

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE C.K.ABDUL REHIM

TUESDAY, THE 13TH DAY OF JANUARY 2015/23RD POUSHA, 1936

WP(C).No. 7754 of 2009 (L)

PETITIONER:

T.A.HANEEFA,
S/O. ABDUL KHADER,
THEKKETHIL HOUSE, KATHARIAN ROAD,
OLLUKKARA P.O., THRISSUR.

BY ADV. SRI.K.B.GANGESH

RESPONDENTS:

1. THRISSUR MUNICIPAL CORPORATION,
REPRESENTED BY SECRETARY,
MUNICIPAL OFFICE ROAD, THRISSUR.

2. THE SECRETARY,
THRISSUR MUNICIPAL CORPORATION,
MUNICIPAL OFFICE ROAD, THRISSUR.

R1 & 2 BY ADVS. SRI.K.P.VIJAYAN
SRI.V.M.SYAM KUMAR
SMT.KRIPA ELIZABETH MATHEWS
SRI.V.N.HARIDAS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13-01-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

AMG

APPENDIX

PETITIONERS' EXHIBITS

- EXT- P1- TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT DATED 19-10-2001 IN OP No.29973/2001.
- EXT- P2- TRUE COPY OF THE ORDER DATED 17-10-2003 IN IA No.12918/2003 IN OP No.1620/2003 PASSED BY THIS HON'BLE COURT.
- EXT- P3- TRUE COPY OF THE ORDER DATED 07-07-2004 IN CON.CASE (C) No.585/2004 OF THIS HON'BLE COURT.
- EXT- P4- TRUE COPY OF THE COMMUNICATION No.R.8/20581/2002 DATED 13-04-2004 ISSUED BY THE REVENUE OFFICER UNDER THE 1ST RESPONDENT.
- EXT- P5- TRUE COPY OF THE COMMUNICATION No.R.8-20581/2002 DATED 29-05-2008 ISSUED BY THE PUBLIC INFORMATION OFFICER, THRISSUR CORPORATION.

RESPONDENTS' EXHIBITS

- EXT- R1- TRUE COPY OF THE AGENDA AND DECISION OF THE THRISSUR MUNICIPAL COUNCIL MEETING DATED 05-09-2000.
- EXT- R1 (a)- TRUE COPY OF THE AGENDA AND DECISION NUMBERS 1, 2, 2 (a) AND 2 (b) IN THE MEETING OF THE CORPORATION COUNCIL DATED 05-09-2000 VIDE REFERENCE No.PW-13449/99 OF THE OF THE THRISSUR CORPORATION COUNCIL.
- EXT- R1 (b)- TRUE COPY OF THE PRIORITY LIST OF ELIGIBLE PERSONS TO GET ALLOTMENT OF ROOMS IN THE NEW PATTALAM, MARKET BUILDING VIDE RESOLUTION No.8 IN THE MEETING DATED 27-03-2004 OF THE THRISSUR CORPORATION COUNCIL.

True copy

P.A. To Judge

C.K.ABDUL REHIM, J

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W.P.(C). No.7754 OF 2009

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Dated this the 13th day of January, 2015

JUDGMENT

The petitioner claims that he is an evictee from a shop room situated in Pattalam Road within the limits of the 1st respondent Corporation. During the year 1994 when the erstwhile Municipality initiated steps for widening the Pattalam Road, owners who were occupying shop rooms therein were evicted based on a promise that they will be allotted with shop rooms in the new commercial buildings proposed to be constructed by the Municipality. However, when the petitioner and others were not considered for allotment of rooms in the new shopping complex, they have approached this court in a writ petition. O.P. No.29973/2001 filed by the petitioner and two others was disposed of through Ext.P1 judgment. This court observed that as per Ext.P7 document produced therein the 1st

respondent Corporation had ordered that the petitioner will be provided with rooms in the upstairs part of the newly constructed building, since they were conducting business in the upstairs of the existing building. The petitioners therein complained that rooms in the newly constructed Pattalam Market Complex Building were allotted to many others mentioned in the said document including strangers. But the Corporation had refused to provide sufficient rooms to the petitioners in the new building. This court observed that, relief already granted to similarly situated others in different writ petitions can be extended to the petitioners therein. Hence the writ petition was disposed of by directing 1st respondent herein to provide convenient rooms to the petitioners therein, in the upstairs portion of the newly constructed Pattalam Market Complex, within one month from the date of the said judgment. It is evident from Ext.P2 order and P3 judgment issued by this court that the petitioner had again approached this court in a further writ petition, O.P. No.1620/2003, which was disposed of

on recording the submission made by the counsel appearing for the 1st respondent Corporation to the effect that there will not be much delay in completing the process of allotment of rooms in the new building. It is revealed from Ext.P2 order that O.P. No.1620/2003 was disposed of by recording the submission made as above. But subsequently the petitioner sought modification of the judgment stating that no time limit is stipulated for compliance. In Ext.P2 this court directed that the Corporation should take appropriate follow up action as envisaged in the judgment within a period of 3 months from the date of the said order. It is further evident from Ext.P3 that a Contempt of Court Case was filed before this court alleging non compliance of the judgment in O.P. No.1620/2003. In Ext.P3 judgment the Contempt of Court Case was disposed of based on the submissions made on behalf of the respondent Corporation to the effect that a decision has already been taken and a list of claimants is prepared for allotment of the rooms, and that the petitioner herein is No.2 in the said list. It was

submitted that it is only a matter of time to get a room. This court closed the Contempt of Court Case by observing that there should not be in any indefinite delay in the matter and the relief may not be made illusory.

2. The Contempt of Court Case was disposed of during July 2004. But the petitioner was not allotted with any room thereafter. To a query made under the Right to Information Act the respondent Corporation in Ext.P5 had replied that the issue is being considered by the Rehabilitation Committee of the respondent Corporation and decision taken will be intimated to the petitioner. It is aggrieved by inaction on the part of the respondents in allotting the shop room as directed in the judgment and orders of this court, the above writ petition is filed seeking appropriate directions.

3. In the counter affidavit filed by respondents, dated 15.4.2009 it is contended that the petitioner is not an eligible person to get a rehabilitation, because his name was not included in the list prepared by the erstwhile

Municipality with respect to eligibility of persons entitled for rehabilitation. However it is conceded that on the basis of Ext.P1 judgment the Corporation had decided to allot a room to the petitioner when the upstairs portion of the building is constructed at the existing new Pattalam Market Building. But there was no proposal at present for construction of the upstairs and therefore it is not possible to allot any room to the petitioner by way of rehabilitation.

4. It is to be noticed that Ext.P1 judgment as well as the observations contained in Exts.P2 and P3 have attained finality. There are findings rendered by this court to the effect that the respondent Corporation had promised to allot room in the newly constructed building for the petitioner. The corporation cannot be permitted to turn around from the promise made before this court on repeated occasions, with respect to the allotment of room. If the Corporation could not allot any room because of the non-construction of the upstairs portion, it is for the Corporation to consider allotment of rooms in any other

building available.

5. The petitioner had filed an affidavit on 13.01.2015 swearing that on enquiry it was understood that room Nos.96, 102, 107, 110 and 117 of the Corporation building in the new Pattalam Market Road is lying vacant. It is further stated that room Nos. 20, 15, and 18 in Kairali building at East Fort owned by the Corporation are also lying vacant. Apart from that new buildings are proposed to be constructed by the Corporation in the new Pattalam Road, during the present financial year. Hence the stand taken by the Corporation that there is no room available to be allotted to the petitioner is disputed.

6. In view of the factual situation emerging as mentioned above, this court is of the considered opinion that the respondent Corporation is bound to implement directions issued by this court in the previous judgments and orders. Therefore it is necessary to consider allotment of a room for rehabilitating the petitioner either in the Pattalam Market building or in any other building owned by

the Corporation. Hence this writ petition is disposed of by directing the respondents to take necessary steps for allotment of a room for rehabilitating the petitioner either in the Pattalam Market Shopping Complex building or in any other Shopping Complex building owned by the Corporation, on the basis prevailing terms and conditions of allotment.

A decision in this regard shall be taken at the earliest possible, at any rate within a period of two months from the date of receipt of a copy of this judgment.

Sd/-
C.K.ABDUL REHIM, JUDGE.

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