

HIGH COURT OF MADRAS**Bench: Justices G.R. Swaminathan and P.B. Balaji****Date of Decision: 23rd May 2024**

W.A. No. 1538 of 2024

S. SASIKALA ...APPELLANT**VERSUS****THE STATE OF TAMIL NADU AND OTH. ...RESPONDENTS****Legislation:**

Article 226 of the Constitution of India

Subject: Writ appeal challenging the dismissal of a writ petition seeking the appointment of the appellant as guardian for her husband, who is in a vegetative state, to manage his properties.

Headnotes:

Guardianship – Appointment for Comatose Patient – Appellant sought appointment as guardian for her husband in a vegetative state to manage his properties and cover medical expenses – Learned single Judge dismissed the writ petition citing lack of jurisdiction under Article 226, directing appellant to approach Civil Court – Division Bench held that the writ petition is maintainable under Article 226 for such reliefs, referencing precedents from Kerala High Court and similar orders from Madras High Court – Relief granted appointing the appellant as guardian [Paras 2-7].

Property Management – Conditions for Sale – Appellant allowed to manage and sell property belonging to her comatose husband – Directed to deposit Rs. 50 lakhs from sale proceeds into a nationalized bank in husband's name – Interest from deposit to be used for husband's care, with remaining amount distributed to legal heirs post his demise [Para 8].

Decision: Appeal allowed – Single Judge's order set aside – Appellant appointed as guardian for her husband and permitted to manage and sell his property with specified conditions.

Referred Cases:

- Shobha Balakrishnan and another v. State of Kerala, W.P.(C) No. 37278 of 2018 (Kerala High Court)
- Sudarsanam v. State of Tamil Nadu, W.P. No. 4370 of 2022
- S. Dhanalakshmi v. Office of the Principal Accountant General and Others, W.P.(MD) No. 8976 of 2023
- Kalaiarasi and Others v. Union of India and Others, W.P.(MD) No. 4809 of 2024

Representing Advocates:

Mr. N. Vijayaraj for the appellant

Ms. M. Sneha, Standing Counsel for respondent nos. 1 & 4

Mr. K. Tippusultan, Government Advocate for respondent nos. 2 & 3

J U D G M E N T

(Judgment of the Court was made by G.R.SWAMINATHAN, J.)

This intra-Court appeal is directed against the order dated 23.04.2024 dismissing Writ Petition No.11314 of 2024 filed by the petitioner.

2. The writ petition was filed for appointing the appellant herein as Guardian for the person as well as the properties of her husband Thiru.M.Sivakumar, who is currently in a vegetative state. He was in hospital from 13.02.2024 till 04.04.2024. It is stated that the hospital bills have run to several lakhs of rupees. At present, Thiru.Sivakumar is being kept at home and taken care of by the appellant through critical care nurses and a caretaker. The appellant has sought for the aforesaid appointment as guardian so that the petition mentioned immovable property standing in the name of her husband can be disposed of. The learned single Judge took the

view that the relief sought for by the appellant cannot be granted in a writ petition under Article 226 of the Constitution of India. Liberty was given to the appellant to approach the jurisdictional Civil Court.

3. When the matter was listed on 15.05.2024, the Hon'ble Division Bench directed the petitioner to implead her children born through Thiru Sivakumar. Accordingly, implead petition in C.M.P.No.11127 of 2024 was filed. The writ appeal was taken up for further hearing on 22.05.2024. Both the children viz., S.Durga and S.Akash born to the appellant through her husband Thiru.Sivakumar were present. Both have attained majority. They categorically stated before us that they have no objection for allowing the writ appeal as prayed for. In fact, the appellant's daughter struggled to control her emotions and indicated to the Court that they are presently bereft of any means and that unless their mother is allowed to deal with the property, the family will be in dire straits.

4. We take the respectful view that the learned single Judge was not right in holding that the writ petition was not maintainable. In fact, the learned counsel for the appellant has enclosed a copy of the order dated 20.02.2019 made in **W.P.(C) No.37278 of 2018 (Shobha Balakrishnan and another - vs- State of Kerala)**. The Hon'ble Division Bench of the Kerala High Court in the aforesaid case was concerned with the individual lying in Comatose state. Paragraphs 34, 35 and 36 of the said order was read 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' 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 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.

35. Coming to the incidental aspects; since no specific provision is available in any Statutes to deal with the procedure for such appointment of Guardian to a victim lying in 'comatose state', it is necessary to stipulate some 'Guidelines', based on the inputs gathered by this Court from different corners, as suggested by the learned counsel for the petitioners, the learned Government Pleader and also by the learned Amicus Curiae, till the field is taken over by proper legislation in this regard. This Court finds it appropriate to fix the following norms/guidelines as a temporary measure:

i) petitioner/s seeking for appointment of Guardian to a person lying in comatose state shall disclose the particulars of the property, both movable and immovable, owned and possessed by the patient lying in comatose state.

ii) The condition of the person lying in comatose state shall be got ascertained by causing him to be examined by a duly constituted

Medical Board, of whom one shall definitely be a qualified Neurologist.

iii) A simultaneous visit of the person lying in comatose state, at his residence, shall be caused to be made through the Revenue authorities, not below the rank of a Tahsildar and a report shall be procured as to all the relevant facts and figures, including the particulars of the close relatives, their financial conditions and such other aspects.

iv) The person seeking appointment as Guardian of a person lying in comatose state shall be a close relative (spouse or children) and all the persons to be classified as legal heirs in the due course shall be in the party array. In the absence of the suitable close relative, a public official such as 'Social Welfare officer' can be sought to be appointed as a Guardian to the person lying in 'comatose state'.

v) The person applying for appointment as Guardian shall be one who is legally competent to be appointed as a Guardian vi) The appointment of a Guardian as above shall only be in respect of the specific properties and bank accounts/such other properties of the person lying in comatose state; to be indicated in the order appointing the Guardian and the Guardian so appointed shall act always in the best interest of the person lying in 'comatose state'.

vii) The person appointed as Guardian shall file periodical reports in every six months before the Registrar General of this Court, which shall contain the particulars of all transactions taken by the Guardian in respect of the person and property of the patient in comatose state; besides showing the utilization of the funds received and spent by him/her.

viii) The Registrar General shall cause to maintain a separate Register with regard to appointment of Guardian to persons lying in 'comatose state' and adequate provision to keep the Reports filed by the Guardian appointed by this Court.

ix) It is open for this Court to appoint a person as Guardian to the person lying in comatose state, either temporarily or for a specified period or permanently, as found to be appropriate.

x) If there is any misuse of power or misappropriation of funds or non-extension of requisite care and protection or support with regard to the treatment and other requirements of the person lying

in comatose state, it is open to bring up the matter for further consideration of this Court to re-open and revoke the power, to take appropriate action against the person concerned, who was appointed as the Guardian and also to appoint another person/public authority/Social Welfare Officer (whose official status is equal to the post of District Probation Officer) as the Guardian.

xi) It shall be for the Guardian appointed by the Court to meet the obligations/duties similar to those as described under Section 15 of the National Trust Act and to maintain and submit the accounts similar to those contained in Section 16.

xii) The Guardian so appointed shall bring the appointment to the notice of the Social Welfare Officer having jurisdiction in the place of residence, along with a copy of the verdict appointing him as Guardian, enabling the Social Welfare Officer of the area to visit the person lying in 'comatose state' at random and to submit a report, if so necessitated, calling for further action/ interference of this Court.

xiii) The transactions in respect of the property of the person lying in 'comatose state', by the Guardian, shall be strictly in accordance with the relevant provisions of law. If the Guardian appointed is found to be abusing the power or neglects or acts contrary to the best interest of the person lying in 'comatose state', any relative or next friend may apply to this Court for removal of such Guardian.

xiv) The Guardian appointed shall seek and obtain specific permission from this Court, if he/she intends to transfer the person lying in comatose state from the jurisdiction of this Court to another State or Country, whether it be for availing better treatment or otherwise. state', any relative or next friend may apply to this Court for removal of such Guardian.

xiv) The Guardian appointed shall seek and obtain specific permission from this Court, if he/she intends to transfer the person lying in comatose state from the jurisdiction of this Court to another State or Country, whether it be for availing better treatment or otherwise.

36. In view of the above discussion, we hereby hold and declare that the petitioners in W.P. (C)No.37278 of 2018 are justified in

approaching the Court for appointment of Guardian to the person by name Gopalakrishnan (husband of the first petitioner and father of the second petitioner), who was lying in 'comatose state' to get the first petitioner declared as the Guardian of Gopalakrishnan, the victim."

5. The appointment of Guardian for the properties of the person lying in Comatose state was in fact made by the Hon'ble Division Bench of the Kerala High Court.

6. Similar order was passed by a learned Judge of this Court on 06.07.2022 in **W.P.No.4370 of 2022 (Sudarsanam -vs- State of Tamil Nadu)**. One of us (G. R.Swaminathan, J.) sitting in the Madurai Bench of this Court had occasion to deal with the said writ petitions. Orders appointing guardian for the person and properties were made in W.P.(MD) No.8976 of 2023 dated 26.04.2023 (S.Dhanalakshmi -vs- Office of the Principal Accountant General and Others) and W.P.(MD) No.4809 of 2024 dated 03.04.2024 (A.Kalaiarasi and Others -vs- Union of India and Others).

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 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)**.

8. In this view of the matter, the order impugned in the writ appeal dated 23.04.2024 in W.P.No.11314 of 2024 is set aside and the following directions are issued.

- (a) The appellant herein is appointed as the guardian for the person as well as properties of Thiru.M.Sivakumar, husband of the appellant.
- (b) It is stated that the immovable property bearing No.80, Waltax Road, Chennai-600 003 belongs to Thiru.Sivakumar. The appellant is permitted to deal with the property on behalf of Thiru.Sivakumar. We are not sure about the valuation of the property. We conservatively assume that it may fetch more than a Crore of rupees. The appellant has to ensure that a sum of Rs.50 lakhs is deposited in a nationalized bank in the name of Thiru.M.Sivakumar. The deposit amount will fetch interest and the accrued interest can be withdrawn by the appellant once in three months. Fixed Deposit so created shall remain till the life time of Thiru.Sivakumar. After his demise, it will go in three equal shares in favour of his legal heirs viz., wife S.Sasikala, daughter S.Durga Devi and son S.Akash. We have incorporated such a condition only for the benefit of the family. Only if there is a fixed deposit, it will ensure that at least the survival needs are met.
- (c) The appellant is directed to file an affidavit before the Registry of this Court indicating the compliance of the direction to create Fixed Deposit in the name of Thiru.Sivakumar to the tune of Rs.50 lakhs (Rupees Fifty Lakhs only).

9. The writ appeal is allowed accordingly. C.M.P.No.11127 of 2024 filed for impleading the proposed respondents 5 and 6 is allowed. No costs.

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