

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

O.A. No. 206 of 2021

IN THE MATTER OF:

Environmental Protection & Research Council ... Applicant

Versus

Union of India & Ors. ... Respondents

**TYPED SET OF PAPERS FILED BY THE 5TH RESPONDENT (M/S. ALFA
VENTURES (P) Ltd.**

S. No.	Date	Description of Document	Page No.
1	19.09.2023	Reply filed by the 5 th Respondent.	1
2	15.07.2022	Annexure 1 - Report submitted by Justice Thottathil B. Radhakrishnan, before the Hon'ble Supreme Court in M.A. Nos. 1808-1809/2019 in C.A. Nos. 4784-4785/2019, C.A. Nos. 4786-4789/2019 and C.A. Nos. 4790-4793/2019.	3

All Annexures are true copies of their originals

Dated at Chennai this the 18th day of October, 2023.


(JOHN JOSEPH R)
(D/3990/2018)
Counsel for 5th Respondent

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BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE BENCH, CHENNAI
ORIGINAL APPLICATION NO.206 OF 2021

IN THE MATTER OF:

Environmental Protection & Research Council : Petitioner

Versus

Union of India & Others : Respondents

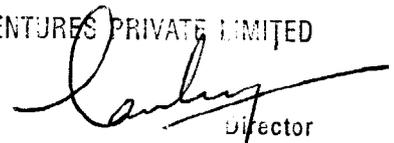
**REPLY BY RESPONDENT No.5, M/S. ALFA VENTURES (P) LTD. IN
THE ABOVE MATTER**

I Paul Raj Joseph, aged 58 years, son of P. V. Joseph, Director, Alfa Ventures (P) Ltd., I.S. Press Road, Kochi – 682018 do hereby solemnly affirm and state as follows:

- 1 That the above application is filed for a direction to restore the environment and for environmental compensation. It is most respectfully submitted that the questions raised in the present application including who is responsible for the construction is pending consideration of the Hon'ble Supreme Court of India in M.A. No. 1808-1809 OF 2019 IN CIVIL APPEAL NO.4784-85, 4786-89 AND 4790-93 OF 2019, in the matter of The Kerala State Coastal Zone Management Authority Vs. Maradu Municipality & Ors.
2. The Hon'ble Supreme court is also considering the report filed by Hon'ble Justice Thottathil B. Radhakrishnan appointed by the Court to enquire and



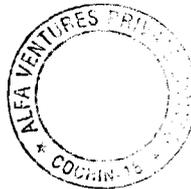
For ALFA VENTURES PRIVATE LIMITED


Director

report as to the responsibility of the Builder, Officers, and Departments in the construction of the building. The report has concluded that the Maradu Grama Panchayath & Municipality and its officers and the Government of the State of Kerala and its officers are also responsible for the construction of the building. Copy of the report dated 15th July 2022 is ANNEXURE-A.

- 3. In view of the pendency of the matter before the Hon'ble Supreme Court, it is most humbly prayed that the present application may be kept in abeyance. This respondent may be allowed to file a detailed Counter affidavit as and when the matter is taken up after the disposal of the Supreme Court matter.

For ALFA VENTURES PRIVATE LIMITED



[Signature]
Director

DEPONENT

I, the above deponent hereinabove do hereby verify the contents of this affidavit to be true and correct to the best of my knowledge and belief. I state that no part of this affidavit is false and nothing material has been concealed there from.

For ALFA VENTURES PRIVATE LIMITED



[Signature]
Director

DEPONENT

[Signature]
D/3990/2018

Counsel for 5th Rep. Verified at Ernakulam on this the 19th day of September, 2023

Signed before me.

[Signature]
Adv. Mathew B. Kurian
K/381/1991

MATHEW B. KURIAN
Advocate
PETER & KARUNAKAR
Lawyers
Alfa Towers, I.S. Press Road
COCHIN-682 018, KERALA

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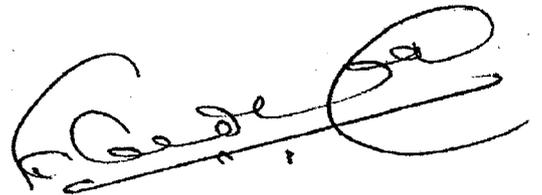
REPORT

Report submitted before the Hon'ble Supreme Court of India by Justice Thottathil B.Radhakrishnan, Chief Justice (Retd.), Calcutta High Court, following the enquiry conducted in terms of the directions contained in the order dated 02.5.2022 on M.A.Nos.1808-1809/2019 in C.A.Nos.4784-4785/2019, C.A.Nos.4786-4789/2019 and C.A.Nos.4790-4793/2019.

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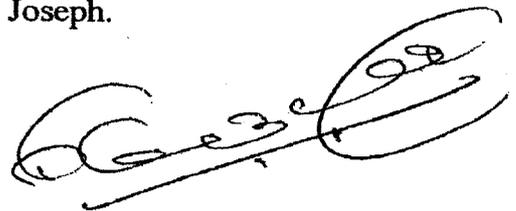


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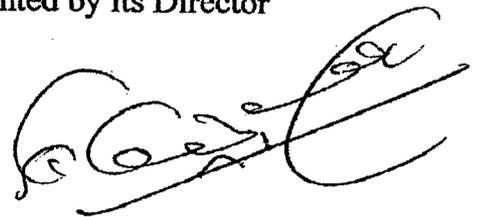
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1. List of Parties

1. The Government of Kerala, represented by the Chief Secretary.
2. The Additional Chief Secretary (Environment), Government of Kerala.
3. The Addl. Chief Secretary, Local Self Government Department, Government of Kerala.
4. The Kerala State Coastal Zone Management Authority, Thiruvananthapuram.
5. The Kerala State Pollution Control Board, represented by Chief Environmental Engineer.
6. The District Magistrate/District Collector, Ernakulam or such office/officer, as may be authorised by the DM/DC.
7. Maradu Municipality, represented by its Secretary.
8. The Secretary, Maradu Municipality, Maradu.
9. The Chief Town Planner, Thiruvananthapuram.
10. The Senior Town Planner, Office of the District Town Planner, LSGD, Civil Station, Kakkanad.
11. The Chief Town Planner (Vigilance), Local Self Government Department, Government of Kerala.
12. The Dy.S.P., C.B. Central Unit - II, Thripunithura, Ernakulam (Officer in-charge of Crime Nos.471, 472 and 473/2019).
- 12A. The Dy.S.P., VACB, Central Range, Kathrikadavu, Ernakulam.
13. M/s. Alfa Ventures (P) Ltd., Alfa Towers, I.S.Press Road, Kochi-682018, by its Director Sri.Paul Raj Joseph.

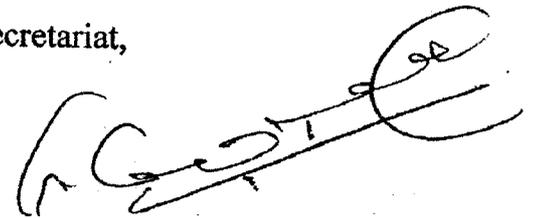


14. M/s. Holy Faith Builders & Developers (P) Ltd.,
TC 34/2353, Mamangalam, Kochi-682025, rep. by Sri.Sany Francis,
Managing Director.
- 14A.M/s, Meadow Homes Pvt. Ltd.
- 14B.M/s. Horizon Ventures Pvt. Ltd.
15. M/s. Jain Housing & Construction Ltd., Apartment No.4082,
Jains Tuffnel Gardens, Block 4, 8th Floor, Nilampathinjamughal,
Chittethukara, Kakkanad-682039.
16. M/s.Vichus Constructions & Hotels (P) Ltd. (K.P.Varkey & Sons and
V S Builders), Dream Mall, 2nd Floor (XXXIII/104J), Rotary Junction,
Thodupuzha, Idukki-685584, rep. by Sri.K.V.Jose, Managing Director.
17. Alfa Serene Apartment Owners Association, represented by President
Sri. Oosman Adam.
18. H2O Apartment Owners Association, represented by Secretary
Sri.Joyson E. Pallan.
19. Jain Coral Cove Allottees Association, represented by the President
Sri.George Kovoov.
20. Golden Kayaloram Residents Association, represented by
Sri.Varghese Cherukoth.
21. Greater Cochin Development Authority, represented by the
Secretary, Ernakulam.
22. Union of India, represented by the Principal Secretary,
Ministry of Environment, Forest & Climate Change, New Delhi.
23. M/s.Bhageeratha Builders Ltd., Bhageeratha Residency,
Banerji Road, Ernakulam, Kochi-682018, represented by its Director
Mr.Sony Chacko Madathil.



24. Legal representatives of late K.P.John:

- (1). Mr.John Paul K.
 - (2) Mr.John Philip K.
 - (3) Mrs.Suja George.
 - (4) Mrs.Mariam Paul.
 - (5) Mrs.Tanu Mariam.
(Sl.No.1 to 5, the legal representatives of Late K.P.John are residing at House No.113, Girinagar, Kochi – 682 020)
- 25 . Smt.K.V.Shanmayi (Maradu Panchayat President: 2000-2005)
26. Sri.K.A.Devassy (Maradu Panchayat President: 2005-2010)
27. Sri.C.E.Vijayan (Maradu Panchayat Vice President: 2000-2005)
28. Sri.M.C.Hamsa (Maradu Panchayat Vice President: 2005-2010)
29. Sri.M.Mohammed Asharaf (Secretary, Maradu Panchayat from 24.10.2005 to 21.3.2007)
30. Sri.P.J.Antony (Do. Do. from 11.6.2007 to 12.1.2011)
31. Sri.Nizarudeen M (Do. Do. from 12.1.2011 to 26.12.2011)
32. Sri.Jayakumar S (Do. Do. from 26.12.2011 to 25.7.2012)
33. Sri.A.P.Satheesan (Do. Do. from 25.7.2012 to 18.12.2012)
34. Sri.T.K.Jose,
Former Principal Secretary, Local Self Government Department,
Presently Addl. Chief Secretary, Home & Vigilance,
Government Secretariat, Thiruvananthapuram.
- 35.Sri.K.Gopalakrishna Bhat,
Former LSGD (Rural) In-charge,
Presently Secretary, Printing and Stationery,
Department of Higher Education, Government Secretariat,
Thiruvananthapuram.



- 36.Sri.Mohammed Y Safirulla,
Former District Collector, Ernakulam,
Presently Additional Secretary, Electronics & Info Tech Department,
Government Secretariat, Thiruvananthapuram.

- 37.Sri.Subhash P.K., Former Secretary, Maradu Municipality.

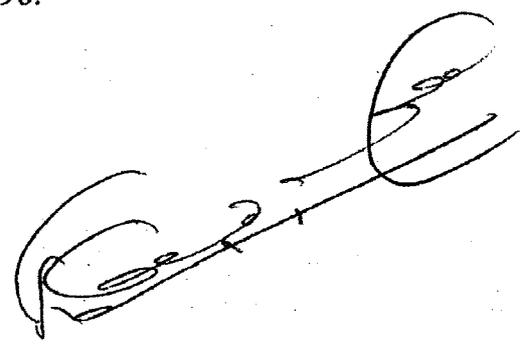
- 38.Smt.K.S.Girija,
Former Chief Town Planner, Government of Kerala, Swaraj Bhavan,
Nanthancode, Kowdiar P.O., Thiruvananthapuram – 695 003.

- 39.Dr.K.K.Ramachandran,
Group Head, Atmospheric & Geo-informative Division,
CESS, Thiruvananthapuram.

- 40.Dr. P.Harinarayanan,
Scientist, KSCSTE, Sasthra Bhavan,
Pattom, Thiruvananthapuram, Kerala-695 004.

- 41.Sri.Balraj, Joint Director (Urban Affairs),
Swaraj Bhavan, Nanthancode,
Kowdiar P.O., Thiruvananthapuram – 695 003.

- 42.Secretary,
Maradu Panchayat during the year 1995-96.
(Not served with notice)



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1A. List of Advocates who appeared

Spl. Govt. Pleader Adv.C.E.Unnikrishnan & Govt. Pleader Adv.Sunil Kumar Kuriakose for Party Nos.1 to 3, 6 and 9 to 11, 34 to 38, 40 & 41.

Adv.M.P.Prakash for Party No.4.

Adv.P.B.Sahasranaman for Party Nos.7 & 8.

Special Public Prosecutor S.Chandrasekharan Nair for Party No.12.

Adv.Mathew B.Kurian for Party No.13.

Adv.Santhosh Mathew for Party No.14

Adv.A.Karthik for Party No.15.

Adv.P.B.Krishnan for Party No.16.

Adv.Suraj Krishna for Party No.17.

Adv.Padminidevi C for Party No.18.

Adv.Anil S.Raj for Party No.19.

Adv.Vipin P.Varghese for Party No.21.

Central Govt.Counsel S.Biju for Party No.22.

Adv.T.N.Manoj for Party No.23.

Sr.Adv.Joseph Markos & Adv.Isaac Thomas for Party No.24.

Adv.M.G.Jeevan for Party No.25.

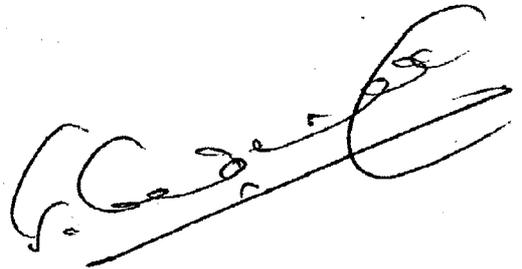
Adv.P.K.Varghese for Party No.26.

Adv.N.C.Sajith for Party No.27.

Adv.K.A.Siyad for Party No.28.

Adv.Rajit for Party No.30.

Adv.Asif N. for Party No.31.



2. REPORT

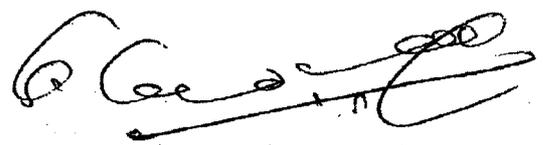
INTRODUCTION - ORDERS OF THIS HON'BLE COURT AND COMMENCEMENT OF THE ENQUIRY PROCEEDINGS

This Hon'ble Court, by order dated 02.5.2022 on M.A.Nos.1808-1809/2019 in C.A.Nos.4784-4785/2019, C.A.Nos.4786-4789/2019 and C.A.Nos.4790-4793/2019, required me to **enquire about the involvement of Builder/Promoter/persons/officials responsible for the illegal construction of the buildings which have already been razed to the ground.** For immediate perusal, a copy of that order dated 02.5.2022 is annexed to this Report as **Annexure-I.**

2. I received Annexure-I order on 10.5.2022 and commenced the proceedings by assuming charge on 11.5.2022. Requisite proceedings were carried out to ensure due establishment and management of the minimum required infrastructure and staff, also by utilising the facilities which were being put to use by the three-member Committee headed by Justice K.Balakrishnan Nair, following the order of this Hon'ble Court to oversee the disbursement of the compensation components to the flat owners. Sri.S.Vijayakumar - District Judge (Retd.) – formerly Special Judge for CBI/NIA Court, Ernakulam was retained as Secretary.

3. To assimilate the scope of the enquiry as directed, I have also perused the earlier orders in these proceedings, including those made available to me from the Registry of this Hon'ble Court along with communication D.No.31584/2019/XI-A dated 23.5.2022.

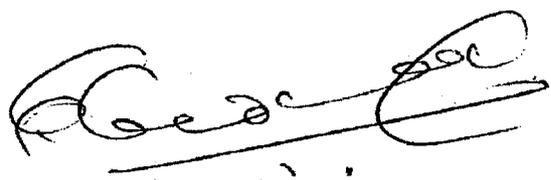
4. By order dated 27.11.2018 on SLP (C) Nos.4238-4241/2016 and 4231-4234/2016, this Hon'ble Court constituted a three-member Committee, consisting of the Secretary to the Local Self Government Department (for short



“LSGD”), the Chief Municipal Officer of the concerned Municipality and the Collector of the District, to hear objections and give findings in terms of the Notification dated 19.2.1991. That Committee was to hear the affected parties as well as the Kerala State Coastal Zone Management Authority and the State Government and to send a report to this Hon’ble Court as to the legality of the construction and precisely in which category the area in question is to be categorised and whether the building is in prohibited zone. That order was issued upon noticing that there is no categorical finding recorded by the Hon’ble High Court as to whether the area in question is in CRZ-III, CRZ-I or CRZ-II, though the plea of the writ petitioner before the learned Single Judge of the Hon’ble High Court was that the land fell within CRZ category II, whereas the case set up by the Kerala State Coastal Zone Management Authority before this Hon’ble Court is that the area is of CRZ category III. A copy of the order dated 27.11.2018 issued by this Hon’ble Court is annexed herewith as **Annexure-II**.

5. Consequently, this Hon’ble Court issued order dated 08.5.2019 on C.A.Nos.4784-4785/2019, C.A.Nos.4786-4789/2019 and C.A.Nos.4790-4793/2019. A copy of that order is placed as **Annexure-III** to this Report. The enforcement of that order ultimately resulted in the razing of the structures, which were found by this Hon’ble Court as illegal.

6. Thereafter, by order dated 27.9.2019 on M.A.No.1808-1809/2019 in C.A.Nos.4784-4785/2019, 4786-4789/2019 and 4790-4793/2019, this Hon’ble Court directed the State Government to pay, out of its funds, a sum of Rs.25 lakhs to each of the flat owners, who were being evicted pursuant to the proceedings and that the amount shall be recoverable from the Builder/Promoter/the persons/officials responsible for raising the construction. A copy of that order is placed as **Annexure-IV** to this Report. In Annexure-I

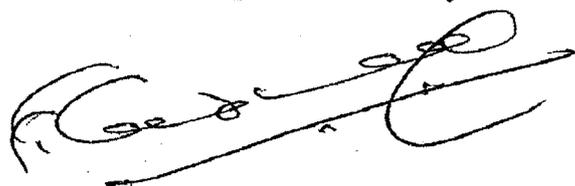


order, it has been recorded that the aforesaid direction to the State Government was complied with and that the question of refunding an amount of Rs.61.50 crores to the State Government by those responsible for the illegal construction has arisen for decision. It was by reading also the earlier order Annexure-IV dated 27.9.2019, that this Hon'ble Court, by Annexure-I order dated 02.5.2022 directed the enquiry as noted above and directed the builders and flat owners to appear for the enquiry as and when summoned. It was also directed that the State Government shall provide necessary facilities and extend cooperation for completing the enquiry expeditiously.

ARRAY OF PARTIES AND THE COURSE OF THE ENQUIRY PROCEEDINGS

7. The Government of Kerala and its officers; the statutory authorities; Police officials; Builders; Apartment/Flat Owners; and Allottees Associations, to whom notices were issued by the Enquiring Authority and those who were brought on record either on the application of any other party or at the request of such 3rd party, are arrayed enumerating them as Parties in the sequence shown in the List of Parties, placed following the Index to this Report.

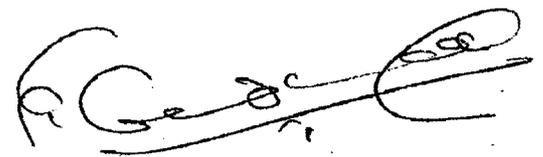
8. Proceedings and consequential notices were issued on 16.5.2022 and 17.5.2022 to the Government of Kerala and its officers; the statutory authorities; Police officials; Builders; Apartment/Flat Owners; and Allottees Associations. To expedite the service of notice, the office of the Additional Chief Secretary (Environment) was tasked to serve the notices. To ensure such process being carried out smoothly, it was further required that the contents of that notice be disseminated appropriately through such mode as may be deemed appropriate to ensure requisite release of such information to the public domain and the contents of that notice being published in various local newspapers. Thereafter, at the instance of one of the builders the Greater Cochin Development Authority



(GCDA) and Union of India were brought on record as Party Nos.21 and 22. They appeared in answer to the notices.

9. Through proceedings dated 23.5.2022, the Secretary, Maradu Municipality was required to explain as to (1) who held the office of Secretary, Maradu Panchayat at the relevant time, (2) who held the administrative charge at that point of time, (3) who were the Panchayat Presidents and Ward Member at the time of the applications and grant of permits which led to the constructions in question; those who were in office while issuing those permits and those who held such offices at the time when LSGD (Vigilance) issued notice to the Panchayat; and (4) whether any action was taken at that point of time or not. On the basis of the disclosure made by Maradu Municipality in answer to those queries, notices were issued to S/Shri M.Mohammed Asharaf, P.E.Joseph, P.J.Antony, Nizarudeen M., Jayakumar S., and A.P.Satheesan, who were the Panchayat Secretary/Municipal Secretary/Officer in-charge, respectively, during the relevant period. Of them, notice to P.E.Joseph was not served and it is stated by the Municipality that the said person is no more. The notice taken out through Maradu Municipality to the person who was its Secretary during 1995-96 (Party No.42) remained unserved. Persons who were President, Vice President and Secretary respectively during the period 2000 – 2005 and 2006 - 2010, were brought on record as Party Nos.25 to 33. Party Nos.34 to 42 were impleaded in the enquiry proceedings as per order dated 6.6.2022 in M.P.8/2022 filed by Party No.16, one of the builders.

10. Party No.16 applied for impleadment of Parties 34 to 42. It is alleged as against Party No.34 Sri.T.K.Jose that he was the then Additional Chief Secretary (LSGD) and that though he was the Secretary of that Department at the relevant point of time, particularly when Annexure-III order was issued by this Hon'ble Court, he did not participate in the proceedings of the three-

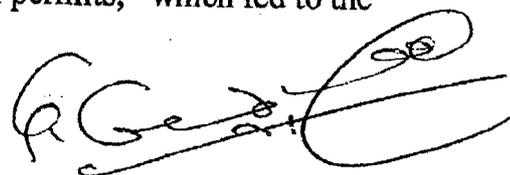


member Committee constituted by this Hon'ble Court through that order, whereby the Committee constituted was one consisting of the Secretary to LSGD, the Chief Municipal Officer of the concerned Municipality and the Collector of the District. Sri.K,Gopalakrishna Bhat was brought on record as Party No.35 on the plea that he, who was not then the Secretary to LSGD, participated as member of the Committee, even as Sri.T.K.Jose continued as Secretary to LSGD. Sri.Mohammed Y.Safirulla, former District Collector, Ernakulam and Sri.Subhash P.K., former Secretary of Maradu Municipality, who were the members of the Committee constituted by this Hon'ble Court through Annexure-III order dated 27.11.2018 were brought on record as Party Nos.36 and 37 respectively and they were duly notified.

11. It appears that after the Committee was constituted by this Hon'ble Court through Annexure-II order to hear the Government, the Municipal authority and the Builder, a Government Order was issued constituting a Technical Team, stated to be to assist the Committee constituted by this Hon'ble Court. Smt.K.S.Girija, Former Chief Town Planner, Government of Kerala, Dr.K.K.Ramachandran, formerly of CESS, Dr.P.Harinarayanan of Kerala State Council for Science, Technology and Environment (KSCSTE), and Sri.Balraj, then Joint Director of Urban Affairs, who were members of that Technical Team constituted by the Government were brought on record as Party Nos.38 to 41.

12. Notice was issued to the Senior Town Planner (Vigilance). The Chief Town Planner (Vigilance) has presented file No.15497/RB1/2007/LSGD before the Enquiring Authority.

13. Parties at Serial Nos.12 and 12A are police officials (Investigating Officers) in the criminal cases relating to the grant of permits, which led to the



constructions leading to this Enquiry. They include those cases pending in the Court of Enquiry Commissioner and Special Judge, Muvattupuzha.

14. For the purpose of this enquiry, accompanied by the Secretary Sri.S.Vijayakumar, I visited the Court of the Enquiry Commissioner and Special Judge, Muvattupuzha on 28.5.2022 with prior telephonic intimation to the officer of that Court, instead of calling for those records to be brought before the Enquiring Authority. With the permission of that Court and in the presence of the officer of that Court, the files available with that Court in Crime Nos.471/CBCU-II/EKM/R/2019, 472/CBCU-II/EKM/R/2019 and 473/CBCU-II/EKM/R/2019 were perused. Having noticed it relevant, the contents of the minutes of the meeting of the Maradu Panchayat held on 9.3.2006 have been specifically noted. The Investigating Officer Sri.Rex Bobby Aravin, Dy.S.P., C.B.C.U-II, Ernakulam and the Special Public Prosecutor Sri.S.Chandrasekharan Nair were also present there. Thereafter, file No.VC 4/2015/EKM was presented before the Enquiring Authority by Sri.T.M.Varghese, Dy.S.P., Vigilance and Anti Corruption Bureau, Central Range, Ernakulam.

15. Pursuant to the notices, statements and/or affidavits were placed before the Enquiring Authority by the State Government and the different authorities including statutory authorities as well as the different Builders and some of the Associations of the Flat Owners. Some individuals have also placed statements, purportedly in public interest or otherwise, in an attempt to espouse the alleged wrong doings of those involved in granting the permit and raising the constructions in question.

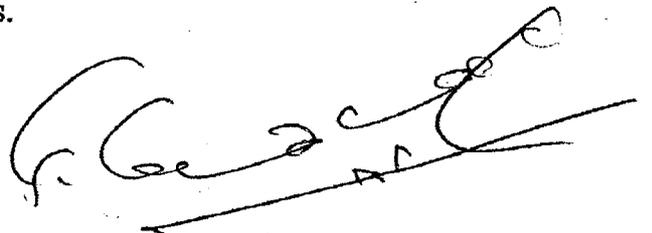
16. It is the case of Party No.16 that the building belonging to it was not even the subject-matter of the litigations and that the building has been razed to



the ground with no sanction of law. It pleads that it was not a party to the proceedings, either before the Hon'ble High Court of Kerala or before the Hon'ble Supreme Court of India, which proceedings have led to this enquiry. Accordingly it was contended and argued through learned Advocate that Party No.16 is not bound by those orders and findings.

17. On the application on behalf of a builder, namely Party No.16 M/s.Vichus Constructions & Hotels (P) Ltd., M/s.Bhageeratha Builders Ltd., and the legal representatives of late K.P.John were brought on record as Parties 23 and 24 (A group of 05 persons). This was in view of the plea of Party No.16 that any liability which may come on them have to be passed on, either in entirety or in part, to those parties.

18. During the course of further proceedings, the Enquiring Authority required Party No.40 Dr.P.Harinarayanan, Principal Scientist, Kerala State Council for Science, Technology and Environment, Thiruvananthapuram and Sri.P.Kalaiarasan, Environmental Engineer, Directorate of Environment and Climate Change, Government of Kerala, Thiruvananthapuram, to appear before the Enquiring Authority to record their statements. The oral statements of those persons in response to queries by the Enquiring Authority as well as some of the learned Advocates were dictated by the Enquiring Authority in the presence of the person concerned and the appearing Advocates. Sri.Rex Bobby Aravin, Investigating Officer of Crime Nos.471, 472 and 473 of 2019 pending before the Enquiry Commissioner and Special Judge, Muvattupuzha tendered his oral statement before the Enquiring Authority. That was recorded by the Enquiring Authority, dictating it out in the presence of the person concerned and the appearing Advocates. The persons concerned whose statements have thus been recorded have also attested such statements.



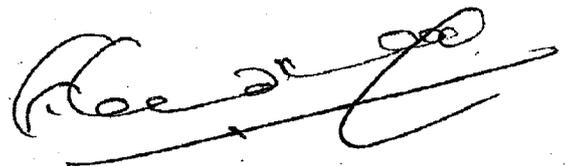
19. On the basis of the different statements and/or affidavits as well as the materials on record including the documents produced by different parties, the learned Advocates representing different parties made oral submissions. In the course of submissions, learned Advocates apart from making reference to the materials on record, referred to the judgments/orders of the Hon'ble Supreme Court of India as well as the Hon'ble High Court of Kerala. Some of those parties who are not represented by Advocates have also made certain oral submissions before the Enquiring Authority.

20. Sri.Gaurav Agrawal, who is the amicus curiae in terms of the order of this Hon'ble Court in relation to Justice Balakrishnan Nair Committee was gracious enough to forward certain materials which are essentially copies of some of the papers/paper books produced before this Hon'ble Court. I have perused those documents also.

21. The hearing of the parties/Advocates concluded on 30.6.2022. The stand taken by the different stakeholders including the Government, the statutory authorities, the Builders, the Flat Owners' Associations and other individuals would be dilated upon in the course of consideration of the materials and submissions, as this report further proceeds.

**RELEVANT FACTS DISCLOSED THROUGH THE MATERIALS ON
RECORD AND ATTENDANT FACTORS ARISING THEREFROM:**

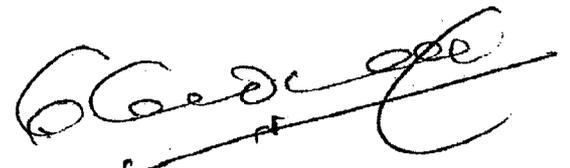
A. At the outset, it needs to be noted that the builders, statutory authorities and the Government of Kerala, who were parties to the proceedings before this Hon'ble Court leading to Annexure-III order dated 08.5.2019 in the Civil Appeals stand bound by the findings therein, inter alia, that the structures ordered to be removed are illegal and are liable to be removed. The direction



contained in that order is that those structures be removed forthwith within the period fixed and compliance be reported. Annexure-I order dated 02.5.2022 is one that requires me to enquire about the involvement of Builder/Promoter/persons/officials responsible for the illegal construction of the buildings which have been so razed to the ground.

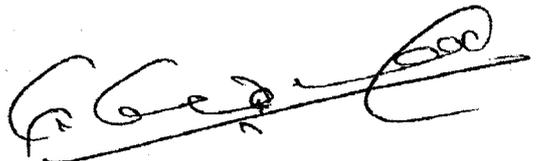
B. The constructions of the buildings in question were on the basis of the permits issued by the Secretary of Maradu Panchayat. By G.O.(Ms) No.149/98/LAD dated 20.7.1998 issued by the Government of Kerala, certain provisions of the Kerala Municipality Act, 1994 and the provisions of the Kerala Building Rules, 1984 were extended with effect from 31.7.1998 to Maradu Grama Panchayat. That Government Order was issued consequent on the decision of the Government to implement those provisions, acceding to the request of Maradu and other Grama Panchayats mentioned therein.

C. Sri.M.Mohammed Asharaf, who is Party No.29 in the enquiry proceedings, took charge as Secretary of Maradu Panchayat on 24.10.2005 and the Kerala Municipality Building Rules, 1999 were then applicable to that Panchayat. The permits for the buildings in question were issued by him. He has filed an affidavit sworn to on 10.6.2022 and an additional affidavit sworn to on 30.6.2022. He has stated that as of now, he could not collect the requisite documents, yet has made submissions based on materials available to him. His statement is that on submission of application for building permit, it is verified by the Section Clerk on the basis of land tax receipt, title document, site plans, structural drawings etc. Those materials thereafter go to the Superintendent, who further verifies and forwards to the Secretary them for site inspection. He has stated in the additional affidavit that the Secretary along with the Superintendent and Section Clerk conducts site inspection and prepares a report, on the basis of which a decision is taken on the application for permit.



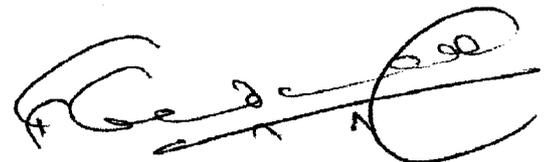
According to him, the judgment of the Hon'ble High Court of Kerala in Lakeshore case, namely **Citizens Interest Agency v. Lakeshore Hospital and Research Centre Pvt. Ltd.** [ILR 2003(2) Kerala 522=2003(3) KLT 424 – MANU/KE/0368/2003] gave him the impression that the CRZ Notification does not apply to Maradu area and the State Government had undertaken before the Hon'ble High Court to prepare fresh Plans, conceding that the existing plans were incorrect. According to him, he did not receive any communication from LSGD, though he had issued various communications to that Department and to the Chief Town Planner, stating his aforesaid view. He has also stated in his additional affidavit that the Senior Town Planner Sri. S.Rajaram had issued a communication to the effect that Kochi Corporation and surrounding local body areas developed as a single metro city. Referring to the zoning notification, his stand is that for the various reasons stated in his additional affidavit, Maradu area falls in CRZ-II. He submitted that the legal opinion given by the then Standing Counsel for Maradu Panchayat confirmed his view. He has also submitted that he had identified the building line and that the building permits were granted by him on the premise that Maradu is classified in CRZ-II.

D. Party No.29, Sri.M.Mohammed Asharaf, was succeeded in office by Sri.P.E.Joseph, Party No.30, who is dead. It was during his tenure in office that Sri.C.M.Dinesh Mony, the then member of the Kerala Legislative Assembly from Palluruthy Constituency, filed a complaint dated 27.3.2007 before the then Minister for Local Self Government alleging irregularities in the matter of grant of building permits in Maradu Panchayat. On that day itself, the Minister ordered an enquiry, which led to a surprise inspection by a team of three officers. Following that inspection, which was conducted with the assistance of Regional Town Planner (Ernakulam), Town Planner (Idukki), Town Planner



(Calicut) and Deputy Town Planner (Regional Town Planning Office, Ernakulam), it was noted that on the whole, the actions taken in the applications for building permits are highly irregular and even no register was maintained. The site inspection and scrutiny were done by the Secretary himself and the building permit was issued by processing that in the Panchayat itself. The crux of the report of Sri.S.Suresh Kumar, Senior Town Planner (Vigilance), LSGD, seen to have been signed by him on 27.4.2007, relates to the violations regarding the Building Rules as regards the Floor Area Ratio and the fee to be reckoned in that regard and matters of similar nature touching the issuance of building permits. It was also noted during the enquiry that the applications for permits and the plans were not signed by the Architect/Engineer/Structural Engineer in many cases. That said report led to the issuance of the letter dated 18.5.2007 by the Principal Secretary to the Government in the LSG (RB) Department to the Secretary of Maradu Grama Panchayat. Along with that letter, a list of building permit cases in which violations/anomalies were detected was also forwarded with the direction to revoke all the building permits as per Rule 16 of Kerala Municipality Building Rules, 1999 and report to the Government. A perusal of the list appended to that communication would show that CRZ issue and classification of lands as CRZ I, II and III were also noted as violations/anomalies. Altogether 31 violations were noted in that list.

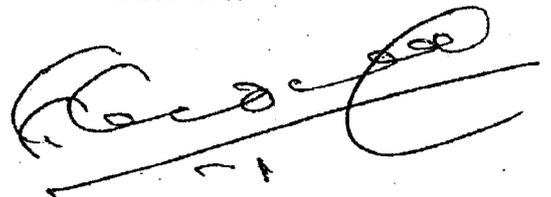
E. The next incumbent in office as Secretary of the Maradu Panchayat was Sri.P.J.Antony. He has filed a statement dated 14.6.2022, stating that he joined Maradu Panchayat on transfer on 11.6.2007. He stated, as noted above, that following the Minister's order, an enquiry led to surprise inspection by a team of three officers. That in turn led to the conclusion of the Vigilance Wing of the Chief Town Planner that various buildings in Maradu Panchayat were



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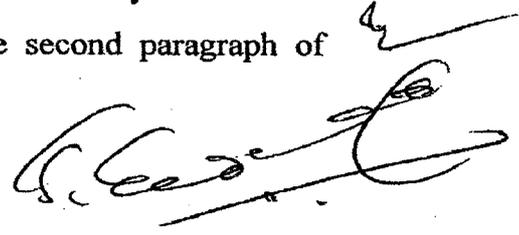
illegal. At that time, Junior Superintendent late P.E. Joseph (now dead) referred to above, was holding charge of the post of Secretary, which fell vacant following the arrest of Sri.M.Mohammed Asharaf in a bribery (trap) case and his consequential suspension from service. Late P.E. Joseph issued show cause notices to the building permit holders, following the direction from the Principal Secretary to the Government, which was based on the report of the Town Planning (Vigilance) Department. Sri.P.J. Antony has stated that he cancelled around 29 building permits, invoking Rule 16 of the Kerala Municipality Building Rules. He has further stated that 5 of the permit holders whose permits were cancelled, challenged the show cause notice issued to them through Writ Petitions before the High Court and, since he was a new incumbent in office as Secretary, affidavits were filed in answer to those Writ Petitions under the instruction of the Panchayat President. He stated that he rejected the application for numbering of a building, which was the subject-matter of WP© No.23293 of 2007; however that, an interim order was passed by the Hon'ble High Court of Kerala directing that the building be numbered and therefore, that building was temporarily numbered. He has also stated that applications for renewal of building permits were made by some of builders in view of the expiry of the validity period of three years and that he rejected those renewal applications. He has further stated that he has not passed any order granting building permit, renewal or numbering in respect of the four apartments referred to therein. He has also stated that during the period while he was in office, building permits were issued strictly as per the norms and conditions specified in the Government Order No.24136/RA1/07/LAD dated 20.6.2007 and all those permits were scrutinised by the LSG Engineering Department, as stipulated in the said Government Order. He has further stated that he retired from service after 30 years of unblemished service.



F. The provisions of Kerala Municipality Building Rules, 1999 came into force by its publication in the Kerala Gazette dated 1.10.1999. Thereby GO(Ms) 127/84 dated 14.5.1984 was superseded. Rule 7 of the Kerala Municipality Building Rules deals with application for building permit. Sub-rule 1 of that Rule applies to the constructions of which we are concerned in this enquiry. Rule 11 provides for approval of site and Plans and issuance of permits. Panchayat Secretary is the statutory authority to approve the site and Plans and issue permit. Rule 16 of the Kerala Municipality Building Rules, 1999 provides for suspension and revocation of permits.

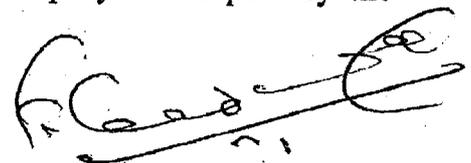
G. At this stage, it is worthwhile to note that when notices for revocation of permits in exercise of the authority under Rule 16 were issued by late P.E. Joseph as noted above, some or all of them were challenged before the Hon'ble High Court. Much has been stated before me about the contents of the order dated 31.7.2007 in WP(C) No.22590/2007 of the High Court of Kerala. For easy reference, a copy of that order is placed along with this report as Annexure-V. That Writ Petition was filed challenging the notice for cancellation of permit. It needs to be noted that what is referred to as Ext.P9 in that order is a notice proposing to cancel the building permit consequent on the enquiry by the Vigilance Wing of the Chief Town Planner's office, resulting in the finding that the buildings referred to therein are illegal and that the permits are to be cancelled. The builders and the Panchayat authorities take the stand that they understood that order as one which results in stay of the actions against the permit holder and the constructions made on the strength of that permit, thereby paving way to the builders carrying on with the construction activities. Even at the first blush, the said approach by the Panchayat authorities and builders does not appeal to reason.

The second paragraph of



Annexure-V order dated 31.7.2007 in WP(C) No.22590/2007 explicitly provides that it shall be open to the Secretary of the Panchayat to issue stop memo in accordance with law. Obviously, the learned Judge was making reference to Rule 19 of the Kerala Municipality Building Rules, which includes the power of the Secretary to issue an order, requiring the person at whose instance the building or the work has been commenced or is being carried on, to stop the same forthwith, if it is commenced or is being carried on, among other things, in contravention of any provision in the Kerala Municipality Act, 1994 or the Kerala Municipality Building Rules. This power of the Secretary to order stoppage of building works in cases falling under sub-rule (1) of Rule 19 is without prejudice to any action taken under those Rules. The provisions in sub-rules (2) and (3) clearly indicate that the Secretary is entitled to even police assistance in consonance with the terms thereof, to enforce the order of stoppage, as per Rule 19 of Kerala Municipality Building Rules (referred to as stop memo in the judicial order dated 31.7.2007 noted above). In this context, it is worthwhile to notice the contents of the judgment dated 19.9.2012 in WP(C) No.22590/2007, in which Writ Petition Annexure-V interim order was issued. A copy of that judgment is placed herewith as Annexure-VI for immediate perusal. That judgment is issued, also noticing that the construction was carried out and completed on the strength of Annexure-V interim order. Annexure-VI judgment was confirmed by the Division Bench of the Hon'ble High Court by judgment dated 02.6.2015 in W.A.Nos.132, 148, 150, 151 and 199 of 2013. It is that judgment, which led to Annexure-III order dated 08.5.2019 of this Hon'ble Court, directing demolition of the structures. That order has ultimately led to Annexure-I order and this enquiry.

H. The action taken by late P.E.Jopseph was triggered by the direction given by the LSG Department, following the enquiry and report by the

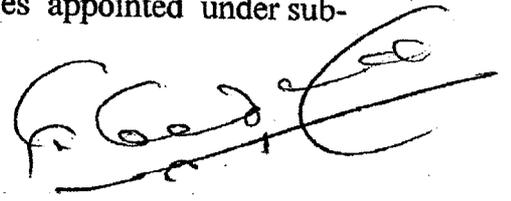


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Vigilance Wing of the State Town Planner. It is a direction which the Secretary is bound to comply and carry to its logical end, thereby fulfilling the objects sought to be achieved by the directions of the Government. This is not only because such directions are provided for, but also since the Secretary is a Government Servant borne on the cadre of the Kerala Panchayat Subordinate Service, in terms of the Kerala Panchayat Subordinate Service Rules, 1994, which is deemed to have come into force on 1st January, 1990.

I. In terms of the provisions of the Kerala Municipality Building Rules, noted above, the duties of the Secretary of the Panchayat in such situations, do not end by merely issuing a stop memo. In terms of the Rules, the said officer continues to be empowered to take further steps, including by issuing directions to stop the work. It is the exercise of that power which has been not only left untouched but also specifically clarified as left to be so, as per Annexure-V order dated 31.7.2007 in WP(C) No.22590/2007 (supra). The attempts of the authorities of the Panchayat to seek cover under the orders of the High Court including any other order similar to the nature of the one noted above, are of no avail.

J. The powers of the Secretary under Sections 182, 183 and 184 of the Kerala Panchayat Raj Act, 1994 would show the onerous responsibilities of the Secretary of the Panchayat and the modalities in which the Government exercises disciplinary proceedings over personnel, who are Government Servants and whose services are lent to the Panchayat. Section 179(1) of that Act provides that the Secretary of a Panchayat shall be a Government Servant. Section 179(3) provides that subject to the provisions of the Act, the Government shall by rules made under the Kerala Public Services Act, 1968, regulate the classification, method of recruitment, conditions of service, pay and allowances and discipline and conduct of the Secretaries appointed under sub-



section (1) referred to above. In terms of the Kerala Government Servants Conduct Rules, 1960, it is the bounden duty of every Government Servant to maintain absolute integrity and discipline and to comply with the directions issued by the Government. In this backdrop of law, one appointed as Secretary in the Panchayat or exercising the powers of the Secretary is bound by the law, to ensure performance in conformity with the statutory provisions and discharge of duties and responsibilities accordingly. Except issuing notices to show cause against cancellation of the building permits, no stop memo was issued by any competent authority, in spite of the specific authority to do so under the statutory provisions. Annexure-V interim order specifically clarifying the preservation of power to stop the construction read along with the contents of Annexure-VI judgment, which was the end result of that litigation before the learned Single Judge, clearly show that the authorities who were empowered to stop the constructions took no steps to do so. Those judicial orders have, apparently, been used as veil by the statutory authorities and the appropriate Government servants to excuse themselves from discharging their duties in accordance with law including statutory provisions. This has, as it appears, provided requisite shield to the builders to carry on with the constructions.

K. The LSG Department in Government, going by the materials on record, provide the channel of meaningful and efficient flow of due authority to appropriate level of governance. Duties and responsibilities attached to each official enjoin due action. The power of superintendence of the Government in its exercise as the Government and the authority to supervise through the administrative structure of LSGD, would show that the said Department spreads out to exercise its authority through the Directorate of Panchayats and its officers at the regional, district and even lower levels in different districts. This is all the more important, in view of the fact that the Panchayats as institutions



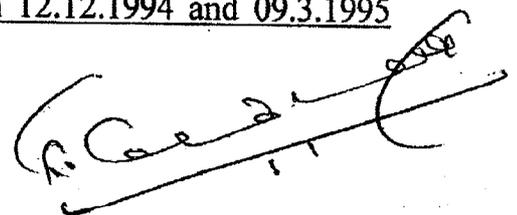
of Local Self Government in terms of the Constitution of India, provide necessary checks and balances to ensure that the statutory power as well as the executive power of the Panchayats and the Government are duly enforced to ensure obedience to the laws.

L. In so far as the questions relating to the Coastal Zone Management are concerned, it is appropriate that reference is first made to the proceedings of this Hon'ble Court in W.P(C) No.664/1993. In that case:

(i) On 12.12.1994 this Hon'ble Court directed that "the respondent States shall not permit the setting up of any industry or construction of any type on the area at least up to 500 metres from the sea water at the maximum high tide".

(ii) The aforesaid order was slightly modified through the order dated 09.3.1995, inter alia, directing that all the restrictions, prohibitions regarding construction and setting up of industries or for any other purpose contained in the notification dated 19.2.1991 issued by the Ministry of Environment and Forests, Government of India, shall be meticulously followed by all the States concerned, and that the activities which have been declared as prohibited within the Coastal Regulation Zone shall not be undertaken by any of the respondent-States. It was also directed that the regulations of permissible activities shall be meticulously followed and the restrictions imposed by the Coastal Areas Classification and Development Regulations contained in Annexure-I to the notification of 19.2.1991 shall be strictly followed by the respondent-States.

(iii) The aforesaid interim orders ultimately merged in the judgment dated 18.4.1996 (Indian Council for Enviro-Legal Action v. Union of India) reported as (1996)5 SCC 281. This Hon'ble Court issued six enumerated directions through that judgment. Of them, direction No.5 was to the effect that pending finalisation of Plans, the interim orders passed on 12.12.1994 and 09.3.1995 shall continue to operate.

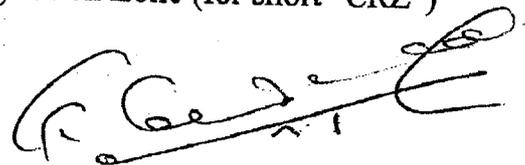


(iv) The aforesaid would show that the directions through the two interim orders dated 12.12.1994 and 09.3.1995 and in the judgment dated 18.4.1996, to that effect, were to be strictly followed by the respondent-States.

(v) The responsibility of the State of Kerala and its Government officers concerned, to ensure obedience to the aforesaid orders through the Governmental machinery, appears to be absolute in terms of those judicial orders, in the backdrop of the Constitution and the laws. The responsibility of the Government and its officials to enforce the contents of those judicial orders and to abide by the restrictions and directions contained in those orders ought to have been ensured by securing obedience of those directions, in letter and spirit. This appears to be so because, ensuring such obedience is essentially within the executive power of the State, including the statutory powers and other police powers, as understood in terms of the Constitution and the laws. The Government of the State of Kerala and its officers are responsible for supervising and enforcing obedience to law, including in the regime of governance by, and of, the LSG institutions. The requirement to ensure obedience to the judicial command contained in the aforesaid orders, definitely called upon the hierarchy of officials in the LSGD and other departments of the Government to strictly abide by, as well as to enforce, those directions in letter and spirit. The materials tend to indicate that the authorities at all levels, in all relevant departments of administration and enforcement of the aforesaid orders, had failed to comply with the directions contained therein.

M. Proceeding further on the issues relating to Coastal Zone Management, the following facts have emerged in this enquiry:

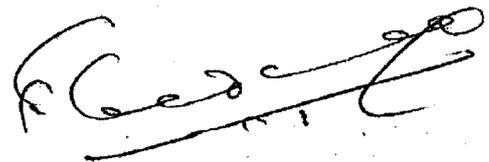
(i) By Notification published on 15.12.1990 [S.O. 944(E)], in exercise of the relevant powers under the Environment (Protection) Act, 1986, the Central Government proposed to declare the Coastal Regulation Zone (for short "CRZ")



as delineated in the opening paragraph of that notification and also to impose the restrictions enumerated therein. Clause 4 of that notification provides, inter alia, that the responsibility to monitor and enforce the provisions amended as per that notification lies with, among other parties, the Government of State or Union Territory and such other authorities at the State or Union Territory levels, as may be designated for such purpose.

(ii). The aforesaid led to Notification dated 19.2.1994 [S.O.114(E)], issued after consideration of the objections received by the Central Government. Clause 3(3) of that notification required the coastal States and Union Territory Administrations to prepare Coastal Zone Management Plans (for short "CZMP"). A time-frame was also fixed with certain guidelines. Sub-clause (iii) of Clause 3(3) of that notification provides that in the interim period till the Coastal Zone Management Plans are prepared and approved, all developments and activities within CRZ shall be without violating the provisions of that notification. Clause 4 of that notification provides that the Ministry of Environment and Forests in the Government of India and the Government of State or Union Territory and such other authorities at the State or Union Territory levels, as may be designated for that purpose, shall be responsible for monitoring and enforcement of the provisions of that notification within their respective jurisdictions.

N. The Government of Kerala submitted its CZMP to the competent authority in the Government of India, vide letter No.221/B1/94/STED dated 21.1.1996. Its contents were examined and letter No.J-17011/23/92-1A III dated 27.9.1996 was issued from the Government of India authority to the Chief Secretary, Government of Kerala. Paragraph 2 of that communication proceeds to state that the signatory thereto was directed to convey the approval of the CZMP of the Government of Kerala, subject to incorporating certain conditions,

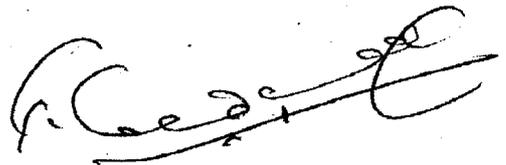


which are 18 in number as General Conditions and 04 in number as Special Conditions/Modifications/Classifications. Though, as already stated, that letter opens by stating in paragraph 2 thereof "I am directed to convey its approval in accordance with the powers vested in Central Government under section 3(3)(i) of CRZ Notification, 1991 subject to incorporating the following conditions/modifications", the last paragraph of that letter is as follows:

"The Plan submitted by Government of Kerala vide Chief Secretary's D.O. letter No.221/B1/94/STED dated 29th January, 1996 is not in conformity with the conditions indicated above. These modifications may be made and the modified plan and maps should be sent to this Ministry, within a period of two months, for record". (Emphasis supplied by me)

This, shows that the CZMP proposed by the Government of Kerala was held to be not in conformity with the requirements stipulated by the competent authority in the Ministry of Environment and Forests of the Government of India.

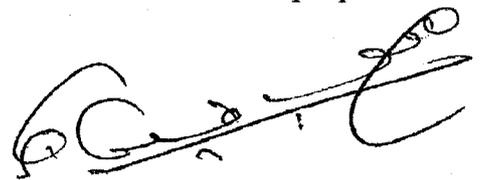
O. Yet another CRZ Notification was issued as S.O. 19(E) on 06.1.2011, following a draft notification published by S.O.2291(E) dated 15.9.2010, inviting objections and suggestions to the proposal contained in that 2010 notification. S.O. 19(E) of 06.1.2011 provided inter alia, in Clause 5(xii) that CZMPs already approved under CRZ notification 1991 shall be valid for a period of 24 months, unless that period is extended by the Ministry of Environment and Forests by a specific notification, on terms and conditions which may be specified therein. Recalling here that notification S.O. 19(E) was published in the Gazette of India dated 06.1.2011, the CZMPs under CRZ



notification 1991 would run to be valid till 06.1.2013 as the effect of Clause 5(xii) thereof.

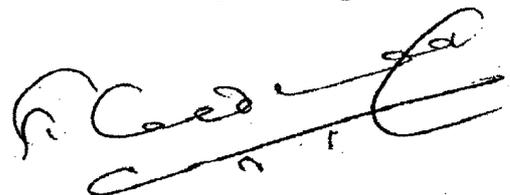
P. Following the aforesaid CRZ Notification 2011, the Principal Secretary in the Environment Department of the Government of Kerala addressed the Secretary, Ministry of Environment, Forest and Climate Change, Government of India, as per D.O letter dated 23.2.2019, stating that following public hearings pursuant to CRZ notification 2011, suggestions/opinions/complaints which were received have been consolidated and reviews have been held by the authorities concerned, as stated in that D.O letter. The Kerala Coastal Zone Management Authority (for short "KCZMA") decided to submit the final draft CZMP to Ministry of Environment, Forest and Climate Change and CC through National Centre for Sustainable Coastal Management (for short "NCSCM"). The final review by the Technical Review Committee on CZMP Kerala was done at NCSCM on 18.2.2019. Draft CZMP maps of Kerala State were accordingly forwarded by the Principal Secretary of the Government of Kerala to the Central Government along with the D.O letter dated 23.2.2019. In the meanwhile, in supersession of the CRZ Notification dated 06.1.2011, CRZ Notification dated 18.1.2019 was published, except as respects things done or omitted to be done before such supersession. That notification came after Dr. Shailesh Nayak Committee submitted its report.

Q. The aforesaid will show that the interim orders dated 12.12.1994 and 09.3.1995 issued by this Hon'ble Court, followed by the judgment in that case [(1996)5 SCC 281] continued as the judicial command by this Hon'ble Court that the restrictions imposed by the Coastal Areas and Classification Development Regulations contained in Annexure-I to the 1991 Notification ought to be strictly followed by the respondent-States until the Plans proposed in 2011 Notification were approved in 2019.



R. The aforesaid is fortified by the oral statement recorded on 30.6.2022 in the course of this enquiry from Sri.P.Kalaiarasan. He works as Environmental Engineer in the Directorate of Environment and Climate Change, a department in the Government of Kerala. He was one who was present in the meeting at NCSCM and the two meetings of the CZMA of Kerala. He had also made a Power Point presentation and answered queries raised during the course of the discussions in those hearings. He stated that the comments/suggestions made by the Technical Scrutiny Committee were carried out and the final draft of CZMP was forwarded to the Ministry of Environment and Forest (MoEF) and the Government of Kerala. It was thereafter that the Government of Kerala submitted the final draft of CZMP to the MoEF, Government of India for approval. He had also attended the 37th meeting of the National Coastal Zone Management Authority (NCZMA) on 25.2.2019, in which NCZMA approved the CZMP of all the 10 coastal districts of Kerala. He stated that until the Plans proposed in 2011 Notification were approved in 2019, the Plans prepared in 1996 had to be followed. He further stated in answer to a query that till a Plan is approved consequent to the 2011 Notification, the 1996 approved Plan will continue to hold the field till 28.2.2019 or until the approval of the new Plan.

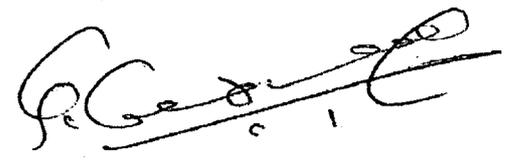
S. Party No.29, Sri.M.Mohammed Asharaf, who was the Secretary of the Maradu Panchayat at the time of grant of the building permits, stated in his additional affidavit, inter alia, that his understanding was that the CRZ Notification does not apply to Maradu area and the State Government had conceded before the Hon'ble High Court of Kerala in the Lakeshore case that the Plans are incorrect and that fresh Plans would be prepared. Through his additional affidavit, he further stated that in anticipation of a fresh Plan being prepared which would have classified Maradu in CRZ II category, he took abundant caution to identify the building line and all the permits granted



accordingly. Obviously, he knew that the area is not in CRZ II in terms of the Notification which stood at the relevant point of time.

T. The files available in the Court of Enquiry Commissioner and Special Judge, Muvattupuzha (where the case under the Prevention of Corruption Act and other laws are pending) show that even the Maradu Grama Panchayat was well aware of the issues relatable to CRZ categorisation. The minutes of the meeting of the Maradu Grama Panchayat held on 09.3.2006 (as reflected in the Minutes Book of that Panchayat) is sufficient to notice that the Panchayat Committee was aware that Maradu Panchayat area did not fall in CRZ-II. The English version of paragraph 8 of the minutes of the meeting dated 09.3.2006 is to the effect that the anomaly in CRZ categorisation in respect of Maradu Grama Panchayat is very serious. It was further stated that as observed by the Hon'ble High Court in Lakeshore Hospital case, the anomaly is the result of absence of true facts and map and the Committee unanimously decided and resolved to approach the authorities concerned to rectify the anomaly by taking into consideration the true facts and court observations. Obviously, therefore, there was no material, either for the Grama Panchayat or for any other statutory authority in the LSG sector as well the Government Department which relates to that sector, to take the stand that the land in question fell within CRZ-II. The situation relating to the classification of Coastal Regulation Zones on the basis of the notifications is fortified by the aforementioned statement of Sri.P.Kalaiarasan.

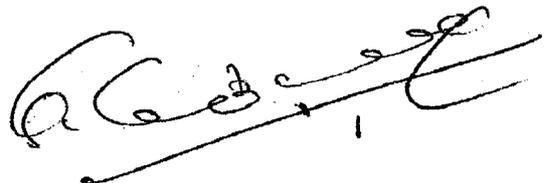
U. It is noted in the enquiry that it was in 2019 that the Government of India notified to the Government of Kerala, the approval of the Plan which was pending consideration. This fact is relied on heavily by the builders as well as the Maradu Panchayat and the officials contesting any proposal to fix liability on them. The stand taken by them is that the communication by the Central Government to the State Government was received by the KCZMA and/or the



Government before consideration of the Civil Appeals by this Hon'ble Court but was not brought to the notice of this Hon'ble Court, before or while the order dated 08.5.2019 was issued by this Hon'ble Court in C.A. Nos.4784-4785/2019, 4786-4789/2019 and 4790-4793/2019 (Annexure-III). The attempt is to show that, if the decision leading to the re-classification of the lands in question as CRZ-II was then brought to the notice of this Hon'ble Court, the demolition would not have been ordered since, according to those parties, the decision of the competent authority approving the Plan had in fact, erased any illegality which might have been otherwise there.

V. For one thing, there is nothing to show that the decisions approving the Plans were enjoined to operate retrospectively from any earlier point of time. Nothing has also been pointed out as a principle of law or binding judicial precedent, which may tend to show that such approval would relate back to any prior date.

W. (i) Party No.16 M/s.Vichus Constructions & Hotels (P) Ltd. has pleaded that it purchased the interest of Party No.23 M/s.Bhageeratha Builders Ltd., which had purchased the title to the property owned by K.P.John (whose legal representatives are bunched as Party No.24), following an earlier contract between M/s.Bhageeratha Builders Ltd. and K.P.John to build on the land belonging to the latter. In that connection, the plea is that late K.P.John had obtained a certificate from Maradu Panchayat to the effect that no building permit is required for construction on that property at that point of time. Going by the written submissions on behalf of Party No.16, the construction commenced in 1995-96, based on a No-objection Certificate issued by the Panchayat while Kerala Building Rules, 1984 were made applicable to Maradu Panchayat only in 1998. The title of late K.P.John over that piece of property at

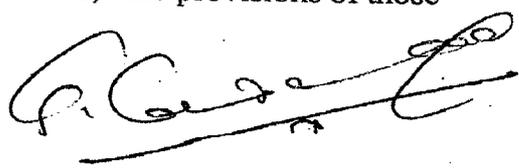


that point of time is not disputed either by M/s.Bhageeratha Builders Ltd. or M/s.Vichus Constructions & Hotels (P) Ltd.

(ii) The activity of M/s.Bhageeratha Builders Ltd. consequent on it proceeding to construct on the property of late K.P.John was one that cannot be treated as attached to land. It appears to be only a contract to build, even going by the pleadings of those parties. Thereafter, it appears that late K.P.John was not interested to continue with that project and he sold the land to M/s.Bhageeratha Builders Ltd. on 30.3.2005. Later, M/s.Bhageeratha Builders Ltd. transferred the title to the land so obtained and its rights over the construction already effected, to M/s.Vichus Constructions & Hotels (P) Ltd.(Party No.16) in 2006.

(iii) The relevant dates noted above would show that the transfer of title to the property by K.P.John or his legal representatives to M/s.Bhageeratha Builders Ltd. was on 30.3.2005 and the subsequent transfer by that builder to Party No.16 M/s.Vichus Constructions & Hotels (P) Ltd. was in 2006. It was long before that, the Kerala Building Rules, 1984 were made applicable to the Maradu Panchayat area in 1998. Kerala Building Rules, 1984 were superseded on 01.10.1999 by the coming into force of the Kerala Municipality Building Rules, 1999. Therefore, on facts, no connectivity recognisable in law is seen on the basis of the materials on record in the course of the enquiry, because M/s.Bhageeratha Builders Ltd. had no title to that property before it purchased the interest of late K.P.John on 30.3.2005 or for that matter, Party No.16 M/s.Vichus Constructions and Hotels (P) Ltd., which made the purchase only in 2006, which could have been only of whatever rights were so available, subject to the laws which so applied.

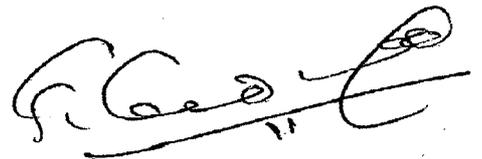
X. On and from 01.10.1999, the date on which the Kerala Municipality Building Rules, 1999 (KMBR, 1999) came into force, the provisions of those



rules applies. It was thereafter that the permits for the buildings in question were issued by Party No.29 Sri.M.Mohammed Asharaf, who took charge as Secretary of Maradu Panchayat on 24.10.2005. The chain of incidents generated by the complaint made by MLA, Sri.C.M.Dinesh Mony, on 27.3.2007 to the then Minister for Local Self Government Institutions, which triggered the inspection by the Vigilance Wing and subsequent administrative and judicial proceedings, leading to the demolition of the structures, were all after the KMBR, 1999 came into force. This aspect is pointed out here now to show that apart from having an interpretation clause which includes the definitions of "developer" as well as "owner" at Clauses (ua) and (ay) of Rule 2; enjoins in Rule 16, the power of the Secretary to suspend and revoke the permit, while Rule 19 provides the power for the Secretary to stop the construction forthwith. It is this power under Rule 19 of the Kerala Municipality Building Rules, 1999, which was, obviously, the reason for the statement in Annexure-V interim order passed by the Hon'ble High Court of Kerala, stating inter alia, that "But I make it clear that it shall be open to the Secretary to issue stop memo in accordance with law".

Y. The proviso to Sub-Rule 1 of Rule 22 specifically prescribes the requirement of certification by the authority concerned with the involvement of the registered Architect/Engineer/Supervisor in all residential units beyond the floor area stated therein. That proviso, beyond dispute, would apply to the constructions in hand. The materials produced by the parties or otherwise available in the course of the enquiry do not disclose any application for completion certificate, particularly, in conformity with such provision.

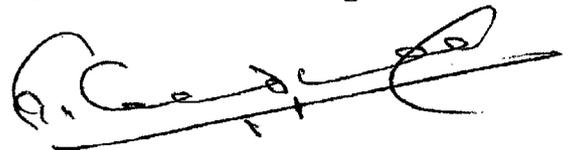
Z. The stand taken by Party No.32 Sri.Jayakumar S., who was the Secretary of Maradu Municipality during the period 26.12.2011 to 25.7.2012, is that in spite of the fact that he was not involved at all in the grant of permits, he



had alerted the Ombudsman for Local Self Government Institutions by making a representation to that authority. He appeared in this enquiry and stated that public money should not be permitted to be utilised to pay off the owners/allottees of the apartments and that public wealth should not be utilised to discharge the liability, which according to him, is only on the builders. This is part of the legal issues which may or may not be found germane for adjudication by this Hon'ble Court during the consideration of this report, though the principles underlying Part IV of the Constitution stating the Directive Principles of State Policy are expected to be part of the guiding beacons for all institutions of national life.

ZA. The Kerala State Coastal Zone Management Authority (KCZMA) is constituted by the competent authority, also in view of the requirement to do so, to obtain compliance of, among other things, the directions of this Hon'ble Court. The role of KCZMA is to provide the regulatory yardsticks by ensuring preparation of the maps and spelling out the yardsticks of permitted activities, restrictions etc., subject to the approval of the competent authority in the Government of India. The enforcement of the CRZ Notifications and obtaining obedience to the contents of the Notifications and Plans, is within the domain of the duties and responsibilities of the Government. Therefore, KCZMA's responsibility appears to be one that rests to that extent only and not beyond that.

In conclusion, on the basis of the aforementioned facts, materials and factors, I humbly submit that while the builders cannot but be held **responsible for the illegal construction of the buildings, which have already been razed to the ground**, the Government of the State of Kerala, as also the Maradu Grama Panchayat, the Maradu Municipality, the officials of the State Government and Local Self Government Institutions are **responsible for raising the**

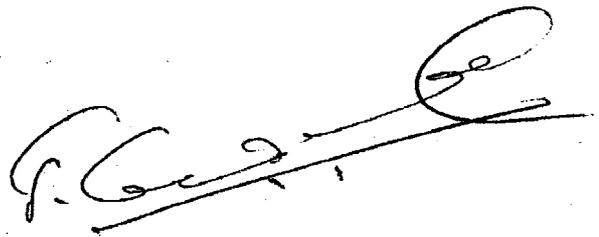


constructions to the stage up to which they came up by the time they were ordered to be demolished by this Hon'ble Court. Any issue relating to the nature of liability, that is to say, whether it is to be joint and several, or whether it is to be apportioned, would depend upon the legal issues which this Hon'ble Court may choose to consider in the event such questions being reckoned as decisive. The report concludes as aforesaid.

The annexures to this report are placed from out of the materials furnished in the enquiry by the parties. Expressing regret for the inconvenience that may occur from any apparent lack of clarity of the print outs presented, I crave leave to submit that the parties concerned may be directed to produce better copies of such documents before this Hon'ble Court.

It is humbly submitted that though Annexure-I order requiring me to hold this enquiry has also authorised me to fix my fee for this enquiry, I seek leave of this Hon'ble Court to dissuade myself from doing so and place it for the consideration of this Hon'ble Court.

The hearing of parties concluded on 30.6.2022, as stated hereinabove. This report consequent on the enquiry is concluded and signed by me on this the 15th day of July, 2022.



JUSTICE THOTTATHIL B. RADHAKRISHNAN

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

O.A. No. 206 of 2021

IN THE MATTER OF:

Environmental Protection & Research Council ... Applicant

Versus

Union of India & Ors. ... Respondents

**TYPED SET OF PAPERS FILED BY THE 5TH RESPONDENT (M/S. ALFA
VENTURES (P) Ltd.**

M/S. B. JEEVAN KUMAR, (2438/2005)

JOHN JOSEPH. R, (D/3990/2018)

B. CHANDRA PRABHA (2225/2015)

Counsel for Respondent No. 5

9599392589

No. 47/1, Vijay Apartments,
1st Main Road,
Shenoy Nagar West,
Chennai – 600 030.