

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

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THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

THURSDAY, THE 14TH DAY OF JANUARY 2021 / 24TH POUSHA, 1942

WP(C).No.1464 OF 2016(S)

PETITIONER:

SUO MOTU

BY ADV.

RESPONDENTS:

- 1 STATE OF KERALA
REP. BY THE SECRETARY TO GOVERNMENT, LAW DEPARTMENT,
THIRUVANANTHAPURAM.
- 2 THE DIRECTOR @neeharam
DIRECTORATE OF SOCIAL JUSTICE, THIRUVANANTHAPURAM.
- 3 REGISTRATION INSPECTOR GENERAL
THIRUVANANTHAPURAM.
- 4 STATE CO-ORDINATOR
STATE NODAL AGENCY CENTRE, KERALA, DIRECTORATE OF
SOCIAL JUSTICE, THIRUVANANTHAPURAM.

SRI. ARAVIND KUMAR BABU, SENIOR GOVERNMENT PLEADER
FOR R1 TO R3

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
14.01.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

SHAJI P. CHALY, J.

Captioned writ petition is a Public Interest Litigation *suo motu* registered by this Court on the basis of a communication received from the State Co-ordinator, State Nodal Agency Centre, Kerala, which is a part of the Directorate of Social Justice, Thiruvananthapuram. The letter states that the Ministry of Social Justice and Empowerment, Government of India, under the National Trust Act, 1999, constituted Local Level Committees, a quasi legal body, having the basic functions of granting legal guardianship and protecting the person and property of persons with the intellectual development disabilities. The Committees so constituted noticed that rights of such persons were being widely infringed upon during partition of their family property or during division of assets under the Succession Act, 1925.

2. The Law Department has given opinion for the amendment to the Registration Act as the only way for the proposed changes since there is no provision in that Act to issue such circulars. The Nodal Agency citing the considerable time taken for the amendment of said Act and issuance of similar circulars in past by Inspector General of Registration to contain certain adverse activities in the registration process, requested the High Court to pass

necessary orders to contain the fraudulent transfers of assets of persons with disabilities.

3. The letter also indicated that there is lack of clarity in the provisions of National Trust Act, 1999, regarding the ways and means to protect the person and property of such persons and also measures to be taken to contain fraudulent transfers and infringement into the rights of people born with such disabilities. It was accordingly that the letter was considered on the administrative side and the *suo motu* writ petition was registered.

4. Various documents in regard to the issue was also produced by the Registrar along with the *suo motu* writ petition registered. In fact the Registration Department has submitted a draft circular along with a Communication dated 21.4.2015 for further action since there is no provision either in the Registration Act or in the Rules for implementation of directions.

5. We have also gone through the Convention on the Rights of Persons with Disabilities and Optional Protocol published by the United Nations, from where we are satisfied that the State Parties have agreed to implement the protocol so prepared. So also the judgment in W.P.(C) No.34367/2009 and a connected case dated 3.9.2010, a learned Single Judge has explained the power of the Registering Authority while registering documents of transferring

properties.

6. Anyhow now the State Government have approved the Circular of the Registration Inspector dated 12.5.2016 in regard to the safety precautions to be taken in the matter of registration of documents involving disabled persons with mental retardation, autism, cerebral palsy and multiple disabilities (person with National Trust disabilities), which was formulated on the basis of the directions issued by the State Government as per its order dated 16.7.2015 bearing GO(Rt.) No.142/2015 issued by the Special Secretary, Social Justice, D Department. The circular makes it clear that the directions are issued to the authorities under the Registration Act to ensure that when the transfer of properties are registered, the rights and interests of persons with disabilities as per the provisions of the National Trust Act, 1999, is not violated and further to secure an affidavit that no person with any of the disabilities mentioned under the National Trust Act has any legal right over the property being transacted and by such transactions, the rights of such individuals are not being deprived nor infringed upon.

7. Likewise if any document is presented for registration in which a Person with Disability as per the provisions of Act, 1999 is involved, then the Registering Officer shall ensure; (a) Consent of Local level Committee in writing (b) Original of Legal Guardianship Certificate issued by the Local Level Committee shall be

verified and a scanned copy or attested photo copy of the same shall be filed separately recording the Aadhar number. It is also directed that a document presented for registration without the permission of the Local Level Committee and local guardianship certificate shall not be accepted for registration. Further it is directed that if any documents is produced by any person involving transfer of property of Person with Disability under the National Trust Act, 1999 has no power or right to do so to reject the same in accordance with rule 191(VII). However, the Registering Authority is given the power to verify whether the defect can be cured or not. Other directions are also issued to protect the interest of the persons producing documents for registration to seek appeal remedies etc. Above all, a direction is issued to publish a notice in the notice board of the office of the Sub Registrar and distribute among the licensed document writers and secure acknowledgement from them.

8. Taking into account the said circular dated 12.5.2016 and the Government order dated 16.7.2015, we are satisfied that sufficient steps are taken by the State Government and the registration department in order to protect the interest of the persons with disabilities in contemplation of the National Trust Act, 1999. Therefore, we are of the view that the writ petition can be disposed of taking into account the aforesaid developments taken place during the pendency of the writ petition.

Accordingly, we dispose of the writ petition directing the State Government and Registration Authorities to take into account the circular and discharge their duties in terms of the circular thus protecting the interests of the persons with disabilities in accordance with the provisions of the National Trust Act, 1999.

sd/-

S .MANIKUMAR

CHIEF JUSTICE

sd/-

SHAJI P .CHALY

JUDGE

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