

Fathima Beevi vs Union of India

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Court : Kerala

Decided On : Jan-18-2023

Judge : Honourable Mr. Justice Sathish Ninan

Appeal No. : WP(C)/23461/2022

Appellant : Fathima Beevi

Respondent : Union of India

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE SATHISH NINAN
WEDNESDAY, THE 18TH DAY OF JANUARY 2023 / 28TH POUSHA,
1944 WP(C) NO. 23461 OF 2022 PETITIONERS: 1 FATHIMA
BEEVI,AGED 64 YEARS,W/O. MUHAMMED KUNJU, 2 SABEERA
BEEVI M,AGED 40 YEARS,D/O. MUHAMMED KUNJU,

NEHUMA MANZIL, MULLICKALA, THEVALAKKARA VILLAGE,
KARUNAGAPPALLY TALUK, KOLLAM DISTRICT, PIN - 690524 3
ABDUL RAHIMAN,AGED 35 YEARS,S/O. MUHAMMED KUNJU, 4
NAZEERA BEEVI M,AGED 36 YEARS,D/O. MUHAMMED KUNJU, 5
MUMINATH,AGED 37 YEARS,W/O. LATE ABDUL LATHEEF, RAMSAN

MANZIL, INCHAKATTU AYYATHU, KAKKAKUNNU, SOORANADU SOUTH, KUNNATHUR TALUK, KOLLAM DISTRICT, PIN - 690522 6 SUBAIDA BEEVI,AGED 47 YEARS,D/O. MUHAMMED KUNJU, BY ADV K.RAKESH

RESPONDENTS: 1 UNION OF INDIA,REPRESENTED BY ITS SECRETARY,

MINISTRY OF HEALTH AND FAMILY WELFARE, NEW DELHI, PIN - 100001 2 THE STATE OF KERALA,REPRESENTED BY ITS SECRETARY, HEALTH AND FAMILY WELFARE DEPARTMENT,SECRETARIAT, TRIVANDRUM, PIN - 695001 3 THE DISTRICT COLLECTOR COLLECTORATE, KOLLAM, PIN - 691013 4 THE TAHSILDAR,KUNNATHUR TALUK OFFICE, KUNNATHUR, KOLLAM DISTRICT, PIN - 690540 5 THE SUB REGISTRAR,OFFICE OF THE SUB-REGISTRAR, SASTHAMKOTTA, KOLLAM DISTRICT, PIN - 690521

W.P(C) NO. 23461 OF 2022 -: 2 :- 6 THE ASSISTANT SURGEON,KERALA HEALTH SERVICES, PRIMARY HEALTH CENTRE, SOORANADU SOUTH, PATHARAM P.O., KOLLAM DISTRICT, PIN - 690522 BY ADVS. S.MANU(ASGI) K.R.RANJITH GOVERNMENT PLEADER SATHYASREE PRIYA EASWARAN (AMICUS CURIAE) V.RAMKUMAR NAMBIAR (AMICUS CURIAE) THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 18.01.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Sathish Ninan, J.

=====

===== Dated this the 18th day of January, 2023

JUDGMENT

The Writ Petition is filed by the wife, children and the daughter-in-law of one 'Muhammed Kunju' who is allegedly in a comatose state. They have approached this Court on the basis of the judgment in Sobha Gopalakrishnan and Others v. State of Kerala and Others [2019(1) KLT 801] seeking appointment of 1st petitioner as guardian of Muhammed Kunju.

2. In Sobha Gopalakrishnan's case, *supra*, a

Division Bench of this Court held that in respect of a person lying in a comatose state this Court could appoint a guardian subject to certain conditions enumerated therein.

3. According to the petitioners, Muhammed Kunju is

lying in a comatose state as is evidenced by Exts P1 and P5 medical reports. Property having an extent of 7.58 Ares of land in Survey No.301/13 of Block No.7 in Sooranadu South Village stands in the name of Muhammed -: 2 :- Kunju. He is being taken care of by the 3rd petitioner. Therefore, the petitioners intend to transfer the property to the name of the 3rd petitioner. It is accordingly that the petitioners have approached this Court.

4. Heard the learned counsel for the petitioner, the learned senior Government Pleader and also the learned amicus curiae.

5. Though the petitioners would rely on Exts P1 and

P5 medical certificates, they do not specify that Muhammed Kunju is lying in a comatose state. Section 14 of the Rights of Persons with Disabilities Act, 2016 reads thus: 14. Provision for guardianship

(1) Notwithstanding anything contained in any other law for the time being in

force, on and from the date of commencement of this Act, where a district court or any designated authority, as notified by the State Government, finds that a person with disability, who had been provided adequate and appropriate support but is unable to take legally binding

decisions, may be provided further support of a limited guardian to take legally binding decisions on his behalf in consultation with such person, in such manner, as may be prescribed by the State Government:

Provided that the District Court or the designated authority, as the case may be, may grant total support to the person with disability requiring such support or -: 3 :- where the limited guardianship is to be granted repeatedly, in which case, the decision regarding the support to be provided shall be reviewed by the Court or the designated authority, as the case may be, to determine the nature and manner of support to be provided.

Explanation.--For the purposes of this sub-section, "limited guardianship" means a system of joint decision which operates on mutual understanding and trust between the guardian and the person with disability, which shall be limited to a specific period and for specific decision and situation and shall operate in accordance to the will of the person with disability.

(2) On and from the date of commencement of this Act, every guardian appointed under any provision of any other law for the time being in force, for a person with disability shall be deemed to function as a limited guardian.

(3) Any person with disability aggrieved by the decision of the designated authority appointing a legal guardian may prefer an appeal to such appellate authority, as may be notified by the State Government for the purpose.

6. The Government has notified Sub Divisional

Magistrate to be the competent authority under Section 14 of the Act. This Court has in *Latha T.B. and Others v. Union of India Represented by Secretary to the Government and Others* (2021) 4 KLT 17 held that, the consultation mentioned in Section 14 above is to be understood as, consultation to the extent possible.

7. In the light thereof, the competent authority under the Act, if approached, can pass appropriate orders regarding guardianship. -: 4 :-

8. In the light of the above, the petitioners are

relegated to approach competent authority - Sub Divisional Magistrate, in terms of Section 14 of the Rights of Persons With Disabilities Act, 2016. If such an application is filed, the same shall be considered as expeditiously as possible and at any rate within a period of three months from the date of receipt of a copy of this judgment. Writ Petition is disposed of as above. Sd/- Sathish Ninan, Judge vdv -: 5

:- APPENDIX OF WP(C) 23461/2022 PETITIONER EXHIBITS Exhibit P1 TRUE COPY OF THE MEDICAL CERTIFICATE ISSUED BY THE 6TH RESPONDENT DATED 26-5-2022 Exhibit P2 TRUE COPY OF THE FAMILY MEMBERSHIP CERTIFICATE OF 'MUHAMMED KUNJU' ISSUED FROM SOORANADU SOUTH VILLAGE OFFICE DATED 12-4-2022 Exhibit P3 TRUE COPY OF THE TAX RECEIPT ISSUED FROM THE VILLAGE OFFICE, SOORANADU SOUTH DATED, 15-7-2020 Exhibit P4 TRUE COPY OF THE DEATH CERTIFICATE OF THE HUSBAND OF THE 5TH PETITIONER ISSUED BY EMBASSY OF INDIA, RIYADH DATED, 10-2-2016 Exhibit P5 TRUE COPY OF CERTIFICATE ISSUED BY A NEUROLOGIST OF VALIYATH INSTITUTE OF MEDICAL SCIENCE DATED 29-11-2022

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