

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

THURSDAY, THE 30TH MARCH 2006 / 9TH CHAITHRA, 1928

WP(C).No. 4074 of 2006(I)  
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PETITIONERS:  
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1. S.S.SANKARANARAYANA REDDIAR,  
TC 14/1917, PALAYAM, THIRUVANANTHAPURAM.
2. S.VISWANATHAN, TC 14/1844 (2216),  
PALAYAM, THIRUVANANTHAPURAM.
3. ROY ISSAC, TC 14/1897 AND 99,  
PALAYAM, THIRUVANANTHAPURAM.
4. T.BALASANKAR, TC 14/1895,  
PALAYAM, THIRUVANANTHAPURAM.
5. G.KANNAN, TC 14/2291,  
PALAYAM, THIRUVANANTHAPURAM.
6. M.JALAL, TC 14/1903,  
PALAYAM, THIRUVANANTHAPURAM.
7. SANTHAKUMARI AMMA,  
TC 14/2295, PALAYAM, THIRUVANANTHAPURAM.
8. SASIKUMARAN NAIR,  
TC 14/1841, PALAYAM,  
THIRUVANANTHAPURAM.
9. JOHN JACOB EAPEN,  
TC 14/1842, PALAYAM,  
THIRUVANANTHAPURAM.
10. S.SAJI KUMAR, TC 14/2292,  
PALAYAM, THIRUVANANTHAPURAM.
11. SANTHOSH KUMAR,  
TC 14/2215, PALAYAM,  
THIRUVANANTHAPURAM.
12. T.RAJAGOPAL, TC 14/1913,  
PALAYAM, THIRUVANANTHAPURAM.
13. S.SUDHAKARAN,

TC 14/1905, PALAYAM,  
THIRUVANANTHAPURAM.

14. REGHURAJA PILLAI,  
TC 14/2232, PALAYAM,  
THIRUVANANTHAPURAM.

15. D.SATHYABHAMA, TC 14/2297,  
PALAYAM, THIRUVANANTHAPURAM.

16. K.KARUPAIAN, TC 14/2239,  
PALAYAM, THIRUVANANTHAPURAM.

17. M.SHAJUDHEEN,  
TC 14/1892 (2261), PALAYAM,  
THIRUVANANTHAPURAM.

18. NARESH KAMMANI,  
TC 14/1915, PALAYAM,  
THIRUVANANTHAPURAM.

19. SWAMI APPAN, TC 14/1402,  
PALAYAM, THIRUVANANTHAPURAM.

20. VISALAKSHI AMMA, TC 14/2235,  
PALAYAM, THIRUVANANTHAPURAM.

21. M.RAJESEKHARAN, TC 14/2233,  
PALAYAM, THIRUVANANTHAPURAM.

22. P.KESAVAN, TC 14/1898,  
PALAYAM, THIRUVANANTHAPURAM.

23. O.ABOOBACKER, TC 14/1900,  
PALAYAM, THIRUVANANTHAPURAM.

24. KUTTAPPAN, TC 14/1901,  
PALAYAM, THIRUVANANTHAPURAM.

25. A.KAMALUDHEEN, TC 14/1896,  
PALAYAM, THIRUVANANTHAPURAM.

26. C.P.SHAJAHAN, TC 14/2238,  
PALAYAM, THIRUVANANTHAPURAM.

27. S.AJITH KUMAR, TC 14/1914,  
PALAYAM, THIRUVANANTHAPURAM.

28. T.M.P.SUHARA, TC 14/1904,  
PALAYAM, THIRUVANANTHAPURAM.

29. NAZEERA BEEVI, TC 14/1906,  
PALAYAM, THIRUVANANTHAPURAM.

30. M.THAJUDHEEN, TC 14/1916,  
PALAYAM, THIRUVANANTHAPURAM.

31. ABDUL GAFOOR,  
TC 14/2236, PALAYAM,  
THIRUVANANTHAPURAM.
32. ISSAC ZACHARIAH, TC 14/2234,  
PALAYAM, THIRUVANANTHAPURAM.
33. C.PRASANNA, TC 14/1894 (2263),  
PALAYAM, THIRUVANANTHAPURAM.
34. R.MURALEEDHARAN, TC 14/2295,  
PALAYAM, THIRUVANANTHAPURAM.
35. PETER GONZALVES, TC 14/1908,  
PALAYAM, THIRUVANANTHAPURAM.
36. ABDUL LATHEEF, TC 14/1891,  
PALAYAM, THIRUVANANTHAPURAM.
37. THOZHILUDAMA ASSOCIATION,  
REPRESENTED BY ITS SECRETARY,  
PALAYAM, THIRUVANANTHAPURAM-695 034.

BY ADV. SRI.V.GIRI

RESPONDENTS:

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1. STATE OF KERALA,  
REPRESENTED BY THE SECRETARY TO GOVERNMENT,  
DEPARTMENT OF LOCAL SELF GOVERNMENT,  
SECRETARIAT, THIRUVANANTHAPURAM.
2. THIRUVANANTHAPURAM DEVELOPMENT AUTHORITY  
REPRESENTED BY THE SECRETARY,  
THIRUVANANTHAPURAM.
3. CHAIRMAN, THIRUVANANTHAPURAM DEVELOPMENT  
AUTHORITY,  
THIRUVANANTHAPURAM.

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

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD  
ON 30/03/2006, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

APPENDIX

EXHIBIT P1- COPY OF BRIEF NOTE ONO THE IMPLEMENTATION OF DTP SCHEME FOR PALAYAM AS ON 2.12.1985.

EXHIBIT P2: COPY OF COMMUNICATION SENT BY SECOND RESPONDENT TO THE FIRST PETITIONER dated. 12.8.1986.

EXHIBIT P3: COPY OF FORMAT OF AGREEMENT EXECUTED BETWEEN TRIDA AND SECOND PETITIONER IN 1986.

EXHIBIT P4: COPY OF AGREEMENT DATED 26.11.1992 BETWEEN TRIDA AND 16TH PETITIONER.

EXHIBIT P5: COPY OF THE AGREEMENT DATED 24.8.1994 BETWEEN TRIDA AND 7TH PETITIONER.

EXHIBIT P6: COPY OF AGREEMENT DATED 22.4.1997 BETWEEN TRIDA AND 8TH PETITIONER.

EXHIBIT P6(a): COPY OF AGREEMENT DATED 31.8.2002 BETWEEN TRIDA AND FIRST PETITIONER.

EXHIBIT P7: COPY OF MINUTES OF THE MEETING DATED 6.10.2000.

EXHIBIT P8: COPY OF ORDER OF THE DISTRICT COLLECTOR ON THE APPEAL NOS.49657/2000 – 49680/2000.

EXHIBIT P9: COPY OF THE ORDER OF THE DISTRICT COLLECTOR DATED 23.12.2000.

EXHIBIT P10: COPY OF THE JUDGMENT OF PRINCIPAL MUNSIF DATED 29.6.2001 ALONG WITH DECREE AND COMPROMISE PETITION.

EXHIBIT P11: COPY OF THE PHOTOGRAPHS DEPICTING PRESENT STAGE OF CONSTRUCTION OF C BLOCK.

EXHIBIT P12: COPY OF THE NOTICE RECEIVED BY THE SECRETARY OF THE THOZHILUDAMA ASSOCIATION ALONG WITH A STATEMENT SHOWING DETAILS OF ALLOTMENT OF SPACE TO VARIOUS PERSONS DATED 10.10.2005.

EXHIBIT P13: COPY OF THE NOTICE SIMILAR TO EXHIBIT P11 GIVING DETAILS OF ALLOTMENT TO FIRST PETITIONER DATED 7.10.2005.

EXHIBIT P14: COPY OF REPRESENTATION SUBMITTED BY THE SECRETARY OF 37TH PETITIONER IN REPLY TO EXHIBIT P11.

EXHIBIT P15: COPY OF THE REPLY SENT BY THE FIRST PETITIONER DATED 21.10.2005 TO EXHIBIT P12.

EXHIBIT P16: COPY OF COMMUNICATION SENT BY FIRST RESPONDENT DATED 22.12.2005 STATED TO BE MINUTES OF MEETING.

EXHIBIT P17: COPY OF STATEMENT SENT BY THE SECRETARY REQUESTING ALLOTTEES

***W.P.(C).No. 4074/06***

TO FILL UP THE DETAILS ALONG WITH THE OBJECTION SUBMITTED BY 37TH PETITIONER DATED 22.12.2005.

EXHIBIT P18: COPY OF COMMUNICATION SENT BY FIRST RESPONDENT DATED 17.1.2006 STATED TO BE MINUTES OF MEETING.

EXHIBIT P19: COPY OF NOTICE RECEIVED BY THE FIRST PETITIONER DATED 24.1.2006.

EXHIBIT P20: COPY OF NOTICE RECEIVED BY THE SECOND PETITIONER DATED 24.1.2006.

EXHIBIT P21: COPY OF THE NOTICE ADDRESSED TO THE PREDECESSOR IN INTEREST OF THIRD petitioner BUT RECEIVED BY THIRD PETITIONER DATED 24.1.2006.

EXHIBIT P22: COPY OF THE NOTICE ADDRESSED TO THE PREDECESSOR IN INTEREST OF FOURTH PETITIONER BUT RECEIVED BY FOURTH PETITIONER DATED 24.1.2006.

EXHIBIT P23: COPY OF NOTICE RECEIVED BY THE FIFTH PETITIONER DATED 24.1.2006.

EXHIBIT P24: COPY OF NOTICE RECEIVED BY THE SIXTH PETITIONER DATED 24.1.2006.

EXHIBIT P25: COPY OF NOTICE RECEIVED BY SEVENTH PETITIONER DATED 24.1.2006.

EXHIBIT P26: COPY OF NOTICE RECEIVED BY EITHER PETITIONER DATED 24.1.2006.

EXHIBIT P27: COPY OF NOTICE ADDRESSED TO PREDECESSOR IN INTEREST OF NINTH PETITIONER BUT RECEIVED BY NINTH PETITIONER DATED 24.1.2006.

EXHIBIT P28: COPY OF NOTICE ADDRESSED TO PREDECESSOR IN INTEREST OF TENTH PETITIONER BUT RECEIVED BY TENTH PETITIONER DATED 24.1.2006.

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EXHIBIT P29: COPY OF THE NOTICE RECEIVED BY ELEVENTH PETITIONER DATED 24.1.2006.

EXHIBIT P30: COPY OF NOTICE ADDRESSED TO PREDECESSOR IN INTEREST OF TWELTH PETITIONER BUT RECEIVED BY TWELTH PETITIONER DATED 24.1.2006.

EXHIBIT P31: COPY OF NOTICE RECEIVED BY THIRTEENTH PETITIONER DATED 24.1.2006 IN RESPECT OF PREMISES NO.14/1905.

EXHIBIT P32: COPY OF NOTICE RECEIVED BY THIRTEENTH PETITIONER DATED 27.1.2006 IN RESPECET OF PREMISES NO.14/1984.

EXHIBIT P33: COPY OF NOTICE RECEIVED BY FOURTEENTH PETITIONER DATED 24.1.2006 IN RESPECT OF PREMISES NO.14/2232.

EXHIBIT P34: COPY OF NOTICE RECEIVED BY FOURTEENTH PETITIONER DATED 24.1.2006 IN RESPECT OF PREMISES NO.14/2232-33.

EXHIBIT P35: COPY OF NOTICE RECEIVED BY FIFTEENTH PETITIONER DATED 24/1/2006.

EXHIBIT P36: COPY OF NOTICE REECEIVED BY 16TH PETITIONER DATED 24.1.2006.

EXHIBIT P37: COPY OF NOTICE RECEIVED BY 17TH PETITIONER DATED 24.1.2006.

EXHIBIT P38: COPY OF NOTICE ADDRESSED TO THE PREDECESSOR IN INTEREST OF 18TH PETITIONER BUT RECEIVED BY 18TH PETITIONER DATED 24.1.2006.

EXHIBIT P39: COPY OF NOTICE RECEIVED BY 19TH PETITIONER DATED 24.1.2006.

EXHIBIT P40: COPY OF NOTICE RECEIVED BY 20TH PETITIONER DATED 24.1.2006.

EXHIBIT P41: COPY OF NOTICE RECEIVED BY 21ST PETITIONER DATED 24.1.2006.

EXHIBIT P42: COPY OF NOTICE RECEIVED BY 22ND PETITIONER DATED 24.1.2006.

EXHIBIT P43: COPY OF NOTICE RECEIVED BY 23RD PETITIONER DATED 24.1.2006.

EXHIBIT P44: COPY OF NOTICE RECEIVED BY 24TH PETITIONER DATED 24.1.2006.

EXHIBIT P45: COPY OF NOTICE RECEIVED BY 25TH PETITIONER DATED 24.1.2006.

EXHIBIT P46: COPY OF NOTICE RECEIVED BY 26TH PETITIONER DATED 24.1.2006.

EXHIBIT P47: COPY OF NOTICE RECEIVED BY 27TH PETITIONER DATED 24.1.2006.

EXHIBIT P48: COPY OF NOTICE RECEIVED BYT 28TH PETITIONER DATED 24.1.2006.

EXHIBIT P49: COPY OF NOTICE ADDRESSED TO PREDECESSOR IN INTEREST OF 29TH PETITIONER BUT RECEIVED BY 29TH PETITIONER DATED 24.1.2006.

EXHIBIT P50: COPY OF NOTICE RECEIVED BY 30TH PETITIONER DATED 24.1.2006.

EXHIBIT P51: COPY OF NOTICE RECEIVED BY 31ST PETITIONER DATED 24.1.2006.

EXHIBIT P52: COPY OF NOTICE RECEIVED BY 32ND PETITIONER DATED 24.1.2006.

EXHIBIT P53: COPY OF NOTICE ADDRESSED TO PREDECESSOR IN INTEREST OF 33RD PETITIONER BUT RECEIVED BY THE 33RD PETITIONER DATED 24.1.2006.

EXHIBIT P54: COPY OF NOTICE RECEIVED BY 34TH PETITIONER DATED 24.1.2006.

EXHIBIT P55: COPY OF NOTICE RECEIVED BYT 35TH PETITIONER DATED 24.1.2006.

EXHIBIT P56: COPY OF NOTICE RECEIVED BY 36TH PETITIONER DATED 24.1.2006.

EXHIBIT P57: COPY OF NOTICE RECEIVED BY 36TH PETITIONER DATED 24.1.2006 IN RESPECT OF SHOP NO.14/2259 ADDRESSED TO HIS PREDECESSOR IN INTEREST.

EXHIBIT P58: COPY OF STATEMENT GIVING DETAILS OF ALLOTMENT TO VARIOUS PETITIONERS INCLUDING PRESENT AND PROPOSED RENT AND SECURITY DEPOSIT.

EXHIBIT P59: COPY OF PWD NORMS.

//TRUE COPY//

PA TO JUDGE



**K.HEMA, J.**

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**W.P.(C).NO.4074 of 2006**

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**Dated this the 30<sup>th</sup> day of March, 2006**

**JUDGMENT**

More than two decades ago, in the year 1986, the Thiruvananthapuram Development Authority ('TRIDA', for short) made a proposal to acquire certain buildings situated by the side of the M.G.Road in the Capital City of the State. The purpose was to widen the road. This became inevitable to accommodate the rampant vehicular traffic in the City. For the implementation of the said project of TRIDA called "Capital Region Development", Government acquired the land, including certain buildings thereon during 1986 and 1992. Compensation was also paid to the land owners.

2. But, the tenants who are occupying those buildings refused to move out. Negotiations and meetings were held at different levels during different periods. Though the tenants could be easily dispossessed of the buildings under the provisions of Land Acquisition Act, it was however, decided that they could be allowed to continue occupation of the same buildings, under certain terms and conditions, taking into consideration the request made by the tenants. According to TRIDA, they were not under any legal obligation to do so, but



such a step was taken purely based on “humanitarian consideration”.

3. Accordingly, the tenants were treated as tenants under TRIDA subject to certain terms and conditions. Agreements were also executed between the tenants and TRIDA. One of such agreements is Exhibit P3. TRIDA decided that the tenants could continue occupation of the respective buildings, until they are rehabilitated in the building to be newly constructed by TRIDA.

4. But after execution of such agreements also, some disputes arose between the parties and negotiations were again held. As a result, parties came to terms again and certain settlements were arrived at between TRIDA and the tenants at a meeting held on 6.10.200. The terms and conditions of one of such settlements, admittedly, find a place in Exhibit P7. A perusal of Exhibit P7 shows that it is styled as 'minutes' of the meeting held by TRIDA on 6.10.2000. It is signed by certain land owners, tenants, office bearers of TRIDA and certain others who took part in the meeting. Very important decisions were taken on the issue and those were incorporated in Exhibit P7.

5. As per the terms in Exhibit P7, both parties agreed that they would act in accordance with the terms and conditions contained in the earlier agreements like Exhibit P3. It was also decided that rehabilitation was to be effected, subject to the terms and conditions contained in Exhibit P7. Special reference was made by petitioners to Clause 14 of Exhibit P7 which stipulates that when

the tenants are evicted and rehabilitated thereafter in the newly constructed building, the rooms were to be either rented out or sold to the tenants on 'no profit no loss' basis, subject to the earlier agreements like Exhibit P3. It is also agreed upon by TRIDA that while fixing rent for the new building, PWD norms in this respect will be taken into account. The above clause is the trump card of the petitioners which is held against TRIDA. This is, essentially, the basis for this Writ Petition also.

6. According to petitioners, they are entitled, in law and on facts, to get directions from this court against TRIDA compelling it to act in accordance with clause No.14 in Exhibit P7. They filed this Writ Petition mainly for this purpose, though the reliefs are molded differently. Petitioners' case is that TRIDA acted totally in contravention of the terms contained in Exhibit P7 and Exhibit P3 agreement and TRIDA proposed to collect huge security deposits and rent from the tenants. TRIDA also issued notices to the tenants calling upon them to pay exorbitant security deposits and rent which are unbearable to them. Those notices are Exhibits P19 to P57.

7. Petitioners raised a plea that the demand made in Exhibit P19 to P57 are not only contrary to the understanding and the agreement entered into by the parties as per Exhibit P7, but the demand made is in violation of the terms in the earlier agreements like Exhibit P3. Therefore, this writ petition is filed

seeking writ of certiorari to quash Exhibits P19 to P57, in so far as those make demand for deposit of exorbitant security deposits and also huge rent.

8. Based on the particulars in Exhibits P19 to P57, petitioners prepared a statement as Exhibit P58, for ready reference. The details of the security deposits, existing rent, proposed rent, name of tenants, existing space of the room, the space allotted etc. are shown in Exhibit P58. A mere glance of Exhibit P58, according to petitioners, will reveal that the demand made is too high, it is submitted. Hence, petitioners seek to quash Exhibit P19 to Exhibit P57 with respect to the demand made regarding security deposits and rent.

9. Learned Standing Counsel for TRIDA, at the very outset submitted that this petition itself is not maintainable, since it relates to a dispute regarding rate of rent and security deposit which are payable by petitioners as tenants. It also involves enforcement of a contract. Hence it was strenuously contended that this court cannot resolve the factual disputes between the parties on this issue and this court lacks jurisdiction to adjudicate upon these type of matters under Article 226 of the Constitution. Learned counsel for petitioners resisted this contention and vehemently argued that as per the settled legal position, even in contractual matters, this court has every power to interfere, under certain circumstances, especially when a State Authority like TRIDA acts like private landlords.

10. There is also no absolute bar for consideration of disputed facts in appropriate cases, and the action of a State Authority can be subjected to judicial review, it was strongly contended. Several decisions of the Supreme Court and this Court were cited on either side in support of the rival contentions. But, on the facts of this case, it may not be necessary for me to sit in judgment over any factual disputes and resolve the same for a disposal of this petition. It also may not be necessary to issue any direction for enforcement of any contract, either. This case can be decided on admitted facts themselves. I shall state my reasons:

11. Admittedly, TRIDA is an authority coming under Article 12 of the Constitution and it is bound by Article 14 of the Constitution. It is also admitted that TRIDA decided to act in accordance with the terms and conditions in Exhibit P3 and Exhibit P7. Genuineness of both Exhibit P3 and Exhibit P7 is also not under dispute. Exhibit P7 is the “minutes” of the meeting of TRIDA held on 6.10.2002 and Exhibit P3 is an agreement executed by TRIDA and one of the petitioners. TRIDA admittedly executed similar agreements with other tenants also.

12. Exhibit P7 reveals that certain shop keepers, tenants and also office bearers of TRIDA had taken part in the meeting held on 6.10.2000. Exhibit P7 also shows the circumstances under which the document came into existence.

It is stated in explicit terms in Exhibit P7 that when the rent and security deposits proposed by TRIDA were found to be “unbearable and unacceptable” to the traders and when the traders found it unable to meet even the expenses for shifting and such traders were in majority, it was decided in the meeting that a 'reasonable stand' was to be taken by TRIDA in the matter. TRIDA in its 'minutes' dated 6.10.2000, recorded in honesty, the above details and narrated its decisions in clear and unambiguous terms.

13.It is also seen from Exhibit P7 that when TRIDA decided to take a “reasonable stand”, the traders also agreed to co-operate in the implement of the proposed project of TRIDA. It is specifically stated in clause 14 of Exhibit P7 that when tenants are evicted and rehabilitated in the building which is to be newly constructed by TRIDA, the rooms therein will be “rented out” or “sold” to the tenants on “no profit no loss” basis, subject to earlier agreement (one of such agreements is Exhibit P3). It is also stated therein that when rent is fixed, PWD norms will be taken into account. Nobody can criticize these decisions to be arbitrary or unfair. If the TRIDA stands by the above terms, none can challenge its actions.

14. Since Exhibit P7 refers to agreements like Exhibit P3, and it was decided to act subject to such agreements, it is necessary to advert to the terms in Exhibit P3 also. A reading of Exhibit P3, particularly clause No.4 thereon

shows that what was insisted upon was payment of security deposit equivalent to three months' rent only. A joint reading of clause 14 of Exhibit P7 and clause 4 of Exhibit P3 would establish that the original demand made by TRIDA was only for three months' rent as security deposit and nothing more.

15. A plain reading of Exhibit P7 itself reveals that TRIDA had decided to act in a just and fair manner. After reading Exhibit P7, TRIDA's actions cannot be criticized as arbitrary or unfair. TRIDA acted only the way a state authority is expected to act, in a fact situation like this and the intentions of TRIDA are quite evident from the contents of Exhibit P7. Whether the said document can be treated as an 'agreement', 'minutes' or not, it does contain the 'decisions' taken by TRIDA on an important issue which involves the future of several traders, consequent to a state action. The nomenclature of the document, therefore, does not make any difference. It does disclose the intentions of TRIDA, as to how it decided to act and deal with the case of petty traders, who were in majority.

16. Learned counsel for petitioners also relied upon Exhibits P8 and P9 to fortify the petitioners' contentions that TRIDA acted subsequently also, in accordance with Exhibit P7. It was argued that the above documents will further confirm that TRIDA stood by the terms in Exhibit P7. Exhibit P8 is an order dated 7.2.2001 passed in an appeal filed under Section 10 of the Kerala

Public Buildings (Eviction of Unauthorized Occupants) Act, 1968. The appeal was filed by tenants when TRIDA initiated action against them to evict them and orders were passed under Section 5(1) of the said Act. The aggrieved tenants filed the appeals and in the appeals there was a compromise. A reading of the order in the appeal (Exhibit P8) will reveal that even in those proceedings before the District Collector, TRIDA expressed its intentions to act in terms of Exhibit P7. Exhibit P9 order also refers to Exhibit P7.

17. It was also pointed out by learned counsel for petitioners that TRIDA acted upon the terms of Exhibit P7 in a suit also, which was filed by certain tenants, including some of the petitioners against TRIDA. A compromise was filed by the parties therein and it was disposed of on terms of the compromise. The judgment and the compromise are marked as Exhibit P10 series. Learned counsel for petitioners read out each of the terms in Exhibit P10 compromise and pointed out that all those terms in Exhibit P10 are replica of Exhibit P7. Clause 14 in Exhibit P7 was incorporated as such in Exhibit P10 as clause No.14. In the above circumstances, it was vehemently contended that TRIDA cannot now retract from the earlier stand contained in Exhibit P7 and the conditions on which rehabilitation was proposed. The TRIDA being a State authority, no doubt, is bound to act at least by its own decisions as reflected in Exhibit P7.

18. As pointed out by learned counsel for petitioners , TRIDA intended to act in accordance with the stipulations in Exhibit P7, as evidenced by Exhibits P8, P9 and P10. Therefore, the contention is that TRIDA cannot now take a different stand and insist for payment of huge security deposit, more than what was demanded by TRIDA, as per Exhibit P3 read with Exhibit P7. But, TRIDA now exhibits a profit-making attitude like a private individual, by insisting upon huge amount as security deposit or rent, is the grievance. The petitioners therefore seek this Court's interference.

19. Learned Standing Counsel for TRIDA would argue that what was agreed upon by the parties as per Exhibit P7 was only with respect to the temporary rehabilitation and not permanent rehabilitation and hence the terms in Exhibit P3 have to be understood to apply only to temporary rehabilitation. So, petitioners cannot raise contention that they need pay only three months' rent. They cannot also place reliance upon Exhibit P7 to resist eviction for permanent rehabilitation, is the contention raised by TRIDA. Even on a plain reading of Exhibit P7, particularly clause 14 it cannot, under any stretch of imagination, be said that the said clause referred to temporary rehabilitation and not permanent rehabilitation. Such a contention cannot be upheld, since specific reference is made therein regarding “permanent rehabilitation”.

20. Learned Standing Counsel for TRIDA further argued that TRIDA



was never acting in any manner as alleged by the petitioners. Its conduct will prove otherwise. TRIDA has absolutely no obligation to suggest a rehabilitation and rehabilitation proposals were made on attractive terms and conditions, it was argued by learned Standing Counsel for TRIDA. But tenants were adamant in not moving out to the building which is now constructed. The acquisition proceedings which was initiated as early as in 1986 has been stalled because of the conduct of the traders and it adversely affects public interest, it was strongly contended. The acquisition was made for a public purpose but the intention of the petitioners is only to protract the matter somehow or other and make a profit out of the delay, by getting buildings of their choice at an attractive locality, by paying only a meagre amount, it is argued.

21. It is also pointed out that huge amount was spent by TRIDA, even loans were raised for constructing buildings, and it will not be feasible for TRIDA to give the buildings on rent or sell them for nominal price, as suggested by the petitioners. Therefore, TRIDA is constrained to insist for payment of the amounts which are mentioned in Exhibits P19 to P57, which are only the bare minimum. It was also submitted that these amounts were fixed, after consultation and detailed discussions with the concerned tenants. Apart from all these, Exhibits P16 and P18 will show that subsequent meetings were also held after the decision taken as per Exhibit P7 and it was proposed to

reduce the proposed rent and security deposit, which was done in the interest of the tenants themselves. Therefore, the argument is that the petitioners cannot insist that TRIDA should act in accordance with Exhibit P7 or Exhibit P3.

22. It is also argued that Exhibits P16 and P18 would reflect the consensus of the parties and hence the tenants are bound by the terms contained in Exhibits P16 and P18. Exhibit P18 shows that the rate of rent etc. were proposed to be reduced. The manner in which security deposit and also the rent were to be reckoned was considered at length and decisions were taken, as recorded in Exhibit P18 and also Exhibit P16. It is contended that the petitioners cannot now travel beyond the terms and conditions in these two documents. Learned counsel for petitioners replied that there were no agreements between the parties, as submitted by the opposite side as per Exhibits P16 or Exhibit P18. He maintained the stand that the petitioners had not agreed to act in accordance with any decisions allegedly taken as per Exhibits P16 or P18. Except for the fact that some of the petitioners had taken part in those meetings, the decisions incorporated in Exhibits P16 and P18, have no binding force on the petitioners, is the argument.

23. A perusal of Exhibits P16 and P18 would show that those are “minutes” of the meetings held on 22.12.2005 and 17.1.2006. The Chairman, Secretary, Local Administration and also TRIDA, Chief Engineer etc. had taken

part in the meeting. It is also seen that some of the petitioners were also present in the meeting. It appears that certain decisions were taken on these days. But in Exhibit P18, it is mentioned that the terms in Exhibit P18 will come into force only when the traders move out of the rooms after execution of agreements. But no agreement is executed after the decision taken as per Exhibit P18. So, whatever be the terms contained in Exhibits P16 or P18, and whatever be the nature of the binding force of these documents on the petitioners or TRIDA, or whether it be a unilateral decision, or incorporation of terms of a consensus, it has to be held that the terms in Exhibit P18 have not come into force. It is also seen from Exhibit P16 that the decisions taken on 22.12.2005 are only tentative in nature and have not become conclusive. In the above circumstances, this Court cannot base any decision on Exhibits P16 or P18, for the time being.

24. Learned counsel for petitioners vehemently asserted that notwithstanding the terms and conditions in the various agreements and the decisions taken by the TRIDA, the TRIDA as a State authority is bound to act reasonably and not arbitrarily. When the buildings are sought to be acquired for a public purpose in public interest, TRIDA is expected to act in a fair and reasonable manner which is expected of a public authority. It was submitted that even under the Kerala Buildings (Lease and Rent Control) Act, huge

security cannot be realised from the tenants and TRIDA is also not expected to insist for payment of huge amount as security deposit.

25. But the learned Standing Counsel for TRIDA submitted that the proposed rent or deposit, on any count, is not high or unreasonable. Going by Exhibit P58, which is prepared by the petitioners itself, the rent and the security deposit proposed cannot be said to be huge, as attempted to be inflated by the petitioners. It was pointed out that the security deposit of about Rs.60,000/- alone was demanded from several tenants, and the rent fixed also is nominal. For example, Rs.535/-, Rs.546/-, Rs.519/-, Rs.531/- etc. are the rents proposed to certain rooms. Different rates have been fixed as rent and also as security deposits, taking into account various aspects such as the nature of the building, the area of the room, its location, the proximity to the road etc.

26. Therefore, the rates suggested in Exhibits P19 to P57 are not exorbitant or unreasonable, it is contended. TRIDA was only acting reasonably and fairly, taking into account the various difficulties expressed by the tenants after holding meetings from time to time and understanding their difficulties. But, the relief in the petition is moulded in such a way that the petitioners are actually seeking a direction from this Court or a writ to direct TRIDA to fix and realise a specific rate of rent and security deposit. This cannot be allowed, is the strong submission.

27. On going through Exhibit P7, I find that petitioners will be justified in insisting that TRIDA must go by what is intended as per clause 14 of Exhibit P7. It has been decided as per Exhibit P7 that when rent is fixed, PWD norms will also be taken into account. It is also decided that the rooms have to be allotted to the tenants as a rehabilitation measure, on a “no loss no profit” basis. It appears that PWD norms were intended to be taken as the basis for fixing the rent, and this stand is quite reasonable. However, it also seems that taking into account the importance of the locality, the area of the room, etc. reasonable rent was sought to be fixed, on consultation with the tenants involved. TRIDA thereafter decided to collect rent which would be more than what is fixed as per the PWD norms. But, such a decision cannot be said to be as unfair, unreasonable or arbitrary, provided, such rent is “reasonable”, taking into consideration the various relevant aspects. Learned counsel for petitioners submitted that petitioners would not have raised any objection if a “reasonable” rent is fixed whether it be in accordance with PWD norms or not. They will have no complaint even if rent is something more than the rate fixed as per PWD norms.

28. Now the question is whether the rent and fixed deposits fixed as per Exhibits P19 to P57 is reasonable or not. But even to decide as to what would be the rate of rent which could be fixed on the basis of the PWD norms, such

norms are not available before this Court. According to petitioners, Exhibit P9 is the PWD norms, whereas learned Standing Counsel for TRIDA submitted that it does not represent the actual PWD norms and hence, based on Exhibit P9 the rent cannot be fixed. It is also argued that Exhibit P9 cannot be relied upon to calculate the capital cost of commercial buildings and hence it cannot form basis for fixing of rate of rent in the present case. Though an objection is raised in respect of Exhibit P9, TRIDA has not produced any document to prove PWD norms, so as to enable this court to appreciate the rival contentions on the relevant aspect and find out whether the rent proposed by the TRIDA is reasonable or not, or whether it has any bearing with the PWD norms. Even though TRIDA would claim that the rent fixed is only “reasonable”, it could not be substantiated on any reasonable standard. The respondents thus could not establish that the rate of rent fixed as per Exhibits P19 to P57 is in accordance with the terms in clause No.14 of Exhibit P7 or whether it is “reasonable”.

29. In such circumstances, petitioners have, a right to compel TRIDA, as an authority under Article 12 of the Constitution of India to act reasonably or at least in accordance with its own decision, as reflected in Exhibit P7. But, I make it clear that when I say this, I am not visualising Exhibit P7 or clause No.14 therein, as a term of a contract. Yet it is evident from clause 14 of Exhibit P7 that TRIDA had intended to take into account PWD norms, while

fixing rate of rent. It also appears from Exhibit P7 that TRIDA proposed to act fairly, on “no loss no profit” basis, while letting out the building or selling the building at the time of permanent rehabilitation of the tenants and accommodating them in the new building. Even without an agreement to such an effect, I have no doubt, this must be the standard which must be followed by an authority like TRIDA. The TRIDA was indeed, adopting such a fair stand also, as per Exhibit P7.

30. In such circumstances, instead of insisting TRIDA to act in accordance with the terms of any so-called agreements, this Court can certainly expect TRIDA to act fairly and reasonably, by “taking into account” PWD norms. It cannot be said that the rent should be the same as in PWD norms. But even if the rent is fixed slightly or reasonably higher than in the PWD norms, such fixation cannot be criticized as unwarranted, as fairly conceded by learned counsel for petitioners. In such circumstances, I hold that TRIDA has to act in tune with the intentions expressed in Exhibit P7 and Exhibit P3 while letting out the building or selling the building, and in fixing the rate of rent or security deposit. The suggestion made that the rate of rent could be reasonably more than in the PWD norms also can be accepted and it is made clear that it must be the norms applicable to commercial buildings. It is also submitted on behalf of the petitioners that they are prepared to pay three months rate of rent as security

deposit, as stated in Exhibit P3, while they are being accommodated in the newly constructed building, it is submitted.

31. Any way, for want of materials, this Court cannot even decide whether the rent or security deposits fixed as per Exhibits P19 to P57 and demanded by TRIDA are reasonable or not. The security deposit ranges from Rs.60,000/- to more than Rs.17 lakhs, in the case of various tenants. The rent fixed has no comparison with the existing rate of rent. At any rate, without knowing the cost of construction or what exactly the PWD norms are, it is not even possible for this Court to state whether the rate of rent and the security deposits are excessive or unreasonably high.

32. Still, taking into consideration, the urgency in the road-widening in the Capital City, the lapse of more than 20 years since the commencement of the land acquisition proceedings, the public interest involved which is at stake because of the resistance from the tenants etc., I find that some orders have to be passed so that the road-widening will be expedited. Only if a reasonable rent and security deposit are fixed without delay, things will move smoothly. The tenants will have to vacate the present buildings and those buildings will have to be demolished. The road has to be widened, without any further delay. This can be done only if some consensus is arrived at, in the case of rate of rent as well as the security deposit. But it is not possible for this Court in this



jurisdiction to fix the rate of rent or the security deposit, going into the meticulous details of facts involved in the matter and also for want of sufficient materials.

33. Therefore, in the compelling circumstances, I find that an Adjudicator can be appointed to fix the rate of rent as well as the security deposit. Both sides welcomed this suggestion wholeheartedly and fairly and they also undertook to co-operate with the adjudication proceedings for settlement of the whole issue without any further delay in the matter. In fact, learned counsel for petitioners himself suggested appointment of an Adjudicator, placing reliance upon the decision reported in ***Jamshed Hormusji Wadia v. Board of Trustees, Port of Mumbai and another*** ((2004)3 SCC 214). It is heartening that such a stand is adopted by the parties, at least belatedly. “It is better to be late, than never”.

34. Both sides also agree that if an Adjudicator is appointed for this purpose, the decision taken by the Adjudicator can be made binding on the parties and they are prepared to act in accordance with the terms suggested by the Adjudicator. On the facts and circumstances of this case, therefore, I find that based on the dictum laid down in the decision cited above, and in the interest of justice and that of the public at large, a retired District Judge can be appointed as the sole Adjudicator to consider the rival contentions raised by

both sides regarding fixation of rent as well as the security deposit to be collected from the respective tenants and this petition can be disposed of by passing an order to that effect. The Registry has made available the list of retired District Judges settled at Thiruvananthapuram and I find that Sri.M.R.Gopalakrishnan Nair can be appointed as the Adjudicator and the relevant matter can be referred to him.

35. In this context, learned Standing Counsel appearing for TRIDA submitted that some of the petitioners are not tenants and therefore, an objection is raised that they cannot take part in the adjudication. But learned counsel for petitioners pointed out that though the names of all the petitioners will not be seen in the records as tenants, the petitioners are actually either tenants or the legal representatives of the original tenants and hence they may be allowed to participate in the adjudication proceedings. Learned Standing Counsel for TRIDA fairly submitted that if the petitioners are able to establish by producing necessary documents before the Adjudicator that they are tenants or legal representatives, TRIDA has no objection in allowing them also to take part in the adjudication proceedings, treating them also as tenants.

36. The learned Standing Counsel for TRIDA requested that a direction may be issued to the tenants to deposit one-tenth of the proposed security deposit before the commencement of the adjudication proceedings. It was also

submitted that this may be imposed as a condition for allowing them to take part in the proceedings. Learned counsel for petitioners agreed that the tenants will make such deposit, which can be adjusted in the payments to be made subsequently, if any, subject to result of the decision to be taken by Adjudicator. Therefore, a direction can be issued with respect to deposit as suggested and agreed at the bar.

37. The petitioners also prayed for a direction commanding TRIDA to allot to the petitioners, rooms which they are entitled to, as part of the rehabilitation programme, strictly in accordance with Exhibit P7. The petitioners have also prayed for a direction to be issued to TRIDA to allow the petitioners to exercise option in taking the rooms proposed to be allotted to them on an “ownership basis”, in accordance with the decision taken on 6.10.2000, as evidenced by Exhibit P7. The learned Standing Counsel for TRIDA submitted that by subsequent decisions, as evidenced by Exhibits P16 and P18, it was decided that rooms cannot be allotted to the petitioners on ownership basis. It was also submitted that the petitioners will be allotted rooms in accordance with the terms in Exhibits P16 and P18. But I have already found that Exhibits P16 and P18 cannot be taken as a final decision regarding the rehabilitation programme. It appears that as per the understanding, an agreement is to be executed by the parties and they have to

vacate the present rooms thereafter and then alone, the decisions in Exhibit P18 will come into force. In the above circumstances, no order can be passed on the basis of the terms in Exhibit P16 or P18.

38. The decision taken by TRIDA as per Exhibit P7 appears to be reasonable and TRIDA itself has acted upon the same and entered into a compromise and allowed a decree to be passed in a suit, in accordance with the terms of Exhibit P7 in the case of some of the tenants. I do not find any reason why it should retract now from the said path in the case of other tenants. TRIDA should, in all fairness, act in accordance with its decisions taken as per Exhibit P7 especially regarding allotment on rental or ownership basis. This is what the public expects from a public authority. So also, is the Court.

30. The learned Standing Counsel for TRIDA also insisted for a direction to be issued to petitioners to shift from the present building to the rooms which are allotted to the respective tenants. But, according to petitioners, the rooms are not in a fit condition to be occupied and even the electricity supply and water connection are not available in the rooms. This fact is denied by TRIDA. But, no materials are available before me to consider correctness of the disputed fact. Anyway, I am satisfied that some order has to be passed regarding shifting of the premises, which alone will expedite widening of the road, and for which purpose, the present buildings have to be demolished. On

considering the contentions on either side, I find that this matter also can be referred to the Adjudicator.

40. But, in the course of the arguments, it has come to my notice that such shifting is also not an easy task. There are some hurdles. It has come to my notice that there is a dispute between the TRIDA and two of the land owners regarding the allotment of rooms, the space to be allotted, as to which floor of the building, room has to be allotted, the location of the room etc. One of the land owners is none other than the mother of one of the petitioners herein. A Writ Petition was also filed by one of those land owners as W.P.(C).No. 5168/2006, for issuance of a writ commanding TRIDA to allot a particular room with a particular space to her. It also appears that some of the rooms which are already allotted to the tenants are those on which preferential rights are claimed by the land owners, who have been fully co-operating with TRIDA in the implementation of the project.

41. So, unless this dispute is also resolved, no finality will be reached, even if a direction to the tenants to shift to the rooms which are now proposed to be allotted to them. All the efforts taken in this Writ Petition to solve the entire issue will be, in vain. 'Flood-gates of litigations' will remain open and it will be a stale-mate to the road-widening project and the ultimate sufferer will be the public. Hence, learned Standing Counsel for TRIDA submitted that

TRIDA offers to convene a meeting to solve this issue at the earliest. But, I do not think that even such a meeting also will be a final solution to the long-burning problem, though it will to certain extent, help the parties to ventilate their grievances and come to some terms, which may near a settlement of the issues.

42. But in the interest of all the parties concerned, and more particularly, in the larger interest of the public, the issue on allotment of rooms also will have to be referred to the Adjudicator. The Adjudicator will hear all the relevant persons involved and also TRIDA on the issue relating to re-allotment and take a decision on the same after affording opportunity to the parties and also the land owners. The decision, if any, taken in the meeting held by TRIDA to settle the issue on re-allotment also can be placed before the adjudicator to aid him to determine re-allotment of rooms.

43. Once, the rooms are re-allotted as suggested by the Adjudicator, petitioners shall have to immediately shift from the present building to the respective buildings re-allotted to them, within four days of the decision taken by the Adjudicator, on such terms and conditions as fixed by him, or on any other subsequent date, as may be fixed by the Adjudicator. The Adjudicator will consider whether the rooms are in a fit condition to be occupied. Taking into consideration, the urgency and also the delay which is already caused in

widening the road, any further delay in shifting shall be scrupulously avoided. Both parties shall co-operate with the Adjudicator to take a right decision on the relevant issue. Since the land owners are not parties to this petition, the Adjudicator shall afford a reasonable opportunity of hearing to them also, before taking a decision on re-allotment. Learned Standing Counsel for TRIDA also pointed out that there is every chance for the petitioners to evade notice from the Adjudicator and hence a direction may be issued for appearance of the parties.

44. Summing up, the following order is passed:-

(1) Sri.M.R.Gopalakrishnan Nair, District Judge (Retired), 'Mohanam', Thalibhagam, Thirumala P.O., Thiruvananthapuram is appointed as the sole Adjudicator to fix reasonable rent and security deposit for the respective rooms to be allotted to the petitioners-tenants in the newly constructed building, in the light of the observations made in this judgment, after affording opportunity of hearing to both sides.

(2). The Adjudicator shall also take a decision on the re-allotment of the rooms to the petitioners-tenants and also to the two land owners, after giving a reasonable opportunity of hearing to the parties herein, such other tenants, if any and also the land owners.

(3). TRIDA shall convene a meeting of the tenants and land-owners

within ten days from date of this order and re-determine the allotment of rooms to them. The decision or consensus reached among the parties and land owners shall be placed before the Adjudicator. The Adjudicator may consider such decision also to finally determine the re-allotment of the rooms to the tenants and land owners.

(4). The petitioners-tenants shall then shift to the respective rooms re-allotted to them, as decided by the Adjudicator, within four days of the decision taken by the Adjudicator or on any future date as may be fixed by the Adjudicator, subject to such terms and conditions fixed by him.

(5). The Adjudicator shall allow the tenant to participate in the adjudication proceedings, only if the tenant deposit one-tenth of the security deposits, as fixed in Exhibit P19 to P57, but such deposits can be adjusted towards payments to be made by tenants, if any, to TRIDA, subject to the final decision taken by the Adjudicator.

(6) The Adjudicator is not bound to record evidence, but he may determine and dispose of the representations made by the petitioners as well as TRIDA and also the land owners, by summary hearing, on receiving such petitions or statements and documents as required by him, for the purpose of taking a right decision on the relevant issues. He is also at liberty to carry out inspection of the leased properties or such other properties as he may deem fit to



do for this purpose.

(7) The decision of the Adjudicator shall be final and binding on the parties, as agreed to by them. In case of any difficulty met by the Adjudicator in implementing the procedure as suggested in this judgment, directions may be sought for by him from this Court, preferably by FAX, from time to time.

(8) The Adjudicator shall take a decision within a maximum period of two months from the commencement of the proceedings. In case, any further time is required, the Adjudicator is at liberty to take such further reasonable time as may be required by him for completion of the decision. But, the decision on re-allotment and shifting shall be taken without delay, bearing in mind, the spirit of the order.

(9). Regarding the remuneration to be paid to the Adjudicator, both sides suggested that Rs.1,00,000/- can be fixed as fees for the Adjudicator for two months, which shall be paid by the tenants and TRIDA, in addition to the facilities offered to be provided by TRIDA to the Adjudicator. Hence, remuneration for the Adjudicator is fixed at Rs.1,00,000/- which shall be paid in equal proportion by the petitioners and such other tenants who take part in the adjudication proceedings, one side, and TRIDA on the other side. The remuneration shall be deposited before this Court, on or before 20.4.2006.

(10) TRIDA shall provide necessary secretarial assistance to the

Adjudicator. TRIDA will also provide the place of sitting, in consultation with the Adjudicator. Official conveyance shall also be provided by TRIDA to the Adjudicator, for the purpose of carrying out his functions, in accordance with the order passed by this Court.

(11). The parties shall appear before the Adjudicator on 10.4.2006 at 10 a.m. at the office of TRIDA, where the Adjudicator will hold his sitting.

(12) The TRIDA as well as the tenants shall co-operate in the finalisation of the dispute and also desist from preferring immaterial or frivolous objection and take such steps which will prolong the adjudication. In case, the Adjudicator finds that any party is protracting the matter without any tenable reason, he will be at liberty to impose cost, which shall be payable to the High Court Legal Services Authority.

(13) Exhibits P19 to P57, in so far as those fix the rate of rent and the security deposits, shall be subject to the final decision taken by the Adjudicator.

The Writ Petition is disposed of accordingly.

**K.HEMA, JUDGE**

vgs.