

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

FRIDAY, THE 30TH DAY OF SEPTEMBER 2022 / 8TH ASWINA, 1944

WP(C) NO. 31334 OF 2022

PETITIONERS:

- 1 SOSAMMA THOMAS
 AGED 91 YEARS
 W/O. LATE THOMAS MATHEW,
 NOW RESIDING AT MERRY VILLA CHANAN, NELLIKALA
 P.O., MALLAPUZHASSERY VILLAGE, PATHANAMTHITTA
 DISTRICT 689 643.
 REPRESENTED BY HER POWER OF ATTORNEY HOLDER,
 ELIZABETH ROY, AGED 68 YEARS, D/O. LATE THOMAS
 MATHEW, MERRY VILLAGE CANAN, NELLIKALA P.O.,
 MALLAPUZHASSERY VILLAGE, PATHANAMTHITTA DISTRICT
 689 643.
- 2 ELIZABETH ROY,
 AGED 68 YEARS
 D/O. LATE THOMAS MATHEW,
 MERRY VILLA CHANAN, NELLIKALA P.O.,
 MALLAPUZHASSERY VILLAGE, PATHANAMTHITTA DISTRICT
 689 643.

BY ADVS.
JACOB P.ALEX
MANU SANKAR P.
JOSEPH P.ALEX
AMAL AMIR ALI

RESPONDENTS:

- 1 DISTRICT COLLECTOR & APPELLATE TRIBUNAL,
 (U/MAINTENANCE AND WELFARE OF SENIOR CITIZENS ACT,
 2007), CIVIL STATION , PATHANAMTHITTA 689 645.
- 2 MAINTENANCE TRIBUNAL & RDO,
 REVENUE DIVISIONAL OFFICE,
 ADOOR 691 523.
- 3 SUSHIL T THOMAS,
 AGED 68 YEARS
 S/O. LATE THOMAS MATHEW,
 KUZHIVELIL HOUSE, PADIMON P.O.,
 MALAPPALLY TALUK, PATHANAMTHITTA DISTRICT 689 587.

- 4 ANIL T THOMAS,
AGED 65 YEARS
S/O. LATE THOMAS MATHEW,
24 DAVIS AVE, RENDOLPH, NEW JERSY,
07869-1085, USA.
- 5 JESSY VIJU CHERIYAN,
AGED 63 YEARS
PUTHENPARAMBIL HOUSE, NEAR GOVT. HOSPITAL,
THIRUVALLA P.O., 689 101.
- 6 WILSON T. THOMAS,
AGED 61 YEARS
S/O. LATE THOMAS MATHEW,
MULAMOOTTIL THUNDIYATHU, (CHEMPAKASSERI GRIHAM),
KAPPIL LANE, MEDICAL COLLEGE ROAD & P.O.,
PATTOM, THIRUVANANTHAPURAM 695 01I.
- 7 VICTOR T. THOMAS,
AGED 60 YEARS
S/O. LATE THOMAS MATHEW,
DR. GEORGE, MATHEW NAGAR HOUSING COLONY,
KOZHENCHERRY P.O., 689 641.
- 8 SUMINA REJI,
AGED 57 YEARS
D/O. LATE THOMAS,
VALANPARAMBIL BABY FARMS, KANAKAPPALAM P.O.,
ERUMELI, KOTTAYAM DISTRICT 689 509.

OTHER PRESENT:

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SRI.V.K.SUNIL, SR.GP

**THIS WRIT PETITION (CIVIL) HAVING COME UP
FOR ADMISSION ON 30.09.2022, THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING:**

P.V.KUNHIKRISHNAN, J.

W.P.(C).No.31334 of 2022

Dated this the 30th day of September, 2022

JUDGMENT

This writ petition is filed with following prayers:

- i. Issue a writ in the nature of Mandamus or any other writ, order or direction to the 1st respondent District Collector and Appellate Tribunal to consider Exhibit P6 (Appeal) and P7 (Stay Petition) in accordance with law after hearing the petitioners and pass appropriate orders thereon, expeditiously within a time limit to be fixed by this Hon'ble Court.
- ii. Stay the Direction No.3 in Exhibit P5 Order and to restrain the respondent Nos. 5 to 7 from forcefully shifting the 1st petitioner mother from the care of 2nd petitioner, until disposal of Exhibit P6 appeal.
- iii. Direct the respondent Nos. 5 to 7 to provide monthly maintenance to the 1st petitioner as sought for in Exhibit P3 application for maintenance, until disposal of Exhibit P6 application.

- iv. Issue such other appropriate writ, order or direction as this Hon'ble Court may deem just and fit in the circumstances of the case.

(SIC)

2. Petitioners suffered with Ext.P5 order. Aggrieved by the same, the petitioners filed Ext.P6 appeal and P7 stay petition. The grievance of the petitioners is that the appellate authority is not considering the appeal and stay petition and in the meanwhile, based on Condition No.(3) in Ext.P5, coercive steps are going to be taken. This Court perused condition No.(3) in Ext.P5. I do not want to make any observation about the merit of the case. Since the appeal and stay petition are pending before the appellate authority, I think there can be direction to the appellate authority to consider the appeal within a time frame and till then, condition No.(3) in Ext.P5 can be kept in abeyance. In this writ petition, notice is not issued to respondents 3 to 8. If they are aggrieved by this judgment, they are free to file a review petition before this Court.

Therefore, this writ petition is disposed of in the following manner:

1. The 1st respondent is directed to consider and

pass appropriate orders in Exts.P6 and P7, as expeditiously as possible, at any rate, within one month from the date of receipt of a copy of this judgment.

2. Till final orders are passed as directed above, Condition No.(3) in Ext.P5 order shall not be enforced.
3. It is made clear that this Court has not considered the matter on merit and the appellate authority is free to pass appropriate orders in accordance to law, after hearing all the affected parties.

sd/-
P.V.KUNHIKRISHNAN
JUDGE

APPENDIX OF WP(C) 31334/2022

PETITIONER EXHIBITS

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| Exhibit P1 | TRUE COPY OF THE POWER OF ATTORNEY DATED 4/3/2022 EXECUTED BY THE IST PETITIONER SOSAMMA THOMAS IN FAVOUR OF 2ND PETITIONER. |
| Exhibit P2 | TRUE COPY OF THE DISCHARGE SUMMARY DATED 23.6.2022 OF THE IST PETITIONER ISSUED BY THE BELIEVERS CHURCH MEDICAL COLLEGE HOSPITAL, THIRUVALLA |
| Exhibit P2 A | TRUE COPY OF THE BILL DATED 23.06.2022 ISSUED BY THE BELIEVERS CHURCH MEDICAL COLLEGE HOSPITAL THIRUVALLA. |
| Exhibit P3 | TRUE COPY OF THE PETITION NO. C4-320507/2021 DATED 01.11.2021 FILED BY THE IST PETITIONER BEFORE THE 2ND RESPONDENT MAINTENANCE TRIBUNAL & RDO. |
| Exhibit P4 | TRUE COPY OF STATEMENT DATED 24.03.2022 OF THE IST PETITIONER RECORDED IN EXHIBIT P2 PROCEEDINGS ALONG WITH IT ENGLISH TRANSLATION. |
| Exhibit P5 | TRUE COPY OF THE ORDER DATED 23.05.2022 IN PROCEEDINGS NO. C4-320507/2021/K-DIS ISSUED BY THE 2ND RESPONDENT ALONG WITH ITS ENGLISH TRANSLATION. |
| Exhibit P6 | TRUE COPY OF THE APPEAL BEARING NO B3-374877 OF 2022 BEFORE THE APPELLATE TRIBUNAL (DISTRICT COLLECTOR), PATHANAMTHITTA ALONG WITH ITS RECEIPT AND ENGLISH TRANSLATION DATED 15/7/2022. |
| Exhibit P7 | TRUE COPY OF THE AFFIDAVIT AND PETITION FOR STAY DATED 14/7/2022 FILED IN EXT. P6 PROCEEDINGS. |
| Exhibit P8 | TRUE COPY OF THE PLAINT IN OS NO. 161/2022 BEFORE THE MUNSIF COURT, PATHANAMTHITTA WHICH WAS ORIGINALLY FIELD BEFORE THE VACATION COURT, PATHANAMTHITTA ALONG WITH THE ENGLISH TRANSLATIONS OF THE PAGES IN |

	MALAYALAM.
Exhibit P8 A	TRUE COPY OF THE INTERIM ORDER DATED 16.4.2022 IN IA NO. 1 OF 2022 BEFORE THE VACATION COURT PATHANAMTHITTA.
Exhibit P9	TRUE COPY OF THE NOTICE DATED 5/9/2022 RECEIVED BY THE PETITIONERS TO APPEAR BEFORE THE IST RESPONDENT FOR THE PURPOSE OF EXT. P6 APPEAL ALONG WITH ITS ENGLISH TRANSLATION.
Exhibit P10	TRUE COPY OF APPLICATION DATED 27/9/2022 SUBMITTED IN EXT.P6 PROCEEDINGS ALONG WITH ITS RECEIPT AND ENGLISH TRANSLATION.