



C.R.

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE D. K. SINGH

FRIDAY, THE 29<sup>TH</sup> DAY OF NOVEMBER 2024 / 8TH AGRAHAYANA, 1946

WP(C) NO. 18370 OF 2024

PETITIONERS:

- 1 MRS. AMEERA M,  
AGED 33 YEARS  
D/O. M. ABDURAHIMAN KUTTY, HAVING PERMANENT ADDRESS AT FLAT  
NO. 7B 'SKYLINE GARNET' APARTMENTS, K.T. GOPALAN ROAD,  
KOTTOOLI P.O., KOZHIKODE, REPRESENTED BY THEIR POWER OF  
ATTORNEY HOLDER MRS.SABARIYA, AGED 55 YEARS, D/O. LATE K. M.  
ALI, RESIDING AT FLAT NO. 7B 'SKYLINE GARNET' APARTMENTS,  
K.T. GOPALAN ROAD, KOTTOOLI P.O., KOZHIKODE, PIN - 673016
  
- 2 MR. DANISH M.,  
AGED 30 YEARS  
S/O. M. ABDURAHIMAN KUTTY, HAVING PERMANENT ADDRESS AT FLAT  
NO. 7B 'SKYLINE GARNET' APARTMENTS, K.T.GOPALAN ROAD,  
KOTTOOLI P.O., KOZHIKODE, PIN &#8211; 673 016, REPRESENTED  
BY THEIR POWER OF ATTORNEY HOLDER MRS. SABARIYA, AGED 55  
YEARS, D/O. LATE K. M. ALI, RESIDING AT FLAT NO. 7B 'SKYLINE  
GARNET' APARTMENTS, K.T.GOPALAN ROAD, KOTTOOLI P.O.,  
KOZHIKODE, PIN - 673016
  
- 3 MRS. SABARIYA,  
AGED 55 YEARS  
D/O. LATE K. M. ALI, RESIDING AT FLAT NO. 7B 'SKYLINE  
GARNET' APARTMENTS, K.T. GOPALAN ROAD, KOTTOOLI P.O.,  
KOZHIKODE, PIN - 673016

BY ADVS.  
SUDEEP ARAVIND PANICKER  
A.S.DILEEP  
P.BINOD  
K.Y.SUDHEENDRAN  
SUSEELA DILEEP  
K.N.HARISHANKAR



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RESPONDENTS:

- 1 THE MAINTENANCE TRIBUNAL, KOZHIKODE,  
REPRESENTED BY ITS PRESIDING OFFICER SUB COLLECTOR/RDO,  
CIVIL STATION P.O., MALAPARAMBA, KOZHIKODE DISTRICT, PIN -  
673020
  
- 2 MR. M. ABDURAHIMAN KUTTY,  
AGED 64 YEARS  
S/O. LATE ABUBACKER, RESIDING AT MOODANTHARMEL HOUSE,  
KARUVANTHRURUTHI P.O., KOZHIKODE DISTRICT, PIN - 673631
  
- 3 MRS. SATHIANOOR M,  
AGED 36 YEARS  
D/O. M. ABDURAHIMAN KUTTY, RESIDING AT FLAT NO. 7B 'SKYLINE  
GARNET' APARTMENTS, K.T. GOPALAN ROAD, KOTTOOLI P.O.,  
KOZHIKODE, PIN - 673016

BY ADVS.  
R. PARTHASARATHY  
B. KRISHNAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21.11.2024,  
THE COURT ON 29.11.2024 DELIVERED THE FOLLOWING:



### JUDGMENT

Petitioners are the daughter, son, and wife, respectively, who filed proceedings No. N2/217/2023 before the 1st respondent, Maintenance Tribunal, constituted under the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007('the Act' for short).

2. The 2<sup>nd</sup> respondent is the father of the 1st and 2nd petitioner, and the Husband of the 3rd petitioner, who is a senior citizen, filed a petition under Section 5 of the Act before the Maintenance Tribunal, Kozhikode (1<sup>st</sup> respondent). It is stated that the petitioners did not take care of providing the residence to him, and he needs maintenance to survive and lead a normal life. It is further stated that second respondent was living abroad, and after he came back from abroad, the petitioners did not permit him to reside in the flat purchased in the joint name of himself and his wife. Before going abroad, all the family members were staying together. After he came back from abroad with some ailments, the petitioners



were not ready to accept him, and he had no place to live. It was also prayed that if the petitioners were not willing to permit him to stay with them, they should arrange a house or flat for him and should also provide the maintenance amount.

3. On the basis of these facts stated, the Tribunal passed an interim order on 27.02.2023, permitting the 2<sup>nd</sup> respondent to reside in the flat, which is in the joint name of husband and wife, subject to the final outcome of the proceedings before the Tribunal. The petitioners approached this Court in W.P(C)No. 16099/2023, and this court granted an interim stay on the interim order passed by the Tribunal on 27.02.2023.

4. This court set aside the interim order passed by the Tribunal and directed the parties to appear before the Tribunal on 26.09.2023. The Tribunal finally came to the conclusion that the 2<sup>nd</sup> respondent did not have a place to stay, and he was residing in the houses of the relatives changing from one to another. A report was also made available from the Village Officer regarding the financial status of the petitioners, and therefore, considering the age and



health condition, the Tribunal directed the petitioners to arrange a house on rent to accommodate the 2<sup>nd</sup> respondent and also bear the monthly rent for the said residence. The Tribunal did not order for maintenance as the 2<sup>nd</sup> respondent had already filed proceedings under Section 125 of the Cr.P.C, claiming maintenance.

5. The learned counsel for the petitioners submitted that during these years, the 2<sup>nd</sup> respondent intentionally deserted his wife and children, who are the petitioners here. He was leading a luxurious life of his choice abroad, and he neglected to take care of and maintain the petitioners and his other daughter, who is not a petitioner in the writ petition.

6. It is submitted that Section 12 of the Act prohibits the Tribunal to entertain a plea for grant of maintenance to an applicant, who has already exercised an option to initiate proceedings under Section 125 of Chapter IX of the Code Criminal Procedure, demanding maintenance from his own children.

7. In the present case, the 2<sup>nd</sup> respondent had approached the Family Court, Kozhikode, seeking maintenance to be paid to him by



the children. Therefore, the order passed for arranging the house for him and paying the rent by the petitioner is against the express provision of Section 12 of Act. Section 2(b) of the Act provides the definition of maintenance which would include *inter alia* providing residence as well.

8. It is further submitted that as providing residence is a facet of maintenance in the definition given in Section 2(b) of Act, the impugned order passed by the respondent Tribunal is unsustainable and liable to be set aside.

9. The next submission advanced by the learned counsel for the petitioner is that Section 4 of the Act prescribes that the parents or senior citizen would be entitled to the maintenance, who is unable to maintain himself/herself from his/ her own earnings or out of the property owned by him/her. Without establishing the jurisdictional factors, an applicant would be precluded from seeking maintenance from its offspring or relatives as defined in Section 2(g) of the Act. The 2<sup>nd</sup> respondent has not established the jurisdictional facts for passing the order impugned in this writ



petition.

10. On the other hand, the learned counsel for the 2<sup>nd</sup> respondent has supported the order impugned and submitted that under Section 125 of the Cr.P.C, the Family Court would not grant the residence to the respondent. He further submits that the provisions of the Act which is a social legislation should be given liberal interpretation to secure the welfare and maintenance of the parents and senior citizen as the case may be.

11. He further submitted that the flat is in the joint name of the petitioner and the 2<sup>nd</sup> respondent. The flat was purchased from the earnings of the 2<sup>nd</sup> respondent. The 2<sup>nd</sup> respondent is suffering from old age related diseases and the petitioners are not even allowing him to live in the flat purchased from his earnings. He further submits that the 2<sup>nd</sup> respondent is entitled to live in the flat, and if the petitioners are not allowing him to stay with them, they must arrange a residence for him, for which they would bear the cost. The Tribunal has passed the correct order, which is not required to be interfered with.



12. I have considered the submissions advanced.

13. The Act has been enacted by the parliament with the objective of ameliorating the deprivation caused to the parents by the children. The object of the Act is to provide more effective provisions for the maintenance and the welfare of parents and senior citizens guaranteed and recognised under the Constitution of India and to provide for the institutionalization of suitable mechanisms for the protection of the life and property of the senior citizens. Section 2(b) defines the maintenance, which would include provisions for food, clothing, residence and medical attendance and treatment. Section 3 of the Act provides that the provisions of the Act shall have an overriding effect with a non-obstante clause.

14. However, the Supreme Court in ***S.Vanitha vs. Deputy Commissioner [(2021) 15 SCC 730]*** has held that the Act's overriding effect as provided under Section 3 cannot be interpreted to preclude all other competing remedies and protections that are sought to be conferred by the Protection of Women from Domestic Violence Act, 2005.





15. Section 4 of the Act provides for the maintenance of parents and senior citizens if one is unable to maintain himself from his own earnings or out of the property owned by him. Such a senior citizen or parents, as the case may be, can make an application under Section 5 of the Act seeking maintenance. Subsection 2 of Section 4 creates an obligation on the children or relative, as the case may be, to maintain a senior citizen, and this obligation is extended to meet the needs of such Act, so that the senior citizens can lead a normal life.

16. In the present case, the property of the 2<sup>nd</sup> respondent is in the possession of the 3<sup>rd</sup> petitioner. It is also not in dispute that the 2<sup>nd</sup> respondent is a senior citizen, and as per the Village Officer report, he is not doing well, whereas the petitioner's financial position is said to be good.

17. The jurisdictional facts necessary for exercising the power under Section 9 are present in this writ petition. The Tribunal, therefore, after taking into consideration the age of the 2<sup>nd</sup> respondent, his financial position and physical health, has



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ordered to provide residence to him. Section 12, which gives an option for claiming maintenance, does not in any way bar the jurisdiction of the Tribunal to provide residence for a senior citizen or the parents, as the case may be. Further, the provisions of Section 3 provide for having an overriding effect and non-obstante clause. The Tribunal has not awarded maintenance but has provided for residence to the 2<sup>nd</sup> respondent. Therefore, I do not find that the order impugned suffers from an error of law or jurisdiction which requires this court to exercise plenary jurisdiction under Article 226 of the Constitution of India.

The present Writ Petition is, therefore, dismissed.

**Sd/-D. K. SINGH**  
**JUDGE**



APPENDIX OF WP(C) 18370/2024

PETITIONER EXHIBITS

- Exhibit-P1 TRUE COPY OF THE POWER OF ATTORNEY DATED 22/12/2022 EXECUTED BY THE 1ST AND 2ND PETITIONERS IN FAVOUR OF THE 3RD PETITIONER
- Exhibit-P2 TRUE COPY OF THE FINAL ORDER DATED 06/12/2023 ISSUED BY THE 1ST RESPONDENT IN PROCEEDING NO. N2/217/2023
- Exhibit-P3 TRUE COPY OF THE INTERIM ORDER DATED 27/04/2023 PASSED BY THE 1ST RESPONDENT IN PROCEEDING NO. N2/217/2023 ALONG WITH OTHER ENCLOSURES
- Exhibit-P4 TRUE COPY OF THE JUDGMENT DATED 18/09/2023 OF THIS HON'BLE COURT IN W.P. (C) 10669 OF 2023
- Exhibit-P5 TRUE COPY OF M.C. 391 OF 2022 FILED BY THE 2ND RESPONDENT BEFORE THE FAMILY COURT, KOZHIKODE
- Exhibit-P6 TRUE COPY OF THE MEMORANDUM OF APPEAL FILED BY PETITIONERS AGAINST EXHIBIT-P2 BEFORE THE APPELLATE AUTHORITY AND DISTRICT COLLECTOR, KOZHIKODE
- Exhibit-P7 TRUE COPY OF THE ORDER DATED 13/03/2024 OF THE APPELLATE AUTHORITY UNDER MAINTENANCE AND WELFARE OF PARENTS AND SENIOR CITIZENS ACT, 2007 PASSED IN APPEAL NO. 1258/2024-G8
- Exhibit-P8 TRUE COPY OF THE SHOW CAUSE NOTICE DATED 07/05/2024

RESPONDENT EXHIBITS

- Exhibit-R2 (a) True copy of Petition dated 23.01.2023 filed before the Maintenance Tribunal, Kozhikode alongwith English translation
- Exhibit-R2 (e) Photograph of the respondent giving hand to the father of the groom as per custom
- Exhibit-R2 (f) Photographs of the marriage of 1st petitioner
- Exhibit-R2 (c) True Copy of the registered Power of Attorney dated 21-06-2016 along with its English



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**Translation**

**Exhibit-R2 (d)**

True copy of the cancellation deed cancelling the power of attorney, dated 29.12.2021 along with its English Translation

**Exhibit-R2 (b)**

True copy of the deed No. 1260/2013 of SRO Chevayur dated 04.04.2013

**PETITIONER EXHIBITS**

**Exhibit-P9**

True copy of the plaint/petition dated 29/08/2022 filed by the 2nd respondent as O.P. No. 1415 of 2022 pending before the Hon'ble Family Court, Kozhikode together with the English translation thereof