

**IN THE NATIONAL GREEN TRIBUNAL (SOUTH ZONE),  
CHENNAI**

Original Application No. 128 of 2021 (SZ)

Between:

Ibrahim Karim

.....Applicant

V.

State of Kerala & Ors

.... Respondents

**MEMO FILED BY THE COUNSEL FOR APPLICANT**

By Order dated 02.09.2021, this Hon'ble Tribunal was pleased to direct me to make proper enquiries as to the nature and issues canvassed in W.P.C. No. 13713 of 2019; which is pending before the Hon'ble High Court of Kerala.

I have procured a copy of the memorandum of W.P.C. No. 13713 of 2019, from its Counsel, and has perused the same.

A copy of the memorandum of W.P.C. No. 13713 of 2019 has been annexed along with this memo for this Hon'ble Tribunal's reference and record.

An elaborate introspection of W.P.C. No. 13713 of 2019 would reveal the following facts:

1. Subject-matter is the same as in the above Original Application.
2. **Issues raised and the reliefs sought are entirely different.**
3. There is **no prayer for restitution of damaged property and restitution of the environment in W.P.C. No. 13713 of 2019.**
4. Petitioner in the Writ Petition only seeks to prevent building construction above 20, 000 square meters.
5. He is least aggrieved by the already caused environmental damage including the ones to flora & fauna.
6. He is absolutely unaware about the conversion of stream and flood-plain thereby causing a larger environmental impact.

It is therefore submitted that W.P.C. No. 13713 of 2019 does not touch the wider canvas or specific legal infringements that has been portrayed in this Original Application.

Dated this the 16th day of September 2019



Counsel for the Applicant

# BEFORE THE HON'BLE HIGH COURT OF KERALA

W.P (C) No.

13713

of 2019

## PETITIONER:

K.O Johney, aged 56 years, S/o Pappachan,  
Kochi Media, Opposite St. Antony's Church,  
Kaloor, Ernakulam - 82017

*Versus*

## RESPONDENTS:

1. District Collector, Pathanamthitta, Civil Station,  
Pathanamthitta district- 689 645
2. Kerala State Environmental Impact Assessment Authority,  
Pallimukku, Pettah P.O, Thiruvananthapuram, Kerala - 695 024  
represented by its Chairman
3. Ranni- Pazhavangadi Grama Panchayat, Panchayat Office, Ranni,  
Pathanamthitta district- 689 673 represented by its Secretary
4. Secretary, Ranni- Pazhavangadi Grama Panchayat, Panchayat Office, Ranni,  
Pathanamthitta district- 689 673
5. State of Kerala,  
represented by Secretary, Department of Revenue,  
Secretariat, Thiruvanthapuram- 695 001
6. Public Works Department, Building Division, Pathanamthitta- 691 523  
represented by the Executive Engineer

## WRIT PETITION (CIVIL) FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA

Address for service of all process to the petitioner is that of his counsel **RAJAN VISHNURAJ & HARISH VASUDEVAN**, Advocates **AMICUS ADVOCATES**, II Floor, Chundanal Monarch, K.K Padmanabhan Road, Kochi - 18 and address for service of all process/notice to the Respondents are as shown above.

### STATEMENT OF FACTS

5. The petitioner herein is a freelance citizen journalist, public spirited citizen as well as a RTI activist. The petitioner has approached this Hon'ble Court on various instance regarding public causes. The petitioner is approaching this Hon'ble Court presently against the illegality conducted by the 6<sup>th</sup> respondent by constructing a multi utility complex in the land belonging to the 5<sup>th</sup> respondent in Ranni in Pathanamthitta district

6. It is respectfully submitted that the petitioner had recently gone to Ranni in Pathanamthitta district. While he got down at the Ittiyapara bus station in Ranni, he happen to notice that the entire area was in a chaotic mess as a result of building materials being scattered all over the place in such manner obstructing the pathways of the pedestrians. The petitioner himself sustained injury while walking through the area as a construction material left carelessly bruised his feet. Upon enquiring regarding the havoc and mess created in the area, it was reliably learnt by the petitioner that the 6<sup>th</sup> respondent is constructing a multi utility complex in the said area. On further query, the petitioner also came to know that the land where the said constructions were going on was in land which belonged to the 5<sup>th</sup> respondent. It was learnt by the petitioner that the nature of the land was in the form of 'nilam' earlier. It was also learnt by the petitioner from the local residents in the area that the said construction is progressing at snail pace and making the life of the people in the area a misery.
7. The petitioner immediately preferred an application under Right to Information Act, 2005 before the 6<sup>th</sup> respondent seeking the details of the multi utility complex which is being built in the land of the 5<sup>th</sup> respondent. Upon receiving reply from the 6<sup>th</sup> respondent, it is learnt by the petitioner that the proposed multi utility complex is having a total area of 22,351.90 square metres. A true photocopy of the reply dated 16.04.2019 issued from the office of the 6<sup>th</sup> respondent to the petitioner along with its English translation is produced herewith and marked as **Exhibit P1**.
8. That, since it was evident that the total area of the proposed project by the 6<sup>th</sup> respondent was more than 20,000 square metres, they ought to have obtained the environmental clearance from the 2<sup>nd</sup> respondent. Accordingly, the petitioner has preferred a query under RTI to the office of the 2<sup>nd</sup> respondent to know if the 5<sup>th</sup> or 6<sup>th</sup> respondent had obtained prior environmental clearance before commencing the constructional activities. Shockingly enough, it was revealed by the 2<sup>nd</sup> respondent that neither the 5<sup>th</sup> nor 6<sup>th</sup> respondent had not obtained any environmental clearance before starting the construction of the multi utility complex. A true photocopy of the reply dated 30.07.2018 issued from the office of the 2<sup>nd</sup> respondent to the petitioner along with its English translation is produced herewith and marked as **Exhibit P2**.
9. That, immediately the petitioner preferred a detailed representation before the 1<sup>st</sup> respondent against the illegality being committed by the 6<sup>th</sup> respondent by carrying out constructions without prior environment clearance as stipulated

under the Environment Impact Assessment Notification, 2006 (*hereinafter referred to as EIA Notification, 2006*) as well as not obtaining prior building permit or plot approval from the 3<sup>rd</sup> respondent or permission from the Local Level Monitoring Committee (*hereinafter referred to as LLMC*). A true photocopy of the detailed representation through email dated 14.08.2018 preferred by the petitioner before the 1<sup>st</sup> respondent along with its English translation is produced herewith and marked as **Exhibit P3**.

10. That, the 1<sup>st</sup> respondent issued a communication to the petitioner stating that he had received a copy of the Exhibit P3 representation and that he has forwarded the same to the Sub Collector, Thiruvallur, Agricultural Officer, Ranni - Pazhavangadi Grama Panchayat for following up actions on the petitioner's complaint against the construction of the multi utility complex in the land of paddy field. A true photocopy of the communication dated 14.11.2018 issued from the office of the 1<sup>st</sup> respondent to the petitioner along with its English translation is produced herewith and marked as **Exhibit P4**.

11. In the meanwhile, the petitioner had received a communication from the Secretary of the 3<sup>rd</sup> respondent on 20.12.2018. It was stated in the said letter that based on the complaint preferred by the petitioner, on enquiry, it is found that the 6<sup>th</sup> respondent has not obtained any permission from the office of the 3<sup>rd</sup> respondent to start the constructional activities. A true photocopy of the communication dated 20.12.2018 issued by the Secretary of the 3<sup>rd</sup> respondent to the petitioner along with its English translation is produced herewith and marked as **Exhibit P5**.

12. It is respectfully submitted by the petitioner that pursuant to Exhibit P4 and P5 communications, no action has been taken by the respondents No. 1 to 3 to curtail the illegal act which is being done by the 6<sup>th</sup> respondent in the property of the 5<sup>th</sup> respondent. The petitioner also submits that he has come to know that the 5<sup>th</sup> and 6<sup>th</sup> respondents have not even obtained any permission under the Kerala Land Utilization Order, 1967 to use the said land for any other purposes. Despite all these illegalities, the 6<sup>th</sup> respondent is going ahead with the constructional activities with no permissions or permits whatsoever. Though, the petitioner has given several reminders to the respondents No. 1 to 3 regarding the illegality which is being done, no action is being taken and the respondents herein are working hand in glove to complete the construction of the multi utility complex according to their whims and fancies. This is clear abuse of power on the part of the respondents herein and unnecessarily wasting the tax payers money.

Moreover, the entire area near the land of the 6<sup>th</sup> respondent is stacked up with constructional materials in the road side posing huge threat to pedestrians, children and motorists.

Under these circumstances, left with no other efficacious or alternative remedy than to approach this Hon'ble court, for the redressal of grievances, the petitioner most humbly prefer this writ petition (civil) under Article 226 of the Constitution of India with following among other

### GROUND

- A. The constructional activity carried out by the 6<sup>th</sup> respondent in the property of the 5<sup>th</sup> respondent without obtaining the various clearances and permissions under the provisions of the EIA Notification, 2006, Kerala Panchayat Raj Act, 1994 and Kerala Land Utilization Order, 1967 is per se illegal and is liable to be stopped immediately.
- B. The constructional activity carried out by the 6<sup>th</sup> respondent by working hand in glove with the respondents herein according to their whims and fancies without any proper supervision by the proper statutory authorities is clear exploitation of the tax payer's money. Since, the construction is being carried out by the 6<sup>th</sup> respondent without any clearances or permissions, there is no accountability for the same. Since, the respondents No. 1 to 3 who are the competent authorities curtail the act of the 6<sup>th</sup> respondent, is sitting mum over the petitioner's complaint, the petitioner has no other option than to approach this Hon'ble Court for the redressal of his grievance.
- C. The petitioner has no other alternate or efficacious remedy than to approach this Hon'ble Court for the invocation of the extra ordinary jurisdiction under Article 226 of the Constitution of India.
- D. It is evident from Exhibit P1 that the project of the 6<sup>th</sup> respondent exceeds more than 20,000 square metres and hence the same requires prior environmental clearance from the 2<sup>nd</sup> respondent before starting any construction. However, it is seen from Exhibit P3 communication that no prior clearance has been granted to the 5<sup>th</sup> or 6<sup>th</sup> respondent till date for constructing the multi utility complex. This is clear violation of the provisions of the EIA Notification, 2006.

- E. The 6<sup>th</sup> respondent ought to have preferred an application under Section 235 F of the Kerala Panchayat Raj Act, 1994 and obtained a building permit from the 3<sup>rd</sup> and 4<sup>th</sup> respondents before starting any constructional activities. However, it is seen from Exhibit P5 communication that no permission has been accorded from the office of the Secretary of the 3<sup>rd</sup> respondent till date to start the constructions activities of the multi utility complex till date. This is clear cut violation of the provisions of the Kerala Panchayat Raj Act, 1994 and the Kerala Panchayat Building Rules.
- F. The petitioner has also come to learn from the local residents that the land in question was a 'nilam' till some time back. However, it is learnt reliably that neither the 5<sup>th</sup> respondent nor the 6<sup>th</sup> respondent has obtained any permission under the Kerala Conservation of Paddy Land and Wetland Act, 2008 or the Kerala Land Utilization Order, 1967 for use of land for any other purpose. This is per se illegal and is to be curtailed by the 1<sup>st</sup> respondent.
- G. The inaction on the part of the respondents No. 1 to 3 on the illegality committed by the 5<sup>th</sup> and 6<sup>th</sup> respondents is clear dereliction of duty and clearly indicates that the respondents are working hand in glove to perpetuate the illegality to extort the tax payer's money from the public ex-chequer.
- H. The careless manner in which the construction materials are being dumped in the construction site is posing huge threat to the life of the local residents, pedestrians as well as motorists. This is unacceptable and stringent action has to be taken against the illegality done against the public at large.
- I. Hence, the urgent intervention of this Hon'ble Court by invoking the wide powers under Article 226 of the Constitution of India is highly inevitable in this case, unless irreparable injuries and hardship may be caused to the poor petitioner.

Having regard to the above mentioned grounds and also such other grounds that may be urged at the time of hearing, it is most humbly prayed that this Hon'ble court may be pleased to:

## PRAYERS

- (i) Issue a writ of mandamus or any other appropriate writ directing the respondents No.1 to 6 to ensure that no building construction more than 20,000 square meter is carried out in the Government land by any person including the 6<sup>th</sup> Respondent without obtaining all statutory permissions and licenses, including prior environmental clearance.
- (ii) Issue a writ of mandamus or any other appropriate writ directing the 1<sup>st</sup> Respondent to do the needful to take cognizance of the offence under the Environment (Protection) Act, 1986 against the persons concerned.
- (iii) Pass such any other order, direction or reliefs as this Hon'ble Court may deem fit in the interest of justice, equity and good conscience.

### INTERIM RELIEF SOUGHT FOR:

For the reasons stated in the memorandum of writ petition (civil) and its accompanying affidavit it is most humbly requested and prayed that this Hon'ble court may be pleased to direct the respondents no.1 to 6 to ensure that no building construction more than 20,000 square meter is carried out by the 6<sup>th</sup> respondent or any other person in the government land, without obtaining statutory clearances including prior Environmental Clearance, pending final disposal of this writ petition (civil).

Dated this the 3<sup>rd</sup> day of May, 2019

PETITIONER

Rajan Vishnuraj  
COUNSEL FOR THE PETITIONER