

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

WEDNESDAY, THE 6<sup>TH</sup> DAY OF DECEMBER 2023 / 15TH AGRAHAYANA, 1945

WP (C) NO. 17195 OF 2023

PETITIONER:

MARY TERESA GLADYS M.P., AGED 74 YEARS,  
W/O. P.T. JOSEPH, PANAKKAL HOUSE, PORT AVENUE,  
PANANGAD, ERNAKULAM DISTRICT, PIN - 682506.

BY ADVS.  
SHERRY J. THOMAS  
JOEMON ANTONY  
ANTONY NILTON REMELO

RESPONDENTS:

- 1 THE DISTRICT COLLECTOR, ERNAKULAM,  
1ST FLOOR OF CIVIL STATION, ECHAMUKU, KUNNUMPURAM,  
KAKKANAD, KOCHI, KERALA, PIN - 682030.
- 2 THE REVENUE DIVISIONAL OFFICER,  
TALUK OFFICE, FORTKOCHI., PIN - 682001.
- 3 MARY GREETY P.J, W/O DOMINIC SHIBU ANTONY,  
DOOR NO. 134, DEVE RAJ COMPOUND, A.D.T COLONY,  
CONOOR, NILGIRI, TAMILNADU, PIN - 643101.
- 4 SEBIN JOSEPH, PANAKKAL HOUSE, PORT AVENUE,  
PANANGAD, ERNAKULAM DISTRICT., PIN - 682506.
- 5 MELBIN, PANAKKAL HOUSE, PORT AVENUE, PANANGAD,  
ERNAKULAM DISTRICT, PIN - 682506.

BY ADVS.C.R.SANISH  
KARTHIK S. ACHARYA(K/1235/2009)  
ANJANA K.P.(K/001818/2023)  
SRI.P.S.APPU, GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON  
06.12.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



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## JUDGMENT

The petitioner, who is a senior citizen, within the ambit of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 ('Act', for short), has filed this writ petition impugning Ext.P4 order of the Maintenance Tribunal and Ext.P7 order of the Appellate Tribunal - both constituted under the afore 'Act' - as being illegal and unlawful.

2. Sri.Sherry J.Thomas - learned counsel for the petitioner, vehemently argued that both the impugned orders are untenable and illegal because the respective Tribunals refused to exercise jurisdiction under Section 23 of the 'Act', in spite of the specific application of his client, solely because she has a pension of her own and thus concluding that she is not required to be maintained by any of the children. He argued that these findings in the



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impugned orders are *per se* vitiated because, Section 23 of the 'Act' mandates that, if the person in whose favour the document has been settled, refuses to comply with certain specified obligations, the senior citizen obtains an indefeasible right to have it set aside. He thus prayed that Exts.P4 and P7 be set aside and the Maintenance Tribunal be directed to reconsider her client's claim, adverting specifically to the settlement deed - a copy of which is on record as Ext.P1.

3. Sri.Sherry J.Thomas concluded his submissions, saying that, even an *ex facie* reading of Ext.P1 would show that an obligation has been fastened on the daughter of the senior citizen, namely the 1<sup>st</sup> respondent herein, of taking care of her and of providing her requirements; and that, since the said respondent has refused to do so, his client is



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entitled to have the reliefs sought for granted.

4. Sri.Sanish C.R. - learned counsel for respondent No.3, however, submitted that the impugned orders are irreproachable because, the Statutory Tribunals have found that the petitioner is not in need of any maintenance since she has a pension and also because she has no complaint against her sons, namely respondents 4 and 5 herein. He argued that, therefore, in the afore circumstances, there is nothing that his client had to do for the senior citizen - her mother; and therefore, that the allegation, that she did not provide for her requirements, is without any factual basis. He, therefore, prayed that this writ petition be dismissed.

5. Sri.P.S.Appu - learned Government Pleader, supported Exts.P4 and P7, saying that the Tribunals conducted enquiries, to find that



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even the senior citizen does not have a case that she requires to be maintained by any of her children, much less the 3<sup>rd</sup> respondent herein. He submitted that it is, therefore, the Tribunals came to the conclusion that her request, to have Ext.P1 set aside under Section 23 of the 'Act', is unnecessary.

6. I am afraid that I cannot find favour with the afore submissions of the respondents because, Section 23 of the 'Act' operates in a very specific ambit. The Tribunals under it are expected to verify whether the criteria that are engrained therein are attracted; and if so, then consider the request of the senior citizen.

7. In the case at hand, the Tribunals found that the senior citizen has a pension and that she has no complaints against her sons, namely respondents 4 and 5 herein. However, this, by itself, could not have been the sole reason to



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presume that she does not require to be maintained by the 3<sup>rd</sup> respondent - her daughter, particularly after she had obtained a Settlement Deed in her favour, namely Ext.P1. This matter certainly will, therefore, require to be reconsidered by the Maintenance Tribunal, within the purlieus of Section 23 of the 'Act'.

In the afore circumstances and in such scenario, I order this writ petition and set aside Exts.P4 and P7; with a consequential direction to the Maintenance Tribunal to reconsider the claim of the petitioner, after affording her, as also respondents 3 to 5, an opportunity of being heard, adverting specifically to Ext.P1; thus culminating in an appropriate order and necessary action thereon, as expeditiously as is possible, but not later than one month from the date of receipt of a copy of this judgment.



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Needless to say, since I have not entered into the merits of any of the rival contentions of the parties, I clarify that my observations herein are not intended to influence the decision of the Maintenance Tribunal, in any manner; and that it should enter into a dispassionate view independently, based on all relevant and germane aspects.

Sd/-

DEVAN RAMACHANDRAN

JUDGE

akv

THE HIGH COURT OF KERALA  
HIGH COURT OF KERALA  
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APPENDIX OF WP(C) 17195/2023

PETITIONER EXHIBITS

- EXHIBIT P 1 THE TRUE COPY OF SETTLEMENT DEED,  
DATED 07-05-2018.
- EXHIBIT P 2 THE TRUE COPY OF MEDICAL REPORT DATED  
8-5-2018, WHICH SHOWS THAT FROM 19-4-  
2018 TO 08/05/2018 THE PETITIONER'S  
HUSBAND WAS IN HOSPITAL .
- EXHIBIT P2 A THE TRUE COPY OF MEDICAL CERTIFICATE  
DATED 26/11/2022 WHICH CERTIFIES THAT  
THE PETITIONER IS UNDERGOING  
TREATMENT.
- EXHIBIT P 3 THE TRUE COPY OF THE PETITION DATED  
18-2-2022, SUBMITTED BY THE PETITIONER  
BEFORE THE HON'BLE MAINTENANCE  
TRIBUNAL .
- EXHIBIT P 4 THE TRUE COPY OF IMPUGNED ORDER OF THE  
HON'BLE MAINTENANCE TRIBUNAL DATED 28-  
10-2022 .
- EXHIBIT P 5 THE TRUE COPY OF THE APPEAL TO  
DISTRICT COLLECTOR DATED 01-12-2022 .
- EXHIBIT P 6 THE TRUE COPY OF THE JUDGMENT DATED  
12.01.2023
- EXHIBIT P 7 THE TRUE COPY OF THE ORDER DATED  
7.3.2023 .