

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

WEDNESDAY, THE 10TH DAY OF FEBRUARY 2021 / 21ST MAGHA, 1942

WP(C).No.24545 OF 2015(R)

PETITIONER:

SUMAN CHAKRAVARTHY, AGED 42 YEARS  
S/O. SUKUMARAN NAIR, SREEPADAM, ORIENT PARK,  
POPULAR ROAD, ERNAKULAM-682023.

BY ADV. DR.K.P.PRADEEP

RESPONDENTS:

- 1 UNION OF INDIA,  
REPRESENTED BY ITS SECRETARY, MINISTRY OF RAILWAY,  
RAIL BHAVAN, NEW DELHI-110001.
- 2 CHAIRMAN, RAILWAY BOARD,  
MINISTRY OF RAILWAYS, GOVERNMENT OF INDIA,  
RAIL BHAVAN, NEW DELHI-110001.
- 3 STATE OF KERALA, REPRESENTED BY ITS SECRETARY,  
DEPARTMENT OF HOME, GOVERNMENT SECRETARIATE,  
THIRUVANANTHAPURAM-695001.
- 4 CORPORATION OF KOCHI,  
CORPORATION OFFICE, SUBASH PARK ROAD,  
KOCHI-682011, REPRESENTED BY ITS SECRETARY.
- 5 HIGH COURT OF KERALA,  
REPRESENTED BY ITS REGISTRAR GENERAL,  
HIGH COURT, KOCHI-682031.
- 6 THE KERALA HIGH COURT ADVOCATES ASSOCIATION  
1ST FLOOR, EAST BLOCK, HIGH COURT OF KERALA,  
KOCHI-682031, REPRESENTED BY ITS SECRETARY.
- 7 THE SECRETARY TO THE GOVERNMENT OF KERALA  
PUBLIC WORKS DEPARTMENT, GOVERNMENT SECRETARIATE,  
THIRUVANANTHAPURAM-695001.

\* 8 LAWYERS ENVIRONMENTAL AWARENESS FORUM (LEAF)  
REGISTER NO. ER-344/97, KERALA HIGH COURT ADVOCATES'  
ASSOCIATION, HIGH COURT OF KERALA, ERNAKULAM, KOCHI-682031,  
REPRESENTED BY ITS PRESIDENT, ADV. SUNIL V. MOHAMMED,  
S/O V. K. MOHAMMED, VADASSERY HOUSE, ESRAA-E-74,  
VIKAS ROAD, ELAMAKKARA P.O, KOCHI-26.

\* ADDITIONAL 8TH RESPONDENT IS IMPEADED AS PER THE ORDER  
DATED 14.12.2015 IN I.A. NO.17379/15.

\*\* 9 THE WILDLIFE WARDEN,  
MANGALAVANAM BIRD SANCTUARY, DR. SALIM ALI ROAD,  
ERNAKULAM, PIN-682031.

\*\* ADDITIONAL 9TH RESPONDENT IS IMPEADED AS PER THE ORDER  
DATED 22/11/2019 IN I.A NO.2/2019.

R1 BY ADV. SMT. MINI GOPINATH, CGC  
R2 BY SRI. A. DINESH RAO, SC, RAILWAYS  
R3 & R7 BY SPECIAL GOVERNMENT PLEADER SRI. M.A.ASIF  
R4 BY ADV. SRI. P.K.SOYUZ  
R5 BY ADV. SRI. ELVIN PETER P. J.  
R6 BY ADV. SRI. M. P. ASHOK KUMAR  
R8 BY ADV. SRI.S.SUBHASH CHAND

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10-02-2021, THE  
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**JUDGMENT**

Dated this the 10<sup>th</sup> day of February, 2021

S.Manikumar, CJ.

Instant Public Interest Litigation has been filed challenging the inaction on the part of the respondents to implement the proposal for acquiring additional land for High Court of Kerala, to improve its parking facilities. Reliefs sought for in the writ petition are as under:

- (i) "To call for the records leading to Ext.P1 letter dated 23.08.2007 sent by the 5<sup>th</sup> respondent, High Court of Kerala, represented by its Registrar General, and Ext.P12 proceedings dated 29.07.2020 issued by the Divisional Railway Manager, Southern Railway, Thiruvananthapuram, and to issue a writ of mandamus or any other writs or order or direction to respondents 3 & 4, to provide adequate funds to pay the lease charges to the Railway, on surrendering their land having extent of 466.2 SQM in the northern boundary of the existing Salim Ali Road and direct them to implement the road widening scheme proposed by the Registry of the High Court of Kerala in Ext.P1 representation, at the earliest or within a time frame fixed by this Court, considering the facts and circumstances of the case.
- (ii) To issue a writ of mandamus or any other writs or direction or order directing the 3<sup>rd</sup> respondent, State of Kerala, to take appropriate steps to acquire enough and sufficient

land from the property now in possession of the railway, in the northern side of the High Court premises, comprised in Survey Nos.2495 and 2496 of Ernakulam Village of Kanayannur Taluk upto the platform of old railway station, for the development and improvement of infrastructure of the High Court of Kerala, including its parking area. Direct the respondents to pay cost of this proceedings.”

2. In support of the reliefs sought for, petitioner has raised the following grounds:

“(A) Evidently, the proposal of the High Court to widen the existing Salim Ali Road, in the northern side of the High Court building was positively considered by the Railway authorities, which is the custodian of the abutting land and Ext.P12 proceedings of the Indian railway is a self speaking document in this regard. However, neither the State Government nor the Corporation of Kochi is taking any serious concern on the demand of the High Court and the Lawyer Community.

(B) It is just and necessary to direct the 3<sup>rd</sup> and 4<sup>th</sup> respondents to take effective steps for widening the existing Salim Ali Road, in terms of the proposal of the High Court, which is accepted by the Railway in Ext.P12 proceedings and the State Government or the 4<sup>th</sup> respondent Corporation of Kochi be directed to deposit the required lease charge for the surrender of land covered by Ext.P12 proceedings of the Railway.

(C) In **All India Judges’ Association v. Union of India** reported in (2010) 14 SCC 705, the Hon’ble Supreme Court

reminded the Executive Authorities that justice delivery system is the bedrock of the Rule of Law, which is held to be the basic structure of the Constitution. In the absence of adequate judicial infrastructure, it would not be possible to sustain rule of law in this country and such infrastructures include physical infrastructures like buildings and incidental facilities like parking etc. The State Government was bound to follow the dictum of the Hon'ble Apex Court in its letter and spirit.

(D) As per the decision in the **All India Judges Association** case, the Hon'ble Apex Court categorically held that lack of resources and financial mobility cannot be a ground for denying the infrastructure facilities to the judiciary."

3. Brief facts leading to the filing of the writ petition are, in **All India Judges' Association v. Union of India** reported in (2010) 14 SCC 705, the Hon'ble Supreme Court reminded the executive authorities that justice delivery system is the bedrock of the Rule of Law, which is held to be the basic structure of the Constitution. Therefore, in the absence of adequate judicial infrastructure and facilities for proper functioning of the Court, it would not be possible to sustain the Rule of law and such infrastructures, including physical infrastructures like buildings, and incidental facilities like parking etc.

4. The High Court of Kerala has started functioning in the new building from February, 2006 onwards, and right from the beginning, the

deficiency of adequate parking area is one of the major difficulties being faced by the lawyers and their clerks, High Court staff, officials of Central and State Governments, visitors and litigants. The present parking facility in the High Court facilitates parking of below 200 vehicles only and due to excessive parking on the road side, particularly in the vicinity of the High Court, traffic congestions during office hours are a usual scenario.

5. To avoid congested parking of vehicle in and around the High Court, as per Ext.P1, the registry of the High Court put a proposal to widen the Salim Ali Road, on the northern side of the High Court building complex, by shifting the compound wall on the northern side of the said road towards the public drain running through the borders of the railway property. The said public drain is maintained by the Cochin Corporation and by putting slab over the drain, around 60 to 75 vehicles can be parked in the said extended area.

6. The proposal was accepted by the railway in Ext.P12 and subject to payment of lease charge of Rs. 59,60,570/- for a long term lease of land measuring 466.2 SQM. They have accorded sanction to surrender the aforesaid land to the Cochin Corporation to widen the road and reconstruct the boundary wall, above the public drain maintained by the Corporation. Ext.P1 proposal of the year 2007 was finally accepted by

railway in 2010, but so far neither the State Government nor the Cochin Corporation, respondents 3 & 4, did not take any action to implement the project and the situation of traffic congestion and inadequacy of parking area has been aggravated in the High Court Compound, to the extent of it affecting the security measures of the high institution.

6. Hence, the petitioner, who is a lawyer practicing in the High Court has filed this writ petition seeking for a direction through a writ of mandamus to respondents 3 and 4 to take appropriate steps to implement the proposal for widening Salim Ali Road, in compliance of the suggestion in Ext.P1 and the scheme offered by the railway in Ext P12.

7. Additionally, on the northern side of the High Court, Railway occupies and possesses more than 25 Acres of land, which was earlier utilized for running a Railway Station. These vacant areas are kept as idle and in an abandoned condition, and it is high time to consider acquiring a portion of the said land for improving the infrastructure and parking facilities of the High Court. From the northern boundary of the Salim Ali Road to Old Railway Station Platform, about 5 acres of land is available, as vacant now and this area is appropriate for infrastructural improvement of the High Court. This is the most suitable area and no other vacant area is available in the vicinity of the High Court to provide a composite parking

area exclusively for the High Court. Hence, the petitioner seeks for a writ of mandamus to the State Government to take urgent and effective steps to acquire a portion of the land available on the northern side of the High Court, which is now under the possession of Indian Railway, for the purpose of implementing a composite vehicle parking system to facilitate parking for the use of lawyers and their clerks, staff of the High Court and Law Officers of the Central and State Government and also to the officials and litigant public.

8. Providing adequate infrastructure for effective dispensation of Justice delivery system must be a priority for the State. State is bound to give proper resources for effective running of the High Court, which is the highest Judicial Institution in the State. Unless and until, this Court exercises its extraordinary jurisdiction under Article 226 of the Constitution of India, there will not be any final resolution for the issue of inadequate and insufficient parking facilities in the High Court compound. Hence, this writ petition.

9. The Divisional Engineer (Special Works), Divisional Manager Office, Southern Railway, Trivandrum Division, on behalf of respondent Nos.1 and 2, in his counter affidavit has contended that the decision of the Railway Board that property required for widening of the road can be



given to the Corporation of Cochin, on long term lease basis, was examined by the Railway Board and was informed to the High Court of Kerala, represented by its Registrar General, 5<sup>th</sup> respondent, vide letter dated 28.10.2009, in response to the letters issued by the Registrar General of this Court, respondent No.5, which states that respondent No.4, Corporation of Cochin would lay slabs on the public drain in the railway property situated by the side of Salim Ali road.

10. The 2<sup>nd</sup> respondent has further contended that he has informed the Corporation of Kochi, represented by its Secretary, 4<sup>th</sup> respondent, vide letter dated 23.2.2010 about the abovesaid decision that the property required for the purpose of widening of road in question, could be handed over to them, on long term lease of 35 years, on condition that they deposit the land leasing charges. As there was no response from the 4<sup>th</sup> respondent, the 2<sup>nd</sup> respondent had again issued a reminder letter dated 29.7.2010 (Exhibit-P12) to the 4<sup>th</sup> respondent, requesting them to pay the amount for the purpose of obtaining further approval from the General Manager and final sanction from the Railway Board. Even though early action was solicited, there was no response. from the 4<sup>th</sup> respondent.

11. The 2<sup>nd</sup> respondent has further contended that he has informed the matter to the Registrar (Administration) of this Court, by letter dated

21.11.2011. He again reminded the 4<sup>th</sup> respondent vide letter dated 31.11.2011 regarding the payment of lease charges for the purpose of handing over of property on lease.

12. He has further contended that the Hon'ble Minister of State (I/C), Consumer Affairs & Food and Public Distribution, New Delhi, had written to the Chairman of Railway Board, enclosing a representation of the President of the Kerala High Court Advocates Association, respondent No.6, requesting to accord sanction to the Corporation to lay slabs over public drain in the railway property. Thereafter, the Chairman, Railway Board, has informed the Hon'ble Minister vide letter dated 13.7.2012 that the matter was already examined and the Railway Board has proposed to give 466.2 sq.metres (11.522 cents) of railway property on long term lease basis for 35 years, to the 4<sup>th</sup> respondent, Corporation of Kochi. It was reiterated that the 4<sup>th</sup> respondent was requested to give consent and sign the draft agreement for lease proposal, before further action could be taken.

13. The 2<sup>nd</sup> respondent has further contended that even after the lapse of 3 years, there has been no response from the 4<sup>th</sup> respondent, despite various correspondences issued by the 2<sup>nd</sup> respondent. The land in question having an extent of 11.522 cents in Survey No.2495 of

Ernakulam Village, Kanayannur Taluk can be permitted to be used by the 4<sup>th</sup> respondent, only on long term lease basis, as per the policy of the Railways that is in vogue. Due to the efflux of time, the matter would have to be reexamined, insofar as the lease charges are concerned, that too, after getting a report from the District Collector, regarding the present cost of land in the locality. Similarly, the 4<sup>th</sup> respondent would have to bear the entire construction cost, for re-construction of the compound wall of the Railways, if the existing one has to be broken down.

14. Railway, in principle, has agreed to give the land to the Government of Kerala on long term lease basis for 35 years. Construction of the compound wall and development of parking place will be done by the PWD.

15. On 20.02.2017, a memo was filed by the learned Senior Government Pleader about the minutes of the meeting held in the Chambers of Advocate General on 18.02.2017, as per the directions issued by this Court on 9.2.2017. Said minutes of the meeting read thus:

“It is decided that the Railway is prepared to stick on its earlier decision on 23.2.2010 to give an area of 466 Sq.M. of land including the drainage required for widening the Salim Ali road along the northern side of the High Court in lease, subject to escalation if any as per the present market value. The further requirement of 1134 sq. metres of land including drainage along

the western side of the Salim Ali Road and whether the rate fixed in 2010 can be waived or relaxed will have to be considered by the Railway Board, as required by the State Government. The land to be leased for making as parking ground shall be in the name of the Government of Kerala. The Railway in principle has agreed to give the land to the State Government on a long term lease basis for 35 years. The decision on this matter has to be taken as quickly as possible. The work for construction of the compound wall and developing the parking space will be done by the Public Works Department. The parties concerned shall take urgent measures for implementing the same. The decision taken will be subject to further orders of this Hon'ble High Court.

The meeting ended at 3.30 PM.

C.P.SUDHAKARA PRASAD  
ADVOCATE-GENERAL"

16. On 28.03.2018, the learned Special Government Pleader has filed a memo enclosing the survey sketch prepared by the District Survey Superintendent as also the lease rent report submitted by the District Collector, in compliance with the order dated 14.3.2018 of this Court, wherein revenue authorities were directed to fix the lease rent of the land required for providing parking space in the land owned by the railway lying along the Salim Ali road on the northern side of the High Court complex comprised in Survey Nos.2495 and 2496 of Ernakulam village in Kanayannur taluk. Accordingly, the survey and demarcation were done by

the District Survey Superintendent and accordingly, vide letter dated 17.03.2018, the District Collector has submitted a report. Said letter is extracted hereunder:

Collectorate, Ernakulam  
Dated : 17/03/18

L9-175531/18

From

The District Collector,  
Collectorate, Ernakulam.

To

The Advocate General of Kerala,  
AG Office, Ernakulam.

Sir,

Sub:- Fixation of Lease rent as per interim order in WP(C) 24545/2015/F4 on 14/03/18 - reg:

Reg:- Letter No. WP(C) 24545/2015/F4, dated : 14/03/18 of M.A.Asif, Special Government Pleader to Addl. AG.

Kind attention is invited to the subject and reference cited above. It is informed that, the rules for assignment of land within Municipal and Corporation areas 1995 stood amended as per the G.O(P) No.64/2016/RD, dated 28/01/16. With this amendment, the lease rent of the land leased out to public sector institutions of the state government is fixed as 2% of the market value of the land per annum as per the substitution namely 12(i) made in rule 12(5) of the rule of assignment of land within Municipal and Corporation areas 1995:

In the above context, the lease rent per annum is,-

= Total extent of land (in areas) x (Market value per are) x 2%

$$\begin{aligned} &= 4.47 \times 41,49,398 \times 0.02 \\ &= \text{Rs.}3,70,956/\text{- per are} \end{aligned}$$

Hence the lease rent per Are per Annum of the land comprised in survey no.2495 and 2496 in Ernakulam village, Kanayanoor taluk may be fixed as Rs.3,70,956/-.

Yours faithfully,

Sd/-  
District Collector"

17. Learned Special Government Pleader, Office of the Additional Advocate General, has filed a statement dated 31.01.2019, which reads thus:

"In interim order dated 26.07.2018, this Hon'ble Court had directed the District Collector to report the basis on which the lease rent was arrived at as reported in his communication dated 17.03.2018. Following the interim order passed by this Hon'ble Court and also taking into account the importance of the project, as suggested by the learned Advocate General in his communication to the Government, the Additional Chief Secretary (Home 85 Vigilance) convened a meeting of all the stakeholders in his chambers at Government Secretariat, Thiruvananthapuram on 09.08.2018 at 11.a.m. to discuss the implementation of the project taking into confidence all the stakeholders.

2. The meeting was attended by officials from the railway, PWD, District Administration, Ernakulam, High Court of Kerala and the Principal Secretary, Transport Department and other top officials of the State. In the meeting, the District Collector was directed to submit a revised report regarding computation of the lease rent of

the land as directed by this Hon'ble Court in order dated 26.07.2018. It was decided in the meeting that the project shall be implemented strictly in accordance with the sketch approved by this Hon'ble High Court. The Corporation of Cochin in EXT.P15 communication had expressed their willingness to paving slabs over the drain once the land is made available and, therefore, it was decided that the said work of pave slabs over the drain shall be executed by the Corporation of Cochin. So also, the shifting of the compound wall shall also be done as per the orders of this Hon'ble Court. The Home Department will move for implementation of the project by following the appropriate procedures in Government.

3. In compliance with the direction of this Hon'ble Court dated 26.07.2018 and also in terms of the decisions arrived at in the meeting convened by the Additional Chief Secretary dated 09.08.2018, the District Collector, Ernakulam had prepared the revised valuation for the 4.47 Ares of land comprised in Sy.No. 2495 & 2496 of Ernakulam village which is required for the project and accordingly the lease rent as per the revised computation is arrived at Rs.2,96,765/- per annum."

18. During the pendency of the writ petition, Lawyers Environmental Awareness Forum (LEAF) has filed I.A. No.17379 of 2015 for impleading them as additional 8<sup>th</sup> respondent in the writ petition, which was allowed on 14.12.2015. The Honorary Secretary of LEAF has filed an additional counter affidavit, wherein it was contended as under:

- "A. Lawyers Environmental Awareness Forum had filed W.P.(C). No. 30730/2009 before this Honourable Court seeking a Writ of Mandamus to respondents 1 and 2 therein i.e., the Southern Railway and the Area Manager, Southern Railway not to destroy the forest in and around Mangalavanam and not to use the land in and around Mangalavanam for any non-forest or development purpose, other than to protect the forest and the Bird Sanctuary. A Writ of Mandamus was also sought against respondents 3 to 5 therein i.e., the State of Kerala, the Chief Conservator of Forest (Custodian of Ecologically Fragile Land) and the Wildlife Warden, Mangalavanam Bird Sanctuary, to protect Mangalavanam area and its buffer zone from any destruction or non-forest activity and to take steps to prevent any such activity and encroachment.
- B. The said Writ Petition was filed when it was seen that Southern Railway Authorities had started clearing the land adjacent to Mangalavanam Bird Sanctuary, which had over years grown several trees and undergrowth and had become part of the natural vegetation in the buffer zone of Mangalavanam Bird Sanctuary.
- C. After constitution of the National Green Tribunal the said Writ Petition was made over to the Chennai Bench of that Tribunal and was numbered as O.A. No.447/2013 (SZ), which was later on re-numbered as O.A. No. 587/2018 before the Principal Bench of the National Green Tribunal, New Delhi.
- D. Pending consideration of the said O.A. No.447/2013, the Assistant Conservator of Forest, Nature Study Centre, Kalady



and Wildlife Warden, Mangalavanam Bird Sanctuary filed an affidavit therein stating inter alia, that it is necessary to protect the ecologically sensitive ecosystem of the surrounding land of the Mangalavanam Bird Sanctuary for safeguarding the ecosystem of Mangalavanam Bird Sanctuary and produced the Proposal for Declaration of Eco Sensitive Zone Around Mangalavanam Bird Sanctuary submitted by the Kerala Forest and Wildlife Department to the Government of India. The Annexures along with the above proposal are not relevant to the Writ Petition and are not produced.

- E. It can be seen from Clause 9 in the Proposal for Declaration of Eco-Sensitive Zone Around Mangalavanam Bird Sanctuary by Kerala forest and Wildlife Department [Ext.R8(b)] that the studies and census reveal drastic depletion in number of bird species, due to variety of biotic interference. The problems in the surrounding area of the PA (Protected Area) is detailed in Clause 13 thereof. Clause 13(1) details about the obstruction to movement of birds due to high rise buildings close to the Bird Sanctuary and the necessity to preserve the present areas still remaining open for the birds to rise slowly, soar and fly and states that if this area is also used for developmental activities it will adversely affect movement of birds. Clauses 13(v) and (vi) details about the adverse effects of sound pollution, parking and vehicle traffic and specifically adverts to the parking in Dr. Salim Ali Road during daytime. It is stated therein that the vehicle movement and the activities of people is a notable disturbance to the birds

visiting the Sanctuary for nesting and feeding. The proposal includes an extent of 3.74 ha of land on the southern side of Mangalavanam Bird Sanctuary of Southern Railway which is part of the Ernakulam Railway Garage and the area owned by Hindustan Petroleum.

- F. It is pertinent to point out at this stage, the First Management Plan for Mangalavanam Bird Sanctuary produced as Exhibit P-8(a) along with the earlier counter affidavit dated 15.12.2016 filed by Additional 8<sup>th</sup> respondent (LEAF). Exhibit R8(a) First Management Plan also points out at internal page 22 thereof the problem caused due to parking and vehicular traffic in Dr. Salim Ali Road during daytime. At internal page 26 of the Exhibit R-8(a), in Clause (m) under the head Strategies and Actions to be adopted in the Core Zone of the protected area, the problems of day time parking and movement of vehicles is highlighted and it is suggested that attempts be made to develop parking space elsewhere and that the road may be kept quite and clean. In internal page 29 of Exhibit R-8(a) clause (b) under the head 'Strategies and Actions for Ecological Buffer Zone' it is stated that some of the areas that are currently under the control of Indian Railway, BPC, Revenue Department and Kochi Corporation be annexed to the Mangalavanam protected area to form a buffer zone.
- G. Subsequently, Central Government have published a draft Notification under Section 3 of the Environment (Protection) Act, 1986 and Rule 5 of the Environment (Protection) Rules, 1986, to notify the area detailed therein around the

boundary of Mangalavanam Bird Sanctuary and its Eco-Sensitive Zone, in the Gazette of India, Extraordinary, Part II, Section 3, Sub Section (II), No. 2463 dated 29.8.2017.

- H. It can be seen that abovesaid notification projects the need to conserve and protect the areas adjoining to Mangalavanam Bird Sanctuary as Eco-Sensitive Zone by prohibiting or regulating certain activities which are detrimental for the existence of the Mangalavanam Bird Sanctuary. It may be noted that as per the boundary said Draft description in Annexure 1 of the Notification the southern side of the Eco-Sensitive Zone is the Salim Ali Road which is extending to the area having the Multi-storeyed building of the Honourable High Court of Kerala.
- J. The Hon'ble National Green Tribunal has disposed the Original Application No. 587/2018 (Earlier O.A. No.447/2013) (SZ) as per order dated 30.1.2019, noting the draft notification For Eco-Sensitive Zone to be published, holding that it is not permissible to carryout any construction activity in view of the statutory provisions of the Wildlife Protection Act 1972 as well as Environment Protection Act 1986. No appeal has been preferred against this order according to this respondent and the order has become final.
- K. In the facts and circumstances of the above case, it is absolutely essential that the Mangalavanam Bird Sanctuary be made a party to this Writ Petition so as to ensure sufficient safeguards to the Wildlife Warden, Sanctuary in the matter including prohibition of any construction in the Eco Sensitive Zone and declaring the said area as 'No Horn Zone'.

M. While considering, this Court may also take note of the possibilities of above Writ Petition, this having automated multi-level car parking system within the premises of this Court, in the parking area before the Chamber Complex and also in the areas where old buildings are to be demolished within the premises. It may also be fruitful to consider the possibility of annexing the area housing the police quarters and the sub jail on the eastern side of the High Court premises for expansion including sufficient multi-level car parking facility for the High Court and the Lawyer community. This area could be used exclusively by the lawyers and staff of the High Court, whereas it may not be possible to insist on such exclusive use in public roads. This may be a better and permanent solution for the parking problems faced in the High Court. It is understood that there is a proposal to move the Sub Jail from the existing place and many of buildings in the Police Quarters is in a dilapidated condition. This Court may also consider the possibility of having parking on the western side, outside the boundary wall of the Judicial Academy/ Ram Mohan Palace where private buses are being parked now. The private buses could be parked on the further western side of the road if the encroachers are removed. Based on the above grounds, they have sought for a dismissal of the writ petition."

19. Along with the counter affidavit, Wildlife Warden, Mangalavanam Bird Sanctuary, Dr. Salim Ali Road, Ernakulam, respondent No.8, has produced a proposal for declaration of Eco-Sensitive Zone around

Mangalavanam Bird Sanctuary (MBS) as Exhibit-R8(b). Relevant portion of Clause (13) of the proposal is extracted hereunder:

**"13. Problems in the surrounding area of the PA**

The major threat that prevails in the surrounding area of the PA (protected area) is the incompatible land use that would eventually affect the biodiversity of the PA. The immediate surroundings of Mangalavanam have become a bustling centre of real estate development. A few large skyscrapers are being built in the area and several more are proposed. A large residential township, almost bordering the sanctuary, is also being proposed in the name of eco-city. The existing land use pattern in the surrounding area of MBS have following detrimental effects.

**(i) Obstruction to movements of birds:**

The high rise buildings close to the sanctuary interrupt proper orientation, take off and landings. Most of the buildings that have come up recently in the area are 7-8 storied and are close to the bird sanctuary. At present some area is still open and birds can have good sight of the areas ahead, rise slowly, soar and fly to other locations for their daily and seasonal routine movements for foraging and other activities. If this area is also used for developmental activities, it will adversely affect movement of birds.

xx xxxxx xxxxxxxx

**(vi) Parking and vehicular traffic.**

During the day, Dr. Salim Ali Road leading to the MBS is being used as parking area for two and four wheelers. On a busy

day, about 150 cars and few two wheelers could be seen parked along the road, which is a recent development. The vehicle movement and the activities of people is a notable disturbance to the birds visiting the sanctuary for nesting and feeding.”

20. Respondent No.8 has also produced along with his counter affidavit, the draft notification regarding Eco-Sensitive Zone around Mangalavanam Bird Sanctuary public in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (II), No.2463 dated 29.08.2017 [Ext.R8(c)], the relevant portion of which reads thus:

**“4. List of Activities prohibited or to be regulated within the Eco-sensitive Zone:**

All activities in the Eco-sensitive Zone shall be governed by the provisions of the Environment (Protection) Act, 1986 (29 of 1986) and the rules made there under including the Coastal Regulation Zone Notification, 2011 and the Environment Impact Assessment Notification, 2006 and other applicable laws including the Forest (Conservation) Act, 1980 (69 of 1980), the Indian Forest Act, 1927 (16 of 1927), the Wildlife (Protection) Act, 1972 (53 of 1972) and amendments made thereto and be regulated in the manner specified in the Table.

XXXX XXXXX XXX

**Boundary description of Mangalavanam Bird Sanctuary and its Eco-sensitive zone.**

The Northern boundary of the proposed Eco-sensitive zone consists of the Pachalam road and the Pachalam overbridge. Hence, the boundary passes through at a highly populated residential area of Ernakulam city and thence Mathai-Majooran road forms the Eastern boundary of the

proposed Eco-sensitive Zone which is contiguous with an area which is highly populated. Thence on the Southern side of the proposed Eco-sensitive zone is the Salim Ali road which extends to an area having the the multi storied building of Honourable High Court of Kerala and a network of roads of the Ernakulam city and thence the Abraham-Madamakkal Road and the Chathiyath Road forms the western boundary of the proposed Eco-sensitive zone. The Western boundary continues to the Vembanadu lake which touches Arabian sea. The Mangalavanam Bird Sanctuary and the proposed Eco-sensitive Zone area completely falls in Ernakulam Village in Kanayannoor Taluk of Ernakulam District.”

21. The National Green Tribunal, Principal Bench, New Delhi by order dated 30.01.2019 [Ext.R8(d)] has dismissed Original Application No.587/2018 filed by the 8<sup>th</sup> respondent LEAF, relevant portion of which is extracted hereunder:

- “1. This matter was initially filed before the Kerala High Court in the year 2009 and transferred to this Tribunal vide order dated 18.11.2013. The grievance in the application is that the forest land which is part of protected forest, adjacent to Mangalavanam Bird Sanctuary should not be used for construction activities.
2. The Applicant states that the area is notified under Section 18 of Wildlife Protection Act, 1972 vide Notification dated 31.08.2004. It is a wetland with natural forest, greenery and Bird Sanctuary. Railways Authorities have started using bulldozer and mechanical devices which is not permissible and is against the Forest Management Plan.
3. The matter has been considered on last more than 30 hearings

in the last five years. Brief reference may be made to some of the proceedings.

4. On 06.09.2016, the Tribunal noted that the area was a Bird Sanctuary and the stand of the State of Kerala was that the area needs to be protected. The Tribunal directed the State of Kerala to file an affidavit whether it is proposed to be declared as eco-sensitive area. On 03.10.2016, it was noted that the proposal was forwarded to MOEF on 15.02.2013 by State of Kerala proposing the area to be declared eco-sensitive zone. On 08.08.2017, statement of learned Counsel for MOEF was recorded that the draft Notification has been approved which was to be published within two weeks.
5. It is today stated that even after more than one year, the Notification has not been finalized.
6. In view of the above, having regard to the fact that the area is forest land and a Bird Sanctuary, we hold that it is not permissible to carry out any construction activity in view of statutory provisions of the Wildlife Protection Act, 1972 as well as Environment Protection Act, 1986."

22. Case of the High Court of Kerala, through its Registrar General, is as under:

(i) During construction of the new High Court Complex, Committee in charge of the High Court Buildings, in its meeting held in June, 2002 resolved as follows:

"Considering the fact that the new High Court Complex is surrounded by Buildings, public roads on all sides except on the north and also in view of the fact that garages and other



facilities provided on the ground have made the premises cramped and virtually no space is available for the staff to park their vehicles, the Committee felt it necessary to procure more vacant land from the available land on the northern side. The Committee also felt the imperative necessity to procure vacant land, in particular, to provide moving space in case of any emergency due to accident? or natural/unexpected calamity. Hence, it is resolved to direct the Registry to take necessary steps to procure at least 10 acres of vacant land available on the northern side of the High Court Complex. "

(ii) The said resolution of the Committee was approved by the Administrative Committee and then the Hon'ble the Chief Justice. On the basis of the said resolution as per the letter dated 23.7.2002, the General Manager, Southern Railway was requested to consider whether an extent of 10 Acres of land in Survey No. 2495 of Ernakulam village lying immediately on the northern side of the new High Court can be transferred to the High Court and that the High Court, in return, shall persuade the State Government to transfer an equal extent of land abutting the Railway property lying on; the north-east of 'Mangala Vanam'.

(iii) In the aforesaid letter, it was clearly pointed out the space constraints faced by the High Court. The new High Court building was constructed in a comparatively small plot in which the building occupies almost the entire area. There are garages on the west, north, and eastern side on the ground with an access road all around. Steps for providing essential amenities such as septic tank, generator room and fire-fighting services etc. are also required apart from the parking area to be provided to the vehicles of the

Hon'ble Judges, the officers, staff and lawyers. There is no possibility of getting more space on the western, southern and eastern side. There is no open space even for a use in an emergency situation like fire or an accident. On the northern side, there is open vacant land belonging to the Railway and there is no building except the remains of the old Railway Goods Shed which has been lying vacant for a long years. It was also pointed out that there is a large extent of revenue land measuring more than 22 acres on the eastern side of the 'Mangala Vanam' and the northern side of the Railway property. This area would be more useful to Railway than the area in their possession at present immediately on the northern side of the new High Court Building.

(iv) In reply to the above, the General Manager by his letter dated 16.8.2002 has requested the High Court to send the plan of the present. High Court area and the land required for the High Court from the Railway land including the location and extent of the land which would be made available to the Railway in exchange of the Railway land, to study the feasibility of the proposal.

(v) The District Collector had also addressed the Divisional Railway Manager on 28.8.2003 stating that the Revenue Divisional Officer, Fort Kochi has made necessary enquiry and Conducted site inspection to identify the vacant land to be made available for the purpose. An extent of 1.1210 hectares (2 Acres 77 cents) of land additionally required to facilitate for the parking of 500 vehicles was identified and earmarked and the south portion of the Railway land comprising in Survey Nos. 2495 and 2496 of Ernakulam Village. A sketch prepared showing the land identified to be transferred was also enclosed along with the said letter.

(vi) Subsequently, the Registrar, High Court of Kerala, as per letter dated 10.12.2004, addressed the Chief Secretary, Additional Chief Secretary in charge of the Home Department and the Principal Secretary, Revenue Department for the urgent steps to annex certain extent of land from the Railway property comprising in Survey Nos. 2495 and 2496 of Ernakulam Village.

(vii) It is also submitted that high level discussions were held by the Hon'ble the then Chief Justice with the Hon'ble Chief Minister in this regard. Thereafter, in the meeting of the Building Committee held on 16.12.2004, the District Collector and the Tahsildar presented a sketch showing the area of the Railway land proposed to be procured for the High Court having an extent of around 8 acres. The District Collector was authorized to proceed with the proposal to procure the proposed area of land from the Railway. Hence, the District Collector forwarded a sketch on 23.12.2004 showing the area of the land to be taken from the Railway to the Principal Secretary, Revenue Department and requested him to take necessary steps to transfer the said area to the High Court.

(viii) In the meantime, certain adverse and exaggerated reports appeared in the media regarding the annexation of the portion of Railway land to the High Court for parking purpose apprehending that the 'Managala Vanam' is also included in the proposed area. Based on this report, the environment monitoring forum also addressed the Chief Justice enclosing the news reports appeared in the media, requesting to remove the apprehension of public in this regard. But the fact is that proposed area neither part of 'Mangala Vanam' nor it lies adjacent to 'Mangala Vanam'. The Principal Secretary to Government informed the Registry on

8.6.2005, that the Chief Engineer, Southern Railway has intimated that the land in question is required to be developed for transshipment yard for international generator transshipment. Hence, the Railway is not willing to spare any land from the area for the use of the High Court. Thereafter, the High Court did not pursue the matter further.

(ix) The new High Court Building was inaugurated in 2006. It was ordered to demolish all the old and tiled roof buildings on the southern side of the old High Court Building including the Bar Association Building by shifting the office to the new High Court Building. All the office viz. Post office, General Record Section, CMP Section, Advocate Clerks' Association and the Bar Association etc. were shifted to the new High Court Building. In the meantime, the Kerala High Court Advocates' Association managed to obtain a Government Order to construct a multi-storeyed chamber complex in the area earmarked as parking space. After the discussion and deliberations, the Association was permitted to construct a chamber complex at the south western side of the parking area of the old High Court Building. Therefore, the parking area of the High Court was considerably reduced and the general public used to park their vehicles on either side of the roads surrounding the High Court Building.

(x) Entry to the High Court Complex through its northern gate is exclusively reserved for the vehicles of the Hon'ble Judges. The road is very narrow, in addition to this, the parking of the vehicles of the Advocates and the litigants cause considerable inconvenience for the entry of vehicles of the Hon'ble Judges to the High Court Complex. Hence, High Court on 7.9.2005 addressed the

Local Authority to explore the possibility of widening the said road under GIDA's project/scheme. Considering the inconvenience faced by Hon'ble Judges for the entry to the High Court Complex, through the Salim Ali Road running from east to west direction on the northern side of the new High Court Building, the District Collector was addressed to make necessary arrangements for widening the Salim Ali Road. The District Collector took up the matter with the Railway authorities for widening the said road. The High Court also addressed the Divisional Manager, Southern Railway as well as the Area Manager on 26.06.2007 stating that congestion on the Salim Ali Road can be eased considerably if the present temporary compound wall erected by the Railway on the northern side is judiciously shifted beyond the drainage running on the southern side of the wall and having concrete slab over that drainage.

(xi) The meeting of Building Committee with the District Collector, Secretary, Corporation of Cochin, Senior Divisional Engineer, Southern Railway, Area Manager, Southern Railway, Assistant Divisional Engineer, Southern Railway, Executive Engineer, PWD etc. were held on 16.7.2007. In the meeting, the necessity for widening the Salim Ali Road by shifting compound wall on the northern side was discussed. The Divisional Engineer pointed out that the narrow strip of land in the northern side in between the compound wall and the drainage has an area of 17 cents and for transfer of the Railway land, permission from the Railway Board is required. The District Collector pointed out that widening the road is beneficial to the Railway and instead of transferring the property to the Corporation, if permission is granted to widen the road by shifting the compound wall beyond the drainage, Corporation is prepared to meet the expenses for the same and the title of the

property need not be transferred to the Corporation. The Committee impressed upon the Senior Divisional Engineer, the necessity for widening the Salim Ali road and the advantage for the Railway in getting the road widened by the Corporation. The Senior Divisional Engineer promised that he would impress upon the higher authorities with the advantages to the Railway in granting permission to the Corporation to widen the Salim All Road by shifting the compound wall beyond the drainage, if the Corporation makes a request for the same. The Corporation has agreed to put up the said proposal. The High Court also addressed the Chairman, Railway Board on 23.8.2007 requesting to accord sanction to lay slab over the public. drain in the Railway land besides the Salim Alim, Road for widening the road as proposed by the Corporation. Several reminders were sent to the Chairman, Railway Board from the High Court. On 29.07.2010, the Divisional Railway Manager has forwarded a copy of the letter addressed to the Secretary, Corporation of Cochin, stating the demand of payment of Rs. 59,60,570/- towards the lease charge of land measuring 466.2 sq.m for widening the Salim Ali Road.

(xii) It is submitted that the above said proposal for laying slabs over the public drain by shifting the compound wall beyond the drainage, the Corporation has undertaken to meet the expenses for the same. Widening of the Salim Ali road is beneficial to the railway also. Apart from that, title of the property owned by the railway need not be transferred to the Cochin Corporation."

23. Corporation of Kochi, respondent No.4, has sent a letter to the Divisional Manager, Southern Railway, vide Ext.P15 dated 28.07.2007

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requesting to take necessary steps for widening of Salim Ali road. Said letter is extracted hereunder:

"MOP2-22976/06

28.07.07

Secretary

Divisional Manager,  
Southern Railway,  
Trivandrum

Sir,

Sub: Cochin Corporation-Town Planning-Widening of Salim Ali road-reg.  
Ref:- Decisions of meeting held at Hon'ble High Court on 16.07.07.

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As per reference cited above the Registrar General of Hon'ble High Court has directed the Secretary, Corporation of Cochin, to try for the widening of Salim Ali road, which is at the northern side of High Court complex in order to reduce the traffic congestion near the High Court premises. It is also directed to contact the D R M in this regard. So you may please permit the Corporation to lay slabs on the drainage and to make it suitable for the parking of vehicles.

Hence, I once again request you to take necessary steps to give direction to the Railway Area Manager to permit the Corporation to do the work as desires by the Hon'ble High Court.

Yours faithfully,  
Secretary.

Encl: Minutes of the meeting held at Hon'ble High Court.

24. The Divisional Railway Manager, Southern Railway has responded positively on the above submissions made by the Cochin Corporation, respondent No.6, and Registrar General, High Court of Kerala,

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and accepted to the proposal made earlier and requested the Cochin Corporation for shifting the wall towards the public drain and reconstruct the wall at the cost of Corporation. Said communication (Ext.P16) is extracted hereunder:

"D.O.NO.V/W.277/Policy/G/Tempy.

Dated: 17.08.07.

Dear Shri Somasundaram

Sub:- Cochin Corporation - request for widening of Salim Ali Road, in front of High Court of Kerala, Ernakulam.

Ref::- This office letter of even No. dated 13.08.07.

This is further to my letter cited above (copy enclosed for ready reference).

Yesterday, the undersigned attended the meeting called for by their Lordships of the High Court of Kerala to review further the progress made. It was mentioned during the meeting that if relinquishment of-land is not possible, atleast permission may be given to the Corporation of Kochi to re-fix the railway boundary wall of ERG in such a way that the drain will fall outside the compound wall so that the Corporation can suitably cover it and broaden the Salim Ali road in front of the High Court of Kerala. If necessary we can even ask the Corporation to construct the wall at the Corporation's cost without forfeiting Railway's right to that stretch of land which has 'been made available to the Corporation.

Their Lordships have ordered urgent attention to the matter. Hence this DO letter for PCE's kind consideration please.

With kind regards,

Yours sincerely,  
(Titus P. Koshy)



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Encl: As above.

Shri V.Somasundaram,  
PCE/MAS.

25. Letter sent by the Registrar General dated 23.8.2007 (Ext.P1) is extracted hereunder:

"No.J1-32842/2002

Dated : 23.08.2007

From

THE REGISTRAR GENERAL OF THE HIGH COURT

To

The Chairman  
Railway Board, Railway Bhavan,  
Rasiama Road,  
New Delhi-110001.

Sir,

Sub:- High Court Complex- Widening of Salim Ali Road situate behind the High Court building-reg.

I invite your kind attention to the following:

A nine storied High Court Complex in Kochi was inaugurated in February, 2006, and ever since the High Court of Kerala is functioning in the building. The road on the northern side of the High Court Complex is known as 'Salim Aii Road', which on the north is separated by a railway property. Entry to the High Court Complex through its northern gate is exclusively reserved for the vehicles of the Hon'ble Judges, for which such vehicles have to pass through the Salim Ali Road. The road is too narrow and, further, on account of blockages caused by parked vehicles of advocates and litigants, very often, considerable inconvenience is caused to the Hon'ble Judges in gaining entry to the High Court Complex. The District Authorities and Corporation of Cochin being made aware of the ensuing difficulties faced by the Hon'ble Judges have presented a proposal

for widening of the road by laying slabs over a public drain running through the railway land situated on the north of the road. On laying of slabs over the public drain running through the borders of railway land touching the road that area can be profitably used for parking of vehicles, which in turn would reduce the traffic congestion and ease the difficulties faced by the Hon'ble Judges in gaining entry to the High Court Complex through its northern gate. The Corporation of Cochin has already moved the Divisional Manager, Southern Railway, Thiruvananthapuram, seeking permission to lay slabs over the drain for widening the road. Since the drain is passing through the railway land, it is understood that sanction at your level is essential for the permission sought for.

I may inform that the widening of the Salim Ali Road, as proposed by the Corporation of Cochin, by laying slabs over the drain running through the railway land, will not cause any loss to the Railway but only add to its value and utility. The public drain running through the border of railway land touching the existing Salim Ali Road has to be preserved, and as such other than laying of slabs over it for widening the road no other activity is possible there. Widening of the road as proposed by laying of slabs over the drain will greatly benefit the Railway for developing the land under its possession which for the last fifty years remain totally unattended. Proposal of the Corporation of Cochin for widening the Salim Ali Road is an urgent necessity to remove the difficulties faced by the Hon'ble Judges to reach the High Court, and its acceptance by the railway will be advantageous both to the High Court and Railway.

I, therefore, request you to accord sanction to the Corporation of Cochin to lay slabs over the public drain in the railway land situate beside the Salim Ali Road for Widening that road, as desired by the Hon'ble High Court.

Yours faithfully,

S.S. Satheesachandran,  
Registrar General.

26. The Registrar General, High Court of Kerala, has sent two reminders to the Chairman, Railway Board, requesting a speedy action in the proposal issued earlier. Letters sent by the Registrar General (Ext.P2 & P3) are extracted hereunder:

**Ext-P2**

Dated : 23.11.2007

No.J1-32842/2002

From

THE REGISTRAR GENERAL OF THE HIGH COURT

To

The Chairman  
Railway Board, Railway Bhavan,  
Rasiama Road,  
New Delhi-110001

Sir,

Sub:- High Court of Kerala- Widening of Salim Ali Road by refixing the compound wall beyond the drain passing through the Southern Railway land - reg.

I invite your kind attention to the letter under reference.

The High Court has made a request to the Railway Board to accord sanction to the Corporation of Kochi to lay slabs over the public drain in the Railway land situate beside the Salim Ali Road and to re-construct the compound wall of the Railway property beyond the drain, for widening of the Salim Ali Road. The compelling circumstances for widening of the road and also the difficulties faced by the High Court on account of the narrow road viz. 'Salim Ali Road' as it exists now have been stated in the previous communication. The advantages which the Railway will have in according sanction to the proposal for widening of the road, with the entire expenditure thereof to be met by the Corporation has also been explained in detail.

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Kindly treat the matter as more urgent, as the difficulties presently faced by the High Court on account of the narrow road are continuing unabated.

An early positive reply is solicited.

Yours faithfully,  
S.S. Satheesachandran,  
Registrar General.

**Ext.P3**

"No.JI-32842/2002

Dated 07.04.2008

From

THE REGISTRAR GENERAL OF THE HIGH COURT

To

The Chairman,  
Railway Board, Rail Bhavan,  
Raisana Road, New Delhi-110001

Sir,

Sub:-High Court of Kerala- Widening of Salim Ali Road by refixing the compound wall beyond the drain passing through the Southern Railway land - Regarding.

Ref:- High Court letter of even No. dated 23.08.2007 and 23.11.2007.

This has reference to the letters cited above. The matter related to the request of the High Court to accord sanction to the Corporation of Kochi, to lay slabs over the public drain in the Railway land situated beside the Salim Ali Road and re-construct the compound wall of the Railway property beyond the drain, for widening the Salim Ali Road on the northern side of the High Court complex is pending consideration of your office. This office has already stated the compelling circumstances for widening of the road and also difficulties faced by the High Court on account of the abovementioned narrow road in the previous communications. The advantages which the Railway will have in according sanction to the proposal for widening of the road, with the entire expenditure thereof to be at by the Corporation of Kochi have also been explained in detail.

Therefore, I am to request you once again to treat the matter most urgent so as to enable the Corporation of Kochi to execute the work at the earliest.

Yours faithfully,

S.S.SATHEESACHANDRAN  
Registrar General"

27. Since the matter was pending before the Railway Board, in the meanwhile, the Kerala High Court Advocates' Association, respondent No.6, made a representation (Ext.P4) to the Registrar General of High Court of Kerala, stating about the inconvenience of parking vehicles in the High Court Compound. Said letter is extracted hereunder:

"THE KERALA HIGH COURT ADVOCATES' ASSOCIATION  
Reg. No. ER 931/2004  
High Court Building, Kochi - 682 031  
Ph: 2393244. Fax : 0484-2394435  
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To

18-06-2010

The Registrar General,  
High Court of Kerala  
Ernakulam.

Sir,

Sub:- Widening of Salim Ali Road situated behind the High Court-  
by refixing the compound wall beyond the drain passing through  
the land belonging to the railway regarding.

Parking of vehicles is a major problem faced by the members of our Association. It is learnt that the Railway has agreed to give possession of land belonging to them on a long term lease and the Corporation of Cochin has agreed to lay slabs on the existing drainage so as to make it suitable for parking of vehicles.

As the issue is one seriously affecting the members of the Association, we would like to follow up the matter with the Railway and Corporation of Cochin.

It is therefore requested that we may be issued with the relevant communications with the High Court in this regard including the letter of sanction issued by the Southern Railway giving possession of land on a long term lease basis.

Thanking You,  
Yours faithfully

Viju Abraham  
Secretary."

28. In reply to the abovesaid letter (Ext.P5), the Registrar Administration has made a letter to the High Court Advocates' Association. Said letter is extracted hereunder:

"Dated:14.07.2010

No.J1-32842/2002

From

THE REGISTRAR (ADMINISTRATION)

To

The Secretary,  
Kerala High Court Advocates Association.

Sir,

Sub: Widening of Salim Ali Road-regarding  
Ref:- That Office letter No.84/KHCAA/2010 dated 18.06.2010.

With reference to above I am to inform you that Railway has informed the High Court that they are considering the proposal to provide the railway land for widening the Salim Ali Road on a long term lease basis. Subsequent to that no information is available in this office.

Yours faithfully

C.S.Divakaran,  
Assistant Registrar,  
For Registrar (Administration)"

29. In the meanwhile, when the matter was pending before the Registrar of High Court of Kerala, the Kerala High Court Advocate' Association, respondent No.6, made a representation (Ext.P6), to the Hon'ble Union Minister of State for Railways, that the proposal submitted by the High Court of Kerala was pending consideration before the railway and seeking for intervention in the matter. At the risk of repetition, said representation is extracted hereunder:

"THE KERALA HIGH COURT ADVOCATES' ASSOCIATION

Reg. No. ER 931/2004

High Court Building, Kochi - 682 031

Ph : 2393244. Fax : 0484-2394435

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19-07-2010

To

Sri. E.Ahamed,  
Hon'ble Union Minister of State for Railways  
New Delhi.

Sub: Widening of Salim Ali Road situated behind the High Court-  
by refixing the compound wall beyond the drain passing through  
the land belonging to the railway regarding

Sir,

Parking of vehicles is a major problem faced by the members of our Association. It is learnt that the Railway has agreed to give possession of land belonging to them as a long term lease and the Corporation of Cochin has agreed to lay slabs on the existing drainage so as to make it suitable for parking of vehicles.

It is understood that the proposal to provide railway land for the above purpose on a long term lease basis is under consideration. The issue is one seriously affecting the members of the association, and the materialization of the above is highly essential for the immediate use of our members. The non-availability of the parking facility is causing serious hardship to lawyers practicing in the High Court.

It is therefore requested that your goodself may kindly intervene in the matter and issue necessary directions to the concerned, to pass orders to provide the railway land mentioned above for the parking of the vehicle of our members.

Thanking You,

Yours faithfully  
Viju Abraham  
Secretary"

30. In reply to the abovesaid representation submitted by respondent No.6, Ministry of State for Railways has sent a letter (Ext.P7) dated 29.07.2010, which is extracted hereunder:

"29 July, 2010

Dear Shri Viju Abraham ji,

I am in receipt of your letter dated 19<sup>th</sup> July, 2010 regarding widening of Salim Ali Road' in Kochi and other matters.

I am having the matter examined.

With regards,

Yours sincerely  
Sd/-  
(E.Ahamed)"

31. The Divisional Railway Manager (Works), Southern Railway, vide Ext.P12 dated 29.7.2010 issued a letter to the Secretary, Corporation of Cochin for granting of Way Leave permission at Salim Ali road. Said letter is extracted hereunder:

"SOUTHERN RAILWAY

No.V/W.227/Ply/G/TY,

Divisional Office  
Works Branch  
Trivandrum  
Dated:29-07-2010



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The Secretary  
Cochin Corporation  
P.B.No.1016  
Ernakulam  
Kochi-682 017

Sir,

Sub: Granting of Way Leave permission at Salim All Road for Corporation of Cochin.

Ref: This office letter of even No.. dated 23-02-2010 addressed to the Secretary, Corporation of Cochin-regarding.

Attention is invited to the letter under reference (1) wherein the willingness of the Corporation of Cochin to remit the prescribed land leasing charges (towards Railways) was sought. No official reply was received.

Since then it is informed from head Quarters office that Associate Finance has concurred the proposal for long term lease of land (measuring 466.2 Sq.M) in front of the High Court of Kerala for widening of Salim Ali Road.

Now the consent of Corporation of Cochin towards payment of the lease charges of Rs.59,60,570/- and other charges has to be communicated for further approval by General Manager & final sanction of Railway Board.

Early action solicited.

Yours faithfully

Divisional Railway Manager (Works)  
Southern Railway  
Trivandrum"

32. The President of the 6<sup>th</sup> respondent Association has submitted a representation before the Minister of Consumer Affairs, Government of India and the Member of Parliament, Ernakulam Constituency, and it was forwarded to the Chairman of Railway Board. In response to the said letter, intimated by the Railway Board, the railway is willing to give 466.2

sq.metres of land on long term lease basis for 35 years and the Cochin Corporation has been requested to give their consent and sign the draft agreement for said lease proposal. The communication dated 13.7.2012 (Ext.P9) is extracted hereunder:

D.O. No.2012//LMB/1/25

"13-7-2012

Dear Prof. Thomas.

Please refer to your letter No.1613/MOS(IC)CA, F&PD/VIP/2012 dated 18-5-2015 forwarding therewith a representation from Advocate B. Gopakumar, President. The Kerala High Court Advocates' Association, Kochi wherein he has requested that Railway may accord sanction to the Corporation of Kochi for laying slabs over the public drain in railway land situated beside the Salim Ali Road, Cochin.

I have got the matter examined. Railway has proposed to give 466.2 sqm of land on long term lease basis for 35 years. Corporation of Cochin has been requested to give their consent and sign the draft agreement for the said lease proposal. Further action will be taken after getting the consent of Corporation of Cochin.

I hope you will kindly appreciate the position.

With regards.

Yours sincerely,  
(Vinay Mittal)"

33. On receipt of the abovesaid communication (Ext.P9), the 6<sup>th</sup> respondent has sent a request to the Secretary, Cochin Corporation, intimating the said lease proposal. Said letter dated 30.7.2012 (Ext.P10) reads thus:

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"KHCAA/220/2012

30-07-2012

To

The Secretary,  
Corporation of Cochin.

Sir,

Sub:- Cochin Corporation - Town Planning - Widening of Salim Ali Road- Reg.

Ref.:- 1. Your letter No. MOP2.22976/06 dated 28-07-2007 addressed to the  
Divisional Manager, Southern Railway Trivandrum.

2. Letter under reference D.O. No. 2012/LMB/1/25 dated 13-07-2012 of the Chairman, Railway Board addressed to Prof. K.V.Thomas, the Hon'ble Minister of State, Govt. of India, in the subject matter noted above; together with the letter dated 20- 07-2012 of the Minister addressed to the President of Kerala High Court Advocates' Association.

The letter referred first above was originated by the Corporation of Cochin pursuant to the decision taken in the joint meeting held at the Hon'ble High Court on 16-07-2007. The urgency as well as the necessity to try for widening of the Sal. Ali Road, had also been pointed out therein; in the matter of laying slabs over the drainage at the side of Salim Ali Road lying at the northern side of the new High Court Complex.

However, the Corporation of Cochin wanted 'Permission' for the same from the Southern Railway for implementing the decision taken in the joint meeting held at the Hon'ble High Court on 16/07/2007. Now, on the intervention of the Hon'ble Minister Prof.K.V.Thomas, the Chairman of the Railway Board himself has informed us that due sanction has already been accorded for the lease of land for laying slabs over the Public drain besides the Salim Ali Road and that the Corporation had been requested to sign the draft agreement for the lease.

In such circumstances, we request that the Corporation may immediately initiate appropriate steps as suggested in the letter referred second above without fail to implement the decision taken at the joint meeting held in the Hon'ble High Court on 16-07-2007.

For Immediate reference of the letters to pursue action at your end, we are forwarding herewith the copies of the letters referred above together with the copies of the sketches prepared by the Village Officer, Ernakulam showing the boundaries and details of the land comprised in Survey No. 2495 and 2496 of Ernakulam Village situated at the Northern side of Salim All Road near High Court Of Kerala.

Thanking you  
Yours faithfully

B.Gopakumar  
President"

34. Since there was no pro-positive action taken either by High Court of Kerala or by Corporation of Kochi, the 6<sup>th</sup> respondent has made a reminder to the Registrar General, vide Ext.P11 dated 12.09.2012. Said letter is extracted hereunder:

"KHCAA/ /2012

12-09-2012

To

The Registrar General  
High Court of Kerala.

Sir,

Sub :- High Court- widening of Salim All Road- Sparing of land to High Court  
- reg.

Ref :- Letter No. J1-321342/2002 dated 26-06-2007 addressed to Divisional  
Manager, Southern Railway, Thiruvananthapuram

The initiatives taken by your good office right from 23-07-2002 onwards to see that more parking space is made available for the vehicles of the Advocates, and to remove the obstruction to the smooth entry and exit of the vehicles of the Hon'ble Judges to the HO Court premises was being followed up

by the Association to get permission of the Railway Board for sparing the Land for widening Salim All Road.

Ultimately, with the due intervention of our M.P and Minister of State for Consumer Affairs, Food and Public Distribution, Govt. of India, we were able to get the due permission. Thereupon, we wrote to the Secretary of the Corporation of Cochin as early as on 30-07-2012 to do the needful. So far there is no response. Copies of the communications in that regard are furnished herewith.

Kindly intervene once again, and appropriate steps be taken to solve the ten year old issue at the earliest.

Thanking you  
Yours faithfully

B.Gopakumar  
President"

35. The 6<sup>th</sup> respondent Association has reminded the matter to the notice of the State Government by submitting a representation vide Ext.P14 dated 31.5.2013 through the Hon'ble Minister for Public Works, Government of Kerala for a thorough and speedy action on the proposal of widening the Salim Ali road. Said letter (Ext.P14) is extracted hereunder:

"KFICA A/175/2013

31/05/2013

To

Hon. Minister V.K. Ebrahim Kunju  
Minister for Public Works  
Government of Kerala  
Secretariat  
Thiruvananthapuram.

Sir,

Sub:- Widening of Salim Ali Road adjacent to the High Court Building.

- Ref: 1. Letter No.J1-32842/2002 dated 26/6/2007 of High Court of Kerala  
2. Letter No MOP,-22976/06 dated 28/7/07 of the Corporation of Cochin  
3 Letter No. DO No.V/ W.227Policy/G/Tempy. dated 17/8/07  
4. Letter No. DO No.2012/ LMB/1/25 dated 13/7/12 of the chairman,  
Railway Board  
5. Letter No., KHCA A/220/2012 dated 30/7/12 submitted to Corporation  
of Cochin-  
6. Letter No.DONo.V/W.227/Policy/G/Tempy. dated 29/7/10 of the  
Divisional Railway Manager, Southern Railway to the Secretary of  
Cochin Corporation.

.....

As per letter dated 26/6/2007, the Registrar General requested the Divisional Manager, Southern Railway to shift the temporary compound wall between the Salim Ali Road and the properties of railway comprised in Survey Nos.2495 & 2496 of Ernakulam Village to the other side of the public drainage running through the above land to facilitate easy traffic through the Salim Ali Road towards the new High Court building as well as old High Court building. In the letter, the High Court also pointed out that a large number of vehicles can be parked without causing hindrance for the traffic through the road thereby, the traffic congestions in other nearby roads due to the parking of vehicles, can be avoided. Subsequently, the Corporation of Cochin as per their Letter dated 28/7/2007, requested the Divisional Manager, Southern Railway to by slabs on the public drainage and to make the road suitable for parking of vehicle. The said letter was replied by the Divisional Office, Southern Railway as per the letter dated 13/8/2007 of the Divisional Railway Manager stating that the subject matter is pending consideration before the Southern Railway and the Railway Board. Thereafter, the High Court of Kerala brought the matter to attention of the Chairman, Railway Board as per letter dated 7/4/2008.

On 18/6/2010, the Kerala High Court Advocates' Association moved a representation to the Registrar General requesting him to take urgent steps to

get permission from the Railway Board to resolve the issue. As per letter dated 14/7/2010, the Registrar (Administration), High Court of Kerala intimated the Association that Railway has informed the High Court that they are considering the proposal to provide the railway land for widening the Salim Ali Road on a long term lease basis. On 19/7/2010, a representation was submitted by the Association to the Hon'ble Union Minister of State for Railways requesting necessary directions to the railway to finalize the matter, without delay. On 29/7/2010. the Hon'ble Minister informed the Association that the matter will be looked into.

On 18/10/2011, the Association had represented the matter before your goodself and requested early action to shift the side wall of the Salim All Road beyond the drainage and to pave concrete slabs over the drainage to facilitate more parking space in the Salim All Road. In response to the request of the Association, your goodself was pleased to depute an Executive Engineer of the Department to inspect the site and have a feasibility study in this matter. The Executive Engineer so deputed has inspected the site, in the presence of the office bearer of the Association, on 18/12/2011 and has opined that the project is technically and financially viable as there is already a well built basement at the northern side of the present drainage. Hence according to him, further works can be executed on getting permission from the railway authorities at the earliest.

On 11/5/2012, the Association again represented before the Chairman, Railway Board through the Hon'ble Union Minister of States, Consumer affairs and the member of the Lok Sabha representing the Constituency, Sri. KV. Thomas for an urgent decision by the Railway Board in the matter. On 13/7/2012, the chairman, Railway Board intimated the Association, through the Hon'ble Minister, that the Railway Board has decided to give 466.2 sq. meter of lands on long term lease basis for 35 years. It was also informed that Corporation of Cochin has been requested to give their consent and sign the

draft agreement for the said lease proposal On 30/7/2012, the Association requested the Corporation of Cochin to do the needful, urgently in the matter of laying slabs over the drainage.

Now, as per letter dated 20/11/2012, the Registrar (Administration) informed the Association that the Southern Railway as per letter dated 20/7/2010 requested the consent of the Corporation of Cochin towards payment of the lease charge of Rs.59,60,570/- and other charges. However, nothing was done thereafter either from the side of Corporation or from the side of Southern Railway.

Parking of vehicles in the High Court Compound is a major problem being faced by the members of the Association Apart from the parking area available in the front of the High Court and the adjacent Advocate Chamber Complex, at present no other facilities are available for parking. Due to the constraints of available area, the lawyers are forced to park their vehicle in the road side and it is usual that traffic congestions are being formed due to the road side parking. At this juncture, along with the High Court, the Association also requested the authorities for the shifting of compound wall constructed between the Salim Ali road and the properties of the railway, beyond the other side of the public drain, starting from traffic- police station junction to the newly constructed office of the Advocate General. Though, the railway authorities have granted their permission subject to payment of lease charge nothing was done thereafter, due to the inaction from the side of the Corporation.

Hence, we request you to intervene in this matter and to do the needful to make available necessary funds for the payment of lease charge as requested by the Southern Railway in their letter dated 29/7/2010.

Thanking you,  
Yours faithfully,

UNNIKRISHNAN V.ALAPATT  
Secretary"



36. Exhibit-R8(b) is a proposal for declaration of Eco-Sensitive Zone around Mangalavanam Bird Sanctuary, Ernakulam and it reads thus:

“PROPOSAL FOR DECLARATION OF ECO-SENSITIVE ZONE  
AROUND MANGALAVANAM BIRD SANCTUARY (MBS)  
ERNAKULAM, KERALA

**1. Name of the Protection Area (PA)**

Mangalavanam Bird Sanctuary

**2. Location**

Mangalavanam Bird Sanctuary is located between latitudes N9°59'13.4" & longitudes E76°16'26.1" on the Arabian Sea coast. Location sketch is enclosed as Annexure-I. Central Marine Fisheries Research Institute (CMFRI) and National Institute of Oceanography (NIO) are located in the west. New building complex of the High Court of Kerala is located in the south. The Bharat Petroleum Corporation Limited campus is in the north and the old Ernakulam Railway State on the south and east. The map of Mangalavanam Bird Sanctuary with above boundaries is shown in Annexure-II.

**3. Legal Status (Date of issue of initial notification and final notification, etc.)**

MBBS with an area of 2.74 ha. Was notified as Bird sanctuary as per G.O.(MS) No.42/04/F&WLD dated 31/08/2004 under section 18 of the Wildlife (Protection) Act, 1972.

**4. Number of village within the Protected Area**

Nil

**5. Status of settlement of rights**

The notified area is Government land and no rights exist.

**6. Status of survey and demarcation of the boundaries.**

Boundaries are demarcated and consolidated

**7. No. of beats/sections/revenue/village/private lands etc.**

The PA is having an area of 2.74 Ha. Only, which is under the control of Assistant Conservator of Forests, NSC, Kalady who also holds full additional charge of Wildlife Warden, Mangalavanam Bird Sanctuary. The PA is located in Ernakulam Village of Kanayannoor Taluk in Ernakulam District.

**8. Status of Management Plan/ Biodiversity Conservation Plan/ Recovery plan (Period to be given)**

The Management Plan for the Sanctuary for the period from 2009-10 to 2018-19 was prepared (through a participatory approach. The views of the stakeholders, NGOs, scientists and Wildlife managers have been incorporated in the management plan after conducting a series of workshops.

xx xxx xxxxxx

**13. Problems in the surrounding area of the PA**

The major threat that prevails in the surrounding area of the PA is the incompatible land use that would eventually affect the biodiversity of the PA. The immediate surroundings of Mangalavanam have become a bustling centre of real estate development. A few large skyscrapers are being built in the area and several more are proposed. A large residential township, almost bordering the sanctuary is also being proposed in the name of eco-city. The existing land use patterns in the surrounding area of MBS have following detrimental effects.

**(i) Obstruction to movement of birds:**

The high rise buildings close to the sanctuary interrupt proper orientation, take off and landings. Most of the buildings

that have come up recently in the area are 7-8 storied and are close to the bird sanctuary. At present, some areas are still open and birds can have good sight of the areas ahead, rise slowly, soar and fly to other locations for their daily and seasonal routine movements for foraging and other activities. If the area is also used for developmental activities, it will adversely affect movement of birds.

**(ii) Obstruction to transport nest materials and food for fledglings:**

The high rise buildings pose serious obstructions in the transport of nest materials and food for fledglings of nesting birds.

**(iii) Effect of striking colours of the buildings:**

Some of the recently built high rise buildings are painted with striking colours. It is very likely that the new buildings in the surrounding area also may go for such striking colours and also for use of considerable quantity of reflective materials like glass. Such repulsive activities are likely to scare away the birds.

**(ix) Effect of high and powerful Lights:**

The bright lights that are likely to be fitted in the large building complexes are likely to scare the birds and pose orientation problems for them.

**(V) Effect of sound pollution:**

It is found that the foundations of the high rise buildings are built in converted / filled up coastal wetlands. This requires deep piling and the piling is mostly done by physical hammering that produces loud recurring banging sound. The clattering sound due to mechanical activities, dredging in the backwaters and filling of the wetlands scare away the birds.

**(vi) Parking and vehicular traffic:**

During the day, Dr. Salim Ali Road leading to the MBS is being used as parking area for two and four wheelers. On a busy day, about 150 cars and few two wheelers could be seen parked along the road, which is a recent development. The vehicle movement and the activities of people is a notable disturbance to the birds visiting the sanctuary for nesting and feeding.

**(vii) Dumping wastes:**

The immediate surroundings of the PA is at present totally exposed to all sorts of solid wastes including plastics. The neighbouring dwellers have made the neighbourhood of MBS as their garbage-dumping site. The plastic materials are evidently scattered all along the Salim Ali Road and the feeder canal that opens to the wetland within the PA.

XX XXX XXXXXX

**16. Outcome of the proposed intervention**

- Conservation of unique coastal wetland mangrove vegetation which is popularly known as the only green lung of the Ernakulam and Kochi city.
- Fulfillment of mandatory requirement of a Bird Sanctuary so that avifauna will continue to flourish.
- Rational management, compatible land use and sustainable development of the surrounding region leading to conservation of the existing biodiversity and protection of the PA."

Sd/-

Assistant Conservator of Forests.  
Nature Study Centre, Kalady &  
Wildlife Warden, Mangalavanam"

37. On 28.08.2017, in exercise of the powers conferred by sub-section (1), read with clause (v) and clause (xiv) of sub-section (2) and

sub-section (3) of Section 3 of the Environment (Protection) Act, 1986 (29 of 1986), as required under sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986, the Central Government have published a notification , for the information of the public likely to be affected thereby and notice is hereby given that the said draft notification shall be taken into consideration on or after the expiry of a period of sixty days from the date on which copies of the Gazette containing this notification are made available to the public.

38. Any person interested in making any objections or suggestions on the proposals contained in the draft notification may forward the same in writing, for consideration of the Central Government within the period so specified to the Secretary, Ministry of Environment, Forest and Climate Change, Indira Paryavaran Bhawan, Jorbagh Road, Aliganj, New Delhi-110003, or send it to the e-mail address of the Ministry at esz-mef@nic.in.

**"Draft Notification**

WHEREAS, the Manglavanam Bird Sanctuary is located at a close proximity to Kochi city and it is the only green patch which serves as green lung to twin cities of Ernakulam and Kochi and situated in the central part of Kerala, Manglavanam Bird Sanctuary has high potential for nature education covering varieties of environmental issues;

AND WHEREAS, the Manglavanam Bird Sanctuary is the

only one coastal protected area in the State of Kerala with an extent of 2.74 hectare of tidal wetland supporting fragile mangrove vegetation which comprises of five species of mangroves and 25 of other floral species and the Manglavanam Bird Sanctuary also supports 3 species of mammals, 9 species of reptiles, 51 species of spiders, 2 species of amphibians and 7 species of fishes;

AND WHEREAS, the existence of Manglavanam Bird Sanctuary supporting good number of avifauna, bats, other animals and other floral species including mangroves amidst a busy city like Ernakulam is very vital from the point of view of environmental conservation;

AND WHEREAS, it is necessary to conserve and protect the areas adjoining to Manglavanam Bird Sanctuary as Eco-sensitive Zone by prohibiting or regulating certain activities which are detrimental for the existence of the Manglavanam Bird Sanctuary;

AND WHEREAS, it is necessary to conserve and protect the area the extent and boundaries is specified in this notification around the Manglavanam Bird Sanctuary as Eco-sensitive Zone from ecological and environmental point of view and to prohibit industries or class of industries and their operations and processes in the said Eco-sensitive Zone.

Environmental (Protection) Act, 1986 is an Act to provide for the protection and improvement of environment and for matters connected therewith. Chapter II of the Act deals with general powers of the Central Government.”

39. Scrutiny of the above draft notification shows that as per Clause 4, there are certain activities, which are prohibited or to be regulated within the Eco-sensitive Zone and the table in Clause 4 describes such activities. Said clause and the table are extracted hereunder:

**"4. List of activities prohibited or to be regulated within the Eco-sensitive Zone:-**

All activities in the Eco-sensitive Zone shall be governed by the provisions of the Environment (Protection) Act, 1986 (29 of 1986) and the rules made there under including the Coastal Regulation Zone Notification 2011 and the Environmental Impact Assessment Notification, 2006 and other applicable laws including the Forest (Conservation) Act, 1980 (69 of 1980), the Indian Forest Act, 1927 (16 of 1927), the Wildlife (Protection) Act 1972 (53 of 1972), and amendments made thereto and be regulated in the manner specified in the Table below, namely:-

**TABLE**

S No.	Activity	Description
<b>A. Prohibited Activities</b>		
1.	Commercial Mining	(a) All new and existing (minor and major minerals), stone quarrying and crushing units are prohibited with immediate effect except for meeting the domestic needs of bona fide local residents including digging of earth for construction or repair of houses and for manufacture of country tiles or bricks for housing and for other activities. (b) The mining operations shall be carried out in accordance with the order of the Hon'ble Supreme Court dated 04.08.2006 in the matter of

		T.N. Godavarman Thirumulpad Vs. UOI in W.P.(C) No. 202 of 1995 and dated 21.04.2014 in the matter of Goa Foundation Vs. UOI in W.P.(C) No.435 of 2012.
2.	Setting of industries including new oil and gas exploration causing pollution (Water, Air, Soil, Noise, etc.).	No new industries and expansion of existing polluting industries in the Eco-sensitive Zone shall be permitted. Only non-polluting industries shall be allowed within Eco-sensitive Zone as per classification of Industries in the Guidelines issued by the Central Pollution Control Board in February 2016, unless so specified in this notification. In addition, non-polluting cottage industries shall be promoted.
3.	Establishment of major thermal and major hydroelectric project.	Prohibited (except as otherwise provided) as per applicable laws.
4.	Use or production or processing of any hazardous substances.	Prohibited (except as otherwise provided) as per applicable laws
5.	Discharge of untreated effluents in natural water bodies or land area.	Prohibited (except as otherwise provided) as per applicable laws.
6.	Setting of new saw mills.	No new or expansion of existing saw mills shall be permitted within the Eco-sensitive Zone.
7.	Setting up of brick kilns.	Prohibited (except as otherwise provided) as per applicable laws.
8.	Commercial use of fire wood.	Prohibited (except as otherwise provided) as per applicable laws
9.	Use of plastic bags.	Prohibited (except as otherwise provided) as per applicable laws.
<b>B. Regulated Activities</b>		
10.	Commercial establishment of hotels and resorts.	No new commercial hotels and resorts shall be permitted within one kilometre of the boundary of the Protected Area or upto the extent of Eco-sensitive Zone, whichever is nearer, except for small temporary structures for Eco-tourism activities: Provided that, beyond one kilometre



		from the boundary of the protected Area or upto the extent of Eco-sensitive Zone whichever II (ii) 21 is nearer, all new tourist activities or expansion of existing activities shall be in conformity with the Tourism Master Plan and guidelines as applicable.
	Establishment of large-scale commercial livestock and poultry farms by firms, corporate, companies.	Regulated under applicable laws.
	Construction activities.	<p>(a) No new commercial construction of any kind shall be permitted within one Kilometre from the boundary of the Protected Area or upto the extent of the Eco-sensitive Zone whichever is nearer: Provided that, local people shall be permitted to undertake construction in their land for their use including the activities listed in sub- paragraph (1) of paragraph 3 as per building bye-laws to meet the residential needs of the local residents such as:-</p> <p>(i) widening and strengthening of existing roads and construction of new roads;</p> <p>(ii) construction and renovation of infrastructure and civic amenities;</p> <p>(iii) small scale industries not causing pollution termed as per Classification done by the Central Pollution Control Board of February 2016;</p> <p>(iv) cottage industries including village industries; convenience stores and local amenities supporting Eco-tourism including home stays; and</p> <p>(v) promoted activities listed in this Notification:</p> <p>Provided further that the construction activity related to small scale industries not causing pollution shall be regulated and kept at the minimum, with the prior permission from the competent authority as per applicable rules and regulations, if any.</p>

		(b) Beyond one kilometre it shall be regulated as per the Zonal Master Plan
	Small scale non polluting industries.	Non polluting industries as per classification of Industries issued by the Central Pollution Control Board in February 2016 and nonhazardous, small-scale and service industry, agriculture, floriculture, horticulture or agro-based industry producing products from indigenous materials from the Eco-sensitive Zone shall be permitted by the Competent Authority
	Felling of Trees	(a) There shall be no felling of trees on the forest or Government or revenue or private lands without prior permission of the competent authority in the State Government. (b) The felling of trees shall be regulated in accordance with the provisions of the concerned Central or State Acts and the rules made thereunder.
	Collection of Forest produce or Non Timber Forest Produce (NTFP).	Regulated under applicable laws.
	Erection of electrical and communication towers and laying of cables and other infrastructures.	Regulated under applicable law. Underground cabling may be promoted.
	Infrastructure including civic amenities.	Shall be done with mitigation measures, as per applicable laws, rules and regulation and available guidelines.
	Widening and strengthening of existing roads and construction of new roads.	Shall be done with mitigation measures, as per applicable laws, rules and regulation and available guidelines
xx xxxx xxxxx		

40. Table - B deals with regulated activities. Column No.18 in Table- B deals with widening and strengthening of existing roads and

construction of new roads and that, the same can be done with mitigation measures as per applicable laws, rules and regulations, and available guidelines. Thus, even in the draft notification, it could be seen that there is no absolute prohibition of widening of the Salim Ali road,

41. Environment (Protection) Act, 1986 is an Act to provide for the protection and improvement of the environment and for matters connected therewith. Chapter II deals with general powers of the Central Government. Section 3 under Chapter II of the Act speaks about the power of Central Government to take measures to protect and improve environment and it reads thus:

**“3. Power of Central Government to take measures to protect and improve environment.—**

(1) Subject to the provisions of this Act, the Central Government shall have the power to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution.

(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), such measures may include measures with respect to all or any of the following matters, namely:—

(i) co-ordination of actions by the State Governments, officers and other authorities—

(a) under this Act, or the rules made thereunder; or

(b) under any other law for the time being in force which is relatable to the objects of this Act;

(ii) planning and execution of a nation-wide programme for the prevention, control and abatement of

environmental pollution;

(iii) laying down standards for the quality of environment in its various aspects;

(iv) laying down standards for emission or discharge of environmental pollutants from various sources whatsoever: Provided that different standards for emission or discharge may be laid down under this clause from different sources having regard to the quality or composition of the emission or discharge of environmental pollutants from such sources;

(v) restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards;

(vi) laying down procedures and safeguards for the prevention of accidents which may cause environmental pollution and remedial measures for such accidents; (vii) laying down procedures and safeguards for the handling of hazardous substances;

(viii) examination of such manufacturing processes, materials and substances as are likely to cause environmental pollution;

(ix) carrying out and sponsoring investigations and research relating to problems of environmental pollution;

(x) inspection of any premises, plant, equipment, machinery, manufacturing or other processes, materials or substances and giving, by order, of such directions to such authorities, officers or persons as it may consider necessary to take steps for the prevention, control and abatement of environmental pollution;

(xi) establishment or recognition of environmental laboratories and institutes to carry out the functions entrusted to such environmental laboratories and institutes under this Act;

(xii) collection and dissemination of information in respect of matters relating to environmental pollution;

(xiii) preparation of manuals, codes or guides relating to the prevention, control and abatement of environmental pollution;

(xiv) such other matters as the Central Government deems necessary or expedient for the purpose of securing the effective implementation of the provisions of this Act.

(3) The Central Government may, if it considers it necessary or expedient so to do for the purposes of this Act, by order, published in the Official Gazette, constitute an authority or authorities by such name or names as may be specified in the order for the purpose of exercising and performing such of the powers and functions (including the power to issue directions under section 5) of the Central Government under this Act and for taking measures with respect to such of the matters referred to in sub-section (2) as may be mentioned in the order and subject to the supervision and control of the Central Government and the provisions of such order, such authority or authorities may exercise the powers or perform the functions or take the measures so mentioned in the order as if such authority or authorities had been empowered by this Act to exercise those powers or perform those functions or take such measures."

42. In exercise of the powers conferred by Sections 6 and 25 of the Environment (Protection) Act, 1986 (29 of 1986), the Central Government made the Environment (Protection) Rules, 1986. Rule 5 of the Rules speaks about prohibition and restriction on the location of industries and the carrying on processes and operations in different areas and the same reads thus:

**"5. Prohibition and restriction on the location of industries and the carrying on processes and operations in different areas. -**

(1) The Central Government may take into consideration the following factors while prohibiting or restricting the location of industries and carrying on of processes and operations in different areas:-

- (i) Standards for quality of environment in its various aspects laid down for an area.
- (ii) The maximum allowable limits of concentration of various environmental pollutants (including noise) for an area.
- (iii) The likely emission or discharge of environmental pollutants from an industry, process or operation proposed to be prohibited or restricted.
- (iv) The topographic and climatic features of an area.
- (v) The biological diversity of the area which, in the opinion of the Central Government, needs to be preserved.
- (vi) Environmentally compatible land use.
- (vii) Net adverse environmental impact likely to be caused by an industry, process or operation proposed to be prohibited or restricted.
- (viii) Proximity to a protected area under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 or a sanctuary, National Park, game reserve or closed area notified, as such under the Wild Life (Protection) Act, 1972, or places protected under any treaty, agreement or convention with any other country or countries or in pursuance of any decision made in any international conference, association or other body.
- (ix) Proximity to human settlements.
- (x) Any other factor as may be considered by the Central Government to be relevant to the protection of the environment in an area.

(2) While prohibiting or restricting the location of industries and carrying on of processes and operations in an area, the Central Government shall follow the procedure hereinafter laid down.

(3)(a) Whenever it appears to the Central Government that it is expedient to impose prohibition or restrictions on the location of an industry or the carrying on of processes and operations in an area, it may, by notification in the Official

Gazette and in such other manner as the Central Government may deem necessary from time to time, give notice of its intention to do so.

(b) Every notification under clause (a) shall give a brief description of the area, the industries, operations, processes in that area about which such notification pertains and also specify the reasons for the imposition of prohibition or restrictions on the location of the industries and carrying on of processes or operations in that area.

(c) Any person interested in filing an objection against the imposition of prohibition or restriction on carrying on of processes or operations as notified under clause (a) may do so in writing to the Central Government within sixty days from the date of publication of the notification in the Official Gazette.

(d) The Central Government shall, within a period of one hundred and twenty days from the date of publication of the notification in the Official Gazette, consider all the objections received against such notification and may within seven hundred and twenty five days, and in respect of the States of Assam, Meghalaya, Arunachal Pradesh, Mizoram, Manipur, Nagaland, Tripura, Sikkim and Jammu and Kashmir in exceptional circumstance and for sufficient reasons within a further period of one hundred and eighty days][from such date of publication, impose prohibition or restrictions on location of such industries and the carrying on of any process or operation in an area.

Provided that for the purpose of this clause, the period of national lockdown from 25<sup>th</sup> March, 2020 to 31<sup>st</sup> May, 2020 on account of COVID-19 pandemic shall be excluded for the purpose of counting the number of days for publication of the final rule or order or notification.

(4) Notwithstanding anything contained in sub-rule (3), whenever it appears to the Central Government that it is in public interest to do so, it may dispense with the requirement of notice under clause (a) of sub-rule (3)."

43. Annexure-I to the draft notification dated 28.08.2017, is boundary description of Mangalavanam Bird Sanctuary and its Eco-

sensitive zone, and it states thus:

“The Northern boundary of the proposed Eco-sensitive Zone consists of the Pachalam road and the Pachalam overbridge. Thence the boundary passes through a highly populated residential area of Ernakulam city and hence, the Mathai-Majooran road forms the Eastern boundary of the proposed Eco-sensitive Zone which is contiguous with an area which is highly populated. Hence, on the Southern side of the proposed Eco-sensitive zone is the Salim Ali road which extends to an area having the multi storied building of Honourable High court of Kerala and a network of roads of the Ernakulam city and thence the Abraham-Madamakkal Road and the Chathiyath Road forms the western boundary of the proposed Eco-sensitive zone. The Western boundary continues to the Vembanadu lake which touches Arabian sea. The Mangalavanam Bird Sanctuary and the proposed Eco-sensitive Zone area completely falls in Ernakulam Village in Kanayannoor Taluk of Ernakulam District.”

44. Annexure-II to the draft notification, is the Co-ordinates of Mangalavanam Bird Sanctuary and its Eco-sensitive Zone in terms of Global Positioning System co-ordinates. Relevant portion of the table in Annexure-II is extracted hereunder

“CO-ORDINATES OF ECO-SENSITIVE ZONE - MANGALAVANAM

	Way points/ Place	Latitudes	Longitudes
xx	xx	xx	xx
9	Railway - inside	N -09°59' 23.760"	E-076° 16' 28.740"



10	Railway - inside	N -09°59' 24.120"	E-076° 16' 28.560"
xx	xx	xx	xx
38	Starting of Salim Ali Road	N-09°59' 13.800"	E-076° 16' 31.800"
39	Mangalavanam (A1)	N-09°59' 15.180"	E-076° 16' 23.520"
40	Mangalavanam (B1)	N-09°59' 19.800"	E-076° 16' 27.960"
41	Mangalavanam (D1)	N-09°59' 20.350"	E-076° 16' 20.476"

45. Minutes of the 29<sup>th</sup> meeting of the Eco-sensitive Zone (ESZ) Expert Committee held on 24.01.2018 for the declaration of ESZ around the protected area shows that 21 proposals have been discussed, and at Serial No.9 of the proposals, in respect of the Mangalavanam Bird Sanctuary, it is recorded thus:

Sl. No.	Protected Area	State	Views of Expert Committee
xx	xxxx	xxxx	xxxx
9.	Mangalavanam BS	Kerala	Recommended for final Notification subject to the issues to stakeholders are addressed by the State Government.

46. Though the Central Government have issue a draft notification, under sub-section (1), read with clause (v) and clause (xiv) of sub-section (2) and sub-section (3) of Section 3 of the Environment (Protection) Act, 1986, as early as on 28.08.2017, no document has been filed/produced either by the Government of Kerala or additional 8<sup>th</sup> respondent, to substantiate that a final notification, in terms of sub-rule 3(d) of Rule 5

has been published, within the stipulated time.

47. Material on record discloses that the Central Government did publish a draft notification under sub-section (1), read with clause (v) and clause (xiv) of sub-section (2) and sub-section (3) of Section 3 of the Environment (Protection) Act, 1986, but there is no final notification, in terms of sub-rule 3(d) of Rule 5 of the Environment (Protection) Rules, 1986.

48. Article 13(3)(a) of the Constitution of India states thus:

“(3) In this article, unless the context otherwise requires,-  
(a) “law” includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law;

49. Rule 5(3)(d) of the Environment (Protection) Rules, 1986, mandate publication of final notification in the Official Gazette.

50. In **Harla v. The State of Rajasthan** (AIR 1951 SC 467), when the validity of Section 7 of the Jaipur Opium Act was challenged on the ground that it was not published in the Gazette, the Hon'ble Supreme Court, at paragraphs 10 to 15, held thus:

“10. We do not know what laws were operative in Jaipur regarding the coming into force of an enactment in that State. We were not shown any, nor was our attention drawn to any custom which could be said to govern the

matter. In the absence of any special law or custom, we are of opinion that it would be against the principles of natural justice to permit the subjects of a State to be punished or penalised by laws of which they had no knowledge and of which they could not even with the exercise of reasonable diligence have acquired any knowledge. Natural justice requires that before a law can become operative it must be promulgated or published. It must be broadcast in some recognisable way so that all men may know what it is, or, at the very least, there must be some special rule or regulation or customary channel by or through which such knowledge can be acquired with the exercise of due and reasonable diligence. The thought that a decision reached in the secret recesses of a chamber to which the public have no access and to which even their accredited representatives have no access and of which they can normally know nothing, can nevertheless affect their lives, liberty and property by the mere passing of a Resolution without anything more is abhorrent to civilised man. It shocks his conscience. In the absence therefore of any law, rule, regulation or custom, we hold that a law cannot come into being in this way, Promulgation or publication of some reasonable sort is essential.

11. In England the rule is that Acts of Parliament become law from the first moment of the day on which they receive the Royal assent, but Royal Proclamations only when actually published in the official Gazette. See footnote (a) to paragraph 776., page 601, of Halsbury's Laws of England (Hailsham edition), Volume VI and 32

Halsbury's Laws of England (Hailsham edition), Page 150 note (r). But even there it was necessary to enact a special Act of Parliament to enable such proclamations to become law by publication in the Gazette though a Royal Proclamation is the highest kind of law, other than an Act of Parliament, known to the British Constitution; and even the publication in the London Gazette will not make the proclamation valid in Scotland nor will publication in the Edinburgh Gazette make it valid for England. It is clear therefore that the mere enacting or singing of Royal Proclamation is not enough. There must be publication before it can become law, and in England the nature of the publication has to be prescribed by an Act of Parliament.

12. The Act of Parliament regulating this matter is the Crown Office Act of 1877 (40 and 41 Victoria Ch. 41). That Act, in addition to making provision for publication in certain official Gazettes, also provides for the making of rules by Order in Council for the best means of making Proclamations known to the public. The British Parliament has therefore insisted in the Crown Office Act that only must there be publication in the Gazette but in addition there must be other modes of publication, if an Order in Council so directs, so that the people at large may know what these special laws are. The Crown Office Act directs His Majesty in Council carefully to consider the best mode of making these laws known to the public and empowers that body to draw up rules for the same and embody them in an Order in Council. We take it that if these Proclamations are not published strictly in accordance with

the rules so drawn up, they will not be valid law.

13. The principle underlying this question has been judicially considered in England. For example, on a somewhat lower plane, it was held in **Johnson v. Sargant** [1918] 1 K.B. 101 : 67 L.J.K.B. 122, that an Order of the Food Controller under the Beans, Peas and Pulse (Requisition) Order, 1917 does not become operative until it is made known to the public, and the difference between an Order of that kind and an Act of the British Parliament is stressed. The difference is obvious. Acts of the British Parliament are publicly enacted. The debates are open to the public and the Acts are passed by accredited representatives of the people who in theory can be trusted to see that their constituents know what has been done. They also receive wide publicity in papers and, now, now, over the wireless. Not so Royal Proclamations and Orders of a Food Controller and so forth. There must therefore be promulgation and publication in their cases. The mode of publication can vary; what is a good method in one country may not necessarily be the best in another. But reasonable publication of some sort there must be.

14. Nor is the principle peculiar to England. It was applied to France by the Code Napoleon, the first Article of which states that the laws are executory "by virtue of the promulgation thereof" and that they shall come into effect "from the moment at which then promulgation can have been known." So also it has been applied in India in, for instance, matters arising under Rule 119 of the Defence of

India Rules. See, for example, **Crown v. Manghumal Tekumal** I.L.R. 1944 Karachi 107, **Shakoor v. King Emperor** I.L.R. 1944 Nag. 150 and **Babulal v. King Emperor** I.L.R. 1945 Nag. 762. It is true none of these cases is analogous to the one before us but they are only particular applications of a deeper rule which is founded on natural justice.

15. The Council of Ministers which passed the Jaipur Opium Act was not a sovereign body nor did it function of its own right. It was brought into being by the Crown Representative, and the Jaipur Gazette Notification dated the 11<sup>th</sup> August, 1923, defined and limited its powers. We are entitled therefore to import into this matter consideration of the principles and notions of natural justice which underlie the British Constitution, for it is inconceivable that a representative of His Britannic Majesty could have contemplated the creation of a body which could wield powers so abhorrent to the fundamental principles of natural justice which all freedom loving peoples share. We hold that, in the absence of some specific law or custom to the contrary, a mere resolution of a Council of Ministers in the Jaipur State without further publication or promulgation would not be sufficient to make a law operative."

51. In **State of Maharashtra v. Hans George** (AIR 1965 SC 722), the Hon'ble Supreme Court held thus:

".....Where there is a statutory requirement as to the mode or form of publication and they are such that, in the

circumstances, the Court holds to be mandatory, a failure to comply with those requirements might result in there being no effective order the contravention of which could be the subject of prosecution but where there is no statutory requirement we conceive the rule to be that it is necessary that it should be published in the usual form i.e., by publication within the country in such media as generally adopted to notify to all the persons concerned the making of rules. In most of the Indian statutes, including the Act now under consideration, there is provision for the rules made being published in the Official Gazette. It therefore stands to reason that publication in the Official Gazette viz., the Gazette of India is the ordinary method of bringing a rule or subordinate legislation to the notice of the persons concerned.....”

52. In **B.K.Srinivasan v. State of Karnataka** [(1987) 1 SCC 658], the Hon'ble Supreme Court explained why the publication in the Gazette was mandatory and necessary in regard to sub-ordinate legislations:

“There can be no doubt about the proposition that where a law, whether Parliamentary or subordinate, demands compliance, those that are governed must be notified directly and reliably of the law and all changes and additions made to it by various processes. Whether law is viewed from the standpoint of the 'conscientious good man' seeking to abide by the law or from the standpoint of Justice Holmes's '*Unconscientious bad man*' seeking to avoid the law, law must be known, that is to say, it must

be so made that it can be known. We know that delegated or subordinate legislation is all pervasive and that there is hardly any field of activity where governance by delegated or subordinate legislative powers is not as important if not more important, than governance by Parliamentary legislation. But unlike Parliamentary Legislation which is publicly made, delegated or subordinate legislation is often made, unobtrusively in the chambers of a Minister, a Secretary to the Government or other official dignitary. It is, therefore, necessary that subordinate legislation, in order to take effect, must be published or promulgated in some suitable manner, whether such publication or promulgation is prescribed by the parent statute or not. It will then take effect from the date of such publication or promulgation. Where the parent statute prescribes the mode of publication or promulgation that mode must be followed.”

53. Having regard to the object and nature of enactment concerning many subjects, which includes prohibited, regulated and such other activities covering many areas such as commercial mining, setting up of industries, including new oil and gas exploration causing pollution, establishment of major thermal and major hydro electrical, use of plastic bags, construction activities, etc., publication of notice under Rule 5(3)(d) of the Environment (Protection) Rules, 1986, is mandatory.



54. We have heard the submissions of learned counsel for the parties and perused the material on record, including the Google map of Mangalavanam Bird Sanctuary and Eco-sensitive Zone.

55. In the light of the above, unless a statutory notification is issued under sub-rule 3(d) of Rule 5 of the Environment (Protection) Rules, 1986, a draft notification cannot be acted upon.

56. Even taking it for granted that there is a draft notification, there is nothing on record to indicate that the widening of Salim Ali road would jeopardize the environment. As stated supra, widening of the road, even as per the draft notification is permissible, but the same in our view can be done, with the monitoring of Wildlife Warden, Forest Department, Chief Conservator of Forest (Custodian of Ecologically Fragile Land) and the State Government. Objections to the prayers, have been made on the basis of an order of the National Green tribunal, Principal Bench, New Delhi, in Original Application No.587/2018 (Earlier O.A. No.447/2013) (SZ) dated 30.01.2019. Said order is extracted hereunder:

**"ORDER**

1. This matter was initially filed before the Kerala High Court in the year 2009 and was transferred to this Tribunal vide order dated 18.11.2013. The grievance in the application is that the forest land which is part of protected forest, adjacent to Mangalavanam Bird Sanctuary should not be used for construction activities.

2. The Applicant states that the area is notified under Section 18 of Wildlife Protection Act, 1972 vide Notification dated 31.08.2004. It is a wetland with natural forest, greenery and Bird Sanctuary. Railways Authorities have started using bulldozer and mechanical devices which is not permissible and is against the Forest Management Plan.

3. The matter has been considered on last more than 30 hearings in the last five years. Brief reference may be made to some of the proceedings.

4. On 06.09.2016, the Tribunal noted that the area was a Bird Sanctuary and the stand of the State of Kerala was that the area needs to be protected. The Tribunal directed the State of Kerala to file an affidavit whether it is proposed to be declared as eco-sensitive area. On 03.10.2016, it was noted that the proposal was forwarded to MoEF on 15.02.2013 by State of Kerala proposing the area to be declared eco-sensitive zone. On 08.08.2017, statement of learned Counsel for MoEF was recorded that the draft Notification has been approved which was to be published within two weeks.

5. It is today stated that even after more than one year, the Notification has not been finalized.

6. In view of the above, having regard to the fact that the area is forest land and a Bird Sanctuary, we hold that it is not permissible to carry out any construction activity in view of statutory provisions of the Wildlife Protection Act, 1972 as well as Environment Protection Act, 1986.

The Application is disposed of.

Adarsh Kumar Goel, CP  
S.P. Wangdi, JM"

57. Perusal of the order of the National Green Tribunal shows that it pertains to a notification dated 31.08.2004, issued under Section 18 of the Wildlife Protection Act, 1972. Said order further shows that on the submission of learned counsel for MoEF that a draft notification has been

approved and that the same would be published within two weeks, the National Green Tribunal, New Delhi has passed the following order:

“6. In view of the above, having regard to the fact that the area is forest land and a Bird Sanctuary, we hold that it is not permissible to carry out any construction activity in view of statutory provisions of the Wildlife Protection Act, 1972 as well as Environment Protection Act, 1986.”

58. What is referred to in the said order is a notification of the year 2004, whereas, we are concerned with the draft notification issued on 28.08.2017. Objections of the Lawyers Environmental Awareness Forum (LEAF), Kochi, respondent No.8, are overruled.

59. In **All India Judges Association and Others v. Union of India and Others**, [(2018) 17 SCC 555], while dealing with infrastructure of courts, at paragraphs 12.5 to 12.7, and at paragraphs 13 and 14, the Hon'ble Apex Court observed and ordered as under:

“12. 5. With the increase in motor vehicles, including cars and two-wheelers, it is imperative that court premises have sufficient and proper parking space to ease vehicular traffic and avoid crowding. All upcoming court complexes must have provision for both sufficient underground and surface parking facilities segregated into four broad categories – for judges, court staff, lawyers and litigants. As far as the existing court complexes are concerned, the possibility and feasibility of constructing underground or multi level parking facilities must be explored.

12.6. The court premises must have easy access at both entry and exit points. End to end connectivity of public transport systems must be ensured for court premises by starting feeder bus service and other dedicated transport services between major public transport points and court

complexes. Access to justice will forever remain an illusory notion if access to courts is not ensured.

12.7. Court premises must be armed with better crowd management arrangements along with adequate security measures. It has been seen, time and again, that at the time of court proceedings of cases which are well covered by the media, the crowd management in court premises runs into utter chaos. Measures must be taken to ensure that whenever court premises are thronged with heightened crowds, there is smooth ingress and egress of both vehicular traffic as well as citizens in the court premises.

13. It is clear that judicial infrastructure not only needs attention and budgeting but also effective utilization of the funds towards specific and proper ends so that the primary goal of access to justice for all is realized. Prompt measures are to be undertaken and procrastination in these matters cannot brook delay where Rule of Law is supreme.

14. Let a copy of this order be sent to the Chief Secretaries of each of the States by the Registry requiring them to constitute a committee of which the Secretary of the Department of Law should be a Member to formulate the development plan as per the directions issued by us and present the status report so that further directions can be issued. The committee shall invite an officer from the High Court to be nominated by the Chief Justice of the High Court. Copies of the order passed today be sent to the Registrar Generals of all the High Courts."

60. In the light of the above decision, a duty is cast upon the State of Kerala, represented by its Secretary, Department of Home; and Corporation of Kochi, respondent Nos.3 and 4 respectively, to provide adequate space, for parking the vehicles.

61. Material on record further discloses that right from the year 2002 onwards, High Court of Kerala, having felt the dire need of providing

sufficient space for parking vehicles, inconvenience caused to the litigants, lawyers, their clerks, and other stakeholders, has been repeatedly addressing various authorities, which does not require reproduction.

62. Railway, in principle, has agreed to give land to the Government of Kerala, on long term lease for 35 years. Correspondence between the authorities concerned, makes it clear that construction of the compound wall and developing of parking space would be done by the Public Works Department. Survey and demarcation of the land has already been done. Lease rent has already been determined, but in 2018, the District Collector has been directed to submit a revised lease rent. Corporation of Kochi, represented by its Secretary, respondent No.4, has expressed their willingness to provide slabs over the drains, once the land is made available.

63. Material on record also discloses that shifting of compound wall was agreed to be done. When railways, in principle, had already agreed to provide the required land, already surveyed, for the purpose of widening of the Salim Ali road, neither the Corporation of Kochi nor the Government, have come forward to agree for payment of the lease amount. Government of Kerala and Corporation of Kochi, respondents 3 and 4 respectively, are bound to provide sufficient funds, to ensure

widening of the Salim Ali road, lay slabs on the drain, for shifting of the compound, and for all other incidental activities. A revised estimate be prepared by the District Collector, Ernakulam, within two months from the date of receipt of a copy of this judgment.

64. Lease rent to be finalised between the parties, at the earliest, and there shall be no delay. On the submission of the revised estimate, Railways, Corporation of Cochin and Government of Kerala, in co-ordination with each other, conclude the process of widening of the Salim Ali road, initiated in the year 2002. There shall be a further direction to the State of Kerala, represented by its Secretary, Department of Home, Thiruvananthapuram; and Corporation of Kochi, represented by its Secretary, respondent Nos.3 and 4 respectively, to provide adequate funds to pay the lease charges to the Railway, on surrendering their land having an extent of 466.2 SQM on the northern boundary of the existing Salim Ali Road and to implement the road widening scheme, proposed by the Registrar of the High Court of Kerala.

65. The 3<sup>rd</sup> respondent, State of Kerala, represented by its Secretary, shall take appropriate steps to acquire enough and sufficient land from the property now in possession of the Railway, in the northern side of the High Court premises, comprised in Sy. Nos.2495 and 2496 of

Ernakulam Village of Kanayannur Taluk, for the development and improvement of infrastructure of the High Court of Kerala, which includes its parking area. Such exercise, shall be completed within a period of three months from the date of receipt of the revised estimate.

66. The entire exercise shall be completed, within five months from the date of receipt of a copy of this judgment.

In the light of the above discussion and the decision in **All India Judges Association** (cited supra), writ petition is ordered accordingly.

Sd/-  
**S. MANIKUMAR**  
**JUDGE**

Sd/-  
**A.M.SHAFIQU**  
**JUDGE**

krj

**APPENDIX**

**PETITIONER'S/S EXHIBITS:**

- EXHIBIT P1 COPY OF THE LETTER NO.J1-32842/2002 DATED 23.08.2007 SENT BY THE 5TH RESPONDENT TO THE 2ND RESPONDENT.
- EXHIBIT P2 COPY OF THE LETTER NO.J-32842/2002 DATED 23.11.2007 SENT BY THE 5TH RESPONDENT TO THE 2ND RESPONDENT.
- EXHIBIT P3 COPY OF THE LETTER NO.J1-32842/2002 DATED 07.04.2008 SENT BY THE 5TH RESPONDENT.
- EXHIBIT P4 COPY OF THE LETTER DATED 18.06.2010 SENT BY THE 6TH RESPONDENT TO THE 5TH RESPONDENT.
- EXHIBIT P5 COPY OF THE REPLY NO.J1-328422/2002 DATED 14.07.2010 SENT BY THE 5TH RESPONDENT TO THE 6TH RESPONDENT.
- EXHIBIT P6 COPY OF THE REPRESENTATION NO.KHCAA/102/2010 DATED 19.07.2010 SENT BY THE 6TH RESPONDENT TO THE MINISTER OF STATE FOR RAILWAYS, GOVERNMENT OF INDIA.
- EXHIBIT P7 COPY OF THE REPLY DATED 29.07.2010 SENT FROM THE OFFICE OF THE MINISTER OF STATE FOR RAILWAY, GOVERNMENT OF INDIA, TO THE 6TH RESPONDENT.
- EXHIBIT P8 COPY OF THE REPRESENTATION DATED 18.10.2011 SUBMITTED BY THE 6TH RESPONDENT TO THE LEARNED ADVOCATE GENERAL OF KERALA.
- EXHIBIT P9 COPY OF THE COMMUNICATION DO.NO.2012/LMB/1/25 DATED 13.7.2012 OF THE 2ND RESPONDENT.
- EXHIBIT P10 COPY OF THE LETTER NO.KHCAA/220/2012 DATED 30.07.2012 SUBMITTED BY THE 6TH RESPONDENT TO THE 4TH RESPONDENT.
- EXHIBIT P11 COPY OF THE LETTER DATED 12.09.2012 SENT BY THE 6TH RESPONDENT TO THE 5TH RESPONDENT.
- EXHIBIT P12 COPY OF THE PROCEEDINGS NO.V/W.277/PLY/G/TY DATED 29.07.2010 ISSUED BY THE DIVISIONAL RAILWAY MANAGER, SOUTHERN RAILWAY, THIRUVANANTHAPURAM.
- EXHIBIT P13 COPY OF THE COMMUNICATION JO.J1(D)-32842/2002 DATED 20.11.2012 ISSUED BY THE 5TH RESPONDENT TO THE 6TH RESPONDENT.
- EXHIBIT P14 COPY OF THE REPRESENTATION NO.KHCAA/175/2013 DATED 31.05.2013 SUBMITTED BY THE 6TH RESPONDENT TO THE HON'BLE MINISTER FOR PUBLIC WORKS, GOVERNMENT OF KERALA.



- EXHIBIT P15 COPY OF THE LETTER NO.MOP2-22976/06 DATED 28.07.2007 ISSUED BY THE 4TH RESPONDENT TO THE DIVISIONAL MANAGER, SOUTHERN RAILWAY, THIRUVANANTHAPURAM.
- EXHIBIT P16 COPY OF THE COMMUNICATION NO.DO NO.V/W.277/POLICY/G/TEMPY DATED 17.08.2007 OF THE DIVISIONAL RAILWAY MANAGER, SOUTHERN RAILWAY, THIRUVANANTHAPURAM.
- EXHIBIT P17 COPY OF THE NOTIFICATION GO(MS) NO.42/F&WLD DATED 31-8-2004 ISSUED BY THE GOVERNMENT OF KERALA.
- EXHIBIT P18 PHOTOGRAPH OF THE MANGALAVANAM BIRD SANCTUARY AND SURROUNDING PLACE.

**RESPONDENTS' EXHIBITS:-**

EXT.R-1(1): COPY OF LETTER ISSUED BY THE OFFICE OF THE SOUTHERN RAILWAY DATED 19.11.2009 TO THE REGISTRAR GENERAL.

EXT.R-1(2): COPY OF LETTER DATED 20.10.2009 ISSUED BY THE HEADQUARTERS OFFICE OF THE SOUTHERN RAILWAY.

EXT.R-1(3): COPY OF LETTER DATED 23.2.2020 ISSUED BY THE OFFICE OF THE SOUTHERN RAILWAY TO THE 4TH RESPONDENT.

EXT.R-1(4): COPY OF LETTER DATED 21.11.2011 ISSUED BY THE OFFICE OF THE SOUTHERN RAILWAY.

EXT.R-1(5):- COPY OF LETTER DATED 31.5.2011 ISSUED BY THE OFFICE OF THE SOUTHERN RAILWAY TO THE 4TH RESPONDENT.

EXT.R1(6):- COPY OF THE LETTER BEARING 2017/LMC/II/25/3/MISC. COURT CASE DATED 06.04.2018 ISSUED BY THE 1ST RESPONDENT.

EXHIBIT-R8(b) RELEVANT EXTRACT OF THE PROPOSAL FOR DECLARATION OF ECO-SENSITIVE ZONE AROUND MANGALAVANAM BIRD SANCTUARY BY KERALA FOREST AND WILDLIFE DEPARTMENT.

EXHIBIT-R8(b) RELEVANT EXTRACT OF THE PROPOSAL FOR DECLARATION OF ECO-SENSITIVE ZONE AROUND MANGALAVANAM BIRD SANCTUARY BY KERALA FOREST AND WILDLIFE DEPARTMENT.

EXHIBIT-R8(c) COPY OF THE ENGLISH PORTION OF THE DRAFT NOTIFICATION REGARDING ECO-SENSITIVE ZONE AROUND MANGALAVANAM BIRD SANCTUARY PUBLISHED IN GAZETTE OF INDIA, EXTRAORDINARY, PART II, SECTION 3, SUB SECTION (II), NO.2463 DATED 29.8.2017.

EXHIBIT-R8(d) COPY OF THE ORDER DATED 30.1.2019 IN O.A.NO.587/2018 OF THE NATIONAL GREEN TRIBUNAL.

ANNEX.R-5(A):- COPY OF THE LETTER DATED 23.7.2002 ISSUED BY THE REGISTRAR, HIGH COURT OF KERALA TO THE GENERAL MANAGER, SOUTHERN RAILWAY, CHENNAI.

ANNEX.R-5(B):- COPY OF THE LETTER DATED 16.8.2002 ISSUED BY THE GENERAL MANAGER, SOUTHERN RAILWAY, CHENNAI TO THE REGISTRAR, HIGH COURT OF KERALA.

ANNEX.R-5(C):- COPY OF THE LETTER DATED 28.8.2003 ISSUED BY THE DISTRICT COLLECTOR, ERNAKULAM TO THE DIVISIONAL MANAGER, TRIVANDRUM ALONG WITH SKETCH.

ANNEX.R-5(D):- COPY OF THE LETTER DATED 10.12.2004 ISSUED BY THE REGISTRAR, HIGH COURT OF KERALA TO SRI. BABU JOSEPH, CHIEF SECRETARY TO GOVERNMENT.

ANNEX.R-5(E):- COPY OF THE LETTER DATED 23.13.2004 ISSUED BY THE DISTRICT COLLECTOR, ERNAKULAM TO THE PRINCIPAL SECRETARY, REVENUE (A) DEPARTMENT, TRIVANDRUM ALONG WITH SKETCH.

ANNEX.R-5(F):- COPY OF G.O(RT) NO.2519/2006/HOME DATED 2.11.2006.

ANNEX.R-5(G):- COPY OF THE LETTER DATED 7.9.2005 ISSUED BY THE REGISTRAR (GENERAL), HIGH COURT OF KERALA TO THE DISTRICT COLLECTOR, ERNAKULAM.

ANNEX.R-5(H):- COPY OF LETTER NO.JI-32842/2002 DATED 26.6.2007 ISSUED BY THE REGISTRAR (GENERAL), HIGH COURT OF KERALA TO THE DIVISIONAL MANAGER, SOUTHERN RAILWAY, TRIVANDRUM AND THE AREA MANAGER, SOUTHERN RAILWAY.

ANNEX.R-5(I):- COPY OF LETTER NO. J1-32482/2002 DATED 23.8.2007 ISSUED BY THE REGISTRAR (GENERAL), HIGH COURT OF KERALA TO THE CHAIRMAN, RAILWAY BOARD, NEW DELHI.

ANNEX.R-5(J):- COPY OF THE LETTER NO.V/W.277/PLY/G/TY DATED 29.7.2010 ISSUED BY THE DIVISIONAL RAILWAY MANAGER (WORKS), SOUTHERN RAILWAY, TRIVANDRUM TO THE SECRETARY, CORPORATION OF COCHIN.

ANNEXURE 1:- SURVEY SKETCH PREPARED BY THE DISTRICT SURVEY SUPERINTENDENT AS PER ORDER C8-16070/2018.

ANNEXURE II:- VALUATION REPORT NO.L9-175531/2018 DATED 17.03.2018 SUBMITTED BY THE DISTRICT COLLECTOR, ERNAKULAM.

ANNEXURE III:- COPY OF THE MINUTES OF THE MEETING CONVENED BY THE ADDITIONAL CHIEF SECRETARY (HOME AND VIGILANCE) ON 09.08.2018.

ANNEXURE IV:- COPY OF THE LETTER NO.L9-175531/2018 DATED 01.10.2018 OF THE DISTRICT COLLECTOR, ERNAKULAM.

W.P.(C).No.24545/2015

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ANNEXURE V:- COPY OF THE MAP OF THE MANGALAVANAM BIRDS SANCTUARY AND THE ECO SENSITIVE ZONE OF THE MANGALAVANAM BIRDS SANCTUARY SURROUNDING THE SANCTUARY

//TRUE COPY//

P.A. TO C.J.