

BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE CHENNAI

Appl No.259 of 2015

Mr. Sakeer,
S/o. Kunhimoideen,
Puttummanakathu House,
Ponnanai Nagaram P.O.,
Ponmani, Malappurama District,
Kerala – 679 958

...Applicant

Vs

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

...Respondents

ADDITIONAL REPORT FILED BY THE 3RD RESPONDENT

It is submitted that the 3rd Respondent herein filed an additional Report as stated as follows :-

1. It is submitted that this Hon'ble Tribunal directed to file additional report in support of CRZ violations.

2. It is submitted that in the present application there is no CRZ violation, the 3rd respondent did not find that there is any illegality in the work being carried out by the 5th respondent in so far as CRZ clearance had already been issued by the competent authority.

3. It is submitted that the work was done prior to grant of clearance was dredging, which was highly required for the harbour activity to prevent danger to the fishermen community.

4. It is submitted that at any rate, entire work was done after submission of the application. That apart, this is a major project of the Government of Kerala and necessary clearance had been obtained for the entire project from the competent authorities and that apart, the entire work had to be completed within short time frame.

5. It submitted that the Meeting has been convened by the Kerala Coastal Zone Management Authority Science and Technology Department dated 27 December 2012, had discussed the development of Ponnani Port under Additional agenda item No.53. 4. 6 bearing file No. 1974/ A2 /2012/KCZMA/S&TD. It states that the port is proposed to be developed towards south of Bharathapuzha River near Ponnani lighthouse. On the Northern side of the project site, Tirurpuzha River Joins with Bharathapuzha River and together drains into the Arabian Sea. The Port is proposed to be developed on predominantly reclaimed the land of about 82 HA(203 Acres) in Phase 1 and 206.1 HA (510 Acres) in Phase 1A(cumulative) which will be the master plan. An area of approximately 12.14 Ha(30 acres) of unsurveyed coastal land belonging to GoK has

been allotted to MPPL for development of Ponnani Port and remaining land will be reclaimed land.

6. It is submitted that the outcome of the meeting has considered the agenda, KCZMA decided to recommend to MoEF the project for clearance and request reconsideration. (Page 14 & Page 17 in Annexure 1).

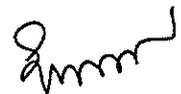
7. It is submitted that as per the MOEF & CC notification dated 15th January 2016, exception of certain cases from the requirement of environmental clearance granted in which dredging and desilting of dams Reservoirs weirs, barrages, river and canals for the purpose of their maintenance, upkeep and disaster management. Hence, the 3rd respondent carried out dredging only for the purpose of maintenance of port for the purposes of clearing ship channels in the port.

(Annexure 2).

8. It is respectfully submit that according to the Joint Committee report (Pg.11-12, Para 5.1.6) concluded that it in view of deliberation at point 5.1.2 in the joint committee report opined that dredging is not in violation of EIA Notification, 2006 and its amendments /Environmental clearance. Therefore, according to the Committee report there is no violation in dredging of sand for maintenance.

5. Therefore it is prayed that this Hon'ble Tribunal record the above Additional facts in the report and pass such further and other orders may deem fit and proper in this circumstances of the case and thus render justice.

Dated at Chennai on this the day of December 2020



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

**KERALA COASTAL ZONE MANAGEMENT AUTHORITY
SCIENCE AND TECHNOLOGY DEPARTMENT, SASTHRA BHAVAN, PATTOM,
THIRUVANANTHAPURAM - 695 004**

Minutes of the 53rd Meeting of Kerala Coastal Zone Management Authority

Date & Time : 27th December 2012 at 2.30 p.m.

Venue : Sasthra Bhavan, Pattom, Thiruvananthapuram

The meeting commenced at 11.00 A.M P.M. The Chairman welcomed all the Members to the meeting of the Authority. Thereafter, the Authority considered the items in the Agenda.

List of participants:

1. Prof. V.N.Rajasekharan Pillai, Chairman, KCZMA.
2. Dr. K.K.Ramachandran, Member Secretary, KCZMA.

Members

1. Sri. James Varghese I.A.S, Principal Secretary, Fisheries Department, Government Secretariat, Thiruvananthapuram - 695 001.
2. Dr. N. Subash, Director (In-charge) CESS
3. Sri. Rajeev.G, Additional Secretary, Environment Department
4. Rajagopal K.S. Joint Secretary, Industries Department
5. B. Madhu, Deputy Secretary, Local Self Government Department
6. Asha Varghese, Under Secretary, Revenue Department
7. K.Sajeevan, Chairman, KSPCB.

Agenda Item No.53.1

Confirmation of the Minutes of the 52nd Meeting

Confirmed the Minutes of the 52nd Meeting

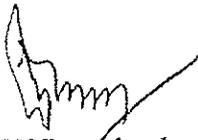
Agenda Item No.53.2

Action taken report on the decisions of the 52nd Meeting

The Authority discussed the action taken report on the 52nd meeting in detail.

Agenda Item No 53.3.

Consideration of Deferred Agenda items of 52nd meeting



Dr. K K Ramachandran
Member Secretary



Prof. V N. Rajasekharan Pillai
Chairman

Deferred Agenda Item No. 53.3.1.

File No. 1562/A2/2012/KCZMA/S&TD

Complaint received from Pallimalakunnu Residents Association against illegal construction of side wall between Canoly Canal and Watershed at Kozhikode

A complaint on the illegal construction of side wall between Canoly Canal and watershed in the area between Karimbanapalam to Kalipoykapalam was received from the Pallimalakunnu Residents Association. A Sub Committee was constituted for verification at the site. The Committee found that violation of CRZ norms took place in the area.

The Authority discussed the report and decided to issue notice to the proponent with regard to the violation of CRZ norms by making construction in CRZ I area. As per the Site Inspection Report placed before the KCZMA, the Authority noted that the construction has been made without prior permission from the CZMA especially in the case of the Sarovaram project - a bio-park developed in the area. Explanation has to be called for from local body with regard to permit issued for the construction and assigning building number. Information shall be conveyed to the Secretary, DTPC; the Secretary, Tourism Department and the Secretary, LSGD.

Deferred Agenda Item No. 53.3.2.

File No. 1571/A2/2012/KCZMA/S&TD

Construction of Residential Building of Shri.V.N.Girishan in Thalassery Municipal Area

Construction of a Residential building with a plinth area of 82.03 M². FAR - 0.50m, Coverage-45.06 in Resurvey No. 62/2B Ward No.9 of Thalassery Municipality by Shri.V.N.Girishan, Valiyaparambathu House, Kavumbhagam, Thalassery. The construction is landward of existing authorised buildings.

The KCZMA considered the proposals for the construction of a residential building and decided to grant CRZ clearance.

Dr. K K Ramachandran
Member Secretary

Prof. V N. Rajasekharan Pillai
Chairman

3

Deferred Agenda Item No. 53.3.3.

File No. 1573/A3/2011/KCZMA/S&TD

Construction of Madrassa Building in Poothakkulam Village, Kollam

Construction of Nellattil Juma Masjid in Poothakkulam Village, Kollam. The area is on the banks of Edava - Nadayara Kayal. As per the provisions of CRZ Notification 2011 Clause 8 III A (iii)(j) construction of schools which are required for the local inhabitants may be permitted on a case to case basis by KCZMA in the No Development Zone of CRZ III. The Madrassa Building is for religious education for the local community. The present construction is for shifting from an old Madrassa building situated in the same plot. It was informed that the existing old building would be demolished after shifting the classes to the new building.

The KCZMA discussed the case in detail and decided to grant clearance for the construction subject to the following conditions:—

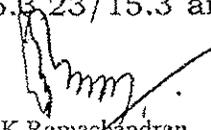
- a) ***Dumping of waste if any generated shall not be done in the CRZ area.***
- b) ***The overall height of the construction shall not be more than 9 m with two floors.***
- c) ***Adequate measures are to be made to prevent children going to the banks of the Kayal.***

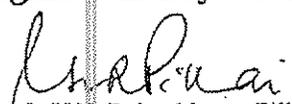
Deferred Agenda item No. 53.3.4.

File No. 1593/A3/12/KCZMA/S&TD

Construction of additional building for Sharon Cashew factory at Thekkumbhagam Grama Panchayath, Kollam

Construction of building for roasting and rest room - (87.32m²), shelling room (145.39m²), rest and cashew (33.72m²), borma (43.61m²), grading hall (89.39m²), ash and shell shed (121.50m²), toilets (15m²) and godown (116m²). The proposed construction is in survey Nos. 23/6, 23/6.1, 23/8.3, 23/5.8, 23/15.3 and 23/15 of Thekkumbhagam Panchayath in Kollam District.


Dr. K K Ramachandran
Member Secretary


Prof. V M. Rajasekharan Pillai
Chairman

The site is Nadakkavu, Chavara, on the banks of Ashtamudi backwaters. 50th KCZMA has considered the case and rejected the same as setting up of new industries and expansion of existing industries except directly related to water front or directly needing foreshore facilities are prohibited in CRZ area. Now the factory authorities and the Secretary, Thekkumbhagam Grama Panchayath has requested to reconsider the decision as factory has no other space in the area other than that in the CRZ for providing the toilet, borma and godown. The above basic facilities are very essential as a large number of employees are working in the institution.

The KCZMA considered the case in detail and decided to grant clearance to the construction as it is confirmed that the area falls in the backwater island.

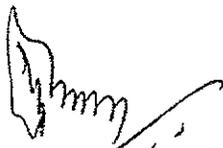
Deferred Agenda Item No.53.3.5.

File No.1654/A2/12/KCZMA/S&TD

Construction of a residential building by Shri. Koyamon, S/o Kunjava, Kunjalakath P.O, Ariyalloor, Malappuram

Shri. Koyamon, S/o Kunjava, Kunjalakath P.O, Ariyalloor constructed a residential building with a plinth area of 164.56m². Two floors with a height of 7.52m in Survey No.244/7 of Ariyalloor village, Vallikkunnu Grama Panchayath, Malappuram. Regularisation has been requested for the residential building in between 100-200m from High Tide Line of sea

The KCZMA discussed the proposal in detail and decided to send communication to the Vallikkunnu Grama Panchayat to prepare and submit a comprehensive plan between 100 and 200 meter from the High Tide Line of Sea in consultation with traditional coastal communities including fisherfolk incorporating the necessary disaster management provisions and sanitation requirements.



Dr. K K Ramachandran
Member Secretary



Prof. V N. Rajasekharan Pillai
Chairman

Deferred Agenda Item No. 53.3.6.

File No. 1674/A3/2012/KCZMA/S&TD

**Construction of Residential building of Sri.Gopalakrishnan, Puthen Veetil,
Adinadu South, Kulasekharapuram, Kollam**

Shri.Gopalakrishnan, Puthen Veetil, Adinadu South, Kulasekharapuram, Kollam has completed construction of a single storied Aluminium sheet roofed residential building with a plinth area of 21.45 M² in Survey No. 438/4/2 (5 cents), 68 m from High Tide Line of T.S. Canal. Regularisation has been requested.

The KCZMA discussed the case in detail and observed that since the construction is by the side of T.S. canal, the banks of which is not subject to any hazard, the construction can be permitted if it is for traditional community or fisherfolk. The authority decided to verify whether the proponent belong to traditional community or fisherfolk.

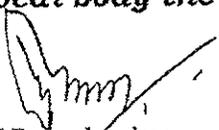
Deferred Agenda Item No. 53.3.7.

File No. 1675/A3/2012/KCZMA/S&TD

**Construction of Residential Building of Mr. Harold & Smt.Sherly, Puthen
Thuruth, Meenam, Sakthikulangara, Kollam**

Construction of a Single storied Residential building with a plinth area of 50.4 M², single storied, FAR: 0.12, Coverage: 12% in Survey No. 46/27 of Sakthikulangara, Kollam by Mr. Harold & Smt. Sherly, Puthen Thuruth, Meenam, Sakthikulangara. The construction is in the NDZ of CRZ III on the banks of backwaters. As per the application the distance of the construction from the water-body is 17 metres.

The KCZMA discussed the case in detail and decided to get clarified from the local body the distance of the construction from the water-body.


Dr. K K Rainackandran
Member Secretary


Prof. V N. Rajasckharan Pillai
Chairman

(6)

Deferred Agenda Item No. 53.3.8.

File No. 1014/A3/11/KCZMA/S&TD

CRZ clearance sought by Mrs. Vimala D. Thiruvananthapuram for a construction proposed at Pallithura in Attipra Village

Construction of a Residential building with plinth area of 191.64 m² with two floors in Sy.No.13/1-14 at Pallithura in Attipra Village by Mrs Vimala D. The area falls in NDZ.

The Thiruvananthapuram Corporation has provided building permit violating provisions of CRZ Notification 2011/1991. This was brought to the notice of KCZMA in its 46th meeting. KCZMA decided " to issue notice to the Corporation seeking explanation on granting permit for the construction, which is in violation of the provision of the CRZ Notification of 1991 marking a copy to Mrs. Vimala D.

Accordingly Notice was issued on 03.03.2012 but the Corporation Secretary was not responded to it till date. 51st Meeting of KCZMA considered the case and decided to issue another notice as per the Section 5 of EP Act calling for explanation within one week and also informing that if no explanation is received within the time stipulated, action as per the provisions of EP Act will be proceeded without further notice.

Based on the above decision the notice was issued to the Corporation Secretary on 01.10.2012 giving One-week time to submit his explanation. But he has not submitted it till date even after the expiry of the time limit.

The KCZMA discussed the case in detail and decided to take up the matter with the Secretary, LSGD for disciplinary action against the Secretary, Corporation of Thiruvananthapuram.



Dr. K K Ramachandran
Member Secretary



Prof. V N. Rajasekharan Pillai
Chairman

Deferred Agenda Item No.53.3.9.
File No. 1693/A3/12/KCZMA/S&TD
Construction of Commercial building by Sri. A. Ajees, Aseena Manzil,

Thiruvananthapuram

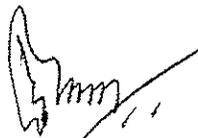
Construction of Commercial building with a plinth area of 383.45m² (Two floors), FAR – 0.47 in Survey No. 251/4 of Vettoor Village, 20 cents of Land 242m from high Tide Line of sea. Construction is 247m from high Tide Line of sea . The area is in CRZ III. . Area upto 200m from High Tide Line is No Development Zone. The proposed area is between 200-500m and this is regulated zone. As per CRZ Notification 2011 commercial complex are not permissible in CRZ III area.

The KCZMA discussed the case in detail and decided to reject the proposal.

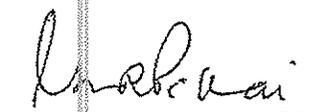
Deferred Agenda Item No. 53.3.10
File No. 1209/A2/12/KCZMA/S&TD
Construction of Telecommunication Tower by M/s. Indus Tower Ltd. at
Parappanangadi Grama Panchayath

Construction of a Telecommunication Tower in Parappanangadi Grama Panchayath by M/s. Indus Tower Ltd., Kochi in R.Sy. No. 48/10, Parappanangadi Village. Construction proposed at a distance of 244m from the HTL of sea. The construction is in CRZ III regulated Zone. This is not listed as a permissible or prohibited activity in the CRZ Notification 2011. Environment Group of KSCSTE reported that Ministry of Environment & Forests had earlier permitted a mobile tower in the 200-500 m Zone of CRZ III in Pallikkara Grama Panchayat of Kasargod district. As per the guidelines issued by MoEF, the minimum distance between transmission towers shall be one Kilometer.

The KCZMA discussed the case in detail and decided that the distance between the towers be ascertained



Dr. K K Ramachandran
Member Secretary



Prof. V N. Rajasekharan Pillai
Chairman

Deferred Agenda Item No. 53.3.11.

File No. 1389/A2/12/KCZMA/S&TD

**Construction of Residential Building by Sri.K.Madhusoodanan,
Koonicheere House, Ramanthali**

Construction of a residential building with a plinth area of 112.98m². Height is 7.30m with two floors in Resurvey No. 47/10 of Ramanthali village by Shri.K.Madhusoodanan, Koonicheere House, Edikulam.P.O, Ramanthali. As per CRZ Notification 2011 Para 8 III B (vii) construction of dwelling units is permissible as long as it is within the ambit of traditional rights and customary uses of existing fishing village and goathans. Construction shall be subject to local town and country planning regulation with overall height of construction not exceeding 9 meters with two floors (G+1 floor).

The KCZMA discussed the case in detail and decided to verify the traditional rights of the applicant.

Deferred Agenda Item No. 53.3.12

File No. 1736/A2/12/KCZMA/S&TD

**Construction of Shop Building by Shri.Jaseer Ahmed.M, Mylanchikkal
House, Pazhayangadi**

Construction of a Shop building with a plinth area of 540.1m², FAR-1.64, 3 Floors (Ground floor + 2) in Resurvey No. 70/2, 70/6, 70/3 of Ezhom Grama Panchayath. The proposed land is on the banks of river having tidal influence from sea. The area is 83.5m from HTL of the river by Shri. Jaseer Ahmed.M, Mylanchikkal House, Pazhayangadi. As per CRZ Notification 2011 commercial complex are not permissible in CRZ III area or in CRZ I area.

The KCZMA discussed the case in detail and decided to reject the proposal.



Dr. K K Ramachandran
Member Secretary



Prof. V N. Rajasekharan Pillai
Chairman

**Deferred Agenda Item No. 53.3.13.
File No.1412/A3/12/KCZMA/S&TD**

Regularisation of residential building of Sri. Manchu Varghese

A residential building constructed with a plinth area of 207.75m² (2 floors) Height – 7m, FAR -0.07%, Coverage 6% in Resurvey No. 61/3 of Thrikkaruva Village, Kollam -36.50acre by Manchu Varghese. Construction of the building completed. Regularisation is requested.

The area is on the banks of Ashtamudi backwater, which has tidal influence from sea. 100m landward of high Tide Line of the backwater in CRZ. The area is also No Development Zone. As per the CRZ Notification 2011 only reconstruction of existing authorised buildings can be permitted in the CRZ-No Development Zone area. The present construction is made in violation of provisions of CRZ Notification.

The KCZMA discussed the case in detail and decided to take action as per the Government of India Office Memorandum of 2012.

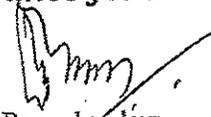
**Deferred Agenda Item No. 53.3.14.
File No. 1449/A2/2012/KCZMA/S&TD**

**Construction of Compound Wall, Chendamangalam Grama Panchayath,
Ernakulam**

Construction of compound wall with a height of 1.95 m for a private property in Survey No. 92 of Chendamangalam Village, Ernakulam. The area is on the banks of inland water body having tidal influence from sea. The area will be CRZ III, No Development Zone.

The construction of compound wall along the banks of inland waterbodies is not mentioned in the CRZ Notification. But on the beaches where resorts / hotels are constructed compound wall is not permissible. Only live fencing or barbed wire fencing is permitted in the NDZ where resorts are to be constructed. This is to avoid the blockade to the beaches.

The KCZMA discussed the case in detail and decided to grant clearance for the construction of the compound wall.


Dr. K K Ramachandran
Member Secretary


Prof. V N. Rajasekharan Pillai
Chairman

Agenda Item No.53.4

Consideration of Additional Agenda items

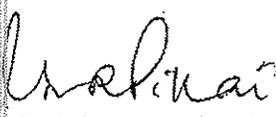
Additional Agenda Item No. 53.4.1
File No. 670/A2/2012/KCZMA/S&TD

Construction of Convention and Exhibition Centre at Mulavukad

KCZMA in its 52nd meeting considered the proposal for the construction of Convention and Exhibition Centre at Mulavukad, and as decided a committee was constituted for examining the case. The report of the sub committee is placed before the KCZMA for consideration.

The KCZMA discussed the report submitted by the committee constituted to visit the site and interact with the port authorities and project proponents. It observed that the reclamation was done by the Port Trust during 2005-06 as part of their operational requirements. ~~CRZ Notification No. 114/2004 (Pt. II) 109~~. Later the Port authorities have obtained permission from the Ministry of Shipping on 4th June 2010 for leasing out the land for 30 years with an option for renewal after 30 years at the then prevailing rates. An area of 10.59 ha of land in the Mulavukad Island adjacent to the Bolghatty was leased out to the Proponent and thus the proposal of the project Lulu Convention and Exhibition Centre with a built up area of 1,49,820 m² came up before the KCZMA for CRZ Clearance. After detailed discussion considering various ecosystem aspects, the KCZMA decided that the area being part of an island, the CRZ landward extends only upto 50 m and the proposal is for construction of non-port related activity envisaged outside the 50 m, the proposal can be recommended subject to the general conditions and that no untreated wastes will be let into the water body and to forward the same to the SEIAA. To ensure strict compliance to the conditions, the proponent shall submit report to the local body and the local body shall verify and report to the KCZMA that the conditions are complied.


Dr. K K Ramachandran
Member Secretary


Prof. W N. Rajasckharan Pillai
Chairman

**Additional Agenda Item No. 53.4.2.
File No. 427/A3/2012/KCZMA/S&TD**

**Judgement in WP(C) No. 5845/12 filed by Shri. Jose George, Kadavil Field
Villa, Pallippuram Post, Cherthala - 688 541**

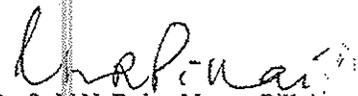
Shri. Jose George filed WP(C) No. 5845/12 praying for the entitlement to make construction in his property after leaving a distance of 50 metres from HTL and also for assigning building number on the basis of his application dt. 02.12.2011. The Hon'ble High Court in its judgement dt. 27.09.2012 disposed of above WP(C) with the following directions.

- i) The petitioner shall submit a proper application to the 3rd respondent supported by all necessary documents, seeking permission of the said authority for regularization of the construction made by him, within a period of two weeks of the date of receipt of a copy of this judgement.
- ii) The 3rd respondent shall on receipt of such application, if submitted, consider the same in accordance with the provisions of the CRZ Notification of 2011 and other notifications, if any applicable, and shall pass final orders thereon, as expeditiously as possible and at any rate within a period of six weeks of the date of receipt of the application of the petitioner.

2) The petitioner filed a representation instead of proper application as per the Court direction. The report of the Env't. Group is as follows:
"The construction is made after 85m from HTL of backwater. The court has directed to consider the proposal based on 2011 Notification. The construction being 85m from HTL will be outside NDZ as per the judgement. As the area is a part of the island and as per judgement the site will be outside the purview of the CRZ Notification based on the following facts.

- (a) The area is in a backwater island.
- (b) The CRZ in the backwater islands are provided with special dispensation and it is now reduced to 50m landward of HTL.


Dr. K K Ramachandran
Member Secretary


Prof. V. N. Rajasekharan Pillai
Chairman

Based on the order of Hon'ble High Court the construction made by the petitioner will be outside CRZ (CRZ Notification 2011 Clause 8 V2). It may also be noted that whatever constructions made in violations of CRZ Notification 1991 will remain as violation of CRZ Notification. Such violations cannot be resolved by provisions of CRZ Notification 2011.

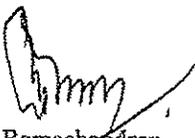
The KCZMA discussed the case in detail with respect to the provisions in the CRZ Notification of 2011. As per Clause 8 V 2 of the CRZ Notification of 2011—

“CRZ for Kerala

In view of the unique coastal systems of backwater and backwater islands alongwith space limitation present in the coastal stretches of the State of Kerala, the following activities in CRZ shall be regulated as follows, namely:-

- (i) all the islands in the backwaters of Kerala shall be covered under the CRZ notification; (ii) the islands within the backwaters shall have 50mts width from the High Tide Line on the landward side as the CRZ area;
- (iii) within 50mts from the HTL of these backwater islands existing dwelling units of local communities may be repaired or reconstructed however no new construction shall be permitted;
- (iv) beyond 50mts from the HTL on the landward side of backwater islands, dwelling units of local communities may be constructed with the prior permission of the Gram panchayat;
- (v) foreshore facilities such as fishing jetty, fish drying yards, net mending yard, fishing processing by traditional methods, boat building yards, ice plant, boat repairs and the like, may be taken up within 50mts width from HTL of these backwater islands.”

It was also noted that whatever constructions made in violation of the provisions of CRZ Notification of 1991 will remain as violation of CRZ and such violations cannot be resolved by provisions of CRZ Notification 2011. The authority therefore finds the construction as violation of CRZ and hence the authority observed that the petition be disposed of treating the construction as a violation of CRZ and decided to take action as per the Government of India Memorandum of 2012.



Dr. K K Ramachandran
Member Secretary



Prof. V N. Rajasekharan Pillai
Chairman

Additional Agenda Item No. 53.4.3.**File No. 977/A3/2012/KCZMA/S&TD****Reconstruction of Residential building by Sri. B.Sethu, Pallinada Puthen Veedu, Vazhamuttom, Pachalloor.P.O, Thiruvananthapuram**

Reconstruction of existing building bearing No. TC/67/2337 with a plinth area of 72.16m², single storied and FAR is 0.33 in Survey No. 2/7-2/8 of Thiruvallam Village of Thiruvananthapuram Corporation. The area is in CRZ III. The site lies 50m from the river in the east and 200m from the sea in the West. It is also shown that the proposed reconstruction and the existing construction bearing No. TC/67/2337 area of same plinth area (72.16m²).

The KCZMA discussed the case in detail and decided to grant clearance for the construction.

Additional Agenda Item No. 53.4.4.**File No. 1867/A3/2012/KCZMA/S&TD****Construction of Ice Plant by Shri. John James, Ittikatharaveedu, Puthupally.P.O, Kayamkulam, Alappuzha**

Construction of a building for Ice Plant in Alappad Panchayath with a plinth area of 267.81m², FAR 0.25 and establishment of Ice Plant in Sy. No. 158/17-2, 157/1/4/2, 158/18/2, 157/1/5/2 of Alappada Village, Kollam. Extent: 10.49 Ares.

The area being in panchayath the CRZ area other than CRZ I & IV are CRZ III. The proposed area is in CRZ III and it is No Development Zone.

As per CRZ Notification 2011 Clause 8 III(A)(ii)(1) facilities required for local fishing communities such as Ice Plants, Ice Crushing units, traditional boat building yards etc. are permissible in the No Development Zone of CRZ III.

The KCZMA discussed the case in detail and decided to grant CRZ clearance subject to the conditions laid in the CRZ Notification of 2011.


Dr. K K Ramachandran
Member Secretary


Prof. V N. Rajasekharan Pillai
Chairman

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Additional Agenda Item No. 53.4.5.

File No. 1918/A3/2012/KCZMA/S&TD

**Construction of Building for Boat repairing yard by Shri. George,
Ittikathara, Puthuppally South P.O, Kayamkulam**

Construction of Boat repairing yard. The plinth area of the building is 46.50M² in Sy. No. 28/3, 28/4, 28/2-6, 28/5-7 of Puthupally Village, Devikulangara Panchayath by Shri. George, Ittikathara, Puthuppally South.P.O, Kayamkulam. The area is in an island in the backwaters of Kayamkulam. The CRZ of 50m from HTL landward in backwater islands as per CRZ Notification of 2011. This area is classified as CRZ III No Development Zone and is marked in Map No.19 of approved KCZMA. As per CRZ Notification 2011, Clause 8 III A (iii) (i) constructions of traditional boat building yards can be permitted in the No Development Zone of CRZ III. Being an inland in the backwater the provisions as per Clause 8 V 2 can also be applied. Here also traditional Boat building yard are permissible. The construction of building is outside CRZ limits. The activities like boat repairing is permissible in CRZ area.

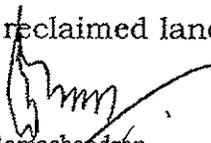
The KCZMA discussed the case in detail and decided to grant CRZ clearance subject to the condition that not waste will be dumped in the CRZ area or let out to the water body.

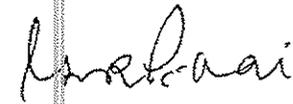
Additional Agenda Item No. 53.4.6.

File No. 1974/A2/2012/KCZMA/S&TD

DEVELOPMENT OF PONNANI PORT, MALAPPURAM

The port is proposed to be developed towards south of Bharathapuzha River near Ponnani lighthouse. On the northern side of the project site, Tirurpuzha River joins with Bharathapuzha River and together drains into the Arabian Sea. The port is proposed to be developed on predominantly reclaimed land of about 82 HA (203 acres) in Phase 1 and 206.1 HA (510 acres) in Phase 1A (cumulative) which will be the master plan area. An area of approximately 12.14 Ha (30 acres) of unsurveyed coastal land belonging to GoK has been allotted to MPPL for development of Ponnani Port and remaining land will be reclaimed land.


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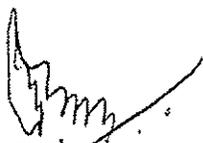
The area is within the Ponnani Municipal Limits. It is on the north side of the coastal stretch between the tidal inlets of Kanjiramukku River and Bharathapuzha river. The North Breakwater is located at Latitude $10^{\circ} 46' 25''$ N and Longitude $75^{\circ} 54' 37''$ E and South Breakwater is located at Latitude $10^{\circ} 45' 31''$ N and Longitude $75^{\circ} 55' 05''$ E.

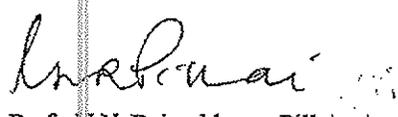
The Environment Clearance from Government of India is required for the project the cargo handling capacity is more than 5mTPA.

The water requirement for the proposal is stated to be 785 KLD and the source is shown from Bharathapuzha.

- i) Power requirement during construction Phase is 3 MW and during Operational Phase is 10 MW.
- ii) Solid waste management is not clearly spelled out. It needs a system that will mitigate the management issues.
- iii) New rail and roads are proposed to the area.

Construction of port is a permissible in CRZ. Clause 4.1(f) of CRZ notification 2011 states that 'construction and operation for ports and harbours, jetties, wharves, quays, slipways, ship construction yards, breakwaters, groynes, erosion control measures are regulated and can be permitted'. The Clause 4.1 (b) states that 'for those projects which are listed under this notification and also attract EIA notification, 2006 (S.O.1533 (E), dated the 14th September, 2006), for such projects clearance under EIA notification only shall be required subject to being recommended by the concerned State or Union territory Coastal Zone Management Authority' ports with more than 5 TPA handling capacity are categorised as Category A and hence requires EIA clearance from MoEF. Land reclamation is proposed in the area. As per the provisions of CRZ notification 2011 clause 3 (IV) Land reclamation, bunding or disturbing the natural course of seawater except those, required for setting up, construction or modernisation or expansion of foreshore facilities like ports, harbours, jetties, wharves, quays, slipways, bridges, sealink, road on stilts, and such as meant for defence and security purpose and for other facilities that are essential for activities permissible


Dr. K K Ramachandran
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Chairman

under the notification; are prohibited. Hence land reclamation for the development/construction of port can be permitted.

The KCZMA discussed the case in detail. The area proposed for the project is a low eroding beach as per the shoreline map prepared by Anna University and approved by MoEF. The KCZMA decided to recommend to the proposal to MoEF for consideration.

Additional Agenda Item No. 53.4.7.

File No. 1944/A3/2012/KCZMA/S&TD

CRZ Clearance for the Pilot Project at Mathipuram Slum, Vizhinjam, Thiruvananthapuram

The 46th KCZMA meeting decided to recommend the project at Mathipuram, Vizhinjam, Thiruvananthapuram for Rehabilitation of Slum to Government of India. The Construction proposed is a G+2 structure to accommodate 1032 families living in 420 huts in Mathipuram, Valiyaparamba, Pattani and Kappachal slum area, which are Coastal area and are quite unhygienic. The inhabitants are fisherfolk depending on the sea for their livelihood. It is not practical to rehabilitate the families elsewhere. The construction of dwelling units for each family is strictly in adherence to the Government of India guidelines to ensure all basic amenities such as roads, drinking water, drainage, sewerage, community centre, Anganwadies etc. The project is envisaged under the Rajiv Awas Yojana. However, the Government of India, Ministry of Environment & Forests vide their letter dated, 11.04.2012, adhering to 8 III B (vii) of the CRZ Notification 2011, informed that the proposal is not permissible under CRZ Notification 2011. The Hon'ble Chief Minister of Kerala took up the matter with the Minister of State for Environment & Forests to reconsider the decision of Government of India in consideration of the fact that the Corporation is constrained to accommodate, within the limited area of 3 acres of land available, 1032 houses in 84 blocks in 3 floor (Ground + 2) in the present slum area after demolishing the existing hut and it is not practical to rehabilitate the fisher folk inhabitants in any other place.

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Member Secretary

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The Secretary, Corporation has requested to recommend the proposal in the wake of the revision of CZMP.

The KCZMA discussed the case in detail. The area being considered for the said project is already part of the Thiruvananthapuram Corporation and would be considering categorization of the said area under CRZ II once the revised KCZMP is submitted for Government approval. The KCZMA opined that the said project is a serious effort from the Government of Kerala to eradicate slum. The fact that the Corporation is constrained to accommodate, within the limited area of 3 acres of land available, 1032 houses in 84 blocks in 3 floor (Ground + 2) in the present slum area after demolishing the existing hut and it is not practical to rehabilitate the fisher folk inhabitants in any other place. Considering the above facts, KCZMA decided to recommend to MoEF the project for clearance and request reconsideration.



Dr. K K Ramachandran
Member Secretary



Prof. V N. Rajasckharan Pillai
Chairman

- 10 का.आ. 562(अ) तारीख 26 फरवरी 2014;
11. का.आ. 637(अ) तारीख 28 फरवरी 2014;
12. का.आ. 1599(अ) तारीख 25 जून 2014;
13. का.आ. 2601(अ) तारीख 7 अक्टूबर 2014;
14. का.आ. 2600(अ) तारीख 9 अक्टूबर 2014
15. का.आ. 3252(अ) तारीख 22 दिसम्बर 2014;
16. का.आ. 382(अ) तारीख 3 फरवरी, 2015;
17. का.आ. 811(अ) तारीख 23 मार्च, 2015;
18. का.आ. 996(अ) तारीख 10 अप्रैल 2015;
19. का.आ. 1142(अ) तारीख 17 अप्रैल 2015;
20. का.आ. 1141(अ) तारीख 29 अप्रैल 2015;
21. का.आ. 1834(अ) तारीख 6 जुलाई 2015;

**MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE
NOTIFICATION**

New Delhi, the 15th January, 2016

S.O. 141(E).—Whereas in exercise of the powers conferred by sub-section (1) and clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986 (29 of 1986), a draft notification for making certain amendments in the Environment Impact Assessment Notification, 2006, issued vide number S.O. 1533(E), dated the 14th September 2006, was published under sub-rule (3) of rule (5) of the Environment (Protection) Rules, 1986, vide number S.O. 2588(E), dated 22nd September, 2015, inviting objections and suggestions from all persons likely to be affected thereby, within a period of sixty days from the date of publication in which copies of Gazette containing the said notification were available to the public;

And whereas, copies of said notification were made available to the public on 22nd September 2015;

And whereas, all objections and suggestions received in response to the above mentioned draft notification have been duly considered by the Central Government;

And whereas, in pursuance to the order of Hon'ble Supreme Court dated the 27th February, 2012 in I.A. No.12-13 of 2011 in Special Leave Petition (C) No.19628-19629 of 2009, in the matter of Deepak Kumar etc. Vs. State of Haryana and Others etc., prior environmental clearance has now become mandatory for mining of minor minerals irrespective of the area of mining lease;

And whereas, as a result of the above said Order of Hon'ble Supreme Court, the number of cases which are now required to obtain prior environmental clearance has increased substantially;

And whereas, the Hon'ble National Green Tribunal, vide its order dated the 13th January, 2015 in the matter regarding sand mining has directed for making a policy on environmental clearance for mining leases in cluster for minor minerals;

And whereas, the State Governments have represented for streamlining the process of environmental clearance for mining of minor mineral;

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15.	Is proposed mining site located over or near fissure / fracture for ground water recharge	
16.	Whether the proposal involves approval or clearance under the following Regulations or Acts, namely:- (a) The Forest (Conservation) Act, 1980; (b) The Wildlife (Protection) Act, 1972; (c) The Coastal Regulation Zone Notification, 2011. If yes, details of the same and their status to be given.	
17.	Forest land involved (hectares)	
18.	Whether there is any litigation pending against the project and/or land in which the project is propose to be set up? (a) Name of the Court (b) Case No. (c) Orders or directions of the Court, if any, and its relevance with the proposed project.	

(Signature of Project Proponent
Along with name and address)

APPENDIX - IX

[See paragraph 7(i)(B)]

EXEMPTION OF CERTAIN CASES FROM REQUIREMENT OF ENVIRONMENTAL CLEARANCE

The following cases shall not require prior environmental clearance, namely:-

1. Extraction of ordinary clay or sand, manually, by the Kumbhars (Potter) to prepare earthen pots, lamp, toys, etc. as per their customs.
2. Extraction of ordinary clay or sand, manually, by earthen tile makers who prepare earthen tiles.
3. Removal of sand deposits on agricultural field after flood by farmers.
4. Customary extraction of sand and ordinary earth from sources situated in Gram Panchayat for personal use or community work in village.
5. Community works like de-silting of village ponds or tanks, construction of village roads, ponds, bunds undertaken in Mahatama Gandhi National Rural Employment and Guarantee Schemes, other Government sponsored schemes, and community efforts.
6. Dredging and de-silting of dams, reservoirs, weirs, barrages, river, and canals for the purpose of their maintenance, upkeep and disaster management.
7. Traditional occupational work of sand by Vanjara and Oads in Gujarat vide notification number GU/90(16)/MCR-2189(68)/5-CHH, dated the 14th February, 1990 of the Government of Gujarat.
8. Digging of well for irrigation or drinking water.
9. Digging of foundation for buildings not requiring prior environmental clearance.
10. Excavation of ordinary earth or clay for plugging of any breach caused in canal, nala, drain, water body, etc., to deal with any disaster or flood like situation upon orders of District Collector or District Magistrate.
11. Activities declared by State Government under legislations or rules as non-mining activity with concurrence of the Ministry of Environment, Forest and Climate Change, Government of India.

APPENDIX - X

[See paragraph 7 (ii) (a)]

PROCEDURE FOR PREPARATION OF DISTRICT SURVEY REPORT

The main objective of the preparation of District Survey Report (as per the Sustainable Sand Mining Guideline) is to ensure the following:

Identification of areas of aggradations or deposition where mining can be allowed; and identification of areas of erosion and proximity to infrastructural structures and installations where mining should be prohibited and calculation of annual rate of replenishment and allowing time for replenishment after mining in that area.

The report shall have the following structure:

1. Introduction
2. Overview of Mining Activity in the District
3. The List of Mining Leases in the District with location, area and period of validity
4. Details of Royalty or Revenue received in last three years
5. Detail of Production of Sand or Bajari or minor mineral in last three years
6. Process of Deposition of Sediments in the rivers of the District
7. General Profile of the District
8. Land Utilization Pattern in the district: Forest, Agriculture, Horticulture, Mining etc.

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

WEDNESDAY, THE 18TH DAY OF DECEMBER 2019/27TH AGRAHAYANA,
1941

WP(C).No.31642 OF 2019(E)

PETITIONER:

S.DILEEP,
AGED 50 YEARS
S/O.LATE SHAHUL HAMEED, SUNINA MANZIL, RUBY
NAGAR, CHALI, THIRUVANANTHAPURAM

BY ADVS.
SRI.R.SUNIL KUMAR
SMT.A.SALINI LAL

RESPONDENTS:

- 1 UNION OF INDIA,
REPRESENTED BY ITS SECRETARY, MINISTRY OF
ENVIRONMENT, FOREST AND CLIMATE CHANGE, INDIRA
PARYAVARAN BHAVAN, ALI GANJ, JORBAGH ROAD,
NEW DELHI-110003
- 2 STATE OF KERALA
REPRESENTED BY SECRETARY DEPARTMENT OF REVENUE,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-
695001
- 3 HARBOUR ENGINEERING DEPARTMET
REPRESENTED BY ITS SECRETARY, GOVERNMENT
SECRETARIAT, STATUE, THIRUVANANTHAPURAM-695001

WP(C) No.31642/19

-:2:-

4 KERAL COASTAL ZONE MANAGEMENT AUTHORITY
REPRESENTED BY IS MEMBER SECRETARY, DIRECTORATE
OF ENVIRONMENT AND CLIMATE CHANGE, 4TH FLOOR,
KSRTC BUS TERMINAL, THAMPANOOR,
THIRUVANANTHAPURAM-695001

5 ADANI VIZHINJAM PORTS (P) LTD,
REPRESENTED BY ITS MANAGING DIRECTOR,
VIPANCHIKA TOWERS, THYCAUD,
THIRUVANANTHAPURAM-695014

R1 BY ADV. SHRI.P.VIJAYAKUMAR, ASG OF INDIA
R2-3 BY SRI.K.V.SOHAN, STATE ATTORNEY
R4 BY ADV. SRI.M.P.PRAKASH
R5 BY ADV. ROSHEN D.ALEXANDER
R5 BY ADV. SMT.TINA ALEX THOMAS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
2.12.2019, THE COURT ON 18.12.2019 DELIVERED THE FOLLOWING:

WP(C) No.31642/19

-:3:-

J U D G M E N T

Dated this the 18th day of December 2019

Shaffique, J.

This writ petition is filed in the form of a Public Interest Litigation alleging that the 5th respondent has constructed a structure at Muthalapozhi Fishing Harbour at Chirayinkeezhu, Thiruvananthapuram in violation of Coastal Regulation Zone Notification 2019. Petitioner seeks for a direction to respondents 1 to 4 viz., the Central Government, State Government, the Harbour Engineering Department and the Kerala Coastal Zone Management Authority (KCZMA) to demolish the said structure and for other consequential reliefs. Petitioner points out that the 5th respondent who had undertaken the construction of Vizhinjam multipurpose seaport at Thiruvananthapuram pursuant to an agreement executed with the State of Kerala during 2015, had decided to construct a mini barge load out facility at Muthalapozhi located at Perumathura, Thiruvananthapuram. They constructed a new boat jetty by trespassing into an area of more

WP(C) No.31642/19

-:4:-

than 15 acres of seashore. A concrete road was also constructed violating all the norms. The same was constructed exclusively for transportation of granite. Earlier a writ petition came to be filed as WP(C) No. 8013/2019 alleging that construction was done without permission from the KCZMA. By an interim order dated 4/6/2019, this Court had directed the 5th respondent not to make any constructions without further directions or without clearance from KCZMA. Ext.P1 is the said order. It is pointed out that, pending the said case, KCZMA had granted clearance, which is produced as Ext.P2. WP(C) No.8013/19 was therefore dismissed by observing that, in so far as permission had already been obtained, there is no reason to proceed with the writ petition. However, when it was contended that the construction was done in an illegal manner and the Coastal Zone Management Authority was not entitled to regularise the same, this Court observed at paragraphs 4 and 5 as under:

"4. Learned counsel for the petitioner contended that the permission from the 5th respondent was obtained at a belated stage, after completing the construction. Therefore it is contended that the construction was done in an illegal manner and the 5th respondent was not entitled to regularize the same. We do not think

-:5:-

that such an issue is germane for consideration in this writ petition, which was filed on the premise that the entire construction is going on without obtaining any permission. If there occurs any illegality in the action of the 8th respondent in granting such permission, it is a separate issue which needs to be agitated in appropriate proceedings

5. Since the cause of action raised in this Writ Petition does not survive, in view of the permission already granted, we do not think it necessary to pursue further the above Writ Petition, which is filed as pro bono publico. Hence, the above Writ Petition is hereby dismissed."

2. Learned counsel for the petitioner submits that the contention now urged by the petitioner is that the Harbour Engineering Department had filed an application for getting clearance before KCZMA in the year 2018 which was considered in the meeting of KCZMA on 10/8/2018. In the meantime, 5th respondent started construction of the facility without sanction and it is at that point of time, a writ petition came to be filed. A show cause notice was issued by KCZMA to the Harbour Engineering Department on 28/5/2019 as to why constructions were being proceeded. In the 102nd meeting of KCZMA held on 9/5/2019, the following decision had been taken:-

"Decision: *As per the request of project proponent,*

-:6:-

the proposal for the construction of temporary barge load out facility along with the transit stockyard for rocks shall be recommended to MoEF & CC to obtain Clearance. A notice shall be issued to Harbour Engineering Department for the construction of road and Jetty without obtaining prior clearance from the Authority by invoking Section 5 of the Environment Protection 1986."

3. It is pointed out that, in the 103rd meeting held on 7/6/2019, the KCZMA had taken the following decision:-

"Decision: The Chief Engineer, Harbour Engineering Department submitted a request vide letter No.D1/10360/09/CE dated 30.05.2019 to reconsider the decision of KCZMA in its 102nd meeting on the said project. The request was examined in detail and KCZMA decided to issue the clearance of Temporary Barge Load out Facility along with Transit Stock yard project at State Level Authority Level itself. It was also decided that the KCZMA decision on recommending the application to MoEF & CC stands cancelled."

4. It is pursuant to the aforesaid decision that Ext.P2 order came to be passed which is now being impugned.

5. The 3rd respondent had filed a memo adopting the statement filed in WP(C) No.8013/2019. In the said statement, it is stated at paragraphs 3 to 6 as under:-

"3 .The site of the Muthalapozhi Fishing Harbour is at the

WP(C) No.31642/19

-:7:-

river mouth of Vamanapuram River which is flowing into the Arabian Sea. The Southern side of the Pozhi (Estuary) is Perumathura and the northern side is Thazhampally. The Government of Kerala during 1997 developed Muthalapozhi as a Fishing Harbour with Environmental Clearance from Government of India. True copy of the Environmental Clearance issued by the Government of India, Ministry of Surface Transport in consultation with Ministry of Environment and Forest for developing Muthalapozhi Fishing Harbour is produced herewith and marked as **Annexure R3(a)**

4. Vizhinjam was a Minor Port. The Government of Kerala decided to develop it into a Major Port during 2013 and sought Environmental Clearance from Ministry of Environment and Forest. Comprehensive study report was submitted for the purpose of obtaining Environmental Clearance before the Ministry of Environment and Forest. In the comprehensive study report itself it was contemplated that necessary quarry materials for the development of Vizhinjam Major Port Project will be made available by transporting stones by road from the quarries situated at Kadavila, Kilimanoor to Muthalapozhi Harbour and from Muthalapozhi Harbour, it will be transported in barges to the project site of Vizhinjam proposed Major Port. True copy of the relevant paragraph 4.1.3.1 of the comprehensive Environment Impact Assessment Study (EIA) for Vizhinjam Project is produced herewith and marked as **Annexure R3(b)**. True copy of the Environmental & CRZ Clearance granted by Ministry of Environment and Forest based on Annexure R3(b) study report is produced

herewith and marked as **Annexure R3(C)**.

5. The contract work for development of Vizhinjam Port into Major Port was conferred on Adani Vizhinjam Port Private Limited (AVPPL). For transporting granite stones using Muthalapozhi Harbour to Vizhinjam Port, an MoU was entered into between Adani Vizhinjam Port Pvt. Ltd. and Harbour Engineering Department of Kerala. Copy of the MoU between Adani Vizhinjam Port Pvt. Ltd. and Government of Kerala is already produced by respondent No. 7 and is marked as Exhibit R7(d).

6. It is as per Exhibit R7(d), the load out facility through Muthalapozhi is permitted by the Government of Kerala, It is submitted that there was already a CRZ & Environmental Clearance for making use of Muthalapozhi for transportation of stones for Vizhinjam Port. Subsequently, The Kerala Coastal Zone Management Authority in its 103 meeting granted CRZ clearance for barged load out facility for Vizhinjam Port Project. Copy of the letter dated 12.06.2019 issued by The Kerala Coastal Zone Management Authority to the Chief Engineer, Harbour Engineering Department intimating that CRZ Clearance is granted by the KCZMA in its 103 meeting held on 7.6.2019 is produced by respondent No.7 and marked Exhibit R7(i)".

6. The 5th respondent has also filed a memo adopting the contentions in the counter affidavit filed by the 7th respondent in WP(C) No.8013/2019 *inter alia* stating at paragraphs 4 to 8 as under:-

"4. It is submitted that the 7th Respondent was

WP(C) No.31642/19

-:9:-

selected as the Concessionaire for Design, Build, Finance, Operate and Transfer (DBFOT) of Vizhinjam Seaport Project which is a major infrastructure project by Government of Kerala which is developed in Public Private Partnership (PPP) mode. The award of the project was the result of a Multi Stage Global Tender Process. Finally, the 23rd meeting of the Empowered Committee of Vizhinjam Port Project held on 07.05.2015 unanimously decided to recommend to the Board of Directors of Vizhinjam International Seaport Ltd. and Government of Kerala to accept the bid submitted by M/s. Adani Ports and Special Economic Zone Ltd. and issued the Letter of the Award.

5. By G.O.(MS) No. 35/2015/F&PD dated 13.07.2015, Government of Kerala had approved the bid submitted by M/s. Adani Ports and Special Economic Zone Ltd. for a grant of 1635 Crores. The estimated project cost for Phase I of the project is Rs. 5552 Crores. This comprises of Rs.1463 Crores of funded work (including construction of breakwater) and Rs.4089 Crores of PPP (Public Private Partnership) Component. The funded work which involves construction of breakwater and a fishing harbour should be funded by Government of Kerala and constructed by Adani Vizhinjam Port Pvt. Ltd. The specification of breakwater as per the Concessionaire Agreement includes a minimum length of 3100 meters with the breakwater top road having a width of 10 meters. The cost assessed for breakwater alone will be Rs.1387 Crore. It is also worthwhile to mention that as per the project completion schedule, the scheduled completion day

-:10:-

shall be 1460 days (4 years) from the appointed date. The Concession agreement was entered in to on 17.08.2015. AVPPL began Construction of the port in the year 2015 i.e. on 5.12.2015 which is narrated as the Appointed date. As per the agreement, the appointed date is a date on which financial close is achieved and financial close is within 270 days from the date of the agreement. Thus, as per the Concession agreement, Adani Vizhinjam Port Ltd. have to complete construction of breakwater by December 2019. The order issued this Hon'ble Court on 04.06.2019, seriously prejudiced AVPPL as as the Government since the same affects the proposed construction schedule as per the Concession Agreement. Any disruption of work in any part of the project will adversely affect the entire project and will push back the scheduled completion further.

6. It is submitted that the environment impact assessment study identified quarries near Kilimanoor area as a potential source of rocks for construction of breakwater which requires appox 70 lakhs tons of rocks. Accordingly AVPPL made an application to Additional Chief Secretary, Fisheries & Harbour Engineering vide letter AVPPL/GoK/2017-18/283 dtd. 24.11.2017 to permit transportation of rock through Muthalapozhi fishing harbour by providing load out facility at Muthalapozhy. A true copy of the letter bearing no. AVPPL/GoK/2017-18/283 dtd. 24.11.2017 is produced and marked as **Exhibit R7(a)**.

7. In furtherance of Ext.R7(a) letter, a meeting was convened by Additional Chief Secretary, Fisheries & Ports among Chief Engineer, Harbour Engineering

-:11:-

Department, Director of Fisheries and AVPPL to discuss about the proposal of AVPPL to construct loadout facility at Muthalapozhi fishing harbour. On 16.01.2018, AVPPL submitted a preliminary layout of the Barge Loading facility and requested to carrying out survey work vide letter no AVPPL/GoK/2017-18/319. Further on 17.01.2018, another meeting was held in the chamber of Chief Engineer, Harbour Engineering Department wherein Chief Engineer, Harbour Engineering Department suggested certain changes in the submitted layout. AVPPL submitted the revised layout to Chief Engineer, Harbour Engineering Department vide AVPPL letter AVPPI/GoK/2017-18/323 on 19.01.2018.

8. On 24.01.2018 AVPPL requested Vizhinjam International Seaport Ltd.; which is the special purpose vehicle company created by Government of Kerala for the purpose of facilitating the Concessionaire, to arrange necessary permission for construction of a loadout facility at Muthalapozhi vide letter no AVPPL/GoK/2017- 18/332 considering the following advantages to Muthalapozhi Fishing harbour and State of Kerala.

- The approach channel of Muthala Pozhi harbor will be dredged by AVPPL facilitating the improved navigation in the existing approach channel.
- The loadout jetty proposed to be constructed by AVPPL can be handed over to the concerned authority, which can be used by them in future either for fishery or tourism activity or any other facility deemed fit.
- The rock storage area levelled and developed by

AVPPL can also be used for any suitable purpose in future after AVPPL's operation ends.

- The material dredged from the existing channel could be disposed on the northern side of channel, which will facilitate reduction in the erosion on the northern side.*
- Backup yard developed on the southern side can be used in future for further expansion of the tourism facility”.*

7. The learned counsel for the petitioner however contended that in so far as the area comes under CRZ 1 category, constructions can be done only with prior the permission of KCZMA. However construction was made without prior sanction. That apart, it is contended that the new Coastal Regulation Zone Notification, 2019 was published on 18/1/2019 which overrides the 1991 and 2011 notifications. The Coastal Zone Management Plan was approved on 28/2/2019 and the maps were uploaded in the website of KCZMA from July, 2019. Therefore, the 2019 CRZ Regulations govern the field. It is pointed out that the present construction comes with CRZ-1-B, the inter tidal zone and any development activities of permissible projects require clearance from Ministry of Environment, Forests and Climate Change based on the recommendations of the

Coastal Zone Management Authority. Though the KCZMA had recommended clearance from Ministry of Environment, Forests and Climate Change, during the next meeting, without even getting any such clearance, the impugned decision had been taken. It is also contended that regularisation is not permissible if any construction had been made without obtaining the clearance and the same will have to be demolished.

8. We also heard State Attorney Sri.K.V.Sohan on behalf of State and its authorities, Sri.M.P.Prakash, learned standing counsel for KCZMA and Sri. Roshan D.Alexander, learned counsel for the 5th respondent.

9. But from the factual aspects involved in the matter as borne out from the counter affidavit filed in this case, the following facts are clear:-

By Government Order dated 13/7/2015, the Government of Kerala had accepted the bid submitted by the 5th respondent M/s Adani Ports and Special Economic Zone Limited (M/s Adani for short) for design, build, finance, operate and transfer of Vizhinjam Sea Port Project, a major infrastructure project by Government of

Kerala. The total project cost of Phase I is ₹5552 crores. The work includes construction of breakwater and a fishing harbour. The schedule completion was fixed as 4 years from the appointed date. As per the agreement, construction of break water has to be completed by December, 2019. Environment impact study conducted by the competent authority identified quarries near Killimanoor area as a potential source of rocks for construction of breakwater. The project requires at least 70 lakh tons of rocks. A request was made by M/s Adani for transportation of rock through Muthalapozi fishing harbour by providing load out facility at Muthalapozi as per letter dated 25/4/2017 pursuant to which a detailed study was conducted. Later the layout had to be revised after consultation with all the stakeholders and accordingly by letter dated 03/04/2018, M/s Adani requested for a joint meeting with KCZMA, Chief Engineer, Harbour Engineering Department and other stakeholders. Accordingly, an MoU was prepared for construction of the proposed barge load out facility. It was also decided that the Harbour Engineering Department would apply for CRZ clearance. An application for CRZ clearance was submitted on 13/9/2018 and KCZMA in its 98th meeting which is

produced as Ext.R7(e) directed remittance of scrutiny fee and a request was made to give a detailed presentation on the project. The scrutiny fee was remitted on 5/1/2019 and finally CRZ clearance was given as per order dated 12/6/2019. In fact while the application was being considered, KCZMA has issued notice dated 28/5/2019 to the Chief Engineer HED calling for explanation why constructions were carried out in CRZ area without obtaining permission from KCZMA as per CRZ notification 2011 and show cause why actions were not taken in the matter. A reply dated 30/5/2019 was sent by the Chief Engineer to the Member Secretary of KCZMA stating that the constructions were carried out before getting clearance to avoid further casualties of fishermen which was happening in the approach channel of the harbour during the past years. Their fishing boats were getting into trouble during monsoon period and used to sink. It is pointed out that during the previous monsoon, dredging work could not proceed and two fishermen lost their lives. It was pointed out that dredging work was carried out only to save human life in the next monsoon.

10. From the aforesaid facts, it is rather clear that the

application was submitted even before 2019 CRZ notification came into existence and even according to KCZMA, the relevant provision that applies is CRZ Notification of 2011. Therefore, the contentions based on 2019 CRZ notification has no basis. In the 2011 CRZ notification, the KCZMA is entitled to give clearance for any activity within the CRZ if it requires water front and foreshore facilities which includes construction under Regulation 4(i)(f) i.e., construction and operation for ports and harbours, jetties, wharves, quays, slipways, ship construction yards, break waters, groynes, erosion control measures and salt works are all permissible activities for which MOEF permission is not required. In this case, what we find from the materials placed on record is that CRZ clearance was given for development of Muthalapozhi harbour which was already in existence. The work includes dredging of the approach channel construction of a load out jetty which could later be used for fishery and tourism activity or any other facility, a rock storage area which could also be used for suitable purpose in the future and the dredged material to be deposited on the northern side of the channel facilitating reduction in the erosion on the northern side and construction of

a backup yard on the southern side which could also be used for further expansion of the tourism facility.

11. In the light of the above discussion, we do not find that there is any illegality in the work being carried out by the 5th respondent in so far as CRZ clearance had already been issued by the competent authority. The work that was done prior to grant of clearance was dredging, which was highly required for the harbour activity to prevent danger to the fishermen community. At any rate, entire work was done after submission of the application. That apart, this is a major project of the Government of Kerala and necessary clearance had been obtained for the entire project from the competent authorities and that apart, the entire work had to be completed within a short time frame. That apart, all these works are carried out in larger public interest, which should always be kept in mind by the Courts to ensure that if at all there is some irregularity, taking into consideration the larger public interest, this Court should not interfere in such matters.

12. In the project report prepared for the purpose of Environment Impact Assessment study (EIA), Ministry of

Environment, Forests and Climate Change had already given clearance. The project report includes transportation of stones by road from quarries situated at Kadavila, Kilimanoor to Muthalpozhi harbour and from Muthalpozhi harbour, it will be transported in barges to the project site of Vizhinjam proposed major port. Clause 4.1.3.1 of the project report takes care of such a situation. It is based on the said environment impact study that the Ministry of Environment and Forest had granted environmental and CRZ clearance as per communication dated 3/1/2014 for the Vizhinjam International Deepwater Multipurpose Seaport.

13. In the writ petition, it is contended that the Coastal Zone Management Plan (CZMP) was approved on 28/2/2019. The 2019 notification was published in the Gazette on 18/1/2019. As per Clause 6 of the 2019 Regulations, a Coastal Zone Management Plan has to be prepared by revising the CZMP prepared under CRZ notification, 2011 and it is stated that until the CZMP is revised or updated, the provisions of 2019 notification shall not apply and the CZMP as per the provisions of CRZ Notification, 2011, shall continue to be followed for appraisal

WP(C) No.31642/19

-:19:-

and CRZ clearance to such projects. It is seen from the website of *indiaenvironmentportal* that the guidelines for updation of CZMP to align with CRZ notification, 2019 has been issued as per notification dated 27th June, 2019. Apparently, the updated CZMP, as per CRZ Notification, 2019 has not been approved by the Ministry of Environment, Forest and Climate Change.

14. In the result, we do not think that this is a case in which any direction can be issued as sought for by the petitioner.

Writ petition is dismissed.

Sd/-

S . MANIKUMAR

CHIEF JUSTICE

Sd/-

A . M . SHAFFIQUE

JUDGE

Rp

APPENDIX

PETITIONER'S EXHIBITS:

- EXHIBIT P1 TRUE COPY OF THE INTERIM ORDER IN WP(C)NO.8013/2019
- EXHIBIT P2 TRUE COPY OF THE ORDER OF KERALA COASTAL ZONE MANAGEMENT AUTHORITY DATED 12.6.2019
- EXHIBIT P3 COPY OF THE JUDGMENT OF THIS HONOURABLE COURT IN WP(C)NO.8013/2019
- EXHIBIT P4 TRUE COPY OF THE RELEVANN PAGES MINUTES OF 98TH MEETING OF KCZMA DATED 15.10.2019
- EXHIBIT P5 COPY OF THE SHOW CAUSE NOTICE DATED 28.5.2019 ISSUED BY KCZMA
- EXHIBIT P6 TRUE COPY OF THE RELEVANT PAGES MINUTES OF 102ND MEETING OF KCZMA DATED 09/05/2019
- EXHIBIT P7 TRUE COPY OF THE RELEVANT PAGES MINUTES OF 103RD MEETING OF KCZMA DATED 07.06.2019

True Copy

PS to Judge

Rp

BEFORE THE NATIONAL GREEN TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

M.A. No. 803 of 2013
In
Original Application No 286 of 2013
And

M.A. No. 744 of 2013
In
Original Application 271 of 2013

IN THE MATTER OF:

Hassan M. Vs. State of Kerala & Ors.
And

Muhammed Saleem Vs. State of Kerala & Ors.

CORAM : HON'BLE MR. JUSTICE SWATANTER KUMAR, CHAIRPERSON
HON'BLE MR. JUSTICE U.D. SALVI, JUDICIAL MEMBER
HON'BLE MR. DR. D.K. AGRAWAL, EXPERT MEMBER
HON'BLE DR. R.C. TRIVEDI, EXPERT MEMBER

Present: Applicant: Mr. M. Gireesh Kumar, Advocate
Applicant in M.A. No. 28 of 2013: Mr. Smith P. Warriar, Adv.
Respondent No.1 to 4: Mr. Jogy Scaria and Mr. Arvind, Advocates

Orders of the Tribunal

Date and Remarks	Item Nos.	Orders of the Tribunal
5&6 January 2014	17,	<p><u>Original Application No 286 of 2013 & Original Application 271 of 2013</u></p> <p>These cases were passed over and directed to be taken up again as nobody was appearing on behalf of the Applicants, when the cases were called out. Still nobody is present on behalf of the Applicant.</p> <p>Learned counsel appearing for the Respondents submits that the Interim Orders passed by the Tribunal dated 27th September, 2013 have affected dredging operations, which they ought not to prohibit dredging for the purposes of clearing ship channels in the Port. Submissions made by the Respondents appear to be correct and reasonable and, therefore, we modify the interim Orders to the extent that they shall not apply to dredging being done for the purposes of clearing the channels and such works shall not be covered by our Interim Orders.</p> <p>List these cases on 21st February, 2014.</p> <p>After the above Order has been passed, Learned counsel appearing for the Applicant has put in appearance. Let his presence be recorded and the Order passed by the Tribunal be informed to him. He is accordingly informed.</p>

M.A. No. 28 of 2014 in Original Application 271 of 2013

This is an Application filed by Ponnani Taluk Manal Marketing & Processing Co. Op. Society for impleadment. According to the Applicant they have the substantial interest in the issues that are likely to be decided in main Application. There is no opposition to the Application.

Consequently the Application is allowed. The Applicant is permitted to be impleaded as Respondent. Necessary amendment be carried out and a copy of the amended Application be furnished to the parties. Reply to the main Application, if any, be filed within two weeks from today with advance copy to the Learned counsel appearing for the Applicant. Rejoinder thereto, if any, be filed within one week thereafter.

Accordingly, the M.A. No. 28 of 2014 stands disposed of.

.....CP
(Swatanter Kumar)

.....JM
(U.D. Salvi)

.....EM
(Dr. D.K. Agrawal)

.....EM
(Dr. R.C. Trivedi)

Annexure V
(42)

No:259/16

Port office, ,Kozhikode, Bepur

Date: 07/12/2020

From

Port Officer
Kozhikode

To:

Dr: Thirunavukkarasu
Ministry of environment, forests & Climate change
Regional office (Southern zone Bengaluru)

Sir,

Subject: OA 259 of 2016 in NGT Chennai – Sakeer vs State of Kerala.

Refer: 1) The order No: OA 259/16 dated 13/02/2020 passed by NGT
Chennai

2) Letter No: EP/12.7/53/NGT/KER/17 Dated 02.06.2020 of Deputy
Director General of Forests (C), MOEF&CC

I have gone through the draft report forwarded by you. In clause No. 6(v) it is stated that though the dredging is permissible activity under both CRZ Notification, 1991 and CRZ, 2011. But it was carried out without clearance from KCZMA Ministry and it amounts to violation. It further says that action need to be taken by KCZMA under CRZ Notification. In fact Kerala Coastal Zone Management Authority was also a party to WP(C) No. 20379/2017 and in paragraph 7 of the judgment dated 13.10.2017 this aspect was also considered by the Hon'ble High Court. For easy reference I am extracting paragraph 7 of the judgment: "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." So in view of the judgment passed by the Hon'ble High Court it cannot be stated that there is violation of CRZ notification and there is no need to take any action by the Kerala Coastal Management Authority. Had the judgment been brought to the notice of the

Tribunal the Tribunal ought not to have passed the order constituting the committee. Further an identical question was considered by the Hon'ble High Court in WP(C) No. 31642/2019 and by judgment dated 18.12.2019 the Hon'ble High Court held as follows:-

"10. From the aforesaid facts, it is rather clear that the WP(C) No.31642/19 application was submitted even before 2019 CRZ notification came into existence and even according to KCZMA, the relevant provision that applies is CRZ Notification of 2011. Therefore, the contentions based on 2019 CRZ notification has no basis. In the 2011 CRZ notification, the KCZMA is entitled to give clearance for any activity within the CRZ if it requires water front and foreshore facilities which includes construction under Regulation 4(i)(f) i.e., construction and operation for ports and harbours, jetties, wharves, quays, slipways, ship construction yards, break waters, groynes, erosion control measures and salt works are all permissible activities for which MOEF permission is not required. In this case, what we find from the materials placed on record is that CRZ clearance was given for development of Muthalapozhi harbour which was already in existence. The work includes dredging of the approach channel construction of a load out jetty which could later be used for fishery and tourism activity or any other facility, a rock storage area which could also be used for suitable purpose in the future and the dredged material to be deposited on the northern side of the channel facilitating reduction in the erosion on the northern side and construction of ~~WP(C) No. 31642/19 a backup yard on the southern side which could also be used for further expansion of the tourism facility.~~

11. In the light of the above discussion, we do not find that there is any illegality in the work being carried out by the 5 th respondent in so far as CRZ clearance had already been issued by the competent authority. The work that was done prior to grant of clearance was dredging, which was highly required for the harbour activity to prevent danger to the fishermen community. At any rate, entire work was done after submission of the application. That apart, this is a major project of the Government of Kerala and necessary clearance had been obtained for the entire project from the competent authorities and that apart, the entire work had to be completed within a short time frame. That apart, all these works are carried out in larger public interest, which should always be kept in mind by the Courts to ensure that if at all there is some irregularity, taking into consideration the larger public interest, this Court should not interfere in such matters."

Considering the above facts, I am of the view that there is no CRZ violation and hence no permission is required from KCZMA. My disagreement to the clause 6(v) may kindly be noted

Yours faithfully



Port Officer