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(2023) 03 TEL CK 0057

In the Telangana High Court

Case No : Writ Petition No. 44347 Of 2022

Badar Alam Khan And 3 Others — APPELLANT

Vs

State Of Telangana And 3 Others — RESPONDENT

Date of Decision : 23-03-2023

Acts Referred:

Citation : (2023) 03 TEL CK 0057

Hon'ble Judges : K. Lakshman, J

Bench : Single Bench

Advocate : Munuga Sateesh

Final Decision : Disposed Of

Judgement

1. Heard Sri Munuga Sateesh, learned counsel for the petitioners and learned Asst.Govt.Pleader for Revenue. Perused the record.

2. This writ petition is filed to appoint the petitioner No.1 namely Badar Alam Khan, S/o Mohmood Alam Khan, as the guardian of his Comatose state mother Mrs.Najma Alam Khan @Najma Ansari @ Najeema Ansari to protect her interest, administer her company affairs, company accounts, investments and company shares etc., and also in the event of necessity to sell the immovable property standing in the name of his Comatose state mother and to use the said proceeds towards her medical treatment and family expenses.

3. Mother of the petitioner Nos.1, 3 and 4 and wife of petitioner No.2 i.e. Mrs.Najma Alam Khan @Najma Ansari @ Najeema Ansari was admitted in Lilavati Hospital and Research Centre, Mumbai on 19.09.2008 with heavy bleeding associated with clots as an in-patient bearing IP No.2008013337. She was discharged on 22.02.2014. According to Petitioner No. 1, presently, she is hemo-dynomically stable with minimal conscious state and she had tracheotomy tube and PEG in situ. She has developed generalized spastic contractures in both upper and lower limbs which prevents her from being mobilized out of bed and she needs a wheel chair to move and regular physiotherapist support. Further,

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she needs 24 hours trained nursing care. A room in the house of the petitioners has been converted into a ward (like ICU). Petitioner No.1 states that he had arranged nursing staff for care and well being of his mother. It is further stated that, at present, she is in a comatose state and is unable to handle affairs of her property and manage its transactions, due to her comatose condition.

4. The petitioner No.1 states that he is the eldest son and has responsibility of petitioner Nos.2 and 3. The petitioner No.2, his father, is a senior citizen and has developed various old age issues. Petitioner No.3 is not at all settled. He is searching for a job. Petitioner No.1 has to arrange the necessary expenses, other needs of family and medical expenses for the day-to-day treatment of his mother. The petitioners have already incurred huge expenses by borrowing money from various quarters for her treatment. Having exhausted all their financial resources, the petitioner No.2 had sold his lands recently and he is in a state of depression.

5. The Petitioner states that during her good health condition, mother of petitioner No.1 along with one Uzma Khatoon jointly purchased certain immovable properties under registered sale deeds which have been described as Schedule-A properties in the present writ petition. Petitioner No.1 also stated that his mother also has 44.40% share in the business of a company under the name and style of G.B. Bakers & Industries Private Limited, Musheerabad, Hyderabad.

6. In proof of her mother's ailment i.e., her comatose state, Petitioner No. 1 has filed a copy of discharge summary dated 22.02.2014 issued by Lilavathi hospital and Research Centre, Mumbai, a certificate dated 15.05.2022 issued by Care hospital and a certificate issued by Virinchi Hospital, Hyderabad. In all the aforesaid certificates, it is specifically mentioned that petitioner No.1's mother is in comatose state. The said reports/certificates indicate that Petitioner No.1's mother has developed generalized spastic contractures in both upper and lower limbs, which prevents her from being mobilized out of bed and she needs round the clock trained nursing care.

7. On the ground that her mother is in Comotose state, the petitioner No.1 is seeking to appoint himself as guardian to manage the said properties. In the affidavit, he has mentioned the details of certain immovable properties and he has not mentioned liabilities of his mother.

8. It is relevant to note that dealing with similar facts and circumstances, a Division Bench of the Bombay High Court in Vijay Ramachandra Salgonkar Vs. State vide order dated 17.07.2021 in W.P.No.637 of 2021, directed concerned Resident Deputy Collector to visit the residence of the petitioner therein where comatose patient was residing and to submit a report to the Court regarding her physical and mental condition including as to whether she is in a position to look after herself and to sign documents/cheques with understanding. Basing on the said report, Bombay High Court has given certain directions appointing the

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petitioner therein as guardian. Similar view was taken by Bombay High Court in Rajni Hariom Sharma Vs. Union of India 2020 SCC OnLine Bom 880. In Ayan Kumar Das Vs. Union of India 2022 SCC OnLine Gau 648, Gauhati High Court also took the same view.

9. Considering the said facts, vide order dated 08.02.2023 in I.A.No.1 of 2022 in W.P.No.44347 of 2022, this Court to verify the physical and mental health condition of Petitioner No. 1's mother, directed 2nd respondent to depute a responsible officer not below the rank of Tahsildar, to visit the residence of petitioner Nos.2 to 3 where their mother and wife Smt.Najma Alam Khan @Najma Ansari @ Najeema Ansari is residing. The officer appointed was directed to submit a report to this Court regarding her physical and mental condition including as to whether she is in a position to look after herself and to sign documents by understanding contents. This Court also directed the said officer to verify the aforesaid medical certificates produced by the petitioners and take the advice of any Doctor having expertise in the subject and submit report. This Court also directed the 1st petitioner to file the details of all the moveable and immovable properties owned by his comatose mother along with details of her liabilities, if any.

10. In compliance with the said order, learned counsel for the petitioners had filed the details of assets owned by his comatose mother in memo vide USR No.31340 of 2023, dated 21.03.2023 which are as follows:-

Sl.

No.

Property Description

Area

1

Sy.No.96/6, Yenkkepally Village, Pudur Mandal, Vikarabad Division, Vikarabad District

Ac.12.05gts.

2

Sy.No.9/6, Yenkkepally Village, Pudur Mandal,

Vikarabad Division, Vikarabad District

Ac.8.00gts.

3

Sy.No.9/7, Yenkkepally Village, Pudur Mandal, Vikarabad Division, Vikarabad District

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Ac.20.27gts

4

Sy.No.13/A, Yenkkepally Village, Pudur Mandal,

Vikarabad Division, Vikarabad District

Ac.6.00gts

5

Sy.No.12, Yenkkepally Village, Pudur Mandal, Vikarabad Division, Vikarabad District

Ac.12.20gts.

6

Sy.No.12, Yenkkepally Village, Pudur Mandal,

Vikarabad Division, Vikarabad District

Ac.12.20gts.

7

Share in family property 6-3-563, Second Floor, Erramanzil, Somajiguda, Hyderabad (Hotel Lobby)

248.70sq.ft.

8

Share in family property 6-3-563, Second Floor,

Erramanzil, Somajiguda, Hyderabad

7363.06sq.ft.

9

Share in family property 6-3-563, Third Floor, Erramanzil, Somajiguda, Hyderabad

3462.06sq.ft.

10

44.40% Shareholding in M/s.Gb Bakers, Industries Private Limited

4,44,058

shares

11

12% share in M/s Super Dairy Farm

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12

Flat at 6-3-563, Erramanzil, Somajiguda, Hyderabd

According to him there are no liabilities.

11. In Compliance with the said order, 2nd respondent directed the Revenue Divisional Officer, Hyderabad Division to depute the concerned Tahsildar to visit the residence of the petitioner Nos.2 and 3 and submit report. Accordingly, the Revenue Divisional Officer, Hyderabad Division deputed Tahsildar, Himayatnagar along with Doctor G.Anil Kumar, Medical Officer, UHNC, Amberpet who in turn visited the residence of the petitioner Nos.2 and 3 and submitted report dated 24.02.2023 to the Revenue Divisional Officer, Hyderabad Division, who in turn, submitted a report to the 2nd respondent dated 24.02.2023. In the said report, it is specifically mentioned that mother and wife of the petitioners respectively is deeply in comatose condition and unable to move, she is on assisted ventilation and PEG (Percutaneous Endoscopic Gastrostomey) tube for Nutrition and also verified the Medical Certificates produced by the petitioners and found correct. Thus, Comatose mother of 1st petitioner is not in a position to look after herself and to sign documents by understanding the contents of the same.

12. This Court perused the medical certificates filed by the petitioners of his comatose state mother Mrs.Najma Alam Khan @Najma Ansari @ Najeema Ansari which shows as follows:-

Patient was admitted for total Laproscopic Hysterectomy, on 20.09.2008 in view of severe polymenorrhagia, not responding to treatment of D & C and Mirena insertion.

Pre-operative fitness was taken on 19.09.2008. Fitness was given for surgery and anaesthesia with ASA Grade-I.

On 20.09.2008 at 1:15 pm, patient was administered general anaesthesia with permission from anaesthetist, modified lithotomy position was given. Abdomen and perineum painted with betadine scrub and solution, and draped with stenie towels.

At 1:20 pm, clinical per vagina examination followed by per speculum examination was done. Removal of Mirena device and endometrial biopsy prior to surgery was done. This took approximately 3 minutes.

On noting vaginal cyanosis, scheduled operation of Total Laparoscopic Hysterectomy was not started. This was brought to notice of anaesthetist.

Patient had hypoxia and immediately resuscitation was started.

Another anaesthetist was called for help. Using a bougie tracheal intubation was done with another endotracheal tube and ventilated with 100% oxygen. Meanwhile CPR continued. Within 40 seconds, oxygen saturation reached 100%. After stabilization, patient was shifted to Intensive Care Unit for monitoring.

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In the ICU, she remained deeply in comatose with ventilatory and inotropic supports for another 48 hours with development of myoclonic jerks suggestive of severe hypoxic-anoxic encephalopathy. She was gradually tapered off inotropes and later tracheostomy was performed on 30.09.2008. She was weaned off successfully from the ventilator and shifted to the wards with ongoing monitoring and nursing-physiotherapy support. PEG tube insertion was done. She continued to have multifocal myoclonic jerks and persisted in a minimally conscious state from there onwards.

Over the past few years of her stay in the hospital, she remained largely free from ventilatory support except for a brief period of return to the ICU from 24.10.2012 to 2015 for Urosepsis. She was treated with antibiotics and supportive care and from there onwards, she remained catheter (urinary) free with regular diaper changes and never went into urinary retention. She required few short courses of antibiotics for recurrent Urinary Tract Infection, which was managed effectively without any urological intervention.

For past few years, she is having intermittent per vagina bleeding and treated with tranexine acid.

Apart from these minor medical issues, she continues to have intermittent myoscopic jerks/breakthrough seizure activities which gets controlled with change in doses and adjustments in anti-epileptic drugs. Her repeat MRI (Brain) done on 02.10.2012 has suggested generalized cerebral atrophy with same focal lacunar infarcts.

At present, she is hemo-dynamically stable with minimal conscious state and has Tracheostomy tube and PEG in situ. She has developed generalized spastic contractures both upper and lower limbs, which does not prevent her from being mobilised out of bed on a wheelchair with physiotherapy support and needs round the clock trained nursing care.

13. As discussed supra, in the report itself, it has been certified that the comatose patient is unable to look after herself and her financial affairs. In the aforesaid circumstances, on considering all the aforesaid facts, This Court is inclined to pass certain directions to meet the ends of justice and the same are as follows:-

1. The 1st petitioner i.e. Badar Alam Khan, S/o Mohmood Alam Khan, shall be treated and accepted as guardian of his Comatose state mother i.e. Mrs.Najma Alam Khan @Najma Ansari @ Najeema Ansari.

2. All authorities including National Company Law Appellate Tribunal At Chennai, in Company Appeal (AT) (CH) No. 111/2022 & I.A.No.999 & 100 of 2022 shall accept the 1st petitioner status as such and allow him to operate or manage the movable and immovable properties of his comatose state mother Mrs.Najma Alam Khan @Najma Ansari @ Najeema Ansari, and shall permit him to represent her in the said case.

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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 1st petitioner as guardian of his Comatose state mother Mrs.Najma Alam Khan @Najma Ansari @ Najeema Ansari and shall submit monthly report to the Telangana State Legal Services Authority which shall be compiled for a period of two years.

4. If it is found necessary, 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 this Court.

5. A copy of the order shall be furnished to the Member Secretary, Telangana State Legal Services Authority for doing the needful. With the above said directions, this writ petition is disposed of accordingly.

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