

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
(SOUTHERN ZONE BENCH, CHENNAI)**

ORIGINAL APPLICATION No.11 OF 2023 (SZ)

1. Ratheesh K.R.

Aged 26 years

Son of Late Ravindran

Kalambukattu Nikarthil

House, Panavally Village

Cherthala Taluk, Alapuzha

& 8 Others

.....Applicants

v.

1. State of Kerala

Represented by the Chief Secretary

Secretariat, Thiruvananthapuram

& 5 Others

....Respondents

COUNTER AFFIDAVIT FILED BY THE 3RD RESPONDENT

I, R.A.Pradeep Kumar, Son of A. Aravinda Kurup, aged 56 years, Secretary, Panavally Grama Panchayath, Kerala and residing at Sreevalsam, Pipeline Road, Palluruthy, Kochi-682006 do hereby solemnly affirm and sincerely state as follows :

(1) I state that I am the Secretary of the 3rd respondent herein and am filing this counter affidavit for and on behalf of the said respondent, which is a local body. I am well acquainted with the factual position. The entire gamut of averments in the application are denied in toto, except those expressly admitted herein.



R.A.PRADEEP KUMAR
secretary
panavally grama panchayath
Mob.9496043607

(2) I submit that there is gross misrepresentation of facts in the present application. The applicants have no locus standi to claim the reliefs set out in the application and it therefore deserves to be dismissed *in limine*.

(3) I submit that the applicants herein had filed a writ petition in W.P(C)No.19564 of 2011 (U) before the Hon'ble High Court of Kerala, arraying all the respondents herein as parties. Identical reliefs of 'payment of compensation and restoration of stake/fishing nets 1, 2 and 3'as sought herein was also a subject matter of the said writ petition. The 1st respondent herein had filed a counter affidavit in the said writ petition, to the effect that the stake nets in question were removed by the 4th respondent herein as early as on 06.10.2008 in consonance with the decision of the appropriate authorities to deepen the National Water-ways. A summary of the said counter affidavit is recorded in paragraph 7 of the judgement dated 25 July, 2013, rendered in the said writ petition by the Hon'ble High Court of Kerala. The Government Order sanctioning compensation *vide* G.O.(RT).No.885/11/F&PD dated 19.12.2011 was filed before the Hon'ble High Court as Exhibit R1.A. The 1st respondent categorically stated before the High Court that the name of one Karumban Krishnan is included in the list of beneficiaries. The applicants herein claim to be the legal heirs of Karumban Krishnan.

(4) I submit that the 4th respondent herein also filed a counter affidavit in the said writ petition re-affirming the stand taken by the 1st respondent.




A. PRADEEP KUMAR
Secretary
Pinnavally Grama Panchayath
Mob. 0496043607

A summary of the same is recorded in paragraph 8 of the judgement of the High Court of Kerala. The 4th respondent took a stand in the said writ petition that they have removed the stake nets on 06.10.2008 and directed the stake net owners to re-fix their nets at other places which are suitable for fishing. The 4th respondent further averred that the legal heirs of Karumban Krishnan requested for an increase in the quantum of compensation and the same was also granted.

(5) I submit that the High Court of Kerala *vide* paragraph 131 of its judgement dated 25 July, 2013, declined to exercise jurisdiction with respect to the reliefs seeking compensation and restoration of stake nets. The reason for the same is recorded in paragraph 88 of the said judgement, as below:

*88. The writ court is not an appellate court. The writ court does not ordinarily decide disputed questions of facts. **This Court cannot on the basis of materials, come to a definite conclusion that the petitioners have established that the stake nets in question were lost in the manner contended by them.** In such circumstances, we cannot consider the grant of the relief of either. compensation or a direction to restore the stake nets. Petitioners may have to work out their remedies in any other competent forum.*

(6) I submit that the present application has been filed before this Hon'ble Tribunal, claiming identical reliefs of compensation and restoration which



[Signature]
A. PRADDEEP KUMAR
secretary
panavally grama panchayath
Mob.9496043607

were rejected by the Hon'ble High Court of Kerala. I submit that no evidence, let alone a material one, has been placed on record in the present application to evince the fact that the stake nets of the petitioners were damaged/lost on account of reclamation of the lake. In fact, the tax receipts that have been annexed with the present application as 'Annexure-A3' indicate that last payment made towards tax was on 07.07.2008. The same adds weight to the stand taken by the 4th respondent that on 06.10.2008, the nets of the applicants were removed.

(7) I submit that according to the applicant's own averments in paragraph 9 of the application, the first complaint against the 5th and 6th respondents was given on 31.12.2010. However, the 4th respondent has submitted a 'Statement of Facts' before this Hon'ble Tribunal, reiterating its stand in the writ petition before the High Court of Kerala to the effect that the nets of the applicants were removed on 06.10.2008. On account of the same, it is evident that the applicant's alleged loss of livelihood can in no manner be attributable to any action/inaction on the part of this respondent. Moreover, the relief of compensation and restoration can be sought from this Hon'ble Tribunal only as a consequence of 'environmental damage', as evident from S.15 of the National Green Tribunals Act, 2010. The alleged loss of livelihood of the applicants has no nexus whatsoever with any sort of environmental damage.

(8) I submit that a perusal of the Statement of Facts filed by the 4th




R.A. PRADEEP KUMAR
Secretary
Punjavily grama panchayath
Mob. 9496043607

respondent reveals that compensation that was earlier fixed was enhanced as per G.O(Rt).No.38/13 F & PD dated 17.06.2013. In any case, this respondent has no connection whatsoever with the proceedings taken to remove the nets of the applicants and is therefore not liable to pay any amount as compensation. The relief of restoration claimed is also not within the ambit of the powers of this respondent.

(9) Without prejudice to the afore-mentioned averments, I submit that in the event this Hon'ble Tribunal arrives at a finding that the applicant is entitled to compensation, the respondents 5 and 6 alone are liable. There is no cause of action projected by the applicants to make this respondent liable for payment of compensation.

In the light of the afore-mentioned reasons, it is humbly prayed that this Hon'ble Tribunal may be pleased to dismiss the present application against the 3rd respondent and thus, render justice.



R.A.PRADEEP KUMAR
Secretary
Nonavally Grama Panchayath
Mob.9406043607

Solemnly affirmed and
Signed before me on this
the 16th day of April 2023
at Ernakulam.

BEFORE ME :

[Signature]

Vidhya . A . c
Advocate
K/332/2003
Ernakulam