
(2009) 04 AHC CK 0578
In the Allahabad High Court

Smt. Ramdarshani

APPELLANT

Vs

District Judge

RESPONDENT

Date of Decision : 10-04-2009

Acts Referred:

MENTAL HEALTH ACT, 1987 — Section 50, 53, 61

Citation : (2009) 3 AWC 2203

Hon'ble Judges : S.K. Singh, J; Pankaj Mithal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

S.K. Singh and Pankaj Mithal, JJ.—This appeal challenges the order passed by the Additional District Judge, Court. No. 1, Etawah dated 21.1.2009 by which the composite application filed by the appellant u/s 53/61 of the Mental Health Act, 1987 has been rejected.

2. One of the submissions of the learned Counsel for the appellant is that the Additional District Judge has not recorded any finding for rejecting the application for appointment of guardian of the mentally ill person which was u/s 53 of the Act.

3. The other submission is that the order has been passed by the learned Additional District Judge without giving any notice or opportunity to the appellant with regard to the valuation of the property in respect whereof permission for transfer was sought and as such an incorrect finding has been recorded that the appellant wanted to sell the property at a lower price. The sale deeds relied upon in the report of the Tehsildar indicate otherwise and those have been filed before this Court as additional evidence and if those sale deeds would have been considered in the right perspective by the court below then the result would have been otherwise.

4. In support of the above submission, learned Counsel has placed reliance upon the provision of Sections 53 and 61 of the Act and has also referred to the

provision as contained in Section 50 of the Act which provides for the procedure to be followed by the Court on receipt of an application under the Act.

5. A plain reading of Section 50 of the Act on which reliance has been placed it is clear that on the receipt of an application the court below was required to issue a notice to the mentally ill person in respect of whom the appointment of guardian is sought and in respect of whose property permission for transfer is being sought. As the application of the appellant for the appointment of guardian of the mentally ill person has been rejected without following the procedure prescribed u/s 50 and without assigning any reason and at the same time as the order was passed in violation of the principles of natural justice without giving opportunity to the appellant or as a matter of fact to any other party to contest the matter as neither any party is arrayed or was otherwise present in the proceedings before the court below nor even before this Court, the Court is of the view that the impugned order cannot be sustained under law and it would be in the interest of justice that the court below be directed to consider the matter afresh.

6. Thus, for the facts and circumstances stated above the appeal succeeds and is allowed on the ground that the order has been passed without following the procedure so provided in the Act and for the reason of lack of opportunity. Accordingly, learned District Judge is directed to revive the matter on filing of an application alongwith the certified copy of this order, whereupon the court below will consider and pass appropriate orders on the application for the appointment of guardian and permission to sell the property of the mentally ill person in accordance with law keeping in view the procedure so prescribed under the Act.

7. It goes without saying that the court below would first deal with the matter of appointment of the guardian of the mentally ill person and would thereafter proceed, if necessary, to decide the application for permission to transfer his property.

8. It is further provided that while dealing with the matter the court below will not be influenced by any finding so recorded in this order and decide the matter independently in accordance with law with all expedition.