



2023:KER:74827
'CR'

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

THURSDAY, THE 23RD DAY OF NOVEMBER 2023 / 2ND AGRAHAYANA,

1945

WP(C) NO. 13607 OF 2023

PETITIONER:

JAGADESH RAMACHANDRAN., AGED 53 YEARS
S/O LATE DR V.K RAMACHANDRAN SFS GRANDE, APT NO.
4A, SREERANGAM LANE, SASTHAMANGALAM P.O,
THIRUVANANTHAPURAM, PIN - 695010

M.GOPIKRISHNAN NAMBIAR
K.JOHN MATHAI
JOSON MANAVALAN
KURYAN THOMAS
RAJA KANNAN
ASHER REVI JOB
B.AJITH KUMAR (KOVALAM)

RESPONDENTS:

- 1 THE MAINTENANCE TRIBUNAL, THIRUVANANTHAPURAM,
(TRIBUNAL UNDER THE MAINTENANCE AND WELFARE OF
PARENTS AND SENIOR CITIZEN ACT, 2007) REVENUE
DIVISIONAL OFFICE, 2ND FLOOR, CIVIL STATION
BUILDING, CIVIL STATION ROAD, THIRUVANANTHAPURAM,
KERALA, REPRESENTED BY ITS PRESIDING OFFICER & SUB
COLLECTOR., PIN - 695043
- 2 BEENA SARASAN., AGED 71 YEARS (Party-In-Person)
W/O SARASAN, RESIDING AT C-1, TENNIS CLUB ENCLAVE,
KOWDIAR P.O, THIRUVANANTHAPURAM, PIN - 695003

SRI P S APPU-GP;
SRI V RAMKUMAR NAMBIAR-ADVOCATE COMMISSIONER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 23.11.2023, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



JUDGMENT

The petitioner is the son of the senior citizen - Smt.Indira B., with whom we are concerned in this case. He impugns Ext.P21 order of the first respondent – Maintenance Tribunal, constituted under the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short 'the Act'), which orders that the senior citizen be allowed to stay with the second respondent – her sister; and consequently that she be relocated to the latter's home immediately.

2. Sri.Nandakumar - learned senior counsel, instructed by Smt.Pooja Menon - appearing for the petitioner, submitted that his client has been constrained to impugn Ext.P21 because, it has proceeded on an unwarranted basis that his client did not take care of his mother in spite of Ext.P13 order, dated 29.10.2021, earlier issued. He submitted that the facts cannot be far from truth, since his client had provided all necessary facilities to his mother, including a full time caretaker; but that the second respondent, who is her sister, took up the matter again with the Tribunal, on an allegation that Ext.P13 was being violated, which then culminated in Ext.P21 order. He argued that Ext.P21 is the result of non-application of mind and improper exercise of power,



particularly because the directions therein cannot be given effect under the 'Act', especially when it says that the senior citizen be given custody to the second respondent – her sister. The learned senior counsel asserted that his client's mother is now living comfortably in the company of his client and another son, who both see her on a regular basis; and therefore prayed that Ext.P21 be set aside.

3. *Au contraire*, Smt.Beena Sarasan - second respondent appearing in person, submitted that though the petitioner accepted Ext.P13 order without demur, he violated it flagrantly and confined his mother – the senior citizen, in unconscionable circumstances; and therefore, that she was constrained to approach the Maintenance Tribunal for further orders. She argued that the Maintenance Tribunal deputed a Social Justice Officer along with her, who visited the senior citizen and that a report was submitted, detailing the exact situation under which she has been housed. She added that since the Social Justice Officer was also concerned by the manner in which the senior citizen was treated, the Maintenance Tribunal was wholly without error, in having issued Ext.P21. She, however, added that her intent is not to take custody of the senior citizen, or to claim anything out of her; but that she be given good care and



attention in the winter years of her life, more so because she is now suffering from minor dementia. She added that it is only on account of her love for her sister that she offered to the Maintenance Tribunal to take her with her and maintain her with the dignity she requires; but left it to this Court to take appropriate decision in this regard, saying that her intention is only as afore.

4. I notice from the files that several interim orders have been issued by this Court, including the ones dated 27.09.2023 and 01.11.2023. Through these orders, this Court had permitted Smt.Beena Sarasan and her other siblings to visit the senior citizen, particularly during her last birthday; and a report has also been placed before this Court by the Social Justice Officer, along with a memo of the learned Government Pleader dated 09.11.2023.

5. Sri.Ramkumar Nambiar – learned Amicus Curiae appointed by this Court in matters relating to mental health cases, submitted that since the senior citizen is suffering from dementia, she certainly requires imperative care and that the consortium of her loved ones, not merely her sons, but also her siblings and such other relatives, since it is extremely



important to her continued life. He, therefore, beseeched this Court to look into the report of the Social Justice Officer very carefully and issue appropriate orders.

6. The aforementioned report of the Social Justice Officer reads as under:

“As per the direction of the Honourable High Court of Kerala on behalf of the Judgement on case no. WP(c) 13607/2023 dtd 27.09.2023, the Maintenance Officer has accompanied with the 2nd respondent Smt. Beena Sarasan to visit Smt.Indira Balagangadharan at Jayaprabha, Abhayanagar, House No.180, Opposite Hindustan Latex on 03/10/2023 Tuesday at 12.30pm. Smt. Beena Sarasan has spent around 45 minutes with her sister Smt.Indira Balagangadharan in the presence of Maintenance Officer. Both sisters seem happy with the interaction.

The untrained ladies appointed as care takers for the purpose of caring the Dementia suspected senior citizen are not competent for the training and caring. It is better to appoint trained and experienced persons to look after her. We came to know the appointed ladies have separate room for sleeping and hence the senior citizen is sleeping alone during night. The Petitioner arranged infrastructure facilities such as mosquito nets, water heater, washing machine, wall fans, mixer grinder, emergency lamp, refrigerator etc for the better support of her. but couldn't see nothing for recreational purpose of the aged senior citizen. She appears to be healthy and living in the hygienic manner. She couldn't get opportunity to mingle and interact with dear and near ones. even though she has five siblings and two sons, She lives in the amidst of two care takers, it never make the mental well being of her. We suggest that it is better to give opportunity to interact siblings and grandchildren to visit her in regular intervals of time to give support and care for her remaining life. it is also reported that the maintenance officer is not a competent authority to interpret the mental report of Indira Balagangadharan” (*sic*).



7. I do not propose to speak on the merits of the contentions of the rival parties, or even on the contents of the report of the Social Justice Officer afore extracted; but find it necessary to remind everyone involved that it is the life of the senior citizen we are now involved with. Internecine egos or disputes cannot be allowed to cast any adverse reflection on her dignity or self respect, notwithstanding the fact that she is suffering from dementia. This does not require to be expatiated because the petitioner is her son, who normally ought to be more concerned about this; while the second respondent is her sister, who says that her only intent is to make sure that she lives well for the rest of her life.

8. Indubitably, *prima facie*, the report of the Social Justice Officer causes some consternation, though I do not propose to speak on it as being the truth at this stage, since it will require a proper enquiry.

9. As I have already said above, the petitioner does not have a case against Ext.P13 order earlier issued by the Maintenance Tribunal; and, on the contrary, he affirms that he accepts it. His only contention is that Ext.P21 ought not to



have been issued without a proper enquiry, particularly as to the condition of the senior citizen.

10. I am, therefore, without doubt that though Ext.P21 cannot find my favour fully at this stage; and that a further enquiry by the Maintenance Tribunal becomes imperative. This is not opposed by the petitioner either because, he asserts vehemently, through his learned senior counsel, that every care and facility required for his mother, to live in a dignified manner, has already been provided to her.

11. That said, there is one aspect that this Court also intends to say adscititiously, namely, that as long as the senior citizen wants such company or presence, no one would be authorised to deny the same to her, particularly that of her siblings and close relatives. The report of the Social Justice Officer speaks on this and it recommends that she be offered the pleasure of such meetings on a regular basis. This shall also be kept in mind by the Maintenance Tribunal, when further orders are issued.

12. In the afore circumstances, I allow this writ petition and set aside Ext.P21; with a consequential direction to the Maintenance Tribunal to reconsider the matter, adverting to



my observations above and specifically to the report of the Social Justice Officer and to the suggestions offered by Sri.Ramkumar Nambiar as afore; thus culminating in an appropriate order and necessary action thereon, as expeditiously as is possible, but not later than one month from the date of receipt of a copy of this judgment.

13. In the meanwhile, I direct the jurisdictional Social Justice Officer to visit the senior citizen on a weekly basis and favour his/her report to the Maintenance Tribunal for further action.

As regards the request of Smt.Beena Sarasan, for her and siblings to meet her sister – the senior citizen, is concerned, she will be at liberty to move the Maintenance Tribunal any time for this purpose; which shall be considered and acceded to, in terms of law.

Sd/- DEVAN RAMACHANDRAN

JUDGE

stu

**APPENDIX OF WP(C) 13607/2023**

PETITIONER EXHIBITS

- Exhibit P1 THE TRUE COPY OF THE COMPLAINT DATED 13.09.2017 FILED BY THE PETITIONER ALONG WITH SMT. MANJU SURESH AND SMT. JAYA SATHEESH BABU BEFORE THE 1ST RESPONDENT
- Exhibit P2 TRUE COPY OF THE MEDICAL CERTIFICATE DATED 30.10.2017 ISSUED BY DR. R. JAYAKUMAR
- Exhibit P3 TRUE COPY OF THE JOINT STATEMENT OF THE 2ND RESPONDENT AND SMT. JAYA SATHEESH BABU DATED 31.10.2017, PURSUANT TO EXHIBIT P1 COMPLAINT, RECORDED BY THE 1ST RESPONDENT
- Exhibit P4 TRUE COPY OF THE STATEMENT OF SMT. INDIRA B. DATED 31.10.2017, RECORDED BY THE 1ST RESPONDENT, PURSUANT TO EXHIBIT P1 COMPLAINT
- Exhibit P5 TRUE COPY OF THE ORDER BEARING NO. J1/19875/17 DATED 20.11.2017 PASSED BY THE 1ST RESPONDENT
- Exhibit P6 THE TRUE COPY OF THE DISCHARGE SUMMARY OF THE PETITIONER ISSUED BY SIMS, SREE NARAYANA HEART FOUNDATION, KOLLAM
- Exhibit P7 A TRUE COPY OF THE DISCHARGE SUMMARY OF INDIRA RAMACHANDRAN DATED 11.11.2019, ISSUED BY MITRA HOSPITAL
- Exhibit P8 TRUE COPY OF THE COMPLAINT REGISTERED AS SPC ST-3/149790/19/PHQ DATED 16.10.2019 FILED BY THE 2ND RESPONDENT, ALONG WITH SMT. MANJU SURESH
- Exhibit P9 TRUE COPY OF THE STATEMENT OF SMT. INDIRA B. RECORDED BY THE POLICE, PURSUANT TO EXHIBIT P8 COMPLAINT
- Exhibit P10 TRUE COPY OF THE PROCEEDINGS BEARING NO. 288/IDPTN/19-B3 DATED 22.10.2019, PASSED BY THE STATION HOUSE OFFICER, PEROORKADA



STATION

- Exhibit P11 THE STATEMENT OF THE 2ND RESPONDENT DATED 19.12.2019 RECORDED BY THE POLICE, PEROORKADA STATION UNDER SECTION 164 OF THE CODE OF CRIMINAL PROCEDURE, 1973
- Exhibit P12 A TRUE COPY OF THE COMPLAINT DATED 6.09.2021 FILED BY THE 2ND RESPONDENT BEFORE THE 1ST RESPONDENT
- Exhibit P13 TRUE COPY OF THE ORDER BEARING NO. J1/5374/2021 DATED 29.10.2021 ISSUED BY THE 1ST RESPONDENT
- Exhibit P14 THE TRUE COPY OF THE REPORT BEARING NO. 339/IDPTN/2021-P5 DATED 3.02.2022 SUBMITTED BY THE PEROORKADA POLICE STATION, BEFORE THE 2ND RESPONDENT
- Exhibit P15 THE TRUE COPY OF THE LAWYER NOTICE DATED 22.06.2022 CAUSED TO BE ISSUED BY THE PETITIONER TO THE 2ND RESPONDENT
- Exhibit P16 TRUE COPY OF THE COMPLAINT DATED 25.10.2022 FILED BY THE 2ND RESPONDENT, BEFORE THE 1ST RESPONDENT
- Exhibit P17 THE TRUE COPY OF THE REPORT SUBMITTED BY THE TECHNICAL ASSISTANT BEFORE THE 1ST RESPONDENT
- Exhibit P18 TRUE COPY OF THE NOTICE DATED 30.12.2022 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER
- Exhibit P19 TRUE COPY OF THE OBJECTION DATED 14.02.2023 FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT IN THE COMPLAINT BEARING NO. J1/11189/2022
- Exhibit P20 TRUE COPY OF THE ACKNOWLEDGEMENT OF THE FILING OF EXHIBIT P19 OBJECTION WITH THE 1ST RESPONDENT



- Exhibit P21 TRUE COPY OF THE ORDER BEARING NO.
J1/11189/2022 DATED 22.02.2023 PASSED BY
THE 1ST RESPONDENT
- Exhibit P22 True copy of the lab reports of Smt Indira
B dated 3.05.2023 obtained from S.K
Hospital
- Exhibit P23 True Copy of the discharge summary dated
3.05.2023 of Smt Indira issued by S.K
Hospital

RESPONDENT EXHIBITS

- Exhibit R2(a) A true copy of the statement dated
08.10.2021 filed by the petitioner before
the 1st respondent in Case No.
RDOTVM/5374/2021-J1
- Exhibit R2(b) A true copy of the letter dated 14.09.2017
issued by Smt. Indira to the Manager,
State Bank of India, Kowdiar Branch,
containing the endorsement of receipt
- Exhibit R2(c) . A true copy of the relevant pages of my
passport, containing the immigration
seals, evidencing my absence from the
country
- Exhibit R2(d) A true copy of the representation dated
10.02.2023 submitted by the 2nd respondent
before the 1st respondent
- Exhibit R2(e) True photographs of Smt. Indira taken in
series
- Exhibit R2(f) True copy of the legal notice dated 29th
July 2023 on behalf of the petitioners in
the writ petition.
- Exhibit R2(g) True copy of Medical Prescription dated
22.04.2022 and results of routine check
dated 23.04.2022 issued from S.K.
Hospital, Thiruvananthapuram in respect of



Smt. Indira.

- Exhibit R2(h) True copy of video recording dated 23.12.2022 at Indira's residence.
- Exhibit R2(i) Original copy of report of ultra sound scan and prescription for Smt. Indira dated 20.03.23 issued from G.G. Hospital, Thiruvananthapuram.
- Exhibit R2(j) True copy of bank statement of Smt. Indira s S.B. Account maintained by SBl, Kowdiar Branch, Thiruvananthapuram for the period from 1.8.2018 to 21.08.2019
- Exhibit R2(k) True copies of video recordings of Smt.Indira in April 2023 enjoying children's cartoon (2 nos.)