

BEFORE THE NATIONAL GREEN TRIBUNAL, (SZ), SITTING AT CHENNAI
(Under Section 18(1) read with S. 14 of National Green Tribunal Act, 2010)

ORIGINAL APPLICATION NO. 11 OF 2023 (SZ)

IN THE MATTER OF:

1. Ratheesh K.R., aged 26, S/o Late Ravindran,
Kalambukattu Nikarthil House, Panavally Village,
Cherthala Taluk, Alappuzha
2. Renuka, w/o Late Ravindran, aged 50,
Kalambukattu Nikarthil House, Panavally Village,
Cherthala Taluk, Alappuzha
3. Rekha, D/o Late Ravindran, aged 26,
Kalambukattu Nikarthil House, Panavally Village,
Cherthala Taluk, Alappuzha
4. Omana, W/o Late Parthan, aged 48,
Kalambukattu Nikarthil House, Panavally Village,
Cherthala Taluk, Alappuzha
5. Remya, D/o Late Parthan, aged 23,
Kalambukattu Nikarthil House, Panavally Village,
Cherthala Taluk, Alappuzha
6. Abhilash, S/o Late Parthan, aged 21,
Kalambukattu Nikarthil House, Panavally Village,
Cherthala Taluk, Alappuzha
7. Rajamma W/o Late Bhaskaran, aged 65,
Koombayil House, Chempu Village, Vaikom Taluk,
Kottayam District
8. Sarala, W/o Rajappan, aged 63,
Mukkidichirayil House, Arookutty Village, Kudapara Muriyil,
Cherthala
9. Valsala, W/o Babu, aged 53,
Manjalikkadu House, Kumbalam Village,
Panangad Muri, Kanayannur Taluk



Signed before me

T.T. JOSEPHINA 9.10.23

T.T. JOSEPHINA
Advocate & Notary
Roll No: K/352/1977, Regd. No: 19419
Govt. Press Road,
Ernakulam, Kochi - 682011

...Applicant(s)

VERSUS

For KAPICO KERALA RESORTS PVT. LTD.

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Authorized Signatory



Represented by the Chief Secretary, Secretariat,
Thiruvananthapuram, Pin- 695 001

2. Kerala Coastal Management Authority,
Sasthra Bhavan, Pattom, Thiruvananthapuram- 695 004,
Represented by its Member Secretary

3. Panavally Gram Panchayath,
Panavally, Cherthala, Alappuzha, Pin- 688 526
Represented by its Secretary

4. The Deputy Director of Fisheries,
Bismillah Complex, Building No. AMC XX/57,
Alappuzha, Pin- 688 001

5. Kapico Kerala Resorts (P) Ltd,
Regd Office at 52 MR Square, D.H. Road, Kochi- 17
Represented by its Director Mrs. Ratna Easwaran
Residing at Apartment No. 52, MR Square, D.H. Road, Kochi-17

6. Roy M. Mathew,
Muthoot House, Kozhencherry P.O.,
Kozhencherry Taluk, Pathanamthitta, Pin- 689 641

... Respondents

REPLY FILED BY THE 5TH RESPONDENT

It is most respectfully submitted that:

1. The present Reply is being filed on behalf of the 5th Respondent, namely, Kapico Kerala Resorts (P) Ltd. It is submitted that all the averments contained in the Original Application filed by the Applicants are denied and disputed in toto. The Application is neither maintainable in law nor sustainable in the background facts and circumstances and is only liable to be dismissed.

2. This original Application has been filed by the Applicants seeking a compensation of Rs. 1 Crore for the deprivation of their livelihood, damage to aquatic fauna and damages to the property and for the restoration of the



For KAPICO KERALA RESORTS PVT. LTD.
T.T. JOSEPHINA
T. T. JOSEPHINA
Advocate & Notary Authorized Signatory
Roll No: K/352/1977, Regd. No: 19419
Govt. Press Road,
Ernakulam, Kochi - 682011



Signed before me

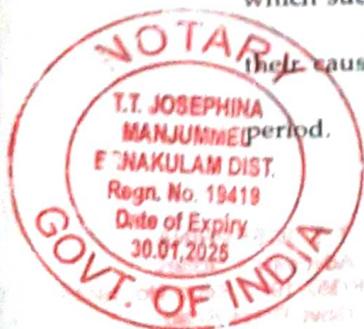
Curipade/ Stakenets in Vembanattu Kayal and Nedyathuruthu Island covered in Patta No. 947 issued by the Fisheries Dept., Govt. of Kerala. The Respondent denies each and every averment and states that the Application is only an afterthought and amounts to abuse of the process and procedure of this Hon'ble Tribunal.

3. In fact, it is relevant to even point out that the Applicants themselves were even involved in the activities of this Respondent project and gained considerable commercial benefit out of the same. It is apprehended that the present litigation is nothing but a malafide attempt to settle other personal scores and armtwist this respondent for other ulterior gains. There is absolutely no genuineness or fairness in the present Application which only deserves to be dismissed with costs.

I. Original Application not maintainable on the aspect of Limitation

4. It is submitted that the Application is filed well beyond the period of Limitation prescribed under Section 14 and 15 of the National Green Tribunal Act, 2010. This Hon'ble Tribunal has held in a catena of judgements that the limitation arises from the date on which the cause of action "first arose" and it is a settled proposition of law that any Application filed before this Hon'ble Tribunal is maintainable only if it is in conformity with the requirement of limitation.

5. Further, in the present case, the nature of the alleged cause of action, namely destruction of nets, cannot be a continuous or recurring one. The alleged violation, if at all, is a onetime event and the limitation triggers from the date on which such removal is alleged. Therefore, the Applicant must strictly establish their cause of action and filing of the Application within the statutory time period.



Signed before me

T.T. JOSEPHINA
Advocate & Notary
Roll No: K/352/1977, Regd. No. 19419
Govt. Press Road,
Ernakulam, Kochi - 682011

For KAPICO KERALA RESORTS PVT. LTD.

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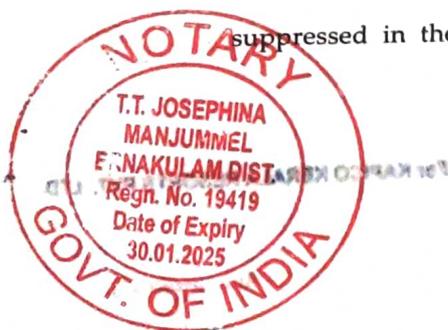
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6. In order to circumvent the legal requirement, the Applicant has conveniently stated and calculated the period of limitation from the date of making of his representation. Such a plea is not at all sustainable in the eye of law and amounts to misleading this Hon'ble Tribunal. It is submitted that even assuming the representation was made, the Application filed from the date of making of representation can only relate to the averments in the representation or any relief thereof. Therefore, the explanation of the Applicant to calculate the period of limitation from the date of making of his representation is only for the sake of convenience and cannot stand the test of law.

7. Further, the contents pertaining to Limitation under paragraph 16 of the Original Application are denied as false and devoid of merit. It is envisaged in Section 15(3) of the National Green Tribunal Act, 2010 that no Application for grant of any compensation or relief or restitution of property or environment shall be entertained this Hon'ble Tribunal unless it is made within a period of five years from the date on which the cause of such compensation or relief first arose. The alleged cause of action in the present original Application, if at all, arose in 2008 when the oonipads/ stake nets were allegedly removed. The present application is not filed within the year 2013 when the NGT Act came into force during the year 2010 itself. Therefore, this Original Application is barred by limitation in accordance with Section 15(3) of the National Green Tribunal Act, 2010.

II. Claim of compensation from the 5th Respondent not maintainable:

8. The Original Application filed by the Applicants conceals the entirety of facts. The fact that removal of the oonipads/ stake nets was an action undertaken by the Department of Fisheries to facilitate the National Water Ways project is suppressed in the Original Application filed by the Applicants. In fact, the



For KAPICO KERALA RESORTS PVT. LTD)

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T.T. JOSEPHINA
Advocate & Notary

Roll No: K/352/1977, Regd. No: 19419

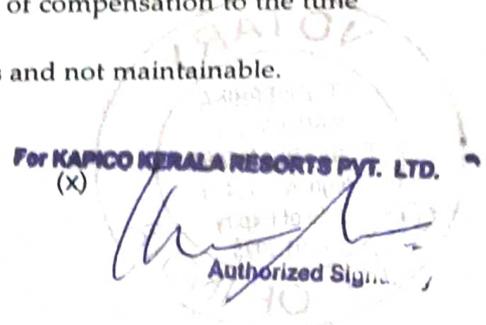
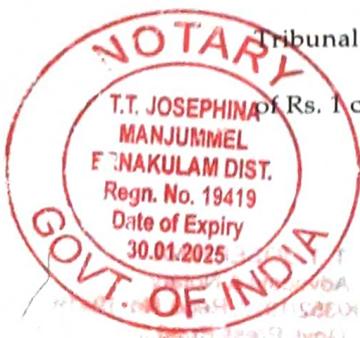
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Department of Fisheries vide its Report dated 11.04.2023 has categorically stated that the disputed stake nets were removed for the National Waterway, by the Department on the basis of the G.O. bearing the No. C3-5490/95 dated 22.12.2007. Further, the Applicants had challenged the removal of the oonipads/ stake nets before the Hon'ble Kerala High Court in W.P. (C) 19564/2011 batch of cases, wherein the Hon'ble High Court had refused to go into the aspect of compensation as the manner of removal of these oonipads/ stake nets was disputed.

9. It is submitted that the Hon'ble High Court denied any relief since there were disputed facts and no material was placed to render a conclusion. Therefore, the leave or liberty of the Hon'ble High Court does not by any stretch of imagination automatically confer on the Applicants any right to seek compensation without proving the violation. In the instant proceedings also, the Applicant has not produced any evidence to show that the removal of the oonipads/ stake nets was by the 5th Respondent. Therefore, the Applicant has not proved his case against the 5th respondent and as such the Order of the Hon'ble High Court applies to the present set of circumstances which only dismisses the claim of the Applicants.
10. That apart, as stated, the Reply of Fisheries Dept would clearly disprove the statement of the Applicant and highlight that this Respondent has not committed any violation or removed the oonipads/ stake nets. Therefore, the claim of the Applicants and the statement made by them is nothing but false and untrue, the Applicants are not only deserving to have their Application dismissed but are also liable of the consequences of pleading wrong facts before this Hon'ble

Tribunal. Therefore, in light of the above, the claim of compensation to the tune

of Rs. 1 crore against the 5th Respondent is frivolous and not maintainable.



III. Basis for the calculation of Compensation not maintainable:

11. Without prejudice to the above, the claim of the Applicants to compensate them to the tune of Rs. 1 Crore is arbitrary, frivolous, and untenable. The Applicants have neither provided any document nor shown any proof for the actual loss of income. Further, there is no appropriate formula, or any basis based on which the Applicants have claimed the compensation. Further, the Applicants have made the claim for present and the future generations to come; the aspect of loss of income of future generations will not come into the picture. In any case, the removal of oonipads/ stake nets was undertaken by the Department of Fisheries and hence the question of claiming of any compensation from the 5th Respondent does not arise.

PARA WISE REPLY:

12. The Applicants are put to the strict proof of the contents in paragraph nos. 1 to 7.
13. With regard to the averments in paragraph 8, it is submitted that the 5th Respondent proceeded with the construction of the Resort bonafidely on the basis of the No Objection granted by the Panchayat. In any case, it is submitted that the averments pertaining to the construction are already dealt with by the Hon'ble Courts and the relevant Authorities and appropriate actions have been taken by the Authorities and hence is irrelevant to the present Original Application.
14. The averments raised in paragraph 9 are vehemently denied as baseless and false. It is submitted that the averments pertaining to the alleged illegal construction are already dealt with by the Hon'ble Courts and appropriate actions have been taken by the relevant Authorities and such averments is therefore, unnecessary, irrelevant and untoward in the present Original Application. The averment



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For KAPICO KERALA RESORTS PVT. LTD.

[Signature]
Authorized Signatory
Signed before me



Roll No: K/352/1977, Regd. No: 19419
Govt. Press Road,
Ernakulam, Kochi - 682011

pertaining to silencing of Authorities with might and influence is frivolous, false and baseless. The Applicants making such frivolous statements are put to strict proof of the same. With regard to averments pertaining to the complaint made before the District Collector, Alappuzha, it is submitted that till date the manner of removal of the stake nets is disputed. In fact, the Department of Fisheries vide its Report dated 11.04.2023 states that the disputed stake nets were removed by the Department from the route of National Waterway on 06.10.2008.

15. With regard to the averments in paragraphs 10 and 11, it is submitted that though frivolous complaints were made before the District Collector, Chief Minister and Sub Inspector of Police, Poochakkal, till date the manner of removal of the stake nets is disputed and has not been proven by the Applicants that it was due to the actions of the 5th Respondent. Further, the Department of Fisheries vide its Report dated 11.04.2023 has categorically stated that the disputed stake nets were removed for the National Waterway, by the Department.

16. The averments in paragraph 12 are denied as baseless and devoid of any merit. The Applicants have neither provided any document nor shown any proof for the actual loss of income. Further, there is no appropriate formula, or any basis

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Accepted
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T. T. JOSEPHINA
Advocate & Notary

Roll No: K/352/1977, Regd. No: 19419

Govt. Press Road,
Ernakulam, Kochi - 682017

Applicants have made the claim for present and the future generations to come;

the aspect of loss of income of future generations will not come into the picture.

The averments in paragraph 13 are denied as baseless and void of merits. It is

submitted that the averments pertaining to the alleged illegal construction and encroachment are already dealt with by the Hon'ble Courts and appropriate

actions have been taken by the relevant Authorities. The averments that the

construction of Resort by the 5th Respondent resulted in the removal of oonipads/



For KAPICO KERALA RESORTS PVT. LTD.

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stake nets of the Applicants is denied in toto. Till date, the Applicants have not been able to prove the manner of removal of oonipads/ Stake nets.

18. The averments in paragraph 14 are admitted to the extent that the Applicants filed W.P. (C) No. 19564/2011 before the Hon'ble Kerala High Court. However, the averment that the Applicants lost their livelihood due to the 5th Respondent is denied in toto. It is submitted that till date no proof has been shown by the Applicants that the oonipads/ stake nets were removed by the 5th Respondent. Further, it is submitted that the removal of oonipads/ stake nets was done by the Department of Fisheries, which is admitted by them in their Report dated 11.04.2023.

19. The Applicants are put to strict proof of the averments raised in paragraph 15. It is however submitted that the Hon'ble Kerala High Court had not gone into the aspect of compensation as the Applicants were not able to prove the manner of removal of oonipads/ stake nets.

20. The averments raised in paragraph 16 are denied as false, baseless and devoid of merits. The Applicants have neither provided any document nor shown any proof for the actual loss of income. Further, there is no appropriate formula, or any basis based on which the Applicants have claimed the compensation. Further, the Applicants have made the claim for present and the future generations to come. Further, the Department of Fisheries vide its Report dated 11.04.2023 has categorically stated that the disputed oonipads/ stake nets were removed for the National Waterway, by the Department, on the basis of the G.O. bearing the No. C3-5490/95 dated 22.12.2007. Hence, the claim of the Applicants to compensate them to the tune of Rs. 1 Crore is arbitrary and untenable.



For KAPICO KERALA RESORTS PVT. LTD.

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Authorized Signatory



Signed before me T. T. JOSEPHINA
Advocate & Notary
Roll No: K/352/1977, Regd. No: 19419
Govt. Press Road,
Ernakulam, Kochi - 682011

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REPLY TO GROUNDS:

21. The grounds raised in Paragraph 16 are specifically denied as wrong and baseless as follows:

A. The contents of Ground A are denied in toto. The 5th Respondent is in no way liable to pay any compensation as claimed by the Applicants in accordance with the refutals made above.

B. The contents of Ground B are denied as false and baseless. Necessary action has been taken against the alleged illegal construction.

C. The contents of Ground C is denied as baseless. The Applicants till date have not been able to prove that the removal of Oonipads/ stake nets was due to the action of the 5th Respondent.

D. The contents of Ground D is denied as baseless and devoid of merits. The 5th Respondent is not liable for the removal of oonipads/ stake nets. It is in fact the Department of Fisheries who is responsible for the same.

E. The contents of Ground E is denied in toto. The 5th Respondent is not liable to pay any compensation to the Applicants.

Signed before me

T.T. Josephina
T. T. JOSEPHINA
Advocate & Notary
Roll No: K/352/1977, Regd. No: 19419
Govt. Press Road,
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F. The contents of Grounds F to H are denied in toto as false and baseless. The same have been dealt in detail above.

G. The contents of Ground I and J are false, baseless and devoid of merits.

H. The contents of Ground K are denied as false and baseless.

22. In light of the above, the 5th Respondent most respectfully prays that this Hon'ble Tribunal may be pleased to dismiss the present Original Application filed by the

Applicants with cost.



For KAPICO KERALA RESORTS PVT. LTD.

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VERIFICATION

I, C. Gunasekaran, aged 72 years, Project Manager of Kapico Kerala Resorts (P) Ltd, residing at Flat No 8A, Holiday Grandeur, Gandinagar, Kadavanthara, Cochin, Ernakulam District, Kerala 682020, the 5th Respondent herein, do hereby state that the contents of the above Reply Affidavit in the above paragraphs are true and correct and that no material has been concealed there from.

Dated on this the 9th day of October, 2023.

NOTARIAL REGISTER ENTRY
Sl. No.: 186 Vol.: 4

COUNSEL FOR REPENDENT



For KAPICO KERALA RESORTS PVT. LTD.

Authorized Signatory

RESPONDENT



For KAPICO KERALA RESORTS PVT. LTD.

Authorized Signatory

Signed before me

T. JOSEPHINA
Advocate & Notary

Signed before me 9.10.23
Roll No: K352/1977, Regd. No: 19419

Govt. Press Road,
Ernakulam, Kochi - 682011

