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When a person having no right to do so assumes the charge of another's estate and carries on the administration and management of the estate this continuous course of conduct results in conferring on him the status of de facto manager. In respect of a minor's estate, such a person is known as de facto guardian. Whether this status gives him some powers, or rights, different systems of law differ, yet all agree that it imposes on him certain liabilities and obligations. Thus, de facto guardianship is a concept under which past acts result in present status.

A de facto guardian is a self-appointed guardian. A fugitive or isolated act of a person in regard to minor's property does not make him a de facto guardian, nor does staying with the minor for some time. It is only some continuous course of conduct in respect of a minor's property that makes him a de facto guardian. Tayabji defines a de facto guardian as " an (unauthorized) person who as a matter of fact (de facto) has custody and care of the person and/or of his property".

Powers of the De facto Guardian:

It may be recalled (see first part of this chapter) that the Muslim authorities classify the acts which are required to be done in respect of a minor under three categories, viz.

, acts of guardianship, acts arising out of the want of the minor, and acts which are purely advantageous to the minor. The Muslim authorities' hold the view that the last two acts may be performed by a ' maintainer' or ' taken up' of the minor. The ' maintainer' or the " taker-up" may be relative or a stranger, but he is not a de jure guardian. He is nothing but a de facto

guardian. But the Privy Council put a damper on de facto guardian's power at an early date. In *Matadeen v. Md. Ali*, the Privy Council said: " It is difficult to see how the situation of an unauthorized guardian is bettered by describing him as a de facto guardian.

He may, by his de facto guardianship, assume important responsibilities in relation to minor's property, but he cannot thereby clothe himself with legal powers to sell it". Then came *Imbandi v. Mustasaddf* which is considered to be the leading case, and which laid down that under Muslim law a de facto guardian has no power of alienation of a minor's property, and that such an alienation, is void. In *Md. Amin v. Vakil Ahmed*, reiterating this position, the Supreme Court observed: A de facto guardian has no power to convey any right or interest in immovable property which the transferee can enforce against the minor. This has come to be the established position. It seems that such alienation is void.

But if a co-sharer and de facto guardian of a minor sells his interest as well as of the minor's sale will be valid as to his interest but void as to the minor's. There is sufficient authority for the view that a de facto guardian has the power to sell or pledge movable properties of the minor for the minor's imperative needs, such as food, shelter, clothing, or medical care. If de facto guardian has alienated minor's property, it is minor who can challenge the alienation. If minor has not done so, no one else can do.

An alienation made by de facto guardian which is not binding on the minor can be challenged by the minor. But no third person has the authority to do so. In *Md. Amin v. Vakil Ahmed*, the Supreme Court has ruled that a de facto

guardian has no power to enter into a family arrangement on behalf of the minor. In this case, a brother of a minor had entered into a family arrangement on behalf of the minor.

It also seems to be clear that a de facto guardian has no power to refer a dispute relating to the minor's property to arbitration. The minor is not bound by any award rendered by the arbitrator in such a case. Even if the de facto guardian is later on appointed as guardian by the court, the award will not be binding on the minor. Similarly, the de facto guardian has no power to sign an agreement on behalf of the minor for the continuance of a business in which minor's deceased father was a partner. A de facto guardian can also not validate to an heir by consenting on behalf of the minor who is a co-heir. The Madras High Court in Venkatarayudu v. Kashim, said that a de facto guardian "in order to prevent a suit, a promissory note in respect of an antecedent debt being filed" against the minor can execute a promissory note in renewal of that note.

In Md. Moizuddin v. Malini the Calcutta High Court said that a de facto guardian cannot bind the minors by execution of a hand note for a debt which their father owned. It seems that the de facto guardian can borrow money for the minor's imperative needs. But if it is not done to meet the imperative needs of the minor, or, on emergent need for borrowing is shown, then such a debt will not be binding on the minor.

In a series of cases it has been held that a partition of properties effected by the de facto guardian is void, the period of limitation to set aside a transfer by the de facto guardian is twelve years.