

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 17TH DAY OF JULY 2015/26TH ASHADHA, 1937

WP(C).No. 29108 of 2014 (K)

PETITIONER(S):

**SAROJA RENGAN, AGED 60 YEARS,
W/O. RENGAN, SHUNMUGHA, KATTIL VEEDU,
TC 14/2225, ORUVATHILKOTTAH, ANAYARA P.O.,
THIRUVANANTHAPURAM.**

BY ADV. SRI.G.SUDHEER

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY ITS PRINCIPAL SECRETARY TO GOVERNMENT,
PUBLIC WORKS DEPARTMENT, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM - 695 001.**
- 2. THE THIRUVANANTHAPURAM DEVELOPMENT AUTHORITY (TRIDA),
REPRESENTED BY ITS SECRETARY, JATA MANSION,
VAZHUTHACAUD, SASTHAMANGALAM P.O.,
THIRUVANANTHAPURAM - 695 001.**
- 3. SRI.RAJAGOPALAN NAIR,
PROPRIETOR, INTERNATIONAL ELECTRONIC,
TAKARAPARAMBU ROAD, THIRUVANANTHAPURAM, PRESIDENT,
KERALA VYAPARI VYAVASAYI SAMATHI,
THAKARAPARAMBU UNIT.**

*** ADDITIONAL R4 & R5 IMPEADED**

**Addl.4. BINDU ELECTRONICS,
THAKARAPARAMBU ROAD, THIRUVANANTHAPURAM P.O. - 695 001.**

**Addl.5. VIJAYARAGHAVAN NAIR,
ARUNA BAKERS, THAKARAPARAMBU ROAD,
THIRUVANANTHAPURAM P.O. - 695 001.**

*** ADDL.R4 & R5 IMPEADED AS PER ORDER DATED 19.11.2014 IN IA 15811/14.**

**R1 BY GOVERNMENT PLEADER SRI.MANOJ P. KUNJACHAN
R2 BY ADV. SRI.K.A.JALEEL, SC., TRIDA
R3 & R5 BY ADV. SRI.V.A.VINOD
R4 BY ADV. SRI.SHAJIN S.HAMEED**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
17-07-2015, ALONG WITH WPC. 17653/2015, THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

APPENDIX

PETITIONER(S)' EXHIBITS

- P1 - TRUE COPY OF LEASE DEED DT. 15.3.14 EXECUTED BY THE THIRUVANANTHAPURAM DEVELOPMENT AUTHORITY.
- P2 - COPY OF ORDER NO. R3-247/2012/TRIDA/4 DT. 21.3.14 ISSUED BY THE THIRUVANANTHAPURAM DEVELOPMENT AUTHORITY.
- P3 - TRUE COPY OF THE FILE NO. S1/22/2003/TRIDA DATED ISSUED BY THE THIRUVANANTHAPURAM DEVELOPMENT AUTHORITY.
- P4 - TRUE COPY OF THE REHABILITATION PROPOSAL SUBMITTED THE 3RD RESPONDENT WITH PLAN.
- P5 - TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE SECRETARY, TRIDA, THIRUVANANTHAPURAM DT. 30.10.14.
- P6 - TRUE COPY OF LEASE DEED EXECUTED BY THE 2ND RESPONDENT IN FAVOUR OF 3RD RESPONDENT DTD.17.11.2014.
- P7 - TRUE COPY OF THE LEASE DEED DTD.17.11.2014 EXECUTED BY THE 2ND RESPONDENT IN FAVOUR OF ADDL. 5TH RESPONDENT.
- P8 - TRUE COPY OF THE PETITION DTD.22.11.2014 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.
- P9 - TRUE COPY OF THE REPLY SENT BY THE 2ND RESPONDENT TO THE PETITIONER DTD.23.1.2014.
- P10- TRUE COPY OF THE APPLICATION SUBMITTED BY P.RAVIKUMAR BEFORE THE CHIEF INFORMATION DTD.12.11.2014.
- P10(a)- ORIGINAL COPY OF THE RECEIPT DTD.14.11.2014 ISSUED BY THE TRIDA TO P.RAVIKUMAR.
- P11- TRUE COPY OF THE REPLY ISSUED BY THE TRIDA TO P.RAVIKUMAR DTD.6.12.2014.
- P11(a)- ORIGINAL COPY OF THE RECEIPT ISSUED BY THE TRIDA TO P.RAVIKUMAR DTD.11.12.2014.
- P12- TRUE COPY OF THE RELVANT PORTION OF THE FILE NO.51/221/03/TRIDA.
- P13- ATTESTED COPY OF THE AFFIDAVIT SWORN ON BY P.RAVIKUMAR SIGNED BEFORE NOTARY PUBLIC DTD.9.7.2015.
- P14: TRUE COPY OF THE APPLICATION SUBMITTED BY FAIZAL BEFORE THE CHIEF INFORMATION OFFICER DTD.20.10.2014.

Msv/

WP(C).No. 29108 of 2014 (K)

P14(a): ORIGINAL COPY OF THE RECEIPT DTD.20.10.2014 ISSUED BY THE TRIDA TO FAIZAL.

P15: TRUE COPY OF THE REPLY ISSUED BY THE TRIDA TO FAIZAL DTD.27.10.2014.

**P15(a): ORIGINAL COPY OF THE REC ISSUED BY THE TRIDA TO FAIZAL
DTD.30.10.2014.**

RESPONDENT(S)' EXHIBITS:

**EXT.R3(a): TRUE COPY OF THE CONSENT EXECUTED BY ADDITIONAL
4TH RESPONDENT DTD.22.10.2014.**

//TRUE COPY//

P.S.TO JUDGE

MsV/

K. VINOD CHANDRAN, J.

W.P(C). Nos.29108 of 2014

&

17653 of 2015

Dated this the 17th day of July, 2015.

JUDGMENT

The petitioners in both the writ petitions challenged the allotment made of shop rooms, as a measure of rehabilitation. The petitioner in WP(C) No.17653 of 2015 is the addl. 4th respondent in WP(C) No.29108 of 2014. The parties are referred to as per their status in WP(C) No.29108 of 2014.

2. The petitioner and the respondents 3 to 5 along with others were conducting businesses in the shop-rooms in a building, which was in the possession of the Trivandrum Social Welfare Co-operative Society. The petitioners were evicted from the said building for reason of construction of a fly-over at Thakarapparambu at Trivandrum. The petitioners were also promised rehabilitation. After construction of the fly-over, a

reconstruction was made to the earlier building and the rooms were allotted in accordance with the earlier holdings of the respective shop-owners, which allotment is the bone of contention herein.

3. The petitioner submits that, he had shop-room of area 55 sq.meters and now has been allotted a far lesser extent of 22.39 sq. meters. The petitioner alleges that the addl. 3rd respondent has been allotted far more than he actually had in the earlier building. The petitioner alleges nepotism and favouritism in the allotments made. Documents are produced to indicate that the TRIDA had intended an allotment, which was considerably deviated from, on the influence exerted by the 3rd respondent. This Court in the teeth of the controversies raised, as to the deliberations made by the TRIDA, called for the files from TRIDA, which has been produced now. Reference is made to the various deliberations made as revealed from the files also.

4. Area and frontage of the petitioners and respondents 3 to 5 in the earlier building and in the present building as per the allotment are indicated herein:

<i>Name</i>	<i>Existing Area</i>	<i>Shop No.</i>	<i>Proposed allotment</i>
<i>V. Rajan</i> [4 th Respondent]	66	2	20.09
<i>Saroja Rangan</i> [Petitioner]	55	5	22.39
<i>T.S. Rajagopalan Nair</i> [3 rd Respondent]	30	4	24.91
<i>S. Vijayaraghavan Nair</i> [5 th Respondent]	30.5	7	23.34

5. The petitioner's contention is primarily on the aspect that though he had 55 sq.meters in the earlier building, he has been granted 22.39 sq. meter and a mere look at the area existing and now allotted to the other persons would indicate that he has been grossly discriminated.

6. Admittedly, there had been many litigations with respect to the allotment of the shop-rooms. The TRIDA now persists for a hearing, since the petitioner is still occupying a temporary shop-room, which he had been allotted while the re-construction and rehabilitation was pending. The TRIDA requires the said area for handing it over to the Kerala Road Fund Board for constructing a service road, facilitating better access to the fly over. The petitioner and the addl. 4th respondent is continuing as per the interim orders of this Court in the temporarily allotted space.

7. This Court has gone through the correspondence file produced by the TRIDA. The files disclose that deliberations were initiated and carried on with all the shop-owners for long, by the officials of the TRIDA. There were also many litigations, which were initiated by the various shop-owners making various claims with respect to the allotments. The addl. 4th respondent had in fact submitted a consent produced as Ext.R3(a) on 22.10.2014. The same is also found in the files of the TRIDA. The addl.4th respondent had consented to allotment of the shop-room having No.2 in the ground floor and that having No.10 in the first floor. The allotment was made in accordance with the said consent. The consent letter is also dated 22.10.2014 and the 4th respondent's contention now is that the same was obtained by means of coercion. However, despite the consent having been given on 22.10.2014, the 4th respondent did not challenge the same until a writ petition was filed on 11.06.2015. In such circumstance, the contention raised by the 4th respondent is found to be unsustainable.

8. Looking at the files it is seen that, almost all the shop-

owners including the 4th respondent have consented to the allotment, except the petitioner. The petitioner had been constantly before the TRIDA, claiming that she has to be allotted shop No.7, which has now been allotted to the addl. 5th respondent. The TRIDA had replied to the petitioner by letter dated 23.11.2014 specifically indicating that the petitioner was allotted a shop-room of 22.39 sq. meters as against his earlier area of 55 sq. meters, only for reason of the earlier shop-room having a meager frontage of 1.8 meters. Even admittedly, the shop-room, which was occupied by the petitioner earlier, had two levels inside the very same room, with the second level being a concrete slab accessible through internal stairs. The specific reply given to the petitioner indicates that the addl. 5th respondent was allotted shop-room No.7; on which the petitioner raised a claim, for reason of the frontage of his earlier shop-room.

9. The petitioner, not being satisfied with the explanation, had been constantly complaining about the allotments. Deliberations are seen to have been carried out by the TRIDA with the shop-room owners many a time. The deliberations also

would indicate that the TRIDA had arrived at a reasonable allotment on the basis of the area and frontage, each of the allottees had in the earlier building and that available in the present building. Looking at the figures as indicated above, among whom alone there is a dispute, this Court does not find a gross anomaly to set aside the allotment made by the TRIDA. True, the petitioner had 55 sq. meters, which is more than what the addl. 3rd and 5th respondents had. However, all the lessees being retail traders, the frontage also has an advantage of its own, in the business carried on.

10. The addl. 3rd and 5th respondents had considerably more frontage than the petitioner. The earlier and present frontage available to each of the petitioners as available from the files is as under:

<i>Name</i>	<i>Earlier</i>	<i>Present</i>
<i>V. Rajan</i> [4 th Respondent]	<i>2m</i>	<i>2 shop rooms 1 ground floor and 1 first floor</i>
<i>Saroja Rangan</i> [Petitioner]	<i>1.8m</i>	<i>2.3</i>
<i>T.S. Rajagopalan Nair</i> [3 rd Respondent]	<i>4m</i>	<i>3.01</i>
<i>S. Vijayaraghavan Nair</i> [5 th Respondent]	<i>7.2m</i>	<i>4.3</i>

The deliberations available in the files also clearly indicate that allotment was made not solely considering the area occupied in the earlier building, but also the frontage, each of the lessees had, with respect to the earlier shop rooms.

11. In such circumstances, on an overall consideration, though the petitioner's area has been considerably reduced, it has to be taken into account that the area of the petitioner's earlier shop-room itself was comprised of two levels inside the same room. The frontage of the existing shop-room is more than what the petitioner had, while all others have lesser frontage. This Court does not find any arbitrariness in the allotment so as to invoke the extraordinary jurisdiction and set it aside.

12. Further, though unsubstantiated, the 3rd respondent submits that the space behind his shop-room was intended to be given to the petitioner, since the petitioner had objected to the allotment on the ground of the area deficiency. The TRIDA as also the other shop-owners, were interested in settling the matter amicably and the 3rd respondent has consented to that too. However, the petitioner refutes such offer having been

made.

13. In any event, this Court has found that the allotment was not motivated by any extraneous considerations. The 3rd respondent submits that the portion behind his shop-room coming to 4.5 sq. meters; even now he is willing to concede to the petitioner. In such circumstances, the TRIDA would examine whether alterations can be made so as to enable the area behind the room allotted to the 3rd respondent, that is shop No.4, to be attached to shop No.5 now allotted to the petitioner. If that is possible, the same shall be done and that would reasonably mitigate the grievance of the petitioner.

14. As for the 4th respondent, true the 4th respondent had 66 sq. meters in two floors even in the earlier building. Now also, the 4th respondent has rooms in two floors as agreed to by him. The 4th respondent's allotment is on consent and the writ petition is grossly belated.

For all the above reasons, both the writ petitions stand dismissed. However, with the reservation with respect to the petitioner in WP(C) No.29108 of 2014. The petitioner and the 4th

respondent shall vacate the temporary premises within two weeks from the date of receipt of a certified copy of this judgment. If the petitioner and the 4th respondent are desirous of an allotment, the petitioner and the 4th respondent also, within the said two weeks, shall file their consent before the TRIDA. If no such consent is filed, the TRIDA would be enabled to deal with the premises as it deems fit. If the consent is made, then definitely, the allotments are to be made and the possibility of what has been directed above; of annexing back portion of room No.4 to that of room No.5, shall also be considered. For which also, the petitioner could approach the TRIDA. Parties shall suffer their respective costs.

Sd/-

**K. VINOD CHANDRAN,
JUDGE**

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