

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

W.P. No. 1436 of 2023

Between:

Smt Prabhat Vinnakota

... Petitioner

And

State of Telangana and others

... Respondents

JUDGMENT PRONOUNCED ON: 09.02.2023

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

1. Whether Reporters of Local newspapers may be allowed to see the Judgment? : yes
2. Whether the copies of judgment may be marked to Law Reporters/Journals? : yes
3. Whether Their Lordships wish to see the fair copy of the Judgment? : yes

SUREPALLI NANDA, J

THE HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P. No. 1436 of 2023****% 09.02.2023****Between:**

Smt Prabhat Vinnakota

... Petitioner

and

\$ State of Telangana and others

.....Respondents**< Gist:****> Head Note:**

! Counsel for the Petitioner : Sri Mohd. Adnan

^Counsel for Respondents : G.P. for Revenue
G.P. for Stamps & Registration**? Cases Referred:**

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

W.P. No. 1436 of 2023

ORDER:

Heard learned counsel for the petitioner, Learned Government Pleader for Stamps and Registration and G.P. for Revenue.

THE PRAYER SOUGHT FOR BY THE PETITIONER IS AS FOLLOWS:

2. This writ petition is filed to issue an order, direction or a writ particularly in the nature of Writ of Mandamus thereby appointing the petitioner Smt Prabhat Vinnakota as guardian of the property of her husband Sri Ramakrishna Vinnakota, in respect of Flat No.805, at 8th floor, in Block A&B, admeasuring 1171 sft with common area of 259 sft with total undivided share of land admeasuring 57 sq. yards, with one car parking slot, in project named as APARNA CYBERZON, situated at Nallagandla Village, Serilingampally Mandal, RR District to the extent of his half share and for other lawful purposes in the interest of justice and consequently, direct the 3rd respondent to accept and register sale deed presented by the petitioner on behalf of herself and as guardian of half of the share of her

husband in respect of Flat No.805, at 8th floor, in Block A&B, admeasuring 1171 sft with common area of 259 sft with total undivided share of land admeasuring 57 sq. yards, with one car parking slot, in project named as APARNA CYBERZON, situated at Nallagandla Village, Serilingampally Mandal, RR District (hereinafter called as 'subject property') in favour of the third party/parties.

3) The case of the petitioner, in brief, is as follows:

a) The petitioner and her husband jointly purchased an apartment bearing Flat No.805, at 8th floor, in Block A&B, admeasuring 1171 sft with common area of 259 sft with total undivided share of land admeasuring 57 sq. yards, with one car parking slot, in project named as APARNA CYBERZON, situated at Nallagandla Village, Serilingampally Mandal, RR District under a registered sale deed vide document No.1354/2015.

b) During Covid 19 second wave, the husband of the petitioner fell sick and is in the state of comatose (i.e., referred to as Coma) and still to this date, husband of the

petitioner is in the same state showing no signs of improvement.

c) Petitioner, has the responsibility to take care of her husband and also, has a school going son. In order to meet the medical expenses of the petitioners husband and the daily needs of the petitioner and the son, the petitioner is intending to sell the flat (i.e., Flat No.805, at 8th floor, in Block A&B, admeasuring 1171 sft with common area of 259 sft situated at Nallagandla Village, Serilingampally Mandal, RR District). In India, as on today, there is no provision get the petitioner appointed as guardian of the property of the person who is in coma.

d) Petitioner, prays this court to act as *parens patriae* and further prays for appointment of petitioner as the guardian of the petitioner's husband who is in a vegetative/comatose state.

PERUSED THE RECORD

4. The learned counsel for the petitioner submits that he is not insisting for second line of the Main prayer for the present writ petition which is the

identical prayer as sought for as interim relief which is extracted below:

"The Hon'ble Court may be pleased to direct the 3rd respondent to accept and register sale deed presented by the petitioner on behalf of herself as guardian of the half of the share of her husband in respect of Flat No.805, at 8th floor, in Block A&B, admeasuring 1171 sft with common area of 259 sft with total undivided share of land admeasuring 57 sq. yards, with one car parking slot, in project named as APARNA CYBERZON, situated at Nallagandla Village, Serilingampally Mandal, RR District in favour of third party/parties"

5. In so far as the main prayer of the petitioner is concerned (extracted above) this Court opines that the same has to be granted in view of the fact as borne on record that in identical circumstances a division bench of Kerala High Court vide its judgement dated 20.02.2019/1ST PHALGUNA, 1940 W.P.(C)No.37062 of 2018 at para 35 observed as under:

"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 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.

6. This Court opines that in the present circumstances of the case the immediate requirement now is to extend help to the petitioner by appointing the petitioner as guardian of the property of her husband. A Division Bench of Bombay High Court in its judgment dated 17.07.2021 in a case filed by one Vijay Ramachandra Salgonkar sought a direction to the State to make provisions for guardianship of mentally sick persons who are not minor and the petitioner thereunder further sought a direction to the respondent State to declare the petitioner as guardian

of his wife Mrs Veena Salgaonkar for the properties listed at Ex.B to the writ petition the Hon'ble Court in its judgment dated 17.07.2021 observed as under at paras 17.1, 17.2, and 17.3 and para 20 observed as under:

"17.1. In that case it was held that when a person is in coma or in a comatose condition or in a vegetative state, it cannot be construed that such a person is a physically challenged person or a mentally challenged person as is understood under the relevant statutes. Nor such a person can be construed to be a minor for the purpose of appointment of guardian. In the circumstances it was held that statutes like the Guardians and Wards Act, 1890, Mental Healthcare Act, 2017 etc. would WP637 21.doc not be applicable to persons in a comatose condition or in a vegetative state. It was also held that there is no legislation in India relating to appointment of guardians to patients lying in comatose or vegetative state."

17.2. On the crucial issue as to relief that may be granted to the petitioner by invoking writ jurisdiction under Article 22h of the Constitution of India, it was noticed that there is no statutory provision governing the field relating to appointment of guardian of a person lying in a comatose condition or in a vegetative state. This

Court referred to and deliberated upon the doctrine of *parens patriae* whereafter it was held that in a case like this it is the Court alone as the *parens patriae* which must take the ultimate decision though views of the near relatives, next friend and doctors must be given due weightage.

17.3. While acceding to the prayer of the petitioner in that case, this Court also sounded a note of caution that there should be some kind of WP.No.637 of 2021.doc monitoring of the functioning of the petitioner as guardian to ensure that guardianship was being used for the benefit of the person who was in a vegetative state observing that such monitoring may be carried out through the forum of Maharashtra State Legal Services Authority constituted under the Legal Services Authorities Act, 1987.

20. In the circumstances and considering all aspects of the matter, we are of the view that if the following directions are issued, the same would meet the ends of justice:-

- 1. Petitioner Mr. Vijay Ramachandra Salgaonkar shall be treated and accepted as the guardian of his wife Mrs Veena Vijay Salgaonkar**
- 2. All authorities shall accept his status as such and allow him to operate or manage the movable and immovable properties of his wife Mrs. Vechu Vijay Salgaonkar.**

3. Member Secretary of Maharashtra State Legal Services Authority either through himself or a designated official of the said authority or through a legal aid counsel or through a para legal volunteer shall monitor functioning of the petitioner WP637 21 as guardian of Mrs. Veena Vijay Salgaonkar and shall submit montlily report to the Maharashtra State Legal Services Authority which shall be compiled for a period of two years. If it is found necessary for extension of the period of monitoring or in case of any exigency. Member Secretary of Maharashtra State Legal Services Authority shall be at liberty to move the High Court.

7. The Division Bench of Allahabad High Court in its judgment dated 15.06.2020 in UMA MITTAL AND FOUR OTHERS v UNION OF INDIA at paras 31, 35, 37 observed as under:

"31. Also, in view of the above discussions made hereinabove, there appears to be no dispute that none of legislative enactments as discussed in the earlier part of the judgment are applicable qua SKM, a person lying in a comatose state. Further, the petitioners are in dire need of money towards medical treatment of SKM and for the welfare of the family as they have exhausted

their financial resources in the past one and a half years.

35. It is made clear that the Petitioner No. 1, Uma Mittal shall not sell, alienate encumber any of the immovable properties of the SKM except with the express permission of the Registrar General of this Court. The same will however not come in the way of the petitioner no. 1 letting out the immovable properties of the SKM from time to time and getting back the possession thereof. The petitioner No. 1, Uma Mittal shall comply with other requirements of being the guardian of petitioner No.1. Needless to state, such appointment is till SKM is unable to look after his affairs and subject to revocation in accordance with law.

36. It is further directed that the Petitioner No. 1 would file a report with the Registrar General of this Court every six months, detailing the transactions in respect of the assets of SKM.

37. Before parting, we wish to recommend to the Central Government to consider enacting an appropriate legislation pertaining to appointment of guardians qua persons lying in a comatose state, as no remedy is provided in any statute to persons in comatose/vegetative state, (as already discussed in detail in earlier part of this judgment), unlike legislations for appointment of guardians for minors and persons with other disabilities, including like mental retardation etc.

8. A Division Bench of Bombay High Court vide its judgment dated 27.08.2020 in W.P. (ST) No.3883 of 2020 in Rajni Hariom Sharma v Union of India at para 38, observed as under:

38. From the above, it is clearly deducible that when the High Court exercises jurisdiction under Article 226 of the Constitution of India, it does so to further the cause of justice. To provide justice or discharge ex debito justitiae is the raison d'etre of the courts. The Latin expression ex debito justitiae literally means a debt of justice; on account of justice; a claim, the refusal of which would involve an injustice, and therefore, one which justice owes it to the claimant to recognize and allow. The doctrine of ex debito justitiae is well established and requires no further elaboration. In addition to Article 226 of the Constitution such power of the High Court is traceable to section: 151 of the Civil Procedure Code, 1908 and section 482 of the Code of Criminal Procedure, 1973,"

9. The Supreme Court in its constitution Bench decision in Charan Lal Sahu v Union of India reported in 1990 (1) SCC 613 explained parens patriae jurisdiction as the right and duty of the sovereign in public interest

to protect persons under disability who have no rightful protector.

10 Taking into consideration the facts and circumstances of the present case and also the view taken by the Division Bench of three different High Courts i.e. Kerala, Bombay and Allahabad in the judgments rendered under identical circumstances (referred to and extracted above) and the view taken by the Apex Court in Charan Lal Sahu v Union of India reported in 1990 (1) SCC 613 and also the view taken by the Division Bench of Bombay High Court on the doctrine of *ex debito justitiae*, the present writ petition is disposed of with the following directions:-

"1. Petitioner – Smt Prabhat Vinnakota shall be treated and accepted as the guardian of her husband Sri Rama Krishna Vinnakota.

2. All the authorities shall accept her status as such and allow her to operate or manage the movable and immovable properties of her husband Sri Rama Krishna Vinnakota.

3. Member Secretary of Telangana State Legal Services Authority either through himself or a designated official of the said Authority or through a legal aid counsel or through a para legal volunteer shall monitor functioning of the petitioner Smt Prabhat Vinnakota as guardian of her husband Sri Rama Krishna Vinnakota and shall submit monthly report to the Telangana State Legal Services Authority which shall be complied for a period of two years. If it is found necessary for extension of the period of monitoring or in case of any exigency Member Secretary of Telangana State Legal Services Authority shall be at liberty to move the High Court.

4. The petitioner shall not sell, alienate encumber any of the immovable properties of Sri Rama Krishna Vinnakota except with the express permission of the Telangana State Legal Services Authority and the Registrar General of this Court.

5. The petitioner Smt Prabhat Vinnakota is directed to file a report with the Member Secretary of Telangana State Legal Services Authority every six months, detailing the transactions in respect of the assets of Sri Rama Krishna Vinnakota.

Miscellaneous petitions, if any, pending shall stand closed. However, there shall be no order as to costs.

SUREPALLI NANDA, J

Date: 09.02.2023

Note: L.R. copy to be marked

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