

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

FRIDAY, THE 18TH DAY OF DECEMBER 2015/27TH AGRAHAYANA, 1937

WP(C).No. 12924 of 2010 (M)

PETITIONER:

THRIKKAKKARA GRAMA PANCHAYAT,
REPRESENTED BY ITS SECRETARY (SPECIAL GRADE)
KAKKANAD, ERNAKULAM.

BY ADV. SRI.S.SHANAVAS KHAN

RESPONDENTS:

1. THE HON'BLE OMBUDSMAN FOR LOCAL SELF GOVERNMENT INSTITUTIONS, THIRUVANANTHAPURAM.
2. MARY XAVIER,
W/O.FRANCIS XAVIER, PALACKATHARA HOUSE,
MARIAKUTTY JOHN ROAD, KOCHI-18

ADDL.R3 TO R9 IMPEADED:

3. P.X JAMES, S/O. LATE FRANCIS XAVIER,
AGED 65 YEARS, RESIDING AT AVITOM VEEDU,
OPP. ST. ANTONY'S CHURCH,
THIRIKKAKARA, KOCHI -21.
4. STELLA PAILY, PULEPARABIL HOUSE,
MUNDAMVELI P.O., KOCHI - 7.
5. P.X. SEBASTIAN, ORION VILLA, M.J. ROAD,
KOCHI - 18.
6. P.X. ANTONY, VALIYAPARAMBIL HOUSE,
THAMARAPARAMBU JUNCTION, ST. JUDE ROAD,
KOCHI - 1.
7. ALICE JOCKY, KANAKKASSERY HOUSE,
OCANTHURUTHU P.O., KOCHI -8.
8. SHEELA ANTONY, ANJATTUPARAMBIL,
FACT, (CD) QUARTERS, AMBALAMEDU,
KOCHI - 7.

(ADDL. R3 TO R8 IMPEADED AS PER ORDER DATED 19.03.2015 IN
I.A. NO. 4036/2015)

WP(C).No. 12924 of 2010 (M)

: 2 :

9. ABDUL RAZAK, OLIYIL HOUSE,
AMBADIMOOLA, KAKKANAD P.O.,
KOCHI - 682 030.

(ADDL.R9 IMPEADED AS PER ORDER DATED 17.12.2015 IN
IA. NO. 18028/2015)

R2,R ADDL BY ADV. SRI.P.V.BABY
R,R2 BY ADV. SRI.R.KIRAN
RADDL. BY ADV. SRI.S.SHARAN
RADDL. BY ADV. SRI.A.D.SHAJAN
RADDL. BY ADV. SMT.JESSY S.SALIM

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
18-12-2015, ALONG WITH W.P.(C) NOS. 12517 & 19501 OF 2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

- EXT.P1 : TRUE COPY OF THE DECISION DATED 23.09.2006 OF THRIKKAKKARA GRAMA PANCHAYATH.
- EXT.P2 : TRUE COPY OF THE PROJECT REPORT PREPARED BY THE PETITIONER.
- EXT.P3 : TRUE COPY OF THE LIST SUBMITTED BY the PETTY TRADERS ASSOCIATION, NGO QUARTERS JUNCTION, THRIKKAKKARA.
- EXT.P4 : TRUE COPY OF THE INTERIM ORDER DATED 05.08.2009 IN W.P.(C) NO. 21513/2009 OF THIS HON'BLE COURT.
- EXT.P5 : TRUE COPY OF THE ORDER DATED 07.08.2009 OF THE HON'BLE OMBUDSMAN FOR LOCAL SELF GOVERNMENT INSTITUTIONS.
- EXT.P6 : TRUE COPY OF THE JUDGMENT DATED 27.08.2009 OF THIS HON'BLE COURT.
- EXT.P7 : TRUE COPY OF THE ORDER DATED 23.11.2009 OF THE 1ST RESPONDENT.
- EXT.P8 : TRUE COPY OF THE ORDER DATED 17.12.2009 IN O.P NO. 1125/2009 OF THE 1ST RESPONDENT.
- EXT.P9 : TRUE COPY OF THE DECISION DATED 16.06.2009 OF THE PANCHAYATH.

RESPONDENTS' EXHIBITS:

- EXT.R2(a) : TRUE PHOTOCOPY OF THE APPLICATION DATED 17.05.2010 SUBMITTED BY P.X. JAMES TO THE MANAGING DIRECTOR OF CONSUMERFED.
- EXT.R2(b) : TRUE PHOTOCOPY OF THE COMMUNICATION DATED 03.06.2010 ISSUED BY THE INFORMATION OFFICER OF THE CONSUMERFED TO P.X JAMES.
- EXT.R2(c) : TRUE PHOTOCOPY OF THE ORDER DATED 23.04.2010 OF THE 1ST RESPONDENT.
- EXT.R2(d) : TRUE PHOTOCOPY OF THE APPLICATION DATED 21.11.2009 SUBMITTED BY P.X JAMES TO THE SECRETARY OF THE PETITIONER.

//TRUE COPY//

P.A. TO JUDGE

DAMA SESHADRI NAIDU, J.

W.P. (C) Nos. 12924 of 2010 &
12517 & 19501 of 2015

Dated this the 18th day of December, 2015.

JUDGMENT

Introduction:

Since all the writ petitions raise the same question of law and fact involving, more or less, the same parties, this Court has decided to dispose of the writ petitions together through a common judgment. For ease of reference and convenience, I take into consideration the facts and exhibits in W.P.(C) No. 12924 of 2015 as the basis for the narrative purpose.

2. The petitioner Municipality, a Grama Panchayat in its earlier version (but referred to all through as Municipality), with its best of intentions has brought itself into a litigious quagmire, for which it has to blame itself partially, though. It has taken a policy decision that there should not be allotment of more than one shop room to one family. When the learned Ombudsman, the first respondent, rendered an order to the contrary, it has not laid immediate challenge; the

Municipality's laxity seems to have led to a multiplicity of proceedings and also further complication of the issue.

Facts:

3. Briefly stated, the Municipality, being then a Grama Panchayat, on 23.09.2006 decided to construct a shopping complex on the property belonging to the Public Works Department of the State. It has, in fact, obtained all the necessary permissions and approvals as is evident from Ext. P2.

4. As it turned out, the property on which the Municipality decided to construct the shopping complex had already been under the occupation of certain third parties, who were 'technically' trespassers. Those persons have raised temporary structures and carried on their petty businesses. Being mindful of the daunting task of getting them evicted, the Municipality chose a middle path: a conciliatory gesture of accommodating those occupants in the shop rooms to be constructed. Accordingly, all the traders coming together were said to have submitted Ext. P3 list containing the names of the persons carrying on the businesses in the said property. Thus, a scheme of rehabilitation has come into being.

5. As is evident, the Municipality constructed 80 rooms—40 on the ground floor and 40 on the first floor. When it began its efforts to allot the rooms, there was vying and jostling among the members found in Ext. P3 list for specific allotment of shop rooms, say, only on the ground floor. In certain other instances, the question of more than one person from a family found reflected in Ext. P3 list also came up for consideration. Incidentally, Ext.P3 list contained the names of two persons from one family: father-in-law, whose wife is the second respondent, and daughter-in-law, whose husband is the additional third respondent.

6. Under those circumstances, the second respondent, who is no more, being the wife of one of the traders in Ext.P3 list, filed W.P. (C) No.21513 of 2009 seeking a direction to the Municipality (Grama Panchayat) to allot her a shop room on the premise that she was the legal heir and successor to her husband, who died before the allotment could take place. It appears that certain other persons also filed similar writ petitions, albeit on other grounds.

7. This Court in W.P.(C) No.21512 of 2009 and three other connected cases issued an interim direction on 05.08.2009. Given the

disputed questions of fact and also the rival claims of the persons who were sought to be rehabilitated by the Municipality, this Court through Ext.P4 interim order directed the parties to approach the learned Ombudsman for the Local Self Government Institutions, the first respondent, who was to hear all the parties concerned and decide the issue of allotment.

8. In response to Ext. P4 interim order of this Court, the first respondent rendered Ext. P5 common order dealing with the claims of many persons in O.P. Nos. 1125 of 2009 to 1128 of 2009. Having considered all the issues elaborately, the first respondent has eventually issued, inter alia, a direction that the second respondent and also the additional third respondent's wife should be allotted shop rooms. Of course, Ext. P5 order has reference to various other persons, including the additional ninth respondent, who is the petitioner in W.P.(C)No. 19501 of 2015.

9. This Court eventually disposed of W.P.(C)No. 21513 of 2009 and five other writ petitions through Ext. P6 judgment making Ext. P5 order of the first respondent part of it. This Court in Ext. P6 judgment has observed that if the parties to the proceedings have any disputes

still remaining unresolved, they could move the first respondent for any further relief, including by way of clarifications or otherwise.

10. If we confine our discussion to the family of the second respondent and the third additional respondent, it can be seen that the first respondent initially passed Ext. P7 order dated 23.11.2009 in O.P.No.1125 of 2009 directing that the second respondent should be given a room as far as possible on the ground floor. He has directed the petitioner Municipality to refrain from handing over the key of 'the room' to any person. Soon thereafter, on 17.12.2009, the first respondent has passed Exhibit P8 order directing the petitioner Municipality to allot room No.40 to the second respondent.

11. After the death of the second respondent, the third additional respondent, her son, filed W.P.(C) No. 12517 of 20015 seeking its implementation. At that juncture, the petitioner Municipality filed the present writ petition assailing Exts. P5, P7 and P8 orders of the first respondent.

Summary of Submissions:

Petitioner's:

12. The learned counsel for the petitioner Municipality has

submitted that, in the first place, the first respondent's view that the persons in Ext. P3 list had surrendered the land is misconceived. According to her, all those persons were trespassers on the property belonging to the Government. As such, the question of their surrendering any land does not arise.

13. She has further submitted that only with a view to avoiding time-consuming, purpose defeating litigation, the petitioner Municipality, then a Grama Panchayat, felt it desirable to rehabilitate those persons who had been found carrying on the businesses unauthorisedly, though, on the Government land which the Municipality sought to be used for constructing the shopping-complex.

14. The learned counsel has strenuously contended that the Municipality did take a policy decision in Ext. P9 dated 16.06.2009 that one family should be allotted one room notwithstanding the fact that more than one person from a family might have had his or her name reflected in Exhibit P3 list. It is the singular contention of the learned counsel that the first respondent has totally disregarded the policy of the Municipality, which, according to her, has resulted in

miscarriage of justice.

15. Adverting to the facts of the matter, the learned counsel would contend that the husband of the second respondent and father of the additional third respondent was admittedly from an affluent family, he being the owner of a resort. She has further contended that the father-in-law and the daughter-in-law showed different addresses at the time of preparation of Ext. P3 list. Then, they were treated to be from two separate families. Now, given the changed circumstances, the additional third respondent (claiming to be the successor to his father or mother) and his wife, another claimant from Ext. P3 list, are now from the same family—and living under the same roof, at that. Yet they have been allotted two separate shop-rooms.

16. The learned counsel has passionately pleaded before the Court that any affirmation of the first respondent's order to allot two separate shop rooms, more particularly, on the ground floor to the wife and husband of the same family would defeat the public purpose. In other words, the policy of the petitioner Municipality would be negated inasmuch as two persons from a very affluent family would have the benefit of carrying on the business on a nominal rent to the

exclusion of many poor persons.

Respondents 3 to 8's:

17. The learned counsel for the additional respondents 3 to 8, who are said to be the legal heirs of the second respondent, has contended, with equal vehemence, that Ext. P5 order of the first respondent has already become part of Ext. P6 judgment of this Court. Since no challenge has been laid against Exhibit P6, contends the learned counsel, any collateral challenge to Exhibit P5 in this writ petition is wholly unsustainable.

18. The learned counsel has further contended that the petitioner Municipality had already taken all these pleas before the first respondent but could not sustain them, as is evident from Ext. P5. When queried by this Court, the learned counsel has submitted that not only the family of the additional respondents but also other families had the allotment of more than one shop. Pat came the refutation from the learned counsel for the petitioner that only another family had the allotment, and it was based on a very protracted litigation, at that. In that context, the learned counsel has submitted that this Court in its judgment in W.A.No.1179 of 2010

held that since those two persons—though father and son—are living separately, they are entitled to separate shops.

19. The learned counsel for the additional respondents has strenuously contended that the wife of the additional third respondent has got the shop room on her own right as her name was independently reflected in Ext. P3 list. In so far as the additional third respondent is concerned, he ought to be treated, along with the other additional respondents, as the legal heir and successor either of the father, the original allottee, or the mother, who was the initial successor to her husband. Looked from either prospective, the additional respondents 3 to 8, according to him, are eminently entitled to have the allotment.

20. Concerning the allotment of specific shop rooms only on the ground floor, the learned counsel would contend that the first respondent, having taken all the aspects of the matter into account, rendered Exhibit P8 order holding that the particular Shop Room No.40 should be allotted to the second respondent; now, it means her successors, the additional respondents 3 to 8.

21. In this context, the learned counsel has also submitted that

the allotment cannot be said to be in favour of the third respondent alone. But it should be treated as allotment in favour of additional respondent 3 to 8, who represent the estate of the second respondent.

Additional 9th Respondent's:

22. The learned counsel for the additional 9th respondent has submitted that in paragraph 15 of Ext.P5, the first respondent has explicitly recorded that the name of the additional 9th respondent was found reflected in Ext.P3 list of traders, who had to be rehabilitated. According to him, based on the directions of the first respondent, the Municipality initially allotted shop room No.7; subsequently, it came to realise that the particular shop room was not suitable for the business being carried on by the additional 9th respondent. Under those circumstances, the petitioner Municipality, contends the learned counsel, allotted shop room No.40 to him. Nevertheless, in the light of the interim direction granted by this Court earlier and especially given the fact that the additional third respondent filed a Contempt Case, the authorities reversed their decision and cancelled the proceedings, through which the additional 9th respondent was initially

allotted shop room No.40.

23. The learned counsel has further contended that the additional third respondent and his wife both come from a very affluent family. According to him, instead of carrying on the business on their own, they sublet the shop rooms to some other persons. He has eventually contended that it being only a rehabilitation, the Municipality should allot the shop rooms to the needy and the indigent.

24. Heard the learned counsel for the petitioners, the learned counsel for the respondent Municipality, and the learned counsel for the additional respondents, apart from perusing the record.

Issues:

- I. Whether the Orders of the First Respondent have attained finality?
- II. Whether the Policy of 'one family-one shop' can be sustained?
- III. Whether the additional respondents 3 to 8 are entitled to succeed to the estate of their deceased mother, the second respondent?

Issue No.I:

25. As has been rightly contended by the learned counsel for additional respondents 3 to 8, Ext.P5 has already become part of Ext.P6 judgment, which has not been challenged. The same contention, however, cannot be advanced vis-a-vis Exts.P7 and P8 orders of the first respondent. In the first place, the first respondent through Ext.P7 has ordered the Municipality to allot a shop room to the second respondent in the ground floor as far as possible. In my view, Ext.P7 order is, at best, advisory in nature and needs no declaration as to its legality or enforceability. Insofar as Ext.P8 order is concerned, there is a specific direction by the first respondent that the shop room No. 40 should be allotted to the second respondent.

26. This Court initially through Ext.P5 has felt that the first respondent is competent to adjudicate the disputes raised by various beneficiaries in Ext.P3 list. Accordingly, having retained the writ petition, the Court has directed the aggrieved persons to approach the first respondent. This action of the Court does not amount to any delegation of powers of adjudication. It, in fact, merely acknowledged the jurisdiction of the first respondent and directed the parties to

approach the said authority, given the complexity of the issue: the disputed questions of fact.

27. The inevitable conclusion, therefore, is that the first respondent has not acted as a delegate of this Court; on the contrary, the said authority acted in his own right in rendering Ext.P5, P7 & P8 orders. Indisputably, this Court did make Ext.P5 order of the first respondent part of Ext.P6 judgment, which, in fact, has not been questioned. I am, therefore, of the opinion that no challenge against Ext.P5 is sustainable. Insofar as Ext.P7 & P8 are concerned, no such limitation is discernible. At any rate, as has already been observed, Ext.P7 is not an enforceable directive—a mere advisory—required to be questioned. As a result, what remains is Ext.P8 order.

Issue No.II:

28. First, on one hand, the question that engages the attention of this Court is whether the concept of succession should be introduced into a policy of rehabilitation, which has at its base a commendable consideration of not depriving the petty traders of their livelihood. The municipality may have been persuaded by the fact that those persons have been carrying their trade for a long time on the

government land, though.

29. Second, on the other hand, it is equally essential to determine — whether, if at all the succession is to be upheld—the said allottees should have a preference to have the allotment only on the ground floor.

30. Indisputably, ever since Ext.P6 judgment was passed, much water has flowed. Further, this Court has allowed any aggrieved persons from among the persons found in Ext.P3 list to have their grievance ventilated before the first respondent. In that context, subsequent to Ext.P6, many persons have approached the said authority on one ground or another.

31. From Ext.P4 proceedings of the municipality, it is discernible that it did formulate, among other things, a policy that one family should be allotted one shop room. In the first place, the traders in Ext.P3 list did not give up their own lands to claim shops as a reparation. It is a method of carrot rather than stick adopted by the Municipality to make the occupants of the Government land surrender it for a public purpose. Those traders found mentioned in Ext.P3 were to be given shops without any public auction and at a nominal rental,

too. Initially the land was up for grabs; many people—more than one from a family, as well—occupied parcels of public land and established their businesses.

32. The Municipality, at the inception, while preparing Ext.P3 list, did not want to stir up the hornet's nest. It did not object to more names than one from a family. While the allotments were underway, it seemed to have realized the folly, which was originally an expediency. However, the first respondent did not acknowledge the policy, with justification perhaps. On the other hand, this Court in Ext.P6 judgment has not specifically ruled on that issue, for the issue never prominently presented itself for resolution.

33. As a corollary, the question is, whether the policy of the petitioner has to be buried deep down? Whether the allotments, iniquitous as they are and expedient may be then, should continue in perpetuity, as if it were a policy by itself etched indelibly?

34. As has already been adverted to, the shop rooms are the State's largesse required to be distributed or allotted equitably. In this case, however, we are concerned with a slightly different question. In

Nagar Nigam, Meerut v. Al Faheem Meat Exports Pvt. Ltd.¹, the Apex Court placing reliance on R.S. Shetty v. Union of India² has held that it is now a well-settled principle of law that having regard to the provisions of Article 14 of the Constitution of India, a State within the meaning of Article 12 thereof cannot distribute its largesse at its own sweet will. The Court can ensure that the statutory functions are not carried out at the whims and caprices of the officers of the government/local body in an arbitrary manner. But the Court cannot itself take over these functions. In fact, the case on hand is in the converse.

35. True, the first respondent through Ext.P5 did reject the objection that more than one member of a family getting the allotment. Ext.P5 has become part of Ext.P6 judgment. Without cavil, I am prepared to accept that the said rejection should not be reviewed collaterally. Does that mean that the arrangement has to continue in perpetuity? Can the concept of succession be brought to bear on the issue? Does any revisiting of the issue amounts to this Court speaking in two voices—that is, at variance from the judicial dictum in Ext.P6

¹ (2006) 13 SCC 382

² (1979) II LLJ 217 SC

judgment?

36. In my considered view, the issue of policy preference has never presented itself for consideration in Ext.P6 judgment. On the other hand, this Court has left the issues open by observing that if any further grievances remain unredressed, parties can approach the first respondent.

37. In the alternative, we can as well examine whether the concept of succession applies to the grant of State largesse. It is too well established to be called in question that tenancy is tantamount to estate heritable and alienable, albeit, subject to certain conditions, which are mostly contractual in nature. If the deceased second respondent had any valid tenancy, a species of immovable property, then, on her death, the issue of succession could have opened up.

38. The issue of succession could have been possible only in the event the tenant secured the tenancy in an open competition, continued to be a tenant, and then died while the tenancy was subsisting. For the residuary period, the legal heirs could have succeeded. Here, there was no tenancy worth the name. A trespasser, under certain ineluctable circumstances, was extended certain

privilege: had the State's largesse conferred on him or her. So long as it remained a largesse or privilege, the beneficiary cannot have any indefeasible rights thereto.

39. Viewed from another perspective, first, at the inception, both the daughter-in-law and the father-in-law, whom the second respondent was said to have succeeded, were living separately. Before there could be actual allotment to the father-in-law, he died. His wife, the second respondent, came into the picture. She still carried the distinguishing tag of living separately from the daughter-in-law. To that extent, we may not disturb or call into question what has already been settled.

40. In the ultimate analysis, on both counts—that there is no succession to a privilege, and the condition of not living under the same roof has come to be breached—this Court has found it meet to revisit the petitioner's policy preference.

Issue No.III:

41. Initially, the second respondent approached the first respondent claiming that she be recognised as the legal heir and successors to her husband, who was one of the traders found in

Ext.P3 list. On the other hand, the additional third respondent, too, seems to have made an independent claim that he be given a shop room, for he was shown by his father, the original trader, as a nominee to him. Be that as it may, initially the first respondent ruled in favour of the second respondent, the wife of the deceased trader. Nevertheless, in the course of time, she having died, not only the additional third respondent but also other additional respondents, i.e., additional respondents 4 to 7, have come on the scene as the legal heirs and successors to the estate of the second respondent.

42. Indisputably, the additional third respondent's wife has been allotted a shop room on the ground floor, albeit in recognition of her independent right as her name had been found in Ext.P3 list originally. The additional third respondent or, for that matter, all the so-called successors to the second respondent did not stake any independent claim other than being the successors to the estate of the deceased second respondent or her husband, who was the original trader.

43. The learned counsel for additional respondents 3 to 7 could successfully demonstrate before this Court that not only the family of

those additional respondents but also certain other families have had the privilege of having more than one shop allotted to them. Be that as it may, when a similar issue has engaged the attention of this Court, in its judgment dated 18.03.2015 in Writ Appeal No. 1179 of 2013, a learned Division Bench has observed as follows:

"5. Annexure A2, the resolution passed by the Municipality produced along with the writ appeal, itself shows that, on enquiry, the Secretary has found that the 2nd respondent is leading a life separately from his father. Therefore, not only that the 2nd respondent was entitled to be treated like other 46 allottees, who were similarly situated, but also having regard to the fact that the 2nd respondent is living separately from the family of his father, he is entitled to be allotted a room in the shopping complex. For all these reasons, we are not satisfied that the appellant has made out a case for interference."

44. It is evident from the above extract that the Secretary of the petitioner Municipality conducted an enquiry and found that the father and the son, who claimed shops independently, had been living separately on their own. It is further clear from the judgment that initially the first respondent, too, took note of the fact, based on the objection raised by the petitioner Municipality, and directed its Secretary to conduct an enquiry into the aspect whether the claimants hailing from the same family had been living together. Thus, what

has weighed with either the first respondent or this Court as a criterion for disqualification is not that the claimants hail from the same family, but that they have been living together.

45. In the present instance, all along, the petitioner Municipality had been contending that the additional respondents hailed from a very affluent family. Added to this is the contention of the additional 9th respondent that the additional third respondent and his wife have sublet both the shops as they live away from the place. Be that as it may, the first respondent having applied his mind has rejected the contention of the petitioner Municipality at the earliest point of time concerning the issue that the daughter-in-law and the mother-in-law should not be allotted separate shops. It is pertinent to observe that at that material point of time, as clearly borne out by the record, the mother-in-law and the daughter-in-law had been living separately. Now, as a matter of subsequent developments, many changes have taken place.

46. The second respondent having died, the additional respondents 3 to 7 have staked a claim to the shop room allotted to her initially. And the said subsequent allotments seem to have been

taken place in the name of the additional third respondent. In the first place, both the additional third respondent, an allottee as a successor, and his wife, another allottee on her own right, have been living under the same roof —and more pertinently far beyond the municipal limits, at that. For that matter, none of the additional respondents live within the Municipal limits where the shop rooms are situated. They all are living in Kochi, a metropolis. Further undeniable is the fact that they all hail from an affluent family.

47. What cannot be lost sight of is the fact that the Municipality, the Grama Panchayath in its earlier version, had the intention of accommodating the petty traders instead of engaging them in a long-drawn litigation only to have, in the end, a Pyrrhic victory. It thus constructed a shopping complex with an offer to accommodate those persons in whose occupation the land in question had been found.

48. At no point in time had this Court consciously rendered any decision concerning the rights of the parties. It has justly observed that the claims and rival claims of the traders whose names were found in Ext.P3 involved certain disputed questions of fact. They were required to be resolved by undertaking an elaborate exercise, albeit

based on the records.

49. In that context, this Court has, in due recognition of the adjudicatory jurisdiction of the first respondent, directed the aggrieved persons to approach the said authority. Indeed, many people have approached the first respondent and invited different orders. As far as the claim of the second respondent was concerned, despite the objection of the Municipality, it was upheld. At the same time, the fact further remains that Ext.P5, having become part of Ext.P6, there was no early challenge as regards the said allotment.

50. The only specific challenge on the part of the Municipality vis-a-vis the second respondent was concerning a direction by the first respondent in Ext.P8 that she be allotted a particular shop—shop No. 40—on the ground floor.

51. I am constrained to observe that with the efflux of time, especially under changed circumstances, it is difficult to sustain that the same indefeasible right the second respondent once had would still be available to her successors as well. As has justly been observed by the learned Division Bench of this Court in its judgment dated 18.03.2015 in W.A. No. 1179 of 2013, the essential criterion to

be followed is whether both the allottees had been living under the same roof. In the present instance, though technically, the second respondent was allotted a shop, given the subsequent litigation, she had never been given possession; the allotment was on paper. The fact, nevertheless, remains that during her lifetime, she deposited ₹1,00,000/–, i.e., many years ago.

52. Be that as it may, this Court while rendering any judgment, especially exercising its power under Article 226 of the Constitution of India, an equitable dispensation, is required to take a compendious view of the issue, especially by taking into account all subsequent developments that have a bearing on the issue. The fulcrum of the policy adopted by the Municipality is that the rehabilitation should ensure that one family will have one shop room, so that as many 'poor and needy' traders as possible can be accommodated.

53. At this juncture, the learned counsel for the petitioners has strenuously contended that the first respondent has already decided the issue, and his decision has become part of the Ext.P6 judgment which remains unchallenged. According to him, any direction at this juncture setting aside Ext.P6 is impermissible.

54. Attractive as the submission seems, I am afraid, on a deeper scrutiny, it renders itself specious and fallacious, too. So long as the second respondent was alive, there was no occasion to review the policy or have any change of view on the part of this Court. Now a policy, which has a commendable object of equitable distribution of the State's largesse as its foundation, i.e., not to deprive the petty traders of their livelihood, cannot be permitted to be abused or misused, especially, in the name of succession.

55. In the present instance, additional respondents 2 to 7, admittedly belonging to an affluent family, are living far away from the place. If any shop room were allotted, apparently none of the additional respondents would carry business; however, if they were to carry, it would be in absentia. It only encourages absent-tenant policy. It, therefore, further results in depriving the benefits to a needy person. The wife of the additional third respondent seems to have been already carrying on business in absentia.

56. In the absence of any statutory mandate to the contrary, this Court is eminently suited, *ex debito justitiae*, to commend any governmental policy and extend its judicial imprimatur, if required,

for its implementation in the face of any challenge.

57. In the facts and circumstances, I am of the considered view that the petitioner Municipality shall review its policy and ensure that no members of any single family living under the same roof get allotted more than one shop room. After identifying any such families, which have more than one shop room allotted to it, the petitioner Municipality shall put those persons on notice; after hearing them, it shall take an appropriate decision in tune with its policy of 'one family-one shop room.' The petitioner shall further ensure that no tenant having secured the shop room as a privilege on his or her having been found mentioned in Ext.P3 should carry on business in absentia—a word of caution being that engaging assistants is different from sub-letting.

58. Insofar as the allotment on a particular floor is concerned, I deem it appropriate that the petitioner Municipality shall have the necessary jurisdiction and discretion to decide the suitability of the candidates to have the allotment on either of the floors. If the Municipality finds more than one candidate being entitled to the allotment of a particular shop or on a particular floor, it shall resolve

the issue by taking recourse to an acceptable method of allotment, such as drawing lots, etc. To that extent, Ext.P8 is set aside.

With the above observations, these writ petitions stand disposed of. No order as to costs.

sd/- DAMA SESHADRI NAIDU, JUDGE.

tkv/rv

W.P.(C.) Nos. 12924/2010 & connected cases