

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

MONDAY, THE 8TH DAY OF DECEMBER 2014/17TH AGRAHAYANA, 1936

WP(C). No.27248 of 2012 (E)

PETITIONER(S):

ANTONY A.V., AGED 36 YEARS,
S/O.VARGHESE, ANAMTHURUTHIL HOUSE, CHILAVANNUR ROAD,
ELAMKULAM VLLAGE, KANAYANNUR TALUK.

BY ADVS.SRI.GOPAKUMAR G. (ALUVA)
SMT.ANUPAMA JOHNY

RESPONDENT(S):

1. CORPORATION OF COCHIN,
REP.BY SECRETARY, ERNAKULAM, KOCHI-682011.
2. ASSISTANT EXECUTIVE ENGINEER,
EAST ZONAL OFFICE, CORPORATION OF COCHIN-VYTTILA,
KOCHI-682019.
3. THE SECRETARY,
KERALA STATE COASTAL ZONE MANAGEMENT AUTHORITY,
SHASTRA BHAVAN, PATTOM, THIRUVANANTHAPURAM.
4. M/S. ADELIE BUILDERS & DEVELOPERS (DLF)
REP.BY ITS MANAGING DIRECTOR, SEAPORT AIRPORT ROAD,
OPP.DOORADARSAN, KAKKANAD, KOCHI-682030

R1 & R2 BY ADVS. SRI.DILEESH JOHN, SC, COCHIN CORPORATION

SRI.P.K.SOYUZ, SC, COCHIN CORPORATION

R3 BY ADV. SRI.PRAKASH C.VADAKKAN. J., SC, KCZMA

R4 BY ADVS. SMT. NALINI CHIDAMBARAM (SR)

SRI.M.GOPIKRISHNAN NAMBIAR

SRI.P.GOPINATH

SRI.P.BENNY THOMAS

SRI.K.JOHN MATHAI

SRI.JOSON MANAVALAN

BY ADV. SRI.SAJI VARGHESE KAKKATTUMATTATHIL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 11-11-2014,
THE COURT ON 08-12-2014 DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S) EXHIBITS:-

- EXT.P1:- PHOTOSTAT COPY OF THE PLAN OF THE CHILAVANNUR KAYAL APPROVED BY KERALA COASTAL ZONE MANAGEMENT AUTHORITY.**
- EXT.P2:- PHOTOSTAT COPY OF THE COMPLAINT DATED 29.06.2009 SUBMITTED BY THE PETITIONER TO THE 1ST RESPONDENT.**
- EXT.P3:- PHOTOSTAT COPY OF THE LETTER DATED 05.09.2009 ISSUED BY THE PUBLIC INFORMATION OFFICER, SCIENCE AND TECHNOLOGY DEPARTMENT (A), SHASTRA BHAVAN, THIRUVANANTHAPURAM TO THE PETITIONER.**
- EXT.P4:- PHOTOSTAT COPY OF THE COMPLAINT DATED 02.07.2010 SUBMITTED BY THE PETITIONER TO THE 1ST RESPONDENT.**
- EXT.P5:- PHOTOSTAT COPY OF THE COMPLAINT DATED 29.09.2010 SUBMITTED BY THE PETITIONER TO THE 1ST RESPONDENT.**
- EXT.P6:- PHOTOSTAT COPY OF THE ORDER DATED 12.02.2011 OF CHAIRMAN, KERALA COASTAL ZONE MANAGEMENT AUTHORITY.**
- EXT.P7:- PHOTOSTAT COPY OF THE LETTER DATED 22.02.2011 ISSUED TO THE PETITIONER BY THE CHAIRMAN OF COASTAL ZONE MANAGEMENT AUTHORITY.**
- EXT.P8:- PHOTOSTAT COPY OF THE RELEVANT PORTION OF THE REPORT SUBMITTED BY THE 1ST RESPONDENT TO THE 3RD RESPONDENT.**
- EXT.P9:- PHOTOSTAT COPY OF THE COUNTER AFFIDAVIT FILED BY THE 3RD RESPONDENT IN WPC NO.16615/2011.**
- EXT.P10- PHOTOSTAT COPY OF THE APPLICATION DATED 04.03.2011 SUBMITTED BY THE PETITIONER TO THE 1ST RESPONDENT.**
- EXT.P11:-PHOTOSTAT COPY OF THE PETITION DATED 03.04.2012 SUBMITTED BY THE PETITIONER TO THE 1ST RESPONDENT.**
- EXT.P12:-PHOTOSTAT COPY OF THE PETITION DATED 31.10.2012 SUBMITTED BY THE PETITIONER TO THE 1ST RESPONDENT.**
- EXT.P13:-TRUE COPY OF LETTER NO.1290/A2/09/S & TD DATED 21.01.2010 ISSUED TO THE 4TH RESPONDENT BY THE 3RD RESPONDENT.**
- EXT.P14:-TRUE COPY OF THE REPORT DATED 31.08.2012 SUBMITTED BY THE SUB COMMITTEE CONSTITUTED BY THE 3RD RESPONDENT.**
- EXT.P15 (SERIES):- TRUE COPY OF THE SATELLITE IMAGES TAKEN FROM GOOGLE EARTH FROM 10.02.2005 TO 27.09.2013.**
- EXT.P16:-TRUE COPY OF THE REPORT DATED 20-08-2010 SUBMITTED BY THE VILLAGE OFFICER, TRIPUNITHURA.**

EXT.P17:-TRUE COPY OF THE REPORT SUBMITTED BY THE CESS DATED 13.06.2013.

EXT.P18:-TRUE COPY OF THE LETTER DATED 7.12.2012 ISSUED BYTHE 3RD RESPONDENT.

EXT.P19:-TRUE COPY OF THE RELEVANT PAGES OF MINUTES OF THE 122ND MEETING OF THE EXPERT APPRAISAL COMMITTEE (EAC) OF MOEF.

EXT.P20:-TRUE COPY OF THE RELEVANT PAGES OF MINUTES OF THE 124TH MEETING OF THE EXPERT APPRAISAL COMMITTEE (EAC) OF MOEF.

EXT.P21:-TRUE COPY OF THE RELEVANT PAGES OF MINUTES OF THE 22ND MEETING OF THE SEIAA KERALA HELD ON 27-09-2013.

EXT.P22:-TRUE COPY OF THE RELEVANT PAGES OF MINUTES OF THE 23RD MEETING OF THE SEIAA KERALA HELD ON 31-10-2013.

EXT.P23:-TRUE COPY OF THE REPORT DATED 30.06.2014 SUBMITTED BY THE FIRST RESPONDENT.

EXT.P24:TRUE COPY OF THE ORDER DATED 12.02.2012 ISSUED BY THE FIRST RESPONDENT.

EXT.P25:-TRUE COPY OF THE REPORT DATED 21.07.2014 SUBMITTED BY THE COMMITTEE CONSTITUTED BY THE 3RD RESPONDENT.

EXT.P26:-TRUE COPY OF THE LETTER DATED 6.9.2012 WRITTEN BY THE FOURTH RESPONDENT TO THE HON'BLE CHIEF MINISTER OF KERALA.

EXT.P27:-TRUE COPY OF THE LETTER DATED 12.12.2012 WRITTEN BY THE FOURTH RESPONDENT TO THE THIRD RESPONDENT.

EXT.P28:-TRUE COPY OF THE LETTER DATED 18.02.2011 WRITTEN BY THE FOURTH RESPONDENT TO THE THIRD RESPONDENT.

EXT.P29:-TRUE COPY OF THE LETTER DATED 11.08.2014 ISSUED BY THE NATIONAL CENTRE FOR EARTH SCIENCE (CESS) TO THE THIRD RESPONDENT.

RESPONDENTS' EXHIBITS:

EXT.R4(A):- TRUE COPY OF THE LETTER DATED 27.9.2007 BEARING NO.D2/7267/07 ISSUED BY THE CHIEF TOWN PLANNER, THIRUVANANTHAPURAM TO THE SENIOR TOWN PLANNER, ERNAKULAM.

EXT.R4(B):- TRUE COPY OF CERTIFICATE NO.778/P12/07/GCDA DATED 01.02.2008 ISSUED BY GREATER COCHIN DEVELOPMENT AUTHORITY.

EXT.R4(C):- TRUE COPY OF THE AGENDA ITEM NO.40.3.1 OF THE 40TH MEETING OF KCZMA DATED 20.03.2010.

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APPENDIX- (3)

EXT.R4(D):- TRUE COPY OF THE REPORT PREPARED BY CENTRE FOR EARTH SCIENCE STUDIES, THIRUVANANTHAPURAM ALONG WITH PHOTOGRAPHS FORMING PART OF THE REPORT.

EXT.R4(E):- TRUE COPY OF THE CRZ AND ENVIRONMENTAL CLEARANCE NO.123/SEIAA/ KL/2320/2013 DATED 11.12.2013.

KRJ

//TRUE COPY//

P.A TO JUDGE

C.R.

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.27248 of 2012

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Dated this the 8th day of December, 2014

JUDGMENT

The petitioner, who is residing on the western side of Chilavannur lake/kayal (backwaters), has come up with this writ petition alleging that the 4th respondent has constructed a multi storeyed building within a distance of 100 metres from the High Tide Line (HTL) of the said lake violating Coastal Regulation Zone Notification (CRZ Notification).

2. The petitioner alleges that as per CRZ Notifications, 1991 and 2011, construction is not permissible within the distance of 100 metres from the side of Chilavannur lake. The petitioner further alleges that he has submitted several complaints to respondents 1 to 3 alleging that the 4th respondent has constructed the building in violation of the CRZ Notification. However, they have not taken any steps to stop the alleged construction. It is the definite case of the petitioner that the 4th respondent has not

produced 'No Objection Certificate' (NOC) from the Kerala Coastal Zone Management Authority (KCZMA) (3rd respondent) along with the application for permit.

3. It is further alleged that the committee constituted by the KCZMA has directed the Secretary of the Corporation of Cochin (1st respondent) through Ext.P6 to verify the on going constructions on either side of the backwaters and to issue stop memo to those who violate the provisions of CRZ Notification, 1991 with respect to their position/location. However, the 1st respondent has not taken any steps to implement the direction.

4. The 3rd respondent informed the petitioner as per Ext.P7 letter dated 22.02.2011 that the 3rd respondent had issued directions to the 1st respondent to stop the unauthorised construction violating the CRZ Notification. The petitioner further alleges that after receiving Ext.P7, though he submitted Exts.P10, P11 and P12 applications to the Secretary, Cochin Corporation, requesting to take steps to stop the construction of the buildings by the 4th respondent and to demolish the constructions which violated the

CRZ norms, the 1st respondent has not taken any steps to dispose of the applications. It is with this background, the petitioner has come up before this Court.

5. The 1st respondent though entered appearance has not filed any counter affidavit.

6. The 3rd respondent filed counter affidavit stating as follows:

According to the 3rd respondent, the construction in the areas covered by CRZ Notification could be made only with the prior approval of the KCZMA/Ministry of Environment and Forest (MoEF), Government of India. According to them, the Chilavannur lake is connected to Vembanad backwaters through a network of canals. The water body has tidal influence from the sea. The banks of the backwater have Coastal Regulation Zone as per the Coastal Zone Management Plan of the State. The CRZ in the area is 100 metres from the HTL of the backwaters. The area where the construction was made has CRZ I and II as per the CRZ Notification.

It was further contended that the development site was part of low-lying areas such as filtration pond/paddy field, which were reclaimed before 2009. Reclamation of another small portion was also carried out after 2009 as per the report submitted by Centre for Earth Science Studies (CESS) in September, 2011. It was further contended that the reclamation is a prohibited activity as per CRZ Notifications 1991 and 2011 and amounts to violation of provisions of CRZ Notification, 1991. They would further contend that CRZ clearance for the project has not been issued till date and construction was started without CRZ clearance.

It was further contended that the construction is made after reclaiming the wetland-pokkali field which was classified as CRZ I (i) areas that are ecologically fragile. The total plinth area of construction was above 20000m² and, therefore, it requires Environmental Impact Assessment (EIA) clearance. The 100 metres from HTL of backwater landward in the area on both sides are declared as Coastal Regulated Zone and constructions are regulated in the area. The KCZMA had constituted a three member

committee to inspect the site and submitted a report. While the committee had inspected, the construction was in progress after reclamation without any clearance from MoEF/ KCZMA.

The KCZMA in its 40th meeting held in September 2010 had recommended compliance of certain conditions to MoEF. The CESS had conducted a study as directed by the KCZMA to verify the compliance of the said conditions during 2011, wherein it was found that the area was reclaimed during 2006-07 period. The 4th respondent submitted CRZ map superimposed with the project layout prepared by the Institute of Remote Sensing (Anna University) during December, 2012. This was found in variance with the map prepared by the CESS earlier, in respect of HTL. Subsequently, the KCZMA had forwarded, as recommended by its 40th meeting, with all relevant documents, including the CESS report and the said superimposed building layout CRZ map to MoEF for further necessary action. It was further contended that KCZMA has no further intimation on the clearance to the project.

The KCZMA had constituted a sub committee much before the complaint was filed by the petitioner based on the request from the 4th respondent for CRZ clearance. The committee submitted a report on the construction. Another committee was constituted for verifying the facts in the complaint and this committee have also submitted its report and action has been taken by the KCZMA based on the report.

It was further contended that the KCZMA based on the report has directed the Cochin Corporation to furnish details of the permits issued for construction on the banks of Chelavannur backwater since 1996 and accordingly, the Cochin Corporation submitted the details, including the construction of the 4th respondent. The construction was permitted by the Cochin Corporation without following the provisions of CRZ Notification; it was contended. They would further contend that building permits were issued in violation of the CRZ Notification, 1991 and the authorities of the Corporation had violated the law of the land by issuing building permits in CRZ area. According to them, as per

the notification, all constructions which are having investment above ₹5 crores or more requires prior CRZ clearance from the MoEF, Government of India. They would contend that the KCZMA has issued instructions to the Local Self Government concerned as well as the District Collectors to initiate action against the proponent under the Environment (Protection) Act, 1986. They would also contend that the construction made in violation of the CRZ Notification cannot be regularised.

7. The 4th respondent filed a counter affidavit wherein it was contended as follows:

As the main grievance of the petitioner is that the 1st respondent has not taken action with regard to the alleged violation of the Building Rules, the petitioner ought to have approached the Tribunal for Local Self Government to have his grievance redressed. It was further contended that the 4th respondent has established itself as a pioneer in the development of properties throughout the country. In implementing its projects, the 4th respondent had always committed itself to ensure adequate

protection of the environment as well as addition to the environmental richness, including the natural resources and the biodiversity which received appreciation and was honoured with awards time and again; it is stated.

According to them, they have purchased 512.885 cents of land in the year 2006. It was a dry and developed land which comes within the residential zone as per the structural plan for Central City, Kochi. On application, the 1st respondent had issued building permit in the year 2004 for constructing a multi storeyed building. The 4th respondent applied for environmental clearance to MoEF which was given on 18.07.2008 in their 63rd meeting and also upon obtaining CRZ clearance for a portion of the land falling within the CRZ. The CESS, which is one of the agencies approved by the MoEF, conducted a detailed study of the proposed project and submitted a report specifically stating that CRZ is 100 metres landward from the HTL and that there was no CRZ I(i) in the project area or close to it. However, it was held that a part of the project area was in CRZ which belonged to CRZ II category,

where buildings were permitted to be constructed only on the landward side of the existing road or on the landward side of existing authorised structures. It should also be subject to the existing local town and country planning regulations.

The 4th respondent on 22.6.2009 had applied to the KCZMA for CRZ clearance along with the report of the CESS. Based on the said report and the subsequent inspection of the site by the committee constituted by the KCZMA, the application for CRZ clearance was approved on 20.3.2010. Having received the approval from the KCZMA and requisite permissions from all the departments, including Fire and Rescue Department, Kerala State Pollution Control Board and the Southern Naval Command, the 4th respondent commenced the construction and completed the same. Therefore, the allegation that the construction of the 4th respondent is in violation of the CRZ Notification is imaginary.

It was further contended that the MoEF has transferred the files of the 4th respondent to the State Environment Impact Assessment Authority (SEIAA) which has granted CRZ-cum-

Environmental clearance on a categorical finding that the land falls in the category of CRZ II and, therefore, there was no absolute prohibition on the constructions thereon. They would contend that there was no illegal conversion of wetland to dry land by the 4th respondent. The property purchased by the 4th respondent comes within the residential zone as per the Structural Plan for Central City, Kochi. The constructions undertaken by the 4th respondent are in accordance with the approved plan and permit and also in accordance with the statutory permit issued by the competent authorities.

The 4th respondent had put up construction in the landward side of the imaginary line drawn between the pre-1991 authorised structures. The CRZ status report for the particular plot was prepared by the CESS way back in 2009. The report confirms that there was no CRZ I(i) in the project area or close to it. The said report also confirms that a part of the project area was coming under CRZ II category only. It was based on the report and subsequent inspection of the site by the committee constituted by

the KCZMA that the respondent's application for CRZ clearance was approved by the KCZMA in its 40th meeting held on 20.03.2010 as Agenda Item No.40.3.1. As the 4th respondent's application for environmental clearance was already recommended by the KCZMA as early as on 20.3.2010, there was no need for any further inspection by the KCZMA of the project site of the 4th respondent. The committee constituted by the KCZMA has visited the project site of the 4th respondent a number of times. As the project site of the 4th respondent falls under CRZ II category, there are no filtration ponds and tidal marshes in the project site area.

The CRZ status varies from plot to plot as the fixation of HTL, LTL and the imaginary line depends on various other parameters and it is for this reason that the law imposes a mandate on each builder to get the CRZ status report prepared by the competent authority approved by the MoEF at the time of applying for the CRZ clearance in Form No. I. The apartment complex constructed by the 4th respondent will in no way affect the life of the petitioner. The residential complex is separated from the river

by a stretch of Government puramboke land having a width of approximately 25 metres. This Government land stands separated from the property of the petitioner by a compound wall. Under no circumstances, the respondent has no approach directly to the river.

The apartment complex was constructed and completed by the 4th respondent. It is supported by valid building permits and clearance. The 1st respondent is duty bound to protect this authorised construction and to issue necessary certificates and building numbers. For the aforesaid reasons, the 4th respondent prayed for a dismissal of the writ petition.

8. The petitioner has filed a detailed reply affidavit to the counter affidavit filed by the 4th respondent.

9. I have heard Sri. G. Gopakumar, the learned counsel for the petitioner, Sri Prakash E. Vadakkan, the learned counsel for the 3rd respondent, Smt. Nalini Chidambaram, the learned Senior Counsel appearing for the 4th respondent and the learned standing counsel for the respondent Corporation.

10. The 4th respondent admittedly approached the 1st respondent in the year 2004 seeking permit for constructing a multi

storeyed building. The Government of India has directed all the States and Union Territories to regulate various activities in the respective coastal areas and to this effect, the CRZ Notification of 1991 was issued by the MoEF under the Environment (Protection) Act, 1986. These regulations came into force on 19.2.1991. Regulation 3(2)(v) of 1991 Notification states that all constructions with investment over ₹5 crores or more requires prior CRZ clearance from the MoEF, Government of India.

11. The claim of the 4th respondent is that they were given CRZ clearance in the 40th meeting of KCZMA. Copy of the minutes of the committee is produced and marked as Ext.R4(c). It is their further case that the Kerala State Environmental Impact Assessment Authority has also granted CRZ clearance to them. Ext.R4(c) would reveal that the decision of the KCZMA in the 40th meeting was to refer the project to the MoEF. As rightly pointed out by the learned counsel for the petitioner this can never be treated as final approval of the project by the KCZMA. This aspect is clarified by the KCZMA also in their counter affidavit.

Exts.P19 and P20 minutes of the Expert Appraisal Committee (EAC) of MoEF would show that MoEF to which the project was forwarded never gave any approval to the project.

12. The SEIAA which was constituted under the EIA Notification of 2006 has not been authorised to issue CRZ clearance. It is crucial to note that EIA notification is silent regarding this aspect. However, Clause 8(v) of EIA Notification, 2006 specifically states that clearance from other regulatory bodies need not be required prior to the issuance of environmental clearance unless such clearance is required under any law. That means, clearance from other regulatory bodies is excluded only if such clearance is not required under any other law. As far as CRZ clearance is concerned, it is governed by two notifications; one issued in the year 1991 and other in the year 2011. These notifications specifically provide that CRZ Regulatory Authority alone has the power to grant CRZ clearance. The position is further clarified by Clause 4(b) of CRZ Notification, 2011 which is issued subsequent to EIA Notification, 2006. Clause 4(b) of

CRZ Notification 2011 states that for those projects which are listed under the said notification, clearance under EIA notification shall only be required subject to being recommended by the concerned State or Union Territory Coastal Zone Management Authority. The 4th respondent who claims that CRZ clearance was obtained, has not produced any document to show that clearance was issued either by the 3rd respondent or by the MoEF.

13. It is evident from the counter affidavit filed by the 3rd respondent that the 4th respondent has started construction of the building even before obtaining prior environmental clearance from any of the authorities. The prior environmental clearances from the SEIAA is a mandatory requirement for commencement of the construction activities since the 4th respondent project comes under the category B under the Environment Impact Assessment Notification (EIA), 2006. The sub committee appointed by the Kerala Coastal Zone Management Authority which visited the site as early as on 29.10.2009 itself has found that the constructions are being carried out by the 4th respondent without

obtaining necessary clearance from the 3rd respondent. This is evident from Ext.P13 which is the true copy of the letter dated 21.01.2010 issued to the 4th respondent by the 3rd respondent. Later, another sub committee was constituted by the 3rd respondent which also noted glaring illegality in the construction work carried out by the 4th respondent. The committee found that some portion of the building under construction was protruding towards backwaters beyond the imaginary line drawn from the seaward side of the existing authorised building parallel to the HTL. True copy of the report of the sub committee dated 31.8.2010 is produced and marked as Ext.P14.

14. The petitioner would allege that the sub committee has diluted and neglected some of the mandatory requirements under the CRZ Notifications and purposefully omitted to note certain violations committed by the 4th respondent. As rightly pointed out by the learned counsel for the petitioner, the committee has not perused the building plan and permit of the Choice Gardens apartment which was considered as the existing authorised

construction for drawing the imaginary line from the HTL. Without verifying whether the near construction found in Choice Gardens is an authorised construction or not, the committee could not have fixed the imaginary line; so submitted the learned counsel for the petitioner. I see valid force in the said submission.

15. It was further pointed out that the water body which cuts the HTL has a width of more than 5 metres and cannot be treated as a mere drainage canal. The said water body is a part of Chilavannur lake itself and it is a natural backwater stream. The petitioner alleges that the 4th respondent had illegally reclaimed certain portions of the land, including filtration pond in and around the land purchased by the 4th respondent. This is admitted by the 3rd respondent also. The satellite images taken from the google earth from 10.02.2005 to 27.09.2013 with respect to the property purchased by the 4th respondent and its surrounding areas are produced and marked as Ext.P15 series.

16. The property possessed by the 4th respondent was got measured by the Village Officer concerned, who had also reported

about the illegal reclamation of Chilavannur lake. The true copy of the report dated 20.8.2010 submitted by the Village Officer, Tripunithura is produced and marked as Ext.P16. The CESS who conducted the studies regarding the distance between the HTL and the 4th respondent's building found that certain portions of the building protrude towards backwaters beyond imaginary line from the HTL, which is in violation of the CRZ Notification. The relevant portion of Ext.P17 report submitted by the CESS reads as follows:-

“Based on a request from S&T Department vide letter No.1290/A2/09/S & T D dated 07-01-2011, the KSCSTE requested CESS (vide letter No.171/ENV/09/ CZMA dated 9-4-2012) to verify whether any construction/violation has been made in the CRZ area by M/s DLF. Field teams with officials from the Centre for Earth Science Studies, consisting of Mr. D. Raju and Mr. M. K. Rafeeqe, Technical Officers and Mr. K. C. Vimal, Senior Research Fellow visited the site on 23 May 2012 and 26 July 2012 and verified the various constructions with respect to CRZ. The data collected by the field teams have been analysed and the following observations were made:

- *The HTL as demarcated by CESS in 2009, is along the backwater side boundary of Survey no.1474 and 1475. The status of the plot prior to 2009 has not been considered while delineating the HTL.*
- *The nearest structure on the adjacent plot is Choice Gardens apartment and distance from the HTL to the nearest structure (swimming pool) or choice Gardens in 13.5 m.*
- *The nearest part of the construction of the housing complex by M/s DLF is 4.6 m from the HTL as demarcated in January 2009.*
- *There are few reclamations/modifications on the backwater side.*
- *It is also observed that the referred area was part of a water body prior to 2005.*

The nearest structure on the adjacent plot is Choice Gardens apartment and the distance from the HTL to the nearest structure of Choice Gardens in 13.5 m as per the Sub Committee constituted vide letter no. 1290/A2/09/S&TD dated 29-9-2009. Hence it is concluded that some part of the referred DLF Housing Project constructions is protruding towards backwater beyond the imaginary line which is considered as the limit for construction in CRZ II. This is in violation of the provisions of CRZ.”

(emphasis added)

17. On 7.12.2012, the 3rd respondent directed the 4th respondent to obtain CRZ map superimposing the constructions

prepared by an agency approved by the Government. Ext.P18 is the letter.

18. It is crucial to note that super imposing map submitted by the 4th respondent was found to be variance with the map prepared earlier by the CESS. It was at this point that the matter was forwarded by the 3rd respondent to the MoEF. The Expert Appraisal Committee (EAC) of MoEF for building/construction projects/township and area development projects, CRZ, infrastructure development and miscellaneous projects in its 122nd meeting considered the project and decided to defer the proposal directing the 4th respondent to address the observations and re-submit the proposal, as evident from Ext.P19 minutes. The project was again considered in the 124th meeting and on the basis of the discussions it was concluded by the EAC that a backwater natural drain exists between the adjoining properties and hence, the validity of the concept of imaginary line would be reviewed and commented by the team visiting the site. Ext.P20 is the copy of the said minutes.

19. The petitioner alleges that in spite of Ext.P20 minutes, on the request of the 4th respondent, the proposal was clandestinely transferred to the Member Secretary, SEIAA for further action. According to the petitioner, this procedure was contrary to Rule 10 of the EIA Notification, 2006. It is crucial to note that the proposal was transferred to SEIAA for its consideration for environmental clearance without obtaining CRZ clearance for the project. The 22nd meeting of the SEIAA Kerala considered the proposal and decided that since there was no recommendation from SEAC Kerala, SEIAA decided to defer the item to the next meeting to study the file in detail and take the correct decision as per Ext.P21 minutes. However, contrary to the said decision, the 23rd meeting of the SEIAA held on 31.10.2013 considered the proposal and decided to approve environmental clearance specifying the conditions stipulated by EAC and the 3rd respondent as per Ext.P22 minutes. EIA Notification 2006 mandates that SEIAA shall base its decisions on the recommendation of SEAC. Instead of referring the matter to the SEAC, the case was rushed

before the 23rd meeting disregarding the aforesaid requirement and, therefore, this Court is of the definite view that Ext.P22 is a nullity in the eye of law and it is only to be ignored.

20. It is crucial to note that the decisions and observations in Exts.P19 and P20 were also not taken note of while passing Ext.P22. It appears that on the basis of Ext.P22 decision which is *per se* illegal, the Member secretary of SEIAA had issued certain directions to the 3rd respondent which is an independent authority, the decisions of whom cannot be interfered by the SEIAA. Later, the 62nd meeting of the 3rd respondent had again decided to depute a committee to verify the CRZ status of the building constructed by the 4th respondent. The committee has submitted its report on 21.7.2014. A copy of the same is produced and marked as Ext.P25. The committee has categorically come to the conclusion that the width of the Chilavannur lake has been substantially reduced due to illegal reclamation and the 4th respondent has violated the CRZ norms and notifications. The following are the conclusions arrived at by the said committee:

- a) The construction was made by the Adelie builders (DLF) without mandatory CRZ/Environmental clearance. As per 1991 CRZ notification all constructions above Rs.5 crore investment require prior CRZ clearance from MoEF, Government of India.
- b) The Corporation of Cochin issued building permit in the CRZ area without valid CRZ clearance. This is in gross violation of the provisions of CRZ notification. Similar rampant violations were also noticed in the adjacent area of Chilavanoor Kayal.
- c) Based on the study conducted by the committee, it is understood that the major part of DLF project site was a water body till 2005-2006 period.
- d) The HTL of the Chilavanoor Kayal adjacent to the DLF housing project shifted towards the backwater side which ranges from 60-130m during 1996 and 2013 period with major reclamation occurred during 2005-2006 and 2009 - 2011 periods respectively with total area of 5.16 acres. This observation is made based on the HTL in the approved CZMP as a baseline. Large scale reclamation of the project site was deciphered during 2005-2006 period.
- e) Reclamation of the project site resulting in the further retreat of HTL of backwater also observed during 2009-2011 period of the order of about 5m even after preparing CRZ map of the project site by CESS in January 2009.
- f) The width of the Chilavanoor Kayal at the site has been reduced from 358 m to 223 m as per the Google images of 2005 and 2013 coupled with ground truth measurement during the present inspection. The width is measured from the High Tide Line between either side of the banks of the Chilavanoor Kayal.

- g) FSI/FAR for residential project prevailing in 1991 in the area as per town and country plan regulation was 1.5 while DLF followed FSI/FAR of 1.99. This amounts to violation of provisions of CRZ notification.
- h) It may be noted that reclamation of water body is a prohibited activity as per the provisions of CRZ notifications of 1991 and 2011. This amounts to blatant violation of provisions of CRZ notification.
- i) The CRZ map prepared by the Institute of Remote sensing is not in order and it is against the guidelines issued by MoEF for preparation of Local Level Maps. The KCZMA should consider taking up this issue with MoEF for information and appropriate action.
- j) The construction activities undertaken by the builders after the interim order of the Hon'ble High Court (**Annexure 13**) during December 2012 have to be viewed seriously
- k) This report is submitted to KCZMA for taking necessary action.

21. The argument advanced by the learned Senior Counsel for the 4th respondent is that the order dated 11.12.2003 of the SEIAA granting SEIAA and CRZ clearance has become final and with the grant of twin clearance, the building permit granted by the 1st respondent and the clearance by the SEIAA, the 4th respondent is entitled to proceed with the project and the 1st respondent is bound to issue the occupancy certificate. It was also argued that

the only remedy open to the petitioner is to challenge the order of the SEIAA before the National Green Tribunal in accordance with law. I am not inclined to accept the same for the the reasons pointed out earlier to hold that that the decision of the SEIAA is a nullity in the eye of law and it is only to be ignored. The definite case of the petitioner is that the construction undertaken by the 4th respondent is within the prohibited distance and, therefore, it required CRZ clearance. His further case is that without insisting for the said mandatory requirement, the 1st respondent Corporation straight away granted permission, which is *per se* illegal.

22. Moreover, the Apex Court in the decision reported in **Vaamika Island (Green Lagoon Resort) (Mls.) v. Union of India and others** [2013 (3) KHC 525 (SC)] has observed that the High Court can entertain the writ petition involving environmental violations considering the larger public interest and that the High Court need not refer the matter to the Green Tribunal. This Court considered similar matters in **Ansari Kannoth v. State of Kerala and others** [2011 (1) KLJ 610] and **Ratheesh K. R. and others v.**

State of Kerala and others [2013 (4) KLJ 120] and has issued various directions, including direction to demolish buildings violating the CRZ Notifications. In this case, violation started with the illegal reclamation of marshy land within the prohibited distance by the 4th respondent. Now, they are trying to take advantage of the illegal reclamation carried out by them.

23. The 4th respondent has produced two judgments rendered by this Court in W.P(C) Nos.21496 of 2014 and 18483 of 2014. W.P(C) No.21496 of 2014 was filed by one Cheshire Tarzen who incidentally had also filed a petition to implead him as additional respondent in this writ petition. During the pendency of the said petition, he filed W.P(C) No.21496 of 2014 and it was dismissed. The Cheshire Tarzan has also filed an appeal before the National Green Tribunal. The learned Senior Counsel for the 4th respondent raised an argument that since the matter is pending consideration before the Green Tribunal, this writ petition is not maintainable before this Court.

24. However, it was pointed out by the learned counsel for the petitioner that the aforesaid Cheshire Tarzan had withdrawn the appeal filed by him immediately after conclusion of the hearing of this writ petition. The judgment of this Court in W.P(C) No.18483 of 2013 was pressed into service by the learned Senior Counsel for the 4th respondent as the petitioner has produced Ext.P23 which is the copy of the report of the Chief Secretary, Government of Kerala wherein he has made certain observations against Ext.P22 decision of the SEIAA. In the aforesaid judgment, it was observed that the aforesaid report prepared by the Chief Secretary (Ext.P23 in this writ petition) was only be treated as a piece of information and the said report shall not bind the 3rd respondent herein.

25. The matters now placed on record would abundantly tend to indicate that the 3rd respondent has independently considered the matter and they have filed a counter affidavit stating that they have not granted CRZ clearance to the 4th respondent. There had been complete lethargy on the part of the

1st respondent in ascertaining whether the 4th respondent has obtained proper clearance before they have issued building permit. Building permits were issued in violation of the CRZ Notification, 1991 and the 1st respondent has violated the law of the land by issuing building permits in CRZ area. Any constructions made in violation of CRZ Notification cannot be regularised.

26. Taking note of the increasing threat to the environmental degradation taking place in different parts of the country, the Apex Court in **Indian Council for Enviro-Legal Action v. Union of India & Ors.** [JT 1996 (4) S.C.263] has observed that it may not be possible for a single authority to effectively control the same. Environmental degradation is best protected by the people themselves. Here, the petitioner, who is a citizen residing in the locality, has come up with this writ petition pointing out the illegalities committed by the 4th respondent and the laches on the part of the 1st respondent. Though it was strenuously argued by the learned Senior Counsel for the 4th respondent that there is nothing to show that the petitioner has suffered any individual loss

and he could have approached the Tribunal for Local Self Government against the laches on the part of the 1st respondent in not taking action against the complainant; the said argument does not appeal to reason.

27. Authorities are constituted under various enactments to see that the environment is protected and to see that the present topography which keeps the ecological balance is not disturbed. The purpose of these laws is to preserve nature for posterity. If the violation of these laws are allowed to become the order of the day, the existence of life would be at peril. Right to life guaranteed by our Constitution takes in innumerable rights, including the right to enjoy nature in the present form. Indiscriminate invasion of nature to the detriment of others is an invasion of right to life. Nature which is the property of the nation cannot be allowed to be scrambled by a minority violating all laws.

On a consideration of the entire materials now placed on record, this Court is of the definite view that the petitioner has succeeded in establishing his case.

In the result, the writ petition is disposed of directing the respondents 1 and 2 to stop all further constructions as per the permit bearing No.KRP1 318/2007 issued to the 4th respondent and to demolish the buildings constructed as per the aforesaid permit in violation of the CRZ Notifications.

Sd/-
A. V. RAMAKRISHNA PILLAI
JUDGE

krj

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P.A to Judge