

**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 THE APPLICANT

I am hereby attaching the Argument Note filed on behalf of the Applicant in the above Original Application for the ease of comprehension of the issue involved before this Hon'ble Tribunal.

Dated this the 05th day of January, 2023



Counsel for the Applicant

IN THE NATIONAL GREEN TRIBUNAL (SZ) CHENNAI

Original Application No. 128 of 2021

Ibrahim Karim : Applicant

Versus

State of Kerala & Ors. : Respondents

ARGUMENT NOTE FILED BY THE COUNSEL FOR THE APPLICANT

WHAT IS THE EXACT ISSUE OF ENVIRONMENTAL DAMAGE BROUGHT TO THE NOTICE OF THIS HON'BLE TRIBUNAL:

The Government of Kerala has commenced an illegal construction of a Multi-utility Complex upon the floodway of Madatharuvi Stream and the floodplains of Aithala, Meenmuttu Streams by converting a wetland situated in the heart of Ittiyappara Town of Ranni in Pathanamthitta district of State of Kerala.

The Averments and Arguments are raised to bring home the truth of the aforementioned illegality. Arguments are methodised into FIVE Parts for the sake of clarity and ease of comprehension.

PART I

(ARGUMENT NO. 1)

THE JOINT COMMITTEE CONSTITUTED BY THIS TRIBUNAL HAS FOUND THAT THE CONSTRUCTION IN QUESTION IS CONDUCTED UPON A FLOODPLAIN AND THE SAME IS ILLEGAL FOR AN ARRAY OF REASONS.

Findings of the Joint Committee undoubtedly proves that the proposed construction of Multi-Utility Complex is in blatant violation of statutory norms. Relevant findings of the Joint Committee are noted below.

1. **Project Proponent (Government of Kerala) has not obtained: (1)** A valid **Building Permit** from the statutory authorities (Project proponent is not exempted from the rigor of statute), **(2)** Integrated **Consent** to establish from the Kerala State **Pollution Control Board,**

(3) Permit from the Kerala State **Fire** and Rescue Department. **(Answer given by the Joint Committee to Query No. 3.2 at Page No. 4 of the Joint Committee Report [Hereinafter referred to as JCR, for short]).**

2. The Construction Site, situated in Survey No. 260, falls within the Floodplain of Meenmuttupara-Aithala stream. **(Answer given by the Joint Committee to Query No. 3.3 at Page Nos. 4, 5 & 18 of JCR, which is marked as Annexure V report of Minor Irrigation Sub Division, Pathanamthitta)**
3. In fact, the Construction Site, situated in Survey No. 260, is upon the floodway of Madatharuvi Stream, which has now been taken over by illegal land fillings and reclamations.
4. According to the Joint Committee, the **environmental impacts** likely to be caused on account of the construction upon this Floodplain are: **(1) Possibility of flood and change in groundwater level** and flow patterns; **(2) Air, Water and Noise pollution** due to the construction activities and land filling; and **(3) erosion and surface water contamination** due to silt runoff from the construction site. **(Answer given by the Joint Committee to Query No. 3.6 at Page No. 5 of JCR)**
5. The Joint committee has also noted that as a part of construction activity, the project proponent has physically landfilled wetlands, in Survey No. 260 (as admittedly recorded in the State revenue records). The nature of impact likely to be caused on the environment by virtue of the aforementioned conversion of wetland to normal plain land, is unavoidable even if the project proponent diminishes or reduces the area below 20, 000 meter square or above it. **(Answer given by the Joint Committee to Query No. 3.7 at Page No. 5 of JCR.)**
6. During the visit the Project Proponent's authorities **have not** provided copies of permissions like **(1) Encumbrance Certificate**, **(2) Environmental Impact Assessment**, **(3) Consent for establishment** from Kerala State Pollution Control Board, **(4) Fire NOC** from fire department, **(5) Groundwater/ Bore Well Water Permission** from Central/State Groundwater Authority, **(6) Building/ Town Plan approval** from concerned department, Panchayat approval. DFO, Ranni was requested to collect those documents if available, or else to report to this Hon'ble Tribunal in case of non-availability. **(Answer given by the**

Joint Committee to Query No. 2 at Page No. 12 of Joint Committee Report, which is marked as Annexure II report of MOEF.)

7. Evidently, DFO had no such documents. No Respondent had produced any such papers, till date as well. Individually, the Construction is conducted without any legal permissions. **This is a classical case for a Government flouting all laws as if they are flying above laws.**
8. Building constructions having built up area more than 20, 000 m square come under the consent purview of the board and have to obtain consent to establish/ consent to operate of the Board under Water Prevention and Control of Pollution Act 1974, Air Prevention and Control of Pollution Act 1981 and Environmental Protection Act 1986. Application for consent to establish for the multi utility project mentioned in the O.A. has not been submitted so far to the Pollution Control Board. **(Page No. 17 of Joint Committee Report, which is marked as Annexure IV report of Kerala State Pollution Control Board).**

PART II

(ARGUMENT NO. 2)

JOINT COMMITTEE HAS FOUND AND RESPONDENTS HAVE THEMSELVES ADMITTED THAT THE CONSTRUCTION IN QUESTION IS CONDUCTED UPON WETLANDS. SECTION 11 OF THE KERALA CONSERVATION OF PADDY LAND AND WETLAND ACT, 2008 IMPOSES A TOTAL PROHIBITION.

Proposed site for Construction of the Multi-Utility Complex is admittedly a Wetland and hence any construction therein is illegal for the following reasons.

1. **Answer given by the Joint Committee to Query No. 3.7 at Page No. 5 of JCR reveals that, for the construction purpose *the project proponent has converted the wetland (which is recorded in revenue records) into normal plain land.*** Hence illegal construction of multi-utility Complex in the wetland is evidenced by the expert committee report.
2. In **Paragraph No. 5 of the Reply dated 28.09.2021, filed by MOEF** it is stated that *"the area under dispute comes in a floodplain wetland area of the stream draining into Pampa river and*

affected by frequent heavy floods during the last 3 years.” Thus another expert body also ratifies the existence of wetland in the proposed construction area.

3. **At this Juncture, Section 11 of the Kerala Conservation of Paddy Land and Wetland Act, 2008** assumes importance. Provision states as follows:

“Prohibition on reclamation of wetland- On and from the date of commencement of this act, the wetlands of the state shall be maintained as such and there shall be total prohibition on reclamation of such wetland and removal of sand there from.

Provided that nothing contained in this section shall affect the removal of slurry and mud to maintain ecological condition of such wetland.”

4. Therefore, Section 11 of the Kerala Conservation of Paddy Land and Wetland Act, 2008 has categorically imposed a total prohibition against the reclamation of wetland. The Act came into force in 2008 itself. The present illegal Construction has commenced during 2013-14. Hence the proposed construction of Multi-utility Complex is apparently violative of Section 11. It is pathetic to see that the Executive is violating the laws made by their own legislature.
5. Now, let us come to the documentary evidence that points out that the proposed site is a WETLAND. First let us see the admission of the Respondent. According to the Respondents, though the proposed site is a wetland as per revenue records and Data Bank; they are now correcting the mistake in order to continue their illegalities.
6. Secondly, the Revenue Records and Data Bank Documents produced by themselves state that the same is WETLAND.
7. Thirdly, the Kerala Conservation of Paddy Land and Wetland Act, 2008 does not provide for category change of WETLAND. The Local Level Monitoring Committee is not endowed with the power to grant sanction to construct upon WETLAND.

8. Even if we assume that the Local Level Monitoring Committee has power to change category, without admitting, for the sake of argument; no single valid reason is seen cited by Respondents in the decision of the Local Level Monitoring Committee dated 26.03.2022, while omitting the entry of wetland from data bank regarding proposed construction site.
9. Therefore the Local Level Monitoring Committee, which has no power to decide on Wetland, has usurped law to commit an illegality to favor the Government. **The Local Level Monitoring Committee is supposed to monitor that the provisions of the statute are enforced. Instead they have sided with the violators. This is a pathetic state of affairs.** All members of the Committee have committed constitutional fraud and are liable to be punished.
10. The decision of the Local Level Monitoring Committee has come after the Joint Committee Report during the pendency of this litigation. This proves that all these actions are merely afterthought to defeat the Environment and this Tribunal's orders.
11. Act of Deletion is an Act of Statutory Fraud and a nullity. By hook or crook, the Government is bent on facilitating the illegal construction of the Multi-utility complex through commission of fraud on Court. This indicates that the higher ups and the bureaucracy has some pecuniary interest in the project. This points towards corruption of a massive scale.

PART III

(Argument No. 3)

GOVERNMENT OF KERALA HAS PLAYED FRAUD BEFORE THIS TRIBUNAL AND THE HIGH COURT OF KERALA THAT INDICATES EXTRANEIOUS INTERESTS OCCUPYING THE DECISION MAKING FIELD.

Contradictory, fraudulent and misleading statements by Respondents cast shadow on the case put forth by the Respondents.

1. In Paragraph No. 3 of the **statement dated 05.08.2021**, the 3rd Respondent has submitted that prior permission from the local

body is not necessary since the drawings are prepared by the Chief Architect. This is legally unsustainable.

2. In the very next **statement dated 25.10.2021** filed by the very same 3rd Respondent, the earlier statement is directly contradicted and it is submitted that the Government secured valid building permit; under the Kerala Municipality Act,1994 for construction. But the same is not produced.
3. The Irrigation Department **which admitted the existence of a floodplain in the Joint Committee Report** took a diametrically opposite turn in its report dated 23.04.2022 at Paragraph No. 5 by stating that Floodplains are not identified. According to the said report, the flood plain is not defined as per the Kerala Irrigation and Water Conservation Act, 2003. The decision regarding fixing of flood plain is to be taken at Government level. The floodplain is yet to be demarcated by the irrigation department. It is clear that the said statement is an afterthought, improvement of illegality. By the U-Turn, the Irrigation Department and the author of the same is expecting to save the Government who have destroyed the environment; by perpetrating grave illegalities. This is nothing short of perjury.
4. Admittedly the area of Multi-Utility Complex is reduced from 22351. 90 Meter Square to 18720. 40 meter square. This reduction was with a view to bypass the statutory requirement of Environmental clearance for constructions above 20, 000 square meters. This is evident from the following facts.
 - (a) In the proceedings of Chief Engineer dated 03.01.2020 for reduction of area of proposed building, WPC No. 13713 of 2019 challenging construction of complex without EC is referred.
 - (b) In the Proceedings of Chief Engineer dated 03.01.2020 for reduction of area of proposed building, one of the reasons cited for reduction of area of building was the letter of MLA demanding deletion of 10th and 11th floor. But interestingly in the letter dated 25.11.2020 by MLA, which is produced as Annexure 3 along with the affidavit filed by the 6th Respondent dated 28.04.2022, what is demanded is construction of 12 floors.
 - (c) This aspect was concealed by Respondents at the time of rendering of Judgment dated 05.01.2022 in WPC No. 13713

of 2019 and hence the judgment was on the basis of proceedings of Chief Engineer dated 03.01.2020.

5. At page No. 4 of the memo dated 07.11.2022 filed by the Applicant, a sketch is produced showing the current flow of stream Madatharuvi through the site after filling up.
6. At Running Page 13 of the Revenue Records and sketch filed by the District Collector dated 22.11.2022, a Survey Sketch of the Survey No. 260 is produced.
7. Survey No. 260 is the exact location of the Pilgrim Centre as shown in the sketch prepared at Running page 14. In the survey sketch at Running page 13, a small stream viz. "Neerozhukku Thodu" is shown passing through the proposed site. This stream is deliberately concealed in the sketch prepared by the Respondents at Running page 14 of the Revenue Records and sketch filed by the District Collector dated 22.11.2022.
8. Thus the existence of a stream in the proposed site as portrayed by Applicant in page No. 4 of the memo dated 07.11.2022 is evidenced by survey sketch at page 13 of the Revenue Records and sketch filed by the District Collector dated 22.11.2022.
9. The enthusiasm of the Respondents to change the status of the land from wetland to dry land itself shows the oblique motive of the Respondents.
10. Even going by the sketch of the Respondents the proposed site shares a boundary with the stream.
11. These kinds of frauds shall not be entertained by this Hon'ble Tribunal. Unless such practices are weeded out, common men will lose trust in the Judicial Institutions.

PART IV

(ARGUMENT NO. 4)

THE ILLEGAL CONSTRUCTION IS A NATIONAL WASTE OF MONEY, RESOURCES AND TIME. RESTORATION ORDER CAN BE EASILY IMPLEMENTED AND THE SAME WOULD HELP THE EXCHEQUER AND OTHER VIABLE PROJECTS.

The Proposed site for Construction of the Multi-Utility Complex is a flood plain and hence any construction therein is illegal. The construction upon the Floodplain has already been found by the Joint Committee. The same if permitted to continue would cause a dent in the public exchequer without any benefit to the Public for the following reasons:

1. Evidently, the Proposed Site falls within the floodplain of Meenmuttupara-Aithala stream as per the Joint Committee report.
2. In **Paragraph No. 5 of the Reply dated 28.09.2021 filed by MOEF** it is stated that the area under dispute comes in a floodplain wetland area of the stream draining into Pampa river and affected by frequent heavy floods during the last 3 years. Thus another expert body also ratifies the existence of flood plain in the proposed construction area.
3. Vide memo dated 20.10.2021, the Applicant produced photos of proposed site for construction flooded with water during the then floods. Despite repeated query from this Hon'ble Tribunal, Respondents remained silent regarding these photographs. As there is no objection from the part of Respondents, the factum of flood plain is admitted.
4. It must be seen that during 2021, it was normal rains which flooded the area over a height of a three storeyed building. The area suffers from frequent rainfalls. Even if a building is constructed, the same would be flooded thrice in a year.
5. A huge amount would be essential for repairs alone. Even further, it's common-sense not to build something upon a river. Government Officials, out of pecuniary greed, are acting insane.

6. Moreover, the traffic to Sabarimala is no longer going through the said path owing to the new highway. Presently, the hub of Ayyappans are at Pampa and Erumely.
7. Huge piling works are done in the proposed site. Wetland is filled up by dumping enormous quantities of soil. However, removal of this dumped Soil is more beneficial since the same can be reused for other viable projects. Considering the cost of Soil, at present, the use of this Soil at an alternate space would only help the Exchequer.
8. Once the Soil is removed and original wetlands are restored, the nature would claim it's due share when the Madatharuvi stream reclaims what was originally it's.
9. Thus, for all of the above reasons the illegal construction in the floodplain warrants urgent interference by this Hon'ble Tribunal. Moreover, restoration order is an unavoidable necessity.

Hence it is humbly prayed to stall the illegal construction of multi-utility complex and restore the extent of wetland which is filled up for construction.

Dated this the 05th day of January,2023



Counsel for the Applicant