IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

FRIDAY, THE 6TH DAY OF NOVEMBER 2015/15TH KARTHIKA, 1937

WP(C).No. 13110 of 2015 (K)

PETITIONER(S):
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1. RADHAMANI, AGED 51 YEARS,
   D/O RAGHAVAN, CHANGALAPPALLIL,
   NADAKKAVU MURI, PERUNGALA, KAYAMKULAM,
   ALAPPUZHA DISTRICT, PIN:690 559.

2. CHITHIRA RAJAN, AGED 23 YEARS
   D/O RADHAMANI, CHANGALAPPALLIL,
   NADAKKAVU MURI, PERUNGALA, KAYAMKULAM,
   ALAPPUZHA DISTRICT, PIN:690 559.

3. ATHIRA RAJAN, AGED 19 YEARS,
   D/O RADHAMANI, CHANGALAPPALLIL,
   NADAKKAVU MURI, PERUNGALA, KAYAMKULAM,
   ALAPPUZHA DISTRICT, PIN:690 559.

4. VIJAYAN R., AGED 59 YEARS,
   S/O RAGHAVAN, GAYATHRI, PERUNGALA,
   KAYAMKULAM, ALAPPUZHA DISTRICT, PIN:690 559.

   BY ADV. SRI.N.ASHOK KUMAR.

RESPONDENT(S):
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1. THE STATE OF KERALA,
   REPRESENTED BY THE SECRETARY,
   REVENUE DEPARTMENT, SECRETARIAT,
   THIRUVANANTHAPURAM, PIN:695 001.

2. THE REVENUE DIVISIONAL OFFICER
   (MAINTENANCE & WELFARE TRIBUNAL),
   REVENUE DIVISIONAL OFFICE,
   CHENGANNUR, PIN:689 121.

3. VILLAGE OFFICER,
   PERUNGALA VILLAGE OFFICE,
   KAYAMKULAM-690 559.

4. SUB REGISTRAR, BHARANIKKAVU,
KAYAMKULAM, PIN:690 503.

5. THE CIRCLE INSPECTOR OF POLICE,
KAYAMKULAM, PIN:690 502.

6. SUMATHY, AGED ABOUT 74 YEARS,
W/O LATE GOPALAKRISHNAN NAIR,
SUMGO ENGINEERING INDUSTRIES, 9,
JAMNADAS INDUSTRIAL ESTATE, OPP. JAWAHAR TALKIES,
R.P. ROAD, MULLUND-WEST, MUMBAI-400 080.

7. GEETHA, AGED 48 YEARS,
D/O LATE GOPALAKRISHNAN NAIR,
SUMGO ENGINEERING INDUSTRIES, 9,
JAMNADAS INDUSTRIAL ESTATE, OPP. JAWAHAR TALKIES,
R.P. ROAD, MULLUND-WEST, MUMBAI-400 080.

8. DR. JYOTHI, AGED 40 YEARS,
D/O. LATE GOPALAKRISHNAN NAIR, 50/320F,
PRASANTHI NAGAR, EDAPPALLY, KOCHI-682 024.

9. VENU RAJAN, AGED 38 YEARS,
S/O LATE GOPALAKRISHNAN NIAR,
SUMGO ENGINEERING INDUSTRIES, 9,
JAMNADAS INDUSTRIAL ESTATE, OPP. JAWAHAR TALKIES,
R.P. ROAD, MULLUND-WEST, MUMBAI-400 080.

R1 TO R5 BY GOVT. PLEADER SRI.GIKKU JACOB.
R6 TO R9 BY SRI.M.RAMESH CHANDER, SENIOR ADVOCATE.
ADVS. SRI.ANEESH JOSEPH
SMT.DENNIS VARGHESE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rs.

WP(C).No. 13110 of 2015 (K)

APPENDIX

PETITIONER'S EXHIBITS:-

EXHIBIT P1: TRUE COPY OF SETTLEMENT DEED NO.1297/2013 OF BHARANIKKAVU REGISTRY.

EXHIBIT P2: TRUE COPY OF BASIC TAX RECEIPT DATED 26.10.2013 ISSUED BY THE VILLAGE OFFICER, PERUNGALA TO THE 1ST PETITIONER.

EXHIBIT P3: TRUE COPY OF THE BUILDING TAX RECEIPT DATED 29.08.2014 ISSUED BY THE CHETTIKULANGARA GRAMA PANCHAYAT TO THE 1ST PETITIONER.

EXHIBIT P4: TRUE COPY OF WILL DATED 26.08.2004 EXECUTED AND REGISTERED BY LATE GOPALAKRISHNAN NAIR IN FAVOUR OF THE 1ST PETITIONER.

EXHIBIT P5: TRUE COPY OF NOTICE DATED 06.03.2015 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.

EXHIBIT P6: TRUE COPY OF PETITION DATED 05.02.2015 SUBMITTED BY GOPALAKRISHNAN NAIR TO THE 2ND RESPONDENT.

EXHIBIT P7: TRUE COPY OF ORDER DATED 10.04.2015 PASSED BY THE 2ND RESPONDENT.

EXHIBIT P8: TRUE COPY OF RECEIPT DATED 08.04.2014 ISSUED BY THE KERALA STATE FINANCIAL ENTERPRISES, KAYAMKULAM BRANCH.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

A.MUHAMED MUSTAQUE, J.

W.P(C)No. 13110 of 2015 **'C.R.'**

Dated this the 6th day of November, 2015

<u>J U D G M E N T</u>

An interesting question of importance arises for consideration in this writ petition in the context of Section 23 of Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to for brevity, as 'the Senior Citizens Act, 2007').

2. Late Gopalakrishnan Nair was a wealthy businessman at Mumbai. He belonged to Kerala. Late Gopalakrishnan Nair approached the Maintenance Tribunal under Senior Citizens Act 2007. His relief before the Tribunal inter alia was for declaration of settlement deed bearing No.1297/2013 dtd.3.6.2013 of Bharanikkavu Sub Registry as null and void.

3. The settlement deed had been executed by the late Gopalakrishnan Nair in the name of the petitioners herein. The first petitioner herein is his niece and the fourth petitioner is the nephew of

the late Gopalakrishnan Nair. The remaining petitioners are the children of the first petitioner.

4. The respondents 6 to 9 are the widow and children of late Gopalakrishnan Nair. It appears that late Gopalakrishnan Nair came down to Kerala to settle down here, after leaving his business and all immovable properties to be taken care of by his wife and children. While he was in Kerala, he had a hope, he would be taken care of by the petitioners. Therefore, with the hope that they would take care of him, he had executed a settlement deed referred as above. In the settlement deed, it is stated that he is executing the deed, on account of love and affection as well on the ground that the petitioners were taking care of and maintaining Gopalakrishnan Nair in his old age. However, Ext.P1 Deed did not contain recitals providing basic amenities and basic physical needs to Gopalakrishnan Nair by the petitioners, as a condition for transfer.

5. The Tribunal revoked the Settlement Deed by finding that

Settlement Deed is liable to be revoked under Section 23(1) of Senior Citizens Act, 2007. The Tribunal also granted other reliefs based on the application of late Gopalakrishnan Nair. The Tribunal passed the order on 10.4.2015. Gopalakrishnan Nair passed away on 17.4.2015.

6. Learned counsel for the petitioner has raised following grounds for challenge before this Court.

i. In the absence of any stipulation in the settlement deed, that petitioners shall provide basic physical needs to the late Gopalakrishnan Nair, document cannot be revoked under Section 23 of Senior Citizens Act,2007.

ii. The late Gopalakrishnan Nair had executed a Will bequeathing the property, which was the subject matter of Settlement Deed. Therefore, on his death the petitioners have become the full owners of the property and the order of the Tribunal has become inoperative.

7. The Senior Citizens Act,2007 has a pivotal role in Indian Societal frame work. The Act, in fact, comprehends a scheme of welfare provisions for senior citizens. The Act contemplates right of senior citizens beyond right of maintenance. The word “welfare” has

a significant importance in the context. The welfare is defined under Section 2(k) as follows:-

> "*2(k) "welfare" means provision for food, health care, recreation centres and other amenities necessary for the senior citizens*."

Section 23 of the Senior Citizens Act, 2007 gives right to senior citizens to approach the Tribunal to declare any transfer of property, by way of gift or otherwise, after the commencement of the above Act, as void, in certain circumstances. It stipulates that such transfer must be with the condition that (a) transferee shall provide the basic amenities and basic physical needs to the transferor and (b) such transferee refuses or fails to provide such amenities and physical needs. Therefore, a deed can be declared as void on fulfilling the two conditions enumerated as above, declaring transfer as a fraud or coercion or under undue influence, as the case may be at the option of the transferor.

8. The question in this case is in the absence of specific recital

as conditions referred as above in the Settlement Deed, whether Tribunal has a power to declare transfer as void.

9. Section 122 of Transfer of Property Act,1882 (hereinafter referred for brevity, as 'the T.P.Act') defines “gift” as a transfer of certain existing moveable or immoveable property made voluntarily and without consideration. Section 126 of T.P.Act makes a provision to suspend or revoke the gift on happening of any specified event on which donor and donee may agree. The word 'consideration' in the context of Section 122 of T.P. Act, only refers to monetary consideration and does not include natural love and affection. However, it cannot be revoked on a mere Will of the donor. The gift or Settlement Deed on a promise to look after the donor at the old age is a transaction without any consideration. If such promise and expectation are treated to be a consideration, certainly transaction as a gift will be deemed to be void. Therefore, such conditions forming part of gift deed are also reiterated under Section 23 of the Senior Citizens Act,2007.

10. Section 23 of the Senior Citizens Act,2007 does not contemplate that the condition should form part as recital in the deed of transfer. It only refers that there should be a condition for such transfer. This condition can be either express or implied. If there is no express recital in the deed, the Tribunal has to look around circumstances to find out whether conduct otherwise dispel the intention of donor to revoke. The consideration for executing a gift deed or settlement deed is based on human conduct, caring and conscientious. Transfer admittedly is out of love and affection. Any donor in a gift deed would expect in a natural course of human conduct that donee continues to behave in same manner as behaved before execution of the deed. The love and affection influenced for execution of the deed certainly must be enduring and without any barrier. The human conduct in relation to a particular relation is presumed to exist in all set of circumstances for governing relationship of those individuals. Transferee cannot disown his own

action of love and affection after the transfer comes into effect. The transfer itself being based on love and affection, that would form part as a condition of the transaction for future conduct as well. Thus, in the absence of any other circumstances to dispel, it must be presumed that transferor expects continuation of the care and love from the transferee even after execution of the deed in same manner, he was taken care prior to execution of the deed.

11. It is to be noted that the special scheme in terms of Senior Citizens Act,2007 could declare certain transfer as void, taking note of the fact that by taking advantage of the emotionally dependent senior citizens, relatives grab the property on the pretext of providing emotional support. Therefore, legislature thought such transaction could be declared as void as the conduct leading to transaction was based on malice or fraud. Therefore, condition referred in Section 23 has to be understood based on the conduct of the transferee and not with reference to the specific stipulation in the deed of transfer. Thus,

this Court is of the view that it is not necessary that there should be a specific recital or stipulation as a condition in the transfer of deed itself. This condition mentioned in Section 23 is only referable as a conduct of the transferee, prior to and after execution of the deed of transfer. Thus, challenge based on the ground that there is no reference in the recital of deed that transferee will provide basic amenities and physical needs to the transferor is of no consequence.

12. Under Section 17 of the Indian Contract Act, 1872, '*fraud*' includes a promise made without any intention of performing it. Section 92 of the Evidence Act places a restriction on the admissibility of evidence in variance or in contradiction of the term of a registered document in writing. However, under second proviso to Section 92, the existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. Under third proviso to Section 92, the existence of any separate oral agreement, constituting a condition precedent to the

attaching of any obligation under any such contract, grant or disposition of property may be proved. Thus, there is no requirement under law that condition as such should form part of written document. It can be implied from the circumstances of human conduct.

13. In this case, the donor named Gopalakrishnan Nair himself had deposed before the Tribunal that he was deprived of basic amenities and physical needs. It is to be noted that Section 23 provides for declaration of the document in certain circumstances, not merely with reference to the failure of providing maintenance, but actually with reference to the failure of providing basic amenities and basic physical needs, which may include failure to provide maintenance as well. The object of section is that transferee is bound to provide all provisions of welfare measures as understood as referable to the word “welfare” under Section 2(k) of Senior Citizens Act. Thus, this Court finds, there is no reason to interfere with the

factual findings of the Tribunal.

14. With regard to the question raised by learned counsel for the petitioners that they are the owners on the demise of Gopalakrishnan Nair based on the Will, this Court is of the view that the above claim is outside the scope of judicial review, based on a challenge in relation to an order under the Senior Citizens Act,2007. If petitioners have any independent claim based on the Will executed by late Gopalakrishnan Nair, petitioners are free to work out their remedy based on the Will. It is to be noted that party respondents also deny the right of the petitioners based on the Will executed by late Gopalakrishnan Nair. Therefore, leaving open the above question, this writ petition is dismissed. No costs.

sd/-

A.MUHAMED MUSTAQUE,
Judge

MBS/