

**PRESENTED ON: 09.112023.**

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL AT CHENNAI**

**Original Application No.11 of 2023**

Ratheesh K.R. & Others: Applicants

Vs.

State of Kerala & Others: Respondents

**AFFIDAVIT FILED BY THE 1<sup>ST</sup> APPLICANT IN THE ABOVE CASE IN REPLY  
TO THE REPORT OF THE 4<sup>TH</sup> RESPONDENT**



**P.K. IBRAHIM &  
K.K. ASHKAR  
ADVOCATES**

**THE HOUSE OF LAWYERS  
VELAMBATH BUILDING, KOMBARA JUNCTION,  
ERNAKULAM, KOCHI-18**

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State of Kerala & Others: Respondents.

**AFFIDAVIT FILED BY THE 1<sup>ST</sup> APPLICANT IN THE ABOVE CASE**

I, Ratheesh K.R, aged 34 years S/o. Late Raveendran, Kalampukuttu Nikathil House, Panavally village, Cherthala Taluk, Alappuzha District, do hereby solemnly affirm and state as follows:

1. I am the 1<sup>st</sup> applicant in the above case, and I am conversant with the facts of the above case. I swear to this affidavit on behalf of myself and other applicants as specifically authorised by them.
2. Applicants belong to traditional fisherman community known as *Dheevara* and fishing is their source of livelihood. By the construction activity carried over by 5<sup>th</sup> respondent company in violation of CRZ regulations and encroaching into backwater, destructed the Oonnipads (stake nets) 1,2 and 3 of the applicants situated between 150 buoys of inland waterways in Vembanad Lake and Nedyathuruth Island covered under Patta No.947 issued by the Fisheries Department, Govt of Kerala causing deprivation of livelihood to applicants and their family.
3. The above application is filed for compensation of Rs.1 Crore to the applicants for deprivation of their livelihood and direction to restore the aforesaid three stake nets of applicants.
4. There were 13 Oonnipads (stake nets) erected in a line across the Vembanad lake by grant of lease in an extent of 6 cents comprised in Sy.No.227/1/1 of Panavally Village between 150 buoy of inland waterways in Vembanad Lake and Nedyathuruth Island. Since the Oonnipads were



located near Nedyathuruth island it was being called as *Nedyathuruth Oonnipads*. The reclamation of lake encroaching into the portion of stake nets 1,2 3 was sternly opposed by the applicants but in vain since Respondents 5 and 6 could silence all law enforcing agencies with their might and influence. Applicants made complaints before the District Collector, Local Police and Chief Minister in December 2010, which fetched no response. Therefore, applicants approached Honourable High Court of Kerala on 18th July 2011 in and by W.P.(C) No. 19564/2011 seeking following reliefs:

- i. *Issue a Writ of Mandamus commanding the respondents to restore the Oonnipads/Stake nets 1, 2 and 3 of the Petitioners situated between 150 buoy of inland waterways in Vembanad Lake and Nedyathuruth Island covered under Patta No.947 issued by the Fisheries Department, Government of Kerala.*
- ii. *Issue a writ of mandamus commanding the respondents jointly and severally to pay compensation to the tune of Rs.1 Crore for the deprivation of their livelihood protected under Article 21 of the Constitution.*
- iii. *Issue a Writ of mandamus commanding the respondents to demolish the illegal constructions made around the Nedyathuruth Island by encroaching into the Vembanad Lake and the Puli Muttu/ Bund constructed across the Vembanad Lake to stall the high tide and low tide effect.*
- iv. *Issue a Writ of mandamus commanding the respondents to survey the land in Nedyathuruth Island and evict respondents 8 and 9 (respondents 5 & 6 herein) from the land found to be encroached by them.*
- v. *Issue a Writ of mandamus commanding the respondents 1 to 7 to survey and identify the land claimed by the respondents 8 and 9 (respondents 5 & 6 herein) in Sy.No.266/1/1 under title deed No.1625/07 dated 14.5.2007 registered at the Sub registrar's office, Panavally and restore 50 cents of Puramboke land occupied by respondents 8 and 9 in Nedyathuruth Island on the strength of the said document.*

5. The above writ petition was heard by the Division Bench of the Honourable High court with connected matters and all the writ petitions were disposed of by Annx-A15 judgment dated 25.07.2013. A survey was conducted by Deputy Surveyor of Alappuzha in the presence of the District Collector, Alappuzha as per the order of High Court dated 22/11/2012 and

found encroachment of backwater and the company was issued with notice under section 11 of Kerala Land Conservancy Act. Even though honourable High Court directed to proceed action against the company in accordance with law as far as encroachment by 5<sup>th</sup> respondent company is concerned, it declined its jurisdiction so far as relief relating to compensation and restoration of stake nets, as prayed by the applicants, giving liberty to the applicants to agitate their grievances in appropriate forum.

6. Accordingly, applicants approached this Honourable Tribunal in the above case along with M.A. No.35/2016 for condonation of delay. This Tribunal was pleased to dismiss M.A. No. 35 / 2016 holding that the application is filed beyond the period of limitation by order dated 04/07/2017. That order was challenged before the Honourable Supreme Court in and by Civil Appeal No.4948/2018 by the applicants. The apex court by order dated 06.09.2022 allowed the Appeal filed against the impugned order of this Tribunal and directed this Tribunal to hear the matter on merits.

7. The National Green Tribunal (Practices and Procedures) Rules, 2011 does not exempt the 4<sup>th</sup> respondent or any other Govt. authorities from the procedures prescribed for filing application, reply and documents before the Tribunal. As per Rule 16 (3) reply shall be signed and verified as a written statement by the respondents or any other person duly authorised by him in writing in the same manner as provided for in O.VI, Rule 15 CPC. The documents accompanying reply shall also be filed along with the reply and the same shall be marked as R1, R2, R3 and so on. In order to evade the verification and action for perjury in the wrong statements made before the court, the official respondents are resorted to filing reply to the application in the guise of reports, such practices have to be deprecated for procedural propriety and fairness.



8. The 4<sup>th</sup> respondent in the above case has filed a report dated 08.05.2023 in reply to the original application in the above case and stated that the Deputy Director of Fisheries, Alappuzha had removed the stake nets 1, 2 and 3 of Nedyathuruth Oonnipads from the route of National Water Way on 06.10.2008 along with the National Waterway Authorities as per Endorsement No. C3-5490/95 dated 22.12.2007 of Director of Fisheries, Thiruvananthapuram. The statement that 4<sup>th</sup> respondent had removed the stake nets of applicants on 06.10.2008 for clearing the route for National Water Ways -III is unfounded and misrepresented to save the 5<sup>th</sup> respondent company from the liability to compensate the applicants on polluter pay principle, for extraneous consideration.

9. The endorsement No. C3-5490/95 dated 22.12.2007 referred to for substantiating the statement that applicants' stake nets were removed on 06.10.2008 is nothing but forwarding the minutes of the review meeting made under the Chairmanship of Principal Secretary WRD/CSIND dated 05.12.2017 on the development of National Waterway-III, to the Fisheries Deputy Directors of Kollam, Alappuzha and Ernakulam Districts for information and urgent necessary action. In the minutes, District Collector, Alappuzha stated that that all the 355 stake nets in Alappuzha District within the alignment of NEW-III have been already removed and that only 72 China nets pending relocation/removal for want of funds from Fisheries Department. Copy of the minutes of the review meeting dated 05.12.2007 along with the endorsement C3-5490/95 dated 22.12.2007 of Director of Fisheries produced along with report in running pages from 29 to 33. Therefore, the statement of the 4<sup>th</sup> respondent that he had removed applicants' stake nets as per the endorsement is untenable as the minutes of meeting forwarded to him confirmed that all stake nets within the alignment of National Waterway-III has been already removed. The 4<sup>th</sup> respondent may



be put to strict proof for his claim that applicants' stake nets were removed by him on 06.10.2008.

**10.** The Nedyathuruth stake nets comes within the jurisdiction of Sub Inspector of Fisheries (Backwater), Thevarvattom and the office had issued Annx-A1 location certificate with respect to Nedyathuruth stake nets on 31.03. 2011. If applicants' stake nets were removed from the lake on 06.10.2008, how location certificate can be issued in the year 2011? Annx-A2 (11) shows that Sub Inspector of Fisheries (Backwater), Thevarvattom has collected stake pole tax with respect to the stake nets of applicants on 07.07.2008. If the stake nets of the applicants contained in the list of stake nets to be removed as per the endorsement dated 21.12.2017, tax for the stake nets would not have been collected thereafter.

**11.** The applicants have not been dispossessed of stake nets 1 to 3 by any acquisition proceedings in connection with expansion of National Waterways. In fact, there was no acquisition proceedings at the instance of National Inland Waterways for expansion of waterways in Vembanad lake (Vaikom Kayal) near Nedyathuruth island. If any acquisition proceedings had been initiated, applicants would have been issued with notice. Till this date, applicants have no knowledge of any such acquisition proceedings.

**12.** The stake nets and Chinese nets found in the alignment of National Waterway-III with obstruction is identified by the National Waterway Sub Committee and those fishing nets were removed by the Fisheries Department after issuing notices to the owners of fishing nets. It is submitted that there were proceedings for expansion of waterways at *Koppayi*. A true copy of the notice dated 29.3.2005 issued to one Madhavan Vijayan in relation to acquisition proceedings of *koppayi Oonni* No.45 is produced herewith and marked for reference as **Annexure-A23**. There have been no



acquisition proceedings in respect of stake nets 1 to 12 and 1A in Nedyathuruth Island.

**13.** It is respectfully submitted that 13 Oonnipads situated in an extent of 6 cents comprised in Sy.No.227/1/1 of Panavally village situated between 150 buoy of Inland Waterways of Vembanad lake and Nedyathuruth island was never subjected to any acquisition proceedings or any proceedings resulting into its removal till this date. The contention that these Oonnipads were removed as part of deepening of National Waterways is absolutely false. As a matter of fact, the question of removing Oonnipads near Nedyathuruth Island does not arise for the purpose of "deepening of National Waterways". There is a distance of 105 meters from the boundary of the National Waterways No.3 to Nedyathuruth Island. The distance from the boundary of 150 buoy to Kulathuruth Island on the other side is 261 meters. The National Waterways have only a width of 38 meters. The National Waterway is passing through the Vembanad lake which lie between Kulathuruth Island and Nedyathuruth Island.

**14.** The 13 numbers of Nedyathuruth Oonnipads covered under Annx-A1 location certificate issued by the fishery department are erected in a line having a total length of 65 meters. The distance between first Oonnipad and Nedyathuruth Island was about 20 meters. By reclamation, the 5<sup>th</sup> and 6<sup>th</sup> respondents have not only encroached in to these 20 meters but also encroached into another 15 meters where Oonnipads 1 to 3 of the Applicants were located. The backwater reclaimed there has been annexed to the Nedyathuruth Island. The Jankar Jetty constructed by the 5<sup>th</sup> respondent was at this reclaimed backwater. Other Oonnipads No.4 to 12 still stands in line up position keeping a distance of 4 meters each. A true copy of the location map showing the National waterway No.3 passing between the two Islands, Namely Nedyathuruth Island and Kulathuruth Island (now Known



as Moopanar Island) is produced herewith and marked for reference as **Annexure-A24**. The location of 13 Oonnipads between National Water ways and Nedyathuruth Island is also marked in Annx-A24.

**15.** It can be seen from Annx-A24 that the widening of National Waterways in any case will not affect the Oonnipads 1,2, and 3 of the applicants. For the Oonnipads 1 to 3 to be removed for the alleged National Water ways, the respondents ought to have first removed all the Oonnipads from 12 to 4 belonging to Krishnan Ayyappan (Oonnipad No12), Karumbi kunji (Oonnipad Nos 11,10,9) and Sanku Velayudhan (8,7,6,5,4). The Oonnipads 4 to 12 are still there and Oonnipads 9,10,11 is protected by orders of the civil courts. In the circumstance, the allegation that Oonnipads 1 to 3 have been removed in connection with National Waterway deepening is like a coke and bull story.

**16.** The Inland Water Authority of India has filed counter affidavit dated 26.11.2011 before the Honourable Kerala High Court in W.P.(C) No.19564/2011 filed by the applicants. IWAI submitted that no control is vested with IWAI over the Kayal except the maintenance of navigable fairway channel having 60 metres wide along the deepest route, which has been demarcated using FRP buoys fitted with solar lights all along the stretch of NW-3. IWAI's only concern is to protect the fairway channel free from encroachment by cross structures, fishing nets, Oonni stakes and other obstructions along with deepest navigable route.

**17.** They have also stated that since the Oonnipads are away from the NW-3 navigation route, IWAI do not have any objection for the fishing nets situated away from the Navigational Channel of National Waterway No. 3. However, if the channel is obstructed, the same needs to be shifted away from the Navigational Channel i.e., leaving 60 metres wide channel, for which the

State Government/ Fisheries Department is assisting IWAI to maintain the channel free from obstructions. A true copy of the counter affidavit filed by the Inland Waterways Authority of India in W.P.C No. 19564/2011 before Kerala High Court is produced herewith and marked for reference as **Annexure-A25**.

**18.** Further the deepening of Waterways does not involve the re-fixing of the boundary of the National Waterways No.3. Even if the National Waterways have to be widened, unless such widening involves a width of 105 meters, by no stretch of imagination it could be said that Oonnipads 1,2, and 3 are removed for widening National Waterways. Therefore, the contention that the Oonnipads of the petitioners were removed as part of the deepening of National Waterways is absolutely false and a claim set out by the department only to help the respondents 5 and 6 who stands in dock on the charge of the illegal reclamation of Vembanad Kayal resulting into the loss of livelihood of the applicants from Oonnipads No. 1, 2 and 3.

**19.** The respondents 5 and 6 have piled up a lot of concrete pillars in the Kayal Puramboke around the Nedyathuruth Island as part of their illegal construction. The 5<sup>th</sup> respondent constructed a "Puli Muttu"(Bund) in the Kayal Puramboke at the southeastern side of stake net Nos. 9, 10 and 11 licensed to Karumbi Kunji, and at the southwestern side of the island so as to divert the natural flow of water from the shore of the island. Many of the concrete pillars so piled up in the Kayal Puramboke are so proximate that the natural flow of water towards these stake nets was disturbed. Equally, due to the illegal construction of "Puli Muttu' encroaching upto the Kayal (backwater) Puramboke, the natural flow of water is diverted away from the aforesaid stake nets and all other stake nets situating in that portion of the Back Water.



20. Due to the construction of the concrete pillars and the Puli Muttu, the quantity of fish which can normally be caught from the sake nets was badly reduced. When the respondents 5 and 6 started construction of Puli Muttu encroaching backwater Puramboke along the Nedyathuruth Island in first week of July 2008, the owners of stake nets 9, 10 and 11 filed an injunction suit vide O.S. No. 556/2008 before the Additional Munsiff Court at Cherthala seeking decree of permanent prohibitory injunction restraining the respondent company or anybody claiming under them from forcibly removing or damaging the plaint schedule stake nets, or from navigating any Junkar or any other boats through the Kayal in such manner as to cause prejudice to the fishing by the plaint schedule stake nets or from damaging the nets, and injunction restraining the respondent company or anybody claiming under them from making any further construction, *Puli mutt* or bund in the Kayal Puramboke in and around the plaint schedule property wherein stake nets situates. True copy of the plaint dated 22.07.2008 in O.S. No. 556/2008 on the files of Additional Munsiff Court at Cherthala is produced herewith and marked for reference as **Annexure-A26**.

21. If any widening of National Waterway No.3 affects even remotely, it should start with stake nets No. 9, 10 and 11. The suit was filed on 22.07.2008. A commission was deputed filed his report on 02.08.2008 identifying 10 stake poles of Nedyathuruth stake nets. The respondent company filed their written statement on 11.07.2009. A true copy of the written statement dated 11.07.2009 filed by Defendants 1 and 2 in O.S. No. 556/2008 is produced herewith and marked for reference as **Annexure-A27**. If the Oonnipads/stake nets near Nedyathuruth island were removed by the fisheries department on 06.10.2008 were a fact as alleged, then respondents 5 and 6 would have certainly come to know the said removal and would have taken it as a prime contention in the written statement and



defended the suit. The respondents didn't have such contention in their written statement.

**22.** Based on the commission report and the averments in the plaint, owners of stake nets 9,10 and 11 were allowed injunction as sought for in O.S.No.556/2008 by the Munsiff Court by order dated 23.07.2008 and the same was in force till disposal of the suit. The suit was later dismissed by the Munsiff Court without accepting the argument note filed by the plaintiff and hearing their side by judgment dated 13.12.2010. Plaintiffs challenged the judgment in A.S.No. 16/2011 before the Sub Court, Cherthala and by order dated 06.06.2011 plaintiffs/appellants were given injunction restraining the respondent company or anybody claiming under them from forcefully removing or damaging stake nets and restraining them from making any constructions encroaching into the Kayal. The application of the respondent company to vacate injunction order was dismissed by the Appellate Court by order dated 12.08.2011 and the injunction order against the company was in force until appellant have withdrawn the suit in 2017 after the judgment of the Honourable High court to remove the constructions carried over by the respondent company and its confirmation by apex court. A true copy of the Order dated 12.08.2011 in A.S No.16/2011 issued by the Sub Court, Cherthala is produced herewith and marked for reference as **Annexure-A28**.

**23.** The 4<sup>th</sup> respondent has submitted in his report that all the 13 stake nets were situated in the Inland National Waterways in the Vembanad Kayal and as per Endt. No. C3-5490/95 dated 22.12.2007 of the Director of Fisheries, Thiruvananthapuram, the Deputy Director of Fisheries, Alappuzha removed these stake nets from the route of National Waterway on 06.10.2008. If the entire 13 stake nets have been removed by the Fisheries Department as claimed by them, the respondent company could have



vacated the injunction order passed against them by the Munsiff Court on 23.07.2008 and the Sub Court on 06.06.2011 and 12.08.2011.

**24.** The story of removal of Nedyathuruth stake nets were initially put forth by the 5<sup>th</sup> respondent company in their counter affidavit dated 06.09.2011 in W.P.C. No. 19564/2011 filed by the applicants before the Kerala High Court. In the counter affidavit, the 5<sup>th</sup> respondent claimed that they have obtained RTI information from Sub Inspector of Fisheries, Backwater, Thevarvattom by letter dated 10.07.2009 that stake nets of applicants were removed with respect to National Waterway. If they have obtained such information on 10.07.2009, they would have produced it before the Munsiff Court and Sub Court for vacating the injunction order passed against them. Thereafter by counter affidavit dated 19.03.2012, the 4<sup>th</sup> respondent herein conceded to the coke and bull story made at the instance of 5<sup>th</sup> respondent company.

**25.** The 4<sup>th</sup> respondent in his report stated that among the 13 stake nets of the Nedyathuruth Oonnipad, compensation for 5 stake nets were disbursed and the compensation for the rest 8 stake nets has not been disbursed yet and that none of these stake nets are refixed for fishing. The Fisheries department might have awarded compensation to ineligible hands utilising the compensation package for the fishing net owners whose fishing nets had to be removed as part of National Waterway-3 development. The Comptroller and Auditor General of India in its Economic Sector Audit report for the year ended 31 March 2018 found irregular payment of compensation to the tune of Rs. 88 Lacs to the owners of illicit China/stake nets. A true copy of the relevant pages of Chapter 3 of CAG Report on Economic Sector of Govt of Kerala for the year ended March 2018 is produced herewith and marked for reference as **Annexure-A29**.



26. All the enforcement authorities danced to the tune of the 5<sup>th</sup> respondent company. The company managed to influence government and law enforcement authorities. That is why honourable High Court made certain observations against the total indifference and non-application of mind by the authorities and particularly the local bodies in Annx-A15 judgment thus:

*"The CRZ notifications issued are intended to protect the costs, the environment in general and to achieve the sustainable development, particularly of the Fisher, folk, and other local population and the notification are meant to be enforced with full vigour. we notice, however, that only lip service is being paid if at all to the terms of the notifications. By such callous, indifference and consequent blatant violation of the notifications, a law which is meant to address serious environmental issue which adversely affect the present and future generations, is being completely undermined. If only the local body was vigilant and had conformed to the law, the matters would not have come to the sorry state of affairs the parties find themselves in."*

27. The honourable High Court directed the government authorities to ensure that the constructions which have been made by the company in the Nedyathuruth is removed in so far, it violates the terms of CRZ notification, 1991 within three months from the date of the judgement. Anx-A15 judgement has been upheld by honourable apex court in *Vaamika Island (Green Lagoon Resort) v. Union of India and others (2013 (8) SCC 760)* and *Kapico Kerala Resorts Private Limited vs. State of Kerala and others (2020 (3) SCC 18)*.

28. Even though, the 4<sup>th</sup> respondent has alleged in the report that stake nets of the applicants were removed from the backwater on 06.10.2008, he

*Retneth*

could not produce any notice served to the applicants for removal of stake nets for development of National Waterways-III and the documentary proof of removal of stake nets. The 4<sup>th</sup> respondent did not produce the list of fishing nets in Waterways hindering the navigability through NW-3 as found in the joint inspection conducted by IWAI and Fisheries Department in July 2004.

29. This Honourable Tribunal may be pleased to direct the 4<sup>th</sup> respondent either to file his reply statement to the original application in compliance with proper procedure prescribed in Rule 16 of NGT (Practices and Procedures) Rules, 2011 or at least to swear an affidavit verifying the correctness of the report he has produced before this Tribunal or the summon the 4<sup>th</sup> respondent to this Tribunal with documents in support of the contentions he made in the report.

In the above circumstances, it is most humbly prayed that this Honourable Tribunal may be pleased to allow the above Original Application in the interest of justice.

All the facts stated above are true and correct.

Dated this the 08<sup>th</sup> day of November 2023

Deponent: Ratheesh K.R

Solemnly affirmed and signed by the deponent who is personally known to me on this the 8<sup>th</sup> day of November 2023 at my office at Ernakulam.

K.K. ASHKAR  
Advocate

സംഖ്യ: ബി. 1059/94

പ്രകാശിതം

ഫിഷറീസ് റെഗുലേഷൻ അക്ട് 1949, തീയതി: 29/03/2005

ഫിഷറീസ് റെഗുലേഷൻ അക്ട് 1949  
[Redacted]

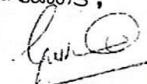
വിഷയം: - ദേശീയ ജലപാത 111 ന് തടസ്സമായി നിൽക്കുന്ന ഉത്തമി കടൽ നീക്കം ചെയ്യുന്നതിനുള്ള അനുമതി.

ദേശീയ ജലപാത ഉപനാമി 25.02.2004-ൽ ദേശീയ ജലപാത കടന്നുപോകുന്ന വഴി പരിശോധിച്ചതിൽ ടി ജലപാതയ്ക്ക് തടസ്സമായി താങ്ങുകൾ നിലനിൽക്കുന്നതിനാൽ ഉത്തമി കടൽ നീക്കം ചെയ്യുന്നതിനുള്ള അനുമതി നൽകുന്നു.

**കോപ്പി ൧൭ ന്നി - ൧൭ ന്നി നമ്പർ - 45**

ടി ജലപാതയുടെ വഴി നശിപ്പിക്കുന്നതിന് താങ്ങുകൾ ടി ഉത്തമി നീക്കം ചെയ്യേണ്ടതു് ഒരു പൊതു അംഗീകാരത്തിന് തീർന്നിരിക്കുന്നതിനാൽ താങ്ങുകൾ ടി പൊതു താൽപ്പര്യ കണക്കിലെടുത്ത് ടി ഉത്തമി കടൽ നീക്കം ചെയ്യുന്നതിനുള്ള അനുമതി നൽകുന്നു. ജലപാത ഗതാഗത ഖോദ്യമാക്കുമെന്ന് താൽപ്പര്യപ്പെടുന്നു.

താങ്ങുകൾ ഇപ്രകാരം ചെയ്യുന്നതിലേക്കിടം ഉന്നി ഉറവിടം കട്ടിയിൽ ഫിഷറീസ് ഡിവിഷൻ്റെ ടി ഉത്തമി കടൽ നീക്കം ചെയ്യുന്നതിനുള്ള അനുമതി നൽകുന്നു.

വിശ്വസ്തതയോടെ,  


ഫിഷറീസ് റെഗുലേഷൻ അക്ട് 1949, അനുബന്ധം.

- പകർപ്പ് : - ഫിഷറീസ് ഇൻസ്പെക്ടർ, അലപ്പുഴ/ഫിഷറീസ് ഇൻസ്പെക്ടർ, തേവർവടം
- " : - ഫിഷറീസ് ഇൻസ്പെക്ടർ, അറുപ്തം എൻ്റർപ്രൈസ് നൽകുന്നു.

ബി/2.4. (250 കോപ്പികൾ) 2005

This is the true copy of the original document marked as Annx-A23 in the accompanying affidavit

  
Adv Ashkar K.K.

**ANNEXURE-A23 B**

No.B.1059/94

Office of the Deputy Director. Fisheries  
Alappuzha Dated 29/03/2005

From

Deputy Director. Fisheries.

To

Shri. Madhavan Vijayan,  
Vanaja Bhavan,  
Vadakemuri, Vaikom.

Sir,

Sub: Removal of Stake Nets hindering navigability of National Waterway-III.

The Sub Committee of National Waterways on inspecting the alignment of passing waterway on 25.02.2004 found that the following stake nets are hindering the navigability of the waterway

Kooppayi Stake Net- Stake No.45

You are hereby required to remove the aforesaid stake net considering the public interest since removal of the same for enabling free navigability of the aforesaid waterway has become a public necessity within one week from receipt of this notice.

If you failed to do so, Fisheries Department will remove the aforesaid stake nets without further notice.

Yours truly,

Sd/-

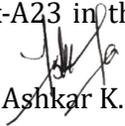
Deputy Director, Fisheries,

Alappuzha

Copy to: Fisheries Inspector, Alappuzha/ Fisheries Sub Inspector, Thevarvattom  
Fisheries Inspector, Aroor

Sha/2.4 (250 copies)

This is the true English translation of the original document marked as Annx-A23 in the accompanying affidavit

  
Adv Ashkar K.K.



LA Pt. 240 30/11/2011

Filed on :- 30.11.2011

BEFORE THE HON'BLE HIGH COURT OF KERALA AT ERNAKULAM

W.P.(C) No. 19564 of 2011

Ratheesh K.R. and others

: Petitioners

Vs

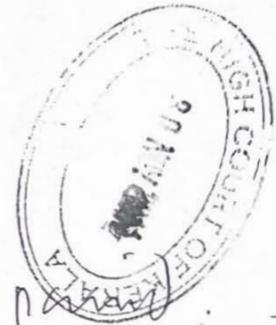
State of Kerala & others

: Respondents

21  
30/11/11



COUNTER AFFIDAVIT FILED BY THE 7<sup>TH</sup> RESPONDENT IN THE ABOVE WRIT PETITION



of 2-10-2011  
Larger 14/11/11  
30/11/11

P.A.AUGUSTINE(AREEKATTEL),(A-378)  
STANDING COUNSEL FOR THE 7<sup>TH</sup> RESPONDENT  
(SC CODE 1314)

Received copy  
Ch.P.K. (brother in law)  
Advocate  
30/11/11

1000715

L

[Handwritten signature]

BEFORE THE HON'BLE HIGH COURT OF KERALA AT ERNAKULAM

W.P.(C) No. 19564 of 2011

Ratheesh K.R. and others : Petitioners

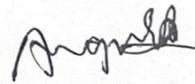
Vs

State of Kerala & others : Respondents

INDEX

Sl.No.	Particulars	Page Nos.
1.	Counter affidavit	1 - 3
2.	Verified Petition to condone the delay	4

Dated this the 29<sup>th</sup> day of November 2011

  
P.A. Augustine  
Counsel for the 7<sup>th</sup> Respondent



BEFORE THE HONOURABLE HIGH COURT OF KERALA AT ERNAKULAM

W.P.(C) No. 19564 of 2011

Ratheesh K.R. and others : Petitioners

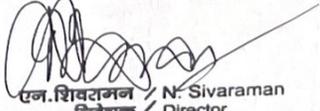
Vs

State of Kerala and others : Respondents

COUNTER AFFIDAVIT FILED BY THE 7<sup>th</sup> RESPONDENT IN THE ABOVE WRIT PETITION

I, N. Sivaraman, S/o K.Neelakandan, aged 56 years, residing at 2 B, Skyline Zircon Apartments, Vidya Nagar, Panampilly Link Road, Kadavanthara P.O., Ernakulam, Cochin – 682 020, do hereby swear and solemnly affirm the following:

1. I am working as the director of the regional office of the seventh respondent in the above Writ Petition. I am fully conversant with the facts and circumstances of the case and am competent to swear to this affidavit.
2. The above Writ Petition is filed seeking for a direction to the respondents 1 to 7 to restrict the respondents 8 and 9 from encroaching into the Vembanadu Kayal and from operating the resort constructed in Nediyaathuruthu Island and for consequential reliefs. Certain incidental reliefs are also sought for.
3. All the averments stated in the writ petition are denied except those which are specifically admitted hereunder or otherwise traversed.
4. At the very outset I submit that the exact location of oonnipads situated between buoy No.150 of IWAI and Nadiyaathuruthu island needs to be physically verified for

  
 एन. शिवरामन / N. Sivaraman  
 निदेशक / Director  
 भा.अ.ज.घा / I.W.A.I  
 (पोत परिवहन विभाग, भारत सरकार)  
 (Ministry of Shipping, Govt. Of India)  
 कन्नडिकाडु, मराठु, कोची  
 Kannadikaadu, Maradu, Kochi

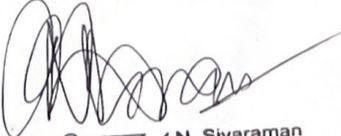
- 2 -

authenticity. With regard to the encroachment by the respondents 8 and 9 in the Vembanadu Kayal, it is to be stated that the subject is dealt with by Revenue Department of Government of Kerala and hence no control is vested with IWAI over the Kayal except the maintenance of navigable fairway channel having 60 mtrs. wide along the deepest route, which has been demarcated using FRP buoys fitted with solar lights all along the stretch of NW.3. This respondent has no comments on the violation on CRZ regulations, building permits etc., since the same are also State subjects and IWAI has no role to play. IWAI's only concern is to protect the fairway channel free from encroachment by cross structures, fishing nets, oonni stakes and other obstructions along with deepest navigable route.

5. I submit that the averments stated in para 1 and 2 of the writ petition, are only known to the petitioners and it is for them to prove it.

6. The averments stated in Para 3 of the writ petition are not correct and hence denied. The petitioners have stated that the oonipads 13 in number were situated between buoy No.150 of IWAI in Vembanadu Kayal and Nedyathuruthu Island. Since the oonipads are away from the NW-3 navigation route, IWAI do not have any objection for the fishing nets situated away from the Navigational Channel of National Waterway No. 3. However, if the channel is obstructed, the same needs to be shifted away from the Navigational Channel i.e. leaving 60 mtrs wide channel, for which the State Government / Fisheries Department is assisting IWAI to maintain the channel free from obstructions.

7. I submit that since the averments stated in paragraphs 4 to 14 of the writ petition are matters of facts strictly related to the petitioners, R1 to R6, R8 and R9, it is for them to answer.



एन.शिवरामन / N. Sivaraman  
निदेशक / Director  
आ.प्र.ज.प्र. / I.W.A.I  
(पोत परिवहन विभाग, भारत सरकार)  
(Ministry of Shipping, Govt. Of India)  
कन्नडिकाडु, मरदु, कोची  
Kannadikaadu, Maradu, Kochi

- 3 -

8. Regarding the allegations stated in para 15 to 17 of the writ petition, I submit that IWAI never favoured any illegal activities on NW-3 and stringent actions were initiated as and when the navigable channel obstructed by any miscreants.

9. The petitioners are not entitled to get any compensation from this respondent, since there is no violation of any statutory or constitutional provisions or negligence shown by any of the officials of Central Government / IWAI on this issue. Hence the above writ petition needs to be dismissed with costs.

10. In the light of the averments of the above paragraphs, I submit that none of the grounds raised by the petitioner in the writ petition is sustainable against this respondent.

11. The petitioners are not entitled to get any relief as against this respondent.

In the above circumstances, it is respectfully prayed that, this Hon'ble Court may be pleased to uphold the contentions in this counter affidavit and dismiss the writ petition with the cost of this respondent.

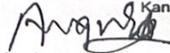
All the facts stated above are true and correct.

Dated this the 26<sup>th</sup> day of November, 2011

Signed and solemnly affirmed by the deponent in my presence on this the 26<sup>th</sup> day of November, 2011 in my office at Ernakulam

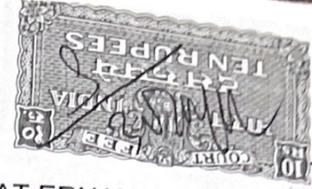
Deponent

  
 एन.शिवरामन / N. Sivaraman  
 निदेशक / Director  
 आ.उ.न.प्रा / I.W.A.I  
 (पोत परिवहन मंत्रालय, भारत सरकार)  
 (Ministry of Shipping, Govt. Of India)  
 कन्नडिकाडु, मरडु, कोची  
 Kannadikaadu, Maradu, Kochi

  
 P.A. Augustine  
 Advocate



- A -



BEFORE THE HON'BLE HIGH COURT OF KERALA AT ERNAKULAM

I.A.No. 19219 /2011

in

W.P.(C) No. 19564 of 2011

Inland Waterways Authority of India : Petitioner/7<sup>th</sup> Respondent

Vs

Ratheesh K.R. and others : Respondents/Petitioners/  
Respondents

*of 2-10-2011*

VERIFIED PETITION FILED U/S 5 OF THE LIMITATION ACT BY P.A. AUGUSTINE, COUNSEL FOR THE 7<sup>TH</sup> RESPONDENT IN THE ABOVE CASE

1. I am the counsel appearing for the 7<sup>th</sup> Respondent in the above case.
2. The notice in the above case was received on 28-7-2011. Three months time was granted to file the Counter Affidavit. However the counter affidavit could not be filed in time. The delay was caused due to the time taken to collect the relevant records to prepare the counter affidavit. There is no willful negligence or laches from the part of the 7<sup>th</sup> Respondent in not filing the counter affidavit in time but due to the reason stated above. It is submitted that the 7<sup>th</sup> Respondent is having valid and tenable contentions in the above case.

In the above circumstances, it is most humbly prayed that this Hon'ble Court may be pleased to accept the counter affidavit of the 7<sup>th</sup> Respondent. or else irreparable injury, loss and hardship will be caused to the 7<sup>th</sup> Respondent.

Dated this the 29<sup>th</sup> day of November 2011

*P.A. Augustine*  
P.A. Augustine  
Counsel for the 7<sup>th</sup> Respondent

All the facts stated above are true and correct

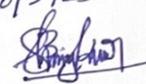
*P.A. Augustine*  
P.A. Augustine  
Counsel for the 7<sup>th</sup> Respondent



HIGH COURT OF KERALA  
AT ERNAKULAM



Year and Number of Suit or other Proceedings : WP(C) 19564 / 2011  
 Name of Applicant/Advocate : P.K.IBRAHIM  
 Application Number : A 14986/2023  
 Application Date : 10-05-2023  
 Date of Calling for Stamp : 20-05-2023  
 Date of Production of Stamp : 20-05-2023  
 Date When copy was Ready : 20-05-2023  
 Date Notified for appearance to receive the copy : 27-05-2023  
 Date when copy was delivered : 20/5/23

Examiner 

This is the true copy of the original document marked as Annx-A25 in the accompanying affidavit

  
Adv Ashkar K.K.

**ANNEXURE-A26-(1)**

Before the Hon'ble Munsiff's Court, Cherthala

O.S. No. 556 /2008

Narayanan and anr : Plaintiffs  
v.  
Roy M. Mathew and ors. : Defendants

Plaint presented under section 26, Order VII, Rule 1 of the Code of Civil Procedure, 1908

**Plaintiffs :**

1. Narayanan, s/o. Karumpan, aged 82, Malayattil Nikarthil from Vezhakkattuchira, Panavalay Village, Panavalay Muriyil, Cherthala Taluk.
2. Velayudan s/o. Karumpan, aged 79, -do--do-.

All notices and other process of the court to be served on the plaintiff may be served on their counsel, Dr. V.N.Sankarjee and Joy Varghese, Advocates, Cherthala.

**Defendants :**

1. Roy M. Mathew, s/o. Mathew, aged 57, Chairman, Coppico Kerala Resorts (P) Ltd., Apartment No. 50, M.R. Square, D.H. Road, Kochi - 17.
2. K. Easwaran Pillal, s/o. P.K. Nair, aged 52, Apartment No. 52, M.R. Square, D.H. Road, Kochi - 17 (Coppico Kerala Resorts (P) Ltd.).
3. Managing Director, CochIn Service, Fortkochi, Kochi - 1.

All summons, notices and other process of the court to be served on the defendants may be served on them at their addresses shown above or on their counsel, if and when engaged.

**SUIT FOR INJUNCTION**

1. The stake nets (oonni vala) described in the plaint schedule were originally belonged to the Plaintiffs' mother Karumpi Kunji by virtue of Sale deed bearing number 247/1114 M.E on the file of the Sub Registrar Office, Valkam. On her death the plaint schedule stake nets devolved upon her three sons including the plaintiffs and one Krishnan. Krishnan transferred his right in favour of the plaintiff vide the release deed bearing number 5528/1963 on the file of the Sub Registrar Arookkutty. Thus the plaintiffs have absolute right including fishing right over the plaint schedule stake nets. The plaintiffs have been eking out their livelihood as well as that of their family members by the income accruing there from. The plaintiffs have been paying tax in respect of plaint schedule stake nets at the office of the Sub Inspector of Fisheries (Back Water), Thevarvattam Poochakkal.

2. The plaint schedule stake nets situate at Vembanad lake and adjacent to the small island (called *Nediyathuruthu* comprised in survey 266/1/87, 266/1/88, 263/3, 263/4, 266/1/1, 266/1/56, 263/2/2, 263/4/2, 26310/3, 263/3, and 263/1). Defendants 1 and 2 have recently purchased this island. Most portion of this island has been agricultural land consisting of paddy field with water logged area







**ANNEXURE-A26-(2)**

and *chira* with coconut saplings. These defendants have been illegally and unauthorisedly converting the said agricultural lands and this island as whole by reclaiming with gravel and constructing buildings through out the island and by encroaching upon Kayal Puramboke surrounding this island. The heavy vehicles containing building materials and gravel are brought to this island from Panavally Jetty (Perumbalam Jetty) by Junkar belonged to the 3<sup>rd</sup> defendant. The junkar has been illegally navigating to and fro frequently through the back water causing damage to stake nets situating all along the Back Water. The defendants are threatening the poor fishermen who own the stake nets and making them silent against the injustice and illegalities.

3. The 1<sup>st</sup> and 2<sup>nd</sup> defendants have piled up a lot of concrete pillars in the Kayal Puramboke around the island as part of their illegal construction. So as to divert the natural flow of water from the shore of the island, the 1<sup>st</sup> and 2<sup>nd</sup> defendants constructed a 'Pulimuttu' in the Kayal Puramboke at the south eastern side of plaintiff schedule stake nets, and at the south western side of the island. Many of the concrete pillars so piled up in the Kayal puramboke are so proximate that the natural flow of water towards these stake nets is disturbed. Equally, due to the illegal construction of 'Pulimuttu' encroaching upon the Kayal Puramboke the natural flow of water is diverted away from the plaintiff schedule stake nets and all other stake nets situating in that portion of the Back Water. Thus due to the construction of these concrete pillars and the 'Pulimuttu', the quantity of fish which can normally be caught from the plaintiff schedule stake nets and other stake nets is badly reduced. 'Pulimuttu' is a bund put up with granite stones, abutting to the water flow of the Kayal Puramboke as a method of diverting the natural flow of water away from the banks of the Kayal.

4. The above narrated activities of the defendants amount to violation of laws regarding Fisheries, Coastal Zone Regulation, Building Rules, Panchayat Raj Act, Inland Water Navigation, etc. The defendants have no right or authority to do so. They have been doing all these illegal activities with connivance of the officers concerned. Since the income from the plaintiff schedule stake nets is grossly reduced due to the illegal activities of the defendants, the plaintiffs and their family members are undergoing severe poverty. The plaintiffs' request to the defendants to forbear from such illegal activities did not evoke any positive response. Rather, the defendants have threatened the plaintiffs and other such fishermen that they would forcibly remove the stake nets including the plaintiff schedule stake nets so as to end the matter once and for all. The defendants threatened the plaintiff on 19-7-2008 also. In furtherance of their evil intention, the 1<sup>st</sup> and 2<sup>nd</sup> defendants are trying to damage the plaintiff schedule stake nets by navigating boats and junkars over the nets. The 1<sup>st</sup> and 2<sup>nd</sup> defendants are very affluent persons with a lot of henchmen including antisocial elements for their

**ANNEXURE-A26-(3)**

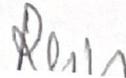
assistance. There is every chance for these defendants to forcibly remove the plaint stake nets or to damage it illegally as they have threatened and the plaintiffs do so believe in view of the facts and circumstances, which are in existence. If these defendants are able to succeed in their evil design, the only means of the plaintiffs livelihood would be spoiled and in such circumstance the plaintiffs would be put to irreparable injury, loss and hardships. The plaintiffs have no other remedy than to approach this Hon'ble Court to redress their grievance.

5. Thus it is highly necessary to pass a decree of permanent prohibitory injunction restraining the defendants or anybody claiming under them from forcibly removing or damaging the plaint schedule stake nets, or from navigating any junkar or any other boats through the Kayal in such manner as to cause prejudice to the fishing by the plaint schedule stake nets or from damaging the nets, or from making any further construction, Pullimuttu or bund in the Kayal Puramboke in and around the plaint schedule property, for the interest of justice and for proper and effective adjudication of the case. The plaintiffs are entitled to obtain such decree against the defendants, who are liable to afford the same.

6. The above facts constitute the cause the cause of action for this suit and it arose in the first week of July, 2008, when the defendants committed the above acts, on 19-7-2008 when the 1<sup>st</sup> and 2<sup>nd</sup> defendants threatened the plaintiffs last and continues to exist at Panavally Village situating within the jurisdiction of this Hon'ble Court. The plaintiffs reserve their right to initiate appropriate legal proceedings against the defendants so as to remove the constructions made illegally in the Kayal Puramboke and to completely redress their grievances due to violation of laws in the properties concerned and in the Kayal Puramboke. The original of Sale deed bearing number 247/1114 M.E on the file of the Sub Registrar Office, Vaikam got spoiled due to elapse of time. The plaintiffs have duly applied for its certified copy. The plaintiffs shall produce the same as and when it is obtained. The tax in respect of plaint schedule stake nets is still paid in the name of the plaintiffs' mother and the receipt thereof is produced herewith. The suit is valued at Rs.1000/- (Rupees one thousand only) for the purpose of court fee and jurisdiction. The court fee is paid under section 27(c) of the Kerala Court Fees and Suits Valuation Act, 1959.

	<u>Valuation</u>	
Valuation for Relief no.1		: Rs.500/-
Valuation for Relief no. 2		: Rs.500/-
Total Valuation		: Rs.1000/-
Court Fee paid under section 27(c) of the Kerala Court Fees and Suits Valuation Act, 1959		: Rs.40/-
Balance court fee		: Nil






ANNEXURE-A26-(4)

Therefore it is most humbly prayed that this Hon'ble Court be pleased to grant the following :

Reliefs

(i). Pass a decree of permanent prohibitory Injunction restraining the defendants or anybody claiming under them from forcibly removing or damaging the plaint schedule stake nets, or from navigating any Junkar or any other boats through the Kayal in such manner as to cause prejudice to the fishing by the plaint schedule stake nets or from damaging the nets,

(ii) Pass a decree of permanent prohibitory Injunction restraining the defendants or anybody claiming under them or from making any further construction, Pullmattu or bund in the Kayal Puramboke in and around the plaint schedule property,

(iii) Award the cost of proceeding to be recovered from the defendants, and

(iv) Pass such other orders as are deemed fit and necessary in the interest of justice and for proper and effective adjudication of the case.

Dated this the 22<sup>nd</sup> day of July, 2008

Plaintiffs : 1. Narayanan

2. Velayudar

  
Dr. V.N. Sankarjee  
Counsel for the plaintiffs

Verification

1. I, Narayan, the 1<sup>st</sup> plaintiff herein do hereby verify and state at Cherthala that what all stated in the plaint are true to the best of my knowledge information and belief.

Dated this the 22<sup>nd</sup> day of July, 2008

1<sup>st</sup> Plaintiff : Narayanan

2. I, Velayudan, the 1<sup>st</sup> plaintiff herein do hereby verify and state at Cherthala that what all stated in the plaint are true to the best of my knowledge information and belief.

Dated this the 22<sup>nd</sup> day of July, 2008

2<sup>nd</sup> Plaintiff : Velayudan

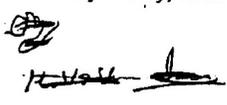
List of documents :

1. Release deed dated 19-12-1963 and bearing number 5528/1963 on the file of the Sub Registrar Arookkutty.
2. Acknowledgement for receipt of money dated 7.7.2008.

Dated this the 22<sup>nd</sup> day of July, 2008

Plaintiffs : 1. Narayanan

2. Velayudan

  
Dr. V.N. Sankarjee  
Counsel for the plaintiffs







**ANNEXURE-A26-(6)**

**Munsiff Court, Cherthala**  
**OS No. /2008**

Plaintiff  
 Narayanan and others

Defendant  
 Roy M. Mathew

**PLAINT SCHEDULE PROPERTY SUBMITTED BY PLAINTIFF IN THE ABOVE CASE**

Number	District	Sub District	Taluk	Village	Desom	Panchavath	Nature	Sv. No.	Letter	Acre	Cents	Sq. Mtr	Description of property	Boundaries			
														East	South	West	North
1	Alappuzha	Arookutty	Cherthala	Old Vaduthala Matathi part (Panavally)	Old Perumpalam (Panavally)	Puramboke	227/1/1				6 cent	243	Stake poles and Stake Nets numbered 9, 10 and 11 comprised in s Cents in Nedyathuruth Part of Vembanad lake having extent of 805 Acre 17.5 cents	Stake Net No.8	Backwater	Backwater	Backwater

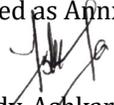
Dated this the day of July 2008

Plaintiffs 1. Narayanan 2. Velayudhan  
 Advocate for Plaintiff V.N. Sankarji

This is true and correct.

1. Plaintiff Naryanan 2. Velayudhan

This is the true English translation of the page No.5 of the original document marked as Annx-A26 in the accompanying affidavit.

  
 Adv. Ashkar K.K.

ANNEXURE-A27-(1)

BEFORE THE HONOURABLE MUNSIFF'S COURT AT CHERTHALAI

O.S.NO. 556 OF 2008

Narayanan and another

Plaintiffs

Roy M.Mathew &amp; ors

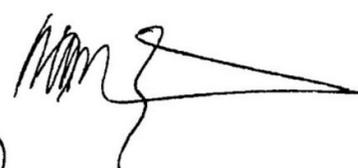
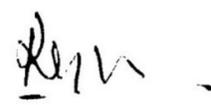
v.

Defendants

WRITTEN STATEMENT FILED BY THE DEFENDANT NOS. 1 AND 2

1. All the averments and allegations contained in the plaint except those that are specifically admitted hereunder are denied.
  
2. The above suit is not maintainable either in law or on facts. This Honourable Court has no jurisdiction to try this case. The above suit is bad for non-joinder of necessary parties. The allegations in the suit are against M/s Kapico Kerala Resorts (P) Ltd. The company M/s Kapico Kerala Resorts (P) Ltd is a company registered under the Companies Act, 1956. In law it is an entity distinct from its shareholders and officers like the 1<sup>st</sup> defendant, who is its Chairman. The company has however not been made a party to the above suit. The above suit is bad for mis-joinder of defendants. The 2<sup>nd</sup> defendant is a practicing Chartered Accountant. He is not personally involved in any matter relating to M/s Kapico Kerala Resorts (P) Ltd. The above suit has been filed as an experimental litigation impleading these defendants. The suit is thus not maintainable in law.
  
3. The plaintiffs are mere name lenders to these proceedings. The plaintiffs are being projected by some others with the intention of extorting money from these defendants, stating that, otherwise the work on a resort being constructed by M/s Kapico Kerala Resorts (P) Ltd, will be stopped by filing avraious complaints and litigations before various forums. The above suit is filed in the aforesaid circumstances with malicious intention. With the above intention the first plaintiff has also approached the Hon'ble Ombudsman for Local Self Government Institutions, Thiruvnanthapuram. The above O.P. is numbered as O.P. 527 of 2009. The above matter was posted on 9.7.2009 before the Hon'ble Ombudsman for Local Self-Government Institutions. After hearing arguments and considering the pleadings of the parties the matter has been reserved for orders.



3. The averments made in the first paragraph of the plaint are not correct. The plaintiffs have no locus standi to prefer this suit. Admittedly, the stake nets described in the plaint schedule property are not in the name of the plaintiffs. No document is produced before this Hon'ble court to prove the title of the plaintiffs. Plaintiffs have not remitted tax for the same to the Government. They have no legal title to the rights claimed in respect of the stake nets. It is reliably known that there are no stake nets in the name of the plaintiffs as alleged as per the revenue department records and Fisheries department records. The averment that the plaintiffs have been paying tax with Fisheries Department is incorrect and denied. The above suit may be dismissed in-entire since the plaintiffs have no locus standi to prefer the suit.

4. The averment that the plaintiffs are eling out their livelihood by the income accruing from fishing is incorrect. It is reliably known that the plaintiffs have other source of income.

5. The averments that the Plaint Schedule stake nets are situated adjacent to Nedyathuruthu i.e. the property belonging to the Defendants 1 and 2 is incorrect and denied. Actually the owner of the land is Mrs Kapico Kerala Resorts (P) Ltd. The plaintiffs have no stake nets near this property. The averments that most portion of this island has been agricultural land consisting of paddy field with water logged area is incorrect. The above land has not been used as paddy field. The averment that these defendants have been illegally and un-authorizedly converting the agricultural land as a whole by reclaiming with gravel and constructing buildings through out the island and by encroaching upon Kayal Puramboke surrounding this island is incorrect and hence denied. The improvements made in the property are not illegal and unauthorized. These defendants have obtained permission from authorities including Panavally Grama Panchayath. In fact the initial permit for construction was granted to the owners of the land as early as on 2.8.1996. Thereafter several buildings were also put up. However due to paucity of funds the owners could not complete the work. Thereafter a company named Kapico Kerala Resorts (P) Ltd. with the original landowner also as one of the Directors was formed to complete the work. The new company was formed with foreign investors also. A new permit was taken from the panchayat in 2007 only to ensure that the constructions are in compliance with the Kerala Municipality

ANNEXURE-A27-(3)

Building Rules. This was necessitated because as per Government Circulars, even in respect of constructions for which N.O.C had been issued earlier and in respect of which the work is not complete, permit has to be taken under the Kerala Municipality Building Rules. These defendants are not reclaiming the island as a whole as averred in the plaint. These Defendants have not encroached upon the Kayal Puramboke also. The averments that the heavy vehicles are brought containing building materials to the island is also incorrect. The averment that a Junkar has been illegally navigating to and fro frequently through the back water causing damage to stake nets situated all along the Back Water is incorrect. The junkar is being operating without obstructing or causing damage to stake nets. The navigation of the junkar is not illegal. The junkar is having all the necessary approvals for navigation. It is pertinent to note that at the time of Inspection, Advocate Commissioner has not even seen the junkar service. This would clearly show that the junkar was not operating very frequently as averred in the plaint.

6. The averment contained in paragraph 3 that these Defendants have piled up a lot of concrete pillars in the Kayal Puramboke around the island so as to divert the natural flow of water is incorrect and hence denied. The averment that these defendants has constructed a 'pulimuttu' in the Kayal Puramboke at the south eastern side of the plaint schedule stake nets is also incorrect. In order to protect the soil of the island from water erosion, which is continuously happening due to high and low tide, a retaining wall has been constructed. On some parts of the above retaining wall, with a view to obtain more lateral support, a few granite pieces have been kept protruded to the back waters. This in fact, is not a 'pulimuttu' and the same is not preventing the natural flow of water.

7. The entire averments contained in paragraph 3 are distorted and made with ulterior motives. These defendants and/or M/s Kapico Kerala Resorts (P) Ltd. have not caused any illegal construction as a result of which the natural flow of water is diverted. The averment that due to the activities of the Defendants and/or M/s Kapico Kerala Resorts (P) Ltd. the quantity of fish caught by the plaintiffs is reduced is incorrect. The averment that the activities of the Defendants and/or M/s Kapico Kerala Resorts (P) Ltd. amount to violation of laws regarding Fisheries, Coastal Zone Regulation, Building Rules, Panchayth Raj Act, Inland Water Navigation etc. are incorrect. These defendants and/or

ANNEXURE-A27-(4)

M/s Kapico Kerala Resorts (P) Ltd. have obtained permissions required under law for their construction activities. The averment that the income from the plaint schedule stake nets have been reduced due to the activities of the Defendants and/or M/s Kapico Kerala Resorts (P) Ltd. is incorrect.

8. The other averments contained in para No.4 that the Defendants have threatened the plaintiffs, the Defendants activities are with connivance of the officers etc. are incorrect and made with ulterior motive. There is no iota of truth in those averments. The averment that these Defendants have tried to remove the plaint stake nets is incorrect.

9. In fact, there is no cause of action for the plaintiffs to approach this Honorable Court. These defendants have not attempted or threatened to remove the plain stake nets if at all there are any in the vicinity.

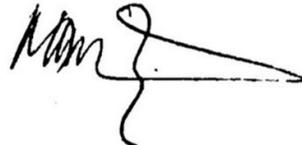
10. The averments contained in para 5 are incorrect and hence denied. The petitioner is not entitled for a decree of prohibitory injunction. In fact, with a view to extort money from the Defendants, the plaintiffs had placed certain poles and news stake nets right in front of the Jetty which is made to transport goods from the main island to the island. The above act is highly illegal and made with ulterior motives to extract money. After filing the suit the plaintiffs have approached the Defendants with an offer to settle the case if an amount of Rs. 2 Crores was paid. The plaintiffs have illegally put new stake nets right in front of the jetty which is constructed to transport materials with the ulterior motive to extract money from Defendants. There were no stake nets adjacent to the Jetty at Nediyanthuruthu. The plaintiffs have unauthorisedly and illegally put the stake nets with a view to extort money.

11. Without prejudice to the aforesaid contentions, it is respectfully submitted that M/s. KAPICO Kerala Resorts (P) Ltd. is in the process of developing a World Class Tourist Resort. KAPICO Kerala Resorts Pvt. Ltd. , was incorporated on 13<sup>th</sup> November, 2006 and is promoted by KAPICO Group Holding Co., Kuwait (KAPICO) and the 1<sup>st</sup> defendant herein, Chairman, Mini Muthoottu Group, (MMG) Kerala to set up a 5 Star Backwater and Beach based Super Luxury Spa Resort and House Boats at Panavally Village, Alleppey District, Kerala. Banyan Tree Hotels and Resorts Private Limited (BNTHR), the world renowned hotel and resort chain developer in the world, based in Singapore is a strategic investor

ANNEXURE-A27-(5)

and would be responsible for the Operation & Management of the property of KKRPL. The property would be named as "Banyan Tree Resorts, Kerala" and would be accordingly marketed by Banyan Tree Group. M/s. Banyan Tree is particularly known for its penchant for promoting totally environment friendly resorts, ensuring complete harmony with nature and ensuring that its activities do not spoil the environment in any manner. It may be relevant to point out here that in the present project a man made lake covering about 6 acres of land is being developed to conserve rain water. Apart from the above about Rs. 3.5 Crores is being spent to establish a comprehensive effluent treatment plant, the treated water from which will be utilized for gardening etc. KAPICO is a multinational company based in Kuwait and having a strong presence in 11 countries across Middle East, Africa, Asia Pacific and South Asia has diverse interests since the areas of Automotive, Healthcare, Lifestyle, Infrastructure and Real Estate. The Company had a turnover of KD 61.55 Mn for the FY 2007 as against KD 40.54 Mn in the FY 2006.

12. Panavally Panchayath had granted permission for the construction of a tourist resort in the same survey numbers and on the same island to owners of the land as early as on 02.08.1996. Even prior to this date, the island was inhabited and there existed on the island several small buildings. These defendants understand that the island was inhabited and several houses were constructed here in the early 1980's. After obtaining the permission from the Panchayath on 02.08.1996, the erstwhile owners who are also the Directors of M/s. KAPICO Kerala Resorts (P) Ltd. constructed some pool villas and was doing tourism resort business. The pile foundation work for remaining 56 pool villas were also completed. Due to paucity of funds the erstwhile owners could not complete the construction of the resort. Subsequently in the year 2006 M/s. KAPICO Kerala Resorts (P) Ltd. was incorporated to take over the project including completed villas and work in progress on the pending project from the erstwhile owners. The erstwhile owners are also 40% share holders in M/s. KAPICO Kerala Resorts (P) Ltd. Since the Municipality Building Rules were made applicable to all Panchayats in the year 2007, permission was sought from the Panchayat to re-commence construction at the site. Panchayath has thereafter sanctioned a building permit in accordance with the Kerala Municipality Building Rules. Thus the allegations raised in the plaint are baseless and devoid of any merit whatsoever.





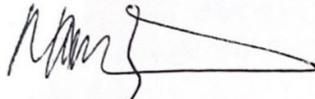

**ANNEXURE-A26-(6)**

14. The above suit is not properly valued and verified. The plaint schedule property ie. stake nets cannot be identified as per the descriptions made in the schedule.

15. This Honourable Court has no jurisdiction to entertain the 2<sup>nd</sup> prayer in the above suit, the plaintiffs have alternative remedies elsewhere. The plaintiffs have not approached this Honourable Court with clean hands. Therefore they are not entitled to the equitable relief of injunction.

17. The suit is frivolous and vexatious. There is no merit in the above suit and the same may be dismissed with costs to these defendants.

Dated this the 11<sup>th</sup> day of July 2009

  
Defendant No.1

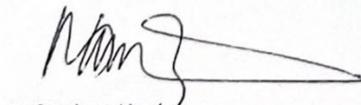
  
Defendant No.2

Counsel for the Defendants.



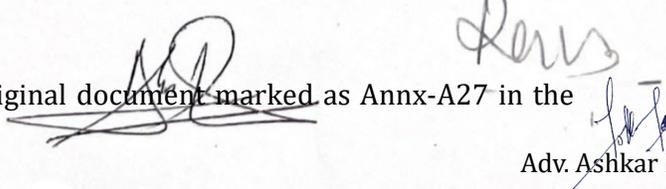
Verification

I, Roy M. Mathew, aged 58 years, S/o. Late M. Mathew, Chairman, Kapico Kerala Resorts (P) Ltd., Apartment No.50 M.R.Square, D.H.Road, Kochi -17, and K.Easwaran Pillai, S/o./ P.K.Nair, aged 53 years, Apartment No.52, M.R.,Square, D.H.Road, Kochi -17, do hereby verify that what is stated in the above paragraphs are true to the best of our knowledge, and belief and the above written statement is signed and verified at the office of the Counsel at Ernakulam on this 11<sup>th</sup> day of July, 2009

  
Defendant No.1

  
Defendant No.2

This is the true copy of the original document marked as Annx-A27 in the accompanying affidavit

  
Adv. Ashkar K.K.

ANNEXURE-A28-(1)

IN THE COURT OF THE SUBORDINATE JUDGE, CHERTHALA

Present:- Sri. D. Sureshkumar., B.Sc., LL.M., Sub Judge

Friday the 12th day of August, 2011/21st Sravana, 1933

A. 975/2011 and I.A. 318/2011 in AS.16/11

(Filed on 22.6.2011)

Petitioners/Respondents/

Defendants:-

1. Roy. M. Mathaw,

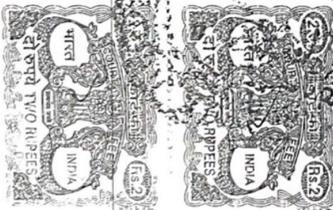
S/o. Mathaw,  
Chairman,  
Kapico Kerala Resorts (P) Limited  
Apartment No.50,  
M.R. Square,  
D. H. Road,  
Cochi.

2. K. Eswaran Pillai,

S/o. P.K.Nair,  
Apartment No.52,  
M.R. Square,  
D. H. Road,  
Cochi.

3. M/s. Kapico Kerala Resorts

(P) Limited.,  
Registered Office,  
Apartment No. 51,  
M.R. Square, D.H. Road,  
Cochi.



*[Handwritten signature]*

*[Handwritten signature]*

ANNEXURE-A28-(2)



-2-

4. M/s. Kapico Kerala Resorts (P) Limited.,  
 Represented by Director,  
 Mrs. Retna Easwaran,  
 W/o. Easwaran Pillai,  
 Residing at Apartment No.52,  
 M.R. Square,  
 D. H. Road,  
 Cochi.

By Advrs: S/Sri. K.P. Sreekumar and Rajesh Pillai.

Counter Petitioners/Appellants/

Plaintiffs:-

1. Narayanan,  
 S/o. Karumpan,  
 Malayattil Nikarthil From  
 Vezhakkattuchira,  
 Panavally Village,  
 Panavally Muriyil,  
 Cherthala Taluk.
2. Velayudhan,  
 S/o. Karumpan,  
 of-do-do-

By Adv: Sri. Joy Varghese.

This petition filed to vacate the injunction order  
 granted in I.A. 316/2011 date 6.6.2011 having been finally  
 heard on 8.8.2011 and the court on 12.8.2011 passed the  
 following:-

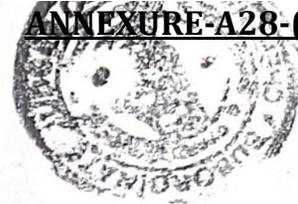
-3-

ORDER

Petition under Order 39 Rule 4 read with section  
151 C.P.C.

2. First petitioner is the first respondent in the appeal. The affidavit is sworn in for and on behalf of respondents 2, 4 and 5 also. The application for injunction filed by the appellants is not maintainable either in law or on facts. It is filed without any good faith or bonafides. The suit was filed to restrain the defendants from forcefully removing or damaging the stake nets, or from navigating any Junkar or any other boats in kayal in such manner so as to cause prejudice to the fishing by plaint schedule stake nets and from damaging the nets. The plaintiff also prayed to restrain the defendants from making any futher construction in the kayal puramboke in and around the plaint schedule property. The defendants



**ANNEXURE-A28-(4)**

-4-

are owners of an island called 'Nediyathuruthu'. The defendants are making constructions in their property. As the claim of the plaintiffs were found to be false. The suit was dismissed on 13.12.2010. Against the judgment and decree the plaintiffs have filed the appeal on 16.2.11. The petitioners/defendants lodged a caveat. The plaintiffs served the notice on the Local Clerk of the appellants counsel. Due to inadvertent omission, because of this they could not appear when the matter was taken up for hearing on 6.6.2011. The court after hearing the appellants granted an injunction order. The appellants have no prima facie case. Their only attempt is to keep the issue alive to bargain and extort money from the defendants. The appellants did not comply Order 39 Rule 3 C.P.C. In the circumstances the petitioners pray for vacating the injunction order granted in I.A. 316/2011.

-5-

3. The respondents/appellants filed a detailed objection denying the entire allegations as false. Reiterating their averments in I.A. 316/2011 they prayed for the dismissal of the petition with costs.

I.A. 316/2011

4. Petition under Order 39 Rule 1 and 2 read with Section 151 C.P.C.

5. Petitioners are the appellants. The plaint schedule property originally belonged to Karumpi Kunji as per sale deed No. 247/1114 ME. of SRO, Vaikom. On her death it devolved upon her children. One of their son Krishnan release his right as per document No. 5528/1963 of SRO, Arookutty. The petitioners are the absolute owners of the plaint schedule stake nets. They are eking out of their livelihood from the income obtained therein. They have valid licence. The plaint schedule property is lying adjacent to Nedyathuruthu island. The defendants illegally and unauthorisedly





-6-

converted the agricultural land and is making constructions encroaching upon kayal puramboke. Due to their construction activities the plaintiffs are seriously affected. The constructions made by the defendants are in violation of laws regarding Fisheries, Coastal Regulations, Building Rules, Panchayath Raj Act, Inland Water Navigation etc. The defendants have no right to do such illegal activities. The defendants have inspite of plaintiffs request are continuing with their illegal activities. They are highly affluent. The petitioners pray for restraining the respondents or anybody claiming under them from forcefully removing or damaging the plaintiff schedule stake nets, or from navigating any Junkar or any other boats through the kayal so as to cause damage to the plaintiffs. They also sought for restraining the defendants from making any constructions encroaching into the kayal puramboke in violation of the statutory provisions.

6. Respondents 1, 2, 4 and 5 filed an objection raising

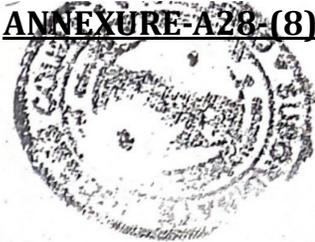
-7-

similar contentions made mentioned in I.A. 875/2011.

7. Along with the appeal the appellants filed I.A. 316/2011. As the respondents 1, 2, 4 and 5 in the appeal lodged a caveat No. 6/2011 notice was ordered to the caveater's counsel and the I.A. was posted for hearing to 8.3.11. As per records it is seen that notice was given to the caveater's counsel and not to the Local Clerk as now contended by the respondents. In spite of notice as the respondents failed to appear before the court, after hearing the appellants and verifying the records in I.A. 316/2011 was allowed as prayed. In such circumstances compliance of Order 39 Rule 3 is not required.

8. The I.A. 316/2011 was allowed on 6.6.2011. Thereafter on 22.6.2011 the respondents 1, 2, 4 and 5 filed I.A. 875/2011. In the I.A. the 3rd respondent in I.A. 316/2011 the Managing Director, Cochin Service, Fort Cochi is not arrayed as a party. No reasons are given why the respondent





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is omitted. In my view that itself is a ground to refuse the prayer in I.A. 875/2011.

9. Evidence on record consists of Exts. A1 to A4 and B1 to B10.

10. The only point for consideration is,

Whether there are sufficient grounds to allow the prayer of the petitioners in I.A. 875/2011 as prayed?

11. The point:- The right of the appellants over plaint schedule property is probablised by Exts. B9 and B10. The fact ~~that~~ that they are conducting fishing operations in the property is also probablised by Ext. A2. The fact that licence fee was remitted for a period of several years together by itself will not discredit their claim.

12. The learned counsel appearing for the appellants/ plaintiffs would say that when the case was posted for

9-

hearing on 13.12.2010 he has submitted Ext.A1 argument notes. His grievance is that the argument notes were not accepted. The lower court also did not hear his side and pronounced the judgment on the very same date. Evidently the judgment is dated 13.12.2010. So at this stage the submission made by the learned counsel seems to be genuine.

13. The plaintiffs filed a commission application before the lower court. It was dismissed. Aggrieved by the same they moved the Hon'ble High Court as seen from Ext. A2. Ext.A3 is the order of Hon'ble High Court in the petition. Thereafter the appellants filed Ext. A5 commission application, it was also dismissed. So the reasoning of the lower court that the plaintiffs failed to take steps to identify the plaint schedule property cannot be justified. The lower court was bound to give an opportunity to the petitioners in the light of the Hon'ble High Court's order, if it was found that the





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property has to be identified for the just disposal of the matter.

14. From Ext. A6 it is seen that during the trial side there was an injunction order against the defendants as now also prayed. It was in force till the disposal of the suit. From Ext. A7 and A8 it is evident that by the injunction order granted by the court no prejudice or hardship was caused to the defendants. Vast constructions are made even when the injunction order was in force.

According to the learned counsel appearing for the respondents 1, 2, 4 and 5 they have not violated the order as seen from Ext. A6. According to him the articles were transported through another route. If that be so by the injunction order granted in I.A. 316/2011 also no prejudice or hardship will be caused.

15. The definite allegation of the plaintiffs are that the constructions made by the respondents in their

-11-

island are in violation of several statutory provisions. In spite of the specific allegations not even a scrap of paper is produced to rebut the same. On the other hand the defendants rely only on Ext.A4. Ext.A4 will only go to show that the O.P. was dismissed holding that the Ombudsman has no jurisdiction to entertain the matter. On a consideration of the entire records placed before me at this stage I do not find any reasons to allow the application as prayed.

For the above reasons the petition is dismissed.

Dictated to the Confidential Assistant, transcribed and typed by her corrected by me and pronounced in open court on this the 12th day of August, 2011.

Sd/-  
D. Sureshkumar,  
Sub Judge.



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AppendixPlaintiff's Exhibits:-

A1	22.7.2008	Copy of plaint in OS. 556/08 of Munsiff's Court, Cherthala
A2	7.7.2008	Copy of Receipt
A3	11.7.2009	Copy of written statement in OS. 556/08 of Munsiff's Court, Cherthala.
<hr/>		
A4	9.7.2009	Copy of order in O.P. 527/09

Counter Petitioner's Exhibits:-

B1	13.10.2010	Copy of argument note in OS. 556/2008
B2	25.6.2010	Copy of petition in I.A. 8570/10
B3	8.3.2010	Copy of Judgment in WP.(C) 7287/10 - O
B4	29.3.2010	Copy of order in I.A. 1163/2010 in OS. 556/08



ANNEXURE-A28-(13)

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B5 11.2.2010

Copy of order in L.A. 419/2010 in  
OS.556/2008

B6 23.7.2008

Copy of order in I.A. 2593/08 in  
OS. 556/2008

B7 3.1.2011

Copy of Commission report in OS. 556/08

B8 2.8.2008

Copy of Commission report in OS. 556/08

B9

Copy of sale deed No. 5528/63  
of SRO, Panavally

B10

Copy of Adharam No. 247/1114 M.E.  
of SRO, Vaikom.Petitioner's witness:- NilCounter Petitioner's witness:- Nil

Id/- Sub Judge

/True copy/

Typed by: VT

Compd by: 

By Order

Examiner

This is the true copy of the original document marked as Annx-A28 in the accompanying affidavit

  
Adv. Ashkar K.K.



# REPORT OF THE COMPTROLLER AND AUDITOR GENERAL OF INDIA

on

**ECONOMIC SECTOR**  
for the year ended March 2018



लोकहितार्थं सत्यनिष्ठा  
Dedicated to Truth in Public Interest



**Government of Kerala**

**Report No. 2 of the year 2019**

**REPORT OF THE  
COMPTROLLER AND AUDITOR  
GENERAL OF INDIA**

**on**

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aquaculture farming. The beneficiary group-oriented projects implemented by the agency did not achieve the targets due to non-compliance with the guidelines and deficiency in monitoring. The Agency also failed to abide by the financial regulations resulting in retention of Government funds outside the Government account and retention of the savings from the projects as its income. It failed to maintain the accounts up to date, despite instructions from Public Accounts Committee. Thus, the Agency was unable to discharge its mandated activities properly.

### 3.2 Irregular payment of compensation to fishermen

**The Department paid an amount of ₹88.80 lakh to a select group of 74 owners of illicit china nets disregarding the fact that they were already paid compensation of ₹92.5 lakh and were not eligible for the second payment.**

The Department of Fisheries established on 1 November 1956 is considered to be one of the most important, productive and developmental sectors of the State. It implements the policy of the Government of Kerala for the socio-economic development of fishermen and schemes for increasing infrastructure in the coastal area.

According to Section 4(3) of the Travancore Cochin Fisheries Act 1950 and Rule 8(1) of the Kerala Inland Fisheries and Aquaculture Rules 2013, only licensed individuals have the right to engage in fishing.

The Inland Waterways Authority of India declared (February 1993) the waterway between Kollam and Kottapuram as National Waterway-3. In order to make the waterway navigable, it was necessary to remove/shift the fishing nets and stakes installed in the channel. The Government sanctioned a compensation of ₹2.5 lakh<sup>23</sup> (June 2013) per net to the fishermen holding valid licenses for china/stake nets installed in the navigation channel, for their removal. The owners of unlicensed china/stake nets were also made eligible for the compensation, but at half the rates applicable to the licensed owners. This was commented in Chapter II of the Audit Report of the Comptroller and Auditor General of India on the Economic Sector, Government of Kerala, for the year ended March 2015.

The Department paid compensation amounting to ₹13.33 crore to the owners of licensed and unlicensed china/stake nets during the period 2013-14 to 2017-18.

Audit noticed that, in addition to the above payment the Department also paid compensation amounting to ₹88.80 lakh to a select group of 74 owners of illicit china nets belonging to Kayamkulam area alone, under a special package, based on a decision taken in a meeting convened (November 2014) by the Home Minister. The meeting took the following decisions:

- (i) Owners of the 74 unlicensed china nets who wished to avail the compensation of ₹1.25 lakh per net declared by the Government were free to avail it.

<sup>23</sup> G.O.(Rt) No.38/13/F&PD dated 17/06/2013

- (ii) For those who did not opt for the compensation, a special employment package would be provided to sustain their livelihood.

The package envisaged purchase of a traditional fishing boat, a net and a 9.9 Yamaha engine by each beneficiary unit<sup>24</sup> utilising an assistance of ₹1.20 lakh<sup>25</sup> to be paid by the Department, along with a contribution of ₹30,000 by each beneficiary unit.

Contrary to the decisions taken in the meeting, the Government sanctioned both the compensation of ₹1.25 lakh and the special employment package of ₹1.20 lakh to each of the 74 beneficiaries. Director of Fisheries disbursed<sup>26</sup> ₹88.80 lakh to the 74 beneficiaries under the special package.

Audit noticed the following:

- The decision of the meeting was to extend special employment package to those who did not opt for the compensation. Contrary to this the 74 beneficiaries were paid both the compensation and the special employment package.
- This double benefit was not extended either to the owners of unlicensed china nets of other areas or to the owners of licensed china nets. So, the action of the Department was discriminatory.
- The Department did not ensure compliance with the conditions of the special employment package by the beneficiaries which resulted in its largescale mis-utilisation.
- A joint survey conducted by Audit along with the departmental officials among 28 beneficiaries revealed that none of them utilised the assistance as envisaged; instead, most of them used it to clear personal debts.

Thus, the payment of additional benefit of ₹88.80 lakh to a select group of 74 owners of illicit china/stake nets was not in order and discriminatory. Besides, the Department also failed to ensure proper utilisation of assistance by the beneficiaries under the special package.

The matter was referred (February 2019) to the Government. In reply, (March 2019) the Government accepted that the special employment package was to be implemented for those net owners alone (including two workers) who were not willing to accept the compensation of ₹1.25 lakh declared by the Government.

<sup>24</sup> A unit consisted of the owner and two labourers working the net

<sup>25</sup> Each member of the unit was to be paid ₹40,000

<sup>26</sup> GO(Rt) No. 413/15/F&PD dated 04/06/2015