

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

MONDAY, THE 29TH DAY OF JUNE 2015/8TH ASHADHA, 1937

WA.No. 65 of 2008 (B) IN WP(C).33397/2007

AGAINST THE ORDER/JUDGMENT IN WP(C) 33397/2007 of HIGH COURT OF
KERALA DATED 13-11-2007

APPELLANT(S) /PETITIONERS:

1. RUGMINI
AGED 51 YEARS, 'VAISAKHAM', KULAPPATTIS LANE
EDAPPALLY TOLL DESOM, THRIKKAKARA NORTH VILLAGE
KANAYANNUR TALUK, ERNAKULAM DIST.

2. RANJITH, D/O LATE VISWANATHAN NAIR,
'VAISAKHAM', KULAPPATTIS LANE, EDAPPALLY TOLL DESOM
THRIKKAKARA NORTH VILLAGE, KANAYANNUR TALUK
ERNAKULAM DIST.
(MENTALLY RETARDED PERSON REPRESENTED BY NEXT
FRIEND AND MOTHER 1ST PETI

BY ADVS.SRI.V.M.KRISHNAKUMAR
SMT.P.A.ANITHA

RESPONDENT(S) /RESPONDENTS:

1. UNION OF INDIA
SECRETARY, MINISTRY OF LAW AND JUSTICE, NEW DELHI.

2. DISTRICT COLLECTOR,
ERNAKULAM.

ADDL. 3. SECRETARY, MINISTRY OF HEALTH AND FAMILY WELFARE,
UNION OF INDIA, NEW DELHI.

4. SECRETARY, MINISTRY OF SOCIAL JUSTICE AND EMPOWERMENT,
UNION OF INDIA, NEW DELHI.

R1, R3 AND R4 BY SRI.P.PARAMESWARAN NAIR,ASST.SOLICITOR

R2 BY SPL.GOVERNMENT PLEADER SMT.GIRIJA GOPAL

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 29-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**ASHOK BHUSHAN, CJ
&
A.M.SHAFFIQUE, J**

W.A.No. 65 of 2008

Dated this the 29th June, 2015

JUDGMENT

Shaffique, J.

This Writ Appeal is filed by the petitioners in the Writ Petition, challenging the judgment dated 13.11.2007 in W.P(C).No.33397 of 2007. First appellant is the mother of the second appellant, who is a mentally retarded person. They together have inherited 2.29 Ares of land, which belonged to late husband of the first appellant. The daughters of the first appellant are married and she claims that she has no source of income of her own. The second appellant is now under the care of the first appellant and she needs huge amounts for the treatment and other expenses of the second appellant. The appellants contended that under the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental

Retardation and Multiple Disabilities Act, 1999, there is no provision for appointment of guardian to dispose of the property of a mentally retarded person. Under such circumstances, the appellants had approached this Court seeking for the following reliefs:

- I. Declare the 1st petitioner as the guardian of the 2nd petitioner who is entitled to execute document assigning share of the 2nd petitioner in the property covered by Exhibit P1 in favour of 3rd persons.*
- II. Declare the omission of the “mentally retarded persons” from the definition provided under S.2(f) of the Mental Health Act, 1987 is unconstitutional, as violative of Art.21 of the Constitution of India.”*

2. The learned Single Judge, by the impugned judgment, formed an opinion that in the absence of any statutory power, the first relief sought for by the petitioners cannot be granted. As far as the second prayer is concerned, it was observed that even going by the nomenclature itself the concept of mentally retarded persons and mentally ill persons as can be seen from the

definition under Section 2(f) of the Mental Health Act, 1987 are totally different and therefore, there is nothing illegal in the exclusion of mentally retarded persons from the definition of mentally ill persons. On that basis, the Writ Petition was dismissed.

3. Learned counsel for the appellants submitted that in the absence of any provision relating to the same, appropriate directions have to be issued by the Court permitting the first appellant to assign the property of the second appellant. On the other hand, the learned Government Pleader relied upon the judgment of a learned Single Judge of this Court in **Narayanankutty Menon v. State** (2009(1) KLT 910), in which it was held at paragraph 10 as under:

“10. In the circumstances, though there is no specific provision in the aforementioned Act authorising the competent authority to appoint any person as the guardian of the property of a person with disability, on appointment of a person as the guardian under S.14 of the Act, his duties are governed by Ss.15 and 16. I agree with the

submission made by Mr.Balasubramanyan that it would have been much better on the part of the legislature to avoid a confusion and specifically provide for the appointment of a guardian for the properties of a person with disability in the lines of what has been provided under S.54 of the Mental Health Act. But, in circumstances where S.15 empowers the guardian appointed under S.14 to have care of such person with disability and his properties, it would only be appropriate that the provisions contained in S.15 be construed as one enabling the competent authority, empowered to effect appointment of a guardian under S.14 of the Act to see that such guardian also is responsible for the property of the person with disability.”

4. Learned counsel for the appellants also relied upon a judgment of the Delhi High Court in **Jagjit Singh and another v. Delhi Development authority** (W.P(C). No.1531/2012). Paragraph 17 of the said judgment is relevant, which reads as under:

“17. Pertinently, there is no savings or repeal clause in The Multiple Disabilities Act, 1999 to any way make it dependent upon the earlier enactment, i.e., The Mental Health Act, 1987, which cannot be said to be parent legislation. In fact, The Multiple

Disabilities Act, 1999 is a comprehensive subsequent enactment, which deals with multiple disabilities including mental retardation in question. Therefore, the subsequent Act, i.e., The Multiple Disabilities Act, 1999 prevails and the certificate issued by the competent authority under this enactment holds good in view of wide powers of Local Level Committee, i.e., competent authority under this enactment being acknowledged in Handbook on Legal Guardianship issued by Ministry of Social Justice and Empowerment, Government of India, whose relevant extract is as under:-

'The Local Level Committee has to ensure that the legal guardian appointed by it

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must not mortgage, sell, lease, exchange or transfer the immovable property of the person with disability without the prior permission of the Local Level Committee obtained in this behalf".

(emphasis supplied)"

5. In the light of the aforesaid judgments, it is always open for the appellants to seek appointment of guardian under Section 14 of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999, and obtain appropriate orders for managing or selling the property of a person

with disability.

6. Having regard to the aforesaid law laid down by the learned Single Judge, we are of the view that when appropriate provisions have been made, no further direction is required to be passed in the case. It shall always be open for the appellants to approach the competent authority in terms of Section 14 of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 and seek necessary directions.

The Writ Appeal is disposed of as above.

**ASHOK BHUSHAN
CHIEF JUSTICE**

**A.M.SHAFFIQUE
JUDGE**

vgs29/6/15