

BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI

I.A. NO. Of 2020

in

Application No.259 of 2016

Mr.Sakeer,
S/o Kunhimoideen
Puttummanakathu, House,
PonnanaiNagaram P.O,
Ponnani, Malappurama District
Kerala 67958

..... Applicant

-Vs-

1. State of Kerala
Represented by its Secretary and others.

..... 3rd Respondent

REPORT FILED BY THE 3rd RESPONDENT

Sl.NO	DATE	DESCRIPTION	Page No.
		Report filed by the 3 rd Respondent	1
1.	22.05.2017	Copy of Order Passed by Hon'ble Tribunal Dated 22.05.2020.	4
2.	08.09.2017	Copy of Order dated 8.9.2017 in Civil Appeal No. 11109/2017 passed by Hon'ble Supreme Court of India.	7
3.	20.6.2017	Copy of Interim order dated 20.6.2017 in Wp© No.20379/2017 passed by Hon'ble High Court of Kerala.	10
4.	11.8.2017	Copy of Order dated 11.08.2017 passed against the interim order dated 20.6.2017 by the Hon'ble Supreme Court of India.	13
5.	22.09.2017	Copy of Order dated 22.9.2017 passed by Hon'ble Supreme Court of India.	14
6.	13.10.2017	Copy of Judgement dated 13.10.2017 in WP© No.20379/2017 passed by Hon'ble High Court of Kerala.	20

Dated at Chennai on this 27th day of November 2020.



M/s. E.K. Kumaresan
Standing Counsel for State of
Kerala.

BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI

I.A. NO. Of 2020

in

Application No.259 of 2016

Mr.Sakeer,
S/o Kunhimoideen
Puttummanakathu, House,
PonnanaiNagaram P.O,
Ponnani, Malappurama District
Kerala 67958

.... Applicant

-Vs-

1. State of Kerala
Represented by its Secretary and others.

.... 3rd Respondent

Report/Reply filed by the 3rd Respondent

The report of the 3rd respondent are stated as follows:-

1. It is respectfully submit that, said application O.A.No. 259/2016 was filed by one Mr.Sakeer the applicant herein, before the National Green Tribunal, Southern Zone, Chennai interalia challenging Annexure A9 order (G.O.Ms.NO. 26/2016) dated 17/08/2016 issued by the Government of Kerala, F&P (D). The applicant also prays for a direction to respondents 1 to 3 to compensate the applicant at Rs.1 lakh for illegal sand mining carried out in Bharathapuzha river.

2. It is humbly submitted that the Hon'ble Tribunal, passed an interim order on 22/05/2017 directing that the dredged material has to be securely kept in the port premises duly ensuring that it does not fall back/slide into the dredged area particularly in the ensuing monsoon.

3. It is humbly submitted that the applicant herein challenged the interim order passed by the NGT dated 22.05.2017 before the Hon'ble Supreme Court by filling civil Appeal No(s). 11109/2017 .By order dated 08/09/2017, the Hon'ble Supreme Court dismissed the SLP. The State of Kerala challenged the interim order dated 22/05/2017 before the Hon'ble High Court by filling Writ petition (civil) No. 20379/2017. The Hon'ble High Court passed an interim order on 20/06/2017, Whereby order passed by the NGT was stayed for a period of 3 weeks. The

applicant in the OA challenged the order dated 20/06/2017 passed by the Honble High Court in Writ petition (civil) No.20379/2017 by filing SLP (civil) No. (S) 19720/2017. The Hon'ble Supreme Court passed an interim order on 11/08/2017, staying the operation of the impugned order dated 20/06/2017 passed by the Hon'ble High Court until further orders. But by order dated 22/09/2017, the Hon,ble Supreme Court disposed of the SLP directing the petitioner/applicant to raise all contentions before the Hon,ble High Court including the issue of jurisdiction. Thereafter the Writ petition was finally heard by the Hon'ble High Court and by Judgment dated 13/10/2017, the Hon'ble High Court allowed the Writ petition and set aside the order dated 22/05/2017 passed by NGT.

4. It is numbly submitted that the said application was listed on 7.12.2017 before the predecessor Lordship afterward the application listed before Hon'ble Tribunal on 2.6.2020 and this Hon'ble Tribunal has passed an order on 02/06/220 on the premises that the order dated 22/05/2017 was affirmed by the Honourable Supreme Court. It is seen that the judgment passed by the Honble High Court and and the order passed by the Honourble Supreme Court was not brought to the notice of the NGT while passing order dated 02/06/22020.

5. It is humbly submitted that subsequent to order dated 02/06/2020 the Hon'ble Tribunal has passed an order on 24/08/2020 and posted the case to 19/11/2020 and further reposed to 15/12/2020 by way of notification.

6. It is humbly submit that the 3rd respondent herein seeking review of the order dated 02/06/2020 and produce the orders/ judgment passed by the Hon'ble High Court as the Hon,ble Supreme Court before the NGT.

7. It is therefore prayed this Hon'ble Tribunal to consider the order passed in Writ petition WP.No.20379 of 2017 passed by the Hon'ble High Court and by Judgment dated 13/10/2017, the Hon'ble High Court allowed the Writ petition and set aside the order dated 22/05/2017 passed by Hon'ble Tribunal and thus render Justice.

Dated at Chennai on this 27th the day of November 2020.


M/s.E. K Kumaresan

Standing Counsel for State of Kerala.

BEFORE THE NATIONAL GREEN TRIBUNAL

SOUTHERN ZONE, CHENNAI

I.A. NO. Of 2020

in

Application No.259 of 2016

Mr.Sakeer,
S/o Kunhimoideen
Puttummanakathu, House,
PonnanaiNagaram P.O,
Ponnani,
Malappurama District
Kerala 67958 ----- Applicant

-Vs-

1. State of Kerala
Represented by its Secretary and others.

.... Respondent

Report filed by the 3rd Respondent

M/s.E.K.Kumaresan

Standing Counsel for State of Kerala.

No.6 Indian Chamber , Esplanade,

Chennai -108.

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BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI
Application No.259 of 2016 (SZ)

Applicant(s)

Mr.Sakeer,
Malappurama District
Kerala 679 583

Vs

Respondent(s)

State of Kerala rep. by its Secretary,
Fisheries and Port Department,
Government Secretariat,
Thiruvananthapuram
Kerala 695001 and others

Legal Practitioners for Appellant(s)

M/s.P.Deepak, Prasanth Rajagopal

Legal Practitioners for Respondents

Mrs.A.S.Suvitha for R1, R2 & R3
Mrs.Me.Saraswathy for R4
Mrs.Vidhyalakshmi Vipin for R5
Mrs.T.N.C.Kaushik for R6

Note of the Registry	Orders of the Tribunal
Item No.11	<p>Date: 22nd May, 2017</p> <p>This matter has been taken up as per order of the Hon'ble High Court of Kerala passed in WP (C) No.16729 of 2017 (M) dated 19.05.2017 by which the Hon'ble High Court has directed the matter to be posted before the Second Court if it is constituted, otherwise before the First Court of Southern Zone, National Green Tribunal, Chennai to consider about the interim relief sought for.</p> <p>We have heard learned counsel appearing for the applicant as well as respondents particularly, Mrs.A.S.Suvitha, learned counsel appearing for the State of Kerala.</p> <p>The issue involved in this case is for the payment of compensation for the alleged illegal sand mining carried out in Bharathapuzha River and to set aside the Government Order dated 17.08.2016 by which the Government of Kerala has decided to grant permission to Local Self Government Department instead of Co-operative Societies to conduct manual dredging.</p> <p>The grievance of the applicant is that even if the manual dredging is</p>

permitted for the purpose of maintenance, the Government order itself does not confer any right on the part of the Government to dispose of the dredged sand to third parties by commercial avocation. It is also brought to the notice of this Tribunal that in fact the Government has given notice calling for public participation by 'online' system for the purchase of dredged sand.

In view of the fact that dredging operations for maintenance of ports, rivers etc. may not require EC, as per the amendment dated 15.01.2016, carried out in EIA Notification, 2006, we are of the considered view that the dredging either manually or otherwise is only for the purpose of maintenance and it does not mean that the dredged sand can be sold away.

In these circumstances, while permitting the dredging operations for maintenance, we direct the respondents not to sell the dredged sand to any third party until further orders. We also make it clear that the dredged material has to be securely kept in the Port premises duly ensuring that it does not fall back/slide in the dredged area, particularly in the ensuing monsoon.

Post this application on 12.07.2017.

.....Sd/-....., JM
(Justice Dr. P. Jyothimani)



.....Sd/-....., EM
(Shri P.S. Rao)

Office is directed to forward a copy of this order along with a copy of the Hon'ble High Court Order to the Principal Bench.

- (I) Serial no. of copy of the application 462/17
- (II) Name of the applicant Mrs. Sunilka A.S.
- (III) Date of presentation of application 23.5.17
- (IV) No. of pages 2
- (V) Copying fee charged (Use and Ordinary) 20 + 40
- (VI) Date of preparation of copy _____
- (VII) Date on which copy is ready _____
- (VIII) Date given for collection of copy 24.5.17
- (IX) Date of delivery _____

For Registrar

Cwasanthi

Signature 24.5.17

Certified that this is a true copy of the document of order as in the case (Application / Appeal No. 259 of 2016) and that all the matters appearing thereon have been legibly and faithfully reproduced with no modifications.

Cwasanthi
 For Registrar (NET)
 Southern Zone 24.5.17

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s).11109/2017

SAKEER

Appellant(s)

VERSUS

THE STATE OF KERALA & ORS.

Respondent(s)

(FOR ADMISSION and IA No.82874/2017-EX-PARTE STAY and IA No.82876/2017-EXEMPTION FROM FILING O.T.)

Date : 08-09-2017 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE ASHOK BHUSHAN

For Appellant(s) Mr. M.K.S. Menon, Adv.
Ms. Usha Nandini. V, AOR
Mr. Shashank Menon, Adv.
Ms. Shreya Menon, Adv.
Ms. Yogamaya, Adv.

For Respondent(s) Mr. K.K. Venugopal, A.G.
Mr. G. Prakash, Adv.
Mr. Jishnu M.L., Adv.
Ms. Priyanka Prakash, Adv.
Ms. Beena Prakash, Adv.
Mr. Vijay Shankar V.L., Adv.
Mr. Subhash Chandran, K.R., Adv.

UPON hearing the counsel the Court made the following
O R D E R

The civil appeal is dismissed in terms of the signed

Order.

(B. PARVATHI)
COURT MASTER

(MALA KUMARI SHARMA)
COURT MASTER

(Signed order is placed on the file)

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S).11109 OF 2017

SAKEER

Appellant(s)

VERSUS

THE STATE OF KERALA & ORS.

Respondent(s)

O R D E R

No ground is made out for our interference with the impugned order passed by the National Green Tribunal. The Civil Appeal is, accordingly, dismissed.

Pending application(s), if any, shall stand disposed of.

.....J
(A.K. SIKRI)

.....J
(ASHOK BHUSHAN)

NEW DELHI;
SEPTEMBER 8, 2017

Signature Not Verified
Digitally signed by
BALA PARIKSHI
Date: 2017.09.13
16:56:22 IST
Reason: []

Encl:

1. True copy of order dated 8.9.2017 in Civil Appeal No. (s) No. 11109/2017 passed by Hon'ble Supreme Court of India.
 2. True copy of Interim order dated 20.6.2017 in WP(C) No. 20379/2017 passed by Hon'ble High Court of Kerala.
 3. True copy of order dated 11.08.2017 passed by Hon'ble Supreme Court of India.
 4. True copy of order dated 22.9.2017 passed by Hon'ble Supreme Court of India.
 5. True copy of Judgment dated 13.10.2017 in WP(C) No. 20379/2017 passed by Hon'ble High Court of Kerala.
-

24/06
5

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE MR.JUSTICE P.B.SURESH KUMAR

Tuesday, the 20th day of June 2017/30th Jyaishtha, 1939

WP(C).No.20379/2017(V)

PETITIONERS:

1. STATE OF KERALA, REPRESENTED BY ITS SECRETARY, FISHERIES AND PORT DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, KERALA STATE, PIN - 695 001.
2. THE DIRECTOR OF PORTS, OFFICE OF THE DIRECTOR OF PORTS, VALIYATHURA, VALLAKKADAVU.P.O., THIRUVANANTHAPURAM, KERALA STATE, PIN - 695 008.
3. THE PORT CONSERVATOR, PORT OFFICE, PONNANI NAGARAM.P.O., PONNANI, MALAPPURAM DISTRICT, KERALA STATE, PIN - 679 583.

RESPONDENTS:

1. SAKEER, AGED 42 YEARS, S/O.KUNHIMOIDEEN, PUTTUMMANAKATHU HOUSE, PONNANI NAGARAM.P.O., PONNANI, MALAPPURAM DISTRICT, KERALA STATE, PIN - 679 583.
2. THE MINISTRY OF ENVIRONMENT AND FORESTS, REPRESENTED BY ITS DIRECTOR, PARYAVARAN BHAVAN, C.G.O COMPLEX, LODHI ROAD, NEW DELHI - 110 003.
3. THE KERALA STATE ENVIRONMENT IMPACT ASSESSMENT AUTHORITY, REPRESENTED BY ITS MEMBER SECRETARY, DIRECTORATE OF ENVIRONMENT AND CLIMATIC CHANGE, PALLIMUKKU, PETTAH.P.O., THIRUVANANTHAPURAM, KERALA STATE, PIN - 695 024.
4. THE KERALA COASTAL ZONE MANAGEMENT AUTHORITY, REPRESENTED BY ITS MEMBER SECRETARY, SASTHRA BHAVAN, PATTOM.P.O., THIRUVANANTHAPURAM, KERALA STATE, PIN - 695 004.

Writ Petition (civil) praying inter alia that in the circumstances stated in the affidavit filed along with the W.P(C) the High Court be pleased to stay all further proceedings in Exhibit P1 OA and also that this Honourable Court may be pleased to stay the operation of Ext.P8 order, pending disposal of the writ petition.

This petition coming on for admission upon perusing the petition and the affidavit filed in support of W.P(C) and upon hearing the arguments of GOVERNMENT PLEADER for the petitioners, CENTRAL GOVERNMENT COUNSEL for R2 and of STANDING COUNSEL for R4, the court passed the following:-

[P.T.O]

P.B. SURESH KUMAR, J.

W.P.(C) No.20379 of 2017

Dated this the 20th day of June, 2017

ORDER

Admit. The learned Central Government Counsel takes notice for the second respondent. The learned Standing Counsel takes notice for the fourth respondent. Issue notice by speed post to respondents 1 and 3.

It is seen that Ext.P8 order is far beyond the scope of Ext.P1 original application pending before the National Green Tribunal. In the circumstances, Ext.P8 order will stand stayed for a period of three weeks.

Sd/-
P.B. SURESH KUMAR, JUDGE

/true copy/

Joan George
ASSISTANT REGISTRAR

*1/10
27-06-17*

EXT.P1: A TRUE PHOTOCOPY OF ORIGINAL APPLICATION NO.259/2016 BEFORE THE NATIONAL GREEN TRIBUNAL (SOUTHERN ZONE), CHENNAI.

EXT.P3: A TRUE PHOTOCOPY OF REPLY AFFIDAVIT FILED IN ORIGINAL APPLICATION NO.259/2016 BEFORE THE LEARNED NATIONAL GREEN TRIBUNAL, SOUTHERN BENCH, CHENNAI.

EXT.P8: A TRUE PHOTOCOPY OF THE ORDER DATED 22.05.2017 OF THE NATIONAL GREEN TRIBUNAL, SOUTHERN ZONE, CHENNAI IN ORIGINAL APPLICATION NO.259/2016.

2
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EXEM NO.38

COURT NO.2

SECTION XI-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s).19720/2017
(Arising out of impugned final judgment and order dated 20-06-2017
in WP(C) No.20379/2017 passed by the High Court of Kerala at
Ernakulam)

SAKEER

Petitioner(s)

VERSUS

THE STATE OF KERALA & ORS.

Respondent(s)

(FOR ADMISSION and I.R. and IA No.67282/2017-EXEMPTION FROM FILING
O.T.)

Date : 11-08-2017 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DIPAK MISRA
HON'BLE MR. JUSTICE A.M. KHANWILKAR

For Petitioner(s)

Mr.M.K.S.Menon, Adv.
Ms.Usha Nandini V., Adv.
Ms.Yogamaya, Adv.

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

Issue notice fixing a returnable date within four
weeks.

Dasti, in addition, is permitted.

There shall be stay of operation of impugned order
dated 20.06.2017 passed by the High Court until further
orders.

Signature valid
Digitally signed by
ASHOK RAJ SINGH
Date: 2017.08.14
17:03:15 +05'30'
Reason:

(Ashok Raj Singh)
Court Master

(H.S.Parasher)
Assistant Registrar

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ITEM NO.21

COURT NO.1 SECTION XI -A
S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 19720/2017
(Arising out of impugned final judgment and order dated 20-06-2017
in WP(C) No.20379/2017 passed by the High Court of Kerala at
Ernakulam)

SAKEER

Petitioner(s)

VERSUS

THE STATE OF KERALA & ORS.

Respondent(s)

(FOR ADMISSION and I.R. and IA No.67282/2017-EXEMPTION FROM FILING
O.T.)

Date : 22-09-2017 This petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE A.M. KHANWILKAR
HON'BLE DR. JUSTICE D.Y. CHANDRACHUD

For Petitioner(s)

Mr.M.K.S.Menon, Adv.
Ms.Usha Nandini V., Adv.
Mr.M.S.Vishnu Sankar, Adv.
Ms.Athira G. Nair, Adv.
Ms.Shreya Menon, Adv.

For Respondent(s)

Mr.K.K.Venugopal, Sr.Adv. (A.G.)
Mr.G.Prakash, Adv.
Mr.Jishnu M.L., Adv.
Mrs.Priyanka Prakash, Adv.
Mrs.Beena Prakash, Adv.
Mr.Vijay Shankar V.L., Adv.
Mr.Subhash Chandran K.R., Adv.
Mr.C.K.Sasi, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Signature Not Verified
Digitally signed by
ASHOK RAJ SINGH
Date: 2017.09.23
13:04:54 IST
Reason:

Heard Mr.M.K.S.Menon, learned counsel for the
petitioner and Mr.K.K.Venugopal, learned senior counsel for
the respondents. Regard being had to the facts and
circumstances of the case, we permit the petitioner to file

an application for variation of order dated 28.06.2017 passed by the High Court in WP(C) No.20379 of 2017.

It is open to the petitioner to raise all the contentions before the High Court including the issue of jurisdiction.

The special leave petition is accordingly disposed of.

(Ashok Raj Singh)
Court Master

(H.S.Parasher)
Assistant Registrar

(16)

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE MR. JUSTICE P.B. SURESH KUMAR

Wednesday, the 9th day of August 2017/18th Sravana, 1939

WP(C).No.20379/2017(V)

PETITIONERS:

1. STATE OF KERALA, REPRESENTED BY ITS SECRETARY, FISHERIES AND PORT DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, KERALA STATE, PIN - 695 001.

AND OTHERS.

RESPONDENTS:

1. SAKEER , AGED 42 YEARS, S/O.KUNHIMOIDEEN, PUTTUMMANAKATHU HOUSE, PONNANI NAGARAM.P.O., PONNANI, MALAPPURAM DISTRICT, KERALA STATE, PIN - 679 583.

AND OTHERS.

Writ Petition (civil) praying inter alia that in the circumstances stated in the affidavit filed along with the W.P(C) the High Court be pleased to stay all further proceedings in Exhibit P1 OA and also that this Honourable Court may be pleased to stay the operation of Ext.P8 order, pending disposal of the writ petition.

This petition again coming on for orders upon perusing the petition and the affidavit filed in support of W.P(C) and this court's order dated 10/07/17 and upon hearing the arguments of GOVERNMENT PLEADER for the petitioners, SRI.JOBI JOSE KONDODY, ADVOCATE for R1, CENTRAL GOVERNMENT COUNSEL for R2 and of STANDING COUNSEL for R4, the court passed the following :-

O R D E R

Interim order is extended until further orders.

09-08-2017

Sd/- P.B.SURESH KUMAR, JUDGE

/true copy/


ASSISTANT REGISTRAR

Prv/2.

MLL
10.8.17
J
10/8/17

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K. VINOD CHANDRAN

FRIDAY, THE 13TH DAY OF OCTOBER 2017/21ST ASWINA, 1939

WP(C).No. 20379 of 2017 (V)

ORIGINAL APPLICATION 259/2016 OF NATIONAL GREEN TRIBUNAL, SOUTHERN
ZONE, CHENNI

PETITIONER(S) :

1. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY,
FISHERIES AND PORT DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM, KERALA STATE PIN 695 001.
2. THE DIRECTOR OF PORTS OFFICE OF THE DIRECTOR OF PORTS,
VALIYATHURA, VALLAKKADAVU P.O, THIRUVANANTHAPURAM,
KERALA STATE, PIN 695 008.
3. THE PORT CONSERVATOR, PORT OFFICE,
PONNANI NAGARAM P.O, PONNANI, MALAPPURAM DISTRICT,
KERALA STATE PIN 679 583.

BY GOVERNMENT PLEADER SRI M.MANOJ

RESPONDENT(S) :

1. SAKEER, AGED 42 YEARS,
S/O KUNHIMOIDEEN, PUTTUMMANAKATHU HOUSE,
PONNANI NAGARAM P.O, PONNANI, MALAPPURAM DISTRICT
KERALA STATE, PIN 679 583.
2. THE MINISTRY OF ENVIRONMENT AND FORESTS,
REPRESENTED BY ITS DIRECTOR,
PARYAVARAN BHAVAN, CGO COMPLEX, LODHI ROAD,
NEW DELHI 110 003.
3. THE KERALA STATE ENVIRONMENT IMPACT
ASSESSMENT AUTHORITY,
REPRESENTED BY ITS MEMBER SECRETARY, DIRECTORATE OF
ENVIRONMENT AND CLIMATIC CHANGE,
PALLIMUKKU, PETTACH PO,
THIRUVANANTHAPURAM KERALA STATE PIN 695 024.

WP(C).No. 20379 of 2017 (V)

4. THE KERALA COASTAL ZONE MANAGEMENT AUTHORITY,
REPRESENTED BY ITS MEMBER SECRETARY,
SASTHRA BHAVAN, PATTOM P.O,
THIRUVANANTHAPURAM KERALA STATE PIN 695 004.

R1 BY ADV. SRI.JOBI JOSE KONDODY

R2 BY ADVS SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL
SRI.K.SHRI HARI RAO, CGC

R3,R4 BY ADV.SRI K.R.SUNIL SC

R4 BY ADV. SRI.M.P.PRAKASH, SC,

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 13-10-2017, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

K.V.

WP(C).No. 20379 of 2017 (V)

APPENDIX

PETITIONERS EXHIBITS:

- P1; A TRUE PHOTOCOPY OF ORIGINAL APPLICATION NO 259/2016 BEFORE THE NATIONAL GREEN TRIBUNAL (SOUTHERN ZONE), CHENNAI.
- P2: A TRUE PHOTOCOPY OF THE JUDGMENT DATED 2.11.2016 IN WPC NO 32962/2016 AND CONNECTED CASES.
- P3; A TRUE PHOTOCOPY OF REPLY AFFIDAVIT FILED IN ORIGINAL APPLICATION NO 259/2016 BEFORE THE LEARNED NATIONAL GREEN TRIBUNAL, SOUTHERN BENCH CHENNI.
- P4: A TRUE COPY OF THE ORDER DATED 10.9.2013 IN M.A NO 744/13 AND M.A NO 745/13 IN ORIGINAL APPLICATION NO 271/13.
- P5; A TRUE PHOTOCOPY OF THE ORDER DATED 17.1.2014 OF THE LEARNED GREEN TRIBUNAL SOUTHERN BENCH, CHENNAI IN MA NO 803 OF 2013 IN O.A NO 286/2013 AND M.A NO 744 OF 2013 IN O A NO 271/2013.
- P6; A TRUE PHOTOCOPY OF JUDGMENT DATED 1.3.2017 OF THIS HON'BLE COURT IN WPC NO 39018/2016.
- P7: A TRUE PHOTOCOPY OF JUDGMENT DATED 19.5.2017 IN WPC NO 16729/2017.
- P8: A TRUE PHOTOCOPY OF THE ORDER DATED 22.5.2017 OF THE NATIONAL GREEN TRIBUNAL SOUTHERN ZONE, CHENNAI IN ORIGINAL APPLICATION NO 259/2016.
- P9: A TRUE PHOTOCOPY OF GO (MS) NO 2/2017 F & PD DATED 9.2.2017 TOGETHER WITH A MANUAL DREDGING POLICY 2016.

RESPONDENTS EXHIBITS:

- R1(A) A TRUE COPY OF THE COMMON FINAL ORDER DATED 8.8.2014 PASSED BY THE PRINCIPAL BENCH THE NATIONAL GREEN TRIBUNAL NEW DELHI IN O A NO 271 OF 2013 AND 286 OF 2013.
- R1(B) A TRUE COPY OF THE INTERIM ORDER DATED 20.6.2017 PASSED BY THE LEARNED SINGLE JUDGE OF THIS HONOURABLE COURT IN WPC 20379 OF 2017.
- R1(C) A TRUE COPY OF THE INTERIM ORDER DATED 11.8.2017 PASSED BY THE HONOURABLE APEX COURT IN SLP 9C) NO 19720 OF 2017.
- R1(D) A TRUE COPY OF THE ORDER DATED 22.9.2017 PASSED BY THE HONOURABLE APEX COURT IN SLP (C) NO 19720 OF 2017.
- R1(E) A TRUE COPY OF THE JUDGMENT DATED 27.7.2015 PASSED BY THE LEARNED SINGLE JUDGE OF THIS HONOURABLE COURT IN WPC NO 2051 OF 2015.

/TRUE COPY/

K.V.

P.S.TO JUDGE

K. VINOD CHANDRAN, J.

=====

W.P.(C) No.20379 of 2017 - V

=====

Dated this the 13th day of October, 2017

Judgment

The writ petition is filed against the interim order passed by the National Green Tribunal (for brevity 'the Tribunal') as is seen at Ext.P8; in an application bearing No.259 of 2016 filed by the 1st respondent. By Ext.P8, the prayer of the 1st respondent to interdict the respondents 1 to 3; who are the petitioners herein, from carrying on dredging operations, within the Ponnani Port area was declined. However, it was made clear that the dredged material has to be securely kept in the Port premises duly ensuring that it does not fall back/slide into the dredged area particularly in the ensuing

W.P.(C) No.20379/2017

monsoon. The State impugns the order to that extent, on the premise that there is absolutely no legal backing for such a prohibition.

2. The State is before this Court, challenging the interim order, on grounds of absolute lack of jurisdiction. The 1st respondent has opposed the maintainability of the writ petition itself, specifically pointing out Ext.R1(e) judgment, wherein, this Court had declined consideration of a writ petition under Article 226 of the Constitution of India, against an order of the Tribunal, relegating the petitioner therein to the appellate remedy or raising the question of fraud alleged therein, before the Tribunal itself. Having heard the writ petition in full, the question of maintainability is the only question since if the order is found to be without jurisdiction, then the writ is maintainable and has to be allowed.

3. The learned Special Government Pleader submits that the Government had been carrying on dredging activities by calling for tenders and in the course of the years, the Government had restricted acceptance of tenders from the labour Co-operative Societies alone, who are formed around the area, the members of which are traditionally engaged in dredging operations. Subsequently finding that the litigations initiated by the various Co-operative Societies, occasion considerable delay in carrying out the dredging, the Government had decided to entrust the dredging operations again by tender to the Local Self Government Institutions. A challenge was made against the said policy decision of the Government, which was addressed and negated by Ext.P2 judgment. The 1st respondent had challenged the dredging operations before the Tribunal, despite Ext.P2 judgment of this Court, is the submission.

4. A reading of Ext.P1 application filed before the Tribunal would disclose that the grounds raised are totally different. The petitioner; an owner of a boat, which was drowned in the Ponnani Port area, for reason of the sand bars existing, was before the Tribunal, contending that the dredging carried on illegally; has caused intrusion of saline water into the Bharathappuzha river and has contaminated his well water. On the principle of "polluter pays", the petitioner claimed damages of Rs.1lakh, on the ground of the Circulars issued by the Government, permitting dredging activities, having given a go-by to the requirement of Environmental Clearance (EC) as stipulated under the Environment Impact Assessment Notification, 2006 (for brevity 'the E.I.A Notification 2006'). The second relief was also to set aside the Government Orders issued, permitting such dredging activities, for reason of absence of EC.

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5. The Tribunal has passed the impugned order at Ext.P8. Ext.P8 as indicated earlier found that the Government could carry on the dredging activities, on the ground that there is no requirement for an EC but restrained the dredged material being taken away from the premises and from being sold. The learned Counsel for the 1st respondent would specifically point to ground No.2 in the application filed, which indicates that the Government had in fact obtained an EC, which was applicable till 2014, with a rider that any dredging operations would be in compliance with CRZ norms and other environmental concerns addressed through E.I.A studies. Reference is also made to the CRZ Notification (SO 19 (E) dated 06.01.2011) issued by the Ministry of Environment and Forest and Climate Change (as it is presently called). Clause 3(iv)(c) of the Coastal Regulation Zone Notification 2011 is specifically pointed out to argue that 'maintenance of

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clearance of water ways, channels and ports based on E.I.A studies', though exempted, no such study was conducted and hence is prohibited. In that context, de hors the requirement of an EC being taken away, there has to be an E.I.A study, is the specific contention taken.

6. Though a ground was specifically raised as pointed out by the petitioners; of absence of EC, admittedly, the EIA notification has been amended removing the requirement as such. The ground as to violation of stipulations made by the CRZ Notification; is also not seen considered by the Tribunal obviously for reason of it not having been argued before the Tribunal. Pertinent is the fact that the interim order passed by the Tribunal was challenged by the appellant before the Hon'ble Supreme Court, which negated the said challenge.

7. The learned Standing Counsel appearing for the 4th respondent; Kerala Coastal Zone Management Authority points out clause 4(i)(a) of the CRZ Notification, which mandates that "clearance shall be given for any activity within the CRZ only if it requires water front and foreshore facilities' which is precisely what is intended by the dredging carried out. The respondent also cannot take such a contention in the writ petition filed by the State and there can be no interference to the dredging permitted by the Tribunal. The said ground if at all sustainable cannot also lead to any justification of the order made by the Tribunal as to the status quo ordered of the dredged sand.

8. Now the question is of the maintainability of the writ petition, which would in fact decide the writ petition also. Even going by Ext.R1(e) judgment, this Court had noticed the binding precedents of the Hon'ble Supreme Court and held so

in paragraph 6 of the judgment.

6: In such circumstance, definitely the power of judicial review under Article 226 cannot be avoided; but, however, it can be invoked only in the specific instances as pointed out in the afore-cited declaration; when there is (i) a prayer for enforcement of any of the fundamental rights or where there has been (ii) a violation of principle of natural justice or where the order under challenge is (iii) wholly without jurisdiction or the (iv) vires of the statute is under challenge. The right to an alternate remedy in such circumstances alone is not a bar in exercising the extra-ordinary discretionary remedy conferred on this Court under Article 226. None of the above circumstances exist as of now in the present writ petition.

9. In the present case, the Tribunal had permitted the dredging of sand on the ground that there was no requirement for an EC for the activities carried on to clear the channels in a water way. It is also admitted by the petitioners that the EIA Notification 2006 has now been amended, taking away the requirement for an EC. In such circumstance, there is absolutely no reason why the Tribunal restricted the sale of the dredged sand. In fact the Government by the order is required

to keep the dredged sand in a safe condition, ensuring that it does not slide back into the dredged area. This also does not come within the scope of the petition filed before the Tribunal. The complaint raised was of illegal dredging causing saline intrusion into the well and consequent damages. It is not comprehensible as to why the petitioner would require the preservation of the sand dredged; without disposing it off. This causes considerable expenditure to the Government and there is no method by which the sand can be disposed of, but, by sale; which the Central Government has not thought fit to prohibit for reason of any anticipated environmental casualty. This Court does not find any statutory mandate or prescriptions, insofar as keeping the sand secure; without sale being effected. It could only lead to further blocking of the water channel; with the sand sliding back into the water. In such circumstance, this Court finds that Ext.P8 order to the

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extent it requires the sand to be kept without sale is totally without jurisdiction. This Court having held that portion of the order challenged before this Court being totally without jurisdiction, the writ petition is maintainable and on the same reasoning the order to that extent has to be set aside. I do so.

The writ petition is allowed. No costs.

Sd/-
K. VINOD CHANDRAN,
JUDGE

SB/19/10/2017

// true copy //

P.A to Judge

BEFORE THE NATIONAL GREEN TRIBUNAL

SOUTHERN ZONE, CHENNAI

I.A. NO. Of 2020

in

Application No.259 of 2016

Mr.Sakeer,
S/o Kunhimoideen
Puttummanakathu, House,
PonnanaiNagaram P.O.,
Ponnani,
Malappurama District
Kerala 67958 ----- Applicant

-Vs-

1. State of Kerala
Represented by its Secretary and others.

.... Respondent

Report filed by the 3rd Respondent

Next hearing date: 15/12/2020

M/s.E.K.Kumaresan

Standing Counsel for State of Kerala.

No.6 Indian Chamber , Esplanade,

Chennai -108.