



O.P.No.731 of 2021

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**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED :27.01.2022

CORAM:

**THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE**

O.P.No.731 of 2021

C. Raghuraman

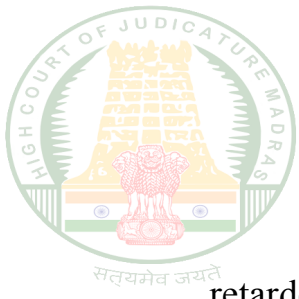
..... Petitioner

**Prayer:** Petition filed for appointment of a guardian under Clause XVII of the Letters Patent of 1865 to appoint Mr.C. Raghuraman, Son of Late K.Chellappan, the petitioner herein, as the guardian of the person and manager of the properties of the mentally retarded person Mr.R. Balaji, and for operation and sale of his assets and liabilities, more fully set out in Schedules “A”, “B”, & “C” hereunder :

For Petitioner : Mr. Sharath Chandran

**ORDER**

The Registry earlier had raised a maintainability issue with regard to the maintainability of the present petition which has been filed seeking to appoint the petitioner as a legal guardian for a mentally



O.P.No.731 of 2021

WEB COPY

retarded person. The maintainability issue was raised by the Registry by relying upon a judgment of this Court in the case of ***G. Nithyanandam vs. Tmt. D. Saritha and others*** reported in ***2013 3 LW 412***, wherein, an application filed for appointment of a legal guardian for a mentally retarded person was heard. In the said decision, the learned Single Judge had directed the petitioner to approach the District Collector under Section 14 of the National Trust for Welfare of persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999. Earlier there was the Mental Health Act, 1987 and under the said Act, Section 53 enabled a person to get himself appointed as guardian for a mentally ill person by approaching the concerned District Court. However, the Mental Health Act, 1987 got repealed in the year 2017 and it was replaced by a new enactment by name “The Mental Health care Act, 2017” which came into effect from 07.07.2018.

2. In the decision of the learned Single Judge reported in 2013 3 LW 412 referred to supra, the petition was filed under Sections 3,7 to 10 and 29 of the Guardians and Wards Act, 1890. Since the Guardian



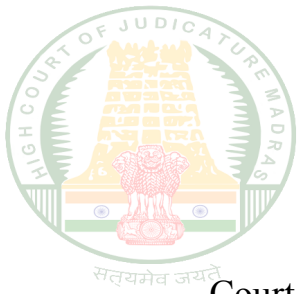
O.P.No.731 of 2021

WEB COPY

and Wards Act, 1890 does not deal with mentally retarded persons or lunatics, the learned Single Judge held the petition filed by **G.Nithyanandam** in the decision referred to supra (*G. Nithyanandam's case*) as not maintainable and directed the said petitioner to approach the concerned statutory authority under Section 14 of the National Trust for Welfare of persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999.

3. Ever since the passing of the aforesaid decision by a learned Single Judge of this Court, the Registry of this Court was not entertaining any petitions filed seeking for appointment of legal guardianship for a mentally retarded person or a lunatic.

4. The learned counsel for the petitioner would submit that under Clause 17 of the Letters Patent, this Court has got powers to entertain petitions of this nature, eventhough “The Mental Health Act, 1987” has been repealed or the replaced enactment viz., The Mental Healthcare Act, 2017 did not provide for a specific provision enabling this



O.P.No.731 of 2021

WEB COPY

Court to exercise powers for appointment of a legal guardian for a mentally retarded or a lunatic person.

5. The learned counsel for the petitioner drew the attention of this Court to the following in support of his submission that under Clause 17 of the Letters Patent, this Court is having the power to exercise jurisdiction for appointment of a legal guardian for a mentally retarded or a lunatic person.

**a. Clause 17 of the Letters Patent**

**b. Definition of an “idiot” as found in Black's Law**

**Dictionary.**

He would submit that “idiot” referred to in Clause 17 of the Letters Patent as seen from its definition means a person who is afflicted with profound mental retardation as in the case on hand where the petitioner is suffering from 60% mental retardation.

**c. The National Trust for Welfare of persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999.**



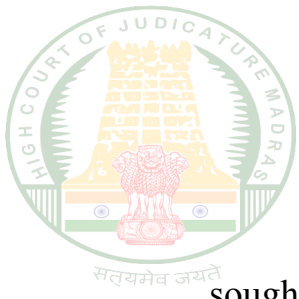
O.P.No.731 of 2021

WEB COPY

Referring to the aforesaid legislation, he would point out that

nowhere in the said legislation, it has curtailed the powers of this Court to appoint a legal guardian for a mentally retarded person. The power of this Court under Clause 17 of the Letters Patent have also not been curtailed. Therefore, he would submit that a litigant has the option of either going before the authority prescribed under Section 14 of the National Trust for Welfare of persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 or approach this Court under Clause 17 of the Letters Patent.

The judgment rendered by a learned Single Bench of this Court dated 16.04.2013 in O.P. No.62 of 2013 in the case of ***G.Nithyanandam vs. Tmt. D. Saritha and others reported in 2013 3 LW 412*** is the judgment based on which the Registry had earlier returned this original petition as not maintainable. He would submit that the said judgment was dealing with a petition filed under the Guardians and Wards Act. According to him, the learned Single Judge has rightly held the petition as not maintainable as appointment of a legal guardian



O.P.No.731 of 2021

WEB COPY

sought for is in respect of a mentally retarded person, which cannot be sought for under the Guardians and Wards Act.

He would submit that the powers under Clause 17 of the Letters Patent empowering this Court to exercise jurisdiction of this nature was not the issue involved in the aforesaid reported decision reported in **2013 2 LW 412**. According to him only on the ground that the petition was filed under the Guardians and Wards Act, it was held to be not maintainable and the learned Single Judge had directed the petitioner to approach the authority under the National Trust for Welfare of persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999.

d. ***P.S. Sathappan (Dead) By Lrs v. Andhra Bank Ltd. and others*** reported in **2004 11 SCC 672**.

He would submit that in the aforesaid decision of the Hon'ble Supreme Court, the Hon'ble Supreme Court has clearly held that unless



O.P.No.731 of 2021

WEB COPY

and until the enactment specifically excludes the applicability of Letters Patent, the powers under the Letters Patent are not curtailed. Therefore applying the same principle, the learned counsel for the petitioner would submit that the instant petition filed by the petitioner under Clause 17 of the Letters Patent is maintainable as under the National Trust for Welfare of persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999, there is no prohibition for the applicability of Clause 17 of the Letters Patent or any other statutory bar.

e. The Decision of Calcutta High Court in the case of ***Kala Chand Chunder, v Fatehadin and Ors.*** reported in ***AIR 1949 CAL 166.*** By relying upon the aforesaid decision, the learned counsel for the petitioner would submit that in the said decision also, the High Court of Calcutta has held that the High Court has got lunacy jurisdiction under Clause 17 of the Letters Patent 1865. Therefore, he would submit that Clause 17 of the Letters Patent enables the petitioner to approach this Court seeking for appointment of a legal guardian for a mentally retarded person.



O.P.No.731 of 2021

WEB COPY

f. A single Bench decision of the Calcutta High Court in the case of *Deepa Asani and another* reported in **2021 SCC Online 2148**.

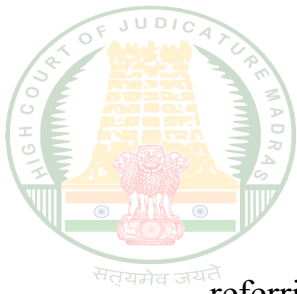
He would submit that the Calcutta High Court has exercised Clause 17 of the Letters Patent and appointed a Legal Guardian for a mentally ill person.

g. A single Bench decision of this Court in the case of *S.Annapoorni vs. K.Vijiay* reported in **2019 SCC Online MAD 723**.

Relying upon the said decision, the learned counsel for the petitioner would submit that the learned Single Judge has exercised Clause 17 of Letters Patent for appointment of a legal guardian for a Minor who is residing outside the jurisdiction of this Court but within the State of Tamil Nadu.

The learned counsel for the petitioner would therefore submit that Clause 17 of the Letters Patent can be exercised by this Court for the appointment of a legal guardian for a mentally retarded person. After





O.P.No.731 of 2021

WEB COPY

referring to the aforementioned authorities, the learned counsel for the petitioner would submit that subsequent to the repealing of the Mental Health Act, 1987 which contained a provision under Section 53 enabling the person to get himself appointed as a Legal guardian for a mentally ill person but under the replaced enactment viz., the Mental Healthcare Act, 2017, there is no such provision and therefore, according to him there is a vacuum as of now as there is no specific legislation with regard to the appointment of legal guardian for a mentally retarded person or a lunatic. Therefore, he would submit “Parens Patriae” jurisdiction will have to be exercised by this Court to fill up the lacuna.

**Discussion :**

6. Clause 17 of the Letters Patent reads as follows :-

**17. Jurisdiction as to infants and lunatics : And We do further ordain that the said High Court of Judicature at Madras shall have the like power and authority with respect to the persons and estates of infants, idiots and lunatics within the Presidency of Madras, as that which is now vested in the said High Court immediately before the publication of these presents.**



O.P.No.731 of 2021

WEB COPY

7. As seen from Clause 17 of the Letters Patent, this Court is having the power to exercise jurisdiction with respect to the persons and estates of infants, idiots and lunatics.

8. “Idiot” is defined in Black's Law Dictionary as follows :-

**Idiot.** A person afflicted with profound mental retardation. This term has largely fallen out of use in modern legal and medical contexts.

9. The Hon'ble Supreme Court in the case of ***P.S. Sathappan (Dead) By Lrs v. Andhra Bank Ltd. and others*** reported in **2004 11 SCC 672**. in paragraphs 30 to 33 held that unless and until a legislation specifically excludes the applicability of the Letters Patent, the Letters Patent is applicable.

10. Paragraphs 30 to 33 of the aforementioned judgment of the Hon'ble Supreme Court which discusses this issue are reproduced hereunder :-

**30.**As such if an appeal is expressly saved by Section 104(1), sub-section (2) cannot apply to such an appeal. Section 104 has to be read as a whole. Merely reading sub-section (2) by ignoring the saving clause in sub-section (1) would lead to a conflict between the two sub-sections. Read as a whole and on well-established principles of interpretation it is clear that sub-section (2) can only apply to appeals not saved by sub-section (1) of



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Section 104. The finality provided by sub-section (2) only attaches to orders passed in appeal under Section 104 i.e. those orders against which an appeal under “any other law for the time being in force” is not permitted. Section 104(2) would not thus bar a letters patent appeal. Effect must also be given to legislative intent of introducing Section 4 CPC and the words “by any law for the time being in force” in Section 104(1). This was done to give effect to the Calcutta, Madras and Bombay views that Section 104 did not bar a Letters Patent. As appeals under “any other law for the time being in force” undeniably include a letters patent appeal, such appeals are now specifically saved. Section 104 must be read as a whole and harmoniously. If the intention was to exclude what is specifically saved in sub-section (1), then there had to be a specific exclusion. A general exclusion of this nature would not be sufficient. We are not saying that a general exclusion would never oust a letters patent appeal. However, when Section 104(1) specifically saves a letters patent appeal then the only way such an appeal could be excluded is by express mention in Section 104(2) that a letters patent appeal is also prohibited. It is for this reason that Section 4 of the Civil Procedure Code provides as follows:

“4. *Savings*.—(1) In the absence of any specific provision to the contrary, nothing in this Code shall be deemed to limit or otherwise affect any special or local law now in force or any special jurisdiction or power conferred, or any special form of procedure prescribed, by or under any other law for the time being in force.

(2) In particular and without prejudice to the generality of the proposition contained in sub-section (1), nothing in this Code shall be deemed to limit or otherwise affect any remedy which a landholder or landlord may have under any law for the time being in force for the recovery of rent of agricultural land from the produce of such land.”

As stated hereinabove, a specific exclusion may be clear from the words of a statute even though no specific reference is made to Letters Patent. But where there is an express saving in the statute/section itself, then general words to the effect that “an appeal would not lie” or “order will be final” are not sufficient. In such cases i.e. where there is an express saving, there must be an express exclusion. Sub-section (2) of Section 104 does not provide for any express exclusion. In this context reference may be made to Section 100-A. The present Section 100-A was amended in 2002. The earlier Section 100-A, introduced in 1976, reads as follows:



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“100-A. *No further appeal in certain cases.*—Notwithstanding anything contained in any Letters Patent for any High Court or in any other instrument having the force of law or in any other law for the time being in force, where any appeal from an appellate decree or order is heard and decided by a Single Judge of a High Court, no further appeal shall lie from the judgment, decision or order of such Single Judge in such appeal or from any decree passed in such appeal.”

It is thus to be seen that when the legislature wanted to exclude a letters patent appeal it specifically did so. The words used in Section 100-A are not by way of abundant caution. By the Amendment Acts of 1976 and 2002 a specific exclusion is provided as the legislature knew that in the absence of such words a letters patent appeal would not be barred. The legislature was aware that it had incorporated the saving clause in Section 104(1) and incorporated Section 4 CPC. Thus now a specific exclusion was provided. After 2002, Section 100-A reads as follows:

“100-A. *No further appeal in certain cases.*—Notwithstanding anything contained in any Letters Patent for any High Court or in any instrument having the force of law or in any other law for the time being in force, where any appeal from an original or appellate decree or order is heard and decided by a Single Judge of a High Court, no further appeal shall lie from the judgment and decree of such Single Judge.”

To be noted that here again the legislature has provided for a specific exclusion. It must be stated that now by virtue of Section 100-A no letters patent appeal would be maintainable. However, it is an admitted position that the law which would prevail would be the law at the relevant time. At the relevant time neither Section 100-A nor Section 104(2) barred a letters patent appeal.

**31.** Applying the above principle to the facts of this case, the appeal under clause 15 of the Letters Patent is an appeal provided by a law for the time being in force. Therefore, the finality contemplated by sub-section (2) of Section 104 did not attach to an appeal passed under such law.

**32.** It was next submitted that clause 44 of the Letters Patent showed that Letters Patent were subject to amendment and alteration. It was submitted that this showed that a Letters Patent was a subordinate or subservient piece of law. Undoubtedly, clause 44 permits amendment or alteration of Letters Patent, but then which legislation is not subject to amendment or



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alteration? CPC is also subject to amendments and alterations. In fact it has been amended on a number of occasions. The only unalterable provisions are the basic structure of our Constitution. Merely because there is a provision for amendment does not mean that, in the absence of an amendment or a contrary provision, the Letters Patent is to be ignored. To submit that a Letters Patent is a subordinate piece of legislation is to not understand the true nature of a Letters Patent. As has been held in *Vinita Khanolkar case* [(1998) 1 SCC 500] and *Sharda Devi case* [(2002) 3 SCC 705] a Letters Patent is the charter of the High Court. As held in *Shah Babulal Khimji case* [(1981) 4 SCC 8] a Letters Patent is the specific law under which a High Court derives its powers. It is not any subordinate piece of legislation. As set out in the aforementioned two cases a Letters Patent cannot be excluded by implication. Further it is settled law that between a special law and a general law the special law will always prevail. A Letters Patent is a special law for the High Court concerned. The Civil Procedure Code is a general law applicable to all courts. It is well-settled law, that in the event of a conflict between a special law and a general law, the special law must always prevail. We see no conflict between the Letters Patent and Section 104 but if there was any conflict between a Letters Patent and the Civil Procedure Code then the provisions of the Letters Patent would always prevail unless there was a specific exclusion. This is also clear from Section 4 of the Civil Procedure Code which provides that nothing in the Code shall limit or affect any special law. As set out in Section 4 CPC only a specific provision to the contrary can exclude the special law. The specific provision would be a provision like Section 100-A.

**33.** It was also sought to be argued that if such be the interpretation of Section 104 CPC, it may create an anomalous situation and may result in discrimination inasmuch as an appeal under the Letters Patent will be available against an order passed by the High Court on its original side, whereas such an appeal will not be available in a case where the order is passed by the High Court in its appellate jurisdiction. A similar argument was urged before this Court in *South Asia Industries (P) Ltd.* [AIR 1965 SC 1442 : (1965) 2 SCR 756] but the same was repelled in the following words : (SCR p. 762 C-G)

“The argument that a combined reading of clauses 10 and 11 of the Letters Patent leads to the conclusion that even the first part of clause 10 deals only with appeals from courts subordinate to the High Court has no



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force. As we have pointed out earlier, clause 11 contemplates conferment of appellate jurisdiction on the High Court by an appropriate legislature against orders of a tribunal. Far from detracting from the generality of the words 'judgment by one Judge of the said High Court', clause 11 indicates that the said judgment takes in one passed by a Single Judge in an appeal against the order of a tribunal. It is said, with some force, that if this construction be accepted, there will be an anomaly, namely, that in a case where a Single Judge of the High Court passed a judgment in exercise of his appellate jurisdiction in respect of a decree made by a court subordinate to the High Court, a further appeal to that Court will not lie unless the said Judge declares that the case is a fit one for appeal, whereas, if in exercise of his second appellate jurisdiction, he passed a judgment in an appeal against the order of a tribunal, no such declaration is necessary for taking the matter on further appeal to the said High Court. If the express intention of the legislature is clear, it is not permissible to speculate on the possible reasons that actuated the legislature to make a distinction between the two classes of cases. It may be, for ought we know, the legislature thought fit to impose a limitation in a case where 3 courts gave a decision, whereas it did not think fit to impose a limitation in a case where only one court gave a decision."

11. Under the Mental Health Act, 1987 which has been repealed there was a specific provision under Section 53 of the said Act empowering the District Court to appoint a legal guardian for a mentally ill person.

12. Section 53 of the repealed Mental Health Act 1987 reads as follows :-



O.P.No.731 of 2021

**53. Appointment of guardian of mentally ill person (1)**

Where the mentally ill person is incapable of taking care of himself, the District Court or, where a direction has been issued under sub-section (2) of section 54, the Collector of the District, may appoint any suitable person to be his guardian.

(2) In the discharge of his functions under sub-section (1), the Collector shall be subject to the supervision and control of the State Government or of any authority appointed by it in that behalf.

13. The Mental Health Act, 1987 was repealed and was replaced by the Mental Healthcare Act, 2017 which came into effect from 07.07.2018. As seen from the Mental Healthcare Act, 2017, there is no provision available for appointment of a guardian of a mentally ill person, which was very much available under the repealed Mental Health Act, 1987. Though the National Trust for Welfare of persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 under Section 14 empowers the Local Level Committee to appoint a legal guardian for a mentally retarded person, the said legislation has not curtailed the powers of this Court to appoint a legal guardian for a



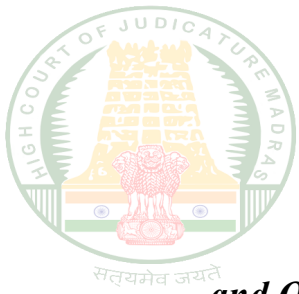
O.P.No.731 of 2021

WEB COPY

mentally retarded person exercising its powers under Clause 17 of the Letters Patent. The decision rendered by a learned Single Judge of this Court in ***G. Nithyanandam vs. Tmt. D. Saritha and others reported in 2013 3 LW 412***, which is the basis for the return of the Original petition by the Registry of this Court is in the context of a petition filed under the Guardians and Wards Act and not under Clause 17 of the Letters Patent. The only reason for holding that the said petition was not maintainable by the learned Single Judge in the reported decision of ***G.Nithyanandam's*** case referred to supra was that under the Guardians and Wards Act, a person cannot be appointed as a legal guardian for a mentally retarded person. Therefore, I am of the considered view that the reason for return of the Original Petition filed by this petitioner under Clause 17 of the Letters Patent seeking for appointment of a legal Guardian for a mentally retarded person by the Registry is erroneous.

14. In similar circumstances, a learned Single Judge of the Calcutta High Court in the case of ***Kala Chand Chunder, v Fatehadin***





O.P.No.731 of 2021

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**and Ors.** reported in *AIR 1949 CAL 166* and in the case of **Deepa Asani**

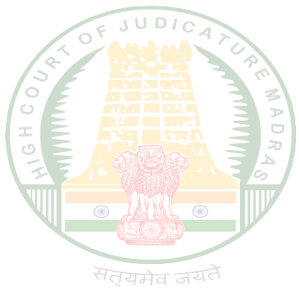
**and another** reported in *2021 SCC Online 2148* exercised powers under

Clause 17 of the Letters Patent and appointed a legal guardian for a mentally ill/lunatic person.

15. The relevant paragraphs of the aforesaid decisions of the Calcutta High Court are extracted hereunder :

**a) Kala Chand Chunder, v Fatehdin and Ors.** reported in *AIR 1949 CAL 166*

14. Even if there be any doubt as to the powers of the District Courts in the matter of making interim orders in pending lunacy proceedings, I entertain no doubt whatever as to the powers of this High Court to do so. This High Court has lunacy jurisdiction under clause 17 of the Letters Patent of 1865. That clause confers on this Court the like power and authority with respect to the persons and estates of infants, idiots and lunatics within the Bengal Division of the Presidency of Fort William as that which was vested in the said High Court immediately before the publication of these presents. This takes us back to the Letters Patent of 1862 which was in force immediately before the publication of the Letters Patent of 1865. Clause 16 of the Letters Patent of 1862 ordained that the High Court should have the like jurisdiction as to infants and lunatics as was then vested in the Supreme Court. This provision takes us further back to the Charter of 1774 establishing the Supreme Court at Fort William in Bengal. Under clause 4 the Chief Justice and Judges of the Supreme Court were given the same powers as the Judges of King's Bench of England had and under clause 18 the Supreme Court was constituted as a Court of Equity with “full power and authority to administer justice in a summary manner, as nearly as may, according to the rules and proceedings of our High Court of Chancery in Great Britain.” Clause 25 of that Charter authorised and empowered the Supreme Court “to appoint guardians and keepers for infants, and their estates according to the order and course observed in that part of Great Britain called England and also guardians



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and keepers of the persons and estates of natural fools or of such as are, or shall be deprived of their understanding or reason by the act of God, so as to be unable to govern themselves and their estates” and also authorised and empowered that Court “to inquire, hear and determine by inspection of the person, or by such other ways and means by which the truth may best be discovered and known.” From what I have stated it follows that this High Court as the successor to the Supreme Court has all, the powers, authority and jurisdiction of the English Courts referred to above. There can be no doubt that the English Courts frequently make interim orders in lunacy proceedings before a person is actually found to be a lunatic on inquisition. Reference may be made to *Ex parte Whitfield* [[1742] 2 A.T.K. 315 : 26 E.R. 592.] , *In re: Pountain* [[1888] L.R. 37 Ch. D. 609 C.A.] , *Seager Hunt* [[1900] L.R. 2 Ch. 54.] and *Re: A.G.* [[1909] 53 Sel. J. 615.] . The position is summarised in Theobald's Law relating to Lunacy at page 401 in the following words:

“In an urgent case an interim receiver may be appointed for the protection of a lunatic's property, upon sufficient medical evidence, and without service or security. The order provides for giving security as soon as possible and for notice of the order to the lunatic with liberty to him to apply to discharge it on short notice.

It is not necessary to refer to Rule 83 of the Rules of 1892 for power to appoint an interim receiver; it is part of the inherent jurisdiction to protect the property of lunatics. The powers conferred by the Act of 1908 are also sufficient to meet the case. Interim orders have frequently been made; see, for instance, *Seager Hunt* [[1900] L.R. 2 Ch. 54.] .

These interim orders have also been recognised by the Lords Justices. It was found that an elderly lady of weak mind was living in her own house in a state of neglect, and it was necessary, at once to have her properly cared for. The matter being urgent, an interim receiver was appointed by the Master. W., January 17, 1922.

When the receiver went to the house to carry out the order he was refused admission by a person who had been allowed to occupy the basement. Application was thereupon made to the Lords Justices for an order to commit this person, and after discussion in Court an order for committal was made, thus recognising in the clearest way the validity of the interim order. W., Sterndale, M.R., Younger, L.J., 1st February, 1922.”

15. It has been argued that the provisions of the Letters Patent are by clause 44 thereof made subject to the legislative powers of the Indian



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Legislature. It is contended that the Indian Legislature has, by the Lunacy Act, altered the law. Reference is made to sec. 2 of the Lunacy Act which provides that nothing contained in Part II will affect the powers of the High Court. It is urged that this section clearly shows that the other provisions contained in other parts of the Act affect the powers of the High Court. Part II provides for the reception, care and treatment of lunatics and gives certain powers to certain persons or tribunal. It was, therefore, necessary to make it clear that those provisions did not affect the powers of the High Court over any person found on inquisition to be a lunatic or over the property of such lunatic. Part III, Ch. IV, however, deals with lunacy proceedings in the High Court. In so far as express provisions have been made in that part they are certainly intended to be binding on the High Court and *ex hypothesi* there could be no occasion for preserving, the powers of the High Court as against those provisions. But it is quite a different thing to say that even in matters on which the Act is silent the powers of the High Court must be deemed to have been taken away. I readily agree that the provisions of the Lunacy Act, in so far as they are expressly contrary to or inconsistent with the powers of the High Court under its Letters Patent, must prevail but I am not prepared to countenance the contention that the Legislature has, by a side wind, taken away the inherent powers of this Court, which, I consider, are essentially necessary in the ends of justice. While sitting as a Judge of this Court I for one shall not, in the absence of unambiguous provision enacted by a competent legislative authority, readily give up ancient and time-honoured powers, authority and jurisdiction which this Court has inherited from the Supreme Court. In my opinion, for the reasons mentioned above, the order of September 3, 1945, was a valid order and Mr. B.P. Chunder as the receiver and manager of the estate of Kala Chand Chunder can legally convey the latter's half share and pass a good title to the purchaser. I, however, agree with Mr. Mukherjee that the records of this suit should be suitably amended either by substituting Mr. B.P. Chunder as such receiver and manager in the place of Kala Chand Chunder or by describing Kala Chand Chunder as a person who, though not adjudged to be a lunatic, is by reason of unsoundness of mind or mental infirmity incapable of protecting his interests and suing by a next friend appointed under Or. 32, r. 15, C.P.C. Even for the purposes of this application such amendment is necessary. Mr. Banerjee agrees that the register of this suit should be amended in the latter way. Relying on the materials on which the order of April 25, 1945, was made and the materials on which an order under Or. 32, r. 15 was made by



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me in another proceeding on September 3, 1945, which related to the mental state of Kala Chand Chunder and all of which are now filed of record of this Court I find that the Plaintiff Kala Chand Chunder is by reason of unsoundness of mind or mental infirmity incapable of protecting his interests and acting under Or. 32, r. 15, C.P.C. I appoint Mr. B.P. Chunder as the next friend of Kala Chand Chunder to continue this suit to its termination and execute and register the conveyance on behalf of Kala Chand Chunder. Let the register of this suit be amended accordingly and let the sale be now completed.

**b) *Deepa Asani and another* reported in 2021 SCC Online 2148.**

6. The 2017 Act provides for the rights of persons who are being treated in mental healthcare establishments and guidelines for the functioning of these establishments. Clause 17 of the Letters Patent for the High Court of Judicature at Fort William in Bengal, appears to be the only answer in such cases where High the Court has the authority to intervene in cases in relation to persons and estates of infants, idiots and lunatics within the jurisdiction vested with the High Court. (Clause 17 is set out below:)

*“Clause 17: Jurisdiction as to infants and lunatics-And we do further ordain, that the said High Court of Judicature at Fort William in Bengal shall have the like power and authority with respect to the persons and estates of infants, idiots, and lunatics within the Bengal Division of the Presidency of Fort William as that which was vested in the said High Court immediately before the publication of these presents.”*

7. Since the petitioner is the only legal heir of Deepa Asani, this Court considers it fit to pass appropriate orders upon being satisfied, prima facie, from the material on record that Deepa Asani is indeed in a critical mental condition and requires sufficient protection from the applicant who is her sole surviving legal heir.

8. It is relevant to trace the use of the word ‘Inquisition’ to The Mental Health Act, 1987, under which an application for judicial inquisition could be made by a class of persons for ascertaining the mental condition of a mentally ill, who holds property, for a direction for admission of that person in a psychiatric hospital. Clause 17 of The Letters Patent evokes the power of the High Court as a guardian-protector to preserve the rights of those who are disenfranchised - by way of mental incapacity - to approach the courts. Barring the words which are seen as inappropriate in the present times, it is a wonderfully inclusive provision



O.P.No.731 of 2021

WEB COPY

which empowers the High Court to take up the cause of persons on the periphery of society.

16. Infact, the decision rendered supra in ***Deepa Asani's case*** reported in 2021 SCC Online 2148, the learned Judge of the Calcutta High Court has observed that there is a vacuum ever since the repeal of the Mental Health Act, 1987 as there is no provision under the Mental Healthcare Act, 2017 for appointment of a legal guardian for a mentally retarded person. Whenever there is a Legislative vacuum and there is utmost necessity as in the instant case, the Court will have to fill up the lacuna by giving appropriate legal relief though within the parameters of law. Since Clause 17 of Letters Patent empowers this Court to exercise lunacy jurisdiction, the hands of this Court are not tied to grant the relief as prayed for in this petition. In a case of this nature, this Court cannot be a mute spectator when there is no specific prohibition for the exercise of power under Clause 17 of the Letters Patent. “*Parens Patriae*” jurisdiction also empowers this Court to appoint a Legal guardian for a Mentally retarded person when there is a legislative lacuna and further

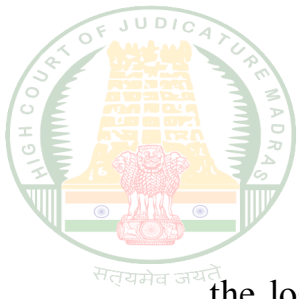


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there being no statutory bar.

17. The learned Single Judge of the Calcutta High Court in the aforesaid reported decisions have also exercised the power under Clause 17 of the Letters Patent for the purpose of appointment of a legal guardian for a lunatic.

18. Since idiot is a colloquial term for a person affected with mental retardation, the term “idiot” found in Clause 17 of the Letters Patent is applicable to a mentally retarded person also as in the instant case. In future, Registry shall entertain petitions filed seeking to appoint legal guardian for a mentally retarded person under Clause 17 of the Letters Patent. Infact, a learned Single Judge of this Court in *S.Annapoorni's* case referred to supra had also exercised powers under Clause 17 of the Letters Patent though it was a case where the petitioner was residing outside the jurisdiction of this Court but that case was in respect of a child custody matter. Though it was a child custody matter,



O.P.No.731 of 2021

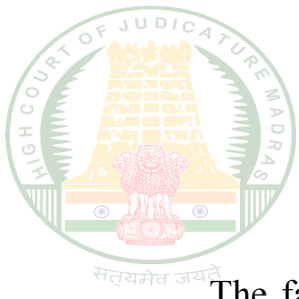
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the logic behind the applicability of Clause 17 of the Letters Patent by this Court was also followed in the said decision.

19. For the foregoing reasons, I am of the considered view that the Registry ought not to have returned the Original Petition filed by this petitioner but anyway since a direction was given by this Court to the Registry to number this petition, they have numbered the same leaving the maintainability issue open. After numbering the petition, this Court had also directed the petitioner to let in oral and documentary evidence before the learned Master. Accordingly, the petitioner has also let in oral and documentary evidence before the learned Master which has been recorded.

20. Now coming to the merits of the petitioner's request for appointment of legal guardian for R. Balaji is concerned, this Court's discussion is as follows :-

21. The petitioner claims that both the parents of the mentally retarded person R. Balaji, who was born on 13.11.1987 are no more.



O.P.No.731 of 2021

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The father of R. Balaji, K. Ravi died on 25.05.2021 and the mother R. Meenakshi died on 12.04.2013. The petitioner is the first cousin of the mentally retarded person R. Balaji. The father of the petitioner died on 11.10.2020 and his mother is still alive. According to the petitioner, ever since the death of K.Ravi, the father of the mentally retarded person Balaji, he has been taking care of R.Balaji. According to the petitioner R. Balaji, the mentally retarded person is now admitted in the “Care and Care Clinic” at New No.23, East Avenue, Near UCO Bank, Korattur, Chennai. and the said clinic is taking care of his day-to-day needs. According to the petitioner a sum of Rs.15,000/- is paid by the petitioner to the said Clinic as special fees for this service for every three months. According to the petitioner, the mentally retarded person R. Balaji has been suffering from mental retardation which has been assessed at 60% by the State Commissioner for disabled, Government of Tamil Nadu. According to the petitioner excepting for him, there is no other person amongst his kith and kin to take care of the mentally retarded person R.Balaji. He has also pleaded that he is of sound health and he is willing





O.P.No.731 of 2021

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to act as a guardian for the mentally retarded person R. Balaji till his life time. He has also given the list of assets standing in name of the parents of the mentally retarded person which has now been inherited by R.Balaji after their death and he has also filed those documents along with the petition.

22. Before the learned Master, the petitioner was examined as a witness (PW1). In his deposition, he has reiterated the contents of the petition filed in support of O.P. No.731 of 2021. Through PW1, the following documents were marked as Exhibits :

<i><b>Exhibits</b></i>	<i><b>Nature of documents</b></i>
P1	Photocopy of the General Power of Attorney dated 28.12.2004 executed by Mrs.Meenakshi Somasundaram in favour of B.Mahadevan
P2	Photocopy of the Release Deed dated 31.08.2006 in favour of Mrs.R. Meenakshi
P3 (Series 2 Nos)	Photocopies of the disability Certificates of R. Balaji
P4	Photocopy of the Sale Deed dated 31.10.2008 executed in favour of K.Ravi
P5	Computer generated death certificate of R. Meenakshi, who died on 12.04.2013
P6	Computer generated death certificate of Sellappan, who



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<b><i>Exhibits</i></b>	<b><i>Nature of documents</i></b>
	died on 11.10.2020.
P7	Computer generated death certificate of Kamatchi, who died on 21.05.2021
P8	Computer generated death certificate of K.Ravi, who died on 25.05.2021
P9	Computer generated Legal Heirship certificate dated 06.08.2021 in respect of K.Ravi
P10	Photocopy of the front page of Indian Bank account passbook bearing account No.705371237 in respect of K.Ravi
P11 (Series 4 Nos)	Photocopies of the fixed deposit receipts bearing Nos.92027, 91873, 92028 and 92026.

23. As seen from the evidence available on record, it is clear that excepting for the petitioner, there is no other person amongst the kith and kin of the mentally retarded person to support him. It is also evident that both the parents of the mentally retarded person viz., R.Meenatchi and K.Ravi are no more as seen from their respective death certificates, which have been marked as Exs.P5 and P8. The certificate given by the State Commissioner for disabled, Government of Tamil Nadu for the mentally retarded person R. Balaji dated 26.10.2005 has also been marked as Ex.P3, which confirms that R. Balaji has been suffering from



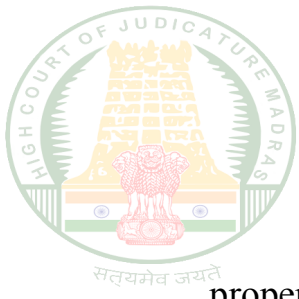
O.P.No.731 of 2021

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mental retardation which has been assessed at 60%. The said certificate was issued based on the medical report submitted by the Kilpauk Medical College which is reflected in the said certificate. The father of the petitioner Sellappan, who is the brother of the mentally retarded person's father (K.Ravi) is also no more as evident from his Death Certificate which has been marked as Ex.P6 which reveals that he died on 11.10.2020. The Legal Heirship certificate of K.Ravi, the father of the mentally retarded person R.Balaji has also been marked as Ex.P9, which confirms that the mentally retarded person R.Balaji is his only Legal Heir. Being a mentally retarded person and that too when both his parents are no more and he does not have any siblings, this Court is of the considered view that the petitioner who is the first Cousin of the mentally retarded person is an apt person to be appointed as legal guardian.

24. The details of the assets standing in the name of the father of the mentally retarded person viz., K.Ravi has also been marked as Exhibits viz., Ex.P4, P10 and P11. The title deeds pertaining to the

27/31



O.P.No.731 of 2021

WEB COPY

property owned by the mother of the mentally retarded R. Meenakshi has also been marked as Ex.P2. The petitioner has sought for appointment of a legal guardian for the person and property of the mentally retarded person R. Balaji. He has also let in oral evidence reiterating the contents of the petition filed in support of OP No.731 and has undertaken to maintain the mentally retarded person in his beneficial interest and welfare. However being a mentally retarded person, this Court is of the considered view that the petitioner will have to submit regular accounts in respect of the assets owned by R. Balaji, the mentally retarded person.

25. After giving due consideration to the pleadings and the evidence available on record as well as after hearing the submissions of the learned counsel for the petitioner, this Court is inclined to grant the relief as prayed for and the petitioner is appointed as a legal guardian for the mentally retarded person Mr.R. Balaji subject to the fullfilment of the following conditions by the petitioner, which are as follows :-

(a) The guardian appointed by this Court shall disclose the particulars of the properties both movable and immovable owned by



O.P.No.731 of 2021

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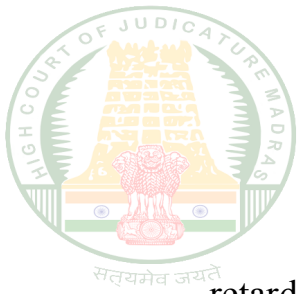
Mr.K.Ravi, the father and Mrs.R.Meenakshi, the mother of the mentally retarded person R. Balaji, before the Registry of this Court within a period of four weeks from the date of receipt of a copy of this order.

(b) R. Balaji, the mentally retarded person shall be examined by a Government Doctor and a report to that effect from the said Government Doctor shall be filed before the Registry of this Court every six months.

(c) The guardian appointed by this Court shall file a statement before the Registry of this Court every six months, disclosing the bank balances of Mr.R. Balaji, the mentally retarded person with various banks/financial institutions.

(d) The guardian appointed by this Court shall render true accounts of the funds belonging to Mr.R. Balaji, the mentally retarded person and shall file a report before the Registry of this Court every six months.

(e) If it is brought to the notice of any Court / any statutory authority about misuse of funds belonging to Mr.R. Balaji, the mentally



O.P.No.731 of 2021

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retarded person, the said Court / authority is empowered to cancel the guardianship after holding a proper enquiry.

(f) The transactions in respect of the property of the mentally retarded person by the guardian shall be strictly in accordance with the relevant provisions of law.

(g) If the guardian appointed by this Court is found to be abusing the power or neglects or acts contrary to the best interest of Mr.R. Balaji, any relative or next friend may apply to the appropriate Court for removal of such guardian.

27.01.2022

Index:Yes/No  
Internet : Yes / No  
Speaking Order: Yes/No  
vsi2

**ABDUL QUDDHOSE, J.**

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O.P.No.731 of 2021

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O.P. No.731 of

27.01.2022

31/31