

Filed on: 19.12.2022

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
(SZ), CHENNAI**

APPEAL No. 5 OF 2022

BETWEEN

SHAJI A. K

: APPELLANT

Versus

MINISTRY OF ENVIRONMENT, FOREST AND
CLIMATE CHANGE & ORS

: RESPONDENTS

**OBJECTION FILED ON BEHALF OF THE 1ST RESPONDENT/ APPELLANT
IN THE ABOVE MENTIONED APPEAL**

HARISH VASUDEVAN (H-253) [K/779/2013]

RAJAN VISHNURAJ (R-1268) [K/653/2010]

Counsel for the Appellant

Amicus Advocates

II Floor, Chundanal Monarch, K.K Padmanabhan Road, Kochi-18

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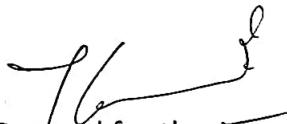
MINISTRY OF ENVIRONMENT, FOREST AND
CLIMATE CHANGE & ORS

: RESPONDENTS

PAPER BOOK

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Dated this the 6th day of December, 2022


Counsel for the Appellant.

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
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**OBJECTION FILED ON BEHALF OF THE 1ST RESPONDENT/APPELLANT
IN THE ABOVE MENTIONED APPEAL**

I, Shaji A.K. Aged about 47 years, S/o. Kuryakose, Arakkal House, Perinkari P.O., Kannur District – 670 706, do hereby solemnly affirm and state as follows:

1. I am the 1st respondent in the above mentioned IA and the appellant in the Appeal No.5 of 2022 and as such I am conversant with the fact of the case. I am competent to swear this affidavit.
2. It respectfully submits that in the above matter, the petitioner/5th respondent have obtained sufficient and more time to produce any document or make any argument against the appeal and before making final arguments on 19.10.20220. It was only after concluding the

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arguments of both parties on 19.10.2022, this Hon'ble Tribunal was pleased to reserve the matter for passing judgment and uploaded a copy of the said order dated 19.10.2022. It was only thereafter, the appellant's counsel has prepared Argument note/Written submissions before this Hon'ble Tribunal. Only after receiving a copy of the argument note filed by the Counsel for appellant, the petitioner/5th respondent has filed this IA on 07.11.2022, much after the final argument note is filed in this regard. I have serious objection in this considering this IA both on fact and on legal grounds.

3. It is respectfully submitted that IA filed for re-opening the case hearing is not maintainable and unsustainable in the eye of law. All the arguments / documents produced along with the IA for reopening the hearing was with the custody of the Proponent himself at the time of filing of his pleadings and he did not choose to plead or produce the same. The dictum laid down in the Judgment of the Hon'ble Supreme Court in Baqai Construction vs. M/s Gupta Building Material Store reported in **2013 (14) SCC 1** is applicable in this case. The dictum laid down by the Rajasthan High Court in the matter of Leeladevi and Anr vs. Narayan and Anr reported in **AIR 2017 NOC 922** clearly held that the power of the Court to reopen the hearing should sparingly be used. It was also held that the reason for requesting to reopen the case must be reasonable and clear from the affidavit and if only to protract the process, then such application must be dismissed without even without calling for objections. In this case, sufficient and more time was provided by the Hon'ble Bench for patient hearing. There is absolutely no extra ordinary circumstance explained in the affidavit as to why such sparingly used power of the Tribunal should be used here, and

Shaji . A. K. Jw

no extra ordinary circumstance is explained in the application to use such a power to reopen the case.

4. I respectfully submit that the IA filed for re-opening the case hearing is a mere delay tactics to escape from the forthcoming Judgment and thereby complete the construction based on a falsely obtained EC. Reopening of argument at this stage is unfair, unjust and defeat the purpose of the Appeal. It will also be a bad precedent before this Hon'ble Tribunal. This IA is an aftermath of the crooked brain of the 5th respondent to simply prolong the judgment in this appeal and to complete the construction without even having sufficient safeguards and to escape from the provision of law.
5. It is fundamental that the 5th respondent cannot develop any argument beyond the scope of the Form-I application duly signed by them. A copy of Form-1 itself produced along with the argument note and hence the production of any other document for any lame excuses beyond the scope of it will not help the 5th respondent in any manner. There is no new facts or law to be brought to the notice of this Hon'ble Tribunal. The facts mentioned in the IA is beyond the scope of the Appeal and liable to be dismissed.
6. The crux of the argument raised in the IA is that the 'Category' of the Project in which EC has been granted should be decided upon the external conduct of the applicant and NOT BASED ON FORM-1 Application. This is absurd, irrational and unheard in the history of EIA Process. When EC is granted based on their own Form-1 application, in which Category of the Project was expressly stated by them, any external conduct related to local

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Shaji A.K JW

laws need absolutely no consideration in this Appeal. Impugned EC is issued based on Form-1 application. If the argument is that it was faulty, EC should be recalled on that basis alone.

7. The project proponent had filed application for building permit on 16.03.2019 itself, for the total extent of area. Even according to them, the project is a building construction project from the date of preparation of such an application. Any Earth development activity altering the land, construction activity, after 16.03.2019 is violation of EIA Notification 2006 and invite violation proceedings under Section.15 and 19 of the EP Act.
8. I submit that the 5th respondent is a continuous violator of the Environment (Protection) Act and any averment to the contrary is false. The starting of construction without waiting for prior EC or a proper appraisal is done by the 5th respondent even before the impugned EC. This is a regular modus operandi of the 5th respondent. The argument that the 5th respondent was unaware of the provisions of EIA Notification is absolutely false and hence denied. A similar application for obtaining EC for building construction project about 1,45,000 sq. m. in Kodanchery Village of Kozhikode District was filed by the same project Proponent, 5th respondent before SEIAA and after site visit, it was found that they have started construction without waiting for prior EC. The SEIAA in its 61st meeting held on 13.11.2016 decided to reject the proposal. As in the case of present appeal, on receipt of an application from the 5th respondent, the SEIAA had even withdrawn an appeal filed before the High Court of Kerala against the construction in ecologically sensitive area of Western Ghats and permitted the 5th respondent to construct buildings more than

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20,000 sq.m.in the ESA Village. Even though the said project was also named as 'Township Project' since the construction of building was involved, the project was appraised as category 8(a) and granted with EC on 28.12.2019. A true copy of the EC granted to the 5th respondent on 28.12.2019 is produced herewith and marked as **Annexure A17**.

9. It is respectfully submitted that the main argument of the petitioner/5th respondent is that they have obtained a Development Permit from the Panchayat initially and therefore it should be considered as a development project. The said argument is absurd. Any person who wants to construct a building after leveling the plot, such person is mandatorily required to obtain a Development Permit from the Panchayat as per Kerala Panchayat Building Rules 2019. Without obtaining a Development Permit, no person can level any plot for the construction of building. The very intention of the 5th respondent was to construct a building project and for the purpose of leveling the plot alone, they have obtained a Development Permit from the Panchayat. This legal aspect of the requirement of Development Permit for the building construction as per the Kerala Panchayath Building Rules 2019 is considered in detailed and held by a Division Bench of Kerala High Court in Panjal Grama Panchayath Thrissur and Anr vs.Aneesh P. reported in **2022 (2) KHC 775**. In the said case, the Division Bench headed by the Hon'ble Chief Justice clearly held that the obtaining of Development Permit is statutorily mandated for the construction of building project if the leveling of plot is needed. A copy of the Judgment of Kerala High Court reported in **2022 (2) KHC 775**. Is attached herewith and marked as **Annexure A18**. Therefore, the argument that the 5th respondent has obtained a Development Permit and therefore the project is not a building

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construction but an 'an area Development project' is absurd, irrational and without any factual or legal basis. The 5th respondent is only trying to mislead this Hon'ble Tribunal by creating confusions.

10. When the Form-1 application itself is crystal clear about the intention and the purpose of project envisaged by the 5th respondent, the date of application for Building Permit also makes the intention of the construction of building project very evident, any argument in contrary will only be a wastage of time, effort and energy and therefore such argument cannot be entertained again, after the arguments are once over.

11. The appellant had never raised an argument that if the 5th respondent really intended to develop a Township project at the site, then they should have applied for and got a Development Permit from the Panchayat. The argument of the appellant was that, once the Form-1 application is filed and Building Permit application is preferred before the Panchayat, after preparation of a detailed building plan before the Authority, the 5th respondent cannot play the ground of 'ignorance of law' as if he conceptualized the said project as the Township Project alone. From the EC dated 28.12.2019, it is evident that modus operandi of the 5th respondent in overlooking the provisions of EIA Notification is not for the first time and not an innocent act.

12. It is respectfully submitted that the impugned EC itself mandates to spend Rs.7 Crore as CER at the time of construction. There is absolutely no remediation plan and Natural and Community Resource Augmentation Plan either prepared or submitted by the 5th Respondent / applicant. Even as per the compliance report and Inspection Report from the Regional

Shaji A.K. Jw

Office of MoEF&CC, only 1% of the same, that is, Rs.7 Lakhs have been spent till date, as name sake compliance. Even as per the notification dated 14.03.2017 and amendment notification dated 08.03.2018, implementation of Damage remediation Plan and Natural and Community Resource Augmentation Plan by the proponent at the time of Construction is a mandatory requirement in case of violation cases. No such procedure is mandated in this impugned EC. Any further delay in stopping the project and taking damage assessment / implementation of remediation plan in the site, will cause irreparable damage to the local environment, including the water streams, paddy lands, butterflies and related species of flora and fauna.

13.I submit that serious prejudice will be caused to the appellant if the IA is allowed and the appeal is again taken for further arguments. The construction of the 5th respondent is creating heavy nuisance in the area and the violation is being continued in the site because of the non-obtaining of a judgment in this appeal. Even in the IA, the 5th respondent did not utter a word regarding the mentioning of category in the Form I application. Any delay in passing a final judgment in this appeal will prejudicially affect the rights of the appellant and the local environment. The filing of IA without filing a copy of the argument note/written submission even after assuring about the same before the Hon'ble Tribunal, this is an unfair attempt to sabotage a fair hearing which is already done in this case.

Shaji. A.K. J

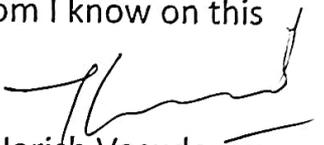
Therefore, it is most humbly requested and prayed that this Hon'ble Tribunal may be pleased to dismiss the IA filed in this case and pleased to reject the request for any further arguments in this regard and pass a final judgment in the appeal, without any further delay and thus render justice.

All the facts stated above are true to the best of my knowledge, belief & information.

Dated this the 06th day of December, 2022

Shaji A.K. Jw
DEPONENT

Solemnly affirmed and signed before me by the deponent whom I know on this the 6th day of December, 2022 in my office.


Harish Vasudevan
ADVOCATE

VERIFICATION

I, Shaji A.K. Aged about 47 years, S/o. Kuryakose, Arakkal House, Perinkari P.O., Kannur District – 670 706, do hereby verifies that the contents of the above paragraphs 1 to 11 are true to the best of my knowledge and I have not suppressed any material facts.

DATE : 06.12.2022

Shaji A.K. Jw
SIGNATURE OF THE APPELLANT

PLACE: Ernakulam

Shaji A.K. Jw



Validity expires on 27.12.2026

**PROCEEDINGS OF THE ADMINISTRATOR, STATE
ENVIRONMENT IMPACT ASSESSMENT AUTHORITY,
THIRUVANANTHAPURAM
(Present. Sabitha.S)**

Sub: SEIAA- Environmental clearance for the proposed "Township" Project at Sy Nos. 15/1& 33/1 at Kodenchery Village, Kozhikode Taluk & Kozhikode District, Kerala by Sri Anwar Sadath, Director, M/s Calicut Landmark Builders & Developers (India) Pvt. Ltd. Landmark World, N.H.17 Bypass, Kozhikode, Kerala-673014 - Environmental Clearance granted – Orders issued

STATE ENVIRONMENTAL IMPACT ASSESSMENT AUTHORITY

No. 909/SEIAA/EC4/3588/2015

Dated, Thiruvananthapuram 28.12.2019

- Ref: 1. Application dated 4-9-2015 from Sri.Anwar Sadath, Director, M/s Calicut Landmark Builders & Developers (India) Pvt. Ltd. Landmark World, N.H.17 Bypass, Kozhikode, Kerala-673014)
2. Minutes of 56th meeting of SEAC held on 6th & 7th June 2016.
3. Minutes of the 59th meeting of SEAC held on 11-12 July 2016.
4. Minutes of 58th meeting of SEIAA held on 08.9-2016.
5. Minutes of the 63rd meeting of SEAC held on 4th October, 2016
6. Minutes of the 61st meeting of SEIAA held on 30-11-2016
7. Minutes of the 73rd meeting of SEIAA held on 15-9-2017
8. Minutes of the 98th meeting of SEIAA held on 18th & 19th September 2019
9. Minutes of the 99th Meeting of SEIAA held on 21st & 22nd November 2019
10. Minutes of the 100th Meeting of SEIAA held on 23rd & 24th December 2019

ENVIRONMENTAL CLEARANCE NO.73 /2019

Sri.Anwar Sadath, Director, M/s Calicut Landmark Builders & Developers (India Pvt. Ltd. Landmark World, N.H.17 Bypass, Kozhikode, Kerala-673014) , vide his application received on 7-9-2015 has sought environmental clearance under the EIA Notification, 2006 for the proposed "Township" Project of total plot area of 7.8269 ha at Sy Nos. 15/1& 33/1 at Kodenchery Village, Kozhikode Taluk & Kozhikode District,, Kerala. It is inter alia, noted that the project comes under the Category B, 8(a) of Schedule

of EIA Notification 2006. No forest land is involved in the present project. The height of the proposed building is 59.70m and the total plot area of the proposed project is 78,268.98m² and the total built-up area is 1,45,000m².

2. The proposal placed in 56th SEAC meeting held on 6th & 7th June 2016. Further to the intimation of SEAC, the proponent and engineer attended the meeting and the engineer made a power point presentation about the salient features of the project briefly. The Committee appraised the proposal based on Form 1, Form I A and conceptual plan. The Committee decided to DEFER the item for field visit and the sub-committee entrusted to specially look into the following aspects.

1. The aerial distance from the Malabar Wild life sanctuary to the project site.
2. Violation in the form of large scale excavations as is observed from the Google map of the area
3. Considering other massive developments noticed from the map is there a need for insisting on a EIA study.
4. Status of a portion of site classified as "nilam" in the documents.
5. Being an isolated property precaution to be taken against accidents like fire.

3. Site visit conducted on 23.6.2016 by subcommittee of SEAC and the proposal placed in 59th SEAC held on 11th & 12th July 2016. 59th SEAC remarked that this proposed project is in Kodenchery Village in Kozhikkode Taluk. Kodenchery Village is a notified ESA Village as per the Order No.F.No.1-4/2012-RE(Pt.), Government of India, MoEF dated 13.11.2013. In the para 9(C) of the said order building and construction projects of 20,000 m² area or above are prohibited. The present project involves construction of four buildings having a total built up area of 1,45,000 m². Since this area far exceeds the permissible limit of construction in ESA Village the committee recommend to reject the proposal.

4. On 23-08-2016, the proponent submitted a representation to reconsider the proposal and has undertaken that "we are ready to fix the area of construction of each individual building to less than 20,000 sq.m and the area of the project to less than 1,50,000 sq.m and revise our plan accordingly." The proposal was considered in the 58th meeting of SEIAA held on 8th September 2016. The Authority found that the project is a category 8(b) project but appraised under 8(a) and referred the proposal to SEAC for reappraisal as the project comes under the category of 8(b)

5. The proposal was considered in the 63rd Meeting of SEAC held on 04th October, 2016. The SEAC committee remarked that only proposals for townships and area development covering an area more than 50 ha and or built up area more than 1,50,000 sq. m fall under such category. The present proposal is not such a project & hence it cannot be categorized as 8 (b). Hence the Committee decided not to change its earlier decision in the matter. The suggestion of the proponent to bring down the area of the individual buildings to less than 20000 sq. m will not serve the purpose as the total area of adjoining constructions will be far in excess of the limitations brought out in the 13.11.2013 Notification of MoEF.

6. The proposal was placed before the 61st SEIAA meeting held on 30-11-2016. The Authority noted that the present project involves construction of four buildings having a total built up area of 1, 45,000 m². And hence it is appraised as Category 8(a). Since this area far exceeds the permissible limit of construction in ESA Village the Committee in its 59th meeting recommended to reject the proposal. In 61st SEIAA meeting, the Authority decided to accept recommendation of SEAC to reject the proposal as per the 59th & 63rd minutes of SEAC.

7. Sri. C Anwar Sadath, Director, Calicut Landmark Builders & Developers (India), Pvt Ltd. submitted a request on 26.05.2017 for reviewing the earlier decision of SEIAA to reject their application for EC. Proponent also informed that as per the Supreme court judgment dated 3.12.2010 in WP(C) 202 /2009 filed by T.N.Godavarman, Thirumulpad against Union of India, it has been clarified that townships with area below 1,50,000 sqmtrs should also obtain EC from SEIAA or MoEF. Calicut Landmark Builders & Developers (India), Pvt Ltd. has therefore submitted a petition to the Hon. Chief Minister to review the earlier decision of SEIAA to reject their application for EC. The proposal considered in 73rd SEIAA meeting held on 15.09.2017. Authority decided to obtain legal opinion in the matter from the Standing Counsel of NGT and Legal department of the State Government.

8. Meanwhile Environment department had forwarded the request of Sri.C.Anvar Sadath, Director, Calicut Landmark Builders & Developers (India) Pvt Ltd. to furnish the present status of the project. File had been placed before 98th SEIAA meeting held on 18th & 19th October 2019 and the authority decided to inform the proponent that the proposal was already rejected by SEIAA in its 61st meeting held on 30.11.2016, as the proposed project site falls

within the Ecologically Sensitive Area (ESA), and hence the proposal cannot be considered as per the existing norms of MoEF which prohibits such constructions in ESA to ensure the environmental stability of the region.

Hence letter had been issued to Sri. C. Anwar Sadath informing that their proposal cannot be considered as per the existing norms of MoEF as the proposed project site falls within the Ecologically Sensitive Area (ESA).

9. Sri. C. Anwar Sadath, the Director, Landmark builders submitted representations dated 30.10.2019 & 01/11/2019 with a request to reconsider their request for Environmental Clearance since their area is not falling under ESA land as per latest orders of MoEF and to give them a personal hearing to explain the facts. Accordingly they were invited for personal hearing.

10. Propoent along with RQP attended the hearing on 99th SEIAA meeting held on 21st November 2019 during which the proponent submitted the order F No.1/9/2018-ESZ dt.03.12.2018 of MoEF exempting certain villages in Kerala from ESA, as per which the survey nos of the proponents project area do not fall in ESA. Further the Village Officer Kodenchery has provided a Certificate dt. 25.06.2019 that the said survey nos do not fall in ESA area. SEAC has already appraised the proposal and EC was held up because of ESA issue.

Authority decided to issue EC for 7 years subject to the following specific conditions in addition to the general conditions.

1. *Proponent shall attend all the observations made by SEAC during appraisals of the project.*
2. *Activities relating to Corporate Environmental Responsibilities (2% of total project cost) shall be carried out leading to protection and promotion of environment including waste management in the project district as per OM F.No.22-65/2017-IA-III dt.01.05.2018 of MoEF & CC as directed by Director, Environment and supervised by District Collector.*
3. *Provision shall be made for the housing of construction labour within the site with all necessary infrastructure and facilities such as fuel for cooking, mobile toilets, mobile STP, safe drinking water, medical health care, crèche etc. The housing may be in the form of temporary structures to be removed after the completion of the project (Circular No.J-11013/41/2006-IA.II(I) of GoI, MoEF dt.22.09.2008).*

11. For clarification regarding the observations made by SEAC during appraisals of the project, the proposal was placed in 100th SEIAA meeting held on 23rd & 24th December 2019. Authority decided to issue EC subject to the condition that the proponent shall attend all observations made by SEAC during appraisal of the project. Hence to issue EC immediately. SEAC shall carry out post EC appraisal within one month and make specific recommendations if any, which shall be carried out by the proponent.

12. In this circumstance, Authority is pleased to issue Environmental Clearance as per the EIA Notification 2006 for the proposed "Township" Project at Sy Nos. 15/1& 33/1 at Kodenchery Village, Kozhikode Taluk & Kozhikode District, Kerala by Sri Anwar Sadath, Director, M/s Calicut Landmark Builders & Developers (India) Pvt. Ltd. Landmark World, N.H.17 Bypass, Kozhikode, Kerala-673014, for seven years subject to the specific conditions in para 10 and 11 of this proceeding and the usual general conditions for projects other than mining appended hereto. Also the following green conditions should be strictly adhered to.

Green Conditions.

1. *Adequate rain water harvesting facilities shall be arranged for.*
2. *Technology and capacity of the STP to be indicated with discharge point (if any) of the treated effluent.*
3. *Effluent water not conforming to specifications shall not be let out to water bodies.*
4. *Maximum reuse of grey water for toilet flushing and gardening and construction work shall be ensured.*
5. *Dual plumbing for flushing shall be done.*
6. *Provisions for disposal of e-wastes, solid wastes, non-biodegradables and separate parking facility for the buildings shall be provided.*
7. *Generation of solar energy to be mandatory for own use and/or to be provided to the grid.*
8. *There shall be no compromise on safety conditions and facilities to be provided by the project proponent, which shall be ensured for occupation, regularisation or consent to operate.*

13. The Clearance will also be subject to full and effective implementation of all the undertakings given in the application form, all the environmental impact mitigation and management measures undertaken by the project proponent in the documents submitted to SEIAA, and the mitigation measures and waste management proposal as assured in the Form - 1 and Form-1A, Environment Management Plan as submitted. The assurances and clarifications given by the proponent in the application and related documents will be deemed to be part of these proceedings as conditions as undertaken by the proponent, as if incorporated herein.

14. Validity of this environmental clearance will be seven years from the date of issuance of this order, subject to earlier review in the event of non-compliance or violation of any of the conditions stipulated herein.

15. Compliance of the conditions herein will be monitored by Authority or its agencies and also by the regional office of the Ministry of Environment & Forests Government of India, Bangalore.

- I. Necessary assistance for entry and inspection should be provided by the project proponent and those who are engaged or entrusted by him to the staff for inspection or monitoring.
- II. Instances of violation if any shall be reported to the District Collector, Kozhikkode to take legal action under the Environment (Protection) Act 1986.
- III. The Half Yearly Compliance Report (HYCRs) with its contents of a covering letter, compliance report and environmental monitoring data has to be in PDF format merged into a single document. The email should clearly mention the name of the project, EC No and date, period of submission and to be sent to the Regional Office of MoEFF & CC by email only at email ID rosz.bng-mefcc@gov.in. Hardcopy of HYCRs shall not be acceptable.
- IV. The given address for correspondence with the authorised signatory of the project is Sri Anwar Sadath, Director, M/s Calicut Landmark Builders & Developers (India) Pvt. Ltd., Landmark World, N.H.17 Bypass, Kozhikode, Kerala-673014)


SABITHA.S

Administrator, SEIAA

To,

Sri Anwar Sadath, Director,
M/s Calicut Landmark Builders &
Developers (India) Pvt. Ltd.
Landmark World, N.H.17 Bypass,
Kozhikode, Kerala-673014)

Copy to,

1. MoEF Regional Office, Southern Zone, Kendriya Sadan, 4th Floor, E&F Wing, II Block, Koramangala, Bangalore-560034.(through e-mail: rosز.bng-mefcc@gov.in)
2. The Principal Secretary to Government, Environment Department, Government of Kerala
3. The Director, Directorate of Environment & Climate Change, 4th Floor KSRTC Bus Terminal, Thampanoor, Thiruvananthapuram, Kerala 695001.
4. District Collector, Kozhikkode
5. The Member Secretary, Kerala State Pollution Control Board
6. The District Town Planner, Kozhikkode
7. Tahsildar, Kozhikkode Taluk
8. Village Officer, Kodenchery Village, Kodenchery .P.O, Kozhikkode- 673580
9. Secretary, Kodenchery Panchayath, Kodenchery .P.O, Kozhikkode- 673580
10. Chairman, SEIAA.
11. Website.
- 12 . S/f/ Q/c

GENERAL CONDITIONS (for projects other than mining)

- (i) Rain Water Harvesting capacity should be installed as per the prevailing provisions of KMBR / KPBR, unless otherwise specified elsewhere.
- (ii) Environment Monitoring Cell as agreed under the affidavit filed by the proponent should be formed and made functional.
- (iii) Suitable avenue trees should be planted along either side of the tarred road and open parking areas, if any, inclusive of approach road and internal roads.
- (iv) The project shall incorporate devices for solar energy generation and utilization to the maximum possible extent with the possibility of contributing the same to the national grid in future.
- (v) Safety measures should be implemented as per the Fire and Safety Regulations.
- (vi) STP should be installed and made functional as per KSPCB guidelines including that for solid waste management.
- (vii) The conditions specified in the Companies Act, 2013 should be observed for Corporate Social Responsibility.
- (viii) The proponent should plant trees at least 5 times of the loss that has been occurred while clearing the land for the project.
- (ix) Consent from Kerala State Pollution Control Board under Water and Air Act(s) should be obtained before initiating activity.
- (x) All other statutory clearances should be obtained, as applicable, by project proponents from the respective competent authorities including that for blasting and storage of explosives.
- (xi) In the case of any change(s) in the scope of the project, the project would require a fresh appraisal by this Authority.
- (xii) The Authority reserves the right to add additional safeguard measures subsequently, if found necessary, and to take action including revoking of the environment clearance under the provisions of the Environment (Protection) Act, 1986, to ensure effective implementation of the suggested safeguard measures in a time bound and satisfactory manner.
- (xiii) The stipulations by Statutory Authorities under different Acts and Notifications should be complied with, including the provisions of Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981, the Environment (Protection) Act, 1986, the Public Liability (Insurance) Act, 1991 and EIA Notification, 2006.
- (xiv) The environmental safeguards contained in the EIA Report should be implemented in letter and spirit.
- (xv) Provision should be made for supply of kerosene or cooking gas and pressure cooker to the labourers during construction phase.
- (xvi) Officials from the Regional of MOEF, Bangalore who would be monitoring the implementation of environmental safeguards should be given full co-operation, facilities and documents/data by the project proponents during their inspection. A complete set of all the documents submitted to MoEF should be forwarded to the CCF, Regional Office of MOEF, Bangalore.
- (xvii) These stipulations would be enforced among others under the provisions of Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981, the Environment (Protection) Act, 1986, the Public Liability (Insurance) Act, 1991 and EIA Notification, 2006.

- (xviii) Environmental Clearance is subject to final order of the Hon'ble Supreme Court of India in the matter of Goa Foundation Vs. Union of India in Writ Petition (Civil) No.460 of 2004 as may be applicable to this project.
- (xix) Any appeal against this Environmental Clearance shall lie with the National Environment Appellate Authority, if preferred, within a period of 30 days as prescribed under section 11 of the National Environment Appellate Act, 1997.
- (xx) The project proponent should advertise in at least two local newspapers widely circulated in the region, one of which (both the advertisement and the newspaper) shall be in the vernacular language informing that the project has been accorded Environmental Clearance and copies of clearance letters are available with the Department of Environment and Climate Change, Govt. of Kerala and may also be seen on the website of the Authority at www.seiaakerala.org. The advertisement should be made within 10 days from the date of receipt of the Clearance letter and a copy of the same signed in all pages should be forwarded to the office of this Authority as confirmation.
- (xxi) A copy of the clearance letter shall be sent by the proponent to concerned GramaPanchayat/ District Panchayat/ Municipality/ Corporation/ Urban Local Body and also to the Local NGO, if any, from whom suggestions / representations, if any, were received while processing the proposal. The Environmental Clearance shall also be put on the website of the company by the proponent.
- (xxii) The proponent shall submit half yearly reports on the status of compliance of the stipulated EC conditions including results of monitored data (**both in hard copies as well as by e-mail**) and upload the status of compliance of the stipulated EC conditions, including results of monitored data on their website and shall update the same periodically. It shall simultaneously be sent to the respective Regional Office of MoEF, Govt. of India and also to the Directorate of Environment and Climate Change, Govt. of Kerala.
- (xxiii) The details of Environmental Clearance should be prominently displayed in a metallic board of 3 ft x 3 ft with green background and yellow letters of Times New Roman font of size of not less than 40.
- (xxiv) The proponent should provide notarized affidavit (*indicating the number and date of Environmental Clearance proceedings*) that all the conditions stipulated in the EC shall be scrupulously followed.

SPECIFIC CONDITIONS

I. Construction Phase

- i. "Consent for Establishment" shall be obtained from Kerala State Pollution Control Board under Air and Water Act and a copy shall be submitted to the Ministry before start of any construction work at the site.
- ii. All required sanitary and hygienic measures should be in place before starting construction activities and to be maintained throughout the construction phase.
- iii. A First Aid Room will be provided in the project both during construction and operation of the project.
- iv. Adequate drinking water and sanitary facilities should be provided for construction workers at the site. Provision should be made for mobile toilets. The safe disposal of wastewater and solid wastes generated during the construction phase should be ensured.
- v. All the topsoil excavated during construction activities should be stored for use in horticulture/landscape development within the project site.

- vi. Disposal of muck during construction phase should not create any adverse effect on the neighbouring communities and be disposed taking the necessary precautions for general safety and health aspects of people, only in approved sites with the approval of competent authority.
- vii. Soil and ground water samples will be tested to ascertain that there is no threat to ground water quality by leaching of heavy metals and other toxic contaminants.
- viii. Construction spoils, including bituminous material and other hazardous materials, must not be allowed to contaminate watercourses and the dump sites for such material must be secured so that they should not leach into the ground water.
- ix. Any hazardous waste generated during construction phase, should be disposed off as per applicable rules and norms with necessary approval of the Kerala State Pollution Control Board.
- x. The diesel generator sets to be during construction phase should be low sulphur diesel type and should conform to Environment (Protection) Rules prescribed for air and noise emission standards.
- xi. The diesel required for operating DG sets shall be stored in underground tanks and if required, clearance from Chief Controller of Explosives shall be taken.
- xii. Vehicles hired for bringing construction material to the site should be in good condition and should have a pollution check certificate and should conform to the applicable air and noise emission standards and should be operated only during non-peak hours.
- xiii. Ambient noise levels should conform to residential standards both during day and night. Incremental pollution loads on the ambient air and noise quality should be closely monitored during construction phase. Adequate measures should be made to reduce ambient air and noise level during construction phase, so as to conform to the stipulated standards by CPCB/KSPCB.
- xiv. Fly ash should be used as building material in construction as per the provisions of Fly Ash Notification of September, 1999 and amended as on 27th August 2003. (The above condition is applicable Power Stations).
- xv. Ready mixed concrete must be used in building construction.
- xvi. Storm water control and its re-use per CGWB and BIS standards for various applications.
- xvii. Water demand during construction should be reduced by use of pre-mixed concrete, curing agents and other best practices referred.
- xviii. Permission to draw ground shall be obtained from the Computer Authority prior to construction/operation of the project.
- xix. Separation of grey and black water should be done by the use of dual plumbing line for separation of grey and black water.
- xx. Fixtures for showers, toilet flushing and drinking should be of low flow either by use of aerators or pressure reducing devices or sensor based control.
- xxi. Use of glass may be reduced by upto 40% to reduce the electricity consumption and load on airconditioning. If necessary, use high quality double glass with special reflective coating in windows.
- xxii. Roof should meet prespective requirement as per Energy Conservation Building Code by using appropriate thermal insulation material to fulfil requirement.
- xxiii. Opaque wall should meet perspective requirement as per energy Conservation Building Code which is proposed to be mandatory for all airconditioned spaces while it is aspirational for non-airconditioned spaces by use of appropriate thermal insulation material to fulfil requirement.

- xxiv. The approval of the competent authority shall be obtained for structural safety of the buildings due to earthquake, adequacy of fire fighting equipments, etc. as per National Building Code including protection measures from lightning etc.
- xxv. Regular supervision of the above and other measures for monitoring should be in place all through the construction phase, so as to avoid disturbance to the surroundings.
- xxvi. Under the provisions of Environment (Protection) Act, 1986, legal action shall be initiated against the proponent if it was found that construction of the project has been started without obtaining environmental clearance.

II. Operation Phase

- i. The installation of the Sewage Treatment Plant (STP) should be certified by an independent expert and a report in this regard should be submitted to the Ministry before the project is commissioned for operation. Treated effluent emanating from STP shall be recycled / reused to the maximum extent possible. Treatment of 100% grey water by decentralised treatment should be done. Discharge of unused treated effluent shall conform to the norms and standards of the Kerala State Pollution Control Board. Necessary measures should be made to mitigate the odour problem from STP.
- ii. The solid waste generated should be properly collected and segregated. Wet garbage should be composted and dry/inert solid waste should be disposed off to the approved sites for land filling after recovering recyclable material.
- iii. Diesel power generating sets proposed as source of back up power for elevators and common area illumination during operation phase should be of enclosed type and conform to rules made under the Environment (Protection) Act, 1986. The height of stack of DG sets should be equal to the height needed for the combined capacity of all proposed DG sets. Use low sulphur diesel. The location of the DG sets may be decided with in consultation with Kerala State pollution Control Board.
- iv. Noise should be controlled to ensure that it does not exceed the prescribed standards. During night time the noise levels measured at the boundary of the building shall be restricted to the permissible levels to comply with the prevalent regulations.
- v. The green belt of the adequate width and density preferably with local species along the periphery of the plot shall be raised so as to provide protection against particulates and noise.
- vi. Weep holes in the compound walls shall be provided to ensure natural drainage of rain water in the catchment area during the monsoon period.
- vii. Rain water harvesting for roof run-off and surface run-off, as plan submitted should be implemented. Before recharging the surface run off, pre-treatment must be done to remove suspended matter, oil and grease. The borewell for rainwater recharging should be kept at least 5 mts. above the highest ground water table.
- viii. The ground water level and its quality should be monitored regularly in consultation with Central Ground Water Authority.
- ix. Traffic congestion near the entry and exit points from the roads adjoining the purposed project site must be avoided. Parking should be fully internalized and no public space should be utilized.
- x. A Report on the energy conservation measures conforming to energy conservation norms finalise by Bureau of Energy Efficiency should be prepared incorporating details about building materials & technology, R & U Factors etc and submit to the Ministry in three months time.

- xi. Energy conservation measures like installation of CFLs/TFLs for the lighting the areas outside the building should be integral part of the project design and should be in place before project commissioning. Use CFLs and TFLs should be properly collected and disposed off/sent for recycling as per the prevailing guidelines/rules of the regulatory authority to avoid mercury contamination. Use of solar panels may be done to the extent possible.
- xii. Adequate measures should be taken to prevent odour problem from solid waste processing plant and STP.
- xiii. The building should have adequate distance between them to allow movement of fresh air and passage of natural light, air and ventilation.

III Post Operational Phase

Environmental Monitoring Committee with defined functions and responsibility should foresee post operational environmental problems e.g. development of slums near the site, increase in traffic congestion, power failure, increase in noise level, natural calamities, and increase in suspended particulate matter etc. solve the problem immediately with mitigation measures


Administrator, SEIAA

2022 (2) KHC 775
Kerala High Court
S. Manikumar, C. J. ; *Shaji P. Chaly, J.

Panjal Grama Panchayat, Thrissur and Another v. Aneesh P.
Parallel citation(s): 2022 (2) KHC 775 : 2022 KHC OnLine 235 : 2022 (2) KLT
653 : 2022 (2) KLJ 295

Kerala Panchayat Building Rules, 2019 -- R.2(ae), R.4, R.5, R.31 -- Whether there is a need to obtain a development permit, whenever there is sub division of a plot -- Merely because a larger area is divided into various small plots and provided with roads for ingress and egress to purchasers, Secretary of Panchayat is not empowered to insist for a development permit, when application for building permit is submitted by the purchaser of the small extent of plot -- Constitution of India, Art.226

Facts of the case

Petitioner and his wife purchased a small extent of land and petitioner filed an application for building permit before the Secretary of Grama Panchayat. However, he was issued with notices demanding to produce the plot development permit for considering the building permit application. According to the writ petitioner, he has purchased a small extent of dry land for constructing a residential building and he does not intend to develop land and there is no requirement for plot development permit and hence, the directions contained in Exhibits P6 & P7 notices are not legally sustainable. Assailing the notice, petitioner filed writ petition before the High Court. Learned Single Judge held that there is no such requirement under Rules, 2019 so as to insist a purchaser of a small extent of property to produce development permit. Assailing the findings of the learned Single Judge, the Panchayat has filed this writ appeal.

Dismissing the appeal, the Court held:

On a reading of the rules discussed above conjointly, we have no hesitation to hold that it contemplates an entirely different situation from the purchase of a small plot of land by an individual from a larger area, whether the owner of the property has divided the same into various plots and sold it or not. Learned counsel for appellants in that regard submitted that, if that is the situation, any owner of a larger area can easily dilute the provisions of the Rules, 2019. However, in our considered opinion, no such contingency arises in the context

for the reason that, the purchaser of a small plot viz., the writ petitioner, has filed an application seeking building permit to carry out construction of a residential building in his plot, since he is not conferred with any other rights by the owner of the larger extent of property. Writ petitioner, an owner of a small extent of property not having the power or authority to seek a development permit for the entire property belonging to some other persons, cannot be compelled to secure a development permit for carrying out construction of a residential building in his property. Moreover, merely because a larger area is divided into 56 plots and provided roads for ingress and egress to the purchasers, the Secretary of the Panchayat is not empowered under the Rules, 2019 to insist for a development permit.

Important Para(s):16, 17

Kerala Panchayat Building Rules, 2019 -- R.2(ad), R.2(ae) -- 'Developer' and 'Development of land' -- Meaning of -- Held, said terms contemplate a situation wherein a developer is developing a land and carrying out constructions, as stipulated under the definition of development of land

Important Para(s):10, 11

Referred: Nafeesa v. Chavakkad Municipality, 2018 (3) KHC 473; Referred to

Advocates:

P. C. Sasidharan; For Appellants
Lindons C. Davis; Swathy A. P.; For Respondent

JUDGMENT

'CR' marked.

The Judgment of the Court was delivered by Shaji P. Chaly, J.

1. This appeal is preferred by the respondents in W. P. (C) No. 27104 of 2021, challenging the judgement of the learned Single Judge dated 10/12/2021, whereby the learned Single Judge allowed the writ petition, quashed Exhibits P6 and P7 notices issued by the 2nd appellant i.e., the Secretary, Panjal Grama Panchayat, Thrissur District and directed the appellants to take up the applications submitted by the writ petitioner for building permit, and consider the same and pass orders within one month from the date of receipt of a copy of the judgement. The subject issue arises under

the Kerala Panchayat Building Rules, 2019, hereinafter called Rules, 2019.

2. Exhibit P6 is a notice issued by the 2nd appellant dated 12/07/2021, whereby the writ petitioner was informed that since the property for which the building permit sought for is deemed to be an area where plot sub-division is required under R.31(1) of the Rules, 2019, however, the writ petitioner has not submitted the documents related to lay out approval under R.31(13) of Rules, 2019. Therefore, the writ petitioner was directed to produce the plot layout in accordance with R.31(13) of Rules, 2019, within 7 days; whereas Exhibit P7 is a notice issued by the 2nd appellant dated 16/10/2021, informing the writ petitioner that the land development permit under R.3(2) of the Rules, 2019 for the land including the survey number in question is not available till date, and therefore, informed that the local body Secretary has only the power to regularise construction / land development activities, which have complied with R.92 of the Rules, 2019, dealing with the power of the Secretary to regularise certain constructions.

3. The sum and substance of the case of the appellant Panchayat is that no land development permit was secured by the owner of the property to sub - divide the larger extent of property in his ownership and possession, from whom the writ petitioner has purchased an extent of 3.86 Ares in Panjal Village, Thrissur District as per Exhibit P1 sale deed dated 30/03/2021.

4. The learned Single Judge, after taking into account the rival submissions and pleadings, has followed the proposition of law laid down by a learned Single Judge of this Court in Nafeesa v. Chavakkad Municipality, 2018 (3) KHC 473 : 2018 (3) KLT 1 : ILR 2018 (3) Ker. 228 and held that a purchaser of a small plot from a large extent of property is not liable to secure any land development permit in contemplation of the provisions of Rules, 2019. In fact, the judgement in Nafeesa (supra) rendered by the learned Single Judge, is on the basis of the Kerala Panchayat Building Rules, 2011, however, the rules were typical in nature.

5. Brief material facts for the disposal of the writ appeal are as follows; the writ petitioner and his wife purchased 3.86 Ares of land in Panjal Village, Thrissur District as per Exhibit P1 sale deed dated 30/03/2021. Petitioner has filed an application on 05/07/2021 for building permit before the Secretary of the aforesaid Grama Panchayat - the 2nd appellant, however, petitioner was served with Exhibits P6 & P7 notices demanding to produce the plot development permit for considering the building permit application. According to the writ petitioner, he has purchased a small extent of dry land for

constructing a residential building and he does not intend to develop land further in contemplation of the provisions of Rules, 2019. Therefore, according to the writ petitioner, there is no requirement for plot development permit and hence, the directions contained in Exhibits P6 & P7 notices are not legally sustainable.

6. Appellants have filed a detailed counter affidavit basically stating that whenever, there is a subdivision of plot, a development permit has to be secured from the Secretary of the Grama Panchayat, as required under the provisions of Rules, 2019; relying upon R.2(ae), R.4, R.5, and R.31 of the Rules, 2019 it is submitted that since development permit is a mandatory requirement in order to subdivide a plot, the Secretary of the Panchayat is entitled as of right to insist a purchaser of a small plot to produce the development permit.

7. However, the learned Single Judge, after assimilating the legal and factual circumstances, has arrived at the conclusion that there is no such requirement under Rules, 2019 so as to insist a purchaser of a small extent of property to produce development permit, especially following the proposition of law laid down by a learned Single Judge of this Court in Nafeesa (supra). It is thus challenging the legality and correctness of the judgement of the learned Single Judge, the appeal is preferred by the Panchayat and its Secretary.

8. The paramount contention advanced is that the learned Single Judge has not properly comprehended the ambit and scope of the statutory rules and the facts of the case. It is further submitted that merely because a developer, who subdivided the property and sold it, has not secured a development permit before the sale of the plot, that will not disable the Panchayat to insist for the development permit for grant of building permit from a person, who applies for building permit. It is further contended that the Rules, 2019 applies to all lands, which are proposed to be developed or redeveloped for construction of buildings. Other contentions are also raised, relying upon R.3(2), R.4, R.5 and R.31 of the Rules, 2019, which would be dealt with hereunder.

9. We have heard Sri. P. C. Sasidharan for the appellants, Sri. Lindons C. Davis and Smt. Swathy A. P. for the respondent / writ petitioner, and perused the pleadings and material on record.

10. Learned counsel for appellants advanced arguments based on the deliberations made above. The Kerala Panchayat Building Rules, 2019 has come into force on and w.e.f. 08/11/2019. S.2(ad) defines 'developer' to mean, any individual or group of individuals or any firm (by whatever name called)

who undertakes any building activity including construction, reconstruction, repairs, additions or alterations of buildings or development or redevelopment of land on behalf of the owner or by himself who has obtained permit under the provisions of these rule, through an agreement executed between them. 'Development of land' is defined under S.2(ae) to mean, any material change on the use of land other than for agricultural purpose brought about or intended to be brought about by filling up of the land or changing from the existing former use of the land, layout of streets and foot paths, provision of water supply, sewerage, drainage, electrification, landscaping, subdivision of land for residential plots or for other uses including layout of internal streets, developing parks, playgrounds and social amenities of the like, but does not include legal partitioning of family property among heirs.

11. Therefore, on a reading of the definitions of 'developer' and 'development of land', it is clear that it contemplates a situation wherein a developer is developing a land and carrying out constructions, as stipulated under the definition of development of land. Here is a case where the writ petitioner is a purchaser of a small extent of property from a larger area and he intends to carry out construction of a small building for his residential use.

12. Learned counsel for appellants Sri. P. C. Sasidharan has made heavy reliance upon R.3(2) of Rules, 2019 dealing with any public or private building to which the Rules, 2019 applies. Sub-R.2 of R.3 specifies that the Rules, 2019 shall apply to all lands which are proposed to be developed or redeveloped for construction of buildings. R.4 deals with essentiality of permit and sub-rule (1) thereto stipulates that no person shall develop or redevelop any parcel of land by subdividing into plots or cause the same to be done without first obtaining a permit for each such development or redevelopment from the Secretary.

13. In our view, the development and redevelopment of land and sub - division of plots referred to in the aforesaid rules will have to be read together with R.2(ad), R.2(ae), defining developer and development of land. Therefore, on a conjoint reading of the aforesaid provisions, it is clear that the development permit in contemplation of the rules is required when the activities as envisaged under the definitions of "developer and development of land" takes place. Learned counsel has relied upon R.5 of Rules, 2019 and submitted that even a person other than a Central or State Government department, who intends to develop or redevelop any parcel of land by subdividing into plots, shall apply in writing to the Secretary in the form in Appendix A3. This would also clearly exemplify that development or

redevelopment of any parcel of land by subdividing into plots is an integrated activity by the developer in contemplation of the development of land as defined under Rules, 2019.

14. The learned counsel has also relied upon R.31 dealing with land sub-division and plot developments wherein it is stipulated that all new land sub-divisions and plot developments shall be subject to, (i) the area of any newly subdivided plot, reconstituted plot or building plot shall be not less than 125 sq. metres with an average width of 6 metres.

15. In our considered opinion, that only deals with a situation where a specified area is required for a divided plot in order to carrying out construction of any residential building and the rest of the provisions under R.31 would show that the requirements contained thereunder are required when the plot is developed in accordance with the 'development of land' as prescribed under R.2(ae) of Rules, 2019.

16. Therefore, on a reading of the rules discussed above conjointly, we have no hesitation to hold that it contemplates an entirely different situation from the purchase of a small plot of land by an individual from a larger area, whether the owner of the property has divided the same into various plots and sold it or not. Learned counsel for appellants in that regard submitted that, if that is the situation, any owner of a larger area can easily dilute the provisions of the Rules, 2019. However, in our considered opinion, no such contingency arises in the context for the reason that, the purchaser of a small plot viz., the writ petitioner, has filed an application seeking building permit to carry out construction of a residential building in his plot, since he is not conferred with any other rights by the owner of the larger extent of property. Thus to say otherwise, the case projected by the appellants definitely would have had much force if the individual purchasers of the plots made a joint application for development of the plots. But there is no case for the appellants that any such joint effort is made by the different plot owners.

17. Therefore, the writ petitioner, an owner of a small extent of property not having the power or authority to seek a development permit for the entire property belonging to some other persons, cannot be compelled to secure a development permit for carrying out construction of a residential building in his property. Moreover, merely because a larger area is divided into 56 plots and provided roads for ingress and egress to the purchasers, the Secretary of the Panchayat is not empowered under the Rules, 2019 to insist for a development permit. In our view this was exactly the question considered by a

learned Single Judge in Nafeesa (supra), which was relied upon by the learned Single Judge to allow the writ petition. It is better to extract relevant portion of the judgement in Nafeesa supra, which reads as follows:

"5. The question that essentially arises for consideration is whether the petitioners, who have purchased small parcels of land from the vendors, who had larger parcels of land, from which a smaller portion was sold to the petitioners, are required to produce a development permit in respect of the lands purchased by them as a pre - condition for effecting the constructions proposed, through the building permit sought by them. It is relevant in this connection to notice the definition of 'development' as obtaining under the Kerala Municipality Building Rules, 1999 / Kerala Panchayat Building Rules, 2011. The definition of 'development of land' in R.2(v) reads as under:

"(v). 'development of land' means any material change on the use of land other than for agricultural purpose brought about or intended to be brought about by filling up of the land and / or water bodies or changing from the existing former use of the land, layout of streets and foot paths, sub-division of land for residential plots or for other uses including layout of internal streets, conversion of wet land, and developing parks, playgrounds and social amenities of the like, but does not include legal partitioning of family property among heirs."...

The definition is similar under the Kerala Panchayat Building Rules also. An analysis of the said definition of 'development of land' would clearly indicate that, in the context of sub-division of land, a mere subdivision of land per se, without anything more, would not attract the definition of 'development of land' for the purposes of the Rules. The definition is unambiguous, when it states that the sub-division of land for residential plots or for other uses including layout of internal streets, must be such as brings about or is intended to bring about any material change on the use of the land. The reference to 'land' here must necessarily be to the land in the hands of the person who resorts to the sub-division of the land. In my view, the sub - division of land, so as to amount to a development of land, must be in the hands of the owner of the larger parcel of land, and the land so sub-divided, together with the layout of internal streets, must result in the development of the entire parcel of land. The position is the same even in the case of the Kerala Panchayat Building Rules, save that in the said Rules, a layout of internal streets is not contemplated. In any event, inasmuch as in the instant cases, it is not established that the vendors of the property had resorted to a sub-division of the entire plot owned by them with a view to developing the said plot in their hands, prior to a sale of a small portion of that property to the petitioners herein, I am of the view that a sale simpliciter, of a smaller portion of property, from out of a larger extent of

property owned by the vendor, will not attract the definition of 'development of land' for the purposes of the Rules, thereby necessitating the obtaining of a development permit. I note in this connection that by the judgment dated 10/04/2013 of this Court in W. P. (C) No. 20204/2012 and connected cases, a similar view, albeit without specific reference to the provisions, has been taken by another learned Single Judge while deciding an issue as to whether or not a development permit was required when garden lands were sub - divided by the vendor into small plots for sale to different individuals. I am of the view that unless in the hands of the purchaser of the smaller portion of land, an activity which attracts the definition of 'development of land', as noticed above, is involved, there would be no requirement for a person purchasing a plot of land for putting up a construction therein, to obtain a development permit prior to applying for a building permit for the said construction. I therefore allow these Writ Petitions, by quashing the orders impugned, and directing the respondent Municipality / Panchayat to consider the application for building permit submitted by the petitioners without insisting on a development permit. The Municipality / Panchayat shall consider and pass orders on the application for building permit, on merits, and in accordance with law, within a period of three weeks from the date of receipt of a copy of this judgment, after hearing the petitioners."

18. That apart a similar view was taken by learned Single Judges prior to Nafeesa (supra) in the judgments in W. P. (C) No. 23281 of 2011 dated 20th October, 2011, W. P. (C) No. 20204 of 2012 dated 10th April, 2013 and W. P. (C) No. 4853 of 2016 dated 18th July, 2016, interpreting the typical provisions of the Kerala Panchayat Building Rules, 2011.

Taking into account the factual and legal circumstances discussed above, we have no hesitation to hold that the learned Single Judge was right in following the judgement in Nafeesa supra. We are also in respectful agreement with the proposition of law laid down in Nafeesa by the learned Single Judge. Taking into account the aforesaid circumstances, we do not think the appellants have made out a case of jurisdictional error or other legal infirmities, justifying our interference in the judgement of the learned Single Judge in an intra Court appeal filed under S.5 of the High Court Act, 1958.

Needless to say, the writ appeal fails, accordingly, it is dismissed. However, since the time period granted by the learned Single Judge for consideration of the application has already expired, it would stand extended for a period of three weeks from today.