

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

IN

ORIGINAL APPLICATION NO 206 of 2021 (SZ)

Applicant(s) : Environmental Protection and
Research Council, a Public Trust,
Thiruvananthapuram

Versus

Respondent(s) : The MoEF&CC & others

**REPORT FILED BY THE CHIEF ENVIRONMENTAL ENGINEER FOR
HIMSELF AND ONBEHALF OF THE CHAIRMAN, THE 3rd RESPONDENT AS
PER THE ORDER DATED 22.09.2021 IN THE ABOVE APPLICATION**

I, M A Baiju, Aged 55 Years, S/o M.K Aravindakshan, Chief Environmental Engineer, Regional office, Ernakulam, as per the order dated 22.09.2021 in OA No 206 of 2021 do hereby submit as follows,

1. I may humbly submit that this application is primarily pointing out the violations committed during construction, shortfalls occurred while carrying out demolition and environmental damages caused during removal of debris of apartments situated at Maradu Municipality in the name and style M/s Alfa Serene(Twin Apartments) of M/s Alfa Ventures Pvt. Ltd., the 5th respondent, M/s Holyfaith H₂O of M/s Holyfaith Builders and Developers Pvt. Ltd., the 6th respondent M/s Golden Kayaloram of M/s Vichus Constructions and Hotels Pvt. Ltd., the 7th respondent and M/s Jain Coral Cov of M/s Jain Housing and Constructions Ltd., the 4th respondent. It further explained that the Hon'ble Apex Court had not gone in to the question regarding environmental damages caused but had only considered the CRZ violations and directed demolition under Rules.
2. It is respectfully submitted that the applicant in OA 206 of 2021 specifically seeks following reliefs also,




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- a) That this Tribunal be pleased to pass a direction to Respondent No. 1, 2 & 3 by themselves or any of the agencies under it, to restore the environment in these areas in accordance with Sec. 15(1) (C) of the NGT Act, 2010 and the cost of such restoration to be recovered from the Respondent Nos.4,5 6 & 7 in accordance with the report of the committee of experts order dated 22.09.2021.
- b). That this Hon'ble Tribunal be pleased to pass a direction to Respondent No. 4, 5, 6 & 7 to pay environmental compensation as is assessed by the committee of experts or as a percentage of the cost of the Project, whichever is higher so as to act as a deterrent against environmental destruction.
- c). For the costs of the present application.

3. It is respectfully submitted that the Hon'ble Tribunal through the said order specifically mentioned that this respondent had reported in OA 12 of 2020 that debris were completely removed from the Kayal thereby no damages were caused due to the demolition of apartment M/s Alfa Ventures, one of the four apartments in question.

4. I may humbly submit that the above mentioned application which was actually taken by this Hon'ble Tribunal "Suomotu" based on the news item published in **'Mathrubhoomi Malayalam news paper dated 19.01.2020 "The removal of debris in maradu not according to norms - National Green Tribunal"**. This case is still in existence and for want of final orders from the Hon'ble Tribunal. It is respectfully submitted that the Board had initiated several steps well in advance to assess water quality of the Kayal where probable chance of pollution was anticipated due to demolition of apartments. The Board had constituted a committee consisting of senior officials of the Board including this respondent to assess the pollution load during demolition and after that.

5. The Chairman, SLMC after inspecting the site alongwith the Chief Environmental Engineer, KSPCB had submitted a report which was reflected in the order of the Hon'ble tribunal dated 14.05.2020, which was self speaking with clearly illustrating all the shortfalls and subsequently suggested action plans to be completed by the Secretary on behalf of the Municipality. It is pertinent to note that some important points mentioned in the order are explained hereunder,

"As per orders of the Hon'ble Supreme Court in Civil Appeal Nos.4784-4785 of 2019 (Arising out of SLP (C) Nos.4227-4228 of 2016), which aims at the protection of the ecology of Vembanad Lake renowned for its bio-diversity, five high rises within the local of Maradu Municipality in Ernakulam District, Kerala were demolished on the 11th and 12th of January, 2020. The process of demolition was completed successfully as per schedule, ensuring the safety of the residents in the neighbourhood throughout the entire ordeal".




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Taking into account the environmental issues that would crop after the demolition of the buildings, the State Level Monitoring Committee (SLMC for short) in its meeting held on 13.12.2019, (i.e. prior to the implementation of the order of the Supreme Court) considered the pollution control measures taken/to be taken in the matter. Subsequently, on 24.01.2020 (i.e., after the demolition) the SLMC considered the post demolition monitoring measures and issued certain specific directions to the Maradu Municipality. Considering the seriousness of the issue, the Chairperson and the Secretary of the Maradu Municipality were asked to attend the meeting. Though the Secretary was present in the meeting, the Chairperson did not respond to the notice”.

The true extract of the relevant portion of the minutes of the meeting convened on 13.12.20219 related to the issue is attached as **Annexure 1** Minutes of the meeting convened on 24.01.2020 is attached as **Annexure 2**

6. It may be noted that this respondent had filed *several* status reports individually and as a part of a committee constituted by this Hon'ble Tribunal in which District Magistrate, Sub Divisional Magistrate and Secretary, Maradu Municipality were also members, extracts from those staus reports are as illustrtated below,

a. Report dated 28.07.2020

I may humbly submit that the draft report explaining the updated actions of the committee was prepared in the prescribed format and got approved by all the rriembers of the joint committee and final report was prepared after incorporating the suggestions made by all the members. It is respectfully submitted that after finalizing this report the Chairman, SLMC has specifically instructed to enquire about a complaint raised by some local public who belong to fisherman community that the Municipality was not able to completely remove the debris from the Kayal. Though the Chairman was intimated about the completion report submitted by the Secretary with respect to removal of debris from all the four sites, he insisted to carry out further enquiry on the specific issue on the removal of debris from the backwater. It is also important to note that the completion report submitted by the Secretary, Maradu Municipality is already attached as an annexure in the original report prepared and signed by all the members of the committee. It is respectfully submitted that on receiving such directions from the Chairman, SLMC, an enquiry was conducted on 24.07.2020 itself with the assistance of a local fisherman and observed some scattered debris which include reinforced concrete structures and other concrete debis in the Kayal. Even though it was reported vide our report dated 25.07.2020 that there are evidences of debris still in the Kayal, the quantity of which could be assessed by carrying out detailed study using accredited agencies, the Chairman, SLMC




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personally visited the site on 26.07.2020 along with this respondent. It may be pertinent to note that the Chairman, SLMC during the visit convinced that the observation of the Board during the visit dated 24.07.2020 is factual. He also asked to give a consolidated report attaching certain photographs taken during different inspections to prove that there are certain noticeable conclusions that still there are debris remains in the backwater which need urgent attention by the Municipality. Hence such report is prepared and forwarded to the Chairman, SLMC who is supervising the activities of removal debris due to demolition with copies to all committee members and with a specific direction to the Secretary, Maradu Municipality who plainly submitted completion report on 19.07.2020 on removal of debris from the backwater.

It is respectfully submitted that the restrictions imposed due to lockdown and the widespread of COVID-19 are more severe here and more areas are declared as containment zones. Hence, there were difficulties in preparing a modified report incorporating all these details in the report already finalized and signed by all the joint committee members since all the other members are engaged in the COVID-19 relief activities. It is also respectfully submitted that the Hon'ble Tribunal specifically stated in the order dated 14.05.2020 that "Pollution Control Board is also at liberty to file independent report as well so as to enable us to assess the present status." Hence this report is submitted individually in addition to the report submitted by the joint committee dated 24.07.2020.

I may humbly submit that the Secretary, Maradu Municipality is responsible as per relevant provisions of the C&D waste Rules 2016 for arranging and managing the service providers for the safe removal of all the wastes due to demolition of flats from the sites. It is pertinent to note that the Board is initiating speedy actions to obtain specific advice/ guidelines from CpCB on imposing environmental compensation since no such specific guidelines or model calculations are available for the same and is not found to be practiced anywhere. On receiving such a document, the shortfalls/ violations committed by the Maradu Municipality if any on complying with specific provisions of the said rule i.e., the C&D Waste Management Rules 2016 will be addressed accordingly. Copy of the letter dated 25.07.2020 sent to the Chairman after the visit of the Board officials & Consolidated report dated 26.07.2020 forwarded to the Chairman, SLMC are produced herewith and marked as Annexure 1&2 respectively.

b. Report dated 23.10.2020

"It is respectfully submitted that though the committee members were intimated regarding the importance of convening a meeting of the committee to discuss about the actions already completed to remove all the debris from the demolition sites especially from the Kayal, the restrictions imposed due to lockdown and the widespread of COVID-19 during the last couple of months restricted the committee in convening meeting before the allowed time of two months from the date of the order i.e., 11.10.2020 by the Hon'ble Tribunal. However, the following specific points are identified after visiting the site on 03.09.2020 and 12.09.2020 by the Surveillance team of the Pollution Control Board and on 30.09.2020 along with the Chairman, SLMC.

- i). Though the Secretary, Maradu Municipality was asked to submit action plan for the removal of debris remains after this has been identified by the Chairman, SLMC during his visit on 30.09.2020, this has not been submitted prior to removal of debris from Kayal and hence the disposal sites could not be identified in advance.
- ii). Total quantity of debris removed from the Kayal after 18.06.2020 could not be verified as no logbook were kept there or not produced before the Pollution Control Board or before the Committee as directed by the Hon'ble Tribunal.




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iii). Though the Secretary, Municipality was specifically asked to report about the disposal of dredged debris and mud as seen during the visit of the Chairman, SLMC, no such details are submitted till date before the Pollution Control Board. It is also important to note that the committee was convened on 22.10.2020 to discuss the future course of actions to be initiated in this case and to finalize the report of the Committee. Since some more corrections are suggested by the Secretary, the report should be finalized after redrafting it and getting it approved by each member of the Committee.

Copy of the letter dated 12.09.2020, report dated 02.10.2020 submitted by the Chief Environmental Engineer, Kerala State Pollution Control Board (Nodal Officer) before the Chairman, SLMC and attendance sheet of the meeting convened on 22.10.2020 are produced herewith and marked as Annexure B, C & D respectively. **(Annexures 3, 4 & 5)**

I may humbly submit that though the Board had instigated action to obtain specific advice/ guidelines from CPCB on imposing environmental compensation for the violations committed by the Secretary, Maradu Municipality if any by way of not submitting periodical reports viz. Action plans, Data on removal and disposal of steel as well as concrete debris, Replies to the queries raised by the Board etc., no such specific guidelines or model calculations are obtained or available for the same and is not found to be practiced anywhere. On receiving such a document the shortfalls/violations committed the Maradu Municipality if any on complying with specific provisions of the said Rule ie, the C&D Waste Management Rules 2016 will be addressed accordingly.

c. Report dated 14.06.2021

I may humbly submit that there are specific mentioning on Environmental Compensation to be assessed on the committed violations by the service providers and the Secretary, Municipality which are as follows,

“Further, as per order dated 11.08.2020, this Tribunal had directed the committee to assess the environmental compensation for violation, if any, committed in respect of Construction and Demolition Waste Management Rules, 2016. But the report of the Joint Committee shows that there was no guideline given by the CPCB to whom the SPCB had addressed.

However, this Tribunal had reiterated in the order dated 11.08.2020, that guidelines provided as per the directions of the Tribunal for violations committed can be considered for the purpose of assessment of compensation in this case also, but no such exercise was seen done by the committee”.

But it is important to note that they have removed all the debris from the sites by satisfactorily following the guidelines except the submission of action plans prior to removal of debris. This is the only identified shortfall committed by them and the debris fallen in the Kayal from the demolition of Alfa Serene-2 flat have been removed satisfactorily as per the direction of the SLMC which was identified by the Chairman, SLMC after visting the site. It is also respectfully reported that assessment of EC was not effected (If needed for the violations committed as explained above) since no specific guidelines for environmental compensation was received from the CPCB till date and the Board is closely following the matter with CPCB.

7. I may report that the duties of different parties are clearly illustrated in the C&D Waste Management Rules, 2016 under the headings which are explained as follows,




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Sec. 4. Duties of Waste generator,

Sec. 5. Duties of service provider and their contractors,

Sec 6. Duties of local authority,

Sec.9. Duties of State Pollution Control Board or Pollution Control Committee,

Sec.10. Duties of State Government or Union Territory Administration etc.

To be more specific the Sec.6. Duties of Local Authority are specifically explained as follows,

The local authority shall,

- (1) issue detailed directions with regard to proper management of construction and demolition waste within its jurisdiction in accordance with the provisions of these rules and the local authority shall seek detailed plan or undertaking as applicable, from generator of construction and demolition waste;*
- (2) chalk out stages, methodology and equipment, material involved in the overall activity and final clean up after completion of the construction and demolition ;*
- (3) seek assistance from concerned authorities for safe disposal of construction and demolition waste contaminated with industrial hazardous or toxic material or nuclear waste if any;*
- (4) Shall make arrangements and place appropriate containers for collection of waste and shall remove at regular intervals or when they are filled, either through own resources or by appointing private operators;*
- (5) Shall get the collected waste transported to appropriate sites for processing and disposal either through own resources or by appointing private operators;*
- (6) Shall give appropriate incentives to generator for salvaging, processing and or recycling preferably in-situ;*
- (7) shall examine and sanction the waste management plan of the generators within a period of one month or from the date of approval of building plan, whichever is earlier from the date of its submission;*
- (8) Shall keep track of the generation of construction and demolition waste within its jurisdiction and establish a data base and update once in a year;*
- (9) shall device appropriate measures in consultation with expert institutions for management of construction and demolition waste generated including processing facility and for using the recycled products in the best possible manner;*
- (10) Shall create a sustained system of information, education and communication for construction and demolition waste through collaboration with expert institutions and civil societies and also disseminate through their own website;*
- (11) Shall make provision for giving incentives for use of material made out of construction and demolition waste in the construction activity including in non- structural concrete, paving blocks, lower layers of road pavements, colony and rural roads.*

and Sec 8. Duties of State Pollution Control Board or Pollution Control Committee as follows,

- (1) State Pollution Control Board or Pollution Control Committee shall*



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monitor the implementation of these rules by the concerned local bodies and the competent authorities and the annual report shall be sent to the Central Pollution Control Board and the State Government or Union Territory or any other State level nodal agency identified by the State Government or Union Territory administration for generating State level comprehensive data. Such reports shall also contain the comments and suggestions of the State Pollution Control Board or Pollution Control Committee with respect to any comments or changes required;

(2) State Pollution Control Board or Pollution Control Committee shall grant authorization to construction and demolition waste processing facility in Form-III as specified under these rules after examining the application received in Form I;

(3) State Pollution Control Board or Pollution Control Committee shall prepare annual report in Form IV with special emphasis on the implementation status of compliance of these rules and forward report to Central Pollution Control Board before the 31st July for each financial year.

8. I may humbly submit that the order dated 22.09.2021 is seen finally ordered as follows,

“5. The Kerala State Pollution Control Board is directed to file a report regarding the allegations made in the application in respect of alleged damage to the enviamental caused due to the demolition of the buildings in view of the directions issued by the Hon'ble Apex Court alleging the CRZ violations.

6 The Kerala State Pollution control Board is directed to ascertain the fact as to whether any damage has been caused to the mangroves said to have been situated in that area, on account of the demolition of the buildings, if so, what is the nature of damage caused is also mentioned in the report.

7. The above official is directed to submit the report to his Tribunal on or before 04.10.2021, by e-filing in the form of searchable PDF/OCR Support PDF and not in the form of Image PDF along with necessary hard copies to be produced as per rules.

8. The applicant is directed to serve a copy of the application to the Chief Environmental Engineer, Reginal Office, Kerala State Pollution Control Board, Ernakulam, and the Member Secretary, Kerela State Pollution Control Board (KSPCB) and also standing counsel appearing for the Kerala State Pollution Control Board within 2 days, so that they can file the report before the next hearing date.

9. The Registry is directed to communicate this order to the official respondents including the Chief Environmental Engineer, Regional Office, Ernakulam and the Chairman, Kerala State Pollution Control Board (KSPCB), for their information and compliance of the direction.

10. For consideration of report, post on 04.10.2021”.

9. It is respectfully submitted that the Joint Committee as well as the State Level Monitoring Committee already identified that all the debris have been removed from the demolition sites. It is pertinent to note that this respondent along with the Chairman, SLMC visited several times the respective areas and specific directions were given to Secretary, Maradu Municipality to comply with relevant provisions of the C&D Waste Management Rules 2016. It is important to note that the Secretary as well as all service providers were summoned by the




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SLMC and directions were given to satisfactorily follow the guidelines and complete the removal of debris from respective demolition sites. It was already informed by this respondent through different individual status reports whenever shortfalls were noticed during the removal of debris from the sites by following strict compliance of the C&D Waste Management Rules 2016. This include non submission of specific action plans which should have been submitted by the Secretary, Municipality prior to the removal of debris from the sites and non compliance of the commitment by the service provider that a crusher unit will be installed for the processing of concrete debris removed from the sites. It may be noted that though they had forwarded certain action taken reports towards the transfer of debris, the non submission of action plans as mandated through the rules created lot of difficulties in identifying whether the sites where they disposed debris are suitable for such activities.

10. I may humbly submit that there are specific mentioning by this Hon'ble Tribunal on Environmental Compensation to be assessed on the committed violations by the service providers and the Secretary, Municipality which are as follows,

“Further, as per order dated 11.08.2020, this Tribunal had directed the committee to assess the environmental compensation for violation, if any, committed in respect of Construction and Demolition Waste Management Rules,2016. But the report of the Joint Committee shows that there was no guideline given by the CPCB to whom the SPCB had addressed.

However, this Tribunal had reiterated in the order dated 11.08.2020, that guidelines provided as per the directions of the Tribunal for violations committed can be considered for the purpose of assessment of compensation in this case also, but no such exercise was seen done by the committee”.

11. But it is important to note that they have satisfactorily removed all the debris but not submitted action plans prior to each transfer of waste from the site. Hence, identified shortfalls committed by them are,

- a.** Ecosystem damage if any caused to Kayal by way of fallen debris through demolition of Alfa Serene-2 apartment though they have removed it as per the direction of the SLMC which was identified by the Chairman, SLMC after visting the site.
- b.** Non submission of action plans prior to each transfer of waste from the site.
- c.** Though they had submitted a proposal for a sand making unit at “Kumbalam” (debris processing) where SPCB had issued consent, they had finally given up the project




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12. It is respectfully submitted that the Secretary, Maradu Municipality has been given strict directions to submit action plans as mandated as per the C&D Waste Rules 2016 and to follow the waste management guidelines as per the Solid Waste Management Rules 2016 where also transfer of wastes from construction and demolition activities are specifically illustrated on which no reply has been submitted till date. At this juncture, it is to be noted that, though it was stated in paragraph 13 of the order dated 01.03.2021 in OA 12 of 2020, that the learned counsel appearing for and on behalf of the Municipality expressed his willingness to instruct the Municipal authorities to abide by the directions of the Hon'ble Tribunal and cooperate with the Board. Hence, these violations shall be addressed by way of assessing Environmental Compensation for shortfalls and assessment of environmental damage cause to backwater ie, Thevara Canal. It is also respectfully reported that assessment of EC was not effected (If needed for the violations committed as explained above) since no specific guidelines for environmental compensation was received from the CPCB till date.

13. It is respectfully submitted that the secretary, Municipality was incharge of supervision of demolition of four apartments at Maradu and was carried out such activities satisfactorily where method used for demolition of all the buildings was implosion and no abnormalities or casualties were experienced during demolition except for Alfa Serene-2 where a portion of the building had fallen in the nearby 'Kayal'. During SLMC meeting the Secretary informed that this was happened while ensuring safety of nearby residents along the back side of this apartment. It is also reported that special care was taken to ascertain whether any remains were there after removal of debris from the site by service providers. It is respectfully submitted that this was discussed in detail during meeting of the joint committee constituted by this Honble Tribunal also and accordingly addressed. Though the Secretary municipality affirmed that all the debris were removed from the Kayal, it was identified that some remnants were left over there. This was identified while investigating a complaint received from Sri Sugunanandan, a nearby resident. It may be noted that Chairman, SLMC also was there while investigating the complaint. Thereafter, the Secretary had initiated actions to remove the debris deposited in the Kayal which was inspected by this respondent and found satisfactorily completed. At this juncture, it was recorded that no EC need to be assessed since no water quality deterioration was identified while verifying the analysis reports of water samples collected from the Kayal prior to monitoring and after that. But it was already identified and reported that the non submission of action plan and disposal of debris without




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prior permission of concerned regulatory authorities are violations. However, the Board is usually assessing EC as per individual guidelines as done in the case of BMW and SWM rules. Though the CPCB was requested to provide Guidelines for EC assessment, no such documents are received till date.

14. Board is not the Authority to assess whether any mangrove has been damaged due to the demolition.

15. It is respectfully stated the Board will initiate actions in association with CPCB with respect to assessment and imposition of EC on the identified violations of the Construction and Demolition waste Rules.

Dated this the 19 day of November 2021



DEPONENT

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Chief Environmental Engineer