

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 3687 of 2024

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS. JUSTICE SANGEETA K. VISHEN

Sd/-

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2	To be referred to the Reporter or not ?	No
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

ANJUBEN KARANSINH DODIYA & ORS.

Versus

STATE OF GUJARAT & ANR.

Appearance:

MR SIDDHARTH R KHESKANI(9483) for the Petitioner(s) No. 1,2,3,4
MS FORAM TRIVEDI, AGP for the Respondent(s) No. 1,2

CORAM: HONOURABLE MS. JUSTICE SANGEETA K. VISHEN

Date : 22/07/2024

ORAL JUDGMENT

Issue rule, returnable forthwith. Ms Foram Trivedi, learned Assistant Government Pleader waives service of notice of rule on behalf of the respondent.

2. By this petition, the petitioners have prayed for direction to hold and declare the petitioner no.1 – Anjuben Karansinh Dodiya as a guardian of Karansinh Rajusinh Dodiya (hereinafter referred to as ‘the patient’), who is in a vegetative/comatose state. Further prayer is for declaring the petitioner no.1 – Anjuben Karansinh Dodiya as the manager of the movable and immovable properties belonging to the patient.

3. Mr Siddharth Keshkani, learned advocate for the petitioners submitted that the petitioner no.1 is the wife of the patient. The marriage was solemnized as per the Hindu rites in the year 1996 and petitioner nos.2 and 3 are the sons of the patient, aged 20 years and 15 years respectively. It is submitted that in the year 2019, the patient was detected with dengue and was hospitalized. Owing to the weakness, the patient, fell on the floor, and as a result, has sustained brain hemorrhage with severe medical complications. It is thereafter, that the patient was shifted to Zydus Hospital and has undergone decompressive craniectomy with evacuation of Acute SDH. It is submitted that as per the certificate, the patient, is in unconscious state. The patient is totally bedridden, unresponsive, unable to communicate via sign language. The patient, since is unconscious, disoriented and non-reactive, the petitioners, therefore, are collectively taking care of the patient, including the medical follow-ups. Even after passage of more than five years, there is no progress in the health condition of the patient and is in a vegetative state. The recovery is full of uncertainty and beyond the medical scope.

3.1 It is submitted that the petitioners are spending approximately Rs.2 lac per month on the medical treatment of the patient. Besides, the patient, requires constant assistance, supervision and active medical monitoring and the family, i.e. the petitioners, are facing unsurmountable difficulties in managing the finances for the ongoing treatment.

3.2 It is submitted that even the team constituted by this Court, has certified that the patient, is sub-conscious. Furthermore, the sons and the father-in-law, have filed their affidavits, indicating that

they have no objection if the petitioner no.1, is appointed as the guardian and manager to deal with the movable and immovable properties of the patient. It is therefore, urged that the petitioner no.1 being the wife, be declared as the manager of the movable and immovable properties belonging to the patient.

3.3 It is submitted that the petitioners, have sought recourse of all the statutes governing the field; however, there is no legislative provision for appointment of guardian of patient lying in comatose state, namely, The Guardian and Wards Act, 1890, The Mental Health Act, 1987 (repealed), The National Trust Act for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999, so also the Rights of Persons with Disabilities Act, 2016. It is therefore, the captioned writ petition has been filed, invoking the extra-ordinary jurisdiction of this Court of “*parens patriae*”, with a permission to allow the petitioner no.1 to act as a guardian of the patient.

3.4 Reliance is placed on the judgment in the case of *Shobha Gopalakrishnan vs. State of Kerala* reported in 2101 SCC OnLine Ker 739. It has been held and observed that in absence of any legislation governing appointment of the guardian to the patient, who is in comatose state, it would be open for the parties to invoke the extra-ordinary jurisdiction under Article 226 of the Constitution of India with a prayer seeking declaration of appointment of a guardian. Reliance is also placed on the judgment in the case of *Sairabanu Mohammad Rafi vs. State of Tamilnadu* reported in 2016 SCC OnLine Mad 8091. It is submitted that it has been held and observed that in none of the legislation, namely, the Mental Health Act; the Guardian and Wards Act, there is any provision for

appointment of a guardian in such a situation and therefore, the Court, accepting the request of the petitioner therein, had appointed the petitioner as guardian of her husband. It is therefore, urged that in view of the affidavits filed by the family members, i.e. the petitioners herein collectively, so also the medical reports of the hospital where the patient has taken the treatment, so also the report filed by the City Deputy Collector in the captioned proceedings, the petitioner no.1 be appointed as a guardian of the patient and be allowed to manage the properties and the bank accounts of the patient.

4. Heard learned advocates appearing for the respective parties and perused the material available on record.

5. Discernibly, in the year 2019, the patient was detected with dengue and was hospitalized and during the course of treatment, the patient had attempted to use the toilet and owing to weakness, he fainted and fell on the floor, which has resulted in the injury of brain hemorrhage, creating several medical complications. The patient was shifted to Zydu Hospital, Ahmedabad and had to undergo several treatment including the decompressive craniectomy brain surgery. Discernibly, the patient has suffered traumatic acute subdural hematoma which, is a lethal head injury. The patient, is bedridden, unresponsive and unable to speak or communicate via sign language. It is clear from the record that the patient is unconscious, disoriented and non-reactive. Since past five years, the health of the patient, has not seen any improvement.

6. The wife, i.e. the petitioner no.1, the petitioner nos.2 and 3, the sons and petitioner no.4, the father, have been collectively taking care of the patient. It is also the case of the petitioners that

sufficient amount, has been spent from the personal savings and accessible account of the patient towards the medical treatment. Besides, the petitioners have to spend approximately Rs.2 lac per month on the constant medical treatment of the patient and the petitioners, are facing not only liquidity crunch, but also unable to manage the movable and immovable properties, namely, the house, the lands, the bank accounts etc. in the name of the patient. Owing to the patient in comatose stage, the petitioners are facing difficulties, as all the banks, the authorities, government offices, are demanding the signature of the patient in order to operate or manage the movable and immovable properties. It is therefore, urged that the petitioner no.1, be allowed to be appointed as a guardian.

7. The petitioners, have set out the list of movable and immovable properties in paragraph 5, which are reproduced herein below for ready reference:

I. SCHEDULE OF LAND

Sr. No.	Particulars	Status
1.	Shade No.84, Madhav Estate, Odhav, S.P. Ring Road, Ahmedabad.	Given on Rent
2.	Shop No. 4 and 5, Madhav-99, Vastral, Ahmedabad.	Given on Rent
3.	Survey No. 723/2, Vastral, Ahmedabad	Agricultural Land.
4.	Survey No. 183, Vastral, Ahmedabad	Non-Agricultural Land.
5.	Survey No. 252, Vastral, Ahmedabad	Agricultural Land.
6.	Survey No. 258, Vastral, Ahmedabad	Agricultural Land.
7.	Survey No. 267, Vastral, Ahmedabad	Agricultural Land.
8.	Survey No. 269, Vastral, Ahmedabad	Agricultural Land.
9.	Survey No. 270, Vastral, Ahmedabad	Agricultural Land.
10.	Survey No. 271, Vastral, Ahmedabad	Agricultural Land.
11.	Survey No. 272, Vastral, Ahmedabad	Agricultural Land.

12.	Survey No. 275, Vastral, Ahmedabad	Agricultural Land.
13.	Survey No. 276, Vastral, Ahmedabad	Agricultural Land.
14.	Survey No. 277, Vastral, Ahmedabad	Agricultural Land.
15.	Survey No. 676, Vastral, Ahmedabad	Agricultural Land.
16.	Survey No. 705, Vastral, Ahmedabad	Agricultural Land.
17.	Survey No. 717, Vastral, Ahmedabad	Agricultural Land.
18.	Survey No. 718, Vastral, Ahmedabad	Agricultural Land.
19.	Survey No. 721, Vastral, Ahmedabad	Agricultural Land.
20.	Survey No. 981/2/1/ Vastral, Ahmedabad	Agricultural Land.
21.	Survey No. 981/2/1/B, Vastral, Ahmedabad	Agricultural Land.
22.	Survey No. 981/2/1/C, Vastral, Ahmedabad	Agricultural Land.
23.	Survey No. 981/2/1/ Vastral, Ahmedabad	Agricultural Land.
24.	Survey No. 981/2/1/E Vastral, Ahmedabad	Agricultural Land.
25.	Survey No. 178/1/ PAIKI Vastral, Ahmedabad	Agricultural Land.
26.	Survey No.266, Vastral, Ahmedabad	Agricultural Land.
27.	Survey No.268, Vastral, Ahmedabad	Agricultural Land.
28.	Survey No.1013, Vastral, Ahmedabad	Agricultural Land.
29.	Survey No.297, Bhadiad, Taluka: Dholera, Ahmedabad	Agricultural Land.

II. SCHEDULE OF LAND

Sr. No.	Account Number	Bank
1.	595501010051015	Union Bank of India, Vastral Branch
2.	595502010005275	Union Bank of India, Vastral Branch
3.	595501010050897	Union Bank of India, Vastral Branch
4.	101006772011	Ahmedabad District Cooperative Bank, Vastral
5.	000784600002569	Yes Bank, CG Road Branch, Ahmedabad

III. SCHEDULE OF FIRMS

Sr. No.	Name of the Firm	Particulars
1.	Khodiyar Corporation, Vastral	Partnership Firm involved in Bakery business in the name of "Shizen"
2.	Dabhan Gasoline LLP.	Limited Liability Partnership engaged in CNG Station of Gujarat Gas Ltd.

Moreover, petitioner no.2, being son, has filed the affidavit, *inter alia*, according to the consent that he has no objection if the petitioner no.1, his mother and wife of the patient, is declared as guardian of the properties of their father. Petitioner no.4, has also filed his affidavit, *inter alia*, stating that he has no objection if the petitioner no.1, i.e. the wife of the patient and his daughter-in-law, is appointed as a guardian. In the respective affidavits, they have set out the list of the movable and immovable properties. The excerpts of the affidavit of the petitioner no.2, are reproduced herein below:-

- “1. I state that my father Shri Karansinh Rajusinh Dodiya is in a comatose state since 2019 and the Petitioners herein are facing unsurmountable difficulties in managing the finances for the ongoing treatment of my father, and keeping up with the consistent requirements of financial affairs. Therefore, the present petition is filed before this Hon'ble Court praying for the appointment of my mother Anjuben Karansinh Dodiya i.e. the petitioner no. 1 as the guardian and manager of the properties of my father.
2. I say and submit that I have no objection for the appointment of my mother i.e. the petitioner no. 1 as a guardian and manager of the properties of my father and I hereby provide my express consent in writing by way of the present affidavit and I reiterate the averments made in the captioned writ petition. I say and submit that there are no other legal heirs of Mr. Karansinh Rajusinh Dodiya apart from the petitioners herein.
4. I state that, I hereby give my consent and pray that the Petitioner No. 1 i.e. my mother Anjuben K. Dodiya is declared as a Gaurdian and Manager of the properties of my father Mr. Karansinh Rajusinh Dodiya mentioned in the abovementioned schedules.”

Similarly, petitioner no.4 has also filed affidavit. Relevant paragraphs 1, 2 and 4 read thus:-

- “1. I state that my son Shri Karansinh Rajusinh Dodiya is in a comatose state since 2019 and the Petitioners herein are facing unsurmountable difficulties in managing the finances for the ongoing treatment of my father, and keeping up with

the consistent requirements of financial affairs. Therefore, the present petition is filed before this Hon'ble Court praying for the appointment of my daughter in law i.e. Anjuben Karansinh Dodiya i.e. the petitioner no. 1 as the guardian and manager of the properties of my father.

2. I say and submit that I have no objection for the appointment of my daughter in law i.e. the petitioner no. 1 as a guardian and manager of the properties of my son and I hereby provide my express consent in writing by way of the present affidavit and I reiterate the averments made in the captioned writ petition. I say and submit that there are no other legal heirs of Mr. Karansinh Rajusinh Dodiya apart from the petitioners herein.
4. I state that, I hereby give my consent and pray that the Petitioner No. 1 i.e. my daughter in law Anjuben K. Dodiya is declared as a Gaurdian and Manager of the properties of my son Mr. Karansinh Rajusinh Dodiya mentioned in the abovementioned schedules."

So far as petitioner no.3 is concerned, he being a minor, is being represented through the petitioner no.1.

8. This Court, has passed an order dated 01.07.2024, and the learned Assistant Government Pleader was required to see that the team of the medical experts, is deputed and the report, is filed. Apropos which, the City Deputy Collector (East) & SDM, has filed an affidavit together with the report dated 28.06.2024 of the team of doctors, who have visited and examined the patient on 26.06.2024. Relevant paragraphs of the affidavit, read thus:-

- "3. The present affidavit in reply is preferred for the limited purpose of placing on record the medical report of Mr. Karansinh Rajusinh Dodiya in compliance of order dated 06-03- 2024 passed by this Hon'ble Court directing the respondent no.2 to undertake the exercise of verifying the state of health of Mr. Karansinh Rajusinh Dodiya and file a medical report of the same. Since, the present affidavit is filled for such limited purpose, the merits of the present petition are not dealt with.
4. It is stated that pursuant to the order dated 06.03.2024 the office of the respondent no. 2 by way of its letter dated 19-03-2024 appointed the Medical Superintendent, Civil Hospital, Asarva, Ahmedabad to undertake the exercise of

verifying the state of health of Mr. Karansinh Rajusinh Dodiya and file a medical report of the same at the earliest in compliance of the order passed by this Hon'ble court.

5. It is submitted that the Medical Superintendent of Civil Hospital, Asarwa replied to the said communication dated 20-03-2024 with a letter dated 28.06.2024 whereby it is stated that a committee of six doctors of BJ medical college was constituted and Mr. Karansinh Rajusinh Dodiya was physically examined by the doctors of the committee and a report dated 26-06-2024 was prepared by the said committee wherein it is mentioned that the copies of the clinical summary of the patient are not provided to the committee and therefore requested to provide the same. The copies of the letter dated 28.06.2024 and report submitted by Medical Department of B.J. Medical College, Ahmedabad is annexed herewith and marked as **ANNEXURE-R1 Colly.**"

From the report, it is clear that the patient has suffered the injury and has undergone surgery and is bedridden, unconscious and in a vegetative state and is unable to communicate or speak with the family members.

9. Adverting to the legal aspect of the matter, pertinently, there are various legislation, namely, (i) The Guardian and Wards Act, 1890, (ii) The Code of Civil Procedure, 1908, (iii) The Indian Lunacy Act, 1912 (repealed), (iv) The Hindu Minority and Guardianship act, 1956, (v) The Mental Health Act, 1987 (repealed), (vi) The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (repealed), (vii) The National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999, (viii) The Rights of Persons with Disabilities Act, 2016 and the Mental Health Care Act, 2017. The said legislation, have been enacted dealing with the appointment of guardians for the respective purposes. So far as the persons in the comatose state is concerned, there is no legislative enactment providing for appointment of a guardian.

10. At this stage, relevant would the judgment in the case of

Shobha Gopalakrishnan (supra). It has been held that considering the role of the Court, jurisdiction under Article 226 of the Constitution of India springs up, when no remedy is provided under any statute to persons with “comatose state” and it is something like “*parens patriae*” jurisdiction. Paragraphs 34, 42 and 43 read thus:

“34. Similarly, the term “**Multiple Disabilities**’ (fifth head) reads as follows:

“5. Multiple Disabilities (more than one of the above specified disabilities) including deaf blindness which means a condition in which a person may have combination of hearing and visual impairments causing severe communication, developmental and educational problems.”

42. Considering the role of this Court, jurisdiction under Article 226 of the Constitution of India springs up, when no remedy is provided under any Statute to persons like patients in 'comatose state'. It is something like 'parens patriae' jurisdiction. A reference to the verdict in *Nothman vs. Barnet London Borough Council* [1978 (1)WLR 220] (at 228) is also relevant. In such cases, it is often said, Courts have to do what the Parliament would have done. A reference to the verdict in *Surjit Singh Karla vs. Union of India* and another [1991(2) SCC 87 explaining the principle of 'causes omissus' is also brought to the notice of this Court; to the effect that if it is an accidental omission, court can supply/fill up the gap. This Court however does not find it appropriate to "re-write" the provision, as it is within the exclusive domain of the Parliament. This is more so, when the relevant statutes like Mental Health Act, 1987 and PWD Act, 1995 came to be repealed, on introducing the new legislations, such as the Mental Healthcare Act 2017 and The Rights of persons with Disabilities Act, 2016 in conformity with the mandate of U.N.Convention, 2006. This Court does not say anything whether any amendment is necessary, also in respect of the National Trust Act for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (National Trust Act, 1999) with reference to the U.N.Convention 2006. It is for the Government to consider and take appropriate steps in this regard, as it is never for the Court to encroach into the forbidden field. This Court would only like to make it clear that, in so far as the case of a patient lying in 'comatose state' is not covered by any of the statutes, (as discussed above), for appointment of a Guardian, the petitioners are justified in approaching this court seeking to invoke the power under Article 226 of the Constitution of India. It is declared accordingly.

43. Coming to the incidental aspects; since no specific provision is

available in any Statutes to deal with the procedure for such appointment of Guardian to a victim lying in 'comatose state', it is necessary to stipulate some 'Guidelines', based on the inputs gathered by this Court from different corners, as suggested by the learned counsel for the petitioners, the learned Government Pleader and also by the learned Amicus Curiae, till the field is taken over by proper legislation in this regard. This Court finds it appropriate to fix the following norms/guidelines as a temporary measure:

i) petitioner/s seeking for appointment of Guardian to a person lying in comatose state shall disclose the particulars of the property, both movable and immovable, owned and possessed by the patient lying in comatose state.

ii) The condition of the person lying in comatose state shall be got ascertained by causing him to be examined by a duly constituted Medical Board, of whom one shall definitely be a qualified Neurologist.

iii) A simultaneous visit of the person lying in comatose state, at his residence, shall be caused to be made through the Revenue authorities, not below the rank of a Tahsildar and a report shall be procured as to all the relevant facts and figures, including the particulars of the close relatives, their financial conditions and such other aspects.

iv) The person seeking appointment as Guardian of a person lying in comatose state shall be a close relative (spouse or children) and all the persons to be classified as legal heirs in the due course shall be in the party array. In the absence of the suitable close relative, a public official such as 'Social Welfare officer' can be sought to be appointed as a Guardian to the person lying in 'comatose state'.

v) The person applying for appointment as Guardian shall be one who is legally competent to be appointed as a Guardian vi) The appointment of a Guardian as above shall only be in respect of the specific properties and bank accounts/such other properties of the person lying in comatose state; to be indicated in the order appointing the Guardian and the Guardian so appointed shall act always in the best interest of the person lying in 'comatose state'.

vii) The person appointed as Guardian shall file periodical reports in every six months before the Registrar General of this Court, which shall contain the particulars of all transactions taken by the Guardian in respect of the person and property of the patient in comatose state; besides showing the utilization of the funds received and spent by him/her.

viii) The Registrar General shall cause to maintain a separate Register with regard to appointment of Guardian to persons

lying in 'comatose state' and adequate provision to keep the Reports filed by the Guardian appointed by this Court.

ix) It is open for this Court to appoint a person as Guardian to the person lying in comatose state, either temporarily or for a specified period or permanently, as found to be appropriate.

x) If there is any misuse of power or misappropriation of funds or non-extension of requisite care and protection or support with regard to the treatment and other requirements of the person lying in comatose state, it is open to bring up the matter for further consideration of this Court to re-open and revoke the power, to take appropriate action against the person concerned, who was appointed as the Guardian and also to appoint another person/public authority/Social Welfare Officer (whose official status is equal to the post of District Probation Officer) as the Guardian.

xi) It shall be for the Guardian appointed by the Court to meet the obligations/duties similar to those as described under Section 15 of the National Trust Act and to maintain and submit the accounts similar to those contained in Section 16.

xii) The Guardian so appointed shall bring the appointment to the notice of the Social Welfare Officer having jurisdiction in the place of residence, along with a copy of the verdict appointing him as Guardian, enabling the Social Welfare Officer of the area to visit the person lying in 'comatose state' at random and to submit a report, if so necessitated, calling for further action/interference of this Court .

xiii) The transactions in respect of the property of the person lying in 'comatose state', by the Guardian, shall be strictly in accordance with the relevant provisions of law. If the Guardian appointed is found to be abusing the power or neglects or acts contrary to the best interest of the person lying in 'comatose state', any relative or next friend may apply to this Court for removal of such Guardian.

xiv) The Guardian appointed shall seek and obtain specific permission from this Court, if he/she intends to transfer the person lying in comatose state from the jurisdiction of this Court to another State or Country, whether it be for availing better treatment or otherwise."

11. In another judgment of the High Court of Allahabad in the case of *Uma Mittal & Others vs. Union of India* reported in AIR 2020 All 202, it has been held that there is no legislative enactment providing for appointment of a guardian for a person lying in the

comatose state. The Court, in its extraordinary jurisdiction under Article 226 of the Constitution of India, may act as *parens patriae* and can pass the orders by issuing necessary directions for subserving the ends of justice. It has been held that the Court cannot shirk its responsibility when a distress call is given by a sinking family of a person lying in a comatose state. Paragraphs 20 to 27 are reproduced hereunder for ready reference:

“20. Now the question arises that when there is no legislative enactment, providing for appointment of a guardian for a person lying in a comatose state, how the matter with regard to appointment of guardian should be dealt with. We cannot lose sight of the fact that we have been called upon to discharge 'parens patriae' jurisdiction. The Court under Article 226 of the Constitution of India can pass orders and given directions as are necessary for subserving the ends of justice when no remedy is provided in any statute in respect to persons lying in comatose condition.

21. The doctrine of Parens Patriae (father of the country) had originated in British law as early as the 13th century. It implies that the King is the father of the country and is under obligation to look after the interest of those who are unable to look after themselves. The idea behind 'Parens Patriae' is that if a citizen is in need of someone who can act as a parent who can make decisions and take some other action, sometimes the State is best qualified to take on this role.

22. In the Constitution Bench decision of this Court in Charan Lal Sahu vs. Union of India (1990) 1 SCC 613 (vide paras 35 and 36), the doctrine has been explained in some detail as follows:

"In the "Words and Phrases" Permanent Edition, Vol. 33 at page 99, it is stated that parens patriae is the inherent power and authority of a legislature to provide protection to the person and property of persons non sui juris, such as minor, insane, and incompetent persons, but the words parens patriae meaning thereby 'the father of the country', were applied originally to the King and are used to designate the State referring to its sovereign power of guardianship over persons under disability. Parens patriae jurisdiction, it has been explained, is the right of the sovereign and imposes a duty on the sovereign, in public interest, to protect persons under disability who have no rightful protector. The

connotation of the term *parens patriae* differs from country to country, for instance, in England it is the King, in America it is the people, etc. The government is within its duty to protect and to control persons under disability".

23. The duty of the King in feudal times to act as *parens patriae* (father of the country) has been taken over in modern times by the State.

24. The Apex Court in the case of *Shafin Jahan* (*supra*) has further expanded the jurisdiction of the Court in application of doctrine of *parens patriae* and has held as under:

"45. Thus, the Constitutional Courts may also act as *Parens Patriae* so as to meet the ends of justice. But the said exercise of power is not without limitation. The courts cannot in every and any case invoke the *Parens Patriae* doctrine. The said doctrine has to be invoked only in exceptional cases where the parties before it are either mentally incompetent or have not come of age and it is proved to the satisfaction of the court that the said parties have either no parent/legal guardian or have an abusive or negligent parent/legal guardian.

46. Mr. Shyam Divan, learned senior counsel for the first respondent, has submitted that the said doctrine has been expanded by the England and Wales Court of Appeal in a case *DL v. A Local Authority and others* 19. The case was in the context of "elder abuse" wherein a man in his 50s behaved aggressively towards his parents, physically and verbally, controlling access to visitors and seeking to coerce his father into moving into a care home against his wishes. While it was assumed that the elderly parents did have capacity within the meaning of the Mental Capacity Act, 2005 in that neither was subject to "an impairment of, or a disturbance in the functioning of the mind or brain", it was found that the interference with the process of their decision making arose from undue influence and duress inflicted by their son. The Court of Appeal referred to the judgment in *Re: SA (Vulnerable Adult with Capacity : Marriage)* 20 to find that the *parens patriae* jurisdiction of the High Court existed in relation to "vulnerable if 'capacitous' adults". The cited decision of the England and Wales High Court (Family Division) affirmed the existence of a "great safety net" of the inherent jurisdiction in relation to all vulnerable adults. The term "great safety net" was coined by Lord Donaldson in the Court of Appeal judgment which was later quoted with approval by the House

of Lords in *In Re F (Mental Patient: Sterilisation)*²¹. In paragraph 79 of *Re: SA (Vulnerable Adult with Capacity : Marriage)*, Justice Munby observes:"

The inherent jurisdiction can be invoked wherever a vulnerable adult is, or is reasonably believed to be, for some reason deprived of the capacity to make the relevant decision, or disabled from making a free choice, or incapacitated or disabled from giving or expressing a real and genuine consent. The cause may be, but is not for this purpose limited to, mental disorder or mental illness. A vulnerable adult who does not suffer from any kind of mental incapacity may nonetheless be entitled to the protection of the inherent jurisdiction if he is, or is reasonably believed to be, incapacitated from making the relevant decision by reason of such things as constraint, coercion, undue influence or other vitiating factors."

25. Thus, a perusal of the aforesaid decisions clearly indicates that the Constitutional Courts may also act as *parens patriae* so as to meet the ends of justice. The Constitutional Courts in the country have exercised *parens patriae* jurisdiction in the matter of child custody, treating the issue of custody of a child to be of paramount concern. Similarly, the doctrine has been invoked in cases where a person who is mentally retarded, is produced before a Court in a writ of Habeas Corpus. These are the rare situations, when the Court can invoke the aforesaid doctrine.

26. In our opinion, in the present case this Court cannot shirk its responsibility when a distress call is given by a sinking family of a person lying in a comatose state for the past year and a half. The dominant factor, after all, is not enforcement of rights guaranteeing protection of life of warring parties under Article 226 of the Constitution but the protection of the rights of a human being lying in a comatose state under Article 21 of the Constitution of India. The Court under Article 226 can pass orders and give direction as are necessary for subserving the ends of justice or to protect the person who is lying in a vegetative state. Under the circumstances, this Court, under Article 226 of the Constitutions of India, is the ultimate guardian of a person who is lying in a comatose/vegetative state and may provide adequate relief of appointment of a Guardian.

27. It may be noted that the Division Bench of Kerala High Court in the case of *Shobha Gopalakrishnan (supra)* has framed certain broad guidelines with regard to appointment of guardian qua a person lying in a comatose state since no specific provision was available in any statute in this regard, The guidelines framed by the Division Bench of Kerala High Court appear to be formidable and sound and, therefore,

can be used as framework for formulating guidelines that need to be implemented in the State of Uttar Pradesh till such time, the legislative enactments are framed and specific provisions are made as to how guardians are to be appointed qua persons in a comatose state.”

12. Further, in the case of *Kumudben Arvindbhai Vadera vs. State of Gujarat* reported in 2020 GLH (4) 507 this Court, while accepting the plea of the petitioner therein, appointed her as a guardian by incorporating various conditions. In another judgment in the case of *Vijailakshmi Acharya & Others vs. State of Tamil Nadu* rendered in Writ Petition No.6926 of 2021 and WMP No.7486 of 2021, the High Court of Madras, while adopting the doctrine of *parens patriae*, appointed the wife as a guardian of the patient, in a comatose state.

13. Therefore, the common thread running through all the judgments is that the Constitutional Courts, may also act as *parens patriae* so as to meet the ends of justice. Therefore, while respectfully agreeing with the law enunciated by various High Courts, so also the nature of the doctrine of *parens patriae*, this Court, under Article 226 of the Constitution of India, proposes to pass the present order, giving necessary directions.

14. As has been noted herein above, the petitioner no.1, has prayed for declaring her as a guardian and further to deal with the movable and immovable properties of the patient as indicated in paragraph 5, which has been reproduced herein above. Moreover, the legal heirs of the patient are the petitioner no.1 and her two sons and father-in-law, who have also filed their respective affidavits, indicating that they have no objection if the petitioner no.1 is appointed as a guardian of the patient and also to deal with the movable and immovable properties. So far as the medical condition of the patient is concerned, the team of doctors, so also

the medical treatment of the hospital where the patient, has taken the treatment, indicates that the patient, is not competent to make and execute any decision. It is also not in dispute that the patient is not in a position to take care of himself and is totally dependent on others.

15. In view of the above discussion, the present writ petition, deserves to be entertained, declaring the petitioner no.1 as a guardian of the patient, i.e. Karansinh Rajusinh Dodiya, who is in the state of coma since the year 2019. Therefore, the petitioner no.1 – Anjuben Karansinh Dodiya, is ordered to be declared as a guardian of the patient, i.e. Karansinh Rajusinh Dodiya and manager of the movable and immovable properties belonging to the patient, i.e. Karansinh Rajusinh Dodiya mentioned at paragraph 5 of the writ petition. The petitioner no.1, having been appointed as a guardian and manager, is permitted and authorised to operate the movable and immovable properties, including the lands, bank accounts of the patient, i.e. Karansinh Rajusinh Dodiya and the partnership firms.

16. With a view to seeing that the present order is adhered to and is observed in its true letter and spirit and that there is no breach, following conditions are necessitated:

- i. The petitioner no.1 - guardian, shall act always in the best interest of the patient suffering from “comatose state” and shall be responsible for medical care and treatment.
- ii. The petitioner no.1 – guardian shall file, every three months, a report with the Registrar General, High Court of Gujarat, adverting to the transactions undertaken by the petitioner no.1 – guardian in respect of the movable and

immovable properties as indicated in paragraph 5 of the writ petition. Besides, the report shall also indicate the funds, if any, received by the guardian and their utilization, for the purpose of maintaining the patient.

iii. The Registrar General, High Court of Gujarat, shall cause a separate register to be maintained which shall set out, *inter alia*, the details of the proceedings, the details of the person appointed as a guardian and orders, if any, passed after the appointment of the guardian. Measures shall also be taken by the Registrar General, High Court of Gujarat to preserve the reports filed by the petitioner no.1 – guardian from time to time.

iv. It should be ensured that there is no misuse of the power or misappropriation of the funds and if, there is, any, or there is no requisite care and protection or support with regard to the treatment being extended to the patient, it will be open to place the matter for further consideration of this Court and to reopen and revoke the power, to take appropriate action against the petitioner no.1 – guardian. It will be also open for the Court to appoint another person/public authority/Social Welfare Officer as the guardian.

v. It shall be the duty of the petitioner no.1 – guardian to meet the obligations/duties similar to those as described under Section 15 and to maintain and submit the accounts similar to those contained in Section 16 of the National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities” Act, 1999.

vi. The petitioner no.1 – guardian, shall intimate her

appointment to the public official/Social Welfare Officer or officer of the equivalent rank designated by the State Government. The petitioner no.1 – guardian as well as the Registrar General, High Court of Gujarat, will cause a copy of this order of guardianship being served upon such officer. Such officer, shall visit the person lying in comatose state at least twice in a month and will generate report of his/her visit. If it is found that the petitioner no.1 – guardian is not acting in the best interest of the patient lying in comatose state, such officer will be at liberty to file appropriate application before this Court at the earliest, seeking appropriate directions.

vii. The transactions in respect of the movable and immovable properties of the patient by the petitioner no.1 – guardian, shall be strictly in accordance with the provisions of law. If the petitioner no.1 – guardian is found to be abusing the power or neglects or acts contrary to the best interest of the patient lying in comatose state, it will be open to any relative or next friend to apply to this Court for removal of such guardian.

viii. In case a relative or a next friend of the patient lying in a comatose state finds that the guardian is not acting in the best interest of the patient, such person will also have the locus to approach this Court for issuance of appropriate directions and/or for removal of the guardian.

ix. The petitioner no.1 - guardian shall seek and obtain specific permission from this Court, if he/she intends to transfer the patient lying in a comatose state from the jurisdiction of this Court to another State and/or Country,

whether it be for availing better treatment or otherwise.

17. Needless to say that this order shall remain operative until the patient, i.e. Karansinh Rajusinh Dodiya, remains in comatose state.

18. With the aforesaid directions, the petition is partly allowed. Rule is made absolute to the aforesaid extent. No order as to costs.

19. Let the copy of this order be circulated to the Registrar General, High Court of Gujarat for information and necessary compliance.

BINOY B PILLAI

Sd/-
(SANGEETA K. VISHEN,J)