil⁵* also relying upon the decision of the Calcutta High Court in the case of *Deepa Asani and Another... Petitioners (supra)* has after elaborately considering the law on the point *albeit* in the case of a person who was mentally retarded and particularly with respect to the jurisdiction of a Chartered High Court under Clause XVII of the Letters Patent as in the case of an idiot, observed in paragraphs 12 to 23 as under:-

“12. The Mental Health Act, 1987 was repealed and was replaced by the Mental Healthcare Act, 2017 which came into effect from 07.07.2018. As seen from the Mental Healthcare Act, 2017, there is no provision available for appointment of a guardian of a mentally ill person, which was very much available under the repealed Mental Health Act, 1987. Though the National Trust for Welfare of persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 under Section 14 empowers the Local Level Committee to appoint a legal guardian for a mentally retarded person, the said legislation has not curtailed the powers of this Court to appoint a legal guardian for a mentally retarded person exercising its powers under Clause 17 of the Letters Patent. The decision rendered by a learned single Judge of this Court in *G. Nithyanandam v. Tmt. D. Saritha*, (2013) 3 LW

5 AIR 2022 Mad 118

412, which is the basis for the return of the Original petition by the Registry of this Court is in the context of a petition filed under the Guardians and Wards Act and not under Clause 17 of the Letters Patent. The only reason for holding that the said petition was not maintainable by the learned single Judge in the reported decision of *G. Nithyanandam's case* referred to supra was that under the Guardians and Wards Act, a person cannot be appointed as a legal guardian for a mentally retarded person. Therefore, I am of the considered view that the reason for return of the Original Petition filed by this petitioner under Clause 17 of the Letters Patent seeking for appointment of a legal Guardian for a mentally retarded person by the Registry is erroneous.

13. In similar circumstances, a learned single Judge of the Calcutta High Court in the case of *Kala Chand Chunder v. Fatehdin*, AIR 1949 Cal 166 and in the case of *Deepa Asani*, 2021 SCC OnLine Cal 2148 : (AIROnline 2021 Cal 455) exercised powers under Clause 17 of the Letters Patent and appointed a legal guardian for a mentally ill/lunatic person.

14. The relevant paragraphs of the aforesaid decisions of the Calcutta High Court are extracted hereunder:

a) *Kala Chand Chunder v. Fatehdin*, AIR 1949 Cal 166.

14. Even if there be any doubt as to the powers of the District Courts in the matter of making interim orders in pending lunacy proceedings, I entertain no doubt whatever as to the powers of this High Court to do so. This High Court has lunacy jurisdiction under clause 17 of the Letters Patent of 1865. That clause confers on this Court the like power and authority with respect to the persons and estates of infants, idiots and lunatics within the Bengal Division of the Presidency of Fort William as that which was vested in the said High Court immediately before the publication of these presents. This takes us back to the Letters Patent of 1862 which was in force immediately before the publication of the Letters Patent of 1865. Clause 16 of the Letters Patent of 1862 ordained that the High Court should have the like jurisdiction as to infants and lunatics as was then vested in the Supreme Court. This provision takes us further back to the Charter of 1774 establishing the Supreme Court at Fort William in Bengal. Under clause 4 the Chief Justice and Judges of the Supreme Court were given the same powers as the Judges of King's Bench, of England had and under clause 18 the Supreme Court was constituted as a Court of Equity with "full power and authority to administer justice in a summary manner, as nearly, as

may, according to the rules and proceedings of our High Court of Chancery in Great Britain.” Clause 25 of that Charter authorised and empowered the Supreme Court “to appoint guardians and keepers for infants, and their estates according to the order and course observed in that part of Great Britain called England and also guardians and keepers of the persons and estates of natural fools or of such as are, or shall be deprived of their understanding or reason by the act of God, so as to be unable to govern themselves and their estates” and also authorised and empowered that Court “to inquire, hear and determine by inspection of the person, or by such other ways and means by which the truth may best be discovered and known.” From what I have stated it follows that this High Court as the successor to the Supreme Court has all, the powers, authority and jurisdiction of the English Courts referred to above. There can be no doubt that the English Courts frequently make interim orders in lunacy proceedings before a person is actually found to be a lunatic on inquisition. Reference may be made to *Ex parte Whitfield* [(1742) 2 ATK 315 : 26 E.R. 592.], *In re: Pountain* [[L.R.] 37 Ch.D. 609], *Seager Hunt* [[1900] 2 Ch. 54.] and *Re A.G.* [(1909) 53 Sel J 615.]. The position is summarised in Theobald's Law relating to Lunacy at page 401 in the following words:

“In an urgent case an interim receiver may be appointed for the protection of a lunatic's property, upon sufficient medical evidence, and without service or security. The order provides for giving security as soon as possible and for notice of the order to the lunatic with liberty to him to apply to discharge it on short notice.

It is not necessary to refer to Rule 83 of the Rules of 1892 for power to appoint an interim receiver; it is part of the inherent jurisdiction to protect the property of lunatics. The powers conferred by the Act of 1908 are also sufficient to meet the case. Interim orders have frequently been made; see, for instance, *Seager Hunt* [[1900] 2 Ch. 54.].

These interim orders have also been recognised by the Lords Justices. It was found that an elderly lady of weak mind was living in her own house in a state of neglect, and it was necessary, at once to have her properly cared for. The matter being urgent, an interim receiver was appointed by the Master. W., January 17, 1922.

When the receiver went to the house to carry out the order he was refused admission by a person who had been allowed to occupy the basement. Application was thereupon made to the Lords Justices for an order to commit this person, and after

discussion in Court an order for committal was made, thus recognising in the clearest way the validity of the interim order. W., Sterndale, M.R., Younger, L.J., 1st February, 1922.”

15. It has been argued that the provisions of the Letters Patent are by clause 44 thereof made subject to the legislative powers of the Indian Legislature. It is contended that the Indian Legislature has, by the Lunacy Act, altered the law. Reference is made to Section 2 of the Lunacy Act which provides that nothing contained in Part II will affect the powers of the High Court. It is urged that this section clearly shows that the other provisions contained in other parts of the Act affect the powers of the High Court. Part II provides for the reception, care and treatment of lunatics and gives certain powers to certain persons or tribunal. It was, therefore, necessary to make it clear that those provisions did not affect the powers of the High Court over any person found on inquisition to be a lunatic or over the property of such lunatic. Part III, Ch. IV, however, deals with lunacy proceedings in the High Court. In so far as express provisions have been made in that part they are certainly intended to be binding on the High Court and ex hypothesi there could be no occasion for preserving, the powers of the High Court as against those provisions. But it is quite a different thing to say that even in matters on which the Act is silent the powers of the High Court must be deemed to have been taken away. I readily agree that the provisions of the Lunacy Act, in so far as they are expressly contrary to or inconsistent with the powers of the High Court under its Letters Patent, must prevail but I am not prepared to countenance the contention that the Legislature has, by a side wind, taken away the inherent powers of this Court, which, I consider, are essentially necessary in the ends of justice. While sitting as a Judge of this Court I for one shall not, in the absence of unambiguous provision enacted by a competent legislative authority, readily give up ancient and time-honoured powers, authority and jurisdiction which this Court has inherited from the Supreme Court. In my opinion, for the reasons mentioned above, the order of September 3, 1945, was a valid order and Mr. B.P. Chunder as the receiver and manager of the estate of Kala Chand Chunder can legally convey the latter's half share and pass a good title to the purchaser. I, however, agree with Mr. Mukherjee that the records of this suit should be suitably amended either by substituting Mr. B.P. Chunder as such receiver and manager in the place of Kala Chand Chunder or by describing Kala Chand Chunder as a person who, though not adjudged to be a lunatic, is by reason of unsoundness of mind or mental infirmity incapable

of protecting his interests and suing by a next friend appointed under Or. 32, R. 15 of the CPC. Even for the purposes of this application such amendment is necessary. Mr. Banerjee agrees that the register of this suit should be amended in the latter way. Relying on the materials on which the order of April 25, 1945, was made and the materials on which an order under Or. 32, R. 15 was made by me in another proceeding on September 3, 1945, which related to the mental state of Kala Chand Chunder and all of which are now filed of record of this Court I find that the Plaintiff Kala Chand Chunder is by reason of unsoundness of mind or mental infirmity incapable of protecting his interests and acting under Or. 32, R. 15 of the CPC. I appoint Mr. B.P. Chunder as the next friend of Kala Chand Chunder to continue this suit to its termination and execute and register the conveyance on behalf of Kala Chand Chunder. Let the register of this suit be amended accordingly and let the sale be now completed.

b) *Deepa Asani*, 2021 SCC OnLine Cal 2148.

6. The 2017 Act provides for the rights of persons who are being treated in mental healthcare establishments and guidelines for the functioning of these establishments. Clause 17 of the Letters Patent for the High Court of Judicature at Fort William in Bengal, appears to be the only answer in such cases where High the Court has the authority to intervene in cases in relation to persons and estates of infants, idiots and lunatics within the jurisdiction vested with the High Court. (Clause 17 is set out below:)

“Clause 17: Jurisdiction as to infants and lunatics-And we do further ordain, that the said High Court of Judicature at Fort William in Bengal shall have the like power and authority with respect to the persons and estates of infants, idiots, and lunatics within the Bengal Division of the Presidency of Fort William as that which was vested in the said High Court immediately before the publication of these presents.”

7. Since the petitioner is the only legal heir of Deepa Asani, this Court considers it fit to pass appropriate orders upon being satisfied, *prima facie*, from the material on record that Deepa Asani is indeed in a critical mental condition and requires sufficient protection from the applicant who is her sole surviving legal heir.

8. It is relevant to trace the use of the word ‘Inquisition’ to the Mental Health Act, 1987, under which an application for judicial inquisition could be made by a class of persons for ascertaining the mental condition of a mentally ill, who holds property, for a direction for admission of that person in a psychiatric hospital. Clause 17 of the Letters Patent evokes the power of the High

Court as a guardian-protector to preserve the rights of those who are disenfranchised - by way of mental incapacity to approach the courts. Barring the words which are seen as inappropriate in the present times, it is a wonderfully inclusive provision which empowers the High Court to take up the cause of persons on the periphery of society.

15. Infact, the decision rendered supra in *Deepa Asani's case*, 2021 SCC OnLine Cal 2148, the learned Judge of the Calcutta High Court has observed that there is a vacuum ever since the repeal of the Mental Health Act, 1987 as there is no provision under the Mental Healthcare Act, 2017 for appointment of a legal guardian for a mentally retarded person. Whenever there is a Legislative vacuum and there is utmost necessity as in the instant case, the Court will have to fill up the lacuna by giving appropriate legal relief though within the parameters of law. Since Clause 17 of Letters Patent empowers this Court to exercise lunacy jurisdiction, the hands of this Court are not tied to grant the relief as prayed for in this petition. In a case of this nature, this Court cannot be a mute spectator when there is no specific prohibition for the exercise of power under Clause 17 of the Letters Patent. "Parens Patriae" jurisdiction also empowers this Court to appoint a Legal guardian for a Mentally retarded person when there is a legislative lacuna and further there being no statutory bar.

16. The learned single Judge of the Calcutta High Court in the aforesaid reported decisions have also exercised the power under Clause 17 of the Letters Patent for the purpose of appointment of a legal guardian for a lunatic.

17. Since idiot is a colloquial term for a person affected with mental retardation, the term "idiot" found in Clause 17 of the Letters Patent is applicable to a mentally retarded person also as in the instant case. In future, Registry shall entertain petitions filed seeking to appoint legal guardian for a mentally retarded person under Clause 17 of the Letters Patent. Infact, a learned single Judge of this Court in *S. Annapoorni's case* referred to supra had also exercised powers under Clause 17 of the Letters Patent though it was a case where the petitioner was residing outside the jurisdiction of this Court but that case was in respect of a child custody matter. Though it was a child custody matter, the logic behind the applicability of Clause 17 of the Letters Patent by this Court was also followed in the said decision.

18. For the foregoing reasons, I am of the considered view that the Registry ought not to have returned the Original Petition filed by this petitioner but anyway since a direction was given by this Court to the Registry to number this petition, they have numbered the

same leaving the maintainability issue open. After numbering the petition, this Court had also directed the petitioner to let in oral and documentary evidence before the learned Master. Accordingly, the petitioner has also let in oral and documentary evidence before the learned Master which has been recorded.

19. Now coming to the merits of the petitioner's request for appointment of legal guardian for R. Balaji is concerned, this Court's discussion is as follows:—

20. The petitioner claims that both the parents of the mentally retarded person R. Balaji, who was born on 13.11.1987 are no more. The father of R. Balaji, K. Ravi died on 25.05.2021 and the mother R. Meenakshi died on 12.04.2013. The petitioner is the first cousin of the mentally retarded person R. Balaji. The father of the petitioner died on 11.10.2020 and his mother is still alive. According to the petitioner, ever since the death of K. Ravi, the father of the mentally retarded person Balaji, he has been taking care of R. Balaji. According to the petitioner R. Balaji, the mentally retarded person is now admitted in the “Care and Care Clinic” at New No. 23, East Avenue, Near UCO Bank, Korattur, Chennai. and the said clinic is taking care of his day-to-day needs. According to the petitioner a sum of Rs. 15,000/- is paid by the petitioner to the said Clinic as special fees for this service for every three months. According to the petitioner, the mentally retarded person R. Balaji has been suffering from mental retardation which has been assessed at 60% by the State Commissioner for disabled, Government of Tamil Nadu. According to the petitioner excepting for him, there is no other person amongst his kith and kin to take care of the mentally retarded person R. Balaji. He has also pleaded that he is of sound health and he is willing to act as a guardian for the mentally retarded person R. Balaji till his life time. He has also given the list of assets standing in name of the parents of the mentally retarded person which has now been inherited by R. Balaji after their death and he has also filed those documents along with the petition.

21. Before the learned Master, the petitioner was examined as a witness (PW1). In his deposition, he has reiterated the contents of the petition filed in support of O.R. No. 731 of 2021. Through PW1, the following documents were marked as Exhibits:

(Tabular matter omitted...Ed.)

22. As seen from the evidence available on I record, it is clear that excepting for the petitioner, there is no other person amongst the kith and kin of the mentally retarded person to support him. It is also evident that both the parents of the mentally retarded person viz., R.Meenatchi and K. Ravi are no

more as seen from their respective death certificates, which have been marked as Exs.P5 and P8. The certificate given by the State Commissioner for disabled, Government of Tamil Nadu for the mentally retarded person R. Balaji dated 26.10.2005 has also been marked as Ex.P3, which confirms that R. Balaji has been suffering from mental retardation which has been assessed at 60%. The said certificate was issued based on the medical report submitted by the Kilpauk Medical College which is reflected in the said certificate. The father of the petitioner Sellappan, who is the brother of the mentally retarded person's father (K. Ravi) is also no more as evident from his Death Certificate which has been marked as Ex.P6 which reveals that he died on 11.10.2020. The Legal Heirship certificate of K. Ravi, the father of the mentally retarded person R. Balaji has also been marked as Ex.P9, which confirms that the mentally retarded person R. Balaji is his only Legal Heir. Being a mentally retarded person and that too when both his parents are no more and he does not have any siblings, this Court is of the considered view that the petitioner who is the first Cousin of the mentally retarded person is an apt person to be appointed as legal guardian. The details of the assets standing in the name of the father of the mentally retarded person viz., K. Ravi has also been marked as Exhibits viz., Ex.P4, P10 and P11, The title deeds pertaining to the property owned by the mother of the mentally retarded R.Meenakshi has also been marked as Ex.P2. The petitioner has sought for appointment of a legal guardian for the person and property of the mentally retarded person R. Balaji. He has also let in oral evidence reiterating the contents of the petition filed in support of OP No. 731 and has undertaken to maintain the mentally retarded person in his beneficial interest and welfare. However being a mentally retarded person, this Court is of the considered view that the petitioner will have to submit regular accounts in respect of the assets owned by R. Balaji, the mentally retarded person.

23. After giving due consideration to the pleadings and the evidence available on record as well as after hearing the submissions of the learned counsel for the petitioner, this Court is inclined to grant the relief as prayed for and the petitioner is appointed as a legal guardian for the mentally retarded person

Mr. R. Balaji subject to the fulfillment of the following conditions by the petitioner, which are as follows:—

(a) The guardian appointed by this Court shall disclose the particulars of the properties both movable and immovable owned by Mr. K. Ravi, the father and Mrs. R. Meenakshi, the mother of the mentally retarded person R. Balaji, before the Registry of this Court within a period of four weeks from the date of receipt of a copy of this order.

(b) R. Balaji, the mentally retarded person shall be examined by a Government Doctor and a report to that effect from the said Government Doctor shall be filed before the Registry of this Court every six months.

(c) The guardian appointed by this Court shall file a statement before the Registry of this Court every six months, disclosing the bank balances of Mr. R. Balaji, the mentally retarded person with various banks/financial institutions.

(d) The guardian appointed by this Court shall render true accounts of the funds belonging to Mr. R. Balaji, the mentally retarded person and shall file a report before the Registry of this Court every six months.

(e) If it is brought to the notice of any Court/any statutory authority about misuse of funds belonging to Mr. R. Balaji, the mentally retarded person, the said Court/authority is empowered to cancel the guardianship after holding a proper enquiry.

(f) The transactions in respect of the property of the mentally retarded person by the guardian shall be strictly in accordance with the relevant provisions of law.

(g) If the guardian appointed by this Court is found to be abusing the power or neglects or acts contrary to the best interest of Mr. R. Balaji, any relative or next friend may apply to the appropriate Court for removal of such guardian.

Order accordingly.”

34. Considering that there are decisions of two other Chartered High Courts and there is no decision of this Court under Clause XVII of the Letters Patent, although the Petitions of this nature were being

considered and allowed, this Court has deemed it appropriate to elaborate on the law on the subject to fill up the vacuum for the benefit of persons, who are mentally incapacitated.

35. In view of the above discussion, however, subject to continuing the undertaking given to this Court at the time of the Interim Order dated 23rd January, 2025, in terms of paragraph 21 of the said order, except to the extent that statements undertaken to be given be given on a six monthly basis, the Petition is allowed in terms of Clauses (a) to (c), which read thus:-

“(a) That this Hon’ble Court be pleased to appoint the Petitioners, acting jointly and/or severally, as the Guardians of the person and the Managers of the properties of Pervez Nadir Dumasias;

(b) That this Hon’ble Court be pleased to declare that as the guardians of Pervez Nadir Dumasias, the Petitioners, acting jointly and/or severally, are authorized to do all acts, deeds and things for the proper medical treatment, nursing care, welfare and benefit of Pervez Nadir Dumasias;

(c) That this Hon’ble Court be pleased to declare that as Managers of Pervez Nadir Dumasias, the Petitioners, acting jointly and/or severally, are authorised to take all such decisions necessary and incidental for the welfare and benefit of Pervez Nadir Dumasias, and maintenance of his property and assets, including to deal with the properties set out at Exhibit “H” and Exhibit “I” hereto, and to utilise the proceeds thereof solely for the benefit and upkeep of Pervez Nadir Dumasias, including the power to:

i) operate all bank accounts in the name of Pervez Nadir Dumasias;

- ii) deal with shares, bonds, debentures and other securities in the name of Pervez Nadir Dumasia;
- iii) take possession and charge of all moveable and immovable properties of Pervez Nadir Dumasia;
- iv) manage, sell, transfer or otherwise deal with Pervez's properties;
- v) invest the monies of Pervez Nadir Dumasia;
- vi) utilize the monies of Pervez Nadir Dumasia for his proper upkeep and for fulfilling his needs and requirements;
- vii) represent Pervez Nadir Dumasia before all persons, authorities, civic bodies;
- viii) sign where required as the guardian(s) of Pervez Nadir Dumasia;
- ix) sign all deeds, documents, cheques and instruments as guardian(s) of Pervez Nadir Dumasia; and
- x) to file returns, etc, before the tax authorities.
- xi) to sign all documents, deeds of the Partnership firms/companies in which he has stakes as per Exhibit "I" hereto and sign on his behalf all the documents, cheques, etc. for the bank accounts associated with these companies."

36. The Petition is accordingly allowed and stands disposed as above.

37. All to act on an authenticated copy of this order/judgment.

38. This Court appreciates the assistance rendered by Mr. Jeejeebhoy in filling up the lacuna in this area of law and procedure for the benefit of persons similarly placed as Mr. Pervez Dumasia.

(ABHAY AHUJA, J.)