

**IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN**

**Tuesday, the 30th day of May 2023 / 9th Jyaishta, 1945
WP(C) NO. 23911 OF 2018**

PETITIONERS:

1. TREASA K.J., AGED 40 YEARS, D/O. JOSEPH K.V., PALLIPARAMBIL HOUSE, HOUSE NO. 48, KARITHALA COLONY, GANDHINAGAR, KOCHI - 682 020.

AND ANOTHER

RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY ITS CHIEF SECRETARY, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM - 695 001.

AND 35 OTHERS

Writ petition (civil) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to direct the 3rd respondent to take urgent measures to remove the solid waste and aquatic plants from the perandoor canal, to ensure free flow of water, in the stretch covering division No.63 of the Kochi Municipal Corporation, during the pendency of the writ petition.

This petition again coming on for orders upon perusing the petition and the affidavit filed in support of WP(C) and this court's order dated 12/05/2023 and upon hearing the arguments of M/S DR.K.P.PRADEEP, T.T.BIJU, K.P.KESAVAN NAIR, NEENA ARIMBOOR, SANAND RAMAKRISHNAN, T.THASMI Advocates for the petitioners, SRI.S.KANNAN, SENIOR GOVERNMENT PLEADER for R1 to R5, Addl.R17, Addl.R26, Addl.R27, Addl.R32 & R33, SRI.K.JANARDHANA SHENOY, STANDING COUNSEL for R6, M/S. RASHMI.K.V. & DEEPTI CHANDRA MOULI, Advocates for Addl. R7 to Addl.R9, M/S.M.GOPIKRISHNAN NAMBIAR, K.JOHN MATHAI, KURYAN THOMAS, PAULOSE C.ABRAHAM, Advocates for Addl. R10, SRI. MANU.S, DEPUTY SOLICITOR GENERAL OF INDIA for Addl. R11 and Addl.R12, SMT. V.A.MINI, SRI.SANTHOSH MATHEW, STANDING COUNSEL for Addl.R13, SRI. N. SATHEESH, and SRI.NIRMAL.S, Advocates for Addl.R14, SRI.V.V.JOSHY and SRI. P.BENJAMIN PAUL, STANDING COUNSEL for Addl. R15, SRI.D. AJITH KUMAR, SMT.T.MANASY, SMT. HARSHA S. NAIR, Advocates for Addl.R18, SRI.JAJU BABU(SR) along with SMT.M.U.VIJAYALAKSHMI, STANDING COUNSEL for Addl. R19 and R29, SRI.JOHNSON MANAYANI and SRI.JEEVAN MATHEW MANAYANI, Advocates for R20 and R21, SRI. K.S. BHARATAN, SRI.ABEL ANTONY and SRI. CHRISTINE MATHEW, Advocate for R22 and R23, M/S. K.JAJUBABU (SENIOR ADOVATE), M.U.VIJAYALAKSHMI and PRIYA CAROL, Advocates for Addl.R29, SRI.M.RAMESH CHANDER (SR) along with SRI.BALU TOM and SRI.BONNY BENNY, Advocate for Addl.R30, SMT. ASHA CHERIAN, SRI.M.A.THOMAS KUTTY and SRI.CHERIAN CHACKO MANAYATH, Advocates for Addl R31 and M/S GOPIKRISHNAN NAMBIAR, K.JOHN MATHAI, JOSON MANAVALAN, KURYAN THOMAS, PAULOSE C ABRAHAM, RAJA KANNAN, JAI MOHAN and IZHAR MOHAMMED, Advocates for Addl

R.34, SRI.REKHESH SHARMA, Advocate for R35 and SRI. SURIN GEORGE IPE, Advocate for Addl. R36 (SOUGHT TO BE IMPEADED) and of SRI.SUNIL JACOB JOSE, SRI.GOVIND PADMANABHAN and SRI.A.G.SUNIL KUMAR, AMICI CURIAE, the court passed the following:

P.T.O.



DEVAN RAMACHANDRAN, J.

W.P(C)No.23911 OF 2018

Dated this the 30th day of May, 2023

O R D E R

This matter has been listed today as requested by the learned counsel for the parties and stakeholders, primarily to verify and oversee the pre-monsoon works and its completion, taking note of the fact that the monsoons are to arrive in the next few days.

I (a). The learned Government Pleader - Sri.S.Kannan, submits that the permission to cut the MG Road has been given to the Kerala Water Authority (KWA) and Sri.V.V.Joshi - learned Standing Counsel for the KWA, submits that work has already begun and 82% of it has been completed. If this is true, certainly it is a commendable effort on the part of the KWA, though this Court will require that the work is completed without any further delay.

(b). However, it has been brought to my notice that a cutting permission for the Chittoor Road would also be necessary; and I, therefore, direct the Corporation to afford such to the KWA in terms of my directions issued on 12.05.2023 with regard to the

MG Road and on the same conditions, as and when such an application is made by the KWA.

II (a). As regards P & T Colony, the Contractor who is engaged with the work speaks through his learned counsel and says that the First Block will be handed over not later than 10.06.2023. Of course, the deadline earlier recorded by this Court is 31.05.2023, but I propose to offer such latitude solely for the purpose of ensuring that there is a smooth hand over of at least one block. As far as the Second Block is concerned, there are disputes projected even before this Court as to the delay on this, but I do not think that it is for me to speak on it.

(b). The District Collector is fully vested with the power to take all necessary action, including under the Disaster Management Act and I order him to keep a vigil and take necessary steps and issue orders as are apposite and warranted, including against the Contractor, if it becomes so necessary. I also record the submission of Sri.S.Kannan - learned Government Pleader, that the Contractor has given an assurance to the District Collector that the First Block will be completed by 07.06.2023; while the Second Block by 15.06.2023. Obviously, the inauguration of the project would have to be done at least by 15.06.2023 or immediately thereafter.

III. The Central Government Counsel - Sri.Daya Sindhu Sreehari, submits that, as regards the jetting of the culverts at Kammatipaadam and other places under the control of the Railways, work has already begun. He added that, as regards the construction of the bridge connecting Thevara Canal and Perandoor Canal, the Chief Bridge Engineer, Chennai, Southern Railway has granted approval and a proposal of Rs.3.30 Crores has been submitted to the Chief Engineer, Chennai, in the Indian Railways Projects Sanctions & Management Department, for sanction by the Railway Board, so as to include it in its programme for the year 2023-2024. These submissions are recorded; however directing the Central Government Counsel to file a statement incorporating all these averments.

IV (a). The learned **Amici Curiae Sri.Sunil Kumar and Sri.Govind Padmanabhan**, brought to my notice that, in spite of the order of this Court dated 11.11.2022, dumping of waste in to stormwater canals by the hotels and in particular, 'Thattukadas' are still going on unabated. They sought that stringent action be authorised against all such.

(b). **Sri.Janardhana Shenoy - learned Standing Counsel for the Kochi Corporation**, submitted that as regards hotels, action has already been taken and is being continued by his

client and that there has been some change. He, however, conceded that, as regards 'Thattukadas', the Corporation has been unable to act effectively.

(c). I fail to understand why the Corporation takes the afore stand because, in the order dated 11.11.2022, this Court has injuncted every section, including private citizens, from discharging any waste into the stormwater canals. 'Thattukadas' do not stand on a better footing and every obligation cast upon the citizens of this nation is binding upon them also.

(d). I, therefore, direct the Corporation to ensure that stringent but legally tenable action is initiated and proceeded against any violation of the order of this Court 11.11.2022 without reservation, be that against hotels, citizens, 'thattukadas' or any other section. A report in this regard shall be made available in due course.

V (a).The learned Amici Curiae also brings to my notice that, even though two Robotic Excavator and Sucker-cum-Jetting machines have been procured by the Corporation of Kochi, they have been kept idle. They say that these machines are invaluable in cleaning the drainage system of the city, especially because it can be managed without opening up all the slabs in

the pedestrian area; but accused the Corporation if not putting it to good use.

(b). This Court is aware that, on 12.05.2023, when this matter was considered, the availability of a Jetting-cum-Sucker Machine with the Kerala Water Authority was mentioned. The District Collector has, in fact, in his proceedings dated 17.05.2023, averred that the said machine has been made available to all co-ordinating agencies.

(c). However, the learned Amici Curiae say that the aforementioned machines are much more powerful than the Sucker-cum-Jetting Machine of the Kerala Water Authority and that the former ought to be used by the Corporation immediately, so that all the drains can be cleaned out without any difficulty.

(d). Sir.Janardhana Shenoy is, therefore, directed to obtain specific instructions in this regard, though I make it clear that if the afore machines are available, then it would be a complete shame if they are kept idle and not put to use, particularly when monsoons are fast approaching. This Court will consider passing specific orders in this regard on the next posting date, after Sri.Janardhana Shenoy is able to obtain instructions.

VI (a). The learned Amici Curiae further complained that, though pre-monsoon cleaning is said to be progressing, it is completely wanting in certain areas.

(b). I do not think that this Court should micro manage the cleaning effort of the Corporation, but it is without doubt that the officers concerned are fully responsible for its effective implementation. In other words, if any drain is found to be not clean in spite of such efforts and notwithstanding the orders of this Court, then the respective Assistant Engineers of the area in question will be held personally accountable and this Court will not shy away from issuing rule against them for contempt and such other apposite action. All Engineers are put on notice regarding the same.

VII(a). This Court has now obtained a letter from 'Sangamam Residents Association', which is an association of the owners of properties and residential houses at Elamakkara. They mention that the 'Perandoor Canal' at various places running through their area and some of the connecting canals have been blocked for several months and that they anticipate and apprehend large scale flooding when the monsoon starts.

(b) This is a valid concern of the citizens of this city, even when effort has been taken by the Authorities to ensure that there is no flooding during monsoons.

(c) I, therefore, direct the Registry to incorporate the above letter as part of the papers of this case and serve copies of the same on the learned Standing Counsel of the Corporation, the learned Government Pleader and the learned Amici Curiae.

(d) I direct the District Collector, the Superintending Engineer - Minor Irrigation, Ernakulam and the Secretary of the Corporation of Kochi to look into this aspect and take remedial steps urgently.

(e) Reports in this regard shall be made available as and when necessary or in due course.

Post on 02.06.2023

Sd/-

DEVAN RAMACHANDRAN, JUDGE

ACR/RR