



AFR

IN THE HIGH COURT OF ORISSA, CUTTACK

GUAP No.07 of 2025

(In the matter of an application under
Section 8 of the Hindu Minority and Guardianship Act, 1956)

Saroj Kumar Behera Appellant

-Versus-

Rojalin Sahoo & another Respondents

Advocate for the parties

For Petitioner : Mr. S.S. Tripathy, Advocate
Mr. P. Pradhan, Advocate

For Opp. Party No.1 : Mr. S. Mohapatra,
Advocate

For Opp. Party No.2 : Mr. P.P. Behera,
Addl. Standing Counsel

CORAM: JUSTICE SANJAY KUMAR MISHRA

Date of Hearing: 01.09.2025

Date of Judgment: 10.10.2025

S.K. Mishra, J. This Appeal has been preferred assailing the Order dated 20.03.2025 passed by the learned District Judge, Khordha in Gua (P) No.05 of 2024, vide which the prayer to grant permission to the Appellant, who is the natural



guardian of his minor son, to alienate the share of the minor in the suit property stood rejected.

2. The factual matrix of the case is that, the marriage of the Appellant with the Respondent No.1 was solemnized as per the Hindu rites and family customs. From their lawful wedlock, they have been blessed with a son namely "Nishant Saroj Behera" (hereinafter referred to as "minor son"), who is now aged about 16 years old, and pursuing his study in Standard-X in KIITS School, Bhubaneswar. The Appellant purchased the suit property in the name of his minor son by virtue of joint sale deed bearing No.1132308244, dated 03.07.2023, for the future benefit of minor son, making the minor son and seven others as equal joint owners of the suit property, having equal shares.

2.1 The joint owners of the suit property, excluding the minor son, executed a Development Agreement bearing No.1132312370, dated 15.09.2023 so also executed a General Power of Attorney (GPA) bearing No.1137312442, dated 15.09.2023 with M/s Abodes Odisha for construction of residential apartments entitling them 44% share from the entire construction without any investment. The minor son



was excluded from such documentation because of lack of permission to alienate his share in the suit property.

2.2 The Appellant, being the natural guardian of his minor son, approached the learned District Judge, Khordha seeking permission to sell the property of his minor son under Section 11 of the Guardians and Wards Act, 1890, shortly, 'the Act, 1890', for the benefit and protection of his minor son's estate. The Respondent No.1, who is the mother of the minor son, also participated in the proceeding and filed her response, supporting the Appellant's prayer in the petition, stating therein that she had no objection, if appropriate permission is accorded to the Appellant for sale of the property of their minor son, as it is in the interest of the minor son. During the hearing, the Appellant deposed as P.W.1. To substantiate the stand, documents were also exhibited through P.W.1 as Ext.1 to 7, which were marked without any objection.

2.3 The learned District Judge, vide the impugned order dated 20.03.2025, observed that the petition has been incorrectly filed under Section 11 and should have been filed under Section 8, read with Section 29 of the Act, 1890. But,



taking into consideration the prayer made in the application, the learned District Judge ignored the said defect and treated the petition to be an application under Section 8, read with Section 29 of the Act, 1890. However, after hearing the parties, the learned Court below rejected the Appellant's prayer to alienate the minor's share in the joint property. Hence, this Appeal.

3. This Appeal has been preferred on the grounds that, the learned Court below failed to appreciate that Section 8(1) of the Hindu Minority and Guardianship Act, 1956, shortly, 'the Act, 1956' permits a natural guardian to do acts which are necessary, reasonable so also for the benefit and protection of the minor's estate. The minor's participation in the Development Agreement entitles him 44% share in the residential apartments without any investment so also this participation qualifies as an evident advantage under Section 8(4) of the Act, 1956, as, after the development of the suit property into a Residential Apartment, the minor son of the Appellant will be the owner of flat(s) in the said Residential Apartment so constructed, the value of which will increase over time.



3.1 It is the case of the Appellant that, the learned District Judge, while rejecting the petition, wrongly observed that there is no legal necessity to allow the sale, because the minor son of the Appellant is only studying in Class IX and the Appellant has good income to maintain him.

3.2. It is also the case of the Appellant that, the Court below erred in law while interpreting Section 8 of the Act, 1956, which permits alienation of minor's property not only in case of necessity of the minor, but also in cases in which there is an evident advantage to the minor so also for protection and benefit of the minor's estate. In the present case, though there is no necessity to alienate the share of the minor son of the Appellant, but the Development Agreement will confer benefit to the minor son as an evident advantage.

4. Reiterating the grounds urged in the Appeal Memo, learned Counsel for the Appellant submitted that despite specific provision under Section 8(4) of the Act, 1956 for granting permission for an evident advantage to the minor so also its own observation made in para-6 of the impugned order, the learned Court below passed the impugned order with an observation that, since the minor son of the Appellant



is studying in Class-IX, there appears no legal necessity in absence of evidence to the contrary, requiring to accord permission in favour of the Appellant-Petitioner to sell the share of his minor son.

5. Learned Counsel for the Appellant further submitted that such observation, being contrary to the evidence on record so also statute, is perverse and deserves interference by this Court. It was further submitted that specific evidences were led before the learned Court below including the Development Agreement, which was marked as Ext.6 on admission, to prove that the Appellant, being the natural guardian of the minor son, purchased the said property in question in the name of his minor son by virtue of a joint sale deed dated 03.07.2023 for the future benefit of his son and his son's share is Ac.0.022.7 decimals, out of the total area of Ac.0.180.66 decimals. By virtue of the said Development Agreement, the Developer has to allocate 44% of the super built-up/built-up/carpet area as per the approved plan as part of owners' portion, which will be in the name of the minor son. The learned Court below failed to appreciate the evidence on record that if the share of the minor son of



the Appellant is handed over to the builder for construction of multi-storied building/flats, the minor son will get flats from the Developer, which can be utilized by him for residing over the same so also for his future benefits, as the standard of the minor will improve. To substantiate his submission, learned Counsel for the Appellant relied on the judgment of the High Court of Madras reported in 2014 SCC OnLine Mad 86 (***In Re:***

T.K. Srinivasan (aka) T.K. Srinivas Chari)

6. Learned Counsel for the Respondent No.1, who is the mother of the minor son, supported the arguments advanced by the learned Counsel for the Appellant.

7. Per Contra, learned Counsel for the State-Respondent No.2, reiterating the observations made vide the impugned order, submitted that there is no perversity in the impugned order deserving interference by this Court. The learned Court below was justified in rejecting the prayer of the present Appellant-Petitioner to accord permission in his favour to sell the share of his minor son.

8. Before proceeding further to decide the present lis, it would be appropriate to reproduce below the relevant provisions enshrined under Section 8 of the Act, 1956.



“8. Powers of natural guardian – (1) The natural guardian of a Hindu minor has power, subject to the provisions of this section, to do all acts which are necessary or reasonable and proper for the benefit of the minor or for the realization, protection or benefit of the minor’s estate; but the guardian can in no case bind the minor by a personal covenant.

(2) The natural guardian shall not, without the previous permission of the court,-

(a) mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of the immovable property of the minor; or

(b) lease any part of such property for a term exceeding five years or for a term extending more than one year beyond the date on which the minor will attain majority.

(3) Any disposal of immovable property by a natural guardian, in contravention of sub-section (1) or sub-section (2), is voidable at the instance of the minor or any person claiming under him.

(4) No Court shall grant permission to the natural guardian to do any of the acts mentioned in sub-section (2) except in case of necessity or **for an evident advantage to the minor.**

xxx

xxx

xxx”

(Emphasis supplied)

9. As is revealed from the trial Court’s record, it was specifically pleaded and proved that the present Appellant (Petitioner before the Court below), being the father of the minor son, is his natural guardian. The case schedule property was purchased by him in the name of his minor son by virtue of joint sale deed dated 03.07.2023 for the future



benefit of his minor son. In the said sale deed, there are eight numbers of vendees, including the minor son of the present Appellant and all the vendees have become the joint owners of an area of Ac.0.180.66 in mouza Jujhagada. It has also been pleaded and proved that the present Appellant invested his own saving to purchase the schedule property jointly along with seven others for future benefit of his minor son, who is at present pursuing his study in Standard-IX in KIITS School, Bhubaneswar. It has also been pleaded and proved that, out of the said area of Ac.0.180.66 decimals, the minor son of the Appellant is having share of Ac.0.022.7 decimals only, which is very low area to make any type of permanent construction and to meet the future requirement of the minor son, including his study expenses, as the Appellant-Petitioner is not in a condition to make permanent construction over the schedule property or afford the heavy expenses for construction over the said property. It has also been pleaded and proved that the minor son of the Appellant/Petitioner will get his share from the Developer without investing money or labour. Though for the necessity and benefit of the minor son, the Appellant's/Petitioner's name and address were included



in the draft General Power of Attorney, shortly, GPA, but the same was registered before the Sub-Registrar, Khandagiri at Bhubaneswar excluding the share of the minor due to want of permission. It has also been pleaded and proved before the learned Court below that if the Appellant/Petitioner hands over the suit property on sharing basis to the Developer; his minor son will be getting his share from the said built-up/super built up area which he can give on rent basis or reside over the said property and utilize the same for his future benefits. That apart, it was also proved that the entire patch of land, excepting only Ac.0.022.7 decimals, has already been handed over to the Developer/Builder to develop the said property, who shall allocate 44% of the super built-up/built-up/carpet area as per the approved plan as part of owners' portion in accordance with the terms and conditions detailed in the said Development Agreement marked as Ext.6.

10. As is further revealed from Ext.6, i.e., the Development Agreement, the owners of the said land will have proportionate share of land allocated between them and the Developer, as detailed in such sub-clause-10 of Clause-I of



the said Development Agreement. Clause-I (10) of the Development Agreement, being relevant, is extracted below.

“CLAUSE: I (DEFINITION)

xxx

xxx

xxx

10. **‘ALLOCATION OF SHARE’** shall mean the total super built up/built-up/carpet area of Independent Residential Flat(s)/Unit(s), constructed over the schedule property as per the plan(s) approved by the concerned authority **along with proportionate share of land allocated between land owners and developer to be as follows :-**

(a) Owners’ allocation shall mean the portion of Independent Residential flat(s)/unit(s) along with proportionate land, which is to be allocated to the Owners (i.e. 44 % of the super built up/built-up/carpet area as per approved Plan) as part of Owners’ portion in accordance with the terms and conditions of these presents, towards consideration amount of their entire land offered for the project.

(b) Developer’s allocation shall mean the remaining portion i.e. 56% of constructed areas over the scheduled property along with rest part of land towards his entire cost of development of land, labour, construction and investment whatsoever in the project.

(c) If in case the super built-up/built-up/carpet area entitlement of the parties of the First Part is more than the super built-up/built-up/carpet area of one full/complete flat/unit (either chosen by the parties of the First Part or offered by the party of the Second Part) in the complex, then the developer/party of the second part shall compensate the land owners/parties of the first part for that difference super built-up/built-up/carpet area. Such compensation shall be by way of payment of cash basing on the then selling price per Square Feet of that project/complex. This same modality will be applicable vice-versa. It shall however be open to the



parties to arrive at any other mode of payment of compensation as may be mutually agreed upon.”

(Emphasis supplied)

11. From the pleadings and documents marked as exhibits on record, it is amply clear that if the share of the minor son, which was purchased by his father out of his own income, is handed over to the Developer, the minor son will be getting 44% of super built-up/built-up/carpet area as per the approved plan towards owners' allocation, including proportionate share of the land allocated between the land owners and Developer. Further, since the other co-owners of the said suit land have already entered into a Development Agreement with the Developer, if the multi-storied apartment is constructed over the said plot parting only Ac.0.022.7 decimals of land, out of the total area of Ac.0.180.66 decimals, it would no way be helpful for the minor son or advantageous for him to utilize the said small patch of land, when it was specifically pleaded and proved before the learned Court below that the present Appellant, who is the father of the minor son, is incapable to make investment for the purpose of construction of an individual house over the said small patch of land. As is further revealed from the TCR,



though the Government Pleader cross-examined the present Appellant, who deposed as P.W.1, most of his evidences, filed in shape of affidavit evidence, remained untouched/un-demolished during his cross-examination. Rather, all the documents were marked as Exts.1 to 7 without any objection. Hence, in view of the discussions made above and the provisions enshrined under Section 8(4) of the Act, 1956, this Court is of the view that the findings of the learned Court below vide impugned order dated 20.03.2025 in Gua (P) No.05 of 2024 is perverse and deserves interference.

12. In the result, the order dated 20.03.2025 passed by the learned District Judge, Khordha at Bhubaneswar in Gua (P) No.05 of 2024 is set aside. Accordingly, permission is granted to the Appellant to develop the schedule property by executing/registering Development Agreement so also Power of Attorney or any other deeds in favour of the Developer/Builder namely, M/s. ABODES ODISHA, in respect of the schedule property, as detailed in Gua (P) No.05 of 2024.

13. It is made clear that, the permission granted herein shall be subject to the similar conditions, as extracted above, with regard to the other seven co-sharers/owners, as



detailed in Development Agreement marked as Ext.6, which is to be ensured by the concerned Sub-Registrar, while registering the GPA and agreement(s), if any.

14. Accordingly, the Appeal stands allowed and disposed of.

.....
S.K. MISHRA, J.

Orissa High Court, Cuttack
The 10th October, 2025/Prasant

Signature Not Verified

Digitally Signed
Signed by: PRASANT KUMAR PRADHAN
Designation: Secretary
Reason: Authentication
Location: High Court of Orissa, Cuttack.
Date: 10-Oct-2025 14:58:53

