

IN THE COURT OF ADDITIONAL DISTRICT JUDGE, DINDIGUL

**PRESENT: THIRU. A.K. MEHBUB ALI KHAN, B.L.M., LL.M.,
PG.D.PM/IR.,
ADDITIONAL DISTRICT JUDGE, DINDIGUL.**

Saturday, the 3rd day of February 2024

I.A.No.14/2020

-in-

G.W.O.P.No. 119 / 2015

(In the matter of minor. P.Beemal @ Karuppusamy)

P.K.Vanjimuthu,
S/o.Karuppanagounder

.. **Petitioner /4th Respondent**

/Vs/

1.K.Ganesan (Mentally disordered person) .. **1st Respondent/Petitioner**

(1st Respondent /petitioner represented through his sister and next friend / Kannammal)

2. Collector, Dindigul District

3.Chinnappan @ Karuppanagounder, S/o.Palanigounder

4.P.S.Karuppanagounder, S/o.Palanigounder,

5.Kamaraj, S/o.late.Karuppanagounder

..... **Respondents 2 to 4/Respondents 1 to 3 and 5**

This petition came on 19.01.2024 for final hearing before this Court in the presence of Thiru.K.Parthasarathy, Advocate for the petitioner, and of Thiru.M.Syedibrahim, Advocate for the 1st Respondent, and of

Thiru.R.K.Ravichandran, Government pleader for the 2nd respondent, Thiru.R.Rameshprabhu, Advocate for the 3rd Respondent and of Thiru.R.Manokaran, Advocate of the 4th respondent, and the 5th Respondent is already exparte in Main O.P. and on perusal of written statement of petitioners side and records and having stood over to this day for consideration this Court passed the following....

ORDER

This Petition is filed by the petitioner/4th Respondent u/s.105 of the Mental Health Care Act 2017.

2. The petitioner has filed an elaborate Affidavit making many averments and allegations reproducing it from the counter and additional counter filed by him in the Main O.P. The averments that are necessary and relevant to decide this petition alone are reproduced hereunder.

3. The 1st respondent has filed the Main petition for appointing herself as guardian of her brother Ganesan who is claimed to be mentally retarded in the said petition. The Court had directed to produce the said Ganesan before the Madurai Rajaji Govt.Hospital for assessing his mental ability and to a report about his mental capacity. Accordingly, the report was filed and the 1st respondent/petitioner in Main O.P. was examined as P.W.1 and has marked

Ex.P.1 to Ex.P.3. When the case was posted for cross examination, this petitioner has filed this petition u/s.105 of the Mental Health Care Act 2017 (hereinafter referred as 'New Act'). He has stated that the examination of Ganesan and the certificate issued by the Doctor of Madurai Rajaji Govt.Hospital is invalid in view of the provisions of Sec.3(4) and 3(5) of the New Act and also the Sec.73 and 74 of the said New Act. He has contended that the Board has to be constituted in accordance with the said provisions of the Act and the said Ganesan has to be produced before it for assessment. The certificate issued by the Government Doctors is not admissible and so he has prayed to pass an order directing to produce Ganesan before the Board constituted as per Sec.73 and 74 and assess his mental ability and submit a report.

4. The respondent has also filed an elaborate counter denying and disputing all the allegations that are not relevant to this petition. The relevant objections are that , this petition is filed only to grab the property of Ganesan who is mentally retarded and with an ulterior motive to drag on the proceedings. The said Ganesan was sent for medical examination through court on 7.4.2018 and was admitted as in-patient in Madurai Rajaji Govt.Hospital from 21.5.2018 to 31.5.2018 and he was assessed by the

qualified Doctors and they have given a certificate that he is suffering from Schizophrenia and has mental illness. The Doctors have stated that the said Ganesan is having 60% of moderate disability (mental illness) and therefore there is no necessity to again sent him for mental assessment u/s.105 of the Act. The Main Guardian is O.P. filed u/s.50, 53 and 54 of the Old Mental Health Care Act 1987 (herein after referred to as “Old Act) and hence this petition has to be dismissed.

5. Point for consideration :

Whether the petitioner to be allowed ?

6. Answer to Point:

This Court, after considering the pleadings and the arguments put forth by either parties, also perused the entire records and found that the said Ganesan was directed to be produced before the Dean of Madurai Rajaji Govt. Hospital for assessment of his mental capacity and for filing a report. Accordingly, as per the direction of this Court dated 7.4.2018, the said Dean of the Madurai Rajaji Govt.Hospital has required the said Ganesan to be produced before the Hospital for assessment by his letter dated 8.5.2018. Accordingly, the said Ganesan was produced before the hospital and he was admitted as in-patient from 21.5.2018 to 31.5.2018 in I.P.No.36552. The

Doctors have assessed his mental ability and also have perused the entire medical history of the said Ganesan. After such assessment, they have sent a report on 31.5.2018 to the District Court certifying that the said Ganesan is suffering from Schizophrenia type of mental illness and has a moderate disability (Mental illness) of 64% and that he has having below average intellectual capacity.

7. This being the factual matrix, the petitioner has contended that the Old Act was repealed by an enactment of the New Act and therefore the certificate issued under the old Act is invalid and the Ganesan has to be assessed by the Board constituted under Sections 73 and 74 of the New Act and this Court u/s.105 of the New Act has to refer the question of mental illness only to the Board. He has further claimed in his petition that the said Ganesan is not suffering from any mental illness and that he is perfectly alright. However, he has also pleaded that if the Court comes to a conclusion that the said Ganesan is mentally ill, he may be appointed as guardian of Ganesan. Per contra, the respondents' counsel has contended that since the New Act came into effect only after the filing of the Main O.P., the certificate issued under the old Act on direction of this court is valid and there is no necessity.

8. In this regard, this court deems it appropriate to refer to “**Sec.126 of the New Mental Health Care Act 2017**” which reads as under :

“126. Repeal and saving.

(1) The Mental Health Act, 1987 (14 of 1987) is hereby repealed.

(2) Notwithstanding such repeal, —

(a) anything done or any action taken or purported to have been done or taken (including any rule, notification, inspection, order or declaration made or any document or instrument executed or any direction given or any proceedings taken or any penalty or fine imposed) under the repealed Act shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act; 52

(b) the Central Authority for Mental Health Services, and the State Authority for Mental Health Services established under the repealed Act shall, continue to function under the corresponding provisions of this Act, unless and until the Central Authority and the State Authority are constituted under this Act;

(c) any person appointed in the Central Authority for Mental Health Services, or the State Authority for Mental Health Services or any person appointed as the visitor under the repealed Act and holding office as such immediately before the commencement of this Act, shall, on such commencement continue to hold their respective offices under the corresponding provisions of this Act, unless they are removed or until superannuated;

(d) any person appointed under the provisions of the repealed Act and holding office as such immediately before the commencement of this Act, shall, on such commencement continue to hold his office under the corresponding provisions of this Act, unless they are removed or until superannuated;

(e) any licence granted under the provisions of the repealed Act, shall be deemed to have been granted under the corresponding provisions of this Act unless the same are cancelled or modified under this Act;

(f) any proceeding pending in any court under the repealed Act on the commencement of this Act may be continued in that court as if this Act had not been enacted;

(g) any appeal preferred from the order of a Magistrate under the repealed Act but not disposed of before the commencement of this Act may be disposed of by the court as if this Act had not been enacted.

(3) The mention of the particular matters in sub-section (2) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 (10 of 1897) with regard to the effect of repeal.”

As per the said provision of Sec.126(2)(f) of New Act, any proceedings pending before the Court under the repealed Old Act can be continued as if the New Act has not been enacted. Therefore, this provision saves the proceedings filed and pending before the court under the Old Act, and thus the provisions of the Old Act alone are made applicable to the pending proceedings viz the Main O.P. filed in the year 2015.

9. It is further important to note that a New Act, though enacted in the year 2017 was given effect to and was enforced only on 29.5.2018 by Central Government Notification S.O.2173(E), Part (II), Sec.3(II). Therefore, New Act was not at all enforced when the Main O.P. was filed in the year 2015 and

more particularly when the said Ganesan was referred to the Madurai Rajaji Govt. Hospital for his mental assessment by an order of the Principal District Court on 7.4.2018. As already pointed out, based on the said order, Ganesan was admitted as in-patient and he was assessed by a team of Doctors of the said Government Hospital from 21.5.2018 to 31.5.2018. Thus, the entire proceedings of mental assessment were done under the provisions of the Old Act. Though the New Act was enforced from 29.5.2018, by that time, the assessment of said Ganesan had commenced and the Doctors have given the certificate on 31.5.2018. Thus the certificate issued by the Government Doctor is well within the ambit of the Old Act and cannot be claimed to be invalid, just because it was issued two days after the enforcement of the New Act.

10. The other factual aspect that has to be taken into account while considering this petition, is that averments and allegations made by the petitioner/4th respondent in his counter and additional counter filed in the Main O.P. This Court had perused the counter and additional counter filed by him in the Main O.P. From such careful perusal, it is found that, this petitioner has admitted that the said Ganesan was having mental issues and he has also claimed that he was not given proper medical treatment by his

sister Kannammal and hence his mental health deteriorated. Having taken a stand that the said Ganesan was suffering from mental illness and his condition deteriorated due to lack of proper medical care, in his earlier counter and additional counter, he cannot now turn around and asked that the said Ganesan is mentally healthy. In this regard, it is necessary to refer to Sec.105 of the New Act that reads as under:

“If during any judicial process before any competent court, proof of mental illness is produced and is challenged by the other party, the court shall refer the same for further scrutiny to the concerned Board and the Board shall, after examination of the person alleged to have a mental illness either by itself or through a committee of experts, submit its opinion to the court.”

From the careful perusal of the said provision, it is understood that only when the proof of mental illness produced by one party is challenged by the other party, the Court shall refer the same for further scrutiny to the concerned Board. Meaning that, the proof of mental illness should be produced by one party, which should be challenged by the other. But in this case, it is the Court that had directed mental assessment of said Gansan by medical professionals vide order dated 7.4.2018. Accordingly, the Government Doctors have assessed the mental health of Ganesan and has produced the report in furtherance of such direction by the court and it is a court document. Therefore, it cannot be treated as if the said certificate (proof) was produced

by Kannammal, so that it is challenged by other party. Even otherwise, having admitted the mental incapacity of Ganesan in the counter and additional counter filed in Main O.P. , this petitioner cannot now abandon the same and claim that the said Gansan is mentally healthy.

11. Thus, since the certificate regarding the mental illness of Ganesan is not produced by the Kannammal, but it was given in furtherance of the directions of the court and it is a court document and also that this petitioner has admitted about the mental illness of Ganesan, he cannot now invoke the provisions u/s.105 of the New Act. The other contentions of the petitioner that the report marked as Ex.P.1 through P.W.1 cannot be admitted and that it should be only be proved through the Doctor who had assessed Ganesan, though acceptable, he has to exercise his right at the time of cross examination and only in the Main O.P. This aspect cannot be decided in this petition. It is needless to point out that admitting a document is one thing and 'proof and probative value' of the same is another. Therefore, the validity and proof of the certificate can be decided only in the Main O.P. and not in this petition.

12. Therefore, in view of the discussions made above, it is held that this petition is not Maintainable for the reasons stated above. This point is decided accordingly.

In the result, this petition is dismissed without cost.

Dictated to the shorthand writer, taken down, transcribed and computerized by her, corrected and pronounced by me in open court, this the 3rd day of February 2024.

Principal District Judge,
Dindigul.