

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL  
(SOUTHERN ZONE, CHENNAI)

Original Application No.268 of 2017 (SZ)

A.P. Mathew

.... Applicant

Vs

Chief Conservator, Forest Department  
Kerala, Vazhuthakkad, Trivandrum  
and 11 Others.

... Respondents

**Further Report of the District Collector/6<sup>th</sup> Respondent in  
O.A. 268 of 2017(SZ)**

It is submitted that this Hon'ble Tribunal had directed the Joint Committee in the above Original Application vide order dated 08.10.2020 and directed to monitor the action and to file further action taken report. It is also directed to report the status of W.P. (C). NO. 30113/2018 pending before High Court of Kerala.

In compliance to the said order, the District Collector/6<sup>th</sup> Respondent herein filed the action taken report of the Committee dated 16.01.2021 along with annexures in the above Original Application. To that effect this memo is filed and the same may be recorded.



(E. K. KUMARESAN)

STANDING COUNSEL FOR STATE OF KERALA

Counsel for Respondents 1,5,6,7,8,9,10,13,14,15



W4 – OA.268/2017

നമ്പർ .....

കേരളാ അഡ്വക്കേറ്റ് ജനറലിന്റെ കാര്യാലയം,  
എറണാകുളം, കൊച്ചി-682 031

പ്രേഷിതൻ

അഡ്വക്കേറ്റ് ജനറൽ  
കേരളം

ഫോൺ { 0484 2395050  
2395052  
2395078  
ഫാക്സ് : 0484 2394674

E-mail : advocategeneralkerala@gmail.com

28.01.2021

തീയതി .....

To

Adv:E.K.Kumaresan,  
Standing Counsel,  
National Green Tribunal,  
Chennai, M/s.EKK Legal,  
No.6, Indian Chamber Ground Floor,  
SICCI Annex Building,  
Esplanade, Chennai-108.

Sir,

Sub:- OA 268/2017 filed by Sri.A.P.Mathew before the Hon'ble  
National Green Tribunal, Chennai - reg.

Ref:- Lr.No.DCIDK/8134/2018-CH dated 16.01.2021 received from  
the District Collector, Idukki.

Kind attention is invited to the reference cited. I am directed to  
forward herewith the report of the joint committee in OA 268/17  
furnished by the District Collector, Idukki duly approved by Hon'ble  
Advocate General for further necessary action.

Yours faithfully,  
Sd/-  
PREETHA RANI.S,  
Deputy Secretary,  
FOR ADVOCATE GENERAL.

Encl:-As above

Approved for Issue,

Section Officer.

29/1/21

DCIDK/8134/2018-C11

O/o District Collector, Idukki  
Painavu P.O, Kuyilimala – 685603  
Phone : 04862-232242, 04862-232303  
E-mail : dcidk.ker@nic.in, Fax : 04862-233101  
**Dated: 16/01/2021**

District Collector,  
Idukki

The Advocate General,  
High Court of Kerala,  
Ernakulam.

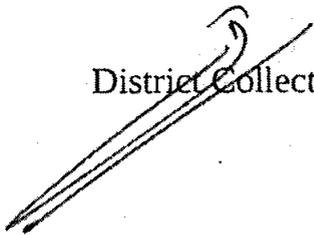
Sir,

Sub:- OA No 268/2017(SZ) filed by Sri.A.P.Mathew before the Hon'ble  
National Green Tribunal -submitting report of the Joint Committee-reg.

Ref:- Order of National Green Tribunal (SZ) dated 08/10/2020 in OA.  
No.268/17.

Your kind attention is invited to the reference cited. The action taken report of  
the Joint Committee in OA 268/2017 (SZ) is submitted herewith.

Yours faithfully,

  
District Collector.

Copy to:-

Sri. E. K. Kumaresan,  
Standing Counsel,  
National Green Tribunal.

W

**Report of the Joint Committee in the matter of A.P.Mathew V Chief Conservator of Forest and others.**

The Joint Committee constituted as per the order dated 28/01/2020 of the Hon'ble National Green Tribunal in O.A. No.268/2017 (SZ) had submitted its joint inspection report on 29/09/2020. The Hon'ble National Green Tribunal considered the above report on 08/10/2020 and vide order dated 08/10/2020 has directed to monitor the action and to submit further action taken report to the Tribunal on or before 18/01/2021. In the above order it is also directed to report the status of the WP(c) No. 30113/2018, pending before the Hon'ble High Court of Kerala.

The Joint Committee convened on 05/01/2021 at the chamber of the District Collector Idukki has discussed about the various steps to be taken on the basis of the order dated 08/10/2020 of the Hon'ble National Green Tribunal and directed the Environmental Engineer, Pollution Control Board, Idukki to inspect the Cheruthoni river along with the representatives of the Vazhathoppu Grama Panchayath. The Committee also directed the Secretary, Vazhathoppu Grama Panchayat to submit action taken report on the basis of the order dated 08-10-2020 of the Hon'ble National Green Tribunal.

The Environmental Engineer, Pollution Control Board, Idukki after conducting site inspection has submitted report on 12/01/2021, which is attached along with the report as annexure I and the Secretary, Vazhathoppu Grama Panchayat submitted the action taken report on 08/01/2021, which is also attached along with the report as annexure II.

The Environmental Engineer, Pollution Control Board, Idukki along with the representatives of Vazhathoppe Grama Panchayat has inspected the Cheruthoni River and its banks on 11-01-2021 and reported that during inspection they have found certain outlet pipes from the commercial and residential buildings on the bank of the Cheruthoni river. These outlet pipes are reported to be carrying rain water from the roof tops. During inspection river bed adjacent to this side was found to be dry and no water flow could be observed at that location. He also reported that since river bank is full of grass and bushes, a detailed investigation is difficult and also requested to give direction to the authorities concerned to clear the same.

Direction was already given to the Secretary, Vazhathoppu Grama Panchayath to clear the vegetation on the banks of the Cheruthoni river so as to enable the authorities concerned to inspect the banks of the river to find out whether there is any outlet pipes into the river. Pollution Control Board has already given direction to the Commercial institutions situated on the banks of the Cheruthoni river not to

discharge any type of waste water into the river. They also issued direction to the Secretary, Vazhathoppu Grama Panchayat to take necessary arrangements for removing the plastic wastes accumulated in the river and to dispose the same as per Plastic Waste Management Rules. Secretary Vazhathoppu Grama Panchayat was also directed to take effective steps for preventing the disposal of plastic wastes into the Cheruthoni river.

Secretary Vazhathoppu Grama Panchayat vide letter dated 08/01/2021 has also reported the steps taken by them on the basis of the order dated 08/10/2020 of the Hon'ble National Green Tribunal. The Joint inspection committee has earlier identified the illegal parking area in the bank of the Cheruthoni river, in place of earlier check dam which was washed away during the 2018 flood, and recommended to remove the same since it prevent the free flow of water through the river during the opening of the shutters. The Secretary of the Grama Panchayat has reported that the area which was recommended to remove by the committee is now operating as an area for the ingress and egress of buses and the same is attempted to be stopped now, without the alternative being ready, that could lead to traffic chaos in Cheruthoni Town. The construction of a new bus stand by the District Panchayat is on progress and the same is expected to be completed within six months. Till then, they requested to continue the present practice for the benefit of the people. The Vazhathoppu Grama Panchayat has assured to remove the said construction in the banks of the Cheruthoni river immediately after the operation of the new bus stand. They also reported that since the Cheruthoni bridge was severley damaged in the 2018 floods, the Central Government has accorded its sanction for the construction of a new bridge and the tender proceedings for the same has also been completed. The said bridge is being constucted in the area noted in the order where the bus stand is presently situated and hence there is no possibility of any other construction in the said area being present after the construction of the new bridge. Hence, a short time is requested to be granted for the compliance of the said order in its totality.

Regarding the finding of the Joint Inspection Committee about the accumulation of plastic wastes in the Cheruthoni river, the Secretary, Vazhathoppu Grama Panchayat has reported that they have removed all the plastic wastes from the river and its banks. The Hon'ble National Green Tribunal vide order dated 08/10/2020 has also directed to report the present status of the WP(c) No. 30113/2018. The writ petition has been dismissed by the Hon'ble High Court vide Judgment dated 07/01/2021. The last para of the Judgment reads as follws.

"Taking into account the above said aspect, we are of the considered opinion that since the scheme has not yet come into the force by issuing appropriate notification by the State Government in contemplation of the provisions of the scheme, petitioners are not entitled to get any reliefs as are sought for in the writ petition, due to the prime reason that, the entire pleadings made in the writ petition is dependent on the scheme and the mistaken impression that the scheme was implemented by the State Government.

Therefore, the writ petition has no sustenance, accordingly it is dismissed."

The copy of the above Judgment is attached along with this report as annexure III.

As per the Judgment dated 07/01/2021 of the Hon'ble High Court of Kerala in WP(c) 30113/2018, the Vazhathoppe Grama Panchayat is not in a position to take action against the violaters as mentioned in the report of the Joint inspection Committee. Such constructions are enlisted as illegal constructions since they were on the construction free Zone of the Idukki Township Area Development Scheme. Now the Hon'ble High Court of Kerala has held that, since the Government has not been notified the date of commencement Idukki Township Area Development Scheme, the same is not supposed to be in existence till date.

Consequent to the pronouncement of Judgment in WP(c) 30113/2018 by the Hon'ble High Court of Kerala, it is not possible to continue the action taken against the owners of the buildings in the construction free zone. Since the commencement of the Idukki Township Area Development Scheme is yet to be notified, it is not possible to take action against the owners of the buildings constructed in the construction free zone.

Regarding the allegation about the encroachment of forest land, direction was already given to the forest and KSEB authorities to conduct survey in their lands for verifying whether there is any kind of encroachment. Stringent action will be taken against the encroachers, if it is found that any part of the forest land has been encroached.

Joint Committee meeting held on 15/01/2021 has approved the draft report to be submitted before the Hon'ble National Green Tribunal and directed the District Collector Idukki to submit the report on behalf of the Joint Committee.

  
DISTRICT COLLECTOR

ANNEXURE-I

Phone &amp; Fax: 04862 221590

Website: www.keralapcb.nic.in, E-mail: kspcbidukki@yahoo.com, kspcbidukki221590@gmail.com



## KERALA STATE POLLUTION CONTROL BOARD

കേരള സംസ്ഥാന മലിനീകരണ നിയന്ത്രണ ബോർഡ്

DISTRICT OFFICE, IDUKKI

ജില്ലാ ഓഫീസ്, ഇടുക്കി

ESSAREN BUILDING, AANAKOODU JN, THODUPUZHA, IDUKKI - 685 584

എസ്റ്റാമെൻ്റ് ബിൽഡിംഗ്, ആനക്കൂട് ജംഗ്ഷൻ, തൊടുപുഴ, ഇടുക്കി - 685 584

PCB/IDK/GEN/NGT/OA-268/2017/2020

Date : 12.01.2021

From

The Environmental Engineer

To

The District Collector  
Idukki

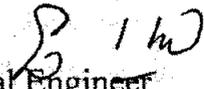
Sub.:- O.A. No. 268/2017 before the National Green Tribunal (SZ) filed by  
Sri. A.P. Mathew reg:-

Ref:- Joint Committee held on 05.01.2021

Sir,

I am enclosing here with report on O.A. No. 268/2017 before the National Green Tribunal (SZ).

Yours faithfully

  
Environmental Engineer

# KERALA STATE POLLUTION CONTROL BOARD

കേരള സംസ്ഥാന മലിനീകരണ നിയന്ത്രണ ബോർഡ്

DISTRICT OFFICE, IDUKKI

ജില്ലാ ഓഫീസ്, ഇടുക്കി

ESSAREN BUILDING, AANAKOODU JN, THODUPUZHA, IDUKKI - 685 584

എസ്സാറേൻ ബിൽഡിംഗ്, ആനകുട്ട് അഗ്ലിംഗൻ, തൊടുപുഴ, ഇടുക്കി - 685 584

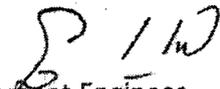


## Report on NGT O.A. 268/2017

In continuation to the report submitted on 17.09.2020 regarding pollution problems in Cheruthoni river I may report the present status as follows.

During the inspection by the joint committee on 18.09.2020 (constituted as per the order dated 28.01.2020 of the Hon'ble NGT) certain outlets to Cheruthoni river was identified. As per the instruction of the joint committee convened on 05.01.2021, further inspection has been conducted on 11.01.2021 with representative from Vazhathoppe Grama Panchayat. During inspection certain outlet pipes are identified from the commercial/residential buildings on the bank of the Cheruthoni River. These outlet pipes are reported to be carrying rain water from the roof tops. During inspection river bed adjacent to this side was found to be dry and no water flow could be observed at this location. This revealed that these outlet pipes carry rain water only. But since the river bank is full of grass and bushes a detailed investigation is difficult now. So concerned government agency may be directed to clear the bushes and grass on the bank of the river as well as on the river bed.

Fourteen numbers of commercial/residential establishments were identified during the inspection on 14.09.2020 and the matter was already reported to the joint committee. Even though no direct discharge could be found strict direction has been issued to the establishments to ensure that all the effluent generated is disposed through soak pits only. Copy of the direction in this regard is enclosed. Regarding the matter of pollution in the river by throwing plastic waste, instruction has been issued to the Secretary Vazhathoppe Grama Panchayat to remove the plastic waste, dispose as per Plastic Waste Management Rules and to ensure no plastic is entering the river. Copy of the letter dated 12.01.2021 addressed to the Secretary Vazhathoppe Grama Panchayat is enclosed.

  
Environment Engineer

3

Phone: 04862 221590  
Website: www.keralapcb.nic.in  
E-mail: kspcbidukki221590@gmail.com



**KERALA STATE POLLUTION CONTROL BOARD**

കേരള സംസ്ഥാന മലിനീകരണ നിയന്ത്രണ ബോർഡ്

DISTRICT OFFICE, IDUKKI

ജില്ലാ ഓഫീസ്, ഇടുക്കി

ESSAREN BUILDING, AANAKOOPU JN, THODUPUZHA, IDUKKI - 685 584  
എസ്സാറേൻ ബിൽഡിംഗ്, അനക്കൂപ്പൻ, തോട്ടുപുഴ, ഇടുക്കി - 685 584

PCB/IDK/GEN/NGT/OA-268/2017/2020

Date : 12.01.2021

From  
The Environmental Engineer  
To  
List Attached

Sub :- O.A. No. 268/2017 before the National Green Tribunal (SZ) filed by  
Sri. A.P. Mathew reg:-

Ref:- Joint inspection conducted by the Board Officials on 14.09.2020 and 18.09.2020

Sir,  
Please recall the inspection conducted by the Board Officials on 14.09.2020 and 18.09.2020. Based on the inspection, you are directed to ensure that entire waste water generated in the unit is disposed through septic tank/soak pit arrangements only and no discharge to the Cheruthoni River at any instance. Compliance to this direction shall be reported without fail.

Yours faithfully,

*[Handwritten Signature]*  
Environmental Engineer

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as informed by the standing counsel for the Panchayat in the High Court of Kerala. The Panchayat is further informed that the Hon'ble Division Bench including the Chief Justice of Kerala has found that the Idukki Township Area Development Scheme published as per GO (Ms) No: 240/80/LA&SWD dtd 26/09/'1980 has not come into effect as clause 1(b) of the said scheme states that " *the scheme will come into force with effect from a date to be announced later by Government* ". The Hon'ble Court has entered into a finding that the Government has not announced a date, which was confirmed by the Government pleaders and hence the said scheme itself is not inexistence / cease to exist.

It is also imperative to state that there is no building in Cheruthoni town at the verge of collapse due to the damage caused by the flood water, as alleged. Only some temporary constructions illegally constructed on the river bed without any permit from the Panchayat or without ownership of the said land were damaged due to the flood.

3. It is hereby submitted and reported before the National Green Tribunal that all the plastic wastes on both banks of the Cheruthoni river in the Vazhathope Panchayat has completely been removed.



Yours Sincerely,

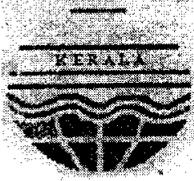
Secretary  
Vazhathope Grama Panchayat  
Thadiyampadu P.O. Idukki(Dt.)-685602  
Tel: 04862-235627, Mob 9496045077

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zone is continuing and its 1<sup>st</sup> stage has already been complete. It has been informed by the District Panchayat that the construction of the Bus stand could be completed within 6 months. When the same is complete, the ingress and egress of the buses to the area inside the construction free zone itself can be stopped. If the same is attempted to be stopped now, without the alternative being ready, this could lead to a traffic chaos in Cheruthoni town due to its severe land constraints. This could be a huge setback and present severe hardships to the public and also the travellers. As the Cheruthoni bridge was severely damaged in the 2018 floods, the Central Government has accorded its sanction for the construction of a new bridge and the tender proceedings for the same has also been completed. The said bridge is being constructed in the area noted in the Order where the bus stand is presently situated and hence there is no possibility of any other construction in the said area being present after the construction of the new bridge. Hence, a short time is requested to be granted for the compliance of the said order in its totality.

2. At the outset, it is submitted that the Panchayat and its elected members always believe and work towards the idea of sustainable development in the Vazhathope Panchayat. It has always stood in favour of development that meet the needs of the present, without compromising the ability of future generations. It is also pointed out that the Panchayat has always acted according to the directions of the State Government and whenever it has refused to issue building permits or has refused to number the buildings in the Cheruthoni Town, the said parties have approached the Hon'ble High Court and obtained favourable orders forcing the Panchayat to issue them.

The same applicant before the Hon'ble National Green Tribunal had also approached the Hon'ble High Court of Kerala filing .WPC No: 30113/2018 seeking orders directing state machinery / authorities including the Panchayat to ensure that no building is erected or re-erected within the construction free zone, orders prohibiting the Town planner, District Panchayat and also the Grama Panchayat from issuing building permits for any construction within the construction free zone among seeking several other reliefs, The respondents in the said case had challenged the legal validity of the said scheme. The said writ petition has been dismissed on 07/01/21,



**KERALA STATE POLLUTION CONTROL BOARD**

കേരള സംസ്ഥാന മലിനീകരണ നിയന്ത്രണ ബോർഡ്

DISTRICT OFFICE, IDUKKI

മില്ലാ ആഫീസ്, ഇടുക്കി

ESSAREN BUILDING, AANA KOODU JN, THODUPUZHA, IDUKKI - 685 584  
എസ്റ്റാറ്റർൻ ബിൽഡിംഗ്, ആനക്കൂട് ജംഗ്ഷൻ, തൊടുപുഴ, ഇടുക്കി - 685 584

Phone & Fax: 04862 221590

Website: www.keralapctc.nic.in,

E-mail: kspcbidukki@yahoo.com, kspcbidukki221590@gmail.com

PCB/IDK/GENNGT/OA-268/2017/2020

12.01.2021

From

The Environmental Engineer

To

The Secretary

Vazhathoppe Panchayath

Sub: OA No 268/2017 before the Hon'ble National Green Tribunal (SZ) filed by  
Sri. A.P Mathew. Reg:-

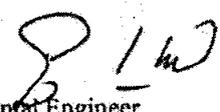
Ref: 1. Joint Committee held on 05.01.2021

2. Joint Inspection conducted by the Board officials on 11.01.2021

Sir,

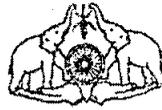
As per the reference cited above, joint inspection has been conducted by the Board officials with the representative of Vazhathoppe Grama Panchayath on 11.01.2021 along the banks of River Cheruthony. During inspection, it was observed that the river is polluted by throwing plastic waste from establishments/residential buildings etc located on the river side. Hence you are instructed to initiate necessary arrangements to remove these accumulated plastic wastes in the river and dispose as per Plastic Waste Management Rules. Also ensure that no plastic is entering the River Cheruthony from the nearby residential/ commercial establishments.

Yours Faithfully

  
Environmental Engineer

207683/21 ●

ANNEXURE - II



## Vazhathope Grama Panchayat

THADIYAMPADU P.O, VAZHATHOPE, IDUKKI, PIN: 685602, KERALA STATE

Phone: 04862-235627 Website: [www.vazhathopepanchayat.com](http://www.vazhathopepanchayat.com)

E-mail : vazhathopegp@gmail.com

A2-3859/20

From

Secretary  
Vazhathope Grama Panchayat

To

Hon'ble District Collector  
Idukki



Date: 08/01/2021

Sub : OA No 268/2017 before the Hon'ble National Green Tribunal (SZ) filed by Sri. A P Mathew – Compliance of Judgement – Reg

Ref :- 1). Letter No DCIDK/8134/2018 C 11 from Hon'ble District Collector of idukki dated 04/01/2021

2). Letter No DCIDK/8134/201 C 13 from Hon'ble District Collector of idukki dated 08/01/2021

Please refer to the above. As per the order of Hon'ble National Green Tribunal (SZ) dated 26/09/2020 in OA No 268/17 the Secretary of Vazhathope Grama Panchayat submitting the report of allegations against the Panchayat.

1. The check dam built on the Cheruthoni river in Vazhathope Panchayat was constructed using the funds of the District Panchayat in the land belonging to the District Panchayat. The said check dam and the bus stand close to it was completely damaged when the shutters of the Cheruthoni dam was opened in the 2018.

Due to the constraints of land in Cheruthoni town, the buses are temporarily using the said land. The construction of the new bus stand by the District Panchayat using 1 Crore from the development funds of the Hon'ble Idukki M.L.A outside the construction free

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

THURSDAY, THE 07TH DAY OF JANUARY 2021 / 17TH Pousha, 1942

WP(C).No.30113 OF 2018(S)

PETITIONERS:

- 1 JANASAKTHI, IDUKKI UNIT,  
REP. BY A.P.MATHEW, UNIT PRESIDENT,  
AYATHUPADATH HOUSE, IDUKKI COLNY P.O.,  
THANNIKANDAM, IDUKKI DISTRICT, PIN- 685 602.
- 2 P.L.BENNY,  
SECRETARY, JANASAKTHI, IDUKKI UNIT, POONTHURYTHIL  
HOUSE, IDUKKI COLNY, P.O.IDUKKI DISTRICT,  
PIN-685 602.

BY ADVS.

S.K. MURALEEDHARA KAIMAL  
A.K.MADHAVAN UNNI

RESPONDENTS:

- 1 THE STATE OF KERALA  
REP. BY THE CHIEF SECRETARY AND CHAIRMAN,  
KERALA STATE DISASTER MANAGEMENT AUTHORITY,  
GOVERNMENT SECRETARIAT,  
THIRUVANANTHAPURAM-695 001.
- 2 THE DISTRICT COLLECTOR IDUKKI AND CHAIRMAN IDUKKI  
DISASTER MANAGEMENT AUTHORITY,  
PAINAVU [PO]PIN-685 602.
- 3 THE TOWN PLANNER, IDUKKI,  
VANCHIKAVALA ROAD, VANCHJIKKAVALA, CHERUTHONI,  
KERALA-685 602.
- 4 THE SECRETARY, DISTRICT PANCHAYATH,  
IDUKKI PAINAVU(P.O.), PIN-685 602.
- 5 THE SECRETARY, VAZHATHOPE GRAMA PANCHAYATH,  
THADIYANPADU(P.O.), IDUKKI DISTRICT, PIN-685 602.

- 6 THE TAHSILDAR, IDUKKI TALUK,  
PAINAVU(P.O.), PIN-685 602.
- 7 PARATHODU ANTONY,  
STONAGE TORIST COMPLEX, RESIDING AT MAYPPAN HOUSE,  
CHERUTONI, IDUKKI COLNY P.O., IDUKKI DISTRICT,  
PIN-685 602.
- 8 MUMTAZ BASHEER,  
AKKOTHU HOUSE, CHERUTONI, IDUKKI COLNY P.O.,  
IDUKKI DISTRICT, PIN-685 602.
- 9 K.P.M.BASHEER,  
KONNAMKUDIYIL HOUSE, CHERUTONI, IDUKKI COLNY P.O.,  
IDUKKI DISTRICT, PIN-686 602.
- 10 BAPPU OOMMER,  
ALIAKKUNNEL HOUSE, CHERUTONI, IDUKKI COLNY P.O.,  
IDUKKI DISTRICT, PIN-685 602.
- 11 A.P.USMAN,  
ARIMBASSERYIL HOUSE, CHERUTONI, IDUKKI COLNY P.O.,  
IDUKKI DISTRICT, PIN-685 602.
- 12 VYAPARI VYAVASAYI EKOPANA SAMITHY,  
CHERUTONI, IDUKKI, REPRESENTED BY ITS SECRETARY,  
IDUKKI COLNY P.O., PIN-685 602.
- 13 ADDL.R13 IDUKKI DISTRICT RESIDENTIAL AND COMMERCIAL  
BUILDING OWNERS ASSOCIATION  
CHERUTHONY, REPRESENTED BY ITS SECRETARY, IDUKKI  
COLONY POST, IDUKKI DISTRICT-685602.  
(ADDL.R13 IS IMPLEADED AS PER ORDER DATED  
08/11/2018 IN IA.01/2018)
- 14 ADDL.R14 THE KERALA STATE ELECTRICITY BOARD  
VYDHYUDHI BHAVANAM, PATTOM,  
THIRUVANANTHAPURAM-695004, REPRESENTED BY ITS  
CHAIRMAN. (ADDL.R14 IS SUO MOTU IMPLEADED AS PER  
ORDER DATED 22/11/2018)

SRI.K.V.SOHAN, STATE ATTORNEY FOR R1 TO R3 AND R6,  
SRI.UNNIKRISHNAN V. ALAPPAT FOR R4,  
SRI. JIMMY GEORGE (THADATHIL) FOR R5,  
SMT. SUMATHY DANDAPANI (SR) FOR R7,  
SRI.TERRY V.JAMES FOR R8,  
SRI. N.RAMESH CHANDER FOR R10,

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SRI.SANTHEEP ANKARATH FOR R11  
SRI.A SHAFEEK (KAYAMKULAM) FOR R12  
SRI.P.K.RAVISANKAR FOR R13  
SRI.JACOB P. ALEX, AMICUS CURIAE.  
SRI.N.KRISHNAPRASAD FOR R14

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON  
07.01.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

## JUDGMENT

### SHAJI P. CHALY, J.

This writ petition is filed as a Public Interest Litigation by an unregistered association viz., Janasakthi Idukki Unit, represented by its unit President A.P.Mathew and an individual claims to be the Secretary of the said association seeking the following reliefs:

- 1.To issue a writ of mandamus, direction or order commanding respondents 1 to 6 to ensure that No person shall erect or re-erect any building within construction free zone Area under Idukki Township Area Development scheme.
- 2.To prohibit respondents 3 and 5 from issuing any building permits for erection or re- erection of any construction within the construction free zone area under Idukki Township Area Development scheme.
3. To prohibit respondents 7 to 12 from erecting or re-erecting any structures or buildings within the construction free zone area under Idukki Township Area Development scheme.
4. To direct the 5<sup>th</sup> respondent to take all necessary immediate action for demolition and removal of all unauthorised constructions including flood damaged building remains within the construction free zone area under Idukki Township Area Development scheme.
- 5.To pass such other interim and consequential orders

2. Brief material facts for the disposal of the writ petition are as follows;  
Petitioners are permanent residents of Idukki Village. According to them, they

are Members of Janasakthi, a social welfare organization; respondents 7 to 11 are owners and occupants of some buildings in Cheruthony Idukki district and they are interested persons as they are owners and occupants of unauthorised constructions within a prohibited construction free zone in Idukki.

3. According to the petitioners, as per Idukki Township Area Development Scheme, no person shall erect or re-erect any building within construction free zone in Idukki and the said scheme stood violated and more than 344 buildings have been constructed by different persons and organizations in the construction free zone. According to them, the 2018 August floods washed away many such unauthorised buildings partly and fully and the remaining of the collapsed and half collapsed 7 storied and 5 storied and other buildings stand near the river and roads posing danger to public, tourists and also animals. Attempts are now being made by respondents 7 to 10 and many others to reclaim the washed away shores of the Cheruthony River running at Cheruthoni town construction free zone area, as if they are mending the damages caused to the buildings in the flood of august 2018. The attempt, according to the petitioners, is to save their unauthorised constructions and expand holdings by encroaching the damaged river bed at Cheruthony Idukki. The Authorities failed to implement a Government approved scheme in its letter and spirit and in order to prevent violations and encroachment of river, in the interests of public, the petitioners filed this public interest writ petition before

this Court.

4. Counter affidavits are filed by the party respondents as well as Government refuting the contentions raised in the writ petition. It is contended by all that, the scheme envisaged by the State Government viz., Idukki Township Area Development Scheme, in exercise of the powers conferred by section 4 of the Travancore Town and Country Planning Act, 1120 r/w. Rule 12 of the Travancore Town and Country Planning Rules, 1953 dated 27.9.1980 was never notified by the State Government. Petitioners have not produced the copy of the scheme published by the State Government. However, the 13<sup>th</sup> respondent, viz., Idukki District Residential and Commercial Building Owners Association, Cheruthoni, Idukki District, has produced the scheme as Ext.R13(a).

5. We have heard Sri.A.K.Madhavanunni, learned counsel for petitioners, Sri.K.V.Sohan, learned State Attorney appeared for respondents 1, 3 and 6, Sri.Unnikrishnan V. Alappat, learned Standing Counsel appeared for respondent No.4, Sri.Jimmi George Thadathi, learned counsel, appeared for respondent No.5, Smt.Sumathy Dandapany, learned Senior counsel, appeared for respondent No.7, Sri.Terry V. James, learned counsel, appeared for respondent No.8, Sri.M.Ramesh Chandra, learned Senior Counsel, appeared for respondent No.10, Sri.Santheep Ankarath, learned counsel, appeared for respondent No.11, Sri.A.Shafeek (Kayamkulam), learned counsel, appeared for respondent No.12, Sri.P.K.Ravishankar, learned counsel, appeared for respondent No.13 and

Sri.Jacob P. Alex, learned Amicus Curiae.

6. It is clear from the pleadings and the legal grounds raised by the writ petitioners that, the case is built upon Ext.R13(a) scheme of the State Government. In our considered opinion, if the scheme is not implemented by the State Government by notifying the same in the official gazette, petitioners are not entitled to get any reliefs as are sought for in the writ petition. We will come to the said aspect at a later point of time. Nowhere in the writ petition petitioners have stated that 1<sup>st</sup> petitioner is a registered association under any of the statutes in vogue in the State of Kerala. The 7<sup>th</sup> respondent i.e., one Antony, owner of a building, has specifically taken a contention that the 1<sup>st</sup> petitioner is not a registered association and therefore, no writ petition can be filed by the 1<sup>st</sup> petitioner. Seventh respondent has also submitted that it is not stated anywhere in the writ petition, who are the members of the 1<sup>st</sup> petitioner association and no court fee has paid on behalf of the members of the association, who are said to be the beneficiaries of the association on account of the filing of the writ petition.

7. It is the settled position in law that no writ petition can be maintained by an unregistered association and also without producing the list of the members of the association, who are also liable to pay court fees. Therefore, we are of the opinion that, 1<sup>st</sup> petitioner has no *locus standi* to file the public interest litigation.

8. Whatever that may be, the 2<sup>nd</sup> petitioner is an individual, who claims

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to be the Secretary of the 1<sup>st</sup> petitioner association and therefore, we are of the considered opinion that even though the 1<sup>st</sup> petitioner is not a competent person, the 2<sup>nd</sup> petitioner being an individual is entitled to maintain the writ petition. We are not going into the rival contentions raised by the parties in the writ petition since the learned State Attorney has submitted before this Court that Ext.R13(a) scheme is not notified by the State Government in contemplation of the provisions of the scheme. However, learned counsel for petitioners submitted that a further notification of the scheme is not required since the explanatory note in Ext.R13(a) scheme makes it clear that it was notified. The relevant portion of the scheme reads thus:

Government of Kerala  
1980

Reg.No.KL/TV(N)/12

**KERALA GAZETTE**

**EXTRAORDINARY**  
PUBLISHED BY AUTHORITY

---

Vol.XXV] Trivandrum, Saturday,

27th September 1980

[No.710

5th Asvina 1902

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GOVERNMENT OF KERALA

**Local Administration & Social Welfare (G) Department**

NOTIFICATION

G.O. (Ms) No. 240/80/LA&SWD.

Dated, Trivandrum, 26th September 1980.

**S. R. O. No. 900/80:**-- In exercise of the powers conferred by section 4 of the Travancore-Town and Country Planning Act; 1120 (Travancore Act XXI of 1120 ) read with rule 12 of the Travancore Town and Country Planning Rules, 1953, Government of Kerala hereby promulgate the Idukki Township Area Development Scheme, the same having been previously published as required by rule 11 of the Travancore Town and Country Planning Rules, 1953.

By order of the Governor,

M. DANDAPANI,  
Special Secretary to Government.

**Explanatory Note**

(This does not form part of the notification, but is intended to indicate its general purport)

In the notification No. 303/76/LA&SWD dated 21-12-1976 published in the Gazette Extraordinary No.751 dated 31st December, 1976, Government constituted the Idukki Township Area Development Authority for the preparation of a scheme for the development of the Township area. The said Authority has prepared and submitted a scheme for the development of the area for approval. Government have published the scheme for the information of persons likely to be affected thereby. They have now approved the scheme. It has to be published in the Gazette as required under the provisions of the Travancore Town and Country Planning Act, 1120. This notification is intended to achieve the above purpose.

THE IDUKKI TOWNSHIP AREA DEVELOPMENT SCHEME

1. Short title and commencement.--(a) This scheme may be called as the "Idukki Township Area Development Scheme.

(b) It shall come into force with effect from a date to be announced later by Government."

9. On a reading of the explanatory note, it is clear that the scheme was published for the information of persons likely to be affected thereby and it was accordingly published in the gazette. However, clause 1(b) of the scheme extracted above makes it clear that it shall come into force only with effect from the date to be announced later by the Government. The scheme is of the

year, 1980 and when the matter was taken up before this Court on 5<sup>th</sup> February, 2020, the learned State Attorney submitted that the scheme was not notified. However, on that date the State was directed to file a counter affidavit. Anyhow when the matter came up before this Court on 6.1.2021, the learned State Attorney again submitted that the scheme is not yet notified by the State Government.

10. Taking into account the above said aspect, we are of the considered opinion that since the scheme has not yet come into force by issuing appropriate notification by the State Government in contemplation of the provisions of the scheme, petitioners are not entitled to get any reliefs as are sought for in the writ petition, due to the prime reason that, the entire pleadings made in the writ petition is dependent on the scheme and the mistaken impression that the scheme was implemented by the State Government.

Therefore, the writ petition has no sustenance, accordingly it is dismissed.

Sd/-

**S.MANIKUMAR**

**CHIEF JUSTICE**

This writ petition is filed as a Public Interest Litigation by an unregistered association viz., Janasakthi Idukki Unit, represented by its unit President A.P.Mathew and an individual claims to be the Secretary of the said association seeking the following reliefs:

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sd/-

**S.MANIKUMAR****CHIEF JUSTICE**

sd/-

**SHAJI P.CHALY****JUDGE**

## APPENDIX

### PETITIONER'S EXHIBITS:

- EXHIBIT P1** A TRUE PHOTOSTAT COPY OF THE REPORT OF INSPECTOR GENERAL OF POLICE, INTERNAL SECURITY, SBCID, THIRUVANANTHAPURAM FILED BEFORE THE LOKAYUKTHA, KERALA.
- EXHIBIT P2** A TRUE PHOTOSTAT COPY OF ORDER OF THE CHAIRMAN, DISTRICT DISASTER MANAGEMENT AUTHORITY.
- EXHIBIT P3** A TRUE PHOTOSTAT COPY OF THE LETTER OF THE KERALA DAM SAFETY AUTHORITY WROTE TO THE DISTRICT COLLECTOR, IDUKKI.

### RESPONDENT'S EXHIBITS:

- EXHIBIT R7(a)** TRUE COPY OF THE GAZETTE NOTIFICATION G.O. (MS)NO.240/80/LA&SWD DTD.26.09.1980
- EXHIBIT R7(b)** TRUE COPY OF THE MAP OF THE COUNTER AFFIDAVIT FILED BY THE 2ND RESPONDENT - SECRETARY, VAZHATHOPPU GRAMA PANCHAYATH WITHOUT ITS EXHIBITS IN W.P. (C) NO.32317/2011.
- EXHIBIT R7(c)** TRUE COPY OF THE JUDGMENT DTD.3.12.2008 IN W.P. (C) NO.32434 OF 2008.
- EXHIBIT R7(d)** TRUE COPY OF THE BUILDING PERMIT DTD.26.2.2007 ISSUED BY THE SECRETARY.
- EXHIBIT R7(e)** TRUE COPY OF THE JUDGMENT DTD.1.4.2009 IN W.P. (C) NO.8025/2009.
- EXHIBIT R8(a)** TRUE COPY OF THE BUILDING PERMIT NO.B1-247/17 DATED 17.1.2018 GRANTED BY THE 6TH RESPONDENT
- EXHIBIT R8(b)** TRUE COPY OF THE PHOTOGRAPH OF THE 8TH RESPONDENT'S BUILDING AT CHERUTHONI TOWN
- EXHIBIT R7(f)** TRUE COPY OF THE PHOTOGRAPHS WHICH SHOWS THE LEVEL OF THE CONSTRUCTION CARRIED OUT BY THIS RESPONDENT.
- EXHIBIT R13(a)** TRUE COPY OF THE MAP OF THE IDUKKI TOWNSHIP AREA DEVELOPMENT SCHEME PUBLISHED AS GO(MS) NO.240/80/LA&SWD DATED 26.9.1980.
- EXHIBIT R13(b)** TRUE COPY OF G.O.MS.NO.303/76/LA&SWD DATED 21.12.1976.

- EXHIBIT R13(c)** TRUE PHOTOGRAPH OF CHERUTHONI TOWN AS ON 11.11.2018.
- EXHIBIT R14(a)** TRUE COPY OF THE BUILDING PERMIT NO.B1-4056/17 DATED 29.7.2017.
- EXHIBIT R14(b)** TRUE COPY OF THE MAP OF THE IDUKKI TOWNSHIP AREA DEVELOPMENT SCHEME PUBLISHED AS PER GO(MS) NO.240/80/LSGD DATED 26.9.1980.

BEFORE THE HON'BLE NATIONAL  
GREEN TRIBUNAL  
(SOUTHERN ZONE, CHENNAI)

Original Application No.268 of 2017  
(SZ)

A.P. Mathew  
.... Applicant

Vs

Chief Conservator, Forest  
Department  
Kerala, Vazhuthakkad,  
Trivandrum  
and 11 Others.

...  
Respondents

**Report filed by the District  
Collector/6<sup>th</sup> Respondent**

(E. K. KUMARESAN)

STANDING COUNSEL FOR STATE OF KERALA

Counsel for Respondents 1,5,6,7,8,

9, 10,13,14,15