

## **DEALING WITH A MINOR'S PROPERTY: ESSENTIAL REQUIREMENTS**

**Author - Paritosh Tomar,**

**Managing Associate, Luthra & Luthra Law offices**

The need to provide for the protection of a minor-in person as well as the minor's property, led to the enactment of the Guardian and Wards Act, 1890 (hereinafter referred to as the '1890 Act') which was enacted as an Act to consolidate and amend the law relating to Guardians and Wards. Subsequently, the Hindu Minority and Guardianship Act, 1956 (hereinafter referred to as the '1956 Act') was enacted to amend and codify certain parts of the law relating to minority and guardianship among 'Hindus'<sup>1</sup> specifically. The 1956 Act is supplemental to the 1890 Act and is to be interpreted as being in addition to the 1890 Act unless specifically provided otherwise<sup>2</sup>.

A 'minor'<sup>3</sup> by law is defined as one who has not completed eighteen years of age. It is presumed by law that such a person is incapable of taking rational and intelligible

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<sup>1</sup> Section 3. Application of Act.—(1) This Act applies,— (a) to any person who is a Hindu by religion in any of its forms or developments, including a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or AryaSamaj; (b) to any person who is a Buddhist, Jain or Sikh by religion, and (c) to any other person domiciled in the territories to which this Act extends who is not a Muslim, Christian, Parsi or Jew by religion unless it is proved that any such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed. Explanation.—The following persons are Hindus, Buddhists, Jains, or Sikhs by religion, as the case may be:— (i) any child, legitimate or illegitimate, both of whose parents are Hindus, Buddhists, Jains or Sikhs by religion; (ii) any child, legitimate or illegitimate, one of whose parents is a Hindu, Buddhist, Jain or Sikh by religion and who is brought up as a member of the tribe, community, group or family to which such parent belongs or belonged; and (iii) any person who is convert or re-convert to the Hindu, Buddhist, Jain or Sikh religion. (2) Notwithstanding anything contained in sub-section (1) nothing contained in this Act shall apply to the members of any scheduled Tribe within the meaning of clause (25) of article 366 of the Constitution unless the Central Government, by notification in the Official Gazette, otherwise directs. 1 [(2A) Notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the Renoncants of the Union Territory of Pondicherry.] (3) The expression "Hindu", in any provision of this Act shall be construed as if it included a person who, though not a Hindu by religion, is, nevertheless, a person to whom this Act applies by virtue of the provisions contained in this section.

<sup>2</sup> Section 2. Act to be supplemental to Act 8 of 1890.—The provisions of this Act shall be in addition to, and not, save as hereinafter expressly provided, in derogation of, the Guardians and Wards Act, 1890 (8 of 1890).

<sup>3</sup> 4. Definitions.—In this Act,— (a) "minor" means a person who has not completed the age of eighteen years

decisions by themselves and would require a ‘guardian’<sup>4</sup> -a person who has completed eighteen years of age and is of sound mind, to act on behalf of the minor in dealing with its person or property. Dealing with a minor’s property stands on a different footing as there are additional statutory safeguards that must be complied with. Section 8 of the 1956 Act reads as follows:

*“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.*

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<sup>4</sup> 4. Definitions.—In this Act,— (b) “guardian” means a person having the care of the person of a minor or of his property or of both his person and property, and includes— (i) a natural guardian, (ii) a guardian appointed by the will of the minor’s father or mother, (iii) a guardian appointed or declared by a court, and (iv) a person empowered to act as such by or under any enactment relating to any Court of wards. (c) “natural guardian” means any of the guardians mentioned in section 6.

*(5) The Guardians and Wards Act, 1890 (8 of 1890), shall apply to and in respect of an Application for obtaining the permission of the court under sub-section (2) in all respects as if it were an Application for obtaining the permission of the court under section 29 of that Act, and in particular—*

*(a) proceedings in connection with the Application shall be deemed to be proceedings under that Act within the meaning of section 4A thereof;*

*(b) the court shall observe the procedure and have the powers specified in sub-sections (2), (3) and (4) of section 31 of that Act; and*

*(c) an appeal shall lie from an order of the court refusing permission to the natural guardian to do any of the Acts mentioned in sub-section (2) of this section to the court to which appeals ordinarily lie from the decisions of that court.*

*(6) In this section, “Court” means the city civil court or a district court or a court empowered under section 4A of the Guardians and Wards Act, 1890 (8 of 1890), within the local limits of whose jurisdiction the immovable property in respect of which the Application is made is situate, and where the immovable property is situate within the jurisdiction of more than one such court, means the court within the local limits of whose jurisdiction any portion of the property is situate.”*

A perusal of Section 8(1) would denote that while the power of the natural guardian to deal with the minor’s property is recognized, such power is subject to the safeguards inserted in the section itself. A natural guardian, wishing to deal with a minor’s estate, must do only such acts as are ‘necessary or reasonable and proper’ for the benefit of the minor or for the ‘realization, protection or benefit’ of the minor’s estate. In *Sh. Manik Chand & Anr. V Sh. Ramchandra*<sup>5</sup>, while dismissing the plea that in a contract for the purchase of property, the guardian would be

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<sup>5</sup> (1980) 4 SCC 22

binding the minor by his personal covenant, the Hon'ble Apex Court held that after passing of the 1956 Act, the guardian of a Hindu minor has power to do all acts which are necessary or reasonable and proper for the benefit of the minor or for realization, protection or benefit of the minor's estate, meaning thereby that the guardian is entitled to act so as to bind the minor if it is necessary or reasonable and proper for the benefit of the minor. The power conferred by this section is in no way more restricted than what was recognized under Hindu law. The guardian, therefore, stands in a fiduciary role *qua* the minor, in a representative capacity before the Court and the Court is mandated by the statute to scrutinize the acts of the guardian in 'dealing' with the minor's property to satisfy itself that the acts of the guardian are indeed aimed at securing the best interests of the minor *only* and not for the guardian himself, or for any other ulterior motive. The guardian has substantial legal capacity and full contractual powers to act on behalf of the minor. The restriction on his powers is that he must act for the benefit of the minor and not to his detriment<sup>6</sup>. What constitutes 'necessary or reasonable and proper' depends on the peculiar facts of each case. This is an exercise of the *parens patriae* jurisdiction that the Court wields over minors.

Therefore, anyone wishing to 'deal' with a minor's property must first obtain the requisite permission from Court by filing an Application under Section 8 of the 1956 Act read with Section 29 of the 1890 Act praying for such permission to be granted. In this sense, proceedings under an Application under Section 8 of the 1956 Act read with Section 29 of the 1890 Act are not adversarial *per se*. It is more a question of satisfying the conscience of the Court that the proposed mortgage or charge, or transfer by sale, gift, exchange or otherwise of the minor's share in immovable property is for 'necessity or evident advantage'<sup>7</sup> to the minor

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<sup>6</sup> AIR 1985 Del 153

<sup>7</sup> Section 8(4) Hindu Minority and Guardianship Act, 1956

Therefore, some essential requirements to be incorporated in an Application under Section 8 of the 1956 Act read with Section 29 of the 1890 Act would be:

- (i) ***Credentials of the Applicant:*** The relation of the Applicant with the minor must be mentioned and details of the Applicant regarding occupation, residence etc. must be stated.
- (ii) ***Title documents:*** The original/certified documents of the title deeds of the minor's property/minor's share in property must be filed. Often, the Court summons the concerned official from the office of the Sub-Registrar to satisfy itself of the veracity of the title documents.
- (iii) ***Material particulars of the transaction:*** By way of averments made in the Application, the requirements of "*necessary or reasonable and proper for the benefit of the minor or for the realization, protection or benefit of the minor's estate*" as occurring in S. 8(1) must be satisfied. The reasons for selling the property/minor's share and the steps taken to secure the interest of the minor must be incorporated in the Application.

Apart from the above, the Court may also give directions regarding filing of an affidavit by the Applicant stating the details of the family members of the minor and/or pass orders for a proclamation to be issued in newspaper(s) having sufficient circulating in the place where the minor resides. This is done to ascertain if any other person, not arrayed in the Application, asserts a better claim than the Applicant viz. the interest of the minor. In the event of appearance of such a person, the objections raised by it are duly heard and considered by the court.

The Court seized of the Application under Section 8 of the 1956 Act read with Section 29 of the 1890 Act is a 'Civil Court' and exercises all the powers of an ordinary civil court.

The Court may also examine the Applicant or such other persons as it may deem necessary under Order X of the Code of Civil Procedure, 1908 to ascertain the *bona fides* of the Applicant preferring the Application.

Section 8(3) of the 1956 Act specifically provides for Court's prior permission to be taken before encumbering the minor's property in any way and if the same is not done, the sale would be voidable at the instance of the minor upon attaining majority, or through any other person claiming under him. The same has been held by the Hon'ble Supreme Court in a catena of judgments<sup>8</sup>.

It is often confused that letters of administration must be obtained for dealing with a minor's property. It is pertinent here to note that letters of administration relate only to 'succession' matters once a person has died, either intestate or by leaving behind a Will. Section 8 of the 1956 Act read with Section 29 of the 1890 Act relate to transfer of the property of a minor *inter vivos*. Further, Sections 244-246 of the Indian Succession Act, 1925 pertain only to minors being executors or legatees claiming an interest to the estate of the deceased.

Therefore, to avoid any future complications from arising when buying or otherwise dealing with a minor's property, it is expedient to first take the permission of the Court under Section 8 of the 1956 Act read with Section 29 of the 1890 Act and then proceed with the transaction. A carefully drafted Application which complies with the statutory provisions and satisfies the incisive interrogation of the Court exercising its *parens patriae* jurisdiction obviates difficulties from arising in the future.

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<sup>8</sup> Saroj v Sunder Singh & Ors.<sup>8</sup> (2013) 15 SCC 727, Vishwambar & Ors v Lakshminarayan(Dead thr. LRs) & Anr. (2001) 6 SCC 163, Divya Dip Singh & Ors. V Ram Bachan Mishra & Ors. (1997) 1 SCC 504