

W.P.(C) No.16849/26

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2026:KER:74368

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

SATURDAY, THE 26<sup>TH</sup> DAY OF SEPTEMBER 2026 / 4TH ASWINA, 1948

WP(C) NO. 16849 OF 2026

PETITIONER:

BY ADVS.  
SHRI.P.M.JOSHI  
SMT.SIJI K.PAUL  
SMT.SRUTHI SUNILKUMAR  
SHRI. C. GOKULKRISHNAN

RESPONDENTS:

- 1 STATE OF KERALA  
REPRESENTED BY THE SECRETARY,  
DEPARTMENT OF HEALTH AND FAMILY WELFARE,  
GOVERNMENT SECRETARIAT,  
THIRUVANANTHAPURAM, PIN - 695001
- 2 THE DISTRICT COLLECTOR  
CIVIL STATION,KAKKANAD,  
ERNAKULAM, PIN-, PIN - 680003



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- 3 THE TAHSILDAR  
TALUK OFFICE, KUNNATHUNAD TALUK,  
KUNNATHUNAD, ERNAKULAM, PIN - 680020
- 4 SUPERINTENDENT  
GENERAL HOSPITAL, ERNAKULAM,  
PARK AVENUE ROAD, ERNAKULAM DISTRICT,  
KERALA, PIN - 682011
- 5 THE MANAGER  
FEDERAL BANK LIMITED, KOLENCHERY BRANCH,  
KOLENCHERY, ERNAKULAM, PIN - 682311

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\*(ADDL R6 AND R7 ARE IMPEADED AS PER ORDER DATED  
19.06.2026 IN I.A No.1/26 IN WPC No.16849/2026

BY ADVS.

SMT.LAYA MARY JOSEPH, GOVT. PLEADER

SRI.JOHNSON GOMEZ

SRI.SANJAY JOHNSON

SHRI.SANJITH JOHNSON

SHRI.ARUN JOHNY

SMT.DEEBU R.

SHRI.ABIN JACOB MATHEW

SHRI.SANKETH SAJAN MATHEW

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION  
ON 24.09.2026, THE COURT ON 26.09.2026 DELIVERED THE  
FOLLOWING:



**BECHU KURIAN THOMAS, J.**

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**W.P(C) No.16849 of 2026**  
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Dated this the 26<sup>th</sup> day of September, 2026

**JUDGMENT**

Petitioner is the sister of ninety three year old Ms.

Both of them are spinsters. The petitioner has approached this Court seeking for a direction to appoint her as the guardian of the person and property of her sister.

2. The petitioner alleges that her sister Ms. \_\_\_\_\_ is suffering from advanced dementia and is bedridden with total dependence on her. Petitioner alleges that her sister is incapable of understanding or to take decisions or even to manage her personal and financial affairs. According to the petitioner, her sister is permanently incapacitated to manage her affairs and needs supervision and assistance for all her activities of daily living.

3. The petitioner asserts that her sister has substantial amounts deposited in the Federal Bank at Kolenchery, which are scheduled into three, as given below:



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## Schedule I.

| Sl<br>No. |
|-----------|
| I         |
| II        |
| III       |
| IV        |
| V         |
| VI        |
| VII       |

Schedule II.

with a balance of Rs.  
31,604.10 (Rupees Thirty-One Thousand six Hundred and four  
and Paise ten Only) in Federal Bank.

Schedule III.

SB NRO Account transferred to Federal Bank Kolenchery Branch  
with account No. \_\_\_\_\_ with a balance of Rs.  
5092.35 (Rupees Five Thousand and ninety two and Paise thirty  
five only).

4. The petitioner alleges that her sister is in such a condition that she is mentally, physically and intellectually impaired to the extent of being in a vegetative state and her dementia is in an incurable, progressive and hopelessly degenerative state. The petitioner further asserts that her sister is unable to understand the consequences of her acts and hence require a guardian to be appointed to take care of her and has approached this Court to manage her financial, medical and all



legal interests.

5. After hearing Sri. P. M.Joshi., the learned counsel for the petitioner and Smt. Laya Mary Joseph, the learned Government Pleader, this Court had, on 21.05.2026, directed the 4<sup>th</sup> respondent to constitute a Medical Board and submit a report regarding the medical condition of petitioner's sister - Ms.

6. Pursuant to the said direction, a report of the Medical Board dated 01.06.2026 has been placed for consideration. The relevant part of the said report reads as follows:

**GENERAL HOSPITAL, ERNAKULAM**

**Hospital Road, Ernakulam, Kerala 682011, INDIA**

E-mail: [generalhospitalernakulam@gmail.com](mailto:generalhospitalernakulam@gmail.com)  
236125/2381762

Phone: 0484 2386000 /

Website: [www.generalhospitalernakulam.com](http://www.generalhospitalernakulam.com) Fax : 0484-2382498

NO. C2/9822/2026

Date:01.06.2026

**MEDICAL BOARD CERTIFICATE**

, 93 years, Female (DOB:10.06.1933) Resident of [redacted], [redacted], [redacted], was seen by medical team on 01.06.2026, 11 am at her residence.

She is an alleged case of dementia, requiring Court Order for incapacitation as demanded by her Bank for managing funds in her bank account.

Informants were the petitioner /

(Nephew). She has a history of gradually progressive cognitive decline as told by the caretaker, in the form of decrease in memory, way finding difficulty and wandering behaviour. Gradually requiring support for activities of daily living.

Bystander also noted progressive slowing of gate and later requiring 2 persons support and currently bed bound state.

Now she is having bowel incontinence and is having foley's catheter



in situ.

She is completely dependent on bystanders for activities of daily living.

**On examination:-**

>She was lying in the bed with periodic spontaneous lower limb movements. Conscious but disoriented to time and place.

> Mild resistance for examination.

**General Physical Examination:-**

> Patient conscious, not oriented to time and place.

> Moderately Built and Nourished.

> No pallor, Icterus, cyanosis, clubbing, lymphadenopathy, oedema

**Vitals :-** (omitted as not relevant)

**Cardio Vascular System:-** (omitted as not relevant)

**Respiratory System:-** (omitted as not relevant)

**Central Nervous System :-**

> Higher mental function (MMSE) — difficult to administer as the patient is having difficulty in comprehending the questions.

> External ocular movements full

> No facial weakness

> Muscle Bulk normal.

**Tone:-** bilateral upper limb and lower limb rigid with the cogwheel phenomenon in both upper limbs.

**Power:-** was difficult to assess however she was moving all four limbs.

**Reflexes:-** deep tendon reflexes were exaggerated and plantar bilateral extensor.

**Primitive Reflexes:-** Palmo-mental and grasp reflexes present.

> Skull, spine normal.

> No neck stiffness.

The disability was assessed with IDEAS scoring, Functional assessment questionnaire and clinical dementia rating scale.

According to the Functional Assessment Questionnaire she was not able to- write cheques and paying bills, handling finance.

FAQ — 30/30 — Severe Dementia

IDEAS- score 18/20 — 99% Disability

Global CDR Scale — 3 (Severe Dementia)

**Diagnosis:-** Alzheimer's disease, Severe Dementia, Parkinsonism, Type 2 Diabetes Mellitus, Systemic Hypertension.



7. On a reading of the above report, it is evident that the sister of the petitioner is suffering from Alzheimer's disease, severe dementia, and Parkinsonism. The report indicates that the patient is unable to write cheques or pay bills or even to handle finance. She is bedbound and dependent on bystanders for activities of daily living with disorientation for time and place. The report also indicates that the patient is having difficulty comprehending questions. The above circumstances indicate that without the support of another permanently, she would not be able to take any decision or even manage her financial aspects.

8. In the decision in **Shobha Gopalakrishnan v. State of Kerala and Others** [2019 (1) KLT 801], a Division Bench of this court laid down the guidelines regarding appointment of a guardian by the High Court, when a person is in a comatose condition. Guidelines were framed by the Court after noting that in respect of persons lying in a comatose condition, no statutory prescriptions are in place for appointment of a guardian. Hence the Court exercised the *parens patriae* jurisdiction, and laid down guidelines for appointment of a guardian, for persons lying in a comatose condition. The case of a person suffering from Dementia or Alzheimer's have not been



considered in the said decision. Hence, the principle laid down therein cannot be imported mechanically into the present case.

9. Under the Schedule to the Rights of Persons with Disabilities Act, 2016 (for short 'RPwD Act'), dementia of the petitioner's sister will not qualify to be included under the term 'specified disability' for attracting the provision for appointment of limited guardian. Dementia of the petitioner's sister is not substantial but complete, as is evident from the medical report. Under RPwD Act, a provision for appointment of a limited guardian for a person with disability is provided under section 14. The District Court or the Designated Authority is conferred with the power to appoint a limited guardian for total support of a person with disability, as per the said provision. The said provision will not apply in the instant case since the guardianship under the said statute is limited in character, that too, to be taken in consultation with such disabled person. Thus, a case for appointing a permanent guardian does not exist for persons suffering from dementia under the provisions of RPwD Act.

10. Also, recourse cannot be made to the provisions of Mental Healthcare Act, 2017 in the instant writ petition as the dementia of the



petitioner's sister is complete and hence cannot be brought under the purview of section 2(1)(s) of the Mental Healthcare Act, 2017. Even if it is assumed that a nominated representative can be appointed under the Mental Healthcare Act, 2017, such representative does not have the right to look after the property of mentally ill persons by virtue of section 17 of the Mental Healthcare Act, 2017. In this context, it is apposite to refer to a decision of the High court of Bombay in **Vijay Ramachandra Salgaonkar v. State** [2021 SCC Online Bom 14114], wherein a Division Bench of the said Court permitted appointment of a guardian for a person suffering from dementia with diabetes mellitus and hypertension expressing the jurisdiction under Article 226 of the Constitution of India.

11. Dementia is an illness that results in the deterioration of memory, thinking and even the ability to perform everyday activities. It creates a dependency on other persons and worsens over the years. Alzheimer's has been identified as one of the common causes of dementia. A person affected with dementia and Alzheimer's loses his cognitive abilities, which starts worsening with age. Dependency on others for all activities of life, is an inevitable outcome, especially during old age. At such a stage when decisions cannot be taken and property



transactions cannot be comprehended, in the absence of a legally appointed guardian, the patient can be subjected to exploitation and prejudice. When the conditions are worse, the Court, if satisfied that the circumstances warrant, must appoint a guardian even for persons with dementia and Alzheimer.

12. On a reading of the Medical Report it is evident that Ms. \_\_\_\_\_, 93 years old and sister of the petitioner, is suffering from a medical condition that requires, in the interests of justice, the appointment of a permanent guardian.

Hence, the petitioner,

\_\_\_\_\_ is hereby appointed as the guardian of

PIN - 682311 for dealing with the bank accounts mentioned in the Schedule in paragraph 3 of this judgment, subject to the following conditions;

(i) Periodical reports shall be filed by the guardian once in every six months before the Registrar General of this Court containing the particulars of all transactions done by the Guardian in respect of the



person and property of the patient besides showing the utilization of the funds received and spent by him/her.

(ii) The Registrar General shall cause an entry to be made with regard to the appointment of Guardian as ordered in this case, in the register maintained by this Court in terms of the directions in **Shobha Gopalakrishnan's** case (supra)

(iii) The Guardian shall, along with a copy of this judgment, intimate the Social Welfare Officer having jurisdiction over the place of residence, about the order of appointment as Guardian.

(iv) The transaction in respect of the accounts of petitioner's sister shall be strictly in accordance with the provisions of law.

(v) It shall be open for any relative or next friend or petitioner's sister to approach this Court for removal of Guardian, if any neglect, abuse of powers or such other grounds at the hands of the Guardian is noticed.

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(vi) The Guardian appointed shall seek and obtain specific permission from this Court, if he/she intends to transfer petitioner's sister from the jurisdiction of this Court to another State or Country, whether it be for availing better treatment or otherwise.

The writ petition is disposed of as above.

Sd/-

**BECHU KURIAN THOMAS  
JUDGE**

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