



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

WRIT PETITION (L) NO. 25114 OF 2023

Anushka Rajiv Mohite
Age : 35 years, Occ. Journalist
Having her address at 1503
Dev Arti, Narayan Pathare
Marg, Mahim West,
Mumbai – 400 016

...Petitioners

Versus

1. Union of India
Through the Department of
Health and Family Welfare,
Government of India,
New Delhi.
2. State of Maharashtra
Directorate of Health Services,
St. Georges' Hospital
Compound, Mumbai-400 001.
3. State Bank of India
Shivaji Park, Gitannjali
Building, Near Shushrusha
Hospital, Shivaji Park, Dadar
(West), Mumbai, MH-400028.
4. Axis Bank
Worli, Mumbai, Maharashtra-
400 025.
5. Tanuja Rajiv Mohite
Widow of late Rajiv Mohite
Having her address at B10,
Shanti CHS, Mogul Lane,
Mahim West, Mumbai 400 016

...Respondents

Ms. Simantini Mohite a/w. Kamlesh Y. Mali for the Petitioner.
Ms. Jyoti Chavan, AGP for the Respondent/State.

**CORAM : SUNIL B. SHUKRE, AND
FIRDOSH P. POONIWALLA, J.J.
DATE : 6th OCTOBER 2023**

JUDGMENT:-

1. Heard learned Counsel for the Petitioner and learned AGP for the Respondent No.2. There is no need to issue any notice to the Respondent-Banks as well as Respondent No.5, who is suffering from Alzheimer disease.

2. Rule. Rule made returnable forthwith. Heard finally by consent of the parties.

3. Petitioner is the daughter of Respondent No.5, who is suffering from Alzheimer's disease and is unable to take care of herself on account of her medical condition that she is going through. The Petitioner states that she is the only child of Respondent No.5 and has already been taking care of the day to day needs and expenses of Respondent No.5 including the expenses incurred on account of her medical treatment. She also states that she has already appointed a care taker for Respondent No.5. She further submits that presently there is no provision under any existing law which would enable the Petitioner to get her appointed as legal guardian for Respondent No.5. She further submits that Alzheimer's disease is a kind of mental disorder and if it is seen to be so, the Petitioner would be able to obtain a declaration from this Court under the provisions of the

Mental Health Act 1987 or any other applicable law that she being a daughter of Respondent No.5, would be her legal guardian for all purposes.

4. These submissions of the Petitioner were considered by this Court in its detailed order passed on 14th September 2023. In Paragraph 5 of the order, this court noted that there was no provision made in Mental Health Act, 1987 or Hindu Minority and Guardianship Act, 1956 for appointing a son or a daughter or a sibling of an aged person suffering from mental health issues to be a legal guardian of that person. It was with this finding that this Court had said that this Petition would be entertained by this Court. However, this Court also expressed an opinion that there must be available on record sufficient material so as to form, in a reasonable manner, an opinion that Respondent No.5 is indeed suffering from Alzheimer disease of such intensity as to be treated as equivalent to mental disorder suffered by Respondent No.5. This Court, therefore, requested Dean of Sir. J. J. Group of Hospitals to appoint a competent Neurologist to examine the Petitioner's mother and submit a report to this Court.

5. Learned AGP has accordingly submitted a report of Dr. Kamlesh A. Jagiasi, Professor and Head of Department , Sir J. J. Group of Hospitals, Mumbai, along with covering letter. The Covering letter dated 3rd October 2023 and the report of the expert dated 27th September 2023, both

are taken on record and collectively marked as document “A” for identification.

6. The report of the expert doctor shows that Respondent No.5. is suffering from Alzheimer Disease (Frontal Variant), which has progressive irreversible cognitive decline. It further shows that Respondent No.5 has severe impairment of executive dysfunction. Finally, it concludes that Respondent No.5 has major neuro cognitive decline and that she requires constant nursing care and assistance in her affairs. Relevant portion of this report is extracted as below:-

“After detailed examination, the neurological assessment is as follows. Mrs. Tanuja Mohite is suffering from Alzheimer Disease (Frontal Variant) or Frontotemporal Dementia, that is a progressive irreversible cognitive decline. She has severe impairment of executive dysfunction. She has major cognitive decline, rendering her dependent for activities of daily living. Since she has major neurocognitive decline, she he requires constant nursing care and assistance in her affairs of life. She has been on adequate medical care for the same so far.”

7. It would be seen from the above referred report that the Alzheimer’s disease suffered by Respondent No.5 has a progressive decline in health condition of Respondent No.5 and the decline today is so much that she has severe impairment of executivefunction and also major cognitive decline, rendering her dependent for activities of daily living. Such health condition is, in our opinion, reasonably indicative of suffering of mental disorder.

8. Such mental disorder of Respondent No.5 makes Respondent No.5 completely dependent upon the person taking her care, for the purpose of her daily living and other needs. When a person becomes dependent upon others to this extent, obviously the person on whom such responsibility to take care of and to assist such dependent person falls would be a person who could be called as a protector, a provider and a facilitator for all purposes for such a dependent person. Such a person, therefore, could be termed as a guardian of such person for all purposes. However, the person providing such care and protection to the dependent person would not be in a position to provide the same effectively, unless some legal recognition of status of such person is made. Unfortunately, there is no provision of law made in either Hindu Minority and Guardianship Act, 1956 or in the Mental Healthcare Act, 2017, or any other Act for conferring such a status upon the guardian of a person dependent upon him or her on account of mental disorder suffered by him or her. There is, however, one exception to it. It is to be found in Section 14 of National Trust Act, 1999, which provides for appointment of guardian by a Local Level Committee for care of persons with multiple disabilities as defined in Section 2(1) of the Person with Disabilities (Equal Opportunity, Protection of Rights and Full Participation) Act, 1995, now replaced by the Rights of Persons with Disabilities Act, 2016. Section 2(s) of the said Act of 2016 defines "Person with Disability" to mean a person with long term

physical, mental, intellectual or sensory impairment. By this definition, Respondent No.5 would be broadly covered by Section 14 of the National Trust Act, 1999. But even this provision of law, with all its restrictions and limitations, would not provide effective ring of protection around Respondent No.5 for ensuring her welfare. But, the lack of or any deficit in legal framework, in our considered view, must not be such a handicap for this court to shy away from providing relief in such a case. After all, the underlying idea of guardianship is of protection and welfare of the person in need of care and protection.

9. Learned Counsel for the Petitioner has relied upon some cases with more or similar facts in which this Court has appointed the Petitioner as legal guardian for the person completely dependent upon the Petitioner because of the mental disorder suffered by him or her. One such case is of **Purnima Kantharia alias Purnima Khokhawala Vs. Union of India & Ors.** Writ Petition (L) No.11993 of 2022, wherein this Court directed that the Petitioner therein would be treated and accepted as guardian of Respondent No.8 therein.

10. In another case, the case of **Vijay Ramachandra Salgaonkar Vs. State** Writ Petition No.637 of 2021 decided on 17th July 2021, this Court invoked the doctrine of '***Parens Patriae***' which requires this Court to act as '***Parens Patriae***' or parents of parents having authority to take such decisions as would lie in the best of interest and for the welfare of the

person for whom the Court would act as the ultimate guardian. For this proposition of law the co-ordinate bench of this Court relied upon the decision of the Supreme Court in **Aruna Ramchandra Shanbaug Vs. Union of India**¹, wherein it was held 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.”

We can thus say that this Court can, in a such case, act like **“Big Guardian”**.

11. Thus, from the discussion made so far we would find that in fit cases, this Court in its capacity as **‘Parens Patriae’ or ‘Big Guardian’**, can take appropriate decisions which are in the best of interest of the dependent person and which are necessary for the welfare of such person and such decisions would also include a decision to hand over the responsibility of acting as a legal guardian for another, provided the person who is entrusted with such a responsibility is found to be a fit and suitable person for discharging the responsibility.

¹(2011) 4 SCC 454

12. In the present case there is nothing which is adverse to the capacity of the Petitioner to be the legal guardian of Respondent No.5, who is the mother of the Petitioner and who is fully dependent upon the Petitioner for her daily living. The Petitioner is a working Journalist and possessed of sufficient means. The Petitioner is also blessed with good physical and mental health and has no criminal antecedents to her, brought to our notice. All these qualities of the Petitioner, in our opinion, would make her eminently suitable to discharge the responsibility that would come with her appointment as legal guardian of Respondent No.5.

13. We are, therefore, of the opinion that this is a fit case wherein Petitioner could be appointed as legal guardian of Respondent No.5.

14. In the result, the Petition is allowed and we pass the following order for meeting the ends of justice:-

- i. Petitioner, Anushka Rajiv Mohite, shall be treated and accepted as the legal guardian of her mother Mrs. Tanuja Rajiv Mohite.
- ii. All authorities shall accept the status of the Petitioner as legal guardian of Mrs. Tanuja Rajiv Mohite and allow her to operate or manage the movable and immovable properties of Mrs. Tanuja Rajiv Mohite.

- iii. Member Secretary of Maharashtra State Legal Services Authority (“the said Authority”) either through himself/herself 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 as legal guardian of Mrs. Tanuja Rajiv Mohite and shall submit to the said Authority a bi-monthly report, which shall be compiled for a period of next two years.
- iv. We further direct that such reports shall not be submitted to the said Authority after the expiry of period of two years, unless it is found to be necessary by Member Secretary of the said Authority and in such a case the Member Secretary shall decide, in his or her discretion the further period for which such bi-monthly report would be submitted to the Authority.
- v. Needless to say, if any adverse material is noticed by the Member Secretary, he or she shall place it before this Court for necessary directions in the matter.

15. Copy of this Order be furnished to the Member Secretary of Maharashtra State Legal Services Authority for doing the needful.

16. The Petition is disposed of on above terms.

17. Rule is made absolute on above terms. No order as to costs.

18. Parties to act upon the authenticated copy of this Order.

(FIRDOSH P. POONIWALLA, J.)

(SUNIL B. SHUKRE, J.)