

**2023 STPL(Web) 14 HP**  
**HIGH COURT OF HIMACHAL PRADESH**

(HON'BLE MR. JUSTICE SANDEEP SHARMA, J.)

**CHITTER LEKHA**

Petitioner

*VERSUS*

**GENERAL PUBLIC AND OTHERS**

Respondents

FAO No. 509 of 2017-Decided on 4-7-2023

**Civil**

**Mental Health Act, 1987 – Section 50, 51, 52, 53, 54, 76, - Mental Health Act – Appointment of guardian for person of unsound mind -** Rejection of application – Approach to High Court – Held: Provisions contained under Ss. 51 and 52, if read in conjunction clearly suggests that application for appointment of legal guardian or manager in respect of a person of unsound mind can only be decided on the basis findings returned by learned District Judge qua the issue of unsoundness of mind of the person concerned which he/she would assess on the basis of report submitted by Assessors appointed in terms of S.50(4). No such exercise done - Rejection of application quashed and set aside, with a direction to learned court below to decide the question of unsoundness of Ms. Usha afresh, taking into consideration provisions contained under Ss. 50 to 54 of the 1987 Act. Petition stands disposed of in afore terms, alongwith all pending applications.

(Para 11, 17)

Advocate(s): For the Petitioner: Mr. G.D. Verma, Senior Advocate with Mr. Hitesh Thakur, Advocate.  
For the Respondents: Respondent No.1 served. Mr. Mohit Sharma, Advocate vice Mr. Vishal Bindra, Advocate, for respondents Nos. 2 and 3. Mr. Lovneesh Kanwar, Senior Advocate with Mr. Tek Chand, Advocate, for respondent No.4.

**JUDGMENT**

**Sandeep Sharma, Judge (oral):** Instant appeal filed under S.76 of Mental Health Act, 1987 (hereinafter, 'Act'), lays challenge to judgment dated 30.6.2017, passed by learned District Judge, Sirmaur District at Nahan, Himachal Pradesh in petition No. 1-G&W/2 of 2016/13, preferred by the petitioner/appellant (hereinafter, 'appellant') under Ss. 53 and 54 of the Act, seeking therein to appoint her as a legal guardian in respect of Ms. Usha, allegedly a person of unsound mind.

2. Precisely, the facts of the case, as emerge from the record, are that the appellant herein filed an application under Ss.53 and 54 of Act, praying therein to appoint her as a legal guardian in respect of Ms. Usha Devi, a person of mentally unsound mind and further permit her to operate and open savings bank account in the name of Usha as her guardian as per law for the benefit of person of unsound mind.

3. Aforesaid prayer made on behalf of the appellant came to be seriously opposed by the respondents namely Tejaswi Singh, Usha widow of Shiv Raj and Smt. Roop Lekha, who are related to Usha, person of unsound mind. Since no cogent and convincing evidence ever came to be placed on record qua mental illness of Ms. Usha, on behalf of appellant, learned court below dismissed the petition as detailed herein above. In the aforesaid background, appellant has approached this court in the instant proceedings, praying therein to set aside impugned order

4. I have heard learned counsel for the parties and perused the material available on record.

5. Mr. Verma submitted that in the case at hand, inadvertently, petition under Ss.53 and 54 of Act was filed by the appellant but even then, learned court below ought not have dismissed the same on the ground that no cogent and convincing evidence ever came to be led on record qua mental illness of Ms. Usha, rather, it ought to have ordered for enquiry in terms of provisions contained under S.50(4) of the Act. He submitted that after receipt of report of Assessors appointed in terms of S.50(4) of the Act, Court could consider prayer made on behalf of the appellant for her being appointed as legal guardian of mentally ill person namely Usha.

6. Mr. Lovneesh Kanwar, Senior Advocate duly assisted by Ms. Anchal Sharma, Advocate representing respondent No. 4,, while supporting the impugned order passed by learned court below, vehemently argued that since there was a specific prayer made on behalf of the appellant to appoint her as Legal

Guardian of Usha, there was otherwise no occasion for learned court below to order for inquisition in terms of S.50 of the Act. He submitted that bare perusal of application filed by the appellant under Ss. 53 and 54 clearly reveals that the appellant wanted her to be appointed as legal guardian of Usha on the ground that said person is of unsound mind. Mr. Kanwar submitted that bare perusal of pleadings as well as evidence nowhere suggests that the appellant was able to prove on record mental illness of Ms. Usha and as such, no illegality can be said to have been committed by the learned court below, while passing the order impugned in the instant proceedings.

7. Having heard learned counsel for the parties and perused material available on record vis-à-vis reasoning assigned in the order impugned in the instant proceedings, this court finds that there is no provision contained under Ss. 53 and 54 of the Act, which enable a party to directly approach court for being appointed as legal guardian of the person of unsound mind. Bare perusal of provisions contained under Ss. 53 and 54 nowhere suggests that the party can directly come to the court for being appointed as legal guardian of person of unsound mind, rather provisions contained under Ss. 53 and 54 of the Act, empowers court to order appointment of legal guardian of a mentally ill person, if there is a specific report made pursuant to enquiry ordered in terms of provisions of S.50(4) that the person is incapable of taking care of himself and managing his property. At this stage, it would be apt to take note of provisions contained under Ss. 50 to 54 of the Act, which are reproduced as under:

“50. Application for judicial inquisition.—

(1) Where an alleged mentally ill person is possessed of property, an application for holding an inquisition into the mental condition of such person may be made either— (a) by any of his relatives, or (b) by a public curator appointed under the Indian Succession Act, 1925 (39 of 1925), or (c) by the Advocate-General of the State in which the alleged mentally ill person resides, or (d) where the property of the alleged mentally ill person comprises land or interest in land, or where the property or part thereof is of such a nature as can lawfully be entrusted for management to a Court of Wards established under any law for the time being in force in the State, by the Collector of the District in which such land is situate, to the District Court within the local limits of whose jurisdiction the alleged mentally ill person resides.

(2) On receipt of an application under sub-section (1), the District Court shall, by personal service or by such other mode of service as it may deem fit, serve a notice on the alleged mentally ill person to attend at such place and at such time as may be specified in the notice or shall in like manner, serve a notice on the person having the custody of the alleged mentally ill person to produce such person at the said place and at the said time, or being examined by the District Court or by any other person from whom the District Court may call for a report concerning the mentally ill person: Provided that, if the alleged mentally ill person is a woman, who according to the custom prevailing in the area where she resides or according to the religion to which she belongs, ought not to be compelled to appear in public, the District Court may cause her to be examined by issuing a commission as provided in the Code of Civil Procedure, 1908 (5 of 1908).

(3) A copy of the notice under sub-section (2) shall also be served upon the applicant and upon any relative of the alleged mentally ill person or other person who, in the opinion of the District Court, shall have notice of judicial inquisition to be held by it. (4) For the purpose of holding the inquisition applied for, the District Court may appoint two or more persons to act as assessors.

51. Issues on which finding should be given by District Court after inquisition.—On completion of the inquisition, the District Court shall record its findings on,— (i) whether the alleged mentally ill person is in fact mentally ill or not, and (ii) where such person is mentally ill, whether he is incapable of taking care of himself and of managing his property, or incapable of managing his property only.

52. Provision for appointing guardian of mentally ill person and for manager of property.—

(1) Where the District Court records a finding that the alleged mentally ill person is in fact mentally ill and is incapable of taking care of himself and of managing his property, it shall make an order for the appointment of a guardian under section 53 to take care of his person and of a manager under section 54 for the management of his property.

(2) Where the District Court records a finding that the alleged mentally ill person is in fact mentally ill and is incapable of managing his property but capable of taking care of himself, it shall make an order under section 54 regarding the management of his property.

(3) Where the District Court records a finding that the alleged mentally ill person is not mentally ill, it shall dismiss the application.

(4) Where the District Court deems fit, it may appoint under subsection (1) the same person to be the guardian and manager. 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.

54. Appointment of manager for management of property of mentally ill person.—

(1) Where the property of the mentally ill person who is incapable of managing it is such as can be taken charge of by a Court of Wards under any law for the time being in force, the District Court shall authorise the Court of Wards to take charge of such property, and thereupon notwithstanding anything contained in such law, the Court of Wards shall assume the management of such property in accordance with that law.

(2) Where the property of the mentally ill person consists in whole or in part of land or of any interest in land which cannot be taken charge of by the Court of Wards, the District Court may, after obtaining the consent of the Collector of the District in which the land is situate, direct the Collector to take charge of the person and such part of the property or interest therein of the mentally ill person as cannot be taken charge of by the Court of Wards.

(3) Where the management of the property of the mentally ill person cannot be entrusted to the Court of Wards or to the Collector under sub-section (1) or sub-section (2), as the case may be, the District Court shall appoint any suitable person to be the manager of such property.

8. Provisions contained under S.50 clearly provide that whenever application is made by a relative of person alleged to be mentally ill, public curator or by the Advocate General of the State, in which the alleged mentally ill person resides, that such mentally ill person is possessed of property, court may order enquiry by appointing two or more persons to act as Assessors.

9. Apart from the persons detailed herein above, where property of mentally ill person comprises of land or interest in land, or where the property or part thereof is of such a nature as can lawfully be entrusted for management to a Court of Wards established under any law for the time being in force in the State, Collector of District may also apply for judicial inquisition in terms of S. 50. On completion of inquisition, district court, may record its finding on the issue whether the alleged mentally ill person is in fact mentally ill or not, and where such person is mentally ill, whether he is incapable of taking care of himself and of managing his property, or incapable of managing his property only.

10. After having recorded findings qua aforesaid issues, District Court shall make an order for the appointment of a guardian under S. 53 or for appointment of a manager under S.54 for the management of his property. Where the District Court records a finding that the alleged mentally ill person is in fact mentally ill and is incapable of managing his property but capable of taking care of himself, it shall make an order under section 54 regarding the management of his property. Where the District Court records a finding that the alleged mentally ill person is not mentally ill, it shall dismiss the application. Where the District Court deems fit, it may appoint under sub-section (1) the same person to be the guardian and manager.

11. Careful perusal of provisions contained under Ss. 51 and 52, if read in conjunction clearly suggests that application for appointment of legal guardian or manager in respect of a person of unsound mind can only be decided on the basis findings returned by learned District Judge qua the issue of unsoundness of mind of the person concerned which he/she would assess on the basis of report submitted by Assessors appointed in terms of S.50(4). 12. Bare perusal of provisions contained under S.53 under which application was filed by the petitioner itself suggests that 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, meaning thereby no direct application if any, under Ss. 53 and 54 of the Act for appointment of a legal guardian, is otherwise maintainable.

13. Till the time, person is not declared of unsound mind or mentally ill by District Judge in terms of Ss.50 and 51 of the Act, no prayer if any made by persons detailed in S.50(a) to (d) can straightway come to court under Ss. 53 and 54 for being appointed as legal guardian.

14. In the instant case, there is no dispute qua the fact that the appellant straightway, without there being any declaration from learned District Judge with regard to unsoundness of person concerned, approached learned District Judge for appointment as legal guardian and the court below, without understanding the entire scheme of the chapter, proceeded to dismiss the application on the ground that no cogent and convincing evidence ever came to be led on record by the appellant that Ms. Usha is a person of unsound mind.

15. Though, aforesaid petition under Ss. 53 and 54 as filed by appellant was not maintainable, but yet learned court below, with a view to do substantive justice, could always order inquisition by invoking provisions contained under S.50 of the Act, as taken note herein above. Before rendering finding if any on application detailed above, learned court below could appoint Assessors in terms of S.50(4) and after submission of report, if any, by them, could specifically return finding with regard to issue of unsoundness of the person concerned, as per provisions contained under S.51.

16. Since in the case at hand, no procedure as detailed in Ss. 51 and 52 ever came to be followed by learned court below, impugned order passed on the application under Ss. 53 and 54 filed by the applicant cannot be said to be legally sustainable.

17. Consequently, in view of above, present petition is allowed. Impugned order 30.6.2017, passed by learned District Judge, Sirmaur District at Nahan, Himachal Pradesh in petition No. 1-G&W/2 of 2016/13 is quashed and set aside, with a direction to learned court below to decide the question of unsoundness of Ms. Usha afresh, taking into consideration provisions contained under Ss. 50 to 54 of the 1987 Act. Petition stands disposed of in afore terms, alongwith all pending applications. 18. Learned counsel for the parties undertake to cause presence of their respective parties, on 19.7.2023, enabling it proceed further with the matter.

19. Since matter is hanging for a long time, this court hopes and trusts that issue detailed herein above, shall be decided by learned court below expeditiously, preferably within a period of six weeks.

20. Interim order dated 3.1.2018 passed by this court, shall remain in force till the disposal of the case afresh by learned court below and thereafter same would be governed by final decision of the case.

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