

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE THE CHIEF JUSTICE MR.HRISHIKESH ROY

&

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

Monday, the 3rd day of June 2019/13th Jyaishtha, 1941

WP(C).No.26055/2018(S)

PETITIONER:

KALoor JOSEPH , PADAPURACKAL HOUSE,
KATTAKKARA ROAD EAST, COCHIN - 682 017.

RESPONDENTS:

1. UNION OF INDIA, REPRESENTED BY ITS PRINCIPAL SECRETARY,
MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE,
PARYAVARAN BHAVAN, CGO COMPLEX, LODHI ROAD, NEW DELHI - 110 003.
2. KERALA COASTAL ZONE MANAGEMENT AUTHORITY, REPRESENTED BY ITS
SECRETARY, DIRECTORATE OF ENVIRONMENT & CLIMATE CHANGE,
DEVIKRIPA, PALLIMUKKU, PETTAH P.O., THIRUVANANTHAPURAM - 695 024.
3. THE ADDITIONAL SURVEYOR GENERAL, SOUTHERN ZONE, SURVEY OF INDIA,
SARJAPUR ROAD, KORAMANGALA, 2ND BLOCK, BANGALORE - 560 034.
4. STATE OF KERALA REPRESENTED BY ITS SECRETARY,
ENVIRONMENT DEPARTMENT, ROOM NO.377,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM - 695 001.
5. NATIONAL CENTRE FOR EARTH SCIENCE STUDIES, (NCESS) ULLLOOR -
AKKULAM ROAD, AKKULAM, THIRUVANANTHAPURAM, KERALA - 695 011,
REPRESENTED BY ITS DIRECTOR.
6. NATIONAL CENTRE FOR SUSTAINABLE COASTAL MANAGEMENT,
MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE (MOEF&CC), ANNA
UNIVERSITY CAMPUS, CHENNAI - 600 025, REPRESENTED BY ITS DIRECTOR.

*ADDITIONAL R7 TO R12 IMPEADED:

- *ADDL.R7. SONY CHEEKU (VIRONY), AGED 53 YEARS,
SON OF XAVIER, PRESIDENT, CHERANALLOOR GRAMA PANCHAYAT,
KARATHURA, SOUTH CHITTUR, PIN - 682021.
- *ADDL.R8. RAJESH VIVEKAND, SON OF NARAYANAN NAIR,
AGED 42 YEARS, KAINIMITTATH HOUSE,
THRICHATTUKULAM.P.O., PANAVALLY, ALAPPUZHA DISTRICT-688 526.
- *ADDL.R9. L.ANIL, SON OF LEKSHMANAN, AGED 48 YEARS, MELATHIL HOUSE,
CHANDANATHOPU.P.O., KOLLAM DISTRICT - 691 014.
- *ADDL.R10. MARTIN ANTONY, AGED 48 YEARS, SON OF K.V.JOSEPH, PRESIDENT,
KUMBALANGHI GRAMA PANCHAYAT OFFICE, KALLANCHERI ROAD,
KUMBALANGY, ERNAKULAM - 682 007, KERALA.
- *ADDL.R11. SHERLY GEORGE, AGED 51 YEARS, W/O.XAVIER, PRESIDENT,
KUMBALAM GRAMA PANCHAYAT OFFICE, KUMBALAM,
KANAYANNUR TALUK, ERNAKULAM DISTRICT - 652 506.

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WP(C).No.26055/2018(S):

*ADDL.R12. YESUDASAN STEPHEN, SON OF STEPHEN,
AGED 44 YEARS, VICE PRESIDENT, ANCHUTHENGU GRAMA PANCHAYATH,
CHILAKKOOR - VALLAKKADAVU ROAD, ANCHUTHENGU,
KERALA - 695 309.

*ADDL.R7 TO R12 IMPLAED AS PER ORDER DATED 22/11/18 IN I.A.NOS.6,7,8,9,10
& 11/18. *in WP(C)*

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 pass an interim order restraining the second respondent from conducting public hearing pursuant to Exhibit P9 notice and to keep in abeyance all steps taken for the finalization of draft Coastal Zone Management Plan of Kerala pursuant to Exhibit P2 CRZ Notification 2011, pending the disposal of the above 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 21/03/2019 and upon hearing the arguments of M/S.P.B.SAHASRANAMAN, T.S.HARIKUMAR & K.JAGADEESH, Advocates for the petitioner, SRI.P. VIJAYAKUMAR, ASSISTANT SOLICITOR GENERAL OF INDIA for R1, R5 and R6, SRI.M.P.PRAKASH, STANDING COUNSEL for R2, SMT.MINI GOPINATH, CENTRAL GOVERNMENT COUNSEL for R3, SRI.K.V. SOHAN, STATE ATTORNEY for R4, SRI.K.R.SUNIL, Advocate for Addl.R7, R10, R11 & R12, SRI.RAAJESH SUBRAMANIAN, Advocate for R8 and of M/S.RAAJESH SUBRAMANIAN & V.R.RAJESH, Advocates for R9, the court passed the following:-

[PT0]

rs.

Hrishikesh Roy, C.J.

&

A.K.Jayasankaran Nambiar, J.

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Dated this the 3rd day of June, 2019

ORDER

A.K.Jayasankaran Nambiar, J.

Pursuant to our last order dated 21.3.2019, the learned counsel appearing for the writ petitioner Sri.P.B.Sahasranaman, would refer to documents produced by him now to reiterate that there has been no application of mind to the issue of categorisation of Panchayats within the State of Kerala and they have been mechanically classified under CRZ-III category without ascertaining whether or not they could be categorised as CRZ-II in line with the criteria specified in the CRZ notifications issued from time to time. In particular, he would point to the criteria for classification that has been adopted in the various CRZ notifications i.e., 1991 notification, 2011 notification and the 2019 notification and submit that the term "developed area" has been defined under the notification as referring to those areas within the municipal limits or in other legally designated urban areas, which are already substantially built up and provided with drainage and approach roads and other infrastructural facilities, and such areas would merit classification under the CRZ-II category notwithstanding that they may fall within the limits of a Panchayath. It is his specific case that an exercise for classification based on the criteria of "developed areas" was not resorted to by the State Government while finalising the Coastal Zone Management Plan relatable to either the 1991 notification or

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the 2011 notification. It is his fervent plea that such an exercise ought to be done at least in connection with the finalisation of the Coastal Zone Management Plan for the purposes of the 2019 CRZ notification.

2. We have taken serious note of the said contention of the learned counsel Sri.P.B.Sahasranaman for the writ petitioner. We find that the Coastal Zone Management Plans prepared for effective implementation of the CRZ notifications have invariably been delayed, leading to a lamentable situation where the Coastal Zone Management Plan that is finalised does not relate to the CRZ notification that is currently in force. On account of the transitional provisions under the various CRZ notifications, the Coastal Zone Management Plan prepared in accordance with the earlier CRZ notification continues to operate during the period of operation of the subsequent CRZ notification; a situation that could have been avoided if timely action was taken by the authorities concerned to finalise the Coastal Zone Management Plan in terms of the relevant CRZ notification. The fact that the Coastal Zone Management Plan prepared in accordance with the 2011 notification was finalised only in 2019 serves to illustrate the problems faced by the stakeholders, more so when the Central Government had by then, in January 2019, notified the 2019 Coastal Regulation Zone Notification.

3. The State Attorney through a statement filed on behalf of the State of Kerala on 26.2.2019 details the steps that are now taken by the State Government for revision of the Coastal Zone Management Plan to make in conformity with the provisions in the CRZ Notification, 2019. The steps taken according to the said statement are as follows:

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- (i) Various regulatory lines viz, at a distance of 20 metres, 50 metres, 200 metres and 500 metres from HTL respectively, as applicable in various CRZ categories shall be demarcated and transferred to the CZM maps.
- (ii) As per the Census Report 2011, the Panchayats belong to CRZ III A in CZMP shall be find out.
- (iii) The public hearing process shall be conducted in the 10 coastal districts and the opinions/suggestions/objections received from the public shall be complied and the Compliance Report shall be submitted.
- (iv) Based on the opinions/suggestions/objections received from the public the CZMP shall be revised and the draft CZMP, along with the recommendation of KCZMA and State Government shall be forwarded to MoEF&CC.
- (v) Approval of Ministry of Environment, Forest and Climate Change shall be obtained."

4. On a perusal of the CRZ Notification of 2019 issued on 18.1.2019, we find that the categorisations of Zones that are contemplated under the notification are - CRZ-I, CRZ-IA, CRZ-IB, CRZ-II, CRZ-III, CRZ-IIIA, CRZ-IIIB, CRZ-IV, CRZ-IVA and CRZ-IVB. In this writ petition, we are concerned primarily with the categorisation under CRZ-II, CRZ-III, CRZ-IIIA and CRZ-IIIB. We find that the classification under CRZ-II would include developed land areas up to or close to the shoreline within the existing municipal limits or in other legally existing designated urban areas, which are substantially built-up with a ratio of built-up plots to that of total plots being more than 50% and have been provided with drainage and approach roads and other infrastructural facilities such as water supply, sewerage mains, etc. An area that does not fall under CRZ-II would likely merit classification under CRZ-III and even under the said category, based on density of population, would fall for classification under CRZ-IIIA or CRZ-IIIB. The preparation of the Coastal Zone Management Plan has to be undertaken as provided under Regulation 6 of the CRZ Notification, 2019. The relevant

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provisions of Regulation 6(i) and (ii) are as follows:

"6. Coastal Zone Management Plan (CZMP)

- (i) All coastal States and Union territory administrations shall revise or update their respective coastal zone management plan(CZMP) framed under CRZ Notification, 2011 number S.O.19(E), dated 6th January, 2011, as per provisions of this notification and submit to the Ministry of Environment, Forest and Climate Change for approval at the earliest and all the project activities attracting the provisions of this notification shall be required to be appraised as per the updated CZMP under the notification and until and unless the CZMPs is so revised or updated, provisions of this notification shall not apply and the CZMP as per provisions of CRZ Notification, 2011 shall continue to be followed for appraisal and CRZ clearance to such projects.
- (ii) The CZMP may be prepared or updated by the coastal State Government or Union territory by engaging reputed and experienced scientific institution(s) or the agencies including the National Centre for Sustainable Coastal Management (hereinafter referred to as the NCSCM) of Ministry of Environment, Forest and Climate Change and in consultation with the concerned stakeholders."

5. Taking note of the apprehension voiced by the learned counsel for the petitioner, and with a view to ensuring a finalisation of the Coastal Zone Management Plan in accordance with the 2019 Notification during the current year itself, we deem it appropriate to direct the 6th respondent i.e. National Centre for Sustainable Coastal Management, Ministry of Environment, Forest and Climate Change, which is the authority mentioned under Regulation 6 of the CRZ Notification, 2019, as having the necessary expertise to guide the State Government in the preparation of the Coastal Zone Management Plan, to file an affidavit stating the measures that would have to be taken and the parameters to be adhered to for correctly identifying the areas that would

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fall under CRZ-II, CRZ-III, CRZ-IIIA and CRZ-IIIB within the State of Kerala. The affidavit shall also clearly state as to whether any such exercise had been undertaken by them at the request of the State of Kerala in connection with the earlier CRZ Notifications i.e. CRZ Notification 1991 and the CRZ Notification 2011. If not, then the affidavit shall clearly state the time frame within which an exercise of the nature mentioned above can be completed for the purposes of classification of the areas in the State of Kerala under CRZ-II, CRZ-III, CRZ-IIIA and CRZ-IIIB for the purposes of the 2019 Notification. The learned Central Government Counsel Sri.K.Rajkumar representing the 6th respondent undertakes to file the necessary affidavit of the 6th respondent within four weeks from today.

Post on 3.7.2019.

Handover.

Sd/-
HRISHIKESH ROY,
CHIEF JUSTICE

Sd/-
A.K JAYASANKARAN NAMBIAR,
JUDGE

vpv

-TRUE COPY-


4/7/19
ASSISTANT REGISTRAR


