

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SATHISH NINAN

FRIDAY, THE 27TH DAY OF NOVEMBER 2020 / 6TH AGRAHAYANA, 1942

WP(C).No.8821 OF 2020(C)

PETITIONER:

THOPPIL ANTO,
AGED 80 YEARS,
S/O. LATE JOSEPH KUNJAPPU, THOPPIL HOUSE, NNRA
NO.66, MAIN LANE NO.8, NETHAJI NAGAR, TOLL GATE,
EDAPPALLY, ERNAKULAM.

BY ADVS.
SRI.JOBY JACOB PULICKEKUDY
SRI.ANIL GEORGE
SRI.T.ANCY
SMT.N.B.FATHIMA SULFATH
SHRI.DAJISH JOHN
SMT.K.BINCYMOL

RESPONDENTS:

- 1 GLANCIN.T.A.,
AGED 54 YEARS
S/O. THOPPIL ANTO, THOPPIL HOUSE, HOUSE NO.39/43A,
NNRA NO.66, MAIN LANE NO.8, NETHAJI NAGAR,
TOLL GATE, EDAPPALLY, ERNAKULAM-682012.
- 2 LEENA,
AGED ABOUT 49 YEARS,
W/O. GLACIN T.A., THOPPIL HOUSE, HOUSE NO.39/43A,
NNRA NO.66, MAIN LANE NO.8, NETHAJI NAGAR,
TOLL GATE, EDAPPALLY, ERNAKULAM-682012.
- 3 THE DISTRICT MAGISTRATE (DISTRICT COLLECTOR)
OFFICE OF THE COLLECTORATE, CIVIL STATION,
KAKKANAD, ERNAKULAM-682030.
- 4 MAINTENANCE TRIBUNAL AND SUB COLLECTOR,
FORT KOCHI, ERNAKULAM-682001.

R1-2 BY ADV. SMT.V.SHYLAJA
R1-2 BY ADV. SRI.A.T.ANILKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
27-11-2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SATHISH NINAN, J.

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W.P.(C) No.8821 of 2020

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Dated this the 27th day of November, 2020

JUDGMENT

The petitioner is a senior citizen. He approached the District Magistrate - the authority under Rule 19 of the Kerala Maintenance and Welfare of Parents and Senior Citizens Rule, 2009 (herein after referred to as “the Rules”) seeking eviction of his son and family from the first floor of his residential building alleging that he is not being permitted to lead a normal life there, with security and dignity.

2. The Senior Citizen had originally approached the Maintenance Tribunal seeking the aforesaid relief. This Court as per Ext.P7 judgment in *Thoppil Anto v. Glacin T. A. and Ors. [2020 (2) KLT 176]* held that the

jurisdiction is vested with the District Magistrate under Rule 19, and not with the Maintenance Tribunal. It was further observed that the District Magistrate could delegate the power to an officer subordinate to him in terms of Section 22(1) of the Kerala Maintenance and welfare of Parents and Senior Citizens Act, 2007. It is pursuant thereto that the impugned order dated 12.03.2020 has been passed.

3. As per the order impugned, the prayer for eviction was refused. It was ordered that the peaceful residence of the petitioner in the ground floor of the building shall not be interfered with by the son and family. There was a further direction to pay an amount of ₹5,000/- towards the maintenance of the senior citizen. Aggrieved by the

refusal to order eviction, the senior citizen has approached this Court.

4. Heard Sri.Joby Jacob Pulickekudy, learned counsel for the petitioner – the senior citizen and Sri.A.T.Anil Kumar, learned counsel for respondents 1 and 2 – the son and his wife.

5. Relying on the judgment of the Full Bench of this Court in *Subhashini v. District Collector, Kozhikode and Ors. [2020 (5) KHC 195]*, learned counsel for respondents submitted that an order of eviction cannot be passed in a proceeding under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and the Rules thereunder. He relied on the following observations of the Full Bench to canvass his contention;

“The Tribunal constituted under the Act of 2007, under Section 23(1) can only declare void the transfer, at the option of the transferor. As we noticed earlier it cannot even order recovery of the possession of the subject property for which again the transferor will have to approach the Civil Court”.

6. The Full Bench was dealing with the scope of Section 23 of the Act and the powers of the Maintenance Tribunal. Section 23 provides that where a senior citizen has transferred his property on condition that the transferee shall provide basic amenities and basic physical needs to the transferor, and the transferee fails in honouring the same, the transfer shall be deemed to have been made by fraud, coercion and undue influence and shall, at the option of the transferor be declared as void by the Maintenance Tribunal. The Full Bench held that, the stipulation for maintenance, which is the prerequisite for application of the Section, shall be expressly mentioned in the document of

transfer. The Full Bench further held that even if such a document is declared void by the Tribunal, for recovery of possession of the property the senior citizen will have to approach the Civil Court. The powers of the District Magistrate under Rule 19 of the Rules, to ensure peaceful living of the senior citizen with security and dignity, was not the subject matter therein.

7. To deliberate upon as to whether the District Magistrate in exercise of his powers under Rule 19 of the Rules, has the power to order eviction, it would be appropriate to refer to certain provisions of the Act and Rules.

8. Coming to the short title of the Act, Section 1(1) states "*This Act may be called the Maintenance and Welfare of Parents and Senior Citizens Act, 2007*".

Section 2(k) defines the term "welfare" thus:-

"Welfare" means provision for food, health care, recreation centres and other amenities necessary for the senior citizens."

Section 4(3) provides for the obligation of the

children to maintain his parent, which extends to providing of needs necessary for the parent to lead a normal life. It is in consonance with the above provisions and the scheme of the Act that Rule 19 was enacted casting duty on the District Magistrate to ensure that senior citizens are able to live with security and dignity. Rule 19 sub rules (1) and (2)(i) read thus:-

“19(1) - The District Magistrate shall perform the duties and exercise the powers mentioned in sub-rules (2) and (3) so as to ensure that the provisions of the Act are properly carried out in his district.

(2)(i) - ensure that life and property of senior citizens of the district are protected and they are able to live with security and dignity.”

The District Magistrate has, under Rule 19(2)(i) the power to order eviction, to ensure the peaceful living of a senior citizen with security and dignity. That such a right vests with the District Magistrate under Rule 19(2)(i) has been recognised

by this Court in *Thoppil Anto v. Glacin T. A. and Ors.* (supra). However, the power has to be exercised very cautiously. It has to be ensured that it is not made as a weapon or tool to settle property disputes amongst siblings.

9. An order of eviction could be passed by the District Magistrate only if, on an enquiry it is found that such an order is necessary to ensure the normal living of the senior citizen with security and dignity. When the relief sought for is eviction, a finding has to be entered into by the authority, either way, as to whether an order of eviction is necessitated or not, on the facts and materials. In the case at hand, on a reading of the order dated 12.03.2020 it is seen that such a conclusion had not been arrived at. It is only proper that the authority passes fresh orders. The contentions of the parties are left open.

On the foregoing discussions, the order dated 12.03.2020 (Exhibit P8) is set aside. The authority shall pass fresh orders after hearing the parties.

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Notice for appearance shall be issued to the parties.

Sd/-
SATHISH NINAN
JUDGE

kns/-

//True Copy//

P.S. to Judge

APPENDIX

PETITIONER'S/S EXHIBITS:

EXHIBIT P1 TRUE PHOTOCOPY OF SALE DEED DATED
03.03.2005 OF S.R.O EDAPPALLY.

EXHIBIT P2 TRUE PHOTOCOPY OF LATEST BASIC TAX
RECEIPT DATED 22.05.2018 ISSUED BY THE
THRIKKAKARA NORTH VILLAGE.

EXHIBIT P3 TRUE PHOTOCOPY OF POSSESSION
CERTIFICATE ISSUED BY THE THRIKKAKARA
NORTH VILLAGE DATED 18.08.2010.

EXHIBIT P4 TRUE PHOTOCOPY OF COMPLAINT DATED
22.08.2017 BEFORE THE KALAMASSERY
POLICE STATION.

EXHIBIT P5 TRUE PHOTOCOPY OF ORDER DATED
04.01.2019 PASSED BY THE 4TH RESPONDENT.

EXHIBIT P6 TRUE PHOTOCOPY OF ORDER DATED
31.07.2019 PASSED BY THE 3RD RESPONDENT.

EXHIBIT P7 TRUE PHOTOCOPY OF JUDGMENT IN WP (C)
NO.26111/2019.

EXHIBIT P8 TRUE PHOTOCOPY OF ORDER DATED
12.03.2020 PASSED BY THE 3RD RESPONDENT.

RESPONDENT'S/S EXHIBITS:

EXHIBIT R1A TRUE COPY OF THE AGREEMENT EXECUTED
BETWEEN PETITIONER AND 1ST RESPONDENT.
