

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE DEVAN RAMACHANDRAN

TUESDAY, THE 28TH DAY OF APRIL, 2020 / 8TH VAISAKHA, 1942

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- 682020
2. VIJAYAKUMAR B
AGED 42 YEARS S/O BALACHANDRAN EWS 668,
GANDHINAGAR, KOCHI- 682020

BY ADV.DR.K.P.PRADEEP

RESPONDENTS:

1. STATE OF KERALA REPRESENTED BY ITS
CHIEF SECRETARY, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM- 695001
2. ADDITIONAL CHIEF SECRETARY, REVENUE
DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM- 695001
3. DISTRICT COLLECTOR, ERNAKULAM
CIVIL STATION, KAKKANAD, ERNAKULAM
4. TAHSILDAR, KANAYANNUR TALUK
KOCHI, PARK AVE ROAD, ERNAKULAM- 682011
5. KERALA STATE DISASTER MANAGEMENT
AUTHORITY OBSERVATORY HILLS, VIKAS BHAVAN P.O,
THIRUVANANTHAPURAM - 695033
REPRESENTED BY ITS CONVENOR
6. KOCHI MUNICIPAL CORPORATION,
CORPORATION OFFICE, PAR AVE ROAD KOCHI,
ERNAKULAM- 682011 REPRESENTED BY ITS SECRETARY

-2:-

7. PADMAJA S. MENON, AGED 55 YEARS
W/O P.S. MENON, KV24, 5TH CROSS ROAD,
PANAMPILLY NAGAR- COCHIN- 682036
8. PREMCHAND, AGED 55 YEARS,
S/O LATE V.P. PILLAI, G-175. ATHIRA,
5TH CROSS ROAD, PANAMPILLY NAGAR- COCHIN- 682036
9. RAMASWAMY RAMAKRISHNAN, 73 YEARS,
S/O. RAMAKRISHNAN, G-205, ELDERS FORUM ROAD,
CANAL SIDE, PANAMPILLY NAGAR- COCHIN- 682036
10. COCHIN PORT TRUST, WILLINGDON ISLAND,
KOCHI, ERNAKULAM- 682003 REPRESENTED BY ITS CHAIRMAN
11. SOUTHERN RAILWAY
HEADQUARTERS, PARK TOWN, CHENNAI- TAMILNADU 600003
REPRESENTED BY ITS GENERAL MANAGER.
12. DIVISIONAL MANAGER, SOUTHERN RAILWAY
THIRUVANANTHAPURAM DIVISION RAILWAY DIVISIONAL OFFICE,
THYCADU P.O. THIRUVANANTHAPURAM- 695014
13. GREATER COCHIN DEVELOPMENT AUTHORITY GCDA OFFICE;
KADAVANTHRA, KOCHI- 682020
REPRESENTED BY ITS SECRETARY
14. KERALA STATE ELECTRICITY BOARD LTD VYDYUTHI BHAVANAM,
PAT TOM THIRUVANANTHAPURAM- 695004 REPRESENTED BY ITS
CHAIRMAN AND MANAGING DIRECTOR
15. KERALA WATER AUTHORITY VELLAYAMBALAM,
THIRUVANANTHAPURAM- 695033, REPRESENTED BY ITS MANAGING
DIRECTOR
16. KERALA SHIPPING AND INLAND NAVIGATION CORPORATION LTD,
61/1227, UDAYA NAGAR, ROAD, GANDHI NAGAR, KADAVANTHRA,
KOCHI- 682020 REPRESENTED BY ITS MANAGING DIRECTOR
17. TALUK SURVEYOR, KANAYANNUR TALUK TALUK OFFICE,
KANAYANNUR, KOCHI ERNAKULAM-682011.

18. KERALA STATE LEGAL SERVICES AUTHORITY
NIYAMASAHAYA BHAVAN, HIGH COURT KOCHI, 682031,
REPRESENTED BY ITS MEMBER SECRETARY
19. KOCHI METRO RAIL LIMITED, 4TH FLOOR,
JLN STADIUM STATION, KALOOR, KOCHI- 17
REPRESENTED BY ITHE MANAGING DIRECTOR

BY SRI.S.SUDHEESH KUMAR, SC, CORPN. OF KOCHI
SRI.N.K.SUBRAMANYAN, SC, SOUTHERN RAILWAY
SRI.S.KANNAN, GOVT.PLEADER
SMT.RESMI VARMA
SRI.D.AJITH KUMAR, SC, MONITORING COMMITTEE

THIS WRIT PETITION HAVING COME UP FOR ORDERS ON
28/4/2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

DEVAN RAMACHANDRAN, J.

=====

WP(C) No.23911 of 2018

=====

Dated this, the 28th day of April, 2020

O R D E R

Even though this writ petition has been pending before this Court for a few years and though this Court has issued several orders from time to time, today, the attention of this Court has been called by the petitioner through this interim application to a concern of imperative urgency and of a nature that we have never encountered before.

2. At these times, when the collective will of all citizens are focused on fighting and combating the Corona Virus Disease 2019 epidemic (hereinafter referred to as Covid-19 for ease), there is a lurking danger of this year's monsoon which is almost at our doorsteps causing havoc, as it had done in the last two years.

3. The preparedness of the civic authorities and the District Administration to ward off or control this danger is critical

this year than any other year because, on account of the ravage of Covid 19, it may become logistically impossible to move citizens to safer places like Relief Camps, as had been done in the last two years, keeping in mind the social distancing requirements put in place by the Central Government and the State Government.

4. The impact of an eventuality of flooding this year, therefore, requires to be more and more restated - since Covid 19 preparedness is inextricably connected to preparedness against flooding.

5. When this matter had been considered by this Court on 24/4/2020, it had been brought to the notice of this Court that the Government proposed to convene meetings of the District Administration and the Corporation, as also of other relevant stake holders; and the learned Government Pleader, Sri.S.Kannan, today informs me that the minutes of the meetings held on 20/4/2020 and 23/4/2020, chaired by the Hon'ble Minister for Agriculture (also the Minister in charge of the District of Ernakulam for Covid-19) and attended by Members of the Parliament, Members of the Legislative Assembly, the Mayor and

-:6:-

the Head of Departments of various Engineering departments, has been placed on record, along with a memo dated 24/4/2020. He assures this Court that no stone will be left unturned by the Government of Kerala, District Administration of Ernakulam to ensure that the highest level of preparedness to avoid flooding this year will be put in place and that steps which are absolutely necessary and imperative will be completed at the earliest. The learned Government Pleader also brought to my notice that under the "Operation Breakthrough" project spearheaded by the District Administration, most of the works under Phase I will be completed soon and that the remaining works under Phase II will be taken up, to the extent possible, and completed before the monsoons. He says that the District Administration is now working very closely with the Corporation of Kochi to ensure that Ernakulam and the city of Kochi is kept completely ready to brace the impact of the monsoons this year.

6. Sri.S.Sudheesh Kumar, learned standing counsel for the Corporation of Kochi, submitted that the meetings convened by the Hon'ble Minister has been fruitful and that the Corporation has now commenced the work of desilting and removal of

-:7:-

blockages in the drainage system and the canals in great earnestness. He submits that on account of the lock-down, these works had been stopped for the last more than a month, but that it has now restarted with the permission of the District Collector, and that most of the works can be completed by the end of May, 2020. He adds to the above by saying that the fencing of the Perandoor canal in Kochi has been completed to about 30% of its length and that the work on the remaining extent has now begun again. He says that as regards the cleaning of the Perandoor canal is concerned, a contract for the same can be entered into only after the tendering process is over and that they will be able to commence work in this regard by the 15th of May, 2020.

7. After saying as above, Sri.Sudheesh Kumar informs this Court that the District Administration is also co-operating with the Corporation in ensuring that the canals and the drainage systems are kept ready for the monsoons and that Corporation does not require any specific directions at this stage from this Court. He prays that this matter be listed after two weeks, so as to enable him to inform this court whether any further orders are required.

-:8:-

8. Sri.N.K.Subramanyan, learned standing counsel appearing for the Southern Railway, volunteered to say that the competent Area Manager has already declared his willingness to offer unstinted support to the District Administration and to the Corporation of Kochi to clear the various culverts along the Perandoor Canal, but that most of these culverts were constructed many decades ago, taking into account the factual situation at that time. He says that it is true that some of these culverts are very narrow and requires to be reconstructed, which however, would need a policy decision to be taken and that the details of such decisions will also be brought on record at the earliest. As regards the culverts presently, he says that the Area Manager will give every assistance possible through his officers, to ensure that they are kept clean; and that as and when any such request had been made or will be made, the said officer will offer it without any avoidable delay. In effect, Sri.N.K.Subramanyan impresses upon me the full support of the Southern Railways in the process of cleaning of the Perandoor Canal and in ensuring its unimpeded flow.

9. In response to the above, Dr.K.B.Pradeep, learned

counsel appearing for the petitioner, confirmed that the fencing on the sides of the Perandoor canal has been completed to nearly one third of its length; but that the position in the area between “GCDA-Kadavanthara” and “Kammattipadam” leaves much to be desired. He says that no work on this stretch has been done and that, consequently, there is no flow of water at all through this area. He asserts that this is particularly why there was flooding even when the city received summer rainfall during the last few days. He, therefore, prays that urgent orders under the Disaster Management Act be directed to be issued by the District Collector for clearing this stretch.

10. Smt.Resmi Varma, learned counsel appearing for some of the party respondents, who are also supporting the cause of maintenance of the Perandoor Canal and who are residents of the areas next to it, affirms the submissions of Dr.K.B.Pradeep, but supplementing it by saying that unless urgent orders are issued by this Court directing the Perandoor canal to be kept clean and ready to receive large rainfall this year, a virtual catastrophe on account of the added problem of Covid 19 will become a reality. She says that since the Media is now reporting that monsoons are

-:10:-

likely to hit Kerala much earlier than usual, the stand of the Corporation, that they will start cleaning of the Perandoor canal after 15th of May, may not be accepted and that they be granted only a much lesser time frame.

11. I have heard all the learned counsel very intently and I have also examined the report placed on record by the learned Government Pleader Sri.S.Kannan.

12. As is evident from the said report, the meetings stated to have been held on 20/4/2020 and 23/4/2040, chaired by the Hon'ble Minister, is seen to have taken the following decisions:-

"1. Various pre monsoon works pending with local bodies will be taken up on priority and completed before the onset of monsoons. The concerned local bodies have been advised to submit the list of works to be taken on priority to the District Collector. Necessary permission to start the works shall be accorded by District Collector subject to the fulfilment of norms and conditions pertaining to Covid-19 lockdown.

2. All the Phase-1 works under Operation Breakthrough pending completion shall be allowed to commence from 25th April. Those among the 33 works identified under Phase II which can be completed before the onset of monsoon shall be undertaken immediately.

3. Cochin Corporation will carry out their routine premonsoon desilting activities on priority basis. All drains

-:11:-

within the corporation limits irrespective of whether it lies alongside of Corporation or PWD roads including by lanes, shall be desilted by Corporation. Secretary, Cochin Corporation has been advised to convene a meeting with other department heads to smoothen inter departmental coordination for timely completion of pre monsoon works."

13. It is ineluctable from the aforesaid decisions that all the stakeholders appear to be aware of the gravity of the situation and this is evident from the fact that all the learned counsel appearing today confirmed that unless the State, District Administration and the Corporation of Kochi prepares itself for flood control this year, it's effect, along with compact of Covid-19 epidemic would become unbearable.

14. In this perspective, it is without doubt that all the stakeholders will have to act in unison, without being constrained by rigid protocols or formalities, since we must expect that the monsoons will arrive in Kerala in less than a month from today. This time frame is crucial because if the monsoons cause flooding this year, then the fate of the citizens of this State, who are already reeling under the hitherto unseen effects of Covid 19 would be less said the better. This Court cannot allow any such

-:12:-

eventuality to happen and I am therefore, of the firm view that all the Authorities, including the State Administration and the Corporation, will have to act as a unified one and will have to ensure that necessary results are effectuated, without unnecessary delay or hindrances.

15. In the aforesaid circumstances, I record the decisions taken by the meeting convened by the Hon'ble Minister as extracted above and direct both the District Administration and the Corporation of Kochi to act urgently and sincerely so as to make sure that the health and safety of the citizens of the State are not in any manner affected on account of the fast approaching monsoons.

16. As regards the cleaning of the canals and the drainage is concerned, in addition to the decisions taken in the meetings as extracted above, it shall be the over-all responsibility of the District Administration and in particular the District Collector, acting under the provisions of the Disaster Management Act, to ensure that they are cleaned and desilted before the monsoons, so that there will be no impediment of flow of water in the event of a larger than usual rainfall.

-:13:-

17. As regards the works to be completed, both at the hands of the District Administration and the Corporation of Kochi, I am certain that the Monitoring Committee already constituted by this Court has an important role to play and I record the submissions of Sri.D.Ajith Kumar, learned counsel appearing for the said Committee, that they are convening a meeting on the 4th of May, 2020, being the day after the lockdown is expected to be relaxed; and prays that the District Collector be also directed to participate in the said meeting. He says that even though meetings had been earlier convened, the District Collector did not participate in it personally but had only deputed other officers; but that in view of the rather extreme urgency now, he himself be directed to participate.

18. I record at this juncture that Sri.Kannan, learned Government Pleader, submits that the District Collector is busy with various other responsibilities but that, if possible, he will take part in the meeting to be convened by the Monitoring Committee, as and when he is properly notified of the same.

19. Resultantly, I deem it appropriate to adjourn this matter to be called on 12/5/2020, within which time, all

-:14:-

stakeholders will inform this court the action taken by them in terms of the observations herein, so as to enable this court to take a further call on the steps to be taken in future.

20. In the meanwhile, and in order to ensure that there are no hiccups in the manner in which the works are to be completed, I direct both the District Administration and the Corporation of Kochi to work as a single team and take into confidence the Area Manager of the Southern Railways, thus ensuring that all necessary works with respect to desilting and smooth flow of water through the drainages and the canals of the city are able to be completed within specific time frames.

21. I also direct the Corporation of Kochi to complete the process of tendering of the contract for the purpose of desilting and removal of weeds from the Perandoor canal at the earliest and not to wait until 15th of May, 2020, as has been submitted by Sri.Sudheesh Kumar, taking note of the fact that the monsoons are expected to hit the State much earlier than normal. I order them to complete this process and to start work within the next 10 days, if it is so possible, and inform this court the steps taken by 12/5/2020.

-:15:-

22. However, as regards the stretch of Perandoor canal from GCDA-Kadavanthara to Kammattipadam, taking note of the absolute necessity to clean this with extreme urgency, I direct the District Collector to invoke the provisions of the Disaster Management Act appropriately and clear this stretch within two weeks from today.

23. I further direct the District Administration and in particular the District Collector to complete the works under Phase I of the Operation Breakthrough at the earliest but not later than the next posting date and report before this Court the progress of the components of Phase II, which is capable of being completed before the monsoons.

24. These directions are necessitated also because Sri.S.Sajal, learned counsel appearing for an impleading petitioner, informs this Court that even though the work of construction of drainage through the Providence Junction area of Kochi has been commenced under "Operation Breakthrough", it has not been completed and that the residents are apprehensive that this will cause inundation of the said area, I, therefore, further direct the District Collector to keep this also in mind and

W.P(C) No.23911/18

-:16:-

complete the work as per the above directions without any delay.

Post on 12/5/2020.

DEVAN RAMACHANDRAN,

JUDGE

Rp