

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

FRIDAY, THE 4TH DAY OF DECEMBER 2015/13TH AGRAHAYANA, 1937

WA.No. 2636 of 2015 () IN WP(C).16550/2013

AGAINST THE JUDGMENT IN WP(C) 16550/2013 DATED 06-11-2015

APPELLANT(S)/PETITIONER IN WPC :-

SABIRA, AGED 52 YEARS
S/O.SAFURULLAH, RESIDING AT P.V HOUSE, M.C PRAMB
FRANCIS ROAD, CHEMMANGAD, NAGARAM AMSOM DESOM
KOZHIKODE DISTRICT

BY ADV. SRI.M.V.THAMBAN

RESPONDENT(S)/RESPONDENT IN WPC :-

1. THE SUB DIVISIONAL MAGISTRATE
KOZHIKODE, KOZHIKODE DISTRICT, PIN - 673 001.
2. IMBICHAMINABI, AGED 85 YEARS
RESIDING AT P.V HOUSE, M.C PRAMB, FRANCIS ROAD
CHEMMANGAD, NAGARAM AMSOM DESOM, KOZHIKODE DISTRICT
PIN - 673 001.
3. LATHEEFA, AGED 43 YEARS,
W/O.KHALID AL HOSANI, PO. BOX. NO.2781, ABUDABI
RESIDING AT P.V HOUSE, M.C PRAMB, FRANCIS ROAD
CHEMMANGAD, NAGARAM AMSOM DESOM, KOZHIKODE DISTRICT
PIN - 673 001.

(ADDRESS OF R3 IS CORRECTED AS PER ORDER DT. 11.10.2013 IN
IA.NO.13011/2013

4. TAHIRA, AGED 40 YEARS
RESIDING AT SANAS, 23/1864, KANNANCHERY
KOZHIKODE DISTRICT, PIN - 673 001.

BY SPL.GOVERNMENT PLEADER SMT.GIRIJA GOPAL
BY SMT.V.RENJU

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
04-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

W.A. No.2636 of 2015

Dated this the 4th day of December 2015

J U D G M E N T

Shaffique, J.

The petitioner in W.P.(C) No.16550 of 2013 is the appellant herein, who challenges the judgment dated 6.11.2015, by which, the said writ petition was disposed of by the learned Single Judge, without interfering with Ext.P5 order passed by the Maintenance Tribunal and Sub Divisional Magistrate, Kozhikode.

2. The facts involved in the writ petition would disclose that the mother of the appellant (2nd respondent herein) filed an application before the Maintenance Tribunal seeking for a right to reside in her property and ensure that she is not harassed in any manner. Respondents 3 and 4 were made parties to the said application. It was inter alia contended that respondents 3 and 4 were harassing the petitioner and she may be permitted to reside in the said property.

3. The Tribunal, however, taking into consideration of all the facts involved in the matter and after hearing all the affected parties, including the relatives, issued a direction that the 2nd

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respondent shall not be prevented in any way by respondents 3 and 4 from staying in the house and land at Nagaram Village till her death, which was in the possession of respondents 3 and 4. As far as the other daughters of the 2nd respondent, who were staying in the house in possession of respondents 3 and 4 were concerned, they were directed to vacate the house and shift to the house in the name and possession of the husband of the 3rd respondent herein, Latheefa and the 2nd respondent and to hand over the house in Nagaram Village to the legal owners within 21 days from the date of the said order.

4. It is aggrieved by the aforesaid direction that the writ petition had been filed. The learned Single Judge, after evaluating the respective contentions of the parties, observed that in so far as the petitioner has no title to the property and when the Tribunal had already made necessary arrangements for the residence of the petitioner in a property situated at Olavanna Village and that she was also heard in the matter by the Tribunal, did not interfere with the order. However, it was observed that it shall be open for the appellant to seek redressal of her grievance by resorting to civil remedies.

5. Impugning the aforesaid judgment, the learned counsel for the appellant submits that no such order could have been passed by the Maintenance Tribunal in exercising its powers under the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. First of all, she was not a party to the lis. That apart, the contention of the 2nd respondent mother was that respondents 3 and 4 were trying to evict her from the property and she sought for a direction only against respondents 3 and 4. Reference is made to Ext.P4 complaint and it is contended that when the claim itself was a right of residence in the property, there was no reason for evicting the petitioner, who was residing in the property for the last several years.

6. We have heard the learned counsel for respondents 3 and 4 as well. It is submitted by the learned counsel that they have purchased the property from the mother by virtue of a valid sale deed. They alone have the right to reside in the property and the petitioner was creating substantial nuisance to them and they should have been permitted to reside in the said property. While the matter was pending before the Tribunal, all the parties including the other daughters of the 2nd respondent were heard in the matter and proper solution had been arrived at, to ensure that

the 2nd respondent would have a peaceful life in her residence. Therefore, it is contended that there is no reason to interfere with the order passed by the Tribunal.

7. Having regard to the aforesaid factual situation, we do not think that any interference is called for with reference to the judgment of the learned Single Judge. The learned Single Judge had considered the matter in the light of the entire factual scenario relating to the issue. The claim of the 2nd respondent is to have a peaceful residence at her place of residence, which has been protected by the Tribunal. The Tribunal also found that residence of the appellant and members of her family was causing serious disturbance to the residence of the 2nd respondent. When a solution had been arrived at among the family members that the appellant along with her family shall reside in another building belonging to the husband of the 3rd respondent and the 2nd respondent, it is evident that sufficient protection had been afforded to the members of the appellant's family as well.

8. Under such circumstances, when a solution had been found out by the Tribunal, after hearing all the affected parties, the learned Single Judge was justified in not interfering with the same. It is made clear that the appellant is entitled to reside in

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the residence, which has been provided to her in terms of Ext.P5 order and it is always open for her to agitate her civil rights in appropriate proceedings.

With the above observation, this writ appeal is dismissed.

**Sd/-
ASHOK BHUSHAN
CHIEF JUSTICE**

**Sd/-
A.M. SHAFFIQUE
JUDGE**

//True copy//

P.A. To Judge

Jvt/4.12.2015.