

IN THE HIGH COURT OF KERALA AT ERNAKULAM  
PRESENT

THE HONOURABLE MR.JUSTICE GOPINATH.P.

TUESDAY, THE 12<sup>TH</sup> DAY OF MAY, 2020/22<sup>ND</sup> VAISAKHA, 1942

W.P(C) NO.9779 OF 2020

PETITIONER:

THAYUMMA, AGED 78 YEARS,  
RESIDING AT KADAVIL PARAMBIL,  
MATHSYAPURY, VATHURUTHY, KOCHI,  
REPRESENTED BY HER DAUGHTER AND NEXT FRIEND,  
SAINABA NOUFAL, AGED 42 YEARS,  
W/O. NOUFAL, AGED 42 YEARS,  
KADAVIL PARAMBIL, VATHURUTHY,  
VATHURUTHY.P.O., ERNAKULAM, PIN : 682 029.

BY ADVS: SRI.R. ASALATHA VARMA (A.715)  
SRI.P.M.SWAYAMPBABHA

RESPONDENTS:

1. STATE OF KERALA,  
REPRESENTED BY CHIEF SECRETARY,  
SECRETARIAT,  
THIRUVANANTHAPURAM - 695 001.
2. DISTRICT COLLECTOR, ERNAKULAM,  
COLLECTORATE,  
KAKKANAD, COLLECTORATE.P.O.,  
ERNAKULAM - 682 030.
3. MAINTENANCE TRIBUNAL,  
(SUB DIVISIONAL MAGISTRATE),  
FORT KOCHI,  
FORT KOCHI.P.O.,  
ERNAKULAM - 682 001.
4. FATHTIMA.N.P., AGED 47 YEARS,  
W/O. NIZAMUDHIN  
KAITHARA VEETIL, NELSON MANDELA ROAD,  
NEAR SDPY SCHOOL, PALLURUTHY,  
PALLURUTHY.P.O., PIN : 682006.



R1-2 BY SRI. GOVERNMENT PLEADER SMT.VINITHA.B  
R3- BY  
R4 BY

THIS WRIT PETITION HAVING COME UP FOR ADMISSION ON 12.05.2020,  
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**Dated this the 12th day of May, 2020**

**JUDGMENT**

The petitioner is a senior citizen and mother of the 4th respondent. According to her, the 4th respondent prevailed upon her to transfer certain property and residential building to herself on the premise that the 4th respondent would take care of the petitioner by providing emotional, physical and monetary support. The petitioner states that she has filed O.S.No.393 of 2019 before the Munsiff's Court, Kochi with a prayer to declare the document executed by her, transferring her property to the 4th respondent as null and void. In the meanwhile, she also filed an application before the third respondent under the provisions of Ss. 5 and 23 of the Maintenance and Welfare of Parents and Senior

Citizens Act 2007 ('the Act'). It is her case that the said application has been disposed of without considering her case and without affording a proper opportunity of hearing to her. When this matter came up on 8.5.2020 I directed the Govt. Pleader to obtain instruction from the third respondent. Today, the learned Govt. Pleader invites my attention to the statement filed on behalf of the third respondent and submits that when the proceedings were pending before the third respondent some sort of settlement had been arrived at between the parties. The 4th respondent had agreed to support the petitioner in every manner possible and had also undertaken not to dispose of the property conveyed to her by the petitioner during the lifetime of the petitioner. The learned Govt. Pleader also submits that it was also agreed that the 4th respondent will pay an amount of Rs.2,000/-per month to the petitioner while four other children of

the petitioner who, were also parties, would pay an amount of Rs.1000/- each to the petitioner. However, the learned counsel for the petitioner submits that no such conciliation has been recorded in the form of proceedings and that no such proceedings has been served on her and so called compromise has not been ratified by the Tribunal. The learned counsel for the petitioner would invite my attention to Rule 12 of the Kerala Maintenance and Welfare of Parents and Senior Citizens Rules 2009 and state that any compromise has to be ratified by the third respondent Tribunal. The learned Govt. Pleader would submit that ratification of the compromise was not undertaken only on account of the fact that the petitioner submitted before the Tribunal that she was not interested in continuing the proceedings and that she would interested only in prosecuting the suit filed by her, as noticed above. This is seriously

disputed by the learned counsel for the petitioner. The learned counsel for the petitioner would also submit that the third respondent tribunal has been vested with the power in terms of Section 23 of the Act to determine whether the transfer of property by the petitioner should be declared void. Considering the facts and circumstances of the case, and considering that the petitioner is a senior citizen it will be appropriate to direct that the application filed by the petitioner under the provisions of the Act shall be restored to file by the third respondent Tribunal and the matter shall either be adjudicated or the compromise entered into between the parties will be ratified by the Tribunal. Proceedings in this regard shall be drawn up and communicated to the petitioner as expeditiously as possible, at any rate, within a period of three months from the date of receipt of copy of this

judgment, needless to say after affording an opportunity of hearing to the petitioner and all others, who are parties to the petition filed by her before the third respondent Tribunal. I deem it appropriate to direct the third respondent to examine whether any of the circumstances in which the transfer of property by the petitioner can be declared null and void u/s.23 of the Act are existing in this case and if so, to adjudicate such issue also while disposing of the application.

**GOPINATH.P, JUDGE**

pm

APPENDIX

PETITIONERS EXTS.:

EXHIBIT-P1 - TRUE COPY OF THE CERTIFIED COPY OF SALE DEED HAVING NO. 1741/2019 DATED 31.05.2019 OF SUB REGISTRAR OFFICE, KOCHI.

EXHIBIT-P2 - TRUE COPY OF APPLICATION SUBMITTED BY PETITIONER BEFORE THE R.D.O., FORT KOCHI ON 16.09.2019.

EXHIBIT-P3 - TRUE COPY OF FORWARDING LETTER DATED 18.09.2019 SENT BY HIBI EDEN, M.P. TO THE R.D.O., FORT KOCHI.

EXHIBIT-P4 - TRUE COPY OF PROCEEDINGS OF THE CONCILIATION OFFICER DATED 17.10.2019.

EXHIBIT-P5 - TRUE COPY OF APPLICATION DATED 26.12.2019 SUBMITTED BY PETITIONER BEFORE THE 3<sup>RD</sup> RESPONDENT.

EXHIBIT-P6 - TRUE COPY OF APPEAL FILED BEFORE THE 2<sup>ND</sup> RESPONDENT ON 17.03.2020.

EXHIBIT-P7 - TRUE COPY OFFIR DATED 3.11.2019 IN CRIME NO.1071/2019 OF HARBOUR CRIME POLICE STATION.