

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 6TH DAY OF JULY 2015/15TH ASHADHA, 1937

W.P.(C).No.5558 of 2015 (T)

PETITIONER(S):-

1. SHAJI JOSEPH, S/O/JOSEPH, AGED 40 YEARS,
VARAKIL, CHEPPUKULAM, THODUPUZHA,
NOW RESIDING AT LIG, 312, MANJU NIVAS
FRIEND LANE, KOCHI- 20.
2. MATHEW.T.JOHN, S/O.JOHN, AGED 45 YEARS,
TAHIPPARAMBIL, PAYIPPAṬ, THIRUVALLA,
PATHANAMTHITTA.
3. SHEEJA MATHEWS, AGED 40 YEARS, W/O.MATHEW.T.JOHN,
TAHIPPARAMBIL, PAYIPPAṬ,
THIRUVALLA, PATHANAMTHITTA.
4. SHEEBA SHAJI, AGED 35 YEARS, W/O.SHAJI,
LIG, 312. MANJU NIVAS, FRIEND LANE, KOCHI- 20.
5. SHIBIN STANLEY, AGED 33 YEARS, S/O.STANELY VARGHESE,
LIG 312, MANJU NIVAS, FRIEND LANE, KOCHI-20.

BY ADV. SRI.K.T.SAJU.

RESPONDENT(S):

1. THE MAINTENANCE TRIBUNAL & SUB COLLECTOR,
FORT KOCHI, COCHIN- 682 001.
2. STANELY VARGHESE, , AGED 61 YEARS, S/O.VARGHESE,
VALIYAVEETIL, LIG 346 A2, GANDHI NAGAR,
KADAVANTRA, KOCHI- 682 020.

R1 BY GOVERNMENT PLEADER SRI.S.JAMAL.

R2 BY ADV. SRI.P.THOMAS JOSEPH (PALLIVATHUCKAL).

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
06-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS:-

- EXT P1- TRUE COPY OF THE COMPLAINT DATED 22/10/2012 FILED BY THE 1ST RESPONDENT IN CASE NUMBER S-9380/2012/K.DIS BEFORE THE MAINTENANCE TRIBUNAL, FORT KOCHI.
- EXT P2- TRUE COPY OF THE INTERIM ORDER DATED 2/07/2013 OF THE MAINTENANCE TRIBUNAL AND SUB COLLECTOR, FORT KOCHI.
- EXT P3- TRUE COPY OF THE COMPLAINT IN M.C. NO.119/2014, FILED BEFORE THE FAMILY COURT, ERNAKULAM.
- EXT P4- TRUE COPY OF THE OBJECTION DATED 22/10/2014 FILED BY THE RESPONDENTS IN M.C.NO.119/2014.
- EXT P5- TRUE COPY OF THE ORDER DATED 25/02/2014 OF THE MAINTENANCE TRIBUNAL AND SUB COLLECTOR, FORT KOCHI PASSED IN S-9380/2012/K.DIS.
- EXT P6- TRUE COPY OF THE EXECUTION PETITION DATED 12/11/2014 FILED BY THE SECOND RESPONDENT BEFORE THE MAINTENANCE TRIBUNAL.

RESPONDENT(S)' EXHIBITS:-

NIL.

Vku/

[true copy]

K. Vinod Chandran, J.

W.P.(C).No.5558 of 2015-T

Dated this the 06th day of July, 2015

JUDGMENT

Petitioners 1 and 2 are the sons-in-law and petitioners 3 to 5 are the children of the 2nd respondent. The 2nd respondent filed a complaint under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 [for brevity “the Act”] and the Rules framed thereunder. The 1st respondent passed Exhibit P4 order.

2. The contention of the petitioners is that petitioners 1 and 2 definitely cannot be brought in under the provisions of the Act, since they do not come within the definition of “children” as defined under Section 2(a) of the Act. The said contention has to be accepted. No proceedings can be taken against the petitioners 1 and 2 by the 2nd respondent under the provisions of the Act and the Rules.

3. With respect to petitioners 3 to 5, the learned counsel would contend that they would come within the definition of “children” and, hence, are liable to be proceeded with under the provisions of the Act, if the 2nd respondent is able to establish the claim made under the Act.

4. The specific contention of the petitioners is that, going by Exhibit P6, the 2nd respondent admits to an income. However, this Court will not go into such contentions. It is for the 1st respondent to examine the evidence adduced by either parties. Looking at Exhibit P5, the order is to pay rent to the 2nd respondent for his residence in a rented house. Nothing is stated as to the amount of rent payable and the building in which the 2nd respondent is residing. The Tribunal's jurisdiction is to consider the claim made by a "senior citizen" as defined under the Act and pass orders as provided under Rule 13(3) of the Maintenance and Welfare of Parents and Senior Citizens Rules, 2009, which sub-rule is extracted hereunder:

"R.13. Action by the Tribunal in other cases.-

xxx

xxx

xxx

(3) While passing an order under sub-rule (1), directing the opposite party to pay maintenance to an applicant, the Tribunal shall take the following facts into consideration:-

- (a) amount needed by the applicant to meet his basic needs, especially food, clothing, accommodation, and healthcare,
- (b) income of the opposite party,
- (c) value of, and actual and potential income from the property, if any, of the applicant which the opposite party would inherit and/or is in possession of".

5. It cannot be said that the order passed at Exhibit P5 deals with any of the matters specified therein. Exhibit P5 order is passed without any application of mind and not in compliance with the provisions of the Act. Exhibit P5, hence, would stand set aside. The parties are directed to appear before the 1st respondent on 15.07.2015, on which date or any near date the matter shall be considered afresh.

The writ petition is disposed of as above. No costs.

Sd/-
K.Vinod Chandran
Judge.

vku/-

[true copy]