

(1937) 06 CAL CK 0034
In the Calcutta High Court

Rajendra Kumar Gupta

APPELLANT

Vs

Sailendra Kumar Gupta

RESPONDENT

Date of Decision : 24-06-1937

Acts Referred:

Lunacy Act, 1912 — Section 56

Citation : AIR 1937 Cal 735

Hon'ble Judges : Costello, Acting C.J.

Bench : Division Bench

Judgement

Costello, Ag. C.J.

1. This is an appeal against certain orders made by the District Judge of Faridpur in a matter which is described as Lunacy Act Case No. 23 of 1937. The present proceedings were started on 3rd May 1937 by the presentation of a petition by one Sailendra Kumar Gupta who is the son of Rajendra Kumar Gupta, in which it was alleged that Rajendra Kumar Gupta had become of unsound mind and had been in that condition for some nine or ten months previously. It was stated that the petition had been made "for being appointed guardian of the person and the property of the lunatic." The word used in the translation is "idiot." Certain facts are set forth in the petition and in para. 10 thereof it was prayed that notice should be served on "the idiot," that the records of the case should be perused, there should be an order for an inquisition recorded and the case heard after serving notices upon the near relatives of "the idiot" and the applicant appointed as the guardian of the person and manager of the property of "the idiot". On the same day on which that petition was filed, an order was made by the District Judge in this form:

Heard pleader for the petitioner regarding withdrawal of the pension of the alleged lunatic Babu Rajendra Kumar Gupta. Ask the Treasury Officer to withhold Rs. 200 out of the pension and keep the same in deposit in this office until further orders. The balance of the pension money may be paid to the pension holder Rajendra Kumar Gupta. I pass the order u/s 56 read with Section 71,

Lunacy Act.

2. It appears that some time, indeed two or three years, before the date of the petition, Rajendra Kumar Gupta had been adjudicated an insolvent and such property as he had become vested in the receiver appointed in the Insolvency. Rajendra Kumar Gupta was, however, in receipt of a pension of about Rs. 396 per mensem, and it is in respect of that pension that the order of 3rd May (which is one of the orders now complained of) was made. On 7th May an application was made to the District Judge asking that the order made on 3rd May should be set aside. The matter was argued on both sides, that is to say on behalf of the petitioner here and on behalf of the alleged lunatic and the learned Judge reserved his decision. On 10th May the learned District Judge recorded this order:

Orders passed in separate sheets. The order dated 3rd May 1937 withholding Rs. 200 out of the pension of Babu Rajendra Kumar Gupta will stand.

3. That entry on the record sheet referred to the judgment which was delivered on 10th May 1937 which is headed "order". The ordering portion of it is in these terms:

A letter will be written to the Treasury Officer whether he can pay the balance of the pension money to the pension-holder keeping Rs. 200 in deposit according to the orders passed on 3rd May 1937. If not, the entire pension money will be drawn by the Nazir of this Court under my orders and then the spirit of the order dated 3rd May 1937 will be followed for payment of the balance of the pension money to Rajendra Babu for the maintenance of himself and his second wife with whom he is living.

4. That in substance is the matter which is now complained of. We are informed that the combined result of the orders of 3rd May and 10th May has been that the unfortunate patient Bajendra Kumar Gupta has not been receiving any money at all since the order of 3rd May. Apparently the learned District Judge acted on the strength of a certain medical certificate which was put before him, and he evidently came to the conclusion that the condition of Rajendra Kumar Gupta was such that he was not in a fit state to look after his own money.

5. It was first of all argued by Mr. Chakraborty on behalf of the alleged lunatic that the learned District Judge not only had no power to make an order of the kind complained of, under the provisions of 8. 71 read with Section 56, Lunacy Act, 1912, but no power to make any order in the nature of a preserving or protective order as regards the property or income of the alleged lunatic, at any rate prior to the determination of the question whether or not the alleged lunatic was in fact a lunatic. In other words, no ad interim order could be made prior to the proceedings on the inquisition. There is no doubt considerable support to that argument to be found in some observations of Sir George Rankin in *Saraj Basini Debi Vs. Mohendra Nath Bhaduri and Others*, the late Chief Justice of this Court said this:

Under the jurisdiction with which we are concerned, it may be worth while to notice that orders for the custody of lunatics and for the management of their estates do not come into question at all, until there has been a finding of lunacy as a result of an inquisition. There is no question of interim orders on such matters pending the determination as to the person's state of mind.

6. I am not at all sure that Sir George Rankin intended to say more than this that there should not be an interim order for the custody of lunatics or for the actual management of their estates pending the result of the inquisition, emphasis being placed on the word "management". To put the matter in another way, it would not be proper either to appoint a custodian or a manager before there had been a definite finding on the inquisition that the alleged lunatic was in fact a lunatic. If however the learned Chief Justice intended to say that in no circumstances can any kind of interim order touching the property of an alleged lunatic be made, then with all possible respect to him I can only say that I am unable to agree with his opinion, having regard to the authority in a contrary sense furnished by certain decisions of the Courts in England.

7. It has been suggested in course of the argument before us that the observations of the learned Chief Justice as regards interim orders were after all no more than obiter dicta in that in the case then before the Court there had been no question of making an interim order at all. Whether that is so or not, it seems to me that it would be most unfortunate and undesirable and certainly not in accordance with the practice in England if we were to hold that a Court in this country has in no circumstances power to appoint an interim receiver for the protection of the property of a person who is alleged to be a lunatic. In my view, the provisions of the Lunacy Act of 1912 and the Amending Act which compendiously may be called the Lunacy Act, 1912-1926 are not absolutely exhaustive. Clearly the present matter is not one which in any sense falls within the scope of either 8. 71 or Section 71 read with Section 56. If there is any section in the Lunacy Act which deals with the point we are considering or any question closely akin to it, it must in my opinion be Section 67 and not Section 71. However, we may take it that this is a matter which lies outside the actual provisions of the statute, and in those circumstances it seems to me that the Courts in this country are entitled to exercise that kind of inherent jurisdiction which originally was exercised by the Courts of Chancery in England in all matters concerning the welfare and the care of infants and lunatics. There is a very old case, *Ex parte Whilfield* (1742) 2 Atk 315 which is an authority for saying that in the case of a lunatic, a receiver of his property may be appointed whenever such an appointment is deemed expedient even though no "action" may be pending at the time, and it makes no difference whether the lunatic has or has not been so found by inquisition. A more modern authority is to be found in *In re Pountain* (1888) 87 Ch D 609 where it was held that in a proper case the Court will, pending an application for inquisition, appoint an interim receiver of the estate of the supposed lunatic, and if the case is urgent will do so upon an *ex parte* application. It is to be observed that Cotton, L.J. delivering the judgment of

the Court of Appeal in England said:

We will appoint Mr... interim receiver. His appointment will take effect immediately, but he must not receive any part of the property until he has given security.

8. In my opinion, that case is ample authority for saying that there is an inherent power in the Courts dealing with lunacy matters to appoint an interim receiver. Of course in the ordinary way it would be necessary and indeed essential that before taking charge of any of the properties of the supposed lunatic, the person appointed as receiver should furnish adequate security. Towards the end of his argument and after the authorities to which I have just referred had been brought to Mr. Chakravarty's attention, he was disposed to concede that the Court can in a proper case appoint an interim receiver. He then proceeded to argue however that the circumstances and the facts of the present proceedings do not constitute a proper case and so on that ground, the order made by the learned District Judge of Faridpur ought to be set aside. When the matter in controversy is reduced to that point, it becomes apparent that this appeal was really rather unnecessary, for it is obvious that the main question, namely whether or not Rajendra Kumar Gupta is a lunatic will shortly be decided one way or the other by the learned District Judge; so, the period during which any temporary arrangement would hold good will be in any case only a short one and it was not therefore worth while challenging the appointment of the interim receiver.

9. We agree however that the orders made by the learned District Judge were not wholly satisfactory in their nature, in that it would seem not to be proper to direct the Treasury Officer to withhold any part of the money which was payable as pension, especially when the result of the order has been to bring it about that the unfortunate patient has not been able to get any funds for his maintenance and other requirements. We think therefore that the order as made by the learned District Judge should be varied. We order that the Nazir of the Court of the District Judge of Faridpur do be and as is hereby appointed interim receiver of the pension monies payable to Rajendra Kumar Gupta. Out of the funds coming into his hands from that source, he will under the direction of the District Judge of Faridpore make such payments as are reasonably necessary for the maintenance of, medical attention to and comforts for the patient himself, that is to say, Rajendra Kumar Gupta and also for the maintenance of the present wife, the infant sons and the unmarried daughters of Rajendra Kumar Gupta. No payments are to be made to any other persons or for any other purposes pending the result of the inquisition. I have already pointed out that normally when a person is appointed interim receiver, he must not take possession of the property of the supposed lunatic unless and until he has furnished security. In the present instance however having regard to the fact that the person appointed receiver is an officer of the Court, we think that security can be dispensed with. The result is that this appeal is allowed in part. We make no

order as to costs.