

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE ANIL K. NARENDRA

WEDNESDAY, THE 14TH DAY OF JANUARY 2015/24TH POUSHA, 1936

WA.No. 1212 of 2007 (B) IN WP(C).12001/2006

AGAINST THE JUDGMENT IN WP(C) 12001/2006 of HIGH COURT OF KERALA
DATED 27-03-2007

APPELLANTS-RESPONDENTS 3 & 4:

1. THIRUVANANTHAPURAM DEVELOPMENT AUTHORITY (TRIDA),
JAYA MANSION, VAZHUTHACADU
THIRUVANANTHAPURAM REPRESENTED, BY ITS SECRETARY.
2. CHAIRMAN, THIRUVANANTHAPURAM
DEVELOPMENT AUTHORITY (TRIDA), JAYA MANSION
VAZHUTHACADU, THIRUVANANTHAPURAM.

BY ADV. SRI.K.A.JALEEL, SC., TRIDA

RESPONDENT(S)/RESPONDENTS-PETITIONERS & RESPONDENT 1,2:

1. RAMKUMAR N., BABU AGENCIES,
T.C.NO.14/1932, PALAYAM, THIRUVANANTHAPURAM.
2. BHUVANACHANDRAN.S.,
AMBILI AUTO AGENCIES, T.C.NO.14/1785, PALAYAM
THIRUVANANTHAPURAM.
3. A.J.JOSEPH, PUSHPA AUTO STORES,
T.C.NO.14/1934, PALAYAM, THIRUVANANTHAPURAM.
4. JACOB THARAKAN T.T., POPULAR ENGINEERING
T.C.NO.14/1797, PALAYAM, THIRUVANANTHAPURAM.
5. SHAJILI.A., SIMI CD WORLD,
T.C.NO.14/323, PALAYAM, THIRUVANANTHAPURAM.
6. IGNATIUS.F., T.C.NO.14/1799, PALAYAM,
THIRUVANANTHAPURAM.
7. RAMACHANDRAN T., MONITOR SOLUTIONS,
T.C.NO.14/1798, PALAYAM, THIRUVANANTHAPURAM.
8. K.AMBIKADASAN, UDAYAM, TAILORS,
T.C.NO.14/1791, PALAYAM, THIRUVANANTHAPURAM.

9. K.SAHADDEVAN,T.C.NO.14/1790,
PALAYAM, THIRUVANANTHAPURAM.
10. ARJUNAN.S.,EXCELLENT HAIR DRESSERS,
T.C.NO.14/1789, PALAYAM, THIRUVANANTHAPURAM.
11. S.SUNIL,DURO TAILORS,T.C.NO.14/1788,
PALAYAM, THIRUVANANTHAPURAM.
12. KRISHNAN,KRISHNA SALOON,
T.C.NO.14/1787, PALAYAM, THIRUVANANTHAPURAM.
13. M.REGHUNATHA PANICKER @ M.R.PANICKER,
DEVU AGENCIES, T.C.NO.14/1786, PALAYAM
THIRUVANANTHAPURAM.
14. S.T.SWAMY, SHANMUGHA WASTE PAPER AGENCES
T.C.NO.14/1930, PALAYAM, THIRUVANANTHAPURAM.
15. C.VIJAYAKUMAR,FURNITURE MART,
T.C.NO.14/1931, PALAYAM, THIRUVANANTHAPURAM.
16. V.SUNIL,OXFORD TAILORS,
T.C.NO.14/1938, PALAYAM, THIRUVANANTHAPURAM.
17. STATE OF KERALA, REPRESENTED BY THE
SECRETARY TO GOVERNMENT, LOCAL SELF GOVERNMENT
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.
18. DISTRICT COLLECTOR, THIRUVANANTHAPURAM DISTRICT,
COLLECTORATE, VANCHIYOOR
THIRUVANANTHAPURAM.
19. THOZHILUDAMA ASSOCIATION, PALAYAM,
THIRUVANANTHAPURAM, REPRESENTED BY ITS SECRETARY.
20. SRI.M.R.GOPALAKRISHNAN NAIR,
DISTRICT JUDGE (RETIRED), 'MOHANAM', THALIBHAGOM
THIRUMALA P.O., THIRUVANANTHAPURAM.
(APPOINTED AS THE SOLE ADJUDICATOR).

R19 BY ADV. SRI.SUMAN CHAKRAVARTHY
R1 TO 16 BY ADV. SRI.J.HARIKUMAR
R1 TO 16 BY ADV. SRI.HARIKUMAR.S.

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD 23.10.2014, THE COURT
ON 14.1.2015, DELIVERED THE FOLLOWING:

ANTONY DOMINIC & ANIL K.NARENDRAN, JJ.

W.A.No.1212 of 2007

Dated this the 14th day of January, 2015

JUDGMENT

ANIL K.NARENDRAN, J.

The appellants are the 3rd and 4th respondents in W.P.(C) No.12001/2006. The said Writ Petition was filed by respondents 1 to 16 herein (hereinafter referred to as 'the writ petitioners') seeking a writ of mandamus commanding the 1st appellant (hereinafter referred to as 'the TRIDA') to allot them shop rooms, which they are entitled to as part of the rehabilitation programme, in accordance with the terms of the decision taken on 6/10/2000 as evidenced by Ext.P5 minutes and for other consequential reliefs. The learned Single Judge by judgment dated 27/3/2007 allowed the said Writ Petition holding that the writ petitioners are also entitled to the benefit of the decision contained in Ext.P5 minutes and that they are entitled to allotment of space by the TRIDA in terms of Ext.P5. Regarding rental or occupation charges that the writ

petitioners will have to pay for such accommodation, it was ordered that in deciding this issue the TRIDA will apply such rates as would be applicable to similar accommodations in terms of space, etc., as may be determined in similar cases by the Sole Adjudicator, the 20th respondent herein, following Ext.P6 judgment. It was also made clear that, if allotment for other persons covered by Ext.P5 had already been done the case of the writ petitioners for allotment shall be finalised and allotment shall be made within a period of 2 months from the date of receipt of a copy of the judgment; otherwise it shall be done along with them. It is aggrieved by the judgment of the learned Single Judge dated 27/3/2007 in W.P.(C) No.12001/2006 the appellants are before us in this Writ Appeal.

2. We heard the arguments of the learned Standing Counsel for the appellants-TRIDA, the learned counsel for respondents 1 to 16-writ petitioners and the learned Senior Government Pleader appearing for the official respondents.

3. The writ petitioners are occupants of different shop rooms abutting the Palayam-Bakery Junction road in Thiruvananthapuram City, in the portion between Panchapura Junction and Reserve Bank Junction in that road. In the year 1978, the TRIDA started a scheme called 'the Palayam Urban Development Scheme' whereby certain lands were notified to be acquired vide notifications published in the Kerala Gazette dated 12/12/1978, 23/1/1979 and 3/10/1989. The land owners and tenants affected by the said acquisition filed objections making a plea for alternate accommodation. In Ext.P1 proceedings of the Secretary, Board of Revenue, dated 4/10/1990 it was made clear that the request of the shop owners for alternate accommodation for conducting their business will be considered, if they produce sufficient proof about their right of tenancy as on the date of the scheme (1979), on no loss no profit basis.

4. It is not in dispute that, the land on which the shop rooms of the writ petitioners are situated were not acquired based on the said notifications dated 12/12/1978, 23/1/1979

and 3/10/1989; instead, their shop rooms were affected only by a subsequent notification issued in February, 2004, i.e., much after Ext.P1 proceedings of the Board of Revenue dated 4/10/1990. It was pursuant to the said notification, writ petitioners 1, 2 and 9 were issued with Exts.P2 to P4 notices dated 10/2/2004, 10/12/2004 and 28/2/2005, respectively.

5. The writ petitioners contended that, the rehabilitation scheme, which formed part of the Palayam Urban Development Scheme is also applicable in the case of acquisition of land on which their shop rooms are situated, which were notified for acquisition in February, 2004. They also relied on Ext.P5 minutes of the meeting held on 6/10/2000 and according to them in the said meeting the Thozhiludama Association, Palayam, the 19th respondent herein, brought about an amicable settlement in the matter of giving vacant possession of the shop rooms in occupation of the traders, for the purpose of widening the road and the decisions taken therein were accepted by both sides. One of the decisions taken in Ext.P5 minutes is that, the traders who are in

occupation of shop rooms either as owners or as tenants will be allotted temporary and permanent rehabilitation by the TRIDA. According to the writ petitioners, Clause 7 of the said minutes deals particularly with traders like them who occupy shop rooms from Taj Hotel to Bakery Junction, i.e., the traders on either side of Palayam-Bakery junction road. Subsequent to Ext.P5, the TRIDA allotted rooms on permanent basis to various traders by the side of M.G.Road and also provided temporary rehabilitation to various traders by the side of Palayam-Bakery junction road, whose lands had already been acquired in the early phases of acquisition. Being dissatisfied with the manner of allotment of shop rooms, fixation of rent, etc., some of such allottees approached this Court in W.P.(C) No.4074/2006 along with the Thozhiludama Association and this Court by Ext.P6 judgment dated 30/6/2006 appointed the 20th respondent herein as the Sole Adjudicator to resolve the issue. The writ petitioners submitted Ext.P7 representation dated 23/1/2006 before the District Collector, Thiruvananthapuram, the 18th respondent herein, urging the

need of rehabilitation and treat them on par with similarly placed persons who have already been rehabilitated. In response to a query made by the District Collector, the TRIDA by Ext.P8 letter dated 17/12/2004 intimated that, the issue of rehabilitation would be worked out practically. The writ petitioners have submitted Exts.P8, P9 and P10 representations before the TRIDA seeking rehabilitation and to provide them the very same treatment afforded to similarly situated persons and thereafter, they have approached this Court in W.P.(C)No.12001/2006 seeking various reliefs.

6. As we have already noticed, the land on which the shop rooms of the writ petitioners are situated were notified for acquisition only in February, 2004, much after the notifications dated 12/12/1978, 23/1/1979 and 3/10/1989 were issued under the Palayam Urban Development Scheme of TRIDA. Similarly, Ext.P1 proceedings of the Board of Revenue dated 4/10/1990 and Ext.P5 minutes of the meeting held on 6/10/2000 are in relation to the Palayam Urban Development Scheme covered by the aforesaid notifications and at that point

of time the land on which the shop rooms of the writ petitioners are situated were not affected by the land acquisition proceedings under the said notifications dated 12/12/1978, 23/1/1979 and 3/10/1989. The fact that, the land on which the writ petitioners' shop rooms are situated were affected only by the notifications issued under the subsequent scheme, is admitted in Ext.P7 representation submitted before the District Collector. Further, it is averred in the writ petition that, the land acquisition proceedings affecting the land on which the writ petitioners' shops are situated were issued only in February, 2004. Therefore, it is not in dispute that, the writ petitioners are not traders of shop rooms affected by the acquisition under the Palayam Urban Development Scheme. A reading of Ext.P5 minutes of the meeting held on 6/10/2000 makes it abundantly clear that, the TRIDA had to convene such a meeting since the existing traders in the 6½ Acres of land acquired under the Palayam Urban Development Scheme refused to vacate their shop rooms. Along with a memo dated 19/10/2009, the TRIDA has produced a sketch showing the

area affected by the Palayam Urban Development Scheme and also the area where the writ petitioners are conducting the shops. Going by the said sketch, the area where the writ petitioners are conducting the shops falls outside the area affected by the Palayam Urban Development Scheme. The details of the tenants affected by the Palayam Urban Development Scheme and the number of remaining tenants to be rehabilitated is also furnished along with an additional memo filed by the TRIDA dated 21/10/2009. Therefore, the documents on record clearly indicate that, the writ petitioners are neither tenants of the TRIDA nor occupants of the shop rooms affected by the land acquisition proceedings under the Palayam Urban Development Scheme.

7. It is also not in dispute that, the shop rooms of the writ petitioners were affected by the land acquisition proceedings under a subsequent scheme, namely, 'the Capital Region Development Programme', formulated by the Government of Kerala, in which the land acquisition for widening of 42.37 Km. length of road in Thiruvananthapuram

City was approved by the Government of Kerala, vide G.O. (Ms.)No.48/2003/PWD dated 22/8/2003. Relying on the details of 'on-going projects' downloaded from the official website of the TRIDA (www.tridatvm.org) the learned counsel for the writ petitioners would contend that, even under the Capital Region Development Programme the TRIDA has prepared plans for the rehabilitation of affected traders at General Hospital junction, Thakaraparambu and Pettah and that, the Government have already sanctioned and allotted Rs.77 Crores to the TRIDA for land acquisition and rehabilitation. Going by the aforesaid details relied on by the writ petitioners, the Capital Region Development Programme is one formulated by the Government of Kerala to widen 42 Kms. of city roads in 12 corridors and the TRIDA is only a nodal agency of the Government for this project.

8. As we have already noticed, going by the sketch produced by the TRIDA along with a memo dated 19/10/2009, the shop rooms of the writ petitioners fall outside the area affected by the acquisition of land under the Palayam Urban

Development Scheme. The writ petitioners have not chosen to file any counter affidavit, disputing the said sketch produced by the TRIDA. Ext.P1 proceedings of the Secretary, Board of Revenue and Ext.P5 minutes of the meeting held on 6/10/2000 are in relation to the Palayam Urban Development Scheme and at that point of time the shop rooms occupied by the writ petitioners were not even affected by any land acquisition proceedings initiated under the aforesaid scheme. On the other hand, going by the averments in the writ petition and that in Ext.P7 representation submitted before the District Collector, the land on which the writ petitioners' shop rooms are situated were affected only by the notifications issued in February, 2004 under the subsequent scheme. Therefore, the writ petitioners are traders affected by the land acquisition proceedings under the Capital Region Development Programme formulated by the Government of Kerala. As such, the writ petitioners are not entitled for any rehabilitation in terms of Ext.P5 minutes of the meeting held on 6.10.2000, in relation to the rehabilitation of traders affected by the land

acquisition under the Palayam Urban Development Scheme.

9. As evident from the sketch produced by the TRIDA along with a memo dated 19/10/2009, a portion of the land acquired under the Palayam Urban Development Scheme was intended for widening of the road abutting the said land. Clause 7 of Ext.P5 minutes deals with those traders affected by the acquisition proceedings under the Palayam Urban Development Scheme, who were having shop rooms abutting the road. At any rate, the writ petitioners, who are traders in the shop rooms on the other side of the road and who are not affected by the acquisition of land under the Palayam Urban Development Scheme, will not fall within Clause 7 of Ext.P5 minutes, and the finding to the contra in the judgment of the learned Single Judge cannot be sustained.

10. In Ext.P8 communication dated 17/12/2004, the TRIDA has informed the District Collector that, they are attempting to evolve a practical solution on the rehabilitation of the traders affected by the widening of Bakery junction-Palayam-Airport road, under the Capital Region Development

Programme formulated by the Government of Kerala. Ext.P8 makes it abundantly clear that, the writ petitioners who are traders affected by the acquisition of land under the Capital Region Development Programme are outside the purview of the rehabilitation envisaged under Ext.P5 minutes and they are not entitled to the benefit of the decision contained therein. The finding to the contra in the judgment of the learned Single Judge cannot be sustained. Further, under the Capital Region Development Programme, it is the Government which sanction and allot necessary funds for the land acquisition and the TRIDA is only a nodal agency of the Government for this project. Therefore, in the absence of any rehabilitation scheme approved and sanctioned by the Government for the traders affected by the widening of Palayam-Bakery Junction road, under the Capital Region Development Programme, the writ petitioners are not entitled for any rehabilitation as prayed for in the writ petition. For the aforesaid reasons, we are unable to sustain the judgment of the learned Single Judge in W.P.(C) No.12001/2006.

In the result, this Writ Appeal is allowed, setting aside the judgment of the learned Single Judge, and dismissing W.P.(C) No.12001/2006. No order as to costs.

SD/-
ANTONY DOMINIC, JUDGE

SD/-
ANIL K.NARENDHRAN, JUDGE

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