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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :24.01.2025

PRONOUNCED ON :31.01.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

W.P.No.28262 of 2024

Mrs.Anitha Swaminathan

... Petitioner

Vs.

1.The Government of Tamil Nadu,
Represented by its Secretary,
Department of Health and Family Welfare,
Secretariat, Fort St.George, Chennai.

2.The District Collector,
Tiruvarur District,
Office of the District Collector,
Thiruvarur.

3.The Tahsildar,
Tiruvarur Taluk and District,
Office of the Tahsildar, Thiruvarur.

4.The Inspector General of Registration,
Office of the Inspector General of Registration,
Santhome High Road, Fore Shore Estate, Chennai.

5.The Sub Registrar,
Thiruvarur Town and Registration District,
Office of the Sub Registrar, Thiruvarur.



6.Miss.A.Vishwa Janany

7.Miss A.Mona Shivani

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of declaration, declaring the petitioner as Guardian for Mr.Subramanian Anbuthiruchelvam to deal with the property situated at Mannargudi Town, Old Thanjavur Rastha South, Ward No.1, Block No.55, T.S.No.3435, measuring an extent of 421.41 Square Meter, that is 4536 Sq.feet of land together with the house, along with all other amenities belonging to her husband as Guardian.

For Petitioner : Mr.M.L.Ramesh

For Respondents :Mr.E.Sundaram
Government Advocate for R1
Mr.G.Ameedius
Government Advocate for R2 to R5

ORDER

This writ petition is filed seeking issue of Writ of declaration, declaring the petitioner as Guardian for Mr.Subramanian Anbuthiruchelvam to deal with the property situated at Mannargudi Town, Old Thanjavur Rastha South, Ward No.1, Block No.55, T.S.No.3435, measuring an extent of 421.41 Square Meter, that is 4536 Sq.feet of land together with the house, along with all other amenities.



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2. According to the petitioner, she married Subramanian Anbutiruchelvam on 19.01.2001 and the marriage has been registered with the Registrar of Marriage, Needamangalam in Serial No.1 of 2001. Out of said wedlock, two female children were born to them. At the time of marriage, the petitioner's husband was employed in Singapore and therefore, after marriage they got settled down at Singapore temporarily. The petitioner's father-in-law V.S.Subramanian had settled his property described above in favour of the petitioner's husband under registered Document No.212 of 2009 registered on the file of Sub Registrar, Mannargudi. The settlement had been acted upon and revenue documents had been mutated in the name of the petitioner's husband. Thus he had become the absolute owner of the same.

3. During March 2020, the petitioner's husband got affected by right acute subdural haemorrhage. The said illness made the petitioner's husband to slip into coma. The petitioner's husband underwent surgeries number of times and inspite of the same, he has become a living vegetable. He is not able to think, decide or act on any aspect. He is completely



bed-ridden and not able to move. In these circumstances, the petitioner moved the Family Justice Courts of the Republic of Singapore for her appointment as guardian of her husband under Section 20 of the Mental Capacity Act, Singapore. The said Court after satisfying about the incapacity of petitioner's husband was pleased to appoint her as deputy to make decisions on his behalf and the petitioner was allowed to operate her husband's bank account.

4. Due to petitioner's husband's continuous medical treatment, it has become very difficult for her to meet family expenses and medical expenses. The only immovable property available in the name of petitioner's husband is situated at Mannargudi within the territorial limits of this Court. The said property is not generating any income and requires spending of money on its maintenance. The petitioner is not in a position to move away from her husband due to his medical conditions and the above mentioned property is in danger of being encroached by strangers. If the said property is sold, the sale proceeds can be better utilized for treatment of petitioner's husband. It is also stated that the petitioner's daughters are not having any



objection for appointing the petitioner as guardian of the above mentioned property of her husband to enable her to deal with the same. There is a lacunae in the present law of guardianship relating to appointment of guardians for persons lying in coma state or vegetative state. Therefore, the petitioner has moved this Court by way of above writ petition.

5. The learned counsel appearing for the petitioner submitted that the present law relating to appointment of guardians do not contain any provision for appointment of guardian of the person or property of persons lying in coma state or vegetative state and hence this Court has to exercise its extraordinary jurisdiction and appoint the petitioner as guardian of his property lying within its jurisdiction.

6. In support of the said contention, the learned counsel relied on the Division Bench judgment of Kerala High Court in ***Shobha Gopalakrishnan and another Vs. State of Kerala and others*** reported in ***Neutral Citation:2019:KER:15011***. He also relied on the Division Bench judgment of this Court in ***Sasikala Vs. The State of Tamil Nadu and others in W.A.No.1538 of 2024***.



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7. The daughter of the petitioner's family, the respondents 6 and 7 filed a supporting affidavit stating that they have no objection for appointment of the petitioner as guardian of the property of their father situated within the jurisdiction of this Court. They also averred in the supporting affidavit that the sale proceeds of the said property can be better utilized for meeting the medical expenses in treating their father.

8. Heard the arguments of the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents.

9. The main contention of the petitioner is that present law relating to appointment of guardian is not sufficient to deal with the persons lying in coma state and vegetative state. The lacuna in present law is very well explained by Kerala High Court in ***Shobha Gopalakrishnan*** case cited supra. The relevant discussion reads as follows:

"34. Considering the role of this Court, jurisdiction under Article 226 of the Constitution of India springs up, when no remedy is provided under any Statute to persons like patients in 'comatose state'. It is something like 'parens patriae'



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jurisdiction. A reference to the verdict in Nothman vs. Barnet London Borough Council [1978 (1)WLR 220] (at 228) is also relevant. In such cases, it is often said, Courts have to do what the Parliament would have done. A reference to the verdict in Surjit Singh Karla vs. Union of India and another [1991(2) SCC 87 explaining the principle of 'causes omissus' is also brought to the notice of this Court; to the effect that if it is an accidental omission, court can supply/fill up the gap. This Court however does not find it appropriate to “re-write” the provision, as it is within the exclusive domain of the Parliament. This is more so, when the relevant statutes like Mental Health Act, 1987 and PWD Act, 1995 came to be repealed, on introducing the new legislations, such as the Mental Healthcare Act 2017 and The Rights of persons with Disabilities Act, 2016 in conformity with the mandate of U.N.Convention, 2006. This Court does not say anything whether any amendment is necessary, also in respect of the National Trust Act for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (National Trust Act, 1999) with reference to the U.N.Convention 2006. It is for the Government to consider and take appropriate steps in this regard, as it is never for the Court to encroach into the forbidden field. This Court would only like to make it clear that, in so far as the case of.



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a patient lying in 'comatose state' is not covered by any of the statutes, (as discussed above), for appointment of a Guardian, the petitioners are justified in approaching this court seeking to invoke the power under Article 226 of the Constitution of India. It is declared accordingly.” (emphasis supplied).

10. The view expressed by the Kerala High Court in the above mentioned order was followed with approval by Division Bench of this Court in ***Sasikala Vs. The State of Tamil Nadu in W.A.No.1538 of 2024***. The relevant observation made by this Court reads as follows:

“7. Coming to the facts of the case, it is beyond dispute that Thiru.Sivakumar, husband of the writ appellant is in a Comatose condition. After an interaction with the children of the appellant (impleaded respondents 5 and 6), we are more than satisfied that the family is without any means and that unless the petition mentioned property is allowed to be dealt with, great hardship will be caused to them. Taking care of a person lying in Comatose condition is not that easy. It requires funds. Paramedical staff will have to be hired. The petition mentioned property belongs to Thiru.Sivakumar. It has necessarily to be put to use for his benefit. The State is



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not taking care of Thiru.Sivakumar. The appellant is shouldering the entire burden. Driving the appellant to move the civil Court, in our view, is not proper. When based on admitted and proved facts relief can be granted, there is no purpose in non-suiting the appellant on the ground that the writ petition is not maintainable. In fact, when writ petitions raising similar grounds have been entertained and reliefs were granted, the learned Judge was not right in holding that the writ petition is not maintainable. We do not want to add further reasons because we endorse the approach taken by the Hon'ble Division Bench of Kerala High Court in W.P.(C) No.37278 of 2018 (Shobha Balakrishnan and another -vs- State of Kerala)."

Therefore, it is clear that the present law relating to appointment of guardianship is not dealing with the persons who are in coma or in vegetative state. When the petitioner has no remedy for seeking her appointment as guardian of the property of her husband under any of the laws of the country, she is entitled to approach this Court under Article 226 of Constitution of India. This Court is entitled to exercise its *parens patriae* jurisdiction and appoint petitioner as a guardian to deal with the property of the person in vegetative state to enable her to meet the medical expenses.



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11. In the case on hand, the medical certificate issued by Doctor who is attached to Singapore General Hospital would explain about the vegetable state of the husband of the petitioner. The relevant portion is extracted below:

“He is awake and interactive but retains little understanding of his surroundings. He is able only to respond to questions regarding pain or mood but cannot understand discussions, retain information or ask questions. He has left sided weakness, speech, mood and cognitive difficulties.”

12. Based on the certificate issued by Doctor attached to the Singapore General Hospital, the Family Justice Courts of the Republic of Singapore appointed the petitioner, as deputy under Section 20 of Mental Capacity Act of that country. The relevant portion of the order passed by the Singapore Court reads as follows:

“a. SUBRAMANIAN ANBUTHIRUCHELVAM (“P”) is unable to make various decisions for himself in relation to a matter or matters concerning P's personal welfare and



property and affairs because of an impairment of, or a disturbance in the functioning of P's mind or brain;

b. The purpose for which the order is needed cannot be as effectively achieved in a way that is less restrictive of P's rights and freedom of action.

3. Appointment of Deputy:

a. SWAMINATHAN ANITHA (NRIC No.S7875557A) of 104 Aljunied Crescent # 03-251 Singapore 380104 is appointed as Deputy to make decisions on behalf of P that P is unable to make for himself in relation to his personal welfare and property and affairs subject to any conditions or restrictions set out in this order. "

13. Therefore, it is not in dispute that the petitioner's husband is lying in a vegetative state and is incapable of taking decisions with regard to his property. There is no *inter se* dispute among family members of the petitioner with regard to appointment of guardianship as her daughters have already filed an affidavit before this Court stating no objection for appointment of the petitioner.



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14. In view of the same, this Court is inclined to allow this writ petition by appointing the petitioner as guardian of the property of her husband viz., Mr.Subramanian Anbuthiruchelvam situated at Mannargudi Town, Old Thanjavur Rastha South, Ward No.1, Block No.55, T.S.No.3435, measuring an extent of 421.41 Square Meter (4536 Sq.feet) of land together with house, subject to the following conditions:

(i) The petitioner is appointed as guardian of the above mentioned property and she is allowed to deal with the property including alienation;

(b) If the property is sold, the petitioner shall maintain proper accounts for the sale proceeds;

(c) The 90% of the sale proceeds shall be deposited in the name of the petitioner in a bank fixed deposit. The interest earned by such deposit shall be withdrawn by the petitioner once in six months and the same can be utilized to meet family expenses and the medical expenses of her husband;



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(d) The petitioner is entitled to utilize 10% of the sale proceeds to meet the immediate medical expenses and family expenses. In case, a need arises in future for utilization of sale proceeds lying in bank deposits, the petitioner is entitled to move this Court for necessary directions based on circumstances.

(e) The petitioner shall maintain proper accounts for sale proceeds and the accrued interest withdrawn by her and file an account statement before Registrar (Judicial) of this Court once in a year;

(f) The Registrar (Judicial) shall forward the copy of the same to the High Court Legal Services Authority. The Member Secretary of the Legal Services Authority shall appoint a competent advocate from the panel of lawyers maintained by the Legal Services Authority to scrutinize the account. In case, any discrepancy is found, the High Court Legal Services Authority is entitled to move for necessary directions;

(g) The first statement of accounts shall be filed by the petitioner within four weeks from the date of alienation of the property.



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15. With these directions, the writ petition stands disposed of.

No costs.

31.01.2025

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
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To

1.The Government of Tamil Nadu,
Represented by its Secretary,
Department of Health and Family Welfare,
Secretariat, Fort St.George, Chennai.

2.The District Collector,
Tiruvarur District,
Office of the District Collector,
Thiruvarur.

3.The Tahsildar,
Tiruvarur Taluk and District,
Office of the Tahsildar, Thiruvarur.

4.The Inspector General of Registration,
Office of the Inspector General of Registration,
Santhome High Road, Fore Shore Estate, Chennai.

5.The Sub Registrar,
Thiruvarur Town and Registration District,
Office of the Sub Registrar, Thiruvarur.

6.The Member Secretary,
High Court Legal Services Authority,
Madras High Court.



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S.SOUNTHAR, J.

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Pre-delivery order made in

W.P.No.28262 of 2024

31.01.2025