

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE MURALI PURUSHOTHAMAN

MONDAY, THE 28TH DAY OF MARCH 2022 / 7TH CHAITHRA, 1944

WP(C) NO. 17425 OF 2014

PETITIONER/S:

LEELAMMA EAPEN, AGED 66
W/O.LATE K.V.EAPEN,
PADINJAREKOLLATTU HOUSE, VELLOOR P.O.,
PAMPADY VILLAGE, KOTTAYAM DISTRICT, PIN: 686 501.

BY ADV SRI.K.M.VARGHESE

RESPONDENTS:

- 1 THE DISTRICT MAGISTRATE, KOTTAYAM
COLLECTORATE, KOTTAYAM- 686002
- 2 SUB DIVISIONAL MAGISTRATE KOTTAYAM
MINI CIVIL STATION, PUTHANANGADY,
KOTTAYAM, PRESIDING OFFICER, MAINTENANCE TRIBUNAL,
(MAINTENANCE AND WELFARE OF PARENTS AND SENIOR
CITIZENS ACT), KOTTAYAM- 686001
- 3 CIRCLE INSPECTOR, PAMPADY
OFFICE OF CIRCLE INSPECTOR, PAMPADY, KOTTAYAM.
- 4 JINU EAPEN VARGHESE
PADINJAREKOLLATTU HOUSE, VELLOOR P.O., PAMPADY,
KOTTAYAM DISTRICT, REPRESENTED BY POWER OF ATTORNEY
HOLDER, CENI PAUL, W/O.JINU EAPEN VARGHESE,
PADINJAREKOLLATTU, PAMPADY, KOTTAYAM DISTRICT-686 501.
- 5 CENI PAUL, W/O.JINU EAPEN VARGHESE,
PADINJAREKOLLATTU, PAMPADY, KOTTAYAM DISTRICT, PIN:
686 501.

BY ADV MS.BEA MARY BENNY-R4,5
GP SRI.C.N.PRABHAKARAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
28.03.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

“C.R”

JUDGMENT

“To care for those who once cared for us is one of the highest honours”.- Tia Walker.

The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as 'Senior Citizens Act') provides for the maintenance and welfare of parents and senior citizens guaranteed and recognized under Article 41 of the Constitution of India. The Senior Citizens Act casts obligation on the relative or children to maintain a senior citizen or a parent who is unable to maintain himself/herself, to lead a normal life. The right to life under Article 21 of the Constitution includes right to live with human dignity. The object of Senior Citizens Act is to maintain parents and senior citizens to lead a life with dignity.

2. If the parent is able to maintain herself from her own earnings, but the son has obstructed the parent to have

access to her earnings, can the Maintenance Tribunal constituted under the Senior Citizens Act direct the son not to obstruct the parent from taking the earnings and to create a peaceful living atmosphere for her in the residence? Enforceability of such an order of the Maintenance Tribunal is the issue involved in this writ petition.

3.The petitioner, a senior citizen, is the wife of Sri. K.V. Eapen who had executed Ext.P2 Will dated 10.10.2008, whereby life interest was created in favour of the petitioner in respect of A schedule properties in the Will, and after her death, the property is to devolve absolutely in favour of their son, the 4th respondent. As per the recital in Ext. P2 Will, during the life time of the petitioner, she can enjoy A schedule properties with absolute freedom including the right to collect and take all income and to reside in the house *ad libitum*.

4. Seven months after the execution of the Will, Sri. K.V.

Eapen passed away and five years thereafter, the petitioner preferred an application before the Maintenance Tribunal under the Senior Citizens Act against the 4th respondent son and the 5th respondent daughter in law, alleging that they are not maintaining her and are not permitting her and her mother in law to stay in the house peacefully and to enjoy or collect usufructs from the property covered by the Will. The application of the petitioner is not produced in the writ petition; but, on a reading of the order passed by the Maintenance Tribunal, it can be seen that the petitioner has prayed for the following reliefs before the Maintenance Tribunal:-

- “(i) to ensure a peaceful living for her and her mother in law in the house,
- (ii) the right to take usufructs from the property,
- (iii) the right to sell the agricultural products yielded during the life time of her husband,
- (iv) protection for life from son and daughter in law.”

5. The 5th respondent daughter in law entered

appearance before the Maintenance Tribunal and resisted the application and contended that they have not caused any obstruction to the petitioner staying in the house or in utilizing the income from the property. The allegation that they have harassed the petitioner was denied and on the contrary, it was contended that it is the petitioner who used to harass her.

6. The Maintenance Tribunal passed Ext. P1 order directing respondents 4 and 5 (i) not to obstruct the petitioner from taking usufructs from the property (ii) to create a peaceful living atmosphere for the petitioner in the house, and (iii) not to cause any harm to the petitioner.

7. Six months thereafter, the petitioner approached the Tribunal by Ext. P3 application for enforcement of Ext. P1 order contending that, in spite of Ext. P1 order passed by the Maintenance Tribunal, respondents 4 and 5 continued to harass the petitioner and obstruct her from entering the

house and taking usufructs. The petitioner contends that the Maintenance Tribunal has not taken any steps to enforce Ext. P1 order and the District Magistrate has not taken any steps to perform the duties imposed on them under Rule 19 (1) and (2) of the Kerala Maintenance and Welfare of Parents and Senior Citizens Rules, 2009 ('Rules', for short) to protect the life and property of senior citizens. Accordingly, the petitioner has filed this writ petition for direction to the District Magistrate and the Maintenance Tribunal to enforce Ext.P1 order.

8. This Court admitted the writ petition to file and on appearance of respondents 4 and 5, taking note of the fact that the contesting parties are the mother and the son, referred the matter for mediation. The mediator submitted a report before this Court on 25.07.2014 stating that the matter is not settled in mediation. This Court, on 01.08.2014, passed an order directing the Sub Divisional Magistrate, the

presiding officer of the Maintenance Tribunal, to ensure that no obstruction is caused to the petitioner in the residence. This Court also made it clear that the order as above shall also not affect the residence of the 5th respondent.

9. The 5th respondent has filed a counter affidavit contending that Ext.P1 order has been passed by the Maintenance Tribunal without jurisdiction and the Maintenance Tribunal cannot pass order in the nature of Ext. P1 under the provisions of the Senior Citizens Act. It is also contended that the petitioner has filed O.S. No. 292/2013 before the Munsiff Court, Kottayam for enjoying the property and taking income from the property and the suit has been decreed and the petitioner has also obtained order from the Judicial First Class Magistrate Court, Kottayam under the Domestic Violence Act prohibiting respondents 4 and 5 from dispossessing the petitioner from the house. It is also stated that the 5th respondent has no objection in the petitioner

residing with her and she denied the allegations of harassment leveled against her.

10. In the counter affidavit dated 20.09.2021 filed by the petitioner to I.A. No.2945 of 2016 filed by the 5th respondent to accept documents, she has produced Ext. P8 report of the District Social Justice Officer, Kottayam, the Maintenance Officer designated under Section 18, stated to be submitted to the Revenue Divisional Officer, Kottayam, pursuant to the said officer's visit to the house of the petitioner on 19.02.2015. In the said report, it is stated that the life of the petitioner appeared to be pathetic and the petitioner and her mother in law are staying in two rooms in the house and 4 doors which allow easy egress from the house are locked and the 5th respondent refused to provide the keys to the said officer. In the said counter affidavit, the petitioner has also stated that respondents 4 and 5 are not allowing her to enter into the house and reside there in terms of the interim order

of this Court dated 01.08.2014 and she is out from her house from 01.06.2016 and is living at the mercy of others.

11. In the affidavit dated 29.10.2021 filed by the 5th respondent in I.A. No. 1 of 2021 for accepting additional documents, she has stated that the petitioner is residing in the house taking the entire income from the property and there has been no obstruction to her stay or enjoyment of the property as alleged. It is also stated that the petitioner had approached the Grama Nyayalaya, Pampadi in M.C.11/2017 seeking relief under Protection for Women from Domestic Violence Act, 2005 and as per Ext. R5 (e) order, she is granted the relief of right to reside in the house peacefully and also to take income from the property.

12. Heard Mr. K.M.Varghese, the learned Counsel for the petitioner, the learned Government Pleader for respondents 1 to 3 and Ms. Bea Mary Benny, the learned Counsel for respondents 4 and 5.

13. Mr.Varghese would contend that Ext. P1 order passed by the Maintenance Tribunal exercising the powers under Chapter II of the Senior Citizens Act is legal and valid and therefore, liable to be enforced. Mr. Varghese further contends that the petitioner has approached other forums for right to take income and for residence, but, the provisions of the Senior Citizens Act have overriding effect over other enactments and there are no conflicting orders and the order of the Maintenance Tribunal is liable to be enforced. Mr. Varghese contends that, under Rule 19 of the Rules, the District Magistrate has wide powers to ensure peaceful living of the senior citizen with security and dignity and also to oversee timely and fair disposal of applications for maintenance and execution of orders of Maintenance Tribunal. Accordingly, Mr. Varghese submits that direction may be issued to the Maintenance Tribunal and the District Magistrate to enforce Ext. P1.

14. Ms. Bea would contend that Ext.P1 is without jurisdiction and the Maintenance Tribunal cannot pass an order in the nature of Ext. P1. Ms. Bea contends that the jurisdiction of the Maintenance Tribunal is only with regard to maintenance and the Tribunal has no jurisdiction to pass an order with regard to other civil rights of the parties. Relying on the decision of the Full Bench of this Court reported in **Subhashini v. The District Collector, Kozhikode and others** [2020 (5) KHC 195] and the decision in **Thoppil Anto v. Glancin T.A and others** [2020 (6) KHC 510], Ms. Bea contends that, Ext. P1 is passed in excess of jurisdiction and cannot be enforced. Ms. Bea also relied on the judgment of this Court in **C.K. Vasu v. Circle Inspector of police** [2012 SCC Online Ker 10658] to contend that the jurisdiction of the Maintenance Tribunal is only with regard to maintenance and cannot pass orders in the nature of Ext. P1. Accordingly, Ms. Bea submits that Ext. P1 order of the Maintenance Tribunal is

without jurisdiction and cannot be enforced and therefore, the writ petition is liable to be dismissed.

15. During the course of hearing, it is submitted by Mr. Varghese that the mother in law of the petitioner expired on 29.05.2019 and the petitioner is staying elsewhere as she is not permitted to enter the house. Ms. Bea submits that the petitioner left the house on her own volition and respondents 4 and 5 have not obstructed to her stay at the house.

16. Section 2 (b) of the Senior Citizens Act defines 'maintenance' to include provision for food, clothing, residence and medical attendance and treatment. Section 4 provides that, a senior citizen including parent who is unable to maintain himself from his own earning or out of the property owned by him, shall be entitled to make an application for maintenance under Section 5 against one or more of his children not being a minor. Section 9 provides that if the children or relatives as the case may be, neglect or

refuse to maintain a senior citizen being unable to maintain himself, the Tribunal may, on being satisfied of such neglect or refusal, order such children or relative to make a monthly allowance at such monthly rate for the maintenance of such senior citizens subject to the maximum allowance of Rs.10,000/- per month.

17. A senior citizen including a parent who is unable to maintain himself from his own earning or out of the property owned by him alone is entitled to maintain an application under Section 5. When the Senior Citizen or parent who has earnings makes an application to the Maintenance Tribunal contending that her right to earning is obstructed by the son who has statutory obligation to maintain the parent, the Maintenance Tribunal has to ensure that the Senior Citizen or parent is able to maintain herself from her earnings. The object of the Act is not only to provide financial support, but also to prevent financial exploitation of the senior citizen and

parent by relative or children.

18.As per the recital in Ext. P2 Will, during the life time of the petitioner, she can enjoy A schedule properties in the Will with absolute freedom including the right to take all income and to reside in the house. When she is prevented from taking the earnings and to reside in the house, she is deprived of her maintenance. The Maintenance Tribunal, on the application of the parent under Section 5 can issue direction to the children, who have obligation to maintain the parent, not to deprive her access to her earnings and residence so that she maintains herself and lead a normal life. A senior citizen or parent who is unable to maintain himself/herself due to deprivation of earnings by children or relative shall also be entitled to make application for maintenance and the Maintenance Tribunal has the jurisdiction and powers to issue directions to the children or relative not to deprive his/her earnings so that he/she

maintains himself/herself. The power of the Maintenance Tribunal under the Senior Citizens Act is not circumscribed to mere ordering of monthly allowance for maintenance of senior citizen where the relative or children neglect or refuses to maintain the senior citizen or parent, but to ensure maintenance from own earnings to lead a dignified life. The Senior Citizens Act is intended to ensure that senior citizens are not left destitute, or at the mercy of their children or relatives. The directions of the Maintenance Tribunal in Ext.P1 are to remove the incapacity of the petitioner to maintain herself, so that she is not left destitute, but leads a normal dignified life.

19. With regard to the decisions cited by Ms. Bea, the Full Bench in **Subhashini** (supra) was dealing with the scope of Section 23 of the Senior Citizens Act and the powers of the Maintenance Tribunal thereunder. Section 23 deals with the powers of the Maintenance Tribunal to declare the transfer of

property by senior citizens to be void in certain circumstances. In the case at hand, the Tribunal has not exercised the powers under Section 23. In **Thoppil Anto** (supra), this Court was dealing with the powers of the District Magistrate under Rule 19 of the Rules, to ensure peaceful living of the senior citizen with security and dignity and not the powers of the Maintenance Tribunal under Chapter II of the Senior Citizens Act and the said decision cannot help Ms. Bea in any manner. Ms. Beea has heavily relied upon the decision in **C.K. Vasu** (supra), the relevant paragraph whereof is extracted hereunder:-

“7.... The Tribunal constituted under the Act can only pass an order for maintenance of a senior citizen or the parent unable to maintain himself if the Tribunal is satisfied that there was neglect or refusal on the part of the children or relatives to maintain him. The Act does not empower the Tribunal constituted under the Act to grant the reliefs prayed for in Ext.P2, one of which is to

evict the fourth respondent and his family members from the residence where the petitioner which he is residing. The only other relief sought in Ext.P2 is to prevent his children from trespassing into his house and from causing bodily injury. That is also a matter on which the Tribunal cannot grant any relief”.

This Court held that the Maintenance Tribunal has no power to order eviction or to restrain the children from trespassing into the house of the senior citizen and from causing bodily injury. **C.K. Vasu** (supra) proceeded on the proposition that the Senior Citizens Act does not provide for a specific remedy of eviction. In Ext. P1 order, the Maintenance Tribunal has not ordered eviction of respondents 4 and 5 from the house. It only directs not to obstruct the petitioner from taking usufructs from the property and to create a peaceful living atmosphere for the petitioner in the house and not to cause any harm to her. Ext.P1 order only directs respondents 4 and 5 not to create any incapacity to the petitioner to maintain

herself and live peacefully. The residence of respondents 4 and 5 is also not affected by the directions. All the three directions in Ext. P1 order passed by the Maintenance Tribunal, when read together, are in furtherance of the purpose of the Act, to ensure that the petitioner maintains herself out of her own earnings to live a normal life with peace, security and dignity.

20. It is also to be noted that, respondents 4 and 5 have not challenged Ext.P1 before this Court. Respondents 4 and 5 cannot just walk away from the moral and statutory obligation to maintain the petitioner. They cannot be permitted to take advantage of their own wrong. The fact that the petitioner has approached other forums and secured orders for taking yield from the property and for peaceful stay at the residence, will not restrain the petitioner to seek enforcement of Ext. P1 order.

The next question to be considered is the manner of

enforcement of Ext.P1 order. As stated earlier, Section 2 (b) of the Senior Citizens Act defines 'maintenance' to include provision for food, clothing, residence and medical attendance and treatment. When the relative or children of senior citizen neglect or refuse to maintain the senior citizen, Section 9 provides for monthly allowance to be paid for the maintenance of such senior citizen. As I have already found, the power of the Maintenance Tribunal under the Senior Citizens Act is not circumscribed to ordering of monthly allowance to be paid in monetary terms for maintenance of senior citizen, but also to ensure maintenance from his own earnings if any, to lead a dignified life. In Ext. P1 order, there is no direction for payment of monthly allowance. It is an order which ensures that the petitioner maintains herself from her own earning and live peacefully. Therefore, it cannot be executed in terms of Section 11 of the Act. As per Section 22 of the Senior Citizens Act, the District Magistrates are

conferred with powers to ensure compliance with the provisions of the Act. Rule 19 of the Rules provides for the duties and powers of the District Magistrate which includes duty to ensure senior citizens live with security and dignity. Rule 19 (2) (ii) provides that it shall be the duty of the District Magistrate to oversee and monitor timely and fair disposal of applications for maintenance and execution of orders of Maintenance Tribunal. Since Ext. P1 order is passed with directions to ensure that the petitioner maintains herself from her own earnings and live peacefully, it is the duty of the District Magistrate under Section 22 and Rule 19 to secure compliance of the said order either through the Maintenance Tribunal or by himself. Accordingly, there will be a direction to the 1st respondent District Magistrate to take necessary steps to enforce Ext.P1 order within a period three months from the date of receipt of a copy of the judgment with notice to the petitioner and respondents 4 and 5. Though all attempts for

mediation, including the mediation talk at the High Court Mediation Centre failed, the jurisdictional District Magistrate shall, before taking steps to enforce Ext. P1 order within the time frame as above, make an attempt to see whether the matter can be amicably settled between the petitioner and her son and daughter in law, so that they all live in comfort and with love.

The writ petition is allowed to the said extent. No order as to costs.

Sd/-

**MURALI PURUSHOTHAMAN
JUDGE**

spc/

APPENDIX OF WP(C) 17425/2014

PETITIONER'S EXHIBITS

EXT.P1: TRUE COPY OF THE ORDER DATED 30TH NOVEMBER 2013 PASSED BY THE RESPONDENT NO.2

EXT.P2: TRUE COPY OF THE WILL DATED 10TH OCTOBER 2008 EXECUTED MR.K.V.EAPEN

EXT.P3: TRUE COPY OF THE APPLICATION DATED 29TH MAY 2014 FILED BEFORE THE RESPONDENT NO.2

EXT.P4 TRUE COPY OF THE COMPLAINT FILED BEFORE THE RESPONDENT NO.2

EXPT.P5 TRUE COPY OF THE COMPLAINT DATED 2ND MAY 2014 GIVEN TO SUB-INSPECTOR, PAMPADY

EXT.P6 TRUE COPY OF THE LETTER DATED 7TH AUGUST 2014 SUBMITTED TO RESPONDENT NO.2

EXT.P7 TRUE COPY OF THE LETTER DATED 13TH AUGUST SUBMITTED BY THE PETITIONER

EXT.P8 TRUE COPY OF REPORT DATED 17.3.2015 SUBMITTED TO REVENUE DIVISIONAL OFFICER, KOTTAYAM

EXT.P9 TRUE COY OF THE COMMISSION REPORT DATED 6.6.2016 IN E.P.NO.98/2016 IN O.S.NO.292/2013 ON THE FILES OF MUNSIF'S COURT, KOTTAYAM.

RESPONDENTS EXHIBITS:

EXT.R5(A) TRUE COPY OF THE AGREEMENT

EXT.R5(B) TRUE COPY OF THE HAND NOTE DATED 25.06.2014

EXT.R5(C) TRUE COPY OF THE FIR IN CRIME NO.183 OF 2015

EXT.R5(D) TRUE COPY OF THE FIR IN CRIME NO.955/2015

EXT.R5(E) TRUE COPY OF THE ORDER OF THE GRAMA NYAYALAYA DATED 29.10.2018

EXT.R5(F) TRUE COPY OF THE AGREEMENT DATED 2.9.21

EXT.R5(G) TRUE COPY OF THE PLAINT IN O.S.NO.462 OF 2021