



**Reserved On : 07/08/2026**

**Pronounced On : 01/09/2026**

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/SPECIAL CIVIL APPLICATION NO. 534 of 2025**

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE MR. JUSTICE J. C. DOSHI**

**Sd/-**

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|------------------------|-----|----|
| Approved for Reporting | Yes | No |
|                        |     | No |

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**PRAVINABEN HIMMATLAL KAVAR & ORS.**

**Versus**

**ALPABEN CHINTALKUMAR KAVAR AS A GUARDIAN OF  
KHUSHI CHINTALKUMAR KAVAR**

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**Appearance:**

MR JAMSHED KAVINA(11236) for the Petitioner(s) No. 1,2,3,4

MR SP MAJMUDAR(3456) for the Petitioner(s) No. 1,2,3,4

MR DHARUVIN A CHHAYA(12305) for the Respondent(s) No. 1

MR N P PANDYA(11241) for the Respondent(s) No. 1

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**CORAM:HONOURABLE MR. JUSTICE J. C. DOSHI**

**CAV JUDGMENT**

1. By way of invoking extraordinary jurisdiction vested under Article 227 of the Constitution of India, the petitioners pray for the following relief/s:-

*“(A) YOUR LORDSHIPS may be pleased to issue a writ of mandamus/ certiorari or a writ in the nature of mandamus/certiorari or any other appropriate writ, order or*



*direction quashing and setting aside dated 30.12.2024 passed by the Principal District Judge Morbi in Civil Miscellaneous Application No.07/2023 below Exh.56 (ANNEXURE-E) in the interest of justice;*

*(B) During the pendency and final disposal of the present petition, YOUR LORDSHIPS may be pleased to stay the implementation of the order dated 30.12.2024 passed by the Principal District Judge Morbi in Civil Miscellaneous Application No.07/2023 below Exh.56 (ANNEXURE-E) and further be pleased to direct the respondent and her assignees (if any) to maintain status quo with regard to the land in question;*

*(C) Pass any such other and/or further orders that may be thought just and proper, in the facts and circumstances of the present case;”*

2. The brief facts of the case are that, the original petitioner - Alpaben Kavar, as the natural guardian and next best friend of the minor, filed application under Section 29 of the Guardians & Wards Act, 1890 (hereinafter referred to as the ‘GW Act’) praying the relief before the learned District Court, Morbi to grant a permission to sell the undivided share of minor - Khushi in the land of Survey No.92 Paiki 1, Paiki 2, admeasuring 1-50-68 Hectare Are sq.mtr. in village Barwala, District: Morbi (hereinafter referred to as the ‘suit land’) *inter alia* on the ground that petitioner - Alpaben married to Chintalkumar and out of the wedlock, she gave birth to a minor daughter – Khushi, who at the time of filing the application was 6 years old.

2.1 The husband of the original petitioner, namely Chintalkumar died on 04.06.2021. Since then, the mother became the natural guardian of the minor – Khushi.



2.2 Deceased Chintalkumar died leaving behind the suit land, which was inherited by the petitioner - Alpaben and minor daughter Khushi jointly.

2.3 The original petitioner preferred the application for the purpose of seeking the permission to sell the suit land for the better life, education and welfare of the minor Khushi.

2.4 The petitioner herein filed objection to the aforesaid petition, whereby the learned District Court, after permitting both the parties to lead the evidence, pleased to pass the conditional order on 30.12.2024 permitting the petitioner to sell the undivided share of minor Khushi in the suit land while imposing certain conditions.

2.5 Being aggrieved, the petitioners have filed the petition with the aforesaid reliefs.

3. Heard learned advocate Mr. Jamshed Kavina appearing for the petitioners and learned advocate Mr. N.P. Pandya appearing for the respondent.

4. Learned advocate Mr. Jamshed Kavina referred to the judgment of the Bombay High Court between **Kamna d/o Satyanarayan Handibag v. Satyanarayan s/o Chatrabhuj Handibag**, reported in **2012(6) Mh. L.J. 434** and submitted that the learned District Court has committed serious error in granting permission to sell the share in the land jointly standing in the name of the original petitioner and minor girl.



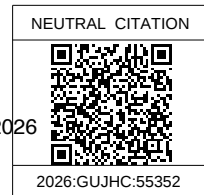
4.1 He would further further submit that the welfare of the child is paramount while deciding the issue that whether the permission for selling the undivided share is to be granted or not.

4.2 He would further submit that, in the present case, on going through the evidence on record, it appears that the learned trial Court has permitted the original petitioner to sell the share of minor at a meager price, whereas during the course of cross-examination, petitioner have offered three times more amount than the sale price. However, the learned District Court ignored the said proposition and committed serious error.

4.3 He would further submit that the Doctrine of *parens-patriae* is to be applied by the learned District Court while making a scrutiny of the issue. Oversight thereof landed the impugned order in illegality.

4.4 He would further submit that in the case where mother acted against the welfare of the minor and further tried to sell the immovable property at a very meager price and thus, he submitted that such selling at the meager price is not in the interest of minor.

4.5 He would further submit that even petitioner failed to prove necessity to sell the immovable property and yet, the learned trial Court in ignorance of provision of the law as well as fact, passed the impugned, unjust and illegal order, and therefore, submitted to allow the Special Civil Application and to quash and set aside the impugned judgment and order.

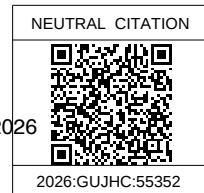


4.6 As far as maintainability of the Special Civil Application is concerned, he would submit that in view of Section 8(5)(c) of the Hindu Minority and Guardianship Act, 1956 (hereinafter referred to as the 'Act of 1956') read with Section 29 of the 'GW Act', an appeal shall lie from an order of the Court refusing permission to the natural guardian to do any of the act mentioned in sub-section (2) of Section 8 of the 'Act of 1956', but if a permission has been granted, no remedy is provided to the aggrieved person by the law to file any appeal and in that event, the aggrieved person cannot be left remediless and thus, the petitioners have filed the Special Civil Application under Article 227 of the Constitution of India. In support of this submission, he referred to the judgment in First Appeal No. 346 of 2022 of this Court.

4.7 In view of above, he submitted to allow this petition and to quash and set aside the impugned judgment and order and to dismiss the Civil Misc. Application.

5. *Per contra*, learned advocate Mr. N.P. Pandya appearing for the other side - original petitioner supports the impugned judgment and submits that the Special Civil Application is not maintainable.

5.1 He would further submit that, under Article 227 of the Constitution of India, this Court cannot deal with the facts of the case. The supervisory jurisdiction under Article 227 of the Constitution of India is limited to find out that whether any error, much less factual error, has been committed by the



learned trial Court, which is in the nature of flagrant abuse or violation of fundamental Principle of law or justice.

5.2 He would submit that, in the present case, petitioners under the guise of filing the Special Civil Application insist that this Court should reappraise the evidence on record, reweigh them as available under the first appeal. He would submit that, under the Special Civil Application, it is not permissible to recapitulate the facts of the case or to sift and weigh the evidence again. Therefore, he submitted that this petition should be dismissed at the threshold with cost.

5.3 He referred to the judgment of this Court in First Appeal No. 332 of 2008 with Special Civil Application No. 3080 of 2009 in support of his contention and submitted to dismiss this petition.

6. Having heard learned advocates for both sides, at the outset, I may refer to the judgment of the Honourable Supreme Court in the case of **Garment Crafts v. Prakash Chand Goel**, reported in **(2022) 4 SCC 181**, whereby the Honourable Supreme Court has examined the ambit and scope of Article 227 of the Constitution of India. Para 15 and 16 of the judgment being relevant are extracted as under:-

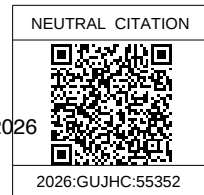
*“15. Having heard the counsel for the parties, we are clearly of the view that the impugned order is contrary to law and cannot be sustained for several reasons, but primarily for deviation from the limited jurisdiction exercised by the High Court under Article 227 of the Constitution of India. The High Court exercising supervisory jurisdiction does not act as a court of first appeal to*



*reappreciate, reweigh the evidence or facts upon which the determination under challenge is based. Supervisory jurisdiction is not to correct every error of fact or even a legal flaw when the final finding is justified or can be supported. The High Court is not to substitute its own decision on facts and conclusion, for that of the inferior court or tribunal [Celina Coelho Pereira (Ms) and Others v. Ulhas Mahabaleshwar Kholkar and Others, (2010) 1 SCC 217]. The jurisdiction exercised is in the nature of correctional jurisdiction to set right grave dereliction of duty or flagrant abuse, violation of fundamental principles of law or justice. The power under Article 227 is exercised sparingly in appropriate cases, like when there is no evidence at all to justify, or the finding is so perverse that no reasonable person can possibly come to such a conclusion that the court or tribunal has come to. It is axiomatic that such discretionary relief must be exercised to ensure there is no miscarriage of justice.*

*16. Explaining the scope of jurisdiction under Article 227, this Court in Estralla Rubber v. Dass Estate (P) Ltd., (2001) 8 SCC 97 has observed:-*

*“6. The scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the Constitution of India is examined and explained in a number of decisions of this Court. The exercise of power under this article involves a duty on the High Court to keep inferior courts and tribunals within the bounds of their authority and to see that they do the duty expected or required of them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the subordinate courts or tribunals. Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected. It is also well settled that the High Court while acting under this article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record.*

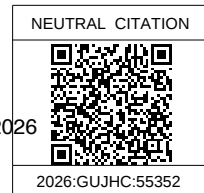


*The High Court can set aside or ignore the findings of facts of an inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the court or tribunal has come to.”*

7. Considering the scope and ambit of exercising of power and jurisdiction by the High Court under Article 227 of the Constitution of India, which is to keep inferior Courts and tribunals within the bounds of their authority and to see that they do the duty expected or required of them in a legal manner. The High Court, which is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decision made within the limit of the jurisdiction of the subordinate Court or tribunals, permits to exercise power of interfering with the orders of the Court or tribunal is restricted to the case of serious dereliction of the duty and flagrant violation of the fundamental principle of law or justice, whereby it is demand that if High Court does not interfere, a grave injustice remains uncorrected.

8. Needless to state that the High Court exercising the supervisory jurisdiction under Article 227 of the Constitution of India does not act as a Court of first appeal to reappreciate, reweigh the evidence or facts upon which the determination under challenge is based.

9. Coming to the facts of the case, petitioner has filed a Civil Misc. Application No.7 of 2023 under Section 20 of the ‘GW Act’ read with Section 29 of the ‘GW Act’ seeking permission to sell the undivided share of minor Khushi involved in a suit land along with the petitioner herself.



10. The learned District Court is expected to adjudicate the matter on the Principle of applying Doctrine of *parens patriae*. The welfare of the minor is paramount while deciding the alienation of the minor's property. The Principle of 'Best interest of the child' has to be observed throughout. However, looking to the nomenclature of Sections 6 and 8 of the 'Act of 1956', which is an enabling provision by which the Court can exercise the jurisdiction to permit the natural guardian to alienate any of the property of a minor, it does not seem to be in adversarial form.

11. Here, the Court exercising the role of *parens patriae* has to judicially scrutinize the best interest of the child and if found, can give the permission to the guardian to sell the undivided share.

12. Section 6 of the 'Act of 1956' defines 'the natural guardian of Hindu minor' and whereas, Section 8 defines 'Powers of the natural guardians'. Section 6 reads as under:-

***“6.Natural guardians of a Hindu minor.-***

*The natural guardians of a Hindu, minor, in respect of the minor's person as well as in respect of the minor's property (excluding his or her undivided interest in joint family property), are-*

*(a) in the case of a boy or an unmarried girl-the father, and after him, the mother: provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother;*

*(b) in the case of an illegitimate boy or an illegitimate unmarried girl-the mother, and after her, the father;*

*(c) in the case of a married girl-the husband;*

*Provided that no person shall be entitled to act as the natural guardian of a minor under the provisions of this section-*

*(a) if he has ceased to be a Hindu, or*

*(b) if he has completely and finally renounced the world by becoming a hermit ( vanaprastha ) or an ascetic (yati or sanyasi )*

*Explanation.- In this section, the expressions 'father' and 'mother' do not include a step-father and a step-mother.”*

12.1 Section 8 reads as under:-

**“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 realisation, 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 by 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*

*the case of necessity or for an evident advantage to the minor.*

*(5) The Guardians and Wards Act, 1890 (8 of 1890), shall apply to and in respect of an application for obtaining 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 Guardian 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.”*

13. In view of Section 6(a) in case of unmarried girl, firstly, the father is natural guardian and after him, the mother with the proviso that the custody of a minor, who has not completed the age of 5 years, shall ordinarily be with the mother. By virtue of Section 6, the natural guardian would be in respect of the minor's person as well as in respect of minor's property, excluding his or her undivided interest in the joint family property.



14. Under Section 8, the natural guardian of the Hindu minor has power 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 such act of the guardian would not bind the minor by a personal covenant.

14.1 Section 8(2) provides that, the natural guardian shall not without the previous permission of the Court transfer, alienate or change the hand of any part of the immovable property of minor or shall not lease the part of such property for a term exceeding 5 years.

14.2 By Section 8(3), the minor has been given authority to set any alienation made by the natural guardian in violation of Section 8(1) or Section 8(2) as voidable none other.

14.3 Section 8(4) defines that what the Court has to do while granting a permission to the natural guardian to do any act mentioned in Section 8(2). It states that the Court shall not grant permission except in case of necessity or for evident advantage of the minor.

15. In view of above, what particularly comes out considering Section 8(3) of the 'Act of 1956' that, if any immovable property of the minor is alienated without following Section 8(1) or 8(2) of the 'Act of 1956', only minor can set it as voidable or any person claiming under him and not any third party. Therefore, no third party has been given any right to

question the disposal of the immovable property by a natural guardian or objecting to the application filed by the natural guardian, seeking disposal of the immovable property of the minor. What is necessary and evident is to see that the petitioner establishes necessity of sale or such sale or disposal is in an evident advantage to the minor.

16. The Supreme Court in case of ***Shephali Chakraborty v. The State of West Bengal***, reported in **2026 LiveLaw (SC) 597** examined the purport of law in detail. Para 7 to 14 read as under:-

*"7. Having appreciated the distinction between ex post and ex ante, we delve into Section 8 of the HMGA, which is an example of the latter. It governs the powers, limitations and consequences of a guardian's actions in respect of a minor's property. It reads:*

*"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 subsection (2) except in case of necessity or for an evident advantage to the minor.*

*(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."*

*It is divided into four substantive parts-Part I- General powers of a natural guardian; Part II - Restrictions on alienation of immovable property; Part III Legal effect of unauthorized alienation; and Part IV- Standard to be applied by the Courts in adjudicating the application.*

*Under sub-section (1), a natural guardian is permitted to perform all acts that are necessary or reasonable for the benefit of the minor or for the protection and proper management of the minor's estate. This power is framed in broad terms, recognising that day-to-day management often requires flexibility. However, the statute is careful to make this authority expressly subject to the restrictions contained*

*in sub-section (2), thereby making it clear that managerial powers do not extend to unfettered rights of disposition.*

*Sub-section (2) draws a clear line when it comes to dealings with immovable property. It prohibits a natural guardian from selling, gifting, exchanging, mortgaging, or otherwise encumbering a minor's immovable property without first obtaining the permission of the Court. The same restriction applies to leases that are longterm in nature, namely those exceeding five years or extending beyond one year after the minor attains majority. The requirement of prior judicial approval reflects legislative caution against transactions that could permanently affect the minor's proprietary rights.*

*The consequences of violating these restrictions are addressed in sub-section (3). A transaction entered into by the guardian without the requisite Court permission is not void ab initio, but voidable at the instance of the minor or any person claiming through the minor. This distinction is significant. It preserves the minor's right, upon attaining majority, to either affirm the transaction or seek its avoidance, depending on whether it ultimately serves their interests.*

*Sub-section (4) guides the Court in deciding whether permission should be granted in the first place. The Court must be satisfied that the proposed transaction is either necessary or demonstrably for the benefit of the minor. Courts have consistently applied this standard with a degree of strictness, placing the burden squarely on the guardian to justify the transaction. Considerations of family's convenience or the guardian's personal obligations are, in our view, insufficient unless they can be shown to translate into a tangible advantage for the minor.*

*Section 8, therefore, embodies the principle that a natural guardian holds the minor's property in a fiduciary capacity. The provision seeks to balance potentially competing interests, i.e., allowing practical management of the minor's estate and subjecting, what may be, irreversible decisions to judicial scrutiny, thereby ensuring that the welfare of the minor remains paramount.*



8. Principles as can be deduced from various judgments of this Court are:

1. Section 8 imposes a statutory restraint on the powers of a natural guardian in respect of a minor's immovable property and requires prior permission of the concerned Court for alienation as a protective measure. [Vishwambhar & Ors. v. Laxminarayan, (2001) 6 SCC 163]

2. An alienation of a minor's immovable property made without the permission contemplated under Section 8(2) is not void ab initio but voidable at the instance of the minor or any person claiming through the minor. [Vishwambhar & Ors. v. (supra)]

3. The right to avoid unauthorized alienation accrues to the minor upon attaining majority and must be exercised within the period of limitation prescribed by law. [Nangali Amma Bhavani Amma v. Gopalkrishnan Nair, (2004) 8 SCC 785]

4. Avoidance under Section 8(3) need not necessarily be effected through a formal declaratory suit and may be manifested through clear and unequivocal conduct inconsistent with the continued validity of the transaction, provided such conduct occurs within limitation. [K. S. Shivappa v. Smt. K. Neelamma, 2025 INSC 1195]

5. Reliefs such as recovery of possession or assertion of exclusive title are contingent upon the prior avoidance of the impugned alienation, and so long as the transaction remains unavowed, it continues to bind the minor's interest. [Murugan & Ors. v. Kesava Gounder (Dead) through LRs, (2019) 20 SCC 633]

6. Section 8 governs alienation of a minor's separate or self-acquired property and does not apply to alienation of undivided joint family property effected in accordance with traditional principles of Hindu law. [Sri Narayan Bal & Ors. v. Sridhar Sutar & Ors., (1996) 8 SCC 54]

7. The requirement of prior permission under Section 8 is rooted in the welfare of the minor and must be applied purposively, with reference to whether the transaction is



*necessary or demonstrably beneficial to the minor. [See generally, G. Annamalai Pillai v. District Revenue Officer & Ors., (1993) 2 SCC 402]*

*8. By rendering unauthorized alienations voidable rather than void, Section 8 balances the protection of a minor's proprietary interests with the need to preserve certainty and stability in property transactions. [See generally, Vishwambhar & Ors. (supra)]*

*9. The requirement of judicial oversight when it comes to the protection of the interests of a minor, is an example of the doctrine of parens patriae as embedded with Section 8. Before going further, a brief detour to the origins of this doctrine and its manifestations in the Indian Legal System, would be, in our view, justified.*

*10. The doctrine of parens patriae, translates to "parent of the nation," and emanates from the idea that the State bears a moral and legal responsibility toward those who are incapable of safeguarding their own interests. It emerges at the intersection of several strands of political and legal theory that challenge a purely formal conception of autonomy. In the liberal tradition, John Stuart Mill, in On Liberty, John W. Parker and Son (1859) famously articulated the harm principle, arguing that State interference with individual liberty is generally unjustified except to prevent harm to others. Crucially, however, Mill expressly excluded children and persons lacking full rational capacity from the scope of this principle, recognising that autonomy presupposes capacity. This implicit exception opens normative space for protective intervention. More recently, Martha Albertson Fineman, Robert W. Woodruff Professor of Law, Emory University School of Law, Georgia, USA through works such as The Autonomy Myth: A Theory of Dependency, The New Press (2004) and The Vulnerable Subject, 20 Yale Journal of Law and Feminism 1 (2008), has reframed the debate entirely by arguing that vulnerability is a universal and enduring feature of the human condition, and that the State has an affirmative obligation to design institutions that respond to this vulnerability. Here itself we may take note of the fact that in Indian classical tradition this doctrine was well established. We may only take one*

*example as to what Kautilya has said: The king shall provide the orphans, (bála), the aged, the infirm, the afflicted, and the helpless with maintenance. He shall also provide subsistence to helpless women when they are carrying and also to the children they give birth to. Elders among the villagers shall improve the property of bereaved minors till the latter attain their age; so also the property of Gods (Kautilya's Arthashastra, translated by R. Shamasastri).*

*In the pages of history, it is found that this responsibility vested in the English Crown, which was regarded as the ultimate guardian of infants and persons of unsound mind or mental incapacity. Eventually, this function came to be in the domain of the Courts where the modus operandi was not the usual adversarial method and instead, a continuing and supervisory jurisdiction, informed by considerations of welfare rather than strict legal entitlement. It is this equitable conception of judicial responsibility that travelled into colonial legal systems, including India, and continues to inform modern constitutional and statutory frameworks.*

*In Annie Besant v. G. Narayaniah, 1914 SCC OnLine PC 40, it was made clear that in matters concerning minors, Courts do not enforce parental or proprietary rights but act solely to secure the welfare of the child. This reasoning was reinforced decades later in McKee v. McKee, [1951] 1 All ER 942 where the Privy Council held that a Court exercising jurisdiction over a child cannot abdicate its responsibility by mechanically enforcing foreign custody orders. The decisive consideration, irrespective of comity or prior determinations, is the welfare and happiness of the child. These decisions illustrate the core parens patriae feature: the Court's obligation is independent, non-deferential, and welfare-centric.*

*Post-independence, this doctrine has acquired constitutional significance. The expansive interpretation of Article 21, read with Article 15(3), are substantive instances of the commitment to protection of dignity, development, and care. The Court's authority to do so is not a creation of statute but emanates from its constitutional role in giving practical*



*meaning to fundamental rights where vulnerability undermines autonomy.*

*11. Statutorily, the legal regime also has many such examples. The Guardians and Wards Act, 1890 exemplifies the classical parens patriae structure. Section 7 empowers Courts to appoint a guardian only where such appointment is necessary for the welfare of the minor while Section 17 directs the Court to be guided exclusively by welfare considerations rather than claims of right. Importantly, the Act provides for continuous judicial control even upon duly appointed guardians, particularly in matters involving the minor's property. These provisions firmly establish the idea that guardianship is a Court- supervised responsibility.*

*A similar logic operates within the Code of Civil Procedure, 1908, especially Order XXXII. By prohibiting minors and persons of unsound mind from conducting litigation on their own, and by mandating the courts to appoint guardians ad litem, the Code requires active intervention on the part of the Court in furtherance of access to justice and ensuring that litigation does not become a site of exploitation or prejudice.*

*Modern welfare legislation makes the doctrine even more explicit. We take two examples. The Juvenile Justice (Care and Protection of Children) Act, 2015 is premised on the understanding that parental authority may fail, and that the State must be prepared to step in as a surrogate caregiver. The powers vested in Child Welfare Committees to remove children from harmful environments, place them in institutional or foster care, and supervise rehabilitation represent a direct exercise of parens patriae. The State here does not merely regulate family relations; it assumes responsibility for the child's holistic well-being.*

*The Mental Healthcare Act, 2017 is another such example. The statute balances the autonomy of an individual vis-à-vis those circumstances in which informed consent becomes difficult/impossible. In such cases, Mental Health Review Boards, and Courts are authorised to appoint representatives, and take all steps as may be necessary in the interest of the person/patient. This framework*

*exemplifies how parens patriae translates into ground reality.*

*In the Bharatiya Nagarik Suraksha Sanhita, 2023, parens patriae, can be seen across many Sections. For example, Section 35(7) restricts the arrest of elderly and infirm persons for less serious offences without the prior approval of a senior officer. Custodial safeguards such as Section 46 (no unnecessary restraint), requirements to inform persons of the grounds of arrest and their rights (Sections 47-48), and provisions for the medical examination of the accused (Sections 51-53) ensure dignity and welfare in custody. In addition to this, Section 398 provides for witness protection schemes, reflecting care for witnesses at risk during proceedings.*

*12. Considering all the above examples, a clear pattern can be discernible. Authority, held privately of whatever nature is never absolute. 'Welfare' supersedes all else as the governing standard. Courts and statutory bodies do not merely adjudicate disputes; they assume responsibility. Philosophy, constitutional values, common law tradition, and statutory provisions show that parens patriae is not a doctrine of narrow application, but an important tool to protect interests wherever vulnerability displaces agency.*

*13. Similar to Section 8 HGMA, other jurisdictions also have the requirement of Court approval. For instance, Section 1821 of the German Civil Code (Accessible at: [https://www.gesetze-iminternet.de/englisch\\_bgb/englisch\\_bgb.html#p7021](https://www.gesetze-iminternet.de/englisch_bgb/englisch_bgb.html#p7021)) enjoins the guardian to seek ratification from the Family Court if they seek to dispose of a plot of land among other things and Section 1822 similarly lists out scenarios in which permission is required. Similarly, Sections 387-1 and 387-3 of the French Civil Code (Original version in the French Accessible at: [https://www.legifrance.gouv.fr/codes/article\\_lc/LEGIART1000031322948/2026-01-15](https://www.legifrance.gouv.fr/codes/article_lc/LEGIART1000031322948/2026-01-15)) lists out activities which the guardian of the minor cannot do without prior permission of the guardianship judge.*

*14. In such a case as the present one, at the core of the Court's duty is the responsibility to safeguard the welfare of*

*the minor, a principle that goes beyond consent or convenience. While the approval of a guardian may indicate familial agreement which is well established to be a power of limited nature. In Hunooman Persaud Panday v. Mussumat Babooee Munraj Koonweree, 1856 SCC OnLine PC 7, the Privy Council observed: "... The power of the Manager for an infant heir to charge an estate not his own, is, under the Hindoo law, a limited and qualified power. It can only be exercised rightly in a case of need, or for the benefit of the estate. But where, in the particular instance, the charge is one that a prudent owner would make, in order to benefit the estate, the bona fide lender is not affected by the precedent mismanagement of the estate. The actual pressure on the estate, the danger to be averted, or the benefit to be conferred upon it, in the particular instance, is the thing to be regarded...". It cannot replace the Court's independent assessment of the minor's interests. The Court concerned needs to meticulously examine whether any proposed arrangement could compromise the child's present or future rights, taking into account that the minor cannot fully comprehend or appreciate the consequences of such transactions. The best interest of the child is not passive consideration but a vigorous principle that requires foresight, caution, and meticulous scrutiny in every matter affecting the minor's property-'for an evident advantage to the minor.*

*In assessing the merits of any transaction, the Court must evaluate the likely advantages against the risks. It must determine whether the minor will receive benefits that are secure, measurable and enforceable. At the same time, it must remain vigilant to possible negative effects such as diminution of value, delay in realization of benefits, or exposure to ventures that could prejudice the minor's undivided share. This evaluation of risk and benefit ensures that sanction of any arrangement is on the basis of child's genuine welfare properly balanced against convenience of adult co-owners.*

*Even where a guardian consents to the arrangement, as in this case, the Court must ensure that adequate safeguards are in place to protect the minor's interests. Such safeguards are not intended to restrict the legitimate rights of adult co-owners but to preserve the minor's stake in the property in a*

*manner. At the same time, the Court should be aware that not only the child in question but also adult co-owners possess lawful rights to derive reasonable benefit from the property. The presence of a minor should not unduly limit the ability of adults to engage in productive or economically beneficial transactions. The task of the Court is to reconcile these interests carefully, enabling everyone including adults to utilize the property in ways that do not undermine or impair the minor's security or future options."*

17. Having considered the aforesaid dictum, the Court is required to see that though there is no legal challenge to the impugned judgment and order, the Court, yet examined on the factual matrix that whether the decision of the learned District Court to permit the petitioner to sell the undivided share of the minor Khushi is true and correct from the point of view of best interest of child or to her advantage.

18. In para 13, 14 and 15, the learned District Court has given the following reasons to permit the petitioner to sell the undivided share of minor Khushi, which are translated from Gujarati to English and extracted as under:-

*"13. Considering the available record and documentary evidence in this matter, the disputed property was acquired by the minor Khushi's father, Chitalkumar, with independent ownership rights in the year 2009, and copies of the revenue records pertaining to this have been produced as documentary evidence vide Mark-44 in this matter. Upon looking at the entries in this document, it is proved that the disputed property was acquired by Chitalkumar Himatlal Kavar with independent ownership rights. Not only this, for removing his own name, Chitalkumar's father Himatlal Bhanjibhai had made an affidavit in favor of deceased Chitalkumar, Pravinaben Himatlal and Rinaben Himatlal on*



*Date: 22/04/2008, and according to that affidavit, out of the disputed property Survey No. 92, 1 Hectare Are. Sq.M. 3-18-58 was acquired by Pravinaben Himatlal (Minor's grandmother), Chitalkumar (Minor's father), Rinaben Himatlal (Minor's aunt). For which a mutation entry has been entered in the revenue record and it has continued accordingly. Thereafter, regarding the minor's grandmother Pravinaben Himatlal and minor's aunt Rinaben Himatlal Patel having relinquished their rights from the disputed property, an affidavit was executed on Date: 04-06-2009, and all their rights of any kind from the disputed property were willingly and voluntarily relinquished in favor of minor Khushi's father Chitalkumar Himatlal. Thus, from the year 2009 until deceased Chitalkumar passed away in the year 2016, the disputed property continued in the revenue records solely and exclusively in the independent ownership and physical possession of deceased Chitalkumar Himatlal Kavar. The very first objection was raised by the objectors of this matter, Pravinaben Himatlal Kavar and Rinaben Himatlal Kavar and Himatlal Bhanjibhai Kavar, before the Collector in the year 2022, which objection has been rejected in the year 2023, and an order has been passed by the competent revenue authority in favor of the applicant minor Khushi Chitalkumar and her mother Alpaben regarding the disputed property. Which order has not been challenged anywhere by the objectors and therefore the order remains permanent. Thus, after a period of 12 years had elapsed since deceased Chitalkumar acquired the disputed property with full ownership rights, the objection raised has been cancelled by the competent authority. Regarding the said property, the objectors Pravinaben Himatlal Kavar or other objectors Raghavjibhai Bhanjibhai, Manibhai Bhanjibhai, Jayantibhai Bhanjibhai having any kind of share, right-interest, or authority, they have not instituted any kind of legal proceedings anywhere. And hence Pravinaben Himatlal Kavar and Himatlal Bhanjibhai Kavar and Rinaben Himatlal Kavar had established it by relinquishing their rights in favor of Chitalkumar and his heirs, it remains permanent, and against it, none of the objectors have even the slightest right or authority to raise an objection, as this court believes. And therefore, the various arguments advanced by the learned advocate for the objectors, Shri V.M. Jethloja, and the objections produced vide Mark-28 and*



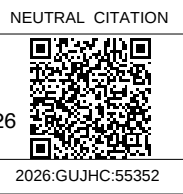
*Mark-33, and the documentary evidence produced in support thereof, the evidence from Mark-46 to Mark-55, are in favor of the objectors and are not liable to be admitted against the applicant party, as this court believes. At this stage, it is necessary to note that, Himatlal Kavar had sold the property acquired by him through inheritance rights in his share to Nilamben Vrajlal Radiya via registered sale deed on Date: 25-07-2022. Hence, this court believes that the objections of the objector party are not tenable.*

*14. The owner of the disputed property in this matter was deceased Chitalkumar Himatlal Kavar; that Chitalkumar Himatlal Kavar died intestate. Therefore, it is necessary to look at Section-8 of the Hindu Succession Act. As stated in Section-8, the property of a Hindu male dying intestate devolves firstly upon the heirs of Class-I, secondly upon Class-II and Class-III, and finally as given in the Schedule. Heirs of Class-I and Class-II include son, daughter, widow, mother. The applicant Khushi Chitalkumar is the daughter of deceased Chitalkumar. As her guardian, the applicant Alpaben is the wife of the deceased. Pravinaben, who submitted the objection vide Mark-28, is the mother of the deceased. Hence, all these three heirs are included in the Schedule of Class-I. Now, when Pravinaben Himatlal Kavar relinquished all kinds of rights-interests, authority in favor of Chitalkumar in the year 2009, that relinquishment of rights-interests, authority has been complied with by the institution established by law and that order remains permanent till date. Then, out of the heirs of deceased Chitalkumar, only 2 heirs remain as mentioned in the Schedule of Class-I, and they are the applicant party in this matter. Apart from them, there being no other heir, the disputed property of deceased Chitalkumar is acquired solely and exclusively by Alpaben Chitalkumar and minor Khushi Chitalkumar as per law. Furthermore, the objections raised vide Mark-33, they are the uncles of Chitalkumar by relation, so they are included in Class-II(4). When the heirs of Class-I are alive, the heirs of Class-II do not acquire any right in the property of the deceased in any way. Hence also, the objections raised vide Mark-28 and Mark-33 are not tenable. Not only this, regarding the application and the documentary evidence produced with the application, it cannot be believed that the*



*documentary evidence has been falsely created merely for the purpose of making the present application. Whatever transaction has taken place regarding the disputed property between Chitalkumar's parents and sister, it took place 12 years prior to this application; all those documentary evidences have been produced in this matter. There is no reason to believe that they are fabricated or false, and therefore, the objections raised by the objector party are not acceptable.*

*15. In this matter, the main objective of the law under which the present application has been made by the applicant party is to protect the interests of the minor and to ensure that the interests of the minor are not harmed. Alpaben is the mother of the minor daughter of Chitalkumar. As she herself is less educated, she indicates her inability to provide appropriate education or upbringing to the minor. Then, so that the minor's future is secure, she receives proper study, proper education, and the minor can live her life properly, if permission is granted to sell the acquired property, the minor's future will become good and secure, and therefore if permission is granted, no harm is going to occur. As far as the question of the minor ceasing to be an agricultural khatedar (account holder) is concerned, as per the submission of the applicant party, agricultural land in the name of the minor will be purchased within the prescribed time limit as per the rules of the Government, and due to this, she will continue as an agricultural khatedar and will not cease to be one, hence the objection raised by the objector party that she will cease to be so, is believed by this court to be not admissible. The learned advocate for the objectors has produced the judgment of the Hon'ble Punjab and Haryana High Court in the case of Meena Davar vs. General Public in Civil Revision No. 920/2021 dated 08/07/2021. In the said judgment, there was a dispute regarding joining the grandparents as parties in the application, wherein the principle established is that, while granting permission to sell the minor's share, the court should very carefully consider all aspects. Only for necessity and apparent benefit should permission for sale be granted. In this matter, the minor cannot do farming and obtain agricultural produce in the property acquired by her from her*



*father. The objectors have not raised any objection nor is there any evidence that the minor can get farming done through someone else and obtain agricultural produce. Now, when the minor cannot use this property, then only for the benefit of the minor, the property should be sold and whatever market value is received from it should be used for the good future of the minor and for the benefit of the minor, so that a secure future is built for the minor; what could be a better alternative than this?. Under such circumstances, keeping in mind the principle in the judgment of the Hon'ble Punjab and Haryana High Court, but the application of the applicant party being admissible, nevertheless keeping in mind the minor's future and until she attains adulthood regarding the specific amount she receives, making a suitable arrangement by keeping it as a fixed deposit in the bank for a specific term for the purpose of her future expenses, subject to the condition of her receiving the interest, this court believes to be proper, just and appropriate.”*

*(Translated from Gujarati to English for better understanding)*

19. On reappreciating the finding, I find that the learned trial Court has not committed any error. In the case on hand, the grandmother and some of the uncles of deceased Chintalkumar came forward to object the petition filed before the learned District Court.

20. The factual matrix requires a glance that the husband of petitioner – Alpaben - Chintalkumar is expired. Now, petitioner – Alpaben is living separately along with the minor Khushi and in para 4 of the petition, she has stated that she is not getting any agricultural produce from the agricultural land. Petitioner is less educated, she has no independent income and she is not in a position to bear the expenses for minor's



education and other living expenses, and therefore, it compelled the petitioner to sell the undivided share of minor.

21. According to this Court, the objector, although did not bothered to maintain the minor or widow of Chintalkumar, who are otherwise a part of the Kavar family, came forward to harass them, making frivolous objections without any *locus-standi*. According to this Court the learned District Court has rightly permitted Alpaben for selling the undivided share of minor Khushi in the suit land.

22. It is also noticeable that the objector having no *locus-standi* to question the petition filed by the petitioner, dragged the petitioner in a long drawn litigation. Petitioner, a widow of Chintalkumar Kavar and natural guardian of minor Khushi, asked the relief to permit to sell the undivided share of minor for the welfare of the minor Khushi. Perhaps, the petitioners herein have some personal grievance with the original petitioner – Alpaben.

23. The facts reveals that the son of the petitioner No.1 herein expired and now his widow, original petitioner – Alpaben for any reasons is not residing in her matrimonial home. The agricultural land was purchased by Chintalkumar and on his death, it is inherited in favor of Alpaben and minor Khushi. Alpaben being a natural guardian of minor Khushi intends to sell the share in the immovable property, which could not have been bear by the petitioners herein and therefore, they have involved the original petitioners in this extended litigation. This is nothing but sheer abuse of the process of the Courts.



24. In view of above, according to this Court, the petition, neither legally nor factually, is maintainable and deserves the fate of only dismissal, that too, with cost.

25. Before parting with the judgment, the judgments which learned advocate Mr. Jamshed Kavina relies upon, are factually distinguishable and thus, do not render any assistance.

26. In view of above reasons, the petition stands dismissed with the cost of **Rs.10,000/-** to be paid to the minor - Khushi within a period of **04 weeks** from the date of receipt of this judgment.

27. Interim-relief, if any, stands discontinued.

27. Petitioners are further directed to place on record the receipt of paying the aforesaid cost to the minor – Khushi before the District Legal Services Authority, Morbi.

28. If the petitioners fail to make payment of the cost to the minor – Khushi, as aforesaid, the District Legal Services Authority, Morbi shall issue a recovery certificate against them and the amount of cost shall be recovered as arrears of land revenue and shall be paid to the minor – Khushi.

29. Record and Proceedings, if any, shall be sent back to the concerned Court forthwith.

**Sd/-**  
**(J.C. DOSHI, J.)**



After pronouncement of the aforesaid judgment, learned advocate Mr. Jamshed Kavina requests this Court to continue the interim-relief by suspending the implementation and execution of this judgment. This Court, in the aforesaid judgment, categorically held that the petitioners have no *locus-standi* to file this kind of application.

In view of that, the submission of learned advocate Mr. Jamshed Kavina cannot be accepted, and accordingly, it is rejected.

**Sd/-**  
**(J.C. DOSHI, J.)**

*Raj*