BEFORE THE NATIONAL GREEN TRIBUNAL SITTING AT PUNE

MEMORANDUM OF APPLICATION

(Under Section 18(I) read with Section 14 and 20 of the National Green Tribunal Act, 2010)

Application No. 64 of 2021

BETWEEN:

Zoru Darayus Bhathena)…Applicants

Versus

State of Maharashtra and Ors.)…Respondents

COMPILATION OF JUDGMENTS ON BEHALF OF THE APPLICANT

Sr. No	Particulars	Pg.No
1.	**Ratheesh KR v. State of Kerala 2013 Scc Online Ker 14359** 1. Breach of CRZ regulation not to be viewed lightly. Commitment to follow court-issued safeguards, does not undo wrong and thus, should not influence the Court- **Para 107-108.**	**1-75**
2.	**Kerala State Coastal Zone Management Authority v. State of Kerala, (2019) 7 SCC 248,** The Hon'ble Supreme Court held at **paragraph 5** as follows, *"The area in which the Respondent have carried out construction activities is part of the tidally influenced water body and the construction activities in those areas are strictly restricted under the provision of the CRZ notifications. Uncontrolled construction activities in these area would have devastating effects on the natural water flow that may ultimately result in severe natural calamities. The expert opinions suggest that the devastating floods faced by Uttarakhand in recent years and Tamil Nadu this year are the immediate result of uncontrolled construction activities on river shores and unscrupulous trespass into the natural path of backwater. The Coastal Zone Management Plan (in short "CZMP") has been prepared to check these types of activities and construction activities of all types in the notified areas. The High Court has ignored the significance of approved CZMP."*	**76-89**

3.	***C H Balamohan v. Union of India (OA No. 04/2013 with Appeal No. 18/2017)*** *"We have given due consideration to the issue of protection of the beaches from human induced erosion caused by hard structures. It is a fact that these hard structures may prevent erosion at the said stretch temporarily but the adverse impact of such measures are felt upstream or downstream where erosion starts. Thereby such hard measures only transfer the problem of shoreline change until and unless a holistic study is undertaken keeping in view that sediment cells and appropriate scientific measures taking into consideration both soft and hard. The problem exhaustively highlighted by the applicant, noted above raises substantial question of environment. We are satisfied that the same needs to be addressed by all coastal States/UTs for protection of beaches from human induced erosion caused by hard structures.*	
4.	**Omkar Mahadeo Supekar v. MCGM 2022 SCCOnlIne Bom 1008** The Hon'ble Bombay High Court held in paragraph no. 21 *"the word "construction" is nowhere defined in DCR 2034. In absence thereof, a plain and natural meaning will have to be assigned. The Oxford English Reference Dictionary, Edition 1995 defines 'construct' and means made by fitting parts together, build, form. Similarly, in Concise Oxord Dictionary, Twelfth Edition, 2011, 'construct' means build or erect. Thus, simply stating, construction is the act to build or erect.* At paragraph 23 the High Court held: *"...the obtaining situation as discernible and decipherable from photographs, which is not disputed, shows land flling / reclamation, metallic frames raised on water body for dumping stones and laying of tar road along with peripheral area of the lake which cannot by any stretch of imagination be termed or construed 'rejuvenation and reinvigoration' of the physical and natural environment of Powai Lake. "*	**90-95**
5.	***Najama Gulab Bagwan v. Laxmibai Rangildas Gujar*, 2005 SCC OnLine Bom 912 :** The Hon'ble Bombay High Court, while reproducing another order of the High Court held ***"****Another aspect of the word "repairs" and "reconstruction" has been considered by the Bombay High Court in Ramakant (supra) and as relied by both the parties, is reproduced as under:* *"7. The expression "repairs" and "reconstruction" are not defined in the Act. Therefore, in order to construe provisions of the Bombay Rent Act where the same words occur, one has to take recourse to the ordinary dictionary meaning of such words, and to find out*	**96-103**

	what is the connotation which is in conformity and in harmony with the Act. The meaning of such words which further the purpose of the Act and its scope is the meaning that has to be adopted. The Act intends to give protection to tenants from their eviction by the landlords. Therefore, eviction of the tenant is permissible only when the grounds laid down in the Act itself are satisfied. *8. "Repair" means, according to the New Webster's Dictionary, to restore to a sound or good state after decay, injury, dilapidation, or partial destruction; to make amends for, as for an injury, by an equivalent; to give indemnity for. It also means restoration to a sound or good state of a part which requires reparation. The word "repair", therefore, connotes in common parlance an idea of mending or removing any damage or danger of injury to a particular thing.* *By implication, such word indicates that for repairs, the thing should still has existence. If the thing cease to exist, there will be no question of mending or correcting it. In turn, the meaning of "reconstruction" is given in the same dictionary as the act of constructing again or rebuilding. This words, therefore, implies that something that had existence has disappeared and is completely renewed."*	
6.	***Jaya Mathachan v. Ministry of Environment, Forests and Climate Change* 2021 SCC OnLine NGT 1024** Period of delay must be construed liberally and if found to be not deliberate or wilful, the Court may condone - **Para 13, 18, 19**	**104-107**
7.	***Dyaneshwar Vishnu Shegde v. Union of India and Ors.* 2012 SCC OnLine NGT 80** Approach of the Tribunal should be liberal and not 'hyper-technical' - **Para 10-14**	**108-111**
8.	***Ram Nath Sao v. Gobardhan Sao and Ors.* (2002) 3 SCC 195** Tribunal should take a liberal approach while interpreting the term 'sufficient cause' when condoning delay - **Para 12**	**112-114**
6.	***In re: Cognizance for Extension of Limitation*** Blanket extension on limitation due to Covid-19 - **Para 1,2**	**120-12**

2013 SCC OnLine Ker 14359 : (2013) 4 KLJ 120 : (2013) 3 KLT 840

Affirmed in *Kapico Kerala Resorts (P) Ltd.* v. *State of Kerala*, (2020) 3 SCC 18

Approved in *Kerala State Coastal Zone Management Authority* v. *State of Kerala*, (2019) 7 SCC 248

Affirmed in *Vaamika Island (Green Lagoon Resort)* v. *Union of India*, (2013) 8 SCC 760

In the High Court of Kerala

(BEFORE K.M. JOSEPH AND K. HARILAL, JJ.)

Ratheesh. K.R and Others … Petitioners;

Versus

State of Kerala, Represented by the Chief Secretary and Others … Respondents.

W.P. (C). Nos. 19564/11 U, 28485/11 I, 34799/11S, 4808/12A, 12965/12S, 8299/12S & 2947/13P

Decided on July 25, 2013

Advocates who appeared in this case:

By Advs. Sri. P.K. Ibrahim, Smt. K.P. Ambika.

R1 to R3 & R6 by Spl. Government Pleader Sri. Tom K. Thomas,

R4 by Advs. Sri. A. Jayasankar, Sri. Manu Govind,

R5 by Sri. Prakash C. Vadakkan. J., S.C,

R7 by Adv. Sri. P.A. Augustine, S.C,

R8 by Advs. Sri. E.K. Nandakumar, Sri. K. John Mathai, Sri. P. Benny Thomas, Sri. P. Gopinath Menon,

R9 by Adv. Sri. Bechu Kurian Thomas.

The Judgment of the Court was delivered by

K.M. JOSEPH, J.:— Nediyathuruthu and Vettilathuruthu, once two sleepy islands which lay nestled in the Vembanad Lake which is the longest lake in India and a backwater in the State of Kerala, are at the centre of the controversy which we are called upon to resolve in these batch of seven Writ Petitions. There are five Writ Petitions touching the Nediyathuruthu island. The others relate to the Vettilathuruthu island. Is there violation of the Coastal Regulation Zone Notifications issued in the year 1991 and 2011, and is there encroachment on puramboke land and kayal, are the questions which substantially arise for our consideration. Writ Petitions relating to the Nediyathuruthu Island:

W.P. (C). No. 19564/11 (filed on 18.7.2011).

2. This Writ Petition has been filed by ten petitioners. The 8th respondent is the Kapico Kerala Resorts (P) Ltd. and Shri. Roy M. Mathew as the party respondent (hereinafter referred to as the company). The ninth respondent is a Director. This is a Writ Petition filed on the basis that there were "Oonnipads" (stake nets) located near the Nediyathuruthu island. Essentially, the petitioners claim under one Karumban Krishnan who is stated to be a traditional fisherman and who had obtained stake nets 1, 2 and 3 under patta No. 947 from the Fisheries Department, Government of Kerala about seventy years back. It is their case that the Nediyathuruthu island was agricultural land cultivated with paddy field in water-locked area and the sand bund. In some portions, it is alleged that prawn cultivation was also being carried out. There

were only few families in the entire island. It is the petitioners' case that the company has no permit to reclaim paddy field. It is alleged that respondents 8 and 9 proceeded to construct resorts in the island. Ext.P5 is the report of the Assistant Engineer of Thykkattussery Grama Panchayat recommending building permit subject to the condition that the proposed construction must be upto or beyond the existing building, otherwise, CRZ will be applicable. There is a case of encroachment into the Vembanad Kayal (Lake) by respondents 8 and 9. There is reference to O.S. No. 556/08 filed by owners of stake nets 9, 10 and 11 before the Munsiff Court, Cherthala. The Suit was dismissed on 13.12.2010. Ext.P6 was a commission report dated 14.12.2010 filed on 03.01.2010. The plaintiff carried the matter in appeal and injunction order was granted vide Ext.P7. According to the petitioners, the stake nets belong to the petitioners, they are closer to the island and the illegal reclamation has damaged the three nets. Ext.P8 is a complaint to the District Collector. Exts.P9 to P11 are further complaints. It is alleged that the total income from the stakes was Rs. 4,20,000/= per year out of which Rs. 1,20,000/= will go towards expenditure. There is a loss of income of around Rs. 3,00,000/=. Ext.P12 purports to be the photographs of the island in 2011 before the construction encroaching the lake. Ext.P13 purports to be photograph of concrete pipes filled by respondents 8 and 9 around the island encroaching the Vembanad Kayal (lake) for constructing the resorts. Ext.P14 is produced to show reclamation of the lake around the island showing JCB. It is produced to show the alleged encroachment (alleged reclamation of the integrated portion). Ext.P15 is further photograph produced to show the construction of the resort in the island and it is alleged that it is done encroaching the Vembanad Lake. In Ext.P16 photograph it is alleged further that it is in the area where the stake nets of the petitioners were situated. Ext.P17 is also photograph showing the stake net No. 4 and the present platform. Inaction is alleged against respondents 1 to 7.

3. The fourth respondent Secretary of the Panchayat has filed Counter Affidavit. Therein, it is, inter alia, stated that on 02.8.1996 a NOC has been granted to one Ratna Eswaran and Babu George for the purpose of building construction in certain survey numbers. It is also stated that the NOC was transferred along with the land to the 8th respondent and upon an application made by the grantee, the NOC has been transferred to the 8th respondent. Since the Building Rules were made applicable from 06.6.2007 onwards, the 8th respondent made an application on 23.7.2007 for construction of a building having an area of 13351.42 sq. metres in 1123 cents of land. Building Permit dated 10.10.2007 was issued to the 8th respondent company with conditions. On 14.8.2010, on application, the permit was extended by three years from 10.10.2010. The allegation that the Panchayat permitted the 8th respondent to construct building in such a manner that the petitioners' stake nets would be destroyed, is denied as incorrect, inte alia.

4. The 8th respondent has filed Counter Affidavit. In the Counter Affidavit, the case that the petitioners have been paying tax in respect of the stake nets is stated to be false. It is their case that the stake nets 1, 2 and 3 of Nediyathuruthu Oonnippadu were removed for development of the National Water Way. Ext.R8(a) letter is produced from the Sub Inspector of Fisheries. It is pointed out that in the Judgment of the Munsiff Court, Cherthala dismissing the Suit filed by the brothers of Karumban Krishnan, it is found that there is no way in which the stake nets could be identified. Ext.R8(c) is the Judgment. It is stated that the petitioners have not produced any document to show that they have obtained a licence as required under the Rules for the management and control of Fisheries and Government Water Rules, 1974. Ext.R8 (d) is the Rules. Ext.R8(e) is the plaint in O.S. No. 556/08. It is stated that action was taken by the officers on the complaint. Inspection was conducted by the authorities. It is stated that there were no stake nets near the island at any point of time. After the present phase of the construction was started, some persons brought some poles

(stakes) and placed the same in front of the Jetty constructed by the respondents in order to make it as if their fishing activities had been affected. The allegation that the land in question was paddy field is stated to be incorrect. It is stated that the water available on the island is brackish water and fresh water for cultivation of paddy is not available. It is specifically stated that on enquiry it is learnt that no paddy cultivation has either been carried out on any part of the land belonging to the respondent at any time in the past more than fifty years. There is reference to the No Objection Certificate dated 02.8.1996 issued by the Panchayat. It is their case that though substantial progress was made in finishing the foundation work for construction of a resort and completing some villas and getting it numbered by the said Panchayat, on the basis of this permission, further construction of the villas could not be completed. Thereafter, the then owners of the property entered into a memorandum of understanding with leading entrepreneurs in the hospitality business for setting up a world class resort, it is alleged. Thereafter, on the basis of the Building Rules being applicable and by virtue of certain Government Orders, all constructions which had not progressed beyond the stage of foundation work on the basis of the NOC issued prior to the extension of the Building Rules were required to get permit and the permit was obtained insisting that the existing building line will not be exceeded. It is stated that the respondent has strictly adhered to the condition.

5. Petitioners have filed a detailed Reply Affidavit producing Exts.P20 to P23. It is, inter alia, therein, stated that there has been no acquisition proceedings of stake nets 1 to 12 and 1A in Nediyathuruthu island. It is also stated that the 10th respondent was related to petitioners 1 to 9 and he is also fisherman. It is stated that the petitioners have been paying tax for the stake nets 1 to 3 without any break from 1965 to 1968, 1970 to 1980 and 1988 to 2009 (Ext.P21). It is stated that Nediyathuruthu island is known as "Kari Nilam". Ext.P22 is the order of the Sub Judge, Cherthala dismissing the application filed by respondents 8 and 9 to vacate Ext.P7 interim order. Ext.P23 is a photograph produced to show the stage before the construction began. It is also stated that the land in Nediyathuruthu island is known as "Kari Nilam" which means field where fresh water pours for six months and saline water for the remaining period. The land after it was acquired by the 8th respondent, was used as an island farm to cultivate fish and prawn. It is pointed out that the the statement that there was no paddy cultivation for the past more than fifty years is false. It is stated that the Sale Deed No. 2922/90 dated 16.10.1990 in favour of Ratna Eswaran even refers to the agricultural loan liability outstanding in the property covered under that document. The 9th respondent has filed a separate Counter Affidavit.

6. The fifth respondent is the Coastal Management Authority (hereinafter referred to as the Authority). In the Counter Affidavit filed, it is, inter alia, stated that the authorities had issued several circulars to the Local Self Government Departments regarding implementation of the Notification from 1996 onwards. Respondents 8 and 9 have constructed resorts without any clearance from the Ministry of Environment and Forests as per 1991 and 2011 Notifications. It is not permitted. The Nediyathuruthu island has CRZ land ward of HTL upto 100 metres. The water body is classified as CRZ-IV. Reference is made to conditions in Annexure II of 1991 Notification and Annexure III of 2011 Notification. The Vembanad Kayal is also CRZ area and is classified as CRZ IV. Vembanad Kayal is also declared critical, vulnerable coastal area. Some of the circulars are produced. Respondents 8 and 9 have constructed a bund which prevents the natural course of tidal water which is also prohibited activity. It is stated that both panchayats do not have sea front, but they have water bodies. Hence they are considered to be falling under CRZ-III category. Hence 100 metre distance has to be maintained while constructing resorts in the area. The panchayat cannot issue building permits when CRZ Notification is applicable. The petitioner has filed a Reply Affidavit to the Counter Affidavit of the 9th respondent, producing two CDs, a newspaper report,

a notice by the All India Youth Federation about a mass match and dharna besides two commission reports. It is, inter alia, stated in the Reply Affidavit that the island being an area close to breeding and spawning grounds of fish and other marine life, comes under CRZ-I. Respondents 8 and 9 have constructed four "Pulimuttu" at various places around the island. The reclamation around the island has doubled the total extent of the island which now comes around 24 acres as against its original extent of 12 acres, it is stated. The 8th respondent has filed an Additional Counter Affidavit wherein it is, inter alia, stated that the No Objection Certificate of the panchayat is dated 02.8.1996 while the plan was notified only on 27.9.1996. The 7th respondent, the Inland Waterways Authority of India, has filed a Counter Affidavit wherein it is, inter alia stated that the exact location of the stake nets situated between Buoy No. 150 of IWAI and Nediyathuruthu island needs to be physically verified for authenticity. No control is vested in IWAI over the "Kayal" (lake) except the maintenance of navigable fairway channel having sixty metres wide along the deepest route. It is also stated that the petitioners have stated that the stake nets, 13 in number, were situated between Buoy 150 of IWAI in Vembanad Kayal and Nediyathuruthu island. It is further stated that since the stake nets are away from NW3, the navigation route, IWAI do not have any objection for the fishing nets situated away from the navigational channel of national water way No. 3. However, if the channel is obstructed, the same needs to be shifted away from the navigational channel, that is, leaving sixty metres wide channel for which State Government/Fisheries Department is assisting IWAI.

7. A Counter Affidavit is filed also by respondents 1 and 2. The second respondent is the District Collector, Alappuzha. The Fisheries Department has issued licence No. 947 in regard to Nediyathuruthu stake nets 1 to 3 in favour of Karumban Krishnan. The legal heirs of Karumban Krishnan, it is stated, were paying tax in the name of Karumban Krishnan. It is stated that the land as per the revenue records is shown as "Nilam" and no permission is seen given by the Revenue Department for reclamation and therefore, directions were issued to the sixth respondent to take necessary action. The stake nets in question were removed as part of deepening of national water ways. Government has sanctioned Rs. 1,00,000/= as compensation. Ext.R1(a) is the order sanctioning compensation. Hence stake nets were removed by the Fisheries Department and not due to reclamation of "Kayal" as alleged, it is stated, and the stake nets were removed by the Deputy Director of Fisheries, Alappuzha on 06.10.2008. Government has sanctioned compensation to the owners of chinese nets and illegal nets at the rate of Rs. 1,00,000/= and Rs. 50,000/= respectively. The name of Karumban Krishnan is also included in the list of beneficiaries. It is stated that any encroachment, if any, after removal of the roads will be evicted by the Revenue Department.

8. The Deputy Director of Fisheries has filed a Counter Affidavit. Therein, he has, inter alia, stated that as per ENDT No. C3-5490/95 dated 22.12.2007 of the Director of Fisheries, Thiruvananthapuram, the Deputy Director of Fisheries, Alappuzha removed these three stake nets and other stake nets from the route of the national water way on 06.10.2008 along with the national water way authorities and cleared the route and transferred it to the National Water Way Authorities. The Deputy Director directed the stake nets owners to refix their stake nets on suitable places for fishering. It is further stated that they could not identify suitable fishing places due to obstruction. They asked for compensation. It is stated that the legal heirs of late Karumban Krishnan requested for compensation. Compensation has been sanctioned.

9. A Reply Affidavit is filed by the petitioners, wherein it is, inter alia, stated that the case of removal of the stake nets as part of the deepening of the national water way, is absolutely false. There is a distance of 105 metres from the boundary of the national water way No. 3 to Nediyathuruthu island. The national water way has only a width of 38 metres. There is encroachment by respondents 8 and 9 into a total of 35

metres where stake nets 1 to 3 of the petitioners were located. Ext.P3 location map is produced showing the national water way No. 3. If stake nets were removed, the respondent could not have accepted the tax of stake nets 1 to 3 for 2009-2010 and 2010-2011 Non-mentioning of the removal of the stake nets in Ext.P34 written statement filed in O.S. No. 556/08 is taken as another circumstance to contend that there was no such removal.

10. Learned counsel for the petitioners also relied on the following case law, inter alia:

(i) *Indian Council for Enviro-Legal Action* v. *Union of India* (1996 KHC 766) which deals with the polluter pay principle.

(ii) *Essar Telecom Infrastructure (P) Ltd.* v. *State of Kerala* (2011 (2) KLT 516) - for the proposition that under the Building Rules, there must be site approval before permit is granted.

(iii) *Krishnadevi Maichand Kamathia* v. *Bombay Environmental Action Group* (2011 KHC 4094) - to contend that even if the conditions in an order are void, it is binding on the parties unless set aside by competent authority.

(iv) He sought to draw support from the decision in *Rabindra Nath Ghosal* v. *University of Calcutta* ((2002) 7 SCC 478 : AIR 2002 SC 3560) and *Smt. Nilabati Behera alias Lalita Behera* v. *State of Orissa* ((1993) 2 SCC 746) to contend that compensation can be ordered under Article 226.

(v) He further canvassed the Judgment in *Olga Tellis* v. *Bombay Municipal Corporation* ((1985) 3 SCC 545) in regard to the liability of the State under Article 14 and 21 of the Constitution.

(vi) On the same lines, he relied on the Judgment in *Lucknow Development Authority* v. *M.K. Gupta* ((1994) 1 SCC 243 : AIR 1994 SC 787).

(vii) The decision in *Intellectuals Forum, Tirupathi* v. *State of A.P.* ((2006) 3 SCC 549) is relied on to contend that the Court must not be swayed by the fact that considerable sums have been spent on mega projects. In this regard, support is also drawn from the decision in *Virender Gaur* v. *State of Haryana* ((1995) 2 SCC 577) wherein the Apex Court insisted on demolition of structure constructed on the lands reserved for common purposes.

(viii) In *Piedade Filomena Gonsives* v. *State of Goa* ((2004) 3 SCC 445), the Apex Court took the view that the construction raised in violation of Coastal Regulation Zone Notifications cannot be lightly condoned.

(ix) The decision in *Delhi Jal Board* v. *National Campaign for Dignity and Rights of Sewerage and Allied Workers* ((2011) 8 SCC 568) is cited to contend that the Apex Court has stressed the need for the Court to be sensitized to the need for doing justice to the large mass of people to whom justice has been denied by a cruel and heartless society for generations. The said decision also is cited to contend that compensation can be ordered by the Court.

(x) The decision in *Ismayil* v. *Deputy Tahsildar* (2011 (2) KLT 322) stresses the need to protect and improve the natural environment and to have compassion for living creature and such values must be borne in mind in scrutinizing the concept of sustainable development.

11. The prayers sought are as follows:

"i) Issue a writ of mandamus commanding the respondents to restore the Oonipads/Stake nets 1, 2 and 3 of the petitioners situated between 150 buoy of inland waterways in Vembanattu Kayal and Nediyathuruthu Island covered under Patta No. 947 issued by the Fisheries Department, Government of Kerala.

ii) Issue a writ of mandamus commanding the respondents jointly and severally to pay compensation to the tune of Rs. 1 Crore for the deprivation of their livelihood

protected under Article 21 of the Constitution.

iii) Issue a writ of mandamus commanding the respondents to demolish the illegal constructions made around the Nediyathuruth Island by encroaching into the Vembanadu Kayal and the Pulimuttu/Bund constructed across the Vembanadu kayal to stall the high tide and low tide effect.

iv) Issue a writ of mandamus commanding the respondents to survey the land in Nediyathuruth island and evict respondents 8 and 9 from the land found to be encroached by them.

v). Issue a writ of mandamus commanding the respondents 1 to 7 to survey and identify the land claimed by the respondents 8 and 9 in Sy. No. 266/1/1 under title deed No. 1625/07 dated 14.5.2007 registered at the Sub Registrar's office, Panavally and restore 50 cents of puramboke land occupied by respondents 8 and 9 in Nediathuruth island on the strength of the said document."

12. W.P. (C). No. 28485/11 (filed on 25.10.2011) is filed by the company seeking police protection to the petitioner and its employees, etc. to carry out construction work at the company's resort at the island as against obstruction from the fourth respondent (who is the 10th petitioner in W.P. (C). No. 19564/11) and supporters. The said writ petition was filed on 25.10.2011.

13. W.P. (C). No. 4808/12 (filed on 24.02.2012) is again filed by the company and its Director/share-holder as the second petitioner. Therein, they seek the following reliefs:

"i) declare that Map 32A of the approved Coastal Zone Management Plan for Kerala Ext.P6, to the extent that it includes Nediyathuruthu Island, within the jurisdiction of the 2nd respondent Panchayat, in Allappuzha District within the Coastal Regulation Zone is ultra-vires the notification dated 19.02.1991 issued under Section 3(1) and Section 3(2)(v) of the Environment (Protection) Act, 1986 (commonly referred to as the Coastal Regulation Zone Notification 1991).

ii) declare that the notification issued under Section 3(1) and Section 3(2)(v) of the Environment (Protection) Act, 1986 commonly referred to as the CRZ Regulation dated 19.02.1991 does not apply to islands within the backwaters of the State of Kerala and that the islands such as the one belonging to the Ist petitioner has been brought within the Coastal Regulation Zone only by the notification issued on 6.1.2011 (the Coastal Regulation Zone Notification, 2011);

iii) in the alternative declare that the absence of any study for classification of Nediyathuruth island as contemplated under Annexure-I of the Coastal Regulation Zone Notification dated 19.02.1991, no restriction can be placed on the use and enjoyment of the said Island on any ground referable to the said notification;

iv) issue a writ, order or direction in the nature of the writ of prohibition restraining the respondents from interfering with the operation of the resort at Nediyathuruthu Island at Panavalli, Allappuzha, on the ground that the construction was made in contravention of the Coastal Regulation Zone Notifications; We have referred to the company's case in brief as respondent. We will deal with their case more elaborately later in this Judgment.

W.P. (C). No. 34799/11 (filed on 16.12.2011).

14. Petitioner is a society registered under the Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act. It is allegedly intended to strive for a corruption free society. According to it, on coming to know that a resort is being constructed in violation of the Coastal Zone Regulations and the Building Rules, it made application under the Right to Information Act. According to them, there is violation of the Coastal Zone Regulations. They would also contend that there is no development permit issued under Rule 3 of the Municipal Building Rules. There is no

permit issued in favour of the company under Rule 4 of the Building Rules. They have obtained only the building permit. They would also point out that the application is filed for building permit only on 10.10.2007 and without following the law, it was issued on the very same day. According to the petitioner, there is clear illegality committed and this Court must interfere.

"1. to call for the records leading to granting of permission and no objection for the construction of resorts including Ext.P14 granted by the Ist and 3rd respondents to the 7th respondent in the banks of Vembanad Kayal within the area covered by Exhibits P4, P10 & P11 and quash the same.

ii) to issue a writ of mandamus to the respondents 1 to 6 and such other authorities to take necessary and proper action for demolishing the illegal constructions carried out in violation of the coastal zone regulation notification and other laws and restore the area into its original lie, situation and state of affairs and to evict the 7th respondent from the Govt. property including puramboke kayal which has been encroached into by the 7th respondent and restore the same to Govt.

iii) to take necessary action against the authorities and officials concerned, who have joined hands and colluded with the 7th respondent by granting permission or clearance for the construction of resorts, in any manner violating the Coastal Zone Regulation and other laws in force.

iv). to issue such other appropriate writ, order or direction as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

The stand of the company is the same and we will deal with it in greater detail later on.

W.P. (C). No. 12965/12 (filed on 04.6.2012):

15. Petitioner in this Writ Petition is a trade union of fishermen and workers engaged in fishing, represented by the President of its Thykkattusseri Block Committee. According to them, the No Objection Certificate issued itself is without any basis and there is no power. Therefore, the construction sought to be supported on the basis of the No Objection Certificate cannot itself be countenanced. According to them, further, the building permit is illegal, as it was issued without following the procedure under the Building Rules made applicable from 06.6.2007. There is also violation of the Coastal Regulation Zone Notification.

There is also a case that there is reclamation by the company without permit under the Land Utilisation Order, 1967 and the Kerala Conservation of Paddy Land and Wet Land Act, 2008. Further more, it is contended that an under water electric line was laid at a cost of Rs. 1.5 crores, which is illegal. There is no permission as required. It has the effect of interfering with the rights of the fishermen, as it will have impact on the fishing. It is hazardous.

Writ Petitions relating to Vettilathuruthu Island:

W.P. (C) No. 8299 of 2012 (filed on 30.3.2012):

16. Petitioner claims to be a registered charitable society. The writ petition is filed purportedly in public interest. Briefly put, the case of the petitioner is as follows:

Petitioner noticed good number of resorts were coming upon the banks of Vembanad lake. Vettilathuruth is a small Island of less than 10 acres out of which 1/3rd of the area is Government land encroached by the private owners of the land. Vembanad lake is one of the important backwaters of the State of Kerala. It is the largest and longest lake in India. The notification is issued under the Environment Protection Act as the Coastal Zone Management Regulation of 1991 and it is amended up to date in 2011. Ext.P2 is the notification of 1991 with subsequent amendment upto 2005. Ext.P3 is the revised Coastal Zone Regulation notification on 6.1.2011.

Petitioner filed application under the Right to Information Act. Ext.P4 is the answer. It reads as follows:

"Information requested furnish here under:

1. Muddy waters Island Pvt. Ltd. has remitted Rs. 16900/- towards professional tax.
2. No orders have been received from government, in the panchayath, exempting the above said establishment from the purview of coastal zone regulation.
3. Not received.
4. No details of un empires un authorized building obtained by instruction.
5. First half yearly professional tax of 2011-2012 for 16 employees remitted.
6. No orders from the coastal zone regulation authority has been obtained."

Petitioner, knowing about the illegal constructions requested the authorities to take action. Ext.P5 is the representation. There is no action taken. No permission is obtained from respondents 1 to 4 by respondents 7 and 8 for making any permanent construction. The party respondents were being assisted by the office bearers of the 6th respondent panchayat and the Village Officer and Tahsildar and other Revenue officers. Ext.P6 is the Circular dated 17.7.1996 issued by the 4th respondent (CZMA). Ext.P7 is another communication by the management authority. Petitioner filed further representation as Ext.P9. Ext.P10 is the building permit dated 30.4.2012. The following reliefs are sought:

"i) To call for the records leading to Ext.P10 building permit and all other records and proceedings issued by the 6th respondent so far as it granted permission for effecting reconstruction of structures for resorts, hotels or for any other purpose by the respondents 7 and 8 at Vettilathuruthu and quash the same by issuing a writ of certiorari.

(i)(a) : To direct the 5th respondent to measure and demarcate the Kayal area encroached by the respondents 7 and 8 at Vettilathuruthu and declare that all such encroachment and illegal constructions therein are liable to be demolished and removed and to restore the area in its original position.

ii) To issue a writ of mandamus to the respondents 1 to 6 and such other authorities to take necessary and proper action for demolishing the illegal constructions carried out in violation of the coastal zone regulation notifications, the Kerala Municipality Building Rules and other laws and evict the respondents 7 and 8 from the illegal encroachment of Kayal area and restore the area into its original lie, situation and state of affairs.

iii) To direct respondents 1 and 2 to take necessary action against the authorities and officials concerned, who have joined hands and colluded with the respondents 7 and 8, in what ever manner, for allowing the encroachment and illegal constructions at Vettilathuruthu, violating the Coastal Zone Regulation and other laws in force.

iv) To issue such other appropriate writ, order or direction as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

17. A Counter Affidavit is filed by the 6th respondent (panchayat) wherein it is, inter alia, stated as follows:

On the basis of the petitioner's complaint inspection is conducted, stop memo is issued to the 8th respondent intimating that the constructions without prior permission should be stopped and on the basis of the same the 8th respondent stopped further constructions. It is further stated that, by communication dated 24.4.2012, the 8th respondent explained that the construction activities now being carried out are only repair works of the existing buildings in old model and no new

construction activities are being undertaken (Archaic style). Pursuant to the communication, the 8th respondent, by request dated 30.4.2012 applied for permit for reconstruction and repair and after conducting necessary inspection it is found that the repair works are being conducted on very old building, 6 in number which were already allotted with panchayat numbers. In such circumstances, the 8th respondent was granted a permit for reconstruction of the existing 6 old buildings with a condition that the reconstruction activity shall not alter the existing plinth area and that the Coastal Zone Regulations shall also be complied with strictly. As per the records maintained by the panchayat, the existing plinth area was 999.23 Sq. meter. However, the reconstruction permit was issued for 869.20 Sq. meter only. In such circumstances, it is pointed out that, there cannot be an allegation that by virtue of the reconstructions, the Coastal Zone Regulations have been violated. The enquiries conducted by the Village Officer has not revealed any instance of encroachment of purampokku land. The 8th respondent, from available records maintained by the pachayat would show that it has remitted license fee, employment tax etc. from 2007 onwards. No new construction has been brought to the notice of the 6th respondent.

18. Subsequently, an affidavit is filed wherein it is inter alia stated by the Secretary of the panchayat that, on further verification, it is found that, on 30.4.2012, the respondent issued a permit for repair and reconstruction. The application for the same was made by request dated 26.4.2012. The mistaken statement that request was made on 30.4.2012 is sought to be corrected.

19. A Statement is filed by the 4th respondent Coastal Management Authority. Therein, it is inter alia stated as follows:

"(1). The Vettilathuruthu Island is in Vembanad backwaters. As per the Kerala Coastal Zone management plan Map No. 32A, the area is marked as filtration ponds which are categorized as CRZ 1 (i) as per CRZ Notification 1991, in these areas no new constructions can be permitted except projects relating to Department of Atomic Energy and pipelines and conveying systems including transmission lines. Facilities that are essential for permissible activities under CRZ1, installation of weather radar for monitoring of cyclone movement, and prediction by Indian Meteorological Department and construction of trans-harbour sea links can also be permitted. Any other construction made in the CRZ 1 area will be blatant violation of provisions of CRZ Notification 1991 and 2011.

(2). The provisions of CRZ notification in Vembanad Kayal as per the approved coastal Zone Management Plan of the State are made upto Thaneermukkam bund. As per CRZ notification 2011 the Vembanad backwaters are declared critically vulnerable coastal area.

(3). As per CRZ notification 1991, the CRZ 11 areas are developed to coastal shoreline within the municipal limit or other legally designated urban area. The CRZ Notification 2011 has been modified to the extent that the classification I, II and III remains same. The category IV includes the water body are influenced tidal action from sea and also upto nautical miles seaward from the Low Tide Line of sea. The notification has provided special dispensation to the backwater islands of Kerala where the CRZ will be 50m landward of High Tide Line.

(4). No new constructions can be permitted in CRZ I area except projects relating to Department of Atomic Energy and pipelines and conveying systems including transmission lines. Facilities that are essential for permissible activities under CRZ I, installation of weather radar for monitoring of cyclone movement and prediction by Indian Meteorological Department and construction of trans-harbour sea links alone can also be permitted. The statement that as far as CRZ I area is concerned building shall be permitted in landward side of road is not

correct. It is applicable only to CRZ II.

It is also stated that the construction made in the Vettilathuruthu Island is a blatant violation of the 1991 and 2011 notifications.

The Centre for Earth Science Studies on request reported that all the construction held and the ongoing landscape modifications/new construction by M/s. Vamika Resorts in Vettilathuruthu Islands are in violation of the provisions of the notifications. The authority has received petitions which have been forwarded to CESS for verification and any construction made without obtaining statutory clearance will amount to violation.

20. A Reply Affidavit is filed by the petitioner.

Respondents 7 and 8 filed counter affidavits wherein it is inter alia stated as follows:

A total extent of 211.06 Ares (521.52 cents) comprised in various survey numbers is owned by the 8th respondent having obtained the same under sale deeds of the years 1999, 2000, 2001 and 2005. They denied the case of illegal construction. They would say that the structures in the property were in existence in 1991 also. There are 12 buildings in the property of which 8 have been numbered by the panchayat. All the buildings have been in existence even in 1991, ie., even prior to purchase of the property by the petitioner. The unnumbered buildings are presently used for storing of materials for staying of labourers who are residing in the property in connection with the renovation work.

Respondents 7 and 8 were running a hotel in their property from the year 2006-2007 onwards in the said property. Subsequently, as is the general practice some of the authorised structures needed to be renovated in order to provide comfortable stay for the guests.

In such circumstances, it was decided to reconstruct 6 of the authorised structures within the limitations of existing floor space index and less than the existing plinth area and for this purpose permit had been applied for and granted. Along with the same, interiors are also being renovated in terms of electrical and lighting fittings, beddings, bathrooms etc. It is also stated that in view of of Rule 10 of the Panchayat Building Rules, a building permit is not necessary in Category II-Village Panchayats for buildings up to 150 Sq. meters and it was in this background and understanding of the provisions that a separate building permit was not applied for.

W.P. (C) No. 2947 of 2013 (filed on 30.01.2013):

21. The above writ petition is filed by the 8th respondent (island owner) in W.P. (C) No. 8299/2012. The prayers in the writ petition are as follows:

> "a) Declare that Ext.P3 to the extent that it includes the property of the petitioner comprised of 16.19 Ares in Sy. No. 236/1-3, 3.40 Ares in Sy. No. 236/1-1 -5, 59.94 Ares in Sy. No. 236/2ABCD,
>
> 4.04 Ares in Sy. No. 236/2B2, 16.20 Ares in Sy. No. 236/2A, 4.05 Ares in Sy. No. 236/2B3, 8.10 Ares in Sy. No. 236/1-2ABC, 29.94 Ares in Sy. No. 236/1-5 and 69.20 Ares in Sy. No. 236/3C comprising north eastern and southern portion of the island of Vettilla Thuruthu in Allapuzha District within the Coastal Regulation Zone is ultra vires the Coastal Regulation Zone Notification, 1991 and the Coastal Regulation Zone Notification, 2011, by an appropriate writ, direction or order.
>
> b) In the alternative, declare that the classification of the property of the petitioner situated in Vettila Thuruthu Island as Filtration Pond in Ext.P3 and the consequent categorization of the same under CRZ-I by the 3rd respondent is unconstitutional besides being ultra vires the Coastal Regulation Zone Notification, 1991 and the Coastal Regulation Zone Notification, 2011 by an appropriate writ, direction or order."

Briefly put, the case of the petitioner is as follows:

Petitioner is the absolute owner in possession and enjoyment of an extent of 16.19 Ares in Sy. No. 236/1-3, 3.40 Ares in Sy. No. 236/1-1-5, 59.94 Ares in Sy. No. 236/2ABCD, 4.04 Ares in Sy. No. 236/2B2, 16.20 Ares in Sy. No. 236/2A, 4.05 Ares in Sy. No. 236/2B3, 8.10 Ares in Sy. No. 236/1-2ABC, 29.94 Ares in Sy. No. 236/1-5 and 69.20 Ares in Sy. No. 236/3C comprising north eastern and southern portion of the island of Vettilla Thuruthu.

The said properties comprising the island was earlier prior to the purchase of the same by the petitioner inhabited by several families who had constructed buildings in the properties and were staying therein. The extent owned by the petitioner on the said island is a pucca garden land. Even prior to 1991, there were families staying in the island and having houses of their own. In order for repair and reconstruction of existing structures bearing Door Nos. I/93, I/94, I/95, I/93A, I/93 B, I/93C, in the property of the petitioner, petitioner obtained building permit NO. C/1/KPBR/2012-13 dated 30-4-2012 from the 4th respondent.

The panchayat gave such permit after fully satisfied genuineness of the request made by the petitioner in that regard. The reconstruction has been completed and the same are being used by the petitioner. The writ petition is filed on the basis of the stand adopted by the Kerala Coastal Zone Management Authority and the counter filed in W.P. (C) No. 8299/2012 wherein they have stated that the entire Island and Vettilathuruth wherein the property of the petitioner is situated is a filtration pond which is categorized as CRZ I (i) as per CRZ Notification 1991. It is the case that Map 32A in so far as it relates to the property of the petitioner on Vettilathuruthu is prepared ignoring the mandate of CRZ 1991 notification and various directives issued by the first respondent. It is arbitrary. The property of the petitioner is not filtration pond. The classification made of Vettilathurutu under CRZ I (i) under the 1991 notification is absolutely erroneous. CRZ 1991 notification does not contemplate any "Filtration Pond". The terms 'filtration pond' is not referred to in the notification in the Environment Protection Act. The Vettilathurutu Island is not an area developed for aquaculture and cannot be characterized as CRZ I (i). No part of the Island is low lying nor the area where fish is grown in large numbers. It is stated that prior surveys does not include the Island as water bodies. No new plan is prepared after 2002. By virtue of the amendment to the notification in 2002, there is a mandate that the distance which the tidal effects are experienced should be determined based on salinity concentration of 5 parts per thousand (ppt). It is their case that, salinity measurement was not conducted in 1993 or earlier point of time. Under the 1991 notification, the salinity measurement is to be done during the driest period of the year implied that salinity is to be measured afresh after the amendment in 2002. The law contemplates the Mapping authority to prepare cadastral maps. But, the same is never done. There were several families residing in the Island prior to CRZ notification and there were structures. It is also submitted that, on account of the global warming salinity would be reduced. It is also submitted that, at any rate, the Island would come only under the CRZ-III.

22. A Counter Affidavit is filed by the authority. Therein, it is, inter alia, stated as follows : Filtration ponds and the adjoining fifty metre belt are demarcated as CRZ-I. Vettilathuruthu is categorised as per the Plan Map 32A as filtration pond. The area is also low lying and it is likely to be inundated due to sea level rise. As per the CRZ Notification, 1991 the entire Vettilathuruthu is CRZ-I and as per 2011 Notification, it is CRZ-III and IV. The 2011 Notification has also defined the Vembanad backwaters as CVCA. An expert team has conducted site inspection and given Ext.R3(c) report. The Coastal Zone Management Plan was prepared based on guidelines of MoEF The geographic maps prepared by the Survey of India (Government of India) and the Cadastral Maps prepared by the Survey Department of Kerala Government was used as

base map for preparation of plan. The 1991 Notification and 2011 Notification do not differentiate between natural and man-made water bodies:

> "7. The Coastal Zone Management Plan was prepared in 1994-1995 periods. The data of 1993-94 was used by CESS for demarcating the CRZ area. While mapping the CRZ, the area up to 5 PPT was demarked and marked in Coastal Zone Management Plan. There was no direction to prepare fresh Coastal Zone Management Plan during 2002. The salinity measurements were done to fix the landward extent of the tidal influence in the back water or rivers. Salinity is an indicator of tidal effects. The salinity measurements were done as per standard measurement technique in Parts Per Thousand (PPT)". The preparation of cadastral scale map has to be done by the Local Self Government Institutions for their applications. The maps are thus cadastral scale maps, which is a mandatory document to be submitted along with the application:
>
> "9. The CRZ notification 2011 had provided special dispensation to the islands in the backwater of Kerala. The CRZ notification 1991 was made applicable to the Islands in proximity to the tidally influenced water bodies. The category IV in CRZ notification 1991 was for Islands in the territorial waters like Lakshadweep and Andaman & Nicobar. The category IV as per CRZ notification 2011 is water body. The islands in the territorial waters have been brought under a separate notification during 2011 and this does not include the backwater islands in Kerala."

The CRZ Notification of 2011 is made applicable with effect from 06.01.2011. The new Coastal Zone Management Plan is being prepared based on the 2011 Notification. Until the new coastal zone map is approved, the plan based on 1991 Notification will be in place. The reconstruction permit issued by the panchayat is subject to CRZ provisions. The petitioner was directed to follow the CRZ Notifications and it has not been followed. Reference is made to the special dispensation for the State in view of the unique coastal system of backwater and backwater islands.

23. AReply Affidavit is filed reiterating the stand in the Writ Petition. The fifth respondent has also filed detailed Counter Affidavit. The fifth respondent is the petitioner in W.P. (C). No. 8299/12.

24. We have heard Shri. K.V. Viswanathan, learned senior counsel who appeared with Shri. P. Gopinath Menon, Shri. T.M. Mohammed Youseff, learned senior counsel, Shri. P. K. Ibrahim, Shri. T. M. Raman Kartha, Shri. K. I. Mayankutty Mather, Shri. Bechu Kurian Thomas, Smt. T.B. Mini, Shri. Prakash C. Vadakkan, Shri. Manu Govind and also Shri. Tom Thomas, learned Government Pleader.

The Coastal Regulation Zone Notifications;

Its salient Features:

25. Let us examine the provisions contained in the Notifications issued under the Environment (Protection) Act, 1986 (hereinafter referred to as the Act). The Coastal Regulation Zone Notification was first issued in the year 1991 which is issued under Section 3 (1) and Section 3 (2) (v) of the Environment (Protection) Act, 1986. Government declared that coastal stretches of seas, bays, estuaries, creeks, rivers and backwaters which are influenced by the tidal action (in the landward side) upto 500 meters from the High Tide Line (HTL) and the land between the Low Tide Line (LTL) and the HTL as Coastal Regulation Zone and imposed with effect from the date of the Notification the restrictions on the setting up and expansion of industries operations or processes. It was further provided that for the purpose of the Notification, the High Tide Line will be defined as a line upto which the highest Highest Tide reaches at spring tide. Thereafter, there was a Note which read as follows:

> "Note.- The distance from the High Tide Line (HTL) to which the proposed regulations will apply in the case of rivers, creeks and backwaters may be

modified on a case by case basis for reasons to be recorded while preparing the Coastal Zone Management Plans (referred to below); however, this distance shall not be less than 100 metres or the width of the creek, river or backwater whichever is less." Thereafter, by Notification dated 18.8.1994, for the portion beginning with the words "For the purposes of this notification, the High Tide Line" and ending with the words "width of the creek, river and backwater whichever is less", the following was substituted:

"For the purposes of this notification, the High Tide Line means the line on the land upto which the highest water line reaches during the spring tide and shall be demarcated uniformly in all parts of the country by the demarcating authority so authorised by the Central Government in consultation with the Surveyor General of India.

NOTE:— The distance from the High Tide Line shall apply to both sides in the case of rivers, creeks and back waters and may be modified on a case by case basis for reasons to be recorded while preparing the Coastal Zone Management Plans. However, this distance shall not be less than 50 metres or the width of the creek, river or back-water whichever is less.

The distance upto which development along rivers, creeks and back-waters is to be regulated shall be governed by the distance upto which the tidal effect of sea is experienced in rivers, creeks or back-waters, as the case may be, and should be clearly identified in the Coastal Zone management Plans."

There were certain other amendments with which we are not concerned.

26. Still later, by Notification dated 29.12.1998, the following amendment was brought about:

"In paragraph 1, sub-paragraph (3), for the words "For the purposes of this notification, the High Tide Line means the line on the land upto which the highest water line reaches during the spring tide and shall be demarcated uniformly in all parts of the country by the demarcating authority so authorised by the Central Government in consultation with the Surveyor General of India", the following shall be substituted, namely:—

"For the purposes of this notification, the High Tide Line means the line on the land upto which the highest water line reaches during the spring tide. The High Tide Line shall be demarcated uniformly in all parts of the country by the demarcating authority or authorities so authorised by the Central Government, in accordance with the general guidelines issued in this regard."

Thereafter, by Notification dated 21.5.2002, the following amendments were effected, inter alia:

"1. In the said notification, (i) in paragraph 1, in sub-paragraph (3),—

(1) the portion beginning with the words, "For the purpose of this notification" and ending with words "general guidelines issued in this regard", shall be numbered as clause (i);

(2) after clause (i) as so numbered, the following clause shall be inserted, namely;

"(ii) The distance from the High Tide Line shall apply to both sides in the case of rivers, creeks and backwaters and may be modified on a case to case basis for reasons to be recorded in writing while preparing the Coastal Zone Management Plans provided that this distance shall not be less than 100 meters or the width of the creek, river or backwaters, whichever is less. The distance upto which development along rivers, creeks and backwaters is to be regulated shall be governed by the distance upto which the tidal effects are experienced which shall be determined based on salinity concentration of 5 parts per thousand (ppt). For

the purpose of this notification, the salinity measurements shall be made during the driest period of the year and the distance upto which tidal effects are experienced shall be clearly identified and demarcated accordingly in the Coastal Zone Management Plans."

(iii) the Note shall be omitted." After the amendment, the provisions read as follows:"i) For the purposes of this notification, the High Tide Line means the line on the land up to which the highest water line reaches during the spring tide. The High Tide Line shall be demarcated uniformly in all parts of the country by the demarcating authority or authorities so authorized by the Central Government, in accordance with the general guidelines issued in this regard." Sub-paragraph (ii) reads as follows after the amendment:"(ii) The distance from the High Tide Line shall apply to both sides in the case of rivers, creeks and backwaters and may be modified on a case to case basis for reasons to be recorded in writing while preparing the Coastal Zone Management Plans provided that this distance shall not be less than 100 meters or the width of the creek, river or backwaters, which ever is less. The distance upto which development along rivers, creeks and backwaters is to be regulated shall be governed by the distance upto which the tidal effects are experienced which shall be determined based on salinity concentration of 5 parts per thousand (ppt). For the purpose of this notification, the salinity measurements shall be made during the driest period of the year and the distance upto which tidal effects are experienced shall be clearly identified and demarcated accordingly in the Coastal Zone Management Plans." Para 2 declares certain activities as prohibited within the Coastal Regulation Zone (hereinafter referred to as 'the Zone"). Para 3 of the 1991 Notification provides that all other activities except those which are prohibited in para 2 is sought to be regulated. Para 3 provided that clearance shall be given for any activity within the Zone only if it requires water front and foreshore facilities. Clause (2) of para 3 details various activities which require environmental clearance from the Ministry of Environment and Forests, Government of India. Among the activities which require environment clearance is "all other activities with investment of five crore rupees or more". (See Para 3 (v)). Annexure-I to the Notification deals with coastal area classification and development regulations. The notification provides for classifying coastal stretches within 500 meters in the High Tide Line area into four categories. They are Categories CRZ-I, CRZ-II, CRZ-III, CRZ-IV. They being relevant for the purpose of our case we extract the same.

"Classification of Coastal Regulation Zone : 6(1) For regulating development activities, the coastal stretches within 500 meters of High Tide Line on the landward side are classified into four categories, namely : Category I (CRZ-I):

(i) Areas that are ecologically sensitive and important, such as national parks/marine parks, sanctuaries, reserve forests, wildlife habitats, mangroves, corals/coral reefs, areas close to breeding and spawning grounds of fish and other marine life, areas of outstanding natural beauty/historically/heritage areas, areas rich in genetic diversity, areas likely to be inundated due to rise in sea level consequent upon global warming and such other areas as may be declared by the Central Government or the concerned authorities at the State/Union Territory level from time to time.

(ii) Area between Low Tide Line and the high Tide Line. Category-II (CRZ-II):

The areas that have already been developed up to or close to the shoreline. For this purpose, "developed area" is referred to as that area within the municipal limits or in other legally designated urban areas which is already substantially built up and which has been provided with drainage and approach roads and other

infrastructural facilities, such as water supply and sewerage mains. Category-III (CRZ-III):

Areas that are relatively undisturbed and those which do not belong to either Category-I or II. These will include coastal zone in the rural areas (developed and undeveloped) and also areas within Municipal limits or in other legally designated urban areas which are not substantially built up. Category-IV (CRZ-IV) : Coastal stretches in the Andaman & Nicobar, Lashadweep and small islands, except those designated as CRZ-I, CRZ-II or CRZ-III."

27. Norms have been made for regulating activities. As far as CRZ-I is concerned, no new construction is permitted except certain activities which are not relevant for our purpose. As already noted, CRZ-IV relates to coastal stretches in Andaman and Nicobar Islands, Lakshadweep and small islands except as designated as CRZ-I, CRZ-II or CRZ-III. Regulations have been put in place separately for Andaman and Nicobar Islands on the one hand and Lakshadweep and small islands on the other. Guidelines have been framed by Annexure-II for development of beach resorts/hotels in the designated areas of CRZ-III for temporary occupation of tourist/visitors with prior approval of the Ministry of Environment and Forests.

28. We may at once also refer to the Coastal Regulation Zone Notification 2011. The same was published on 6.1.2011 in the Gazette. In Para 1 of the Notification it is inter alia stated as follows:

"Now, therefore, in exercise of the powers conferred by sub-section (1) and clause (v) of sub-section (2) of section of the Environment (Protection) Act, 1986 (29 of 1986), the Central Government, with a view to ensure livelihood security to the fisher communities and other local communities, living in the coastal areas, to conserve and protect coastal stretches, its unique environment and its marine area and to promote development through sustainable manner based on scientific principles taking into account the dangers of natural hazards in the coastal areas, sea level rise due to global warming, does hereby, declare the coastal stretches of the country and the water area up to its territorial water limit, excluding the islands of Andaman and Nicobar and lakshadweep and the marine areas surrounding these islands up to its territorial limit, as Coastal Regulation Zone (hereinafter referred to as the CRZ) and restricts the setting up and expansion of any industry, operations or processed and manufacture or handling or storage or disposal of hazardous substances as specified in the Hazardous Substances (Handling, Management and Transboundary Movement) Rules, 2009 in the aforesaid CRZ; and In exercise of powers also conferred by clause (d) and sub rule (3) of rule 5 of Environment (Protection) Act, 1986 and in supersession of the notification of the Government of India in the Ministry of Environment and Forests, number S.O.

114. (E), dated the 19th February, 1991 except as respect things done or omitted to be done before such supercession, the Central Government hereby declares the following areas as CRZ and imposes with effect from the date of the notification the following restrictions on the setting up and expansion of industries, operations or processes and the like in the CRZ—

(i) the land area from High Tide Line (hereinafter referred to as the HTL) to 500 mts on the landward wide along the sea front.

(ii) CRZ shall apply to the land area between HTL to 100 mts or width of the creek whichever is less on the landward side along the tidal influenced water bodies that are connected to the sea and the distance up to which development along such tidal influenced water bodies is to be regulated shall be governed by the distance up to which the tidal effects are experienced which shall be determined based on salinity concentration of 5 parts per thousand (ppt) measured during the driest period of the year and distance up

to which tidal effects are experienced shall be clearly identified and demarcated accordingly in the Coastal Zone Management Plans (hereinafter referred to as the CZMPs).

Explanation.-For the purposes of this sub-paragraph the expression tidal influenced water bodies means the water bodies influenced by tidal effects from sea, in the bays, estuaries, rivers, creeks, back waters, lagoons, ponds connected to the sea or creeks and the like.

(iii) the land area falling between the hazard line and 500 mts from HTL, on the landward side, in case of seafront and between the hazard line and 100 mts line in case of tidal influenced water body. The word 'hazard line' denotes the line demarcated by Ministry of Environment and Forests (hereinafter referred to as the Sol) taking into account tides, waves, sea level rise and shoreline changes.

(iv) land area between HTL and Low Tide Line (hereinafter referred to as the LTL) which will be termed as the inter tidal Zone.

(v) the water and the bed area between the LTL to the territorial water limit (12 Nm) in case of sea and the water and the bed area between LTL at the bank to the LTL on the opposite side of the bank, of tidal influenced water bodies.

2. For the purposes of this notification, the HTL means the line on the land up to which the highest water line reaches during the spring tide and shall be demarcated uniformly in all parts of the country by the demarcating authority (s) so authorized by the MoEF in accordance with the general guidelines issued at Annexure-I HTL shall be demarcated within one year from the date of issue of this notification."

Para 3 deals with prohibited activities. Para 4 deals with regulation of permissible activities in the zone area. Para 4 inter alia provides that activities which are mentioned shall be regulated except those prohibited in para 3. The notification also clearly provides that clearance will be provided within the zone only if it requires waterfront and foreshore facilities. Clause 4(b) inter alia reads as follows:

"(b) for those projects which are listed under this notification and also attract EIA notification, 2006 (S.O.1533 (E), dated the 14th September, 2006), for such projects clearance under EIA notification only shall be required subject to being recommended by the concerned State or Union territory Coastal Zone Management Authority (hereinafter referred to as the CZMA)."

Clause 'd' reads as follows:

"(d) Construction involving more than 20,000 sq.mts build-up area in CRZ-II shall be considered in accordance with EIA notification, 2006 and in case of projects less than 20,000 sq.mts. built-up area shall be approved by the concerned State or Union territory Planning authorities in accordance with this notification after obtaining recommendation from the concerned CZMA and prior recommendations of the concern CZMA shall be essential for considering the grant of environmental clearance under EIA notification, 2006 or grant of approval by the relevant planning authority."

Para 4.2 deals with the procedure for clearance of permissible activities. The project proponents are to apply the documents which are mentioned therein. Further, it provides for getting no objection certificate from the State Pollution Control Board inter alia for projects involving discharge of effluents, solid wastes, sewage and the like. Para 5 provides for preparation of Coastal Zone Management Plans. It inter alia provides that the Ministry of Environment Forests (MOEF) may obtain Coastal Zone management Plans (CZMPs) prepared through respective State Government or Union Territory. The plans may be prepared by the concerned State Government by engaging reputed and experienced scientific institutions or agencies as provided inter alia. The coastal States and Union Territories are to prepare within a period of twenty four

months from the date of issue of the notification draft CZMPs in 1 : 25,000 scale map identifying and classifying the CRZ areas within the respective territories in accordance with the guidelines in Annexure-I of the notification which involve public consultation. The draft CZMPs are to be submitted by the State Government or Union territory to the concerned CZMA for appraisal including appropriate consultations and recommendations as provided under the Environment (Protection) Act, 1986. Ultimately, the MoEF shall consider and approve the CZMPs within a period of 4 months from the date of receipt of the CZMPs complete in all respects. All developmental activities listed in the notification are to be regulated within the framework of CZMPs as the case may be in accordance with the provisions of the notification. Para 5(xii) reads as follows:

"(xii) The CZMPs already approved under CRZ notification, 1991 shall be valid for a period of twenty four months unless the aforesaid period is extended by MoEF by a specific notification subject to such terms and conditions as may be specified therein."

Para 6 deals with Enforcement of the CRZ.

Clause (d) therein provides as follows:

"(d) The dwelling units of the traditional coastal communities including fisherfolk; tribals as were permissible under the provisions of the CRZ notification, 1991, but which have not obtained formed approval from concerned authorities under the aforesaid notification shall be considered by the respective Union territory CZMAs and the dwelling units shall be regularized subject to the following condition, namely:—

(i) these are not used for any commercial activity.

(ii) these are not sold or transferred to non-traditional coastal community."

Para 7 deals with classification of the Zone and it provides that for the purpose of conserving and protecting the coastal areas and marine waters, the Zone area is to be classified as CRZ-I, CRZ-II, CRZ-III, CRZ-IV and V. CRZ-I reads as follows:

(i) CRZ-I,- A. The areas that are ecologically sensitive and the geomorphological features which play a role in the maintaining the integrity of the coast,—

(a) Mangroves, in case mangrove area is more than 1000 sq.mts, a buffer of 50 meters along the mangroves shall be provided;

(b) Corals and coral reefs and associated biodiversity;

(c) Sand Dunes;

(d) Mudflats which are biologically active;

(e) National parks, marine parks, sanctuaries, reserve forests, wildlife habituate and other protected areas under the provisions of Wild Life (Protection) Act, 1972 (53 of 1972), the Forest (Conservation) Act, 1980 (69 of 1980) or Environment (Protection) Act, 1986 (29 of 1986); including Biosphere Reserves;

(f) Salt Marshes;

(g) Turtle nesting grounds;

(h) Horse shoe crabs habitats.

(i) Sea grass beds;

(j) Nesting grounds of birds;

(k) Areas or structures of archaeological importance and heritage sites.

B. The area between Low Tide Line and High Tide Line:"

It is also relevant to extract the area classified as V. It reads as under.

"(V). Areas requiring special consideration for the purpose of protecting the critical coastal environment and difficulties faced by local communities,- A. (i) CRZ area

falling within municipal limits of Greater Mumbai;

(ii) the CRZ areas of Kerala including the backwaters and backwater islands;

(iii) CRZ areas of Goa.

B. Critically Vulnerable Coastal Areas (CVCA) such as Sunderbans region of West Bengal and other ecologically sensitive areas identified as under Environment (Protection) Act, 18\986 and managed with the involvement of coastal communities including fisherfolk."

Para 8 provides for regulation of permissible activities. Regarding V it is divided as follows:

"1. CRZ area falling within municipal limits of Greater Mumbai : 2 deals with CRZ areas of Kerala. It being relevant we extract the same.

"2. CRZ for Kerala In view of the unique coastal systems of backwater and backwater islands along with space limitation present in the coastal stretches of the State of Kerala, the following activities in CRZ shall be regulated as follows, namely:—

(i) all the islands in the backwaters of Kerala shall be covered under the CRZ notification;

(ii) the islands within the backwaters shall have 50 mts width from the High Tide Line on the landward wide as the CRZ area.

(iii) within 50 mts from the HTL of these backwater islands existing dwelling units of local communities may be repaired or reconstructed however no new construction shall be permitted.

(iv) beyond 50 mts. from the HTL on the landward side of backwater islands, dwelling units of local communities may be constructed with the prior permission of the Grama Panchayath;

(v) foreshore facilities such as fishing jetty, fish drying yards, net mending yard, fishing processing by traditional methods, boat building yards, ice plant, boat repairs and the like, may be taken up within 50 mts. width from HTL of these backwater islands."

29. Still further, we may notice that clause 4(a) purports to deal with what is called Critical Vulnerable Coastal Areas and we extract the same.

"4(a) Critical Vulnerable Coastal Areas (CVCA) which includes Sunderbans and other identified ecological sensitive areas which shall be managed with the involvement of the local coastal communities including the fisher folk;-

(b) the entire Sunderbans mangrove area and other identified ecologically important areas such as Gulf of Khambat and Gulf of Kutchchh in Gujarat, Malvan, Achra-Ratnagiri in Maharashtra, Karwar and Coondapur in Karnataka, Vembanad in Kerala, Gulf of Munnar in Tamil Nadu, Bhaitarkanika in Orissa, Coringa, East Godavari and krishna in Andhra Pradesh shall be declared as Critical Vulnerable Coastal Areas (CVCA) through a process of consultation with local fisher and other communities inhabiting the area and depend on its resources for their livelihood with the objective of promoting conservation and sustainable use of coastal resources and habitats;

(c) the process of identifying planning, notifying and implementing CVCA shall be detailed in the guideline which will be developed and notified by MoEF in consultations with the stakeholders like the State Government, local coastal communities ad fisherfolk and the like inhabiting the area;

(d) the Integrated management Plans (IMP) prepared for such CVCA shall interalia keep in view the conservation and management of mangroves, needs of local communities such as, dispensaries, schools, public rain shelter, community toilets, bridges, roads, jetties, water supply, drainage, sewerage and the impact

of sea level rise and other natural disasters and the IMPs will be prepared in line with the para 5 above for preparation of Coastal Zone Management Plans;

(e) till such time the IMPs are approved and notified, construction of dispensaries, schools, public rain shelters, community toilets, bridges, roads, jetties, water supply, drainage, sewerage which are required for traditional inhabitants shall be permitted on a case to case basis, by the CZMA with due regards to the views of coastal communities including fisherfolk."

Annexure-I of the 2011 notification provides for guidelines for preparation of coastal zone management plans. It inter alia provides under the heading "Hazard Mapping" that CZM maps shall be prepared in accordance with the CZM Maps. Para 5 deals with demarcating CRZ-I, II, III, IV and V. Maps should clearly demarcate land use plan of the area and list out CRZ-I area. CRZ-I area listed under para I.A and B should be specifically classified.

Clause 8 reads as follows:

"8. No developmental activities other than those listed above shall be permitted in the areas between the hazard line and 500 mts or 100 mts. or width of the creek on the landward side. The dwelling unit of the local communities including that of the fishers will not be relocated if the dwelling units are located on the seaward side of the hazard line. The State Government will provide necessary safeguards from natural disaster to such dwelling units of local communities."

Still further, clause 12 provides as follows:

"12. In the CRZ V areas the land use maps shall be superimposed on the Coastal Zone Management Plan and clearly demarcating the CRZ I, II, III, IV."

Para III. of Annexure reads as follows:

"III. CZMPs approved by MoEF in accordance with CRZ notification, 1991

1. While preparing the CZMPs under CRZ notification, 2011, the CZMPs that have been approved under the CRZ Notification, 1991 shall be compared. A justification shall be provided by the concerned CZMA in case the CSMPs prepared under CRZ notification, 2011 varies with respect to the approved CZMP prepared under CRZ notification, 1991."

Para IV reads as follows:

"IV. Public Views on the CZMP.

a) The draft CZSMPs prepared shall be given wide publicity and suggestions and objections received in accordance with the Environment (Protection) Act, 1986, Public hearing on the draft CZMPs shall be held at district level by the concerned CZMAs.

b) Based on the suggestions and objections received the CZMPs shall be revised and approval of MoEF shall be obtained.

c) The approved CZMP shall be put up on the website of MoEF, concerned website of the State, Union Territory CZMA and hard copy made available in the panchayat office, District Collector office and the like."

Annexure III deals with guidelines for development of beach resorts or hotels in the designated areas of CRZ-III and CRZ-II for occupation of tourist or visitors with prior approval of the Ministry of Environment and Forests (MoEF). An authority has been constituted in Kerala Coastal Zone Management Authority with various Government officers and others.

30. In view of the vexed nature of the issues, we directed that a person competent to answer questions be present. He was present. We asked him certain questions, many of which were put at the instance of the learned counsel appearing for the parties.

The following are the questions and the answers given by Dr. P.T. Thomas, Head of

the CESS:

"05.11.2012:

Today, Dr. K.V. Thomas, Scientist G, Head, Marine Sciences Division, Centre for Earth Science Studies, Akkulam, Thiruvananthapuram - 695 031 is present in Court. We asked him a few questions.

First of all, we asked him as to whether there can be a High Tide Line in the interior parts of a State or whether High Tide Line is necessarily to be found on the sea coast? We asked him on what basis the High Tide Line was prepared in connection with Coastal Regulation Zone Plan in the year 1995? The answer was as follows:—

There can be a High Tide Line in the interior parts of the State. Three tests were employed by the CESS. They are as follows:—

Firstly it was pointed out that there must be salinity of 5 parts per thousand (5 PPT). Secondly they also relied on the reversal of current based on tide levels or tide status. Lastly morphological signatures such as tidal flat (inter tidal zone) or existence of filtration pond were relied on. He pointed out, when confronted with the question, that salinity test was introduced by the amendment in 2002, that the test was employed by the CESS even in 1995. It was part of the methodology employed by the CESS to determine whether there is a Coastal Regulation Zone and with reference to the same a High Tide Line is fixed.

In answer to the question as to why the island in controversy namely Nediyathuruthu island is not earmarked, the answer was that Nediyathuruthu island is shown as the filtration pond and the maximum width of the land part is 50 metres and with this scale of the map, it cannot be shown. It is stated that the filtration pond is marked in the land part and the entire land parts will be CRZ i.e. Coastal Regulation Zone.

In answer to the question as to what is meant by the word 'coasts', the officer would say that it is not confined to sea coast and had it been so, it would have been specified as sea coast.

In regard to the question as to how the island in question was identified as containing filtration pond, the answer was as follows:—

(1) Satellite imagery was employed

(2) Aerial photographs were used

(3) Survey of India top sheets and field maps.

The officer is not very certain as to whether in the case of the particular island, field map was used.

In regard to the question as to whether cadastral survey has been done, the answer was as follows:—

It is for the project proponent to make request to the CESS and then the CESS will undertake the work of cadastral survey. It is submitted that in respect to the island in question, there is no request for cadastral survey and no cadastral survey has been done.

In answer to the question as to whether the island in controversy would not come within the ambit of CRZ IV as per 1991 Notification, the officer would say that CRZ IV is meant to cover Marine Islands.

In answer to another question, namely whether pursuant to notification dated 4/1/1999 demarcation of the HTL and LTL was made on th basis of the guidelines mentioned therein, the officer stated as follows:

The plan was prepared in 1995 with reference to the very same guidelines which were in fact mentioned in the notification.

In answer to the question as to whether the Cadastral survey which was directed to be undertaken by letter dated 4/1/1999 which is referred to in paragraph 6 of the

judgment of this Court reported in 2003 (3) KLT 424 was undertaken, the officer answered by saying that this huge efforts required. It is submitted that cadastral survey as such has not been done. It is submitted that the survey being taken up on a priority basis starting from Kozhikode, Varkkala, Kollam, Thiruvananthapurm and it is on going in Kochi, Ernakulam and Maradu. It is submitted that otherwise it is undertaken on request. He also stated that cadastral survey has not been undertaken in Alleppey District. In answer to the question as to whether pursuant to 2011 notification, Coastal Regulation Zone Plan has been prepared, it is answered by saying that it is an on going process in Kochi pursuant to 2011 notification and further plan will be made on the basis of 2011 notification.

The officer during the course of his statement mentioned that the filtration pond was prepared on the basis of certain criteria. They included aerial survey, satellite survey and photographs. The 4th respondent in W.P. (C) No. 4808/2012 will make available all materials in his possession which was basis for him in Nediyathuruthu Island as filtration pond.

20.11.2012:

Dr. K.V. Thomas, Head Marine Sciences Division, CESS is present today also. We asked him that certain islands are appearing smaller than the island in question. These islands are not F.P. But Land. According to him, having regard to the small size of the land, it is not possible to mark the details.

2. As regards some other maps, which are pointed out by the learned Senior Counsel for the Company, Dr. K.V. Thomas would submit that egg-shaped portion is actually marked and having regard to the smaller land size the entire area is No Development Zone under CRZ3. In regard to 10 and 15, he would say that these are small land portions. They are completely land mass. The 'line' seen on the map of the small island is part of the legend for CRZ3

3. In regard to the islands, maps 43 and 53 were written as mangroves and maps 64, 67A and 68B were certain areas specifically marked as mangroves-eco system. Root system of mangroves spread to adjoining mudflat. Hence mangrove eco-system. He would say that mangroves are found in the inter tidal zone. Healthy mangroves will not survive in the landward of High Tide Line. In other words mangroves will be found in between high tide line and low tide line.

4. We also asked him what is the explanation of the word in 6(1) of Annexure-I to the 1991 notification, wherein it is stated that coastal stretches within 500 metres of high tide line on the landward side read with the inclusion of mangroves in CRZ1. According to him, CRZ1 extent between the low tide line and high tide line and mangroves can survive only in the inter tidal zone. Mangroves extent between the high tide line and low tide line and if spatial extent of mappable size, it can be earmarked and marked. He would add that in case of very smaller areas where the mangroves are in a smaller extent, it may not be marked.

5. In an answer to the question put at the instance of the learned Senior Counsel for the company that at page 23 of the Coastal Management Plan of Kerala, it is mentioned that the zone of filtration pond is dark gray and as far as the road, rail and canal, it is also gray to dark gray, gray to dark gray and dark gray respectively. How filtration pond could be distinguished from a road, rail and canal, he would say that it can be distinguished on the basis of shape. Roads, rails and canals are a linear shape unlike filtration ponds.

6. Another question asked at the instance of the learned Senior Counsel for the Company is that how they could find out whether it is merely a water body or a filtration pond. He answered that the boundary or bund of a filtration pond will be having a definite shape and it will be seen only in the saline water system and this will not be there in a fresh water system.

7. In regard to the question as to why in the toposheet one area shown as FP in blue, which indicates as a water body, and why it is not shown in regard to the island in question. His answer is that probably it was because it was alternatively being cultivated paddy and prawn culture. Filtration ponds were not considered for that mapping.

02.5.2013

Dr. K.V. Thomas, Head marine Sciences Division, Centre for Earth Science Studies is present today. We asked him as to whether in which Zone under the Coastal Regulation Zone Notification, 2011 Vettilathuruthu Island falls. He would say that, the detailed plan contemplated under the 2011 notification in regard to the Island has not been prepared. According to him, the Island falls within the 2011 notification, but as to in which specific Zone it will fall he would say that a part of it will fall within Coastal Regulation Zone-I and part will fall in Coastal Regulation Zone-III, yet another part falls in Coastal Regulation Zone-IV. According to him, a part of the Island come under Coastal Regulation Zone-I on account of the fact that, that part has mangroves which would bring it under Coastal Regulation Zone-I under the 2011 notification.

2. To the question why does it fall according to him as part of Coastal Regulation Zone-III the answer is that the Island falls within the boundaries of the Panavally Grama Panchayat land part which is not developed and in the rural area will fall in Coastal Regulation Zone-III.

3. A portion of the Island fall within Coastal Regulation Zone-IV on account of it being part of water body and bed. We asked him as to whether the Critically Vulnerable Coastal Area (CVCA) would fall in Coastal Regulation Zone-IV. According to DR. K.V. Thomas, the area which is declared as CVCAs will not fall under Coastal Regulation Zone-IV. He would further submit that, once the IMP is prepared as contemplated under the notification and approved by the Ministry of Environment and Forest, operations in respect of that area can be done in terms of the approved IMP. Part of it is attributable to clause B under Coastal Regulation Zone-IV.

4. He would say that, Vettilathuruthu Island falls partly in Coastal Regulation Zone-I under the 2011 notification for the reason there are mangroves.

5. In answer to the question why the Map is not prepared he would say that the process for the preparation of plan under the 2011 notification is on going.

6. He would say that as far as Coastal Regulation Zone for Kerala is concerned, it specifically provided that the Coastal Regulation Zone for the Islands in the backwaters will have a width of 50 meters from the High Tide Line on the landward area which is to be treated as Coastal Regulation Zone area. The officer would say that as to what really is the effect of the notification in respect of landward area beyond 50 meters from the High Tide Line in respect of backwater islands in Kerala the question is mooted in the form of clarification before the Ministry of Environment and Forests and they are awaiting reply.

7. When we pointed out sub paragraph 12 under Annexure-I relating to the guidelines for preparation CZMPs falling under classification of Coastal Regulation Zone areas the answer given by Dr. Thomas was that, first of all, the plan is to be prepared and thereafter the land use map must indeed be indicated which has not yet been done (it is in the process) by way of superimposition. When we pointed out that in para 12 there is a reference specifically that Coastal Regulation Zone-V under the 2011 notification the Coastal Regulation Zone areas of Kerala including backwaters and backwater Islands is brought under areas requiring special consideration under para 7, his answer is that it comes under that special category. According to him, land use in respect of the Vettilathuruthu Island will be distributed between Coastal Regulation Zone-I, Coastal Regulation Zone-III and Coastal Regulation Zone-IV.

8. In answer to the question put at the instance of the learned counsel for the

petitioner in W.P. (C) No. 2947/2013 to the question what is the basis for there are mangroves in the Island in question Dr. K.V. Thomas would say that an inspection was conducted on 6.10.2012 and mangroves were found there as reported. He would say that counter affidavit is filed also on the basis of verification done. He does not dispute the fact that it is not mentioned specifically in the report or counter and that there is no reference to there being mangroves in the Island either in the affidavit or report. But, according to him, it is on the basis of the same he would refer to the photographs produced along with the report. In answer to the question put at the instance of the learned counsel for the petitioner as aforesaid, he would say that the exact area occupied by mangroves is not measured and ascertained.

9. At the instance of the learned counsel for the petitioner again he was asked the further question as to whether it is ascertained that mangrove area is more than 1000 sq.meters. The answer is that it is not ascertained. According to him, the visual estimate would show that the mangrove area is not more than 1000 sq.meters on continuous basis. He would add that in answer to the Court's question as to what will be the position if there are only a few mangroves and the area is not more than 1000 sq.meters that even if there is a single mangrove it will fall under Coastal Regulation Zone-I.

10. When a question was put to Dr. K.V. Thomas at the instance of the learned counsel for the petitioner in W.P. (C) No. 2947/2013 as to what he has to say to the statement in the report (Ext.R3(c)) filed along with the counter affidavit to the effect that the committee was constituted on 8.10.2012 and it made visit on 6.10.2012 the officer would say that he has to verify and may state on the contradiction.

11. In answer to the question asked at the instance of the learned counsel for the petitioner aforesaid that Vettilathuruthu has not been marked and some other island has been marked he would insist that it was indeed Vettilathuruthu Island which was marked. According to him, there is an arrow indicating that it was Vettilathuruthu which was identified.

12. In response to the question of the learned counsel for the petitioner aforesaid again which was to the effect that the google photo produced are not consistent with the contours of the Island he would say that the Vettilathuruthu and adjoining Filtration Ponds have been demarcated as single Filtration Pond (FP) in the Coastal Zone Management Plan 1995. Since the scale of the Map does not permit to give details of the canal in that FP in that area it has been marked as FPs. He would say that the conglomeration of Island was taken as one when it was pointed out to him at the instance of the learned counsel for the petitioner that the Island marked is Kakkathuruthu and not Vettilathuruthu. The officer would say that going by the latitude and longitude the officer is able to identify the Island Vettilathurutu and the report was given on that basis and it is also mentioned in the report. He would say that, in the report the features pertinent to Vettilathuruthu Island alone have been indicated.

13. In answer to the question at the instance of the learned counsel for the petitioner whether the Island of 5 acres can be shown as larger than Island of about 17 acres (Nediyathuruthu) the officer would say that it is the area mentioned by the petitioner is to be verified.

14. In answer to the further question again at the instance of the learned counsel for the petitioner that the Island falls in Coastal Regulation Zone - IV when there is special connotation for the words water body and it cannot be referred to as water body within the landmass the officer would say as follows. The water body and the canal network within the Island is connected to the backwater system with exchange tidal water and FP was initially part of the backwater system which was bunded and separated from the backwater system providing connection to the backwater.

15. A question was put to Dr. K.V. Thomas as to whether there exists any document which could be the foundation for concluding that it is being used as FP. He would submit that no document as such has been looked into but it was signatures such as presence of bund and the connection with the backwater. He would add that there are indeed aerial photographs and satellite images which indicated existence of FPs.

16. In answer to the question how it could be found from the satellite area photographs that it was man made, he would say that geometrical shape of the bund and the connection that is given to the backwater indicates the signatures which were used to find the same.

17. In answer to another question at the instance of the learned counsel for the petitioner aforesaid, as to whether the FP will take within its sweep man made and natural grounds of breeding fish, the answer is as follows. it takes in both. Another question is put at the instance of the learned counsel for the petitioner that from pages 23 and 38 of the Plan of the authority what is contemplated is only man made breeding grounds and there is no reference to natural breeding ground. The answer is as follows. Natural seedlings from the backwater enters and is grown therein. Seedlings are also brought from hatcheries. Both system exist in different places. Both will be treated as FP.

18. In answer to the question as to whether any area could be declared as falling in Coastal Regulation Zone area without conducting a salinity test the officer would say that salinity test was commissioned and conducted in the year 1993-94 through a project sponsored by the Ministry of Environment and Forest, Government of India through Space Application Centre and Centre for Earth Science Studies (Kerala).

19. In answer to the question the test was conducted in respect of Kaithapuzha kayal he would say that Kaithapuzha kayal is part of Vembanad Kayal and salinity test has been conducted under the project marked above.

20. We asked Dr. Thomas as to the purport of Ext.R3(b) Land Use Map in the context of a question which is sought to be put by the learned counsel for the company that in R3(b) Land Use Map, Nediyamthuruthu island contains reference to part of the island being under coconut cultivation (2.2) and in Map 32A, the whole area were shown as F.P. The Land Use Map was prepared as part of the projects which CESS submitted to the Kerala State Council for Science Technology and Environment (KSCSTE) for getting information on the general land use of coastal regulation zone and the adjoining areas. He would state that in the plan prepared by the coastal management authority the land use such as coconut cultivation or other cultivations was not a criteria. But in the Land Use Map, these classifications relating to the actual land use showing the agricultural operations and other operations were included. It was shown in the coastal management plan as F.P. because of the filtration pond and the net work of canals and coconut trees cannot be separately shown because of scale limit. When the learned counsel for the company pointed out the manner in which an island just below Nediyamthuruthu island is shown in map 32A wherein only a portion is shown as F.P. and the other area had shown as partly no development zone and separately marked in other words which is in consonance with the classification in R3 (b) Land Use Map, the answer we were given is that in Nediyamthuruthu island there is more water body part in the form of filtration pond, canals and channels. Dr. Thomas would say further that in the report itself that for detailed planning of Coastal Regulation Zone and the adjoining areas, it may necessary to use Cadastral Scale Map and in such cases the maps may be given as general guide lines.

21. In answer to the question given by the learned counsel for the company as to how we can reconcile its earlier statements given to the court that cadastral maps were being prepared on the basis of the request made by proponents and the

statement in R3(c) report wherein it is stated that the Science Technology and Environment Departments have directed to coastal local bodies on 16.06.1999 to prepare cadastral CRZ Maps and to implement Coastal Regulation Zone, he would say that the local bodies never prepared and such information is a must for giving clearance, and the project proponents were being asked to get prepared the cadastral level CRZ maps for the specific areas for which permission was sought. It is stated that there are seven authorised agencies and the CESS is one of those agencies.

22. At the instance of the petitioner we asked what is the distance between the Island and the salinity testing point. The officer said he is not aware."

Common Issues in respect of both islands:

31. Whether islands in the back waters of Kerala are covered under the Notification of 1991 and whether, at any rate, the stand of the Coastal Regulations and Management Authority is legally flawed by reason of the fact that the salinity test as contemplated in the amendment incorporated in 2002 is not fulfilled?

In considering the question as to whether the back water islands in Kerala are covered by the 1991 Notification, we must first consider and appreciate as to what is the concept of High Tide Line (hereinafter referred to as HTL). A contention was raised that the Coastal Regulation Zone is intended to apply only in respect of areas close to the sea coast. In fact, reliance is placed on the decision of a Division Bench of this Court in *Institute of Social Welfare* v. *State* (1996 (1) KLT 718) wherein the Court, inter alia, held as follows:

> "6. While dealing with the second contention, an understanding is necessary regarding the farthest limits of CRZ. It is described as the coastal stretch influenced by tidal action "upto 500 meters from the High Tide Line (HTL) and the land between the Low Tide Line (LTL) and the HTL". The zone can in the appropriate cases include estuaries, creeks, rivers and backwaters which are influenced by tidal action. In order to fix up the farthest line, an idea of what is meant by HTL is necessary. The Central Government brought about some amendments to the earlier notifications dealing with this subject through S.O.114(E) dated 19-2-1991 and declared that "the High Tide Line means the line on the land upto which the highest water line reaches during the spring tide and shall be demarcated uniformly in all parts of the country by the demarcating authority so authorised by the Central Government in consultation with the Surveyor General of India."
>
> No material has been made available to us regarding the said demarcation, if any, made by the demarcating authority. Without fixing HTL it is difficult to decide whether the proposed reclamation is within the prohibited area. Third respondent has a case that the proposed reclamation would be in the backwaters situated at a distance of 4.2 to 4.5 kilometres from the mouth of the sea. We are thus not in a position to find that the proposed reclamation would come within the CRZ until it is established that the High Tide Line had been demarcated in accordance with the procedure prescribed by the Central Government in the notification mentioned above."

Support is also sought to be drawn from the decision of the Full Bench of this Court in *Jacob Vadakkancherry* v. *The State of Kerala* (AIR 1998 Ker. 114), wherein the Court was concerned with the case relating to development of certain islands within the Cochin Port limits and falling within the Cochin backwaters. The development project was given environmental clearance by the Ministry of Environment & Forests, Government of India, subject to certain conditions. There were objections to the project. Writ Petitions were filed and the Full Bench referred to the judgment in *Institute of Social Welfare* v. *State* (1996 (1) KLT 718) which we have already referred to. The Court noted that it was after the judgment of the Division Bench that the Apex Court rendered its judgment on 19.6.1996 in Writ Petition No. 664/93. The Court took

note of the fact that the new project would involve reclamation of 25 hectares near the Marine Drive, inter alia. The Court found that taking into consideration all aspects of the matter it was difficult to hold prima facie, that the land proposed to be reclaimed will fall within the CRZ. It was also held "serious impairment to aquatic resources, ecology and environment are unlikely to result by reclamation of a small strip of land along with existing Marine Drive, that would not also involve violation of CRZ Regulations." The Court issued certain directions. Much reliance also is placed on the Bench decision of this Court in *Citizens Interest Agency* v. *Lakeshore Hospital & Research Centre Pvt. Ltd.* (2003 (3) KLT 424). As the very first sentence of the judgment shows, a question arose as to whether a 350 bed hospital and the show room should be ordered to be demolished for violation of the 1991 Notification. According to the petitioner, Kundannoor area is included in the CRZ I category. It is described in the plan as Map No. 33A. The fourth respondent (Coastal Authority) in the said case filed a Reply wherein it was, inter alia, stated that the authority had forwarded the application of the seventh respondent (who had allegedly violated the Notification) as a special case for CRZ clearance to the National Coastal Zone Management Authority. It is further submitted that the plan of the State is prepared in 1 : 12,500 on a base map enlarged from Survey of India top sheets of 1 : 50,000 scale with the use aerial photograph and satellite imageries. Hence, it is difficult to arrive at the exact conclusions on the CRZ status of the disputed area. We notice that in the said judgment, reference is made to letter dated 4.1.1999 by the Ministry of Environment and Forest directing the State Government to prepare local level CRZ maps in cadastral scale (1 : 3960 or the nearest scale) to ascertain the CRZ. We further find in the judgment that it is stated as follows:

> Apparently the stand of the authority itself was that the actual status of the disputed construction could be "ascertained only with the help of such large scale map which has not been prepared for this purpose." Thereafter, in paragraph 18, it is stated as follows:
>
> "18. Learned counsel were repeatedly asked as to when was the land reclaimed. There is no material on the record to indicate any time. Mr. Tojan, learned counsel for the petitioner in O.P. No. 22314 of 2002 has vaguely submitted that it was sometime in the year 1996. However, learned counsel was unable to specify as to who had done it. Even in the Writ Petitions, no specific allegation regarding the time of reclamation has been given. No other evidence regarding any fish culture has been produced or pointed out. In this situation, it is clear that there is no evidence on the record to show that there was any filtration pond at the site. In fact, the evidence on record as produced on behalf of the respondents shows that construction has existed at the site since the year 1983. The Club House building has been charged to property tax by the Village Panchayat for the year 1983-84. A copy from the Panchayat record has been produced as Ext.R7(a) with the counter-affidavit filed by the 7th respondent. In fact, in the counter petition filed by the respondents, there is an indication of the existence of other buildings even prior to 1983. In view of the evidence produced by the respondents, the contention as sought to be raised on behalf of the petitioner that there was a filtration pond at the site and it has been reclaimed, cannot be sustained."

We further notice that the Court notes that despite being repeatedly asked, the petitioners were not able to indicate from the plan produced by them that the land falls within 500 metres of the HTL. It is further stated that counsel were not even able to point out as to where the HTL or LTL could be said to start. The Court also took note of the fact that the construction of the hospital started many years back and the claim of the respondent that it had spent more than Rs. 50 crores approximately. Counsel for the company also drew our attention to paragraph 32 which reads as follows:

> "32. Mr. Rajan Joseph, learned Additional Advocate General appearing for the

official respondents, states that the original plan was prepared on the basis of the plan given by the Survey of India and the Satellite imageries. These plans are prepared in 1 : 12,500 and 1 : 50,000 scale. He points out that depicting an area of 12 = thousand sq. kms. In one inch is a difficult job. Similarly, in the case of the scale prepared in the ratio 1 : 50,000, it is still more difficult. In view of this situation, the Government is preparing cadastral plans. Thereafter, a fresh plan and map shall be issued. In view of the factual position, learned counsel states that the three petitions are premature."

We may, in this connection, also notice a Bench decision rendered in *Ansari Komath* v. *State of Kerala* (2011 (1) KLT 1043). One of the petitioner therein was a society. It established and operated a Mangrove Theme Park on the banks of Valapattanam river and its branch in Pappinissery. Public interest litigation was filed alleging violation of the 1991 Notification. The Court found that mangroves area would come under CRZ I category. The Court relied on map No. 66A of the Coastal Plan of Kerala. The Court noted that the park was situated on the northern bank of the Valapattanam river and its branch. It was further held that "coastal line is only one of the considerations and not the only consideration for inclusion in CRZ I." We notice further that the Court also made reference to the remarks which we have already referred to in page 23 of the Coastal Management Plan wherein filtration ponds are referred to as another fish spawning and breeding area. The Court also notes that the plan prepared in 1995 was approved by the Central Government. The Court further took the view that it was not impressed by the contention that if mangroves were planted after the Notification, it will not attract CRZ I. As far as the decision in *Citizens Interest Agency* v. *Lakeshore Hospital & Research Centre Pvt. Ltd.* (2003 (3) KLT 424), the Court notes that in the said case, the area in question was not found to be within the CRZ I category for reason of lack of materials on record. The Court also took the view that a reading of the decision would show that the building in question was constructed on the side of a canal (artificial) unlike the banks of a river or a branch. We are in agreement with the said view.

32. It is contended that in these cases, the islands are located far away from the sea coast and it is inconceivable as to how the islands could be brought within the purview of the CRZ in the first place. It is further pointed out that the 1991 Notification does not expressly refer to and cover the backwater islands of Kerala. If an interpretation is placed seeking to bring the island within the CRZ, it will have far reaching consequences. There are drastic consequences on the owners of the property or persons in possession of lands covered by the CRZ, it is contended. The Notification is expropriatory and a strict construction is warranted. The Court also is requested to bear in mind the undeniable fact that from 6.1.2011, when the fresh Notification was issued, backwater islands of Kerala were expressly included.

33. We are of the view that there is no merit in the contention of the company or the island owner that backwater islands of Kerala are not covered by the Notification issued in the year 1991. By the 1991 Notification, Government has declared the coastal stretches of seas, base, estuaries, creeks, rivers and backwaters which are influenced by the tidal action (in the landward side) upto 500 metres from the HTL and the land between the LTL and the HTL as the Coastal Regulation Zone. Originally, the HTL was defined to mean the line on the land upto which the highest water line reaches during spring tide. It was to be uniformly demarcated in all parts of the country by the authorised authority in consultation with the Surveyor General of India. The only change brought about by the amendment in 1998 was that the demarcation was to be done after the amendment in accordance with the general guidelines issued in this regard.

34. The contention of the company and the island owner appeared to be that there

cannot be HTL except on the sea coast. We are unable to agree. In the first place, as already noted, the coastal stretches of not only seas, but also rivers and backwaters, no doubt, which are influenced by the tidal action upto 500 metres from the HTL in the landward side also constitute the Coastal Regulation Zone. The coastal stretches of river or a backwater would take in not only the main land, but clearly would embrace within its scope islands. Backwater Islands would also, in other words, be coastal stretches of a river or a backwater. In other words, the framers of the Notification have specifically included coastal stretches of backwaters also, no doubt, which are influenced by the tidal action as provided. In fact, Sub-paragraph (ii) of paragraph (1) provided from 1991 itself that the distance from the High Tidal Line shall apply to both sides of the rivers, creeks and backwaters and it could be modified on a case to case basis. Reasons must be recorded. It was, however, subject to the stipulation that the distance shall not be less than 100 metres or the width of the creek, river or backwaters whichever is less. It was by amendment dated 18.8.1994 that a Note was amended by providing that the distance shall not be less than 50 metres (in place of 500 metres) or the width of the water body. It was also provided that the distance upto which development along rivers, creeks and backwaters is to be regulated shall be governed by the distance upto which the tidal effect of the sea is experienced in the water bodies as the case may be and it was to be clearly identified from the Plan. It is while so that a public interest litigation was filed under Article 32 of the Constitution before the Apex Court and the decision is reported in *Indian Council for Enviro-Legal Action* v. *Union of India* ((1996) 5 SCC 281). Therein, the Court was called upon to consider the vires of the amendments made to the 1991 Notification by the Notification dated 18.8.1994. There were six amendments. The amendments were made on the basis of a Report of the Committee headed by B.B. Vohra which was set up by the Central Government. Among the amendments, the Court considered the amendment by which the No Development Zone was relaxed to 50 metres as already noticed. The Vohra Committee did not suggest any relaxation. It is relevant to extract the following discussion of the Apex Court in the Judgment:

> "(ii) The NDZ for rivers, creeks and backwaters which was 100 metres from HTL has, by the amended notification, been relaxed to 50 metres. As already seen, the main Notification does not apply to all the rivers. It applies only to tidal rivers which are part of the coastal environment. It was contended that the reduction from 100 metres to 50 metres was arbitrary and was not made on any basis. It was also contended that the Vohra Committee had made no proposal for relaxation along the rivers but it merely asked for a clarification of the limits to which the control would apply since in some areas, tidal ingress could go up to 50 kms from the coastline.

39. Justifying this amendment, it was contended by the Union of India that in case of creeks, rivers or backwaters, it is not possible to have a uniform basis for demarcating NDZ. The zone shall be regulated based upon each individual case. It is no doubt true that there can be no uniform basis for demarcating NDZ and it will depend upon the requirements by each State authority concerned in their own Management Plans, but no reason has been given why in relation to tidal rivers, there has been a reduction of the ban on construction from 100 metres to 50 metres. Even the Vohra Committee which had been set up to look into the demands of Hotel and Tourism Industry had not made such a proposal and, therefore, it appears to us that such a reduction does not appear to have been made for any valid reason and is arbitrary. This is more so when it has been alleged that in some areas like Goa, there are mangrove forests that need protection and which stretch to more than 100 metres from the river bank and this contention had not been denied. In the absence of any justification for this reduction being given, the only conclusion which can be arrived at is that the relaxation to 50 metres has been done for some extraneous reason. It was

submitted, at the time of arguments by the Additional Solicitor General that construction has already taken place along such rivers, creeks etc. at a distance of 50 metres and more, but no such explanation has been given in the reply affidavit. Even if this be so, such reduction will permit new construction to take place and this reduction cannot be regarded as a protection only to the existing structures. In the absence of a categorical statement being made in an affidavit that such reduction will not be harmful or result in serious ecological imbalance, we are unable to conclude that the said amendment has been made in the larger public interest and is valid. This amendment is, therefore, contrary to the object of the Environment Act and has not been made for any valid reason and is, therefore, held to be illegal."

We may in this context specifically notice, inter alia, that the Vohra Committee had sought clarification of the limits to which the control would apply, since in some areas the tidal ingress could go upto 50 kilometres from the coastal line. It is thus that the terms of the original Notification providing that the distance shall not be less than 100 metres was restored in place of 50 metres, no doubt, subject to the condition that if the width of the water body was less than 100 metres, it would prevail.

35. It is true that the said sub-paragraph clothed the authority with the power to make a case by case study. But, in no case, could it be reduced to below 100 metres or the width of the water body whichever is less. In this context, we may also consider that in the Plan prepared by the Government of Kerala, it is, inter alia, stated as follows:

"Coastal Water Bodies:

All the water bodies falling in the coastal area, except the very small streams which are marked by a single line in the toposheet, are transferred on to the base map and are verified using satellite imageries to incorporate their present status. At several places the land water boundary was found to be modified due to natural or anthropogenic (bunding, reclamation, etc) activities. The filtration ponds (FP), tidal marshes, etc, though are shallow in nature, are considered as a part of the backwater system. Hence the backwater boundaries are drawn around them (Fig.12).

For the purpose of regulation, the Notification says "The Distance from the High Tide Line shall apply to both sides in the case of rivers, creeks and backwaters and may be modified on a case by case basis for reasons to be recorded while preparing the Coastal Zone Management Plans. However, this distance shall not be less than 50 metres or the width of the creek, river or backwater whichever is less. The distance upto which development along rivers, creeks and backwaters is to be regulated shall be governed by the distance upto which the tidal effect of sea is experienced in rivers, creeks or backwaters, as the case may be, and should be clearly identified in the Coastal zone Management Plans."

The landward extent of the tidal influx in the backwaters or rivers are decided by the measure of salinity, which is an indicator of tidal effect. For this the salinity measurement programme was undertaken (Kurian, et al, 1993) and the limit (at which up to 5 ppt is recorded) is demarcated on the map. The HTL at the water bodies is the river or the backwater boundary itself due to (i) the water-land boundary is almost vertical so that the low water and high water lines cannot be differentiated spatially, unlike several locations in other parts of the country and (ii) the tidal range in Kerala is around one metre only.

According to the Notification, the regulation zone can extend up to 500 m from the HTL even in the case of water bodies. It would mean that, if the 500 m norm is adopted, vast stretches of land in Kerala (eg. Ashtamudi, Cochin, Alappuzha, Vypeen, Parur, Valapatanam, etc) will have to be brought under the regulation zone (Fig. 13). This will cause difficulty in implementing the regulation on two accounts; (i) these areas are thickly populated with a population density per square kilometer of 2097 in

rural areas and 4228 in urban areas; (ii) with about 25% of the State's population living in this coastal stretch, the effective area available for the development activities may not be in proportion to the population. Hence, declaring several kilometre stretch as regulation zone will prevent developmental activities, which are crucial for the upliftment of the coastal population. Moreover, the backwater is not prone to the erosion problem, unlike the sea coast of Kerala. Hence a lesser regulation zone is proposed for the water bodies, ie. a regulation not less than 50 metres or the width of the creek, backwater or river, whichever is less from the land-water boundary."

Apparently, there is reference that the distance should not be less than 50 metres. But, the said amendment, as already noticed, was struck down by the Judgment of the Apex Court which was decided on 18.4.1996. The Plan was prepared apparently in December, 1995 by the Centre for Earth Science Studies, an authorised body. The said Plan came to be approved by Ext.P6 in W.P. (C). No. 4808/12 (which is challenged by the company). Ext.P6 is a communication dated 27.9.1996 under Section 3(3)(i) of the Notification subject to certain conditions. The Government of Kerala was to delineate the LTL, HTL 200 metres, 500 metres lines and other relative lines in respect of creeks, backwaters and rivers affected by the tidal action so that the distances can be measured whenever required. It was further provided that all uninhabited islands are classified as CRZ-I (subject to the continuation of existing traditional rights, special rights and customary uses) except those islands which have been approved by the MoEF as CRZ-IV. It is also provided that in exceptional cases, in case of uninhabited islands classified as CRZ-I should have a carrying capacity study established that a proposed development will not have adverse ecological impacts, those particular islands should be re-classified as CRZ-IV, subject to the prior approval of the Ministry of Environment and Forest. It is also provided that the distance from the High Tide Line to which the CRZ Regulations will apply in case of rivers, creeks and backwaters should be kept as 100 metres, not 50 metres as proposed or the width of the rivers, creeks or backwaters whichever is less. Apparently, the last condition mentioned was stipulated in view of the decision of the Apex Court declaring the amendment dated 18.8.1994 illegal by Judgment dated 18.4.1996 as aforesaid. It is true that by amendment dated 21.5.2002, it was, inter alia, provided that the distance upto which a development along rivers, creeks and backwaters is to be governed by the distance upto which the tidal effects are experienced, to be determined on the basis of salinity concentration of 5 parts per thousand (ppt). It is also provided that for the purpose of the Notification, the salinity measurements are to be made during the driest period of the year and the distance upto which the tidal effects are experienced shall be clearly identified and demarcated accordingly in the Management Plans. The Note was omitted by the amendment and instead, the aforesaid amendment became part of sub-paragraph (ii) of paragraph (1).

36. We would only think that the said provision also reiterates that there can be a HTL applicable to the backwaters and which are away from the sea. However, only a distance of 100 metres or the width of the backwaters (in the case of backwater) whichever is less, could constitute the reduced zone if the authority considers it so.

37. We have already noticed the Statement given by the expert also that HTL is not confined to the sea coast and also that the word "coast" is not to confine the sea coast. HTL is relevant and possible with regard to backwaters in so far as the line is defined as the line on the land upto which the highest water reaches during the spring tide. The spring tide does not leave the backwaters unaffected. We may also notice that in the guidelines issued for demarcation of HTL, it is, inter alia, stated that the HTL as defined in the CRZ Notification of 1991 and LTL will also be demarcated along the banks of tidal influenced inland water bodies with the help of geomorphological signatures/features. Coastal stretches of backwaters would specifically include islands in the backwaters and the backwater islands would also, if influenced by the tidal

action, come within the scope of the Notification issued in 1991. In this regard, we are reinforced by the action of the authority in issuing the coastal plan wherein admittedly both islands have been marked with the words "F.P." and which admittedly is indicative of the presence of filtration ponds and which, in turn, unmistakably, is intended to refer to the area being one falling within CRZ I of the 1991 Notification.

38. We are also not impressed by the argument that backwater islands of the State of Kerala are covered expressly by the 2011 Notification and, therefore, backwater islands were not covered by the 1991 Notification. It is true that in the 2011 Notification, there is reference to backwater islands expressly under Category V which provides for areas requiring special consideration for the purpose of protecting the critical coastal environment and the difficulties faced by the local communities. What is stated therein is as follows:

> "CRZ areas of Kerala including the backwaters and backwater islands". It is also true that in clause (2) under paragraph 8 under the heading "CRZ for Kerala", it is stated that all the islands in the backwaters shall be covered under the CRZ Notification. In this context, we may note that when the 2011 Notification was framed, apparently the Government had the experience of the working of the 1991 Notification. On account of the Notification, apparently there were difficulties faced by the fishermen communities and other local communities living in the coastal areas. That was why, apparently the Government wanted to provide certain relaxation for certain categories. This view of ours is reinforced by the fact that under the head "CRZ for Kerala" under paragraph 8, reference is made to the unique coastal system of backwater and backwater islands along with the space limitation present in the coastal stretches in the State of Kerala. Therefore, the mere fact that backwater islands in the State of Kerala are specifically referred to or rather the CRZ areas of Kerala including its backwaters and backwater islands are specifically referred to, will not detract from the applicability of the terms of the 1991 Notification to the backwater islands in the State of Kerala even under the 1991 Notification. Apart from the islands in question, the 1995 plan would show that other islands in the backwaters were also included. It is inconceivable that the authorities were not aware of such inclusion. In fact, we would think that the very fact that they have used the words "coastal stretches of Kerala including its backwaters and backwater islands" itself show that the islands in the backwaters of Kerala were already considered as included within the Zone otherwise. The plan is also approved by the Central Government.

39. With the wealth of the aforesaid inputs, there can be no doubt that the distance from the sea as observed by this Court and which is relied on, cannot be the criterion for deciding whether the Zone applies in respect of the coastal stretch of water bodies like the river or the backwater. What is relevant is the tidal effect. The tidal effect can be felt in the interior portions and away from the sea coast. There can be no doubt that islands could be coastal stretches of river or backwater and backwater islands in Kerala were clearly covered by the 1991 Notification and also perceived as covered by all the authorities including the Central Government. The next question which we must answer is whether the classification of the islands in question are bad for the reason that salinity test was conducted? The salinity test was actually introduced by way of an amendment as noticed in the year 2002. The definite case of the authority is that, however, the salinity test was employed for the purpose of preparation of the Plan in question in the year 1995. Not only is there pleadings to the aforesaid effect, but there is also reference to the same in the Plan itself which we have noticed, namely the landward extent of the tidal effect in the backwaters or rivers was decided by the measure of salinity test which is an indicator of tidal effect and more particularly, that the salinity measurement programme was undertaken and the limit (at which upto 5 parts per thousand (ppt) is recorded) is demarcated in the map.

40. It is true that there is a principle that when the statute commands that a thing should be done in a particular manner, it should be done in that manner only. The island owners have a definite case that the 1991 Notification requires that the salinity measurement is to be done during the driest period of the year, and that it shows that there must be fresh salinity measurement. The stand of the authority is contained in paragraph (7) of its Counter Affidavit in W.P. (C). No. 2947/13 which reads as follows:

> "7. The Coastal Zone Management Plan was prepared in 1994-1995 periods. The data of 1993-94 was used by CESS for demarcating the CRZ area. While mapping the CRZ, the area up to 5 PPT was demarked and marked in Coastal Zone Management Plan. There was no direction to prepare fresh Coastal Zone Management Plan during 2002. The salinity measurements were done to fix the landward extent of the tidal influence in the back water or rivers. Salinity is an indicator of tidal effects. The salinity measurement programme was undertaken during 1993-94. The salinity measurements were done as per standard measurement technique in Parts Per Thousand (PPT)."

41. In examining this question, while we do feel troubled by the lack of any definite response, in that, it is not stated that whether the test was done in the year 1993-94 by CESS during the driest season, we may, however, also not overlook the following aspects:

We are of the view that we can safely hold that even before the requirement of salinity test was incorporated by the amendment in 2002, reliance has been placed on the salinity test and that too, on the basis of 5 ppt. Apparently, the said test appears to be an accepted test. It is also to be noted that in the Counter Affidavit it has been categorically stated that the salinity measurements were done as per standard measurement technique in Parts Per Thousand (ppt). We cannot overlook the fact that the island owners obtained permit with the condition, inter alia, that the conditions of CRZ should be strictly adhered to. They have also specifically, apparently, proceeded on the basis that they were granted the permit for repair and reconstruction on the basis that the same is permissible in respect of CRZ-III. In other words, they have accepted the condition that the island falls within the embrace of the Coastal Regulation Zone. The island owner has not challenged the condition in the permit. They have accepted the condition. It may not be permissible for them to, at any rate, disregard the said condition. There is no challenge to the same, at any rate. Thus, we reason that accepting the condition, it may not be open to them to contend that the island will not fall in the Zone. The Writ Petition is filed, as already noted, by the island owner in the year 2013 (No doubt, they have filed it in the light of the Counter Affidavit of the authority in W.P. (C). No. 8299/12). In fact, we notice that in Ext.R3 (e) report, it is stated that the salinity is 5 ppt during the driest month in an year. No doubt, there is nothing to show that this report was prepared with notice to the island owner. As far as the company is concerned also, we may notice that the company has specifically been visited with the condition indicating to them clearly that the construction should be compliant with the 1991 Notification, apart from providing that the construction should not go beyond the existing building line, otherwise CRZ will be applicable. Further more, we notice that as far as the company is concerned, the company has a case that the construction work was commenced and foundation work as well as developmental activities were substantially undertaken on the strength of the No Objection given by the panchayat dated 02.8.1996. It is not clear whether the said work was undertaken before 2002 and what was the extent of work done before 2002. We may not be justified in striking down or declaring the Plan illegal which has also been acted upon on the ground that the salinity test was not done, at any rate, strictly as prescribed by the amendment, that is during the driest period, in 2002.

Whether the Islands would fall under CRZ-IV of 1991 Notification? Effect of

property rights and doctrine of legitimate expectation.

42. We are not impressed by the argument that the islands in the backwaters of Kerala would fall in CRZ IV of the 1991 Notification. CRZ IV of the 1991 Notification provides as follows:

> "Coastal stretches in the Andaman and Nicobar, Lakshadweep and small islands, except those designated as CRZ I, CRZ II or CRZ III."

The argument of the company appears to be, in fact, as follows:

The words "small islands" occurring after "Lakshadweep" only denote the cluster of small islands which forms part and parcel of Lakshadweep. It is further contended that if "small islands" is used independently, then it would draw its colour from the preceding words which would show that all the islands, either sea islands or marine islands and backwater islands are not covered. The non-mentioning of backwater islands is a conscious departure. It is further contended that the words "small islands" which come after the words "Andaman, Nicobar and Lakshadweep" must receive the interpretation in the context of which it is used. Therefore, small islands are intended to denote marine islands in the vicinity of Andaman and Nicobar and Lakshadweep.

43. We are also in agreement with the contention of the company and which is adopted by the island owner that the words "small islands" in CRZ IV in the 1991 Notification is intended to cover the small islands in the vicinity of Andaman and Nicobar and Lakshadweep. They are essentially marine islands and not the backwater islands. As far as backwater islands are concerned, we are of the view that they are also intended to be covered by the 1991 Notification, being coastal stretches of backwaters which are otherwise influenced by the tidal effect as contemplated in the Notification. They would fall to be governed by the terms of the appropriate Zone in which they would otherwise fall. For instance, if there are mangroves in or around the island, necessarily such backwater island in the State of Kerala will fall within CRZ I. If it is an area close to breeding and spawning of fish and other marine life, then also, it will fall under CRZ I. If the islands are not otherwise covered by CRZ I, then we would have to examine whether it would fall in CRZ II. If the backwater island falls in the terms of CRZ II, it may have to be classified as CRZ II. If it does not fall either in CRZ I or CRZ II, then it would necessarily fall under CRZ III.

44. We may advert to the case law cited by the company:

In *Dwarkadas Shrinivas* v. *The Sholapur Spinning & Weaving Co. Ltd.* (AIR 1954 SC 119), an ordinance which purported to take away the management and administration of a company was challenged on the ground, inter alia, that it contravened Article 31 (2) (Article 31 stands omitted by the 44th Amendment to the Constitution). His Lordship Justice Mahajan noted that the scope of Article 19(1)(f) (since deleted by the 44th Amendment) and Article 31 is different. Article 31 was held to deal with the field of eminent domain. It was further held that Article 31(1) (which provides that "no person shall be deprived of his property save by authority of law") declared the first requisite for the exercise of the power of eminent domain. Article 31(2) in substance prohibited property being taken in possession or acquired for public purpose under any law, unless compensation was provided for and either the amount was fixed or the principles regarding fixing the same was specified. Thus, Article 31(2) was held to define the power of the Legislature in the field of eminent domain. It was further held that Article 31(1) and (2) deal with the same topic of compulsory acquisition of property:

> "25. The next contention of the learned counsel that the word "acquisition" in Art.31(2) means the acquisition of title by the State & that unless the State becomes vested with the property there can be no acquisition within the meaning of the clause and that the expression "taking possession" connoted the idea of requisition cannot be sustained and does not, to my mind, affect the decision of the

case. As above pointed, both these expressions used in clause (2) convey the same meaning that is conveyed in Clause (1) by the expression "deprivation". As I read Art.31, it gives complete protection to private property as against executive action, no matter by what process a person is deprived of possession of it. In other words, the Constitution declares that no person shall be deprived of possession of private property without payment of compensation and that too under the authority of law, provided there was a public purpose behind that law.

It is immaterial to the person who is deprived of property as to what use the State makes of his property or what title it acquires in it. The protection is against loss of property to the owner and there is no protection given to the State by the Article. It has no fundamental right as against the individual citizen. article 31 states the limitations on the power of the State in the field of taking property and those limitations are in the interests of the person sought to be deprived of his property. the question whether acquisition has a larger concept than is conveyed by the expression "taking possession" is really of academic interest in view of the comprehensive phraseology employed by Clause (2) of Art.31. As the matter was argued at some length, I propose to briefly indicate my opinion on that point."

In *Tolaram Relumal* v. *The State of Bombay* (1955 SCR 158), the Apex Court was dealing with a provision in a Rent Act which rendered punishable receipt of any fine, premium or other like sum, etc. other than the standard rate in respect of the grant/renewal/continuance of a lease. The Court declared that the provisions contemplated a subsisting lease, and not an executory contract to grant lease. It was held that the Section does not make the intention punishable. It makes an act punishable which is related to the existence of a lease. The Court further held as follows:

> "As pointed out by Lord *Macmillan in London and North Eastern Railway Co.* v. *Beriman*, "where penalties for infringement are imposed it is not legitimate to stretch the language of a rule, however beneficent its intention, beyond the fair and ordinary meaning of its language."

The Court held further that if executory contracts were intended to be covered, the Legislature should have used clear and unambiguous language. Though the learned senior counsel for the company drew support from the decision, we are of the view that it will not apply to the facts of the present case. The terms of the 1991 Notification are clear. If the island comes under CRZ - 1, then the prohibition operates.

45. Reliance was further placed on the decision in *Krishi Utpadan Mandi Samiti* v. *Pilibhit Pantnagar Beej Ltd.* ((2004) 1 SCC 391). The question which arose there was whether the respondent therein was liable to pay market fee under the U.P. Krishi Utpadan Mandi Adiniyan. The respondent sold wheat seeds purchased from the firms after treating them, rendering them unfit for human consumption. In the majority judgment it was held that as wheat seeds is not included in the Schedule and that when it was intended to be covered, it was specifically mentioned as seeds. The company appeared to lay store by the following passages in the concurrent Judgment authored by S.B. Sinha, J:

> "57. The rule of strict construction should be applied in the instant case. The intention of the legislature in directing the trader to obtain licence is absolutely clear and unambiguous insofar as it seeks to regulate the trade for purchase and sale. Thus a person who is not buying an agricultural produce for the purpose of selling it whether in the same form or in the transformed form may not be a trader. Furthermore, it is well known that construction of a statute will depend upon the purport and object of the Act, as has been held in Sri Krishna Coconut case itself. Therefore, different provisions of the statute which have the object of enforcing the provisions thereof, namely, levy of market fee, which was to be collected for the

benefit of the producers, in our opinion, is to be interpreted differently from a provision where it requires a person to obtain a licence so as to regulate a trade. It is now well known that in case of doubt in construction of a penal statute, the same should be construed in favour of the subject and against the State.

58. In the case of *London and North Eastern Rly. Co.* v. *Berriman, Lord Simonds quoted with approval* (at All ER p.270 C-D) the following observations of Lord Esher, M.R. In the case of *Tuck & Sons* v. *Priester*, QBD at p.637:

"We must be very careful in construing that section, because it imposes a penalty. If there is a reasonable interpretation which will avoid the penalty in any particular case we must adopt that construction. If there were two reasonable constructions we must give the more lenient one. That is the settled rule for the construction of penal sections."

It is trite that fiscal statute must not only be construed literally, but also strictly. It is further well known that if in terms of the provisions of a penal statute a person becomes liable to follow the provisions thereof it should be clear and unambiguous so as to let him know his legal obligations and liabilities thereunder.

59. The matter may be considered from another angle:"expressio unius personae vel rei est exclusio alterius" is a well-known maxim which means the express intention of one person or thing is the exclusion of another. The said maxim is applicable in the instant case. (See *Khemka & Co. (Agencies) (P) Ltd.* v. *State of Maharashtra*, SCC paras 47 and 48)."

The learned Judge also went on to hold that seeds is also an essential commodity under the Essential Commodities Act, 1955. That the seed purchased by the respondent was not meant to be used as a cereal could not be an agricultural product, reasoned the Court.

46. In *Teri Oat Estates (P) Ltd.* v. *U.T., Chandigarh* ((2004) 2 SCC 130), again relied on by the company, the power of resumption and forfeiture was exercised by the estate officer under Section 8A of the Capital of Punjab (Development and Regulation) Act, 1952. The Court on a conspectus of the facts found that the lands in question were transferred to the appellant for all intents and purposes and they were merely to pay the balance amount of 75% of the consideration in installments. The Court noted the appellant's contention that it had constructed a three storyed building including the basement floor. The Court also considered the appellant's conduct in expressing willingness to deposit the difference and the amount of interest ordered. The Court, inter alia, held as follows:

"43. In terms of the provisions of the Act, the respondents are entitled to : (1) resumption of the land, (2) resumption of the building and (3) forfeiture of the entire amount paid or deposited. Having regard to the extreme hardship which may be faced by the parties, the same shall not ordinarily be resorted to.

49. Ever since 1952, the principle of proportionality has been applied vigorously to legislative and administrative action in India. While dealing with the validity of legislation infringing fundamental freedoms enumerated in Article 19(1) of the Constitution of India, this Court had occasion to consider whether the restrictions imposed by legislation were disproportionate to the situation and were not the least restrictive of the choices. In cases where such legislation is made and the restrictions are reasonable; yet, if the statute concerned permitted administrative authorities to exercise power or discretion while imposing restrictions in individual situations, question frequently arises whether a wrong choice is made by the administrator for imposing the restriction or whether the administrator has not properly balanced the fundamental right and the need for the restriction or whether he has imposed the least of the restrictions or the reasonable quantum of restrictions etc. In such cases, the administrative action in our country has to be

tested on the principle of proportionality, just as it is one in the case of main legislation. This, in fact, is being done by the courts. Administrative action in India affecting the fundamental freedom has always been tested on the anvil of the proportionality in the last 50 years even though it has not been expressly stated that the principle that is applied is the proportionality principle. (See Om Kumar)."

We would think that the facts are distinguishable. In *T. Vijayalakshmi* v. *Town Planning Member* ((2006) 8 SCC 502), under the existing valid development plan, agricultural land falling within residential areas were permitted to be used for residential purposes. Amendments were proposed. Pending the proposed amendment, an application was rejected, stating that the land fell within the Valley Zone in the proposed comprehensive plan. The Plan was not notified. The Court held that the doctrine of legitimate expectation applied. The Court, inter alia, held as follows:

"Town planning legislations are regulatory in nature. The right to property of a person would include a right to construct a building. Such a right, however, can be restricted by reason of a legislation. In terms of the provisions of the Karnataka Town and Country Planning Act, a comprehensive development plan was prepared. It indisputably was still in force. Whether the amendments to the said comprehensive development plan as proposed by the Authority would ultimately be accepted by the State or not was uncertain……The High Court has not held that the existing laws were ultra vires. The right of a person to construct residential houses in the residential area is a valuable right. The said right can only be regulated in terms of a regulatory statute but unless there exists a clear provision the same cannot be taken away. It is also a trite law that the building plans are required to be dealt with in terms of the existing law. Determination of such a question cannot be postponed far less taken away. Doctrine of legitimate expectation in a case of this nature would have a role to play……..It is settled law that an application for grant of permission for construction of a building is required to be decided in accordance with law applicable on the day on which such permission is granted. However, a statutory authority must exercise its jurisdiction within a reasonable time."

We see no scope for applying the principle of legitimate expectation in favour of the company or the island owners against the terms of a notification, statutory in nature.

47. In *Chairman, Indore Vikas Pradhikaran* v. *Pure Industrial Coke & Chemicals Ltd.* ((2007) 8 SCC 705), the application made by the respondent for development of the land was rejected on 14.12.2004 on the basis of purported publication of a draft development plan. The appellant constituted by the State Government had published a draft development plan on 27.6.2003 affecting villages "B and K" in which plan, the respondent's land was situated. The plan was returned by the State Government with a direction to prepare the plan for the projected population as in the year 2021. The Government published a Notification bringing villages "B and K" within the operation of the appellant on 28.10.2005. A draft plan was published on 13.7.2006. The Court noted that the villages in question have been included in the area of the appellant only on 28.10.2005. It was held as follows:

"67. We do not see any force in the said argument. It is possible to enforce a draft development plan in a given case, but the statute must specifically provide for the same. But, a draft development plan which has not attained finality cannot be held to be determinative of the rights and obligations of the parties and, thus, it can never be implemented. Section 50 of the Actexplicitly states that the authority may declare its intention to prepare a town development scheme which having regard to Section 2(u) of the Act must be read to mean declaration of its implementation (sic intention) to prepare a scheme for the implementation of the provisions of a development plan."

But, the learned senior counsel would highlight the following passages:

"53. The right to property is now considered to be not only a constitutional right but also a human right.

55. Earlier human rights were existed to the claim of individuals right to health, right to livelihood, right to shelter and employment, etc. but now human rights have started gaining a multifaceted approach. Now property rights are also incorporated within the definition of human rights. Even claim of adverse possession has to be read in consonance with human rights. As President John Adamam (197-1801) pu it:

"Property is surely a right of mankind as real as liberty".

Adding,

"The moment the idea is admitted into society that property is not as sacred as the laws of God, and that there is not a force of law and public justice to protect it, anarchy and tyranny commence."

57. The Act being regulatory in nature as by reason thereof the right of an owner of property to use and develop stands restricted, requires strict construction. An owner of land ordinarily would be entitled to use or develop the same for any purpose unless there exists certain regulation in a statute or a statutory rules. Regulations contained in such statute must be interpreted in such a manner so as to least interfere with the right to property of the owner of such land. Restrictions are made in larger public interest. Such restrictions, indisputably must be reasonable ones. (See *Balram Kumawat* v. *Union of India*, *Krishi Utpadan Mandi Samiti* v. *Pilibhit Pantnagar Beej Ltd.* And *Union of India* v. *West Coast Paper Mills Ltd.*). The statutory scheme contemplates that a person and owner of land should not ordinarily be deprived from the user thereof by way of reservation or designation.

58. Expropriatory legislation, as is well-known, must be given a strict construction."

We would think that the said decision cannot come to the assistance of the company. It is a case where the Court on a conspectus of the provisions, noted the effect of publication of a mere draft plan and it can have no application to the facts of this case.

48. In *Karnataka State Financial Corporation* v. *N. Narasimahaiah* ((2008) 5 SCC 176), the Court held that the power under Section 29 of the State Financial Corporation Act, 1951 could be exercised only against defaulting concern and not against the surety. The Court held, inter alia, as follows:

"40. Right to property, although no longer a fundamental right, is still a constitutional right. It is also human right. In absence of any provision either expressly or by necessary implication, depriving a person therefrom, the court shall not construe a provision leaning in favour of such deprivation. Recently, this Court in *P.T. Munichikkana Reddy* v. *Revamma dealing with adverse possession opined*:

(SCC p.77, para 43):

"43. Human rights have been historically considered in the realm of individual rights such as, right to health, right to livelihood, right to shelter and employment, etc.but now human rights are gaining a multifaceted dimension. Right to property is also considered very much a part of the new dimension. Therefore, even claim of adverse possession has to be read in that context. The activist approach of the English Courts is quote visible from the judgment of *Beaulane Properties Ltd.* v. *Palmer* and *Japye (Oxford) Ltd.* v. *United Kingdom*. The Court herein tried to read the human rights position in the context of adverse possession. But what is commendable is that the dimensions of human rights have widened so much that now property dispute issues are also being raised within the contours of human rights."

49. The 1991 Notification, in our view, clearly provides for creation of the Coastal Regulation Zone in regard to the coastal stretches of backwaters which, in our view, will clearly take within its sweep the coastal stretches of the backwater islands and we see no reason at all to deviate from this view even applying the principles of strict interpretation of a Statute which has penal consequences, no doubt. This is for the reason that in our view, the declaration of the law by the framer of the law is clear and on the other hand, it is reinforced by the actions of those charged with the duty of implementing the same (the act of preparation of the plan) which unambiguously discloses the inclusion of not only the islands in question, but various other islands wherein restrictions have been imposed and enforced for a long period of time. The acceptance of the contention of the company and island owners would, in fact, be in the teeth of the clear provisions contained in paragraph 1 by which not only the coastal stretches of the sea, but the coastal stretches of the backwaters are specifically brought within the scope of the Notification. We are also not impressed by the argument that the Court must bear in mind the fact of right to property, though no longer a fundamental right is none-the-less recognized as a human right.

50. Undoubtedly, it is true that the right to property is a very important right. Most of the other rights may be rendered meaningless and impossible of enjoyment, unless the right to property is guaranteed. The constituent body took a conscious decision by the 44th amendment, however, to delete Article 19(1)(f) and thereby deprive it of the high position it occupied as a fundamental right. The right to property is today a constitutional right and it is a right to not be deprived of property, except in accordance with the procedure established by law. A Notification issued under the Environment Protection Act is undoubtedly law. The terms of the Notification by which restrictions are put, are not specifically called in question in the Writ Petitions. What is impugned is the inclusion of the property of the company and island owners. If we find that the challenge raised to the inclusion of their properties as without foundation, then, necessarily they would become subject to the various restrictions and regulations which are imposed under the Notification. Therefore, we are of the view that even on the ground that right to property is recognized as a human right and even proceeding on the basis that the Notification and the plan regulates and strict interpretation is necessary even on the basis that it is an expropriatory law, in view of the fact that the backwater islands are covered by the Notification in 1991, it was specifically shown as covered in the plan and also various backwater islands in the State of Kerala are shown as covered and the provisions in the Zone were being enforced, it does not lie in their mouth to contend that the Notification must not be used against them. Restrictions are imposed, admittedly under the Notification on the properties falling within the main land. The fact that the islands have only much lesser width and the restrictions would have an undeniably devastating effect on the enjoyment of the property rights cannot, in our opinion, stand in the way of the regulation of activities therein by way of absolute prohibition of certain activities and regulation of others. We cannot be unmindful of principles which are far to well established in environmental jurisprudence like inter-generational equity and sustainable development as being vitally important concepts. The threat of global warming is not the figment of imagination any more. In judicial review proceedings, this Court would be loathe in finding ways by interpretational activism to derail Governmental action having the noble purpose of protecting the environment and promoting sustainable development.

Certain Miscellaneous Objections to the Plan:

51. It is contended that identification of the island as a filtration pond is not based on any scientific or acceptable process and it is on the basis of maps drawn to the scale of 1 : 12,500 using aerial photographs and/or satellite imageries without any field check. Unless a fresh map is drawn after getting cadastral map, it cannot be

identified as done, it is contended. It is submitted that Filtration Ponds had been identified on the basis of colour classification code in satellite imagery interpretation. It is submitted that in the plan of 1995, reference is made in page 56 in Map 32A under Ernakulam District whereas the area is actually in Alleppey District (at page 54, though it is correctly shown as falling in Panavally - Vaduthala area in Allappey District), it is submitted that at the maximum, it is a recommendation by the CRZ Authority/recommendation general guideline which got implemented only in 2011 Notification. A Filtration Pond is a water body - a part of the backwater system and thus, it cannot be an island, it is contended. It is the shallow water body and, therefore, it cannot be an elevation in relation to the backwater, it is contended. Regulation Zones can be marked only on the land and, therefore, a filtration pond cannot have regulation zone being part of the backwater system, is another submission. It is pointed out that every land mark which has been recognized as such including small islands have been provided with a fifty metre regulation zone. It is further pointed out that some of these islands are left with a small no regulation zone and, therefore, the entire island has been considered as regulated. As far as the island is concerned, it is without marking the fifty metre regulation zone. It is submitted that without marking the fifty metre regulation zone and it being ascertained as to whether the area left over is a small isolated patch requiring the entire island to be treated as regulated, the action cannot be supported. It is further submitted that small islands can be situated in a filtration pond or the backwater itself, but, the island cannot lose its identity. There is no guideline suggesting that if a small island contains filtration pond, the entire island should be treated as regulated or depicted as Filtration Pond. With reference to certain map numbers (10, 12, 14A, 15, 16, 16A and others), it is submitted that they are small islands which are completely regulated. Map Nos. 31A, 32, 32A, 33A, 35A, 36, 37, 38A, 39 and 39A are shown as plates showing islands in filtration ponds. It is pointed out that wherever small islands exist, they have been faithfully marked in the maps. Small islands in filtration ponds have been distinguished from the filtration pond and have also been demarcated for the regulation zones either fully or marking out the No Regulation Zone. The filtration ponds are specifically marked wherever they exist. Their boundaries in the backwaters are also marked in some maps. All maps are drawn to an identical scale. Islands in filtration ponds are designated under CRZ-I. The maps have been drawn on toposheet formats. It is unacceptable for an island to be depicted as a filtration pond. The failure to depict the Nediyathuruthu island itself and its regulation zone concludes that the plan does not apply to it. There is nothing in the map, plan or any other contemporaneous records to suggest that there exists a filtration pond on the island. It is an impossibility as filtration ponds are parts of backwaters and there cannot be any backwater body on an island. The depiction of the island as a filtration pond is an obvious error. Admittedly, there exists residential buildings on it, it is contended. It is an impossibility as no construction can be made on a filtration pond. There is nothing in the map to suggest that the island contains a filtration pond. A close examination of maps 32, 32A and 32B with the corresponding commentary shows that the reference to small islands in filtration pond as backwaters are made to such islands which are demarcated with regulation zones. Such islands are clearly identifiable from the maps in question. Clearly, therefore, the reference was not to Nediyathuruthu island. It is further emphasised that the plan does not make a distinction between Filtration Ponds which are natural and those formed due to anthropogenic causes. It is further submitted that there are several small islands with regulation zone and no regulation zone. Many of these islands are smaller than Nediyathuruthu island and there is hostile discrimination and illegal classification. The official satellite imagery for the area as published by the National Remote Sensing Agency depicts the Nediyathuruthu island as an agricultural land, and not as a filtration pond. The island is adjacent to the

national water way No. 3 and a shallow water body cannot lie in the path of an island water way for obvious reasons, it is contended.

52. Learned counsel for the island owners has adopted the contentions and would emphasise that the very concept of filtration ponds is alien to the idea of areas close to breeding and spawning of fish and other marine life found in CRZ-I of the 1991 Notification. He would also emphasise that a perusal of the commentaries in the plan of 1995 would show that filtration ponds are shown as shallow water bodies adjoining the backwater system where certain species of fish are grown in large numbers (see page 38). He would highlight the word "grown" and contend that it is not in consonance with the concept "area close to breeding and spawning of fish and other marine life". In short, it is contended that when fish are grown, it is not a case where there is breeding or spawning as contemplated in the Notification.

Findings:

53. In the 1995 plan, it is, inter alia, stated as follows:

> "The State has a large expanse of brackish water areas in the form of lower reaches of rivers, backwaters, lakes, tidal marshes and mangroves with vast potential for developing aquaculture. The well known "Prawn filtration" method of aquaculture is carried out in about 4300 ha paddy fields (Filtration Ponds) adjacent to estuaries in central Kerala."

(See page 20)

In the plan, it is further stated that the existing reliable maps of the coastal areas are basically of two types. The survey of India topographic maps in 1 : 50,000 (prepared in 1967) or 1 : 25000 (prepared in 1981) scale and the cadastral or village maps of 1 : 3960, 1 : 7820 or 1 : 5000 scales. The cadastral maps, it is stated further, are suitable for micro level planning at the village or grama panchayat level (Cess, 1994) and they do not contain the terrain, resource or assets information. It is stated that for the objection sets forth in the work, the toposheets will be more convenient as all the informations can either be derived from them or plotted in it. It is stated further as follows:

> "A more recent source of information is the Satellite data, which is available as False Colour Composites (FCC) in 1 : 50,000 scale. However, for the satellite data the scale is not a constraint as the available FCC film positive/digital data can be easily blown up to any required level up to a maximum enlargement of 70 times and any required scale can be arrived at. PROCOM, an equipment used for blowing up FCC positive is available in CESS. The third source of information, the aerial photographs is more detailed and accurate and is available for this region in 1 : 15,000 scale.
>
> In these circumstances it is decided to use a scale of 1 : 12,500, which is nothing but a double or four times enlargement of 1 : 25,000 or 1 : 50,000 toposheets respectively. This scale of 1 : 12,500 has also the advantage that it is closer to the scale of aerial photographs."

It is further stated that filtration ponds are specifically identified with reference to the tone, shape, texture, location and association. Mangroves, going by the commentary at page 38, are spawning and breeding grounds of fish and the fifty metre belt around them is shown as CRZ-I. Filtration Ponds are also shown as falling in CRZ-I as they are shallow water bodies adjoining the backwater system where certain species of fish are grown in large numbers. It is also commented that it is a low lying area and, therefore, it is likely to be inundated due to sea level rise (SLR). At page 56 of the plan, no doubt, under Ernakulam District, after referring to Panavally - Vaduthala (32A) besides two other maps, it is, inter alia, stated that small islands are seen, both in the filtration ponds and the backwaters. In these islands, after providing the fifty metre regulation zone, there exists very small isolated patches of No

Regulation Zone. It is in such cases, the whole island may be considered as regulated, it is stated. At page 54, under table 11, area of regulation zones coming under different categories, as against 32A, Panavally - Vaduthala is shown under Alleppey District. The area of fifty metre zone (in sq. kms) is shown as 1.622. The area shown under CRZ-I as against 32A, Panavally - Vaduthala is 1.221 sq. kms.

54. We are of the view that there is no merit in the contentions of the company or the island owners. A specific stand has been taken in W.P. (C). No. 4808/12 filed by the company by the authority that Nediyathuruhu island falls in CRZ-I. It is shown as filtration pond. Moreover, it is also shown as a low lying area likely to be inundated by sea level rise (SLR). Undoubtedly, areas likely to be inundated due to rise in sea level consequent upon global warming are one of the areas falling under CRZ-I. More importantly, the areas close to breeding and spawning grounds of fish and other marine life would also fall under CRZ-I. The island in question has been admittedly marked as filtration pond. We cannot accept the argument that the words "areas close to breeding and spawning grounds of fish and other marine life" will not take in places where the fish are grown by taking advantage of the topography, namely the closeness to the backwaters. What we gather is that bunding is done and the fish are bred. The word "breed" has been defined in the Chambers (20th Century) Dictionary, inter alia, as follows:

> "breed = to generate or bring forth; to cause or promote the generation of, or the production of breeds of; to train or bring up; to cause or occasion; to be with young; to produce offspring; to be produced or brought forth; to be in training, to be educated."

The word "spawn" has been defined in the same Dictionary as follows:"spawn = a mass of eggs laid in water; fry; brood; contemptuously, offspring' mushroom mycelium;- v.t. to produce as spawn; contemptuously, to generate, esp. in mass; to produce or deposit spawn; to teem; to come forth as or like spawn-n. spawner one who spawns; a female fish, esp. at spawning time.- n. and adj. spawning.-spawn-brick, -cake a consolidated cake of horse-dung with mushroom spawn; spawning-bed, -ground a bed or place in the bottom of a stream on which fish deposit their spawn."

The word "eco" has been defined in the same Dictionary as "any composition, concerned with habitat and environment in relation to living organisms as in ecology". "Ecocide" is defined in Chambers Dictionary as "the destruction of the aspects of the environment which enables it to support life". The word "ecology" is defined as a study of plants or of animals or of people and institutions in relation to environment." Therefore, the coastal stretches that are located in areas that are ecologically sensitive and important take in areas close to breeding and spawning grounds of fish and other marine life. Filtration Ponds are shallow water bodies. Fish are bred or grown in the said area. Developmental activities would have deleterious effects on fishing, whether it is natural fish breeding or fish being bred by permissible aqua-culture.

55. In appreciating the arguments of the company and the island owners, it is crucial to bear in mind that what CRZ-I contemplates, is areas close to breeding and spawning grounds of fish and other marine life. The concept of areas close to breeding and spawning grounds of fish, is different from areas of breeding and spawning grounds of fish and other marine life. Filtration Pond is a water body. Therefore, keeping in view of the concerns of the framers of the Notification, the areas close to the breeding and spawning grounds which would be larger than the actual breeding and spawning grounds itself can be classified as CRZ-I. Therefore, we are not much impressed by the contention that because it is a part of the water body, there cannot be a regulation zone in regard to a filtration pond. When it is said that there is a filtration pond, it means that it is a shallow water body which is lying along with the backwater system or rather adjoining it and filtration pond would be part of the

islands.

56. We are not impressed by the argument that in every island, the fifty metre regulation zone has to be marked. We find that even in the argument note, even according to the company, the average width of the backwater island where the construction has been now completed, is only 20 to 60 metres. It is for the concerned authority to ascertain and demarcate an area as one falling in the different zones. In this case, subject to our repelling the argument that there are no materials at all to find that they could be treated as filtration ponds, the classification of the entire island which is admittedly a small island having an average width of 20 to 60 metres where construction was done even according to the company cannot be the subject matter of interference by this Court under Article 226. We must bear in mind the limitations on the Court under Article 226. The Court does not sit as an appellate body reviewing factual findings or issues, in particular, when the work impugned is that of an expert body. The court will show greater deference. It was for the company to have made necessary enquiries and ascertained about the implications of the contents of the plan. The body entrusted with the work under the statute, an expert body at that, has found the entire area is one falling under CRZ-I. We find no basis at all to interfere with the same.

57. The island in question appears to have water bodies and also areas which do not contain any water body. It will be doing injustice to interpret the Notification as being one not being applicable, when there is a water body within the island also. Once it is found that the island is an area close to breeding area of fish, then, it would, in our view, fall under CRZ-I. The Zone, no doubt, is landward side (500 metres) or 100 metres or width of the water body at the minimum, if so decided, in respect of back water islands. But, landward side is indicated to show that the Zone, being coastal stretch, is not towards the sea, bay, creek, river or backwater. From the high tide line towards the land will take in all including water bodies within the landward side.

58. The fact that the No Development Zone is not marked, may not avail the company or the island owners. The word "No Development Zone" is found under Category III. When it falls under CRZ-III, the Notification contemplates ear-marking of an area upto 200 metres from the HTL, as the "No Development Zone". It may be true that some filtration ponds are specifically marked and their boundaries in the backwaters are also marked. As far as plan 32A is concerned, the entire area is shown as filtration pond. This is apparently on the basis of the special topography. It is also not irrelevant to note that the island is stated to be a low lying area. We cannot, therefore, find that it cannot be shown as falling under CRZ-I. Nediyathuruthu is an island with filtration ponds in it. The filtration ponds by its very nature lies adjacent to the backwaters. Having regard to the low width, that is a little over fifty metres which clearly cannot be developed the entire area has been marked as filtration pond, and a perusal of the commentary in the plan makes it clear that the entire area falls in CRZ-I. We find no basis to interfere with such a classification.

59. It is to be noted that under the 1991 Notification, paragraph (1) declares that the coastal stretches of seas, base, estuaries, creeks, rivers and backwaters which are influenced by the tidal action in the landward side upto 500 metres will be the Zone, inter alia. In 1991 itself, under the Note to paragraph (1), the distance from the HTL was to apply to both sides of the rivers, creeks and backwaters. It could be modified on a case to case basis. The reasons were to be recorded when the plans were to be prepared. But, the distance after such modification was not to be less than 100 metres or the width of the water body whichever was less. In 1994, by the amendment, the distance of 100 metres was reduced to 50 metres. This was, as already noticed, declared illegal by the Apex Court by its Judgment rendered in April, 1996. Thus, while the Plan was prepared in the year 1995, apparently, the authorities have

proceeded on the basis that the prevalent position was that the distance should not be less than 50 metres or the width of the water bodies, whichever is less. When the Apex Court pronounced it illegal in April, 1996, the decision of the Apex Court was given effect to by the Central Government, when it gave its approval vide Ext.P6 in W.P. (C). No. 4808/12 wherein the Plan of the State Authority was modified and it was directed that the distance should be treated as 100 metres or the width of the water body whichever is less, and not 50 metres. There are two things to be noticed. Under the provisions in paragraph (1) of the 1991 Notification, there is a discretion, undoubtedly, for modifying the Zone (the distance from the HTL) in the case of rivers, creeks and backwaters on a case to case basis for which reasons are to be recorded. The words used are "may be modified". At any rate, as far as the cases at hand are concerned, it is clear that the authority has proceeded on the basis that the distance is to be treated as 50 metres, seeking shelter under the provision which came to be declared as illegal and under the law applicable, the distance could not be less than 100 metres or the width of the water body whichever is less and it is declared also in Ext.P6, as already noticed. There is no case for the company or the island owners that the width of the water body is less than 100 metres. It is important to remember that the modified distance is not to fall below 100 metres or the width of the water body, whichever is less. The distance can be 500 metres as declared in paragraph (1) itself. What the Notification contemplated is permitting a reduced Coastal Regulation zone in respect of coastal stretches of rivers, creeks and back waters. It is to be noted that even according to the company, the width of the island (where the constructions exist) appears to be between 20 to 60 metres. Going by Ext.P6, a distance of 100 metres is to be treated as the Zone. This is in tune with what the Apex Court has held about the amendment in 1994, reducing the width from 100 metres to 50 metres. At any rate, the authorities have themselves found that the extent which was there after providing for the 50 metre zone, is only little and, therefore, the entire island is to be treated as regulated. It is to be borne in mind that 50 metres which has been struck down by the Apex court, was the shortest distance, if the authority so decided. In other words, the distance could not be less than 50 metres or the width of the water body whichever is less. It could always be more than 50 metres or the width of the water body even under the amendment which was declared illegal.

60. We are also not impressed by the argument that there are no guidelines, that is if a small island contains a filtration pond, the entire area is to be regulated. We would think that the authority is given to an expert body and the alleged absence of guidelines as such cannot deprive the plan of its validity. We are clearly unimpressed by the argument that the filtration pond is distinct from an island. Actually, it is part of the island, as it is a water body within the island.

61. It is, no doubt, stated at one place (page 34 of the plan) that a filtration pond, inter alia, is considered as part of the backwater system and hence the backwater boundary are drawn around them. In page 38, however, filtration ponds are stated to be shallow water bodies adjoining the backwater system. The 50 metre belt adjoining the filtration ponds are stated to be demarcated as CRZ-I (it is also stated examples "Alappuzha, Ernakulam and Kannur coasts"). Besides this, this area is stated to be low lying is likely to be inundated by SLR. As we understand, the way to reconcile both the statements is as follows:

Filtration ponds are stated to be adjoining the backwater system, as they are water bodies lying by the side of the backwaters. It is also part of the backwater system, as there is an integral connection with the backwater system, as there is exchange of waters which, no doubt, is controlled.

62. The further argument that as admittedly there are buildings on it, it is an impossibility as no construction can be made on a filtration pond, is equally based on a

mis-conception of the terms of CRZ-I. As already noted, CRZ-I deals with areas close to breeding and spawning grounds. The actual breeding takes place in the water body or the filtration pond as such. There would be areas which are not water bodies which are landmass within the island. On the same, it may be that constructions of the buildings were there prior to the Notification. That fact, however, would not take away the classification of the island containing the water body along with the adjoining landmass as areas close to breeding and spawning of fish and other marine line. There is no merit in the contention that there is nothing in the maps to suggest that the islands contained filtration pond. The plans have been prepared apparently by expert bodies. Islands have been specifically marked in the map 32A as (FP). There is absolutely no room for any ambiguity or uncertainty. Anyone reading the plan and seeing the map would have immediately come to the conclusion that the framers of the map had intended the islands to be treated as an area falling under CRZ-I. At page 43 of the plan, it is stated that the low lying areas adjoining the filtration ponds are also vulnerable and they are also marked as CRZ-I). It may also be noted that under map 32A in which admittedly the islands are shown marked as filtration ponds, at page 56, it is specifically provided that after providing for the fifty metre zone, there exists very small isolated patches No Regulation Zone and in such cases, the entire island is to be treated as regulated.

Whether filtration ponds are anathema, in view of the decision in *S. Jagannath* v. *Union of India* ((1997) 2 SCC 87)?

63. In *S. Jagannath* v. *Union of India* ((1997) 2 SCC 87), the Apex Court was dealing with the petition under Article 32 of the Constitution in public interest seeking enforcement of the Notification of 1991, stoppage of intensive and semi-intensive type prawn farming in the ecologically fragile areas, among other reliefs. The Apex Court after consideration of various aspects, disposed of the Writ Petition by giving various directions. They include the following:

> "3. The shrimp culture industry/the shrimp ponds are covered by the prohibition contained in para 2(i) of the CRZ Notification. No shrimp culture pond can be constructed or set up within the coastal regulation zone as defined in the CRZ notification. This shall be applicable to all seas, bays, estuaries, creeks, rivers and backwaters. This direction shall not apply to traditional and improved traditional types of technologies (as defined in Alagarswami Report) which are practised in the coastal low-lying areas.
>
> **4.** All aquaculture industries/shrimp culture industries/shrimp culture ponds operating/set up in the coastal regulation zone as defined under the CRZ Notification shall be demolished and removed from the said area before 31-3-1997. We direct the Superintendent of Police/Deputy Commissioner of Police and the District Magistrate/Collector of the area to enforce this direction and close/demolish all aquaculture industries/shrimp culture industries shrimp culture ponds on or before 31-3-1997. A compliance report in this respect shall be filed in this Court by these authorities before 15-4-1997.
>
> **5.** The farmers who are operating traditional and improved traditional systems of aquaculture may adopt improved technology for increased production, productivity and return with prior approval of the "authority" constituted by this order."

The traditional and improved traditional technology of aqua culture are set out in the judgment as follows:

> "Traditional : Practised in West Bengal, Kerala, Karnataka and Goa, also adopted in some areas of Orissa. Coastal low-lying areas with tidal effects along estuaries, creeks and canals; impoundments of vast areas ranging from 2-200 ha in size. Characteristics : fully tidally-fed; salinity variations according to monsoon regime; seed resource of mixed species from the adjoining creeks and canals by auto-

stocking; dependent on natural food; water intake and draining managed through sluice gates depending on local tidal effect; no feeding; periodic harvesting during full and new moon periods; collection at sluice gates by traps and by bag nets; seasonal fields alternating paddy (monsoon) crop with shrimp/fish crop (inter monsoon); fields called locally as bheries, pokkali fields and khazan lands.

Improved traditional : System as above but with stock entry control; supplementary stocking with desired species of shrimp seed (P. monodon or P. indicus); practised in ponds of smaller area 2-5 ha."

64. In the first place, going by the Notification of 1991, the authority has chosen it fit to characterise certain areas as filtration ponds on the basis of their perception that they are areas close to breeding and spawning of fish and other marine life. We have already found that filtration ponds as understood by the authorities would fall within the scope of CRZ-I, as they are essentially areas where breeding takes place. Therefore, we would think that it may not be open to us to further consider whether such a classification which incidentally was done prior to the judgment of the Apex Court would not survive after the judgment of the Apex Court. But, we do not wish to rest repelling the contentions of the company and the island owners on the said score. We feel that we are on surer foundations, when we hold that the said contention is meritless for the following reasons:

The Apex Court has, no doubt, directed certain kinds of aqua culture to be stopped. They are aqua culture industries, shrimp culture industries and shrimp culture ponds. The Apex Court has held that the shrimp culture industries/shrimp ponds are covered by the prohibition contained in paragraph 2(i) of the Notification. It was further directed that no shrimp culture pond can be constructed or set up within the zone. This includes the backwaters. But, the Court has specifically directed that the said direction will not apply to traditional and improved traditional types of technology as defined in Alagar Swami Report which are practised in the coastal low lying areas. The Court has, in fact, categorically held that the farmers who are operating traditional and improved traditional systems of aqua culture may adopt improved technology for increased production, productivity and return, with the prior approval of the authority constituted by its Order. Thus, the Apex Court has countenanced the continuance of the traditional and improved traditional forms of aqua culture even in coastal ares. It is not argued before us that there was aqua culture of the prohibited variety which was the basis of the Filtration Pond classification. In fact, the case of the company and island owners is that there is no basis to classify it as a filtration pond at all. On the aforesaid reasoning, we have no hesitation in repelling the contention of the learned counsel for the company and island owners based on the judgment in *S. Jagannath* v. *Union of India* ((1997) 2 SCC 87).

Whether there is any reliable material to classify the areas as filtration ponds?

65. The contentions are that there is no reliable material for the authority to classify the areas as filtration ponds and there is no document which would show that it was being used as filtration pond. Learned counsel for the company would point out that in the Counter Affidavit filed in W.P. (C). No. 2947/13 (the writ petition filed by the island owners), the authority has produced the land use map. In the land use map, it was pointed out, in regard to Nediyathuruthu island, that a portion is shown as occupied by coconut plantation. He poses the question as to how in map No. 32A the entire area could be classified as filtration pond. In fact, he would submit that this land use map was not produced in the proceedings of the company. It is further contended that the official satellite imagery for the area as published by the National Remote Sensing Agency depicts the Nediyathuruthu island as an agricultural land and not as a filtration pond or a wet land. The island is adjacent to the national water way No. 3, a fact which is verifiable from the map of the National Waterway Authority and

the shallow water body cannot lie in the path of an island water way, it is contended.

66. On the other hand, apparently the case of the respondent/authority is that the filtration ponds were identified on the basis of satellite imagery and aerial photographs. Survey of India toposheets were also used. Clearly no cadastral survey as such was done. In our approach to such problem, we must bear in mind the principles of law which are applicable. A Writ Court is not essentially a fact finding court (this is not to say that the Court does not have the jurisdiction to decide even disputed questions of facts capable of resolution in writ jurisdiction). The Court is not an appellate forum. The Court employs principles of judicial review, when administrative action is assailed. It is true that under the Wednesbury Concept of Judicial Review, an approach or a finding which is perverse may be vulnerable. A perverse view is a view which no reasonable man would take in the circumstances of a case. If two views are possible, the Court will not interfere. Equally, a perverse view is one which is entertained without the support of any material. When the view is a view taken by an expert body, it is elementary that the Court will be slow to substitute its view for that of the expert body. Within the confines of the aforesaid principles, let us consider the issue raised by the company and the island owners. It is apparent that the authority has before it aerial photographs and satellite images. The work was undertaken in 1990s, in the aftermath of the Notification in 1991. The company and the island owners would make an attempt to persuade this Court, after nearly two decades, that there was no material to warrant classification of the areas as filtration ponds. We cannot ignore this aspect also. At any rate, we would think that there were materials with the authorities in the form of aerial photographs, satellite imageries besides toposheets. It is not a case where there were no material at all as to the interpretation of the aforesaid materials. We should also bear in mind that the interpretation was done by the persons who are experts. We must further remind ourselves that the plan as prepared has been approved by the Government of India. This is also very important circumstance which we cannot ignore. Furthermore, we would also notice that it is specifically stated that the satellite imagery of 2006 prior to the construction of the resort building confirms that the entire island consisted of filtration ponds.

67. We may notice also that the company has in the Counter Affidavit filed in W.P. (C). No. 19564/11, categorically stated that the water available on the island is brackish water and fresh water required for cultivation of paddy is not available there. They have specifically stated that it is learnt on enquiries that no paddy cultivation has been carried out on any part of the land belonging to the respondent at any time for more than the past fifty years. We have already noted in the plan at page 20, that it is noted that the State has a large expanse of brackish water area in the form of lower reaches of the rivers, backwaters, etc. with vast potential for developing aqua-culture and prawn filtration method of aqua-culture is practised in filtration ponds. It is also to be noted that what is declared as CRZ Zone in regard to the filtration ponds is in respect of the area adjoining the filtration ponds which is in keeping with the areas close to breeding and spawning of fish and other marine life contemplated in CRZ-I.

68. We must also repel the argument of the company that there were earlier materials suggesting that it was being used for agricultural purpose. We may notice that prawn farms in the backwaters were being run and are still being done in many areas by doing agriculture and prawn cultivation alternatively. We cannot also discountenance the possibility of areas which were earlier being occupied by agriculture activities being used for aqua culture. What is relevant is for what use the lands were being put to at the time when the studies were conducted which led to the 1995 plan. We have already noticed the stand of the company itself. It is also categorically stated by the authority, as already noted, that the satellite imagery of 2006 confirmed that the entire island consisted of filtration ponds. We would also be

overstepping the limits of our jurisdiction, if we were to re-evaluate and sift the materials and substitute the view which we are persuaded to accept, at the instance of the company and island owners.

69. We would arrive at the same conclusions ultimately in regard to the argument based on the land use map produced as Ext.R3(b) in the Counter Affidavit filed by the third respondent in W.P. (C). No. 2947/13. It is no doubt shown as prepared in 1993. The expert would say before us that the land use map was prepared as part of the project which Cess submitted to the Kerala State Council for Science, Technology and Environment for getting information in general, land use of the Coastal Regulation Zone and adjoining areas and that the land use map suggesting coconut cultivation or other cultivation was not a criterion when the plan was prepared by the Coastal Management Authority. He has also stated that it was shown as Filtration Pond because of the filtration pond and net-work of canals and coconut trees cannot be separately shown because of the scale limit. He would also say, in answer to a question as to why the island just below Nediyathuruthu island where a portion is shown as Filtration Pond and other area is shown as partly No Development Zone which is in consonance with Ext.R3(b) land use map that in the Nediyathuruthu island, there is more water body part in the form of filtration pond, canals and channels. No doubt, he would also say that in the Report itself it is stated that for detailed planning of the Coastal Regulation Zone and the adjoining areas, it may be necessary to use cadastral scale map and in such cases, the maps may be given as general guidelines. (The last observation of the expert is made with reference to the statement contained in the Coastal Regulation Plan of 1995).

70. We are of the view that therefore these are all aspects which we must view from the perspective of our jurisdictional limits and hence we take the view that we cannot, at any rate, characterize the classification of the area as filtration ponds as without basis. In *Tata Housing Development Co. Ltd.* v. *Goa Foundation* ((2003) 11 SCC 714), relied on by the company, a public interest case was launched impugning permission granted to the appellants for change of land used, construction and felling of trees in a plot which was allegedly forest. There were three interim reports. The High Court accepted the third interim report of the Sawant Committee and allowed the Writ. In the said report, the committee relied on satellite imagery. In the second report, three criteria were considered to determine any area as forest. The Apex Court found that the third report revealed that the three criteria laid down in the second report were given a complete go by. It is pertinent, however, to refer to the following passage in paragraph 15.

> "15. In its Second Interim Report the Sawant Committee categorically rejected satellite imagery and toposheets as one of the criteria for identifying a forest as the same would at best show natural green cover which, according to the Committee, would include plantations, seasonal crops etc. and the same cannot be a relevant consideration for classifying a forest, as such the Committee in its report relating to the appellants' plot was not justified in taking the same into consideration. Likewise, in its Second Interim Report, the Committee had rejected Nature Reserve Green Belt Map as a relevant consideration for holding a land to be forest on the ground that the same would show all types of vegetation including cashew crops etc. as such in the Third Interim Report the Committee was not justified in placing reliance upon the Report of the Sub-Committee for maintaining nature reserve around the city. So far as the third criterion that weighed with the Committee is concerned, it may be stated that enumeration of the plants in a 50 metre belt adjoining the appellants' plot on three sides was irrelevant, especially when the Committee did not find that 75% of the plants, in the 50-metre-wide belt adjoining the boundaries of the appellants' land, were of forestry species."

71. We are of the view that the facts are clearly distinguishable. We are also of the view that the said decision cannot be taken as an authority for the proposition that in no circumstances, can satellite imagery be relied on as appears to be the line of argument advanced by Shri. Vishwanathan. Satellite imagery and toposheets would only show green colour and it would not necessarily prove that it is a forest. It is in the said context that the Apex Court took the view it did. In Anand *Arya* v. *Union of India* ((2011) 1 SCC 744), the two applicants before the Court who were residents of Noida challenged the very large project on the ground that the project area was a forest and there was no environmental clearance. The Court found that it was not a forest area. More importantly, the company seeks support from the finding that satellite image may not reveal the complete story. It is relevant to quote from page 745:

> "In the revenue records, none of the khasras (plots) falling in the project area was ever shown as jungle or forest. According to the settlement year 1359 Fasli (1952 AD) all the khasras are recorded as agricultural land, banjar (uncultivable) or parti (uncultivated). The records of the land acquisition proceedings in 1980 to 1983 and 1991 also complement the revenue record of 1952 in which the lands were shown as agricultural and not as jungle or forest. There is no reason not to give due credence to these records since they pertain to a time when the impugned project was not even in anyone's imagination and its proponents were nowhere on the scene……The records pertaining to satellite images have not given information about the different species of trees, their age and the girth of their trunks, etc. The satellite images only reveal that in October, 2006 there was thin to moderately dense tree cover over about half of the project site. But this fact is all but admitted. The State Government admits to felling of over 6000 trees in 2008. As per government information on a large tract of land (33.45 ha in area) that was forever agricultural in character, trees were planted with the object of creating an urban park (and not for afforestation!). The trees, thus, planted were allowed to stand and grow for about 12-14 years when they were cut down to make the area clear for the project……..But trees planted in the project area cannot be branded as "forest". It is inconceivable that trees planted with the intent to set up an urban park would turn into forest with a span of 10 to 12 years and the land that was forever agricultural, would be converted into forest land. One may feel strongly about cutting trees in such large numbers and question the wisdom behind replacing a patch of trees by large stone columns and statues but that would not change the trees into a forest or the land over which those trees were standing into forest land."

72. We would think that the case law cited by the learned counsel is clearly distinguishable, as we do not think that the Apex Court has completely tabooed use of satellite imagery in the matter of deciding whether an area is to be classified as a filtration pond. There were aerial photographs also available apparently.

The plan clearly shows how the authority has understood the features of the filtration ponds. That is to say, we must defer to the expert's understanding of various topographical features. In regard to Filtration Ponds, the features are as follows:

Table 3. Elements of image interpretation of satellite imageries.

Category Tone Shape Texture Location Association Remarks 4. Filtration Dark Gray Irregular Smooth Estuarine region With backwater filtration ponds ponds are mud flats/tidal flats developed for aquaculture.

We have noted that when the Expert was specifically asked at the instance of the company that the tone of filtration pond is dark gray and as far as the road, rail and canal are also gray to dark gray etc., he explained it by saying that it can be distinguished on the basis of shape as roads, rails and canals which are a linear shape unlike the filtration ponds. Therefore, in the light of these circumstances, we would

repel the argument of the company and the island owners that there was no basis at all to classify the areas in question as filtration ponds.

Whether there must be island specific study?

73. We see no merit in the contention of the company and island owners that there must be an island specific study. This argument apparently is based on the argument that the backwater islands would fall under CRZ-IV of the 1991 Notification. In paragraph 6 under the caption "Lakshadweep and small islands" it is stated that for permitting construction of buildings, the distance from the HTL shall be decided depending on the size of the islands. It is further stated that this shall be laid down for each island on the basis of integrated coastal zone management study and with the approval of the Ministry of Environment & Forest, keeping in view the land use requirements for specific purposes, vis-a-vis, the local conditions including hydrological aspects, erosion and ecological sensitivity. It is true that it is provided also that in some of the islands, there is provision for designating the same as falling under CRZ-I, CRZ-II or CRZ-III. There is a process of designation involved undoubtedly as it has to be done with the prior approval of the Ministry of Environment & Forest. When such designation takes place, the Regulations which are appropriate to CRZ-I, CRZ-II or CRZ-III would apply. We are of the view that all these aspects are irrelevant for the purpose of considering the Regulations applicable in regard to the islands with which we are concerned. As already noted, the need for a study would arise only in respect of the marine islands which are small islands which are apart from the Lakshadweep. The Notification does not contemplate or provide for such study in regard to the backwater islands in the State of Kerala. We may also notice that there is no challenge against the Notification as such and any contention against the same, cannot also be examined by us. Therefore, we find the arguments clearly unacceptable.

Whether the 2011 Notification will not apply in view of the provisions "except things done or omitted to be done"?

74. The company has a case that in view of the provisions contained in 2011 Notification that it has been issued in supersession of the 1991 Notification and that it would have effect except as regards things done or omitted to be done before the supersession and in so far as there was sanction by the appropriate authority for commencement of construction and they form integrated parts of the same transaction, the 2011 Notification does not alter the position with regard to the construction already done or in process. In this context, reliance is placed on the decision of the Apex Court in *Universal Imports Agency* v. *The Chief Controller of Imports and Exports* (1961 (1) SCR 305). We see no merit in the said argument. We have already found that the backwater islands were already within the ambit of the 1991 Notification. The island in question was one which was specifically shown as Filtration Pond and it is intended to denote an area close to breeding and spawning of fish and other marine life and hence it fell within CRZ-I. Any act contrary to the terms of the 1991 Notification would clearly attract action as contemplated under law.

Whether the contradictory stand of the Authority will avail the company?

75. We are also not impressed by the contention of the company that there was contradictory stand adopted by the authority in so far as, in the Counter Affidavit filed by it in W.P. (C). No. 19564/11 it took the stand that the island falls within CRZ-III whereas in W.P. (C). No. 4808/12 the authority takes the stand that the island is covered as CRZ-I and this, according to the company shows that even the authority is not sure as to how the scheduled premises is covered under the Regulations.

76. While it may be true that the authority has taken two different stands, ultimately the lis must be terminated by the Court considering the matter with reference to the materials. In this case, we have found that the island is covered by

the marking "Filtration Pond" and it is intended to denote an area coming under CRZ-I. Once the area comes under CRZ-I, then there is no question of it falling also under CRZ-III.

77. We have found that the island cannot fall in CRZ-IV. The island admittedly falls in a panchayat area. If that be so, it will fall under CRZ-III. The constructions of the nature carried out by the company would be clearly impermissible, having regard to the restrictions imposed under the 1991 Notification in regard to CRZ-III areas. Even according to the company, constructions were carried out on an island where the average width was between 20 to 60 metres. This means that it would be clearly part of the No Development Zone. No doubt, the No Development Zone as such is not marked as the entire island itself was treated as falling under CRZ-I. But, even in the absence of marking as No Development Zone, in view of the width (20-60 metres), the constructions are illegal.

Whether the maxim "expressio unius est exclusio alterius" will avail the company?

78. The contention that the backwater islands are not expressly referred to in the 1991 Notification and therefore the maxim "expressio unius est exclusio alterius" applies and the portions which were not expressly included must be deemed to be excluded, is misplaced. We are of the view that there is no scope for applying the said maxim, in the teeth of the express words used in the Notification indicating that coastal stretches in the backwaters are intended to be covered. We see no reason to limit coastal stretches to the coastal stretches of the main land of the backwaters. The coastal stretches of the island in the backwaters would also be coastal stretches of the backwaters. Further more, the understanding of the said words in the Notification by the authority followed by the Plan clearly shows that the backwater islands of the State of Kerala were also comprehended within the 1991 Notification. Such an understanding of the authority has also been approved by the Central Government.

Whether cadastral survey a must and its absence fatal?

79. Guidelines have been issued for demarcation of the HTL/LTL under the 1991 Notification. It is stated that the demarcation of the HTL/LTL shall be made on the coastal zone management maps of scale 1 : 25,000 prepared by the agencies identified by the Central Government. Thereafter, the base map of 1 : 25,000 scale is to be acquired from the Survey of India. Where such map is not available, 1 : 50,000 maps will be enlarged to 1 : 25,000. High water level and low water level marked on the base maps should be transferred to the Coastal Zone Management Maps (CZM Maps). Coastal Geomorphological signature in the field/satellite imageries/aerial photographs will be used for appropriate adjustments in the HWL and LWL for demarcating the HTL/LTL. Landward(Monsoonal) berm crest in the case of sandy beaches, rocks, hard lands, clips, sea walls, revetments and embankments are the geomorphological features which will be considered for demarcating HTL/LTL.

80. Local level CZM maps are to be prepared by the officials of the local bodies for accurate determination of the regulation zone. They are to be prepared on the cadastral scale. The cadastral (village) maps in 1 : 3960 or the nearest scale will be used as the base maps which are available with the revenue authorities. HTL and LTL are to be demarcated in the cadastral map base on the detailed physical verification, using coastal geomorphological signatures/features in accordance with the CZM Maps approved by the Central Government. The 500 metres and 200 metres lines are to be demarcated in regard to the HTL marked. It is also stipulated that HTL as defined in the 1991 Notification and the LTL will also be demarcated along the banks of the tidal influenced island water bodies with the help of the geomorphological signatures and features. The demarcation on cadastral maps is to be done by the local agencies approved by the Central Government. They are to work under the guidance of the concerned State Authorities in the case of States.

81. In the *Lakeshore's case* (supra) is concerned, while there is reference to letter dated 04.01.1999 of the Ministry of Environment and Forest to the State Government to prepare local level CRZ Maps in cadastral scale and further the Court has also recorded the stand of the Additional Advocate General, inter alia, that depicting an area of 12 & 1= thousand sq. Kilometres in one inch is a difficult job and that the Government is preparing cadastral plans and thereafter a fresh plan and map shall be issued and therefore the Writ Petitions were premature.

82. We are not impressed by the said argument. There is a plan prepared with the use of satellite imageries, aerial photographs and apparently using toposheets. In regard to the islands, it is not doubt true that field studies cannot be stated to have been done as such with certainty. As stated in the plan itself, cadastral maps are suitable for micro level planning at the village or grama panchayat level. It is undoubtedly true that there was communication from the Government dated 4.1.1999 and also in the guidelines there is reference to the need to prepare cadastral plans that the local level CZM Maps (Coastal Zone Management Maps) for use in the local bodies for which cadastral village maps were to be used as the base maps. The guidelines also contemplates classification to be transferred from the CZM maps to the local CZM maps.

83. As far as the CZM maps are concerned, no complaint can be had. In fact, under the plan, the scale used is 1 : 12,500 which is double enlargement of 1 : 25,000. In fact, when comes to the 2011 Notification, Annexure I guidelines also contemplated demarcation of HTL or LTL on a scale of 1 : 25,000. In fact, there is no difference in the guidelines. Under the 2011 Notification, the CZM maps are to be prepared in accordance with paragraph 5 of the Notification, demarcating CRZ I, II, III, IV & V. The maps should demarcate the land use plan of the area and must list out CRZ I areas.

84. Under the head "Hazard Mapping", various directions have been given. They include the following, inter alia:

> "1. The CZM Maps shall be prepared in accordance with para 5 of the CRZ notification demarcating CRZ I, II, III, IV and V.
>
> 2. The CZM Maps shall clearly demarcate the land use plan of the area and lists out the CRZ-I, areas. All the CRZ-I, areas listed under para 7(1) A and B shall be clearly demarcated and colour codes given so that each of the CRZ-I, areas can be clearly identified.
>
> 5. The hazard line to be drawn up by MoEF shall be superimposed on the CZM maps in 1 : 25,000 scale and also on the cadastral scale maps.
>
> 9. The water areas of CRZ IV shall be demarcated and clearly demarcated if the water body is sea, lagoon, backwater, creek, bay, estuary and for such classification of the water bodies are terminology used by Naval Hydrographic Office shall be relied upon.
>
> 10. The fishing Zones in the water bodies and the fish breeding areas shall be clearly marked.
>
> 12. In the CRZ V areas the land use maps shall be superimposed on the Coastal Zone Management Plan and clearly demarcating the CRZ I, II, III, IV."

The guidelines also contemplate the draft plans being given wide publicity and calling for objections/suggestion from the public, holding a public hearing at District level. The plans are to be revised and with the approval of the Ministry of Environment and Forest, approved plans should be put on the web site.

85. There is no dispute that the plan as contemplated under the 2011 Notification has not been prepared. As far as the company is concerned, according to it, it has admittedly made various constructions. The constructions began, according to it, on the basis of the NOC which was obtained in the year 1997. Still later, according to the

company, they have obtained permit from the panchayat in the year 2007. They proceeded to make construction. The police protection writ petition is filed on 25.10.2011. We have found that the Nediyathuruthu island comes squarely under CRZ -I of the 1991 Notification. This means that no activity can be done, virtually on the island. There cannot be any dispute that the company has indeed made constructions even within fifty metres of the HTL which was clearly prohibited. At any rate, the constructions began during the time the 1991 Notification was in force. The same appears to us to be clearly illegal. This is unlike the situation in *Lakeshore's* case where, apart from the fact that the canal was man-made canal, even according to the authority, there was absence of material indicating whether the building in question fell within the prohibited zone. We may advert to the following commentary in regard to the word "cadastral" to be found in Pleaders' Survey Manual by Shibanath Basu, inter alia:

> "The word "cadastral" is one which is not familiarly used in surveying nomenclature and the meaning of which is variously and frequently erroneously interpreted. It is probably of French origin and was apparently first applied with any definiteness at the statistical conference held in Brussels in 1853, as referring to national maps on very large scales, approximately I : 2500. The word "Cadastre" has been accepted in Great Britain as being referred to a map or survey on a large scale, because the scale of the map corresponds with "cadrer" being that scale in nature which will permit of representing accurately the width of a road and the dimensions of a building. More recently on the continent the expression "Cadastral Surey is applied to a plan from which the area of land may be computed and from which its revenue may be valued."

We must bear in mind that cadastral survey is intended under the Guidelines for the use of the local bodies and other agencies to facilitate implement ion of the CRZ plans. Obviously cadastral plan would contain micro details. Apparently, the reason the proponents being expected to produce the cadastral plan is that with reference to the cadastral plan which is prepared on a large scale, it can be categorically found out whether the property of the applicant is affected by the Notification and whether it falls in a particular zone. As far as the islands of the company and island owner are concerned, we may notice that there is no dispute that it is having very low width. According to the company itself, the average width where the construction has been done is between 20 to 60 metres. Thus, we have already noticed that the plan contemplates that in the islands in question, very little space is available after the fifty metre belt is provided and, therefore, the entire island must be treated as regulated. In such a scenario, we are at a loss as to how when constructions have been made, even as contended by the company, the absence of the cadastral survey will be of any avail. Undoubtedly, we do express our concern at the apathy shown by the local authority in not having prepared the cadastral plan which it had been directed to do. But, the fact that it has failed to do its duty, cannot, in our view, assist the company or the island owner in wriggling out of the regulation contained in the Notification. In this case, the fact that there is no map prepared to the cadastral scale which, no doubt, was to be done by the local body, cannot avail them. Admittedly, the islands are located adjoining the Vembanattu lake which is a backwater in the State of Kerala and not an artificial canal. Even according to the company, the average width is between 20 to 60 metres. The entire island is classified as CRZ I. If that be so, the non-preparation of the cadastral plan cannot avail the company or the island owner which has put up various buildings which is indisputably well within the prohibited zone.

Whether there is encroachment by the company into the Vembanad Kayal (lake) and in the island itself?

86. As far as this issue is concerned, we had directed that the extent of the property in the possession of the company must be measured. The exact extent of the island was also directed to be measured. Survey was also directed to be conducted by the Deputy Surveyor of Alappuzha in the presence of the District Collector, Alappuzha. This was done by order dated 22.11.2012. Pursuant to the same, a report was submitted. On the strength of the same, finding encroachment, notice has already been issued under Section 11 of the Kerala Land Conservancy Act. On I.A. No. 16744/12, a petition seeking clarification filed by the company, we had left it open to the company to impugn the correctness of the report of the survey conducted by the Assistant Director of Survey (Re-survey), Chengannur and also the consequential report of the Deputy Director of Survey and also the report of the District Collector, Alappuzha along with the sketch before the statutory authorities as also before any competent forum which the company has the legal right to approach. In the light of this development, we need not be detained by the prayers in the Writ Petitions seeking action on the encroachment. Besides reiterating what we have stated in I.A. No. 16744/12 dated 17.12.2012 as aforesaid, we can only direct that proceedings started against the company will be continued in accordance with law.

W.P. (C). No. 19564/11

87. We have already referred to the pleadings in some detail. On the one hand, according to the petitioners, the stake nets in question were damaged on account of the activities of the company. On the other hand, the case is resisted by both the Government of Kerala and its authorities besides the company, as already noticed. No doubt, the learned counsel for the petitioners would reiterate the contentions which have been taken. In particular, he would submit that the case of the company and the Government cannot be accepted in the light of the various circumstances which have been referred to, including the stand of the Inland Water Authority of India and the Rules for Management and Control of Fisheries and Government Water Rules, 1974.

88. The writ court is not an appellate court. The writ court does not ordinarily decide disputed questions of fact. This Court cannot on the basis of the materials, come to a definite conclusion that the petitioners have established that the stake nets in question were lost in the manner contended for by them. In such circumstances, we cannot consider the grant of the relief of either compensation or a direction to restore the stake nets. Petitioners may have to work out their remedies in any other competent forum.

W.P. (C). No. 12965/12

89. W.P. (C). No. 12965/12, as already noted, is a writ petition filed by a trade union of fishermen. There is a challenge to the permit issued to the company by the panchayat. Direction is sought to proceed against the company and to demolish the building constructed as detailed in the permit. Further direction is sought in regard to the reclamation and filling up of wet land in violation of the Kerala Conservation of Paddy Land and Wet Land Act, 2008 and the Kerala Land Utilization Order, 1967. A writ of prohibition is sought against respondents 5 and 8 (the State Electricity Board and its Executive Engineer respectively) from laying under-water electrical line to the company's premises. The case of the company essentially is one which is common and we need not replicate the same. As far as the laying of the under-water cable and associated work is concerned, it is stated by the company that it is being done at a cost of Rs. 1.5 crores and that the cables are laid under water after obtaining lease from the Government of Kerala in the Irrigation Department. Ext.R6(a) is the lease agreement. Ext.R6(b) permission has already been received from the Inland Water Authority of India, is the company's case. We would think that as far as the issue relating to laying of under-water cable is concerned, the petitioner has not been able to establish any illegality and we reject the contention of the petitioner.

Whether the building permits granted to the company and island owner are liable to be interfered with?

90. The permit in favour of the company has been challenged specifically in W.P. (C). No. 12965/12. The Writ Petition was filed on 04.6.2012. In W.P. (C). No. 19564/11 there is no challenge to the permit as such. In W.P. (C). No. 34799/11 which was filed on 16.12.2011, the permit as such issued to the company is challenged by way of an amendment permitted during the pendency of the Writ Petition. We have noticed the 1st prayer though where there is a challenge without producing the permit. According to the company and the panchayat, the permit cannot be challenged and there is a provision for appeal to the tribunal under the Act. Learned counsel for the panchayat drew our attention to the unreported Judgment of this Court in W.P. (C). No. 24020/09 & connected cases. In the said Judgment, no doubt, the Division Bench of this Court has, inter alia, held as follows:

> "Apparently such challenges could not have been taken up before this court in the ordinary course since any person aggrieved by an order passed by the local authority is to pursue his grievance before the Tribunal for Local Self Government Institutions. Similarly any person aggrieved by the licence granted by the Department of Telecommunications is to pursue the matter before the TDSAT. If there is any other issue, the same is to be sorted out before the civil court." As observed by the Court, ordinarily as there is a remedy open by way of a statutory appeal, direct approach to the Writ Court challenging the permit may not be permissible. It is one thing to say that the Court will not entertain a writ petition challenging the permit without exhausting the alternate remedy, as a matter of wise policy imposing self-restraint and bearing in mind that writ jurisdiction is discretionary in nature. But, it is another thing to say that the Court does not have jurisdiction in no circumstances to entertain such writ petition.

91. The next question is whether the challenge being made after a long time is to be entertained. The Building Permit is issued in the year 2007 to the company. Writ Petition is filed challenging the permit in the years 2011 and 2012. No doubt, according to the petitioner in W.P. (C). No. 12965/12, though the permit was obtained in 2007, construction was not being done.

92. The common complaint, no doubt, is that the permit was granted virtually at an incredible speed. The permit dated 10.10.2007 is stated to be on the basis of application which is also dated 10.10.2007. It is a non-family residential permit. The construction of standard villas, delux villas, two bed room villas, resident villas, A spa and house block in all measuring a large extent of 13211.22 sq. metres is permitted. According to the panchayat, it is to be noted, Ext.R2(a) purports to be a letter from Ratna Easwaran who is the second petitioner in W.P. (C). No. 4808/12 and who is stated to be one of the Directors and share holder of the company. Going by Ext.R2(a) dated 03.8.1995 produced by the panchayat in its Counter Affidavit in W.P. (C). No. 4808/12, Ratna Easwaran stated that she would like to set up a resort in certain survey numbers mentioned, which is owned by her and jointly with one Babu George. The resort was to consist of fiftytwo pool villas with reception and restaurant, health club and conference hall buildings. There is reference to the resort if implemented, helping to increase the revenue of the panchayat and generating employment potential. Ext.R2(b) purports to be the plan.

93. The permit is pointed out to be illegal and there is no prior site inspection as held necessary by this Court. Shri. T. M. Mohamed Youseff, learned senior counsel appearing in W.P. (C). No. 34799/11 would also point out that actually the company has not obtained a development permit as mandated in the Building Rules. It is pointed out that clearly development work was done and it is patently illegal without a development permit. According to the company, development permit as such is not

necessary. Rule 12 of the Kerala Municipality Building Rules, 1999 which was made applicable to panchayats in Kerala from 06.6.2007, inter alia, reads as follows:

> "12. Grounds on which approval of site or permission to construct or reconstruct building may be rejected.- The grounds on which approval of site for construction or reconstruction of a building or permission to construct or reconstruct a building shall be refused are the following:—
>
> (i) that the work or use of the site for the work or any particulars comprised in the site plan, ground plan, elevations, sections or specifications would contravene provisions of any law or order, rule, declaration or bye law made under such law."

Under Rule 12(1) of the Municipal Building Rules which we have just extracted, permit cannot be granted if it would result in violation of any law or order, rule, declaration or byelaw made under such law. Interestingly, the word "Notification" is not mentioned. No doubt, the word "law" would in the general sense, take in a statutory Notification, as the Notification is subordinate legislation. In Rule 26(4) of the Kerala Panchayat Building Rules 201, it is provided as follows:

> "26. General requirements regarding plot.-
>
> (4) Any land development or redevelopment of land or construction in any area notified by Government of India as Coastal Regulation Zone under the Environment (Protection) Act, 1986 (29 of 1986) and Rules made thereunder shall be subject to the restrictions that may be imposed by Government of India contained in the said notification as amended from time to time."

In the Kerala Municipality Building Rules, 1999 which was made applicable to the Panchayats on 06.6.2007, Rule 23(4) is an identical provision.

94. As far as the challenge to the No Objection Certificate and the Permit issued to the company are concerned, we may notice the following facts:

The No Objection is dated 02.8.1996 and the permit is issued in the year 2007. The earliest of the Writ Petitions in which there is a challenge is in the year 2011. We may also notice that in *Assistant Commissioner of Central Excise* v. *Krishna Poduval* (2005 (4) KLT 947) a Bench of this Court took the view that once the period of limitation has run out and there is no power with the appellate authority to condone the delay in filing the appeal, the discretionary remedy under Article 226 cannot be invoked. We further notice that in *Tiyarcee Tiles* v. *Addl. Sales Tax Officer* (2006 (3) KLT SN.87 Case No. 123) the Division Bench held that the assessment orders are amenable for statutory appeal and if the original petition is entertained after years, it will result in circumventing the statutory provisions regarding limitation. There is also the Judgment of this Court in *District Executive Officer* v. *Abel* (2006 (2) KLT 758). Therein, the Court took the view that where the party was not vigilant and had failed to avail of the statutory remedy, he is not justified in invoking the extraordinary jurisdiction of the Court under Article 226 of the Constitution of India. That was a case under the Motor Transport Workers' Welfare Fund Act, 1985 wherein the Court took the view that there was no power with the Government to condone the delay in filing an appeal beyond sixty days from the date of receipt of the order under Section 8 sub-section (5) of the aforesaid Act. No doubt, the petitioners may have a case that they were not aware of the permit. But, at the same time, to permit them to challenge the No Objection Certificate and permit may not be appropriate, no doubt, particularly, in view of the view we are taking as to the effect of the Notification.

95. As far as the permit issued in favour of the island owners is concerned, the permit is issued in the year 2012. There is a pending Writ Petition (W.P. (C). No. 8299/12). The permit was challenged by way of an amendment. The permit is issued on 30.4.2012. According to the petitioner in W.P. (C). No. 8299/12, the petitioner came to know when a Counter Affidavit producing the permit was filed. No doubt, there was already a prayer in the Writ Petition (prayer No. 1) under which Reports

were to be called, enabling them to make any such construction in Vembanad Lake and to declare any such construction as illegal and liable to be demolished. As noticed, we note that the permit was specifically challenged in 2013. We may notice that the permit is apparently issued on the basis that the area is covered by CRZ III under which, even according to the authority, part of the island falls in CRZ III of 2011 Notification. We do not intend to pronounce on the legality of the permit as such, particularly in the view we are taking of the effect of the Coastal Regulation Notifications.

96. We cannot but note, however, that as far as the permit to the company is concerned, there can be no doubt that it betrays clear non-application of mind and exposes palpable ignorance of the mandatory provisions of the Notification. The third condition is that the construction should be in compliance with the Notification (obviously referring to the 1991 Notification). The last condition is to the effect that the proposed construction must be upto or beyond the existing buildings, otherwise CRZ will be applicable. Taking the last condition first, it is palpable that the condition is absolutely untenable. Under the 1991 Notification, it is in regard to CRZ-II areas that the Notification permits buildings on the landward side of the existing road or on the landward side of existing authorised structures. Admittedly, the island is part of the Panavally Grama Panchayat. Therefore, the island cannot fall as an area within municipal limits or any other legally designated urban areas. If CRZ-I is not applicable, then it will only be CRZ-III which should be applicable. At any rate, there is no question of countenancing construction of buildings by providing that the construction should not be beyond the existing building.

97. Coming next to the condition that the construction should be compliant with the Notification, we are at a loss to understand how, even in a case where if the land in question fell in CRZ-III, a permit could be issued permitting construction within "20 to 60" metres as admitted even by the company and provide that the construction should be in accordance with the Notification. When construction of the buildings as sought for was patently impermissible, we cannot escape the feeling that the panchayat is paying lip service to the mandate of the Notification while countenancing a flagrant breach of its terms.

98. However, we would rather rest our decision without pronouncing on the validity of the permits as such. We have found that the Notification is applicable to the island, the island falls in CRZ-I and construction is impermissible. By merely getting a permit under the Building Rules, it cannot be in the region of any doubt that the company cannot arrogate to itself, the right to flout the terms of the Notification. We have already noticed Rule 23(4) of the Kerala Municipality Building Rules, 1999 and Rule 26 (4) of the Kerala Panchayat Building Rules, 2011. In this case, we may also note that there is no permission sought from the authority. It is apposite to note that paragraph 3(v) clearly mandates that for investment of Rs. 5 crores and above, permission must be obtained from the Ministry of Environment and Forest. In this case, the investment of the company is far above Rs. 5 crores. In respect of investments below Rs. 5 crores, for activities which are not prohibited, permission must be obtained from the concerned authority in the State. The company has not made any such attempt at getting permission. That apart, this is a case where, even if permission had been applied for, the terms of the Notification would stand in the way of any such permission being granted in so far as the island is treated as falling in CRZ-I. Construction of buildings as has been done by the company was absolutely impermissible. The fact that in a situation where the construction activity was permissible under the Notification and if the company had obtained permit from the local body, would have made its activities legal, cannot avail the company for the reason that under the terms of the Notification, such permit obtained from the panchayat will be of little avail to it in the light of the nature of the restrictions

brought about by the Regulations in respect of CRZ-I in which zone the island falls. According to the panchayat, no doubt, the conditions have been imposed also as recommended by the Assistant Engineer who is alleged to have even visited the island. Whatever that be, as observed by us, in the light of the view we have taken, namely that the 1991 Notification applies to the island, it is squarely covered by the same being included in CRZ-I and the constructions were begun even during the currency of the 1991 Notification. The conclusion is inescapable that it is in the teeth of the prohibition contained in the 1991 Notification and, therefore, it is palpably illegal.

Effect of the No Objection Certificate:

99. According to the company, the company has obtained a No Objection Certificate from the panchayat in 1996 (granted on 02.8.1996). According to the Panchayat, the No Objection was given in favour of the second petitioner in W.P. (C). No. 4808/12 Mrs. Retna Easwaran and Mr. Babu George vide Ext.R2(a) for the construction in certain survey numbers. It is stated that the plan was sanctioned vide Ext.R2(b). What is stated in the No Objection Certificate is that the panchayat has no objection in constructing new buildings in the survey numbers owned by the two persons, since the Kerala Building Municipal Regulation Act (must be the Building Rules) have not been enforced in the panchayat area. It is stated by the panchayat also that it is seen that the No Objection Certificate was transferred along with the land to the company on 20.3.2007. It is to be noted that there is actually no provision as such under which a No Objection Certificate is to be issued. Apparently, the Municipal Building Rules had not been made applicable to the panchayats (they were made applicable for the first time from 06.6.2007). Thus, when the No Objection Certificate was issued, the Building Rules were inapplicable. There were no Rules made by the government under the Kerala Panchayat Raj Act either. Thus, apparently in the absence of the Rules, the panchayat was not giving any permit for construction as such. Even if there was no No Objection Certificate issued and the construction was made, unless there was a transgression of the provision in the Act, there could not be any obstacle in the numbering of the building. Thus, the No Objection Certificate cannot be treated as a permit as such. It only signifies the lack of any objection by the panchayat to the construction. We are not able also to appreciate the basis for contending that the said No Objection was transferred to the company as such. In such circumstances, even if construction is started on the basis of the same, it is clear that the person who does any activity violating the Notification (which is subordinate legislation) he cannot defend his actions with reference to the so-called No Objection Certificate. Nor can such construction be the basis of legalizing construction contravening the Notification of 1991, by contending that it was done under the No Objection given before the Plan of 1995 being notified. It is noteworthy that the Notification itself was in force even in 1991. The mere fact that the approval of the Central Government came after the No Objection can in no way legitimize the construction. The No Objection Certificate is dated 02.8.1996. The Notification came into force on 19.2.1991. The plan was prepared in the year 1995. The approval came, going by Ext.P6 in W.P. (C). No. 4808/12, on 27.9.1996. It is also to be noted that Paragraph 3(3)(iii) of the Coastal Regulation Zone Notification, 1991 reads as follows:

> "3. Regulation of Permissible Activities:
>
> All other activities, except those prohibited in para 2 above, will be regulated as under:
>
> (3)(iii) : In the interim period till the Coastal Zone Management Plans mentioned in para 3(3)(i) above are prepared and approved, all developments and activities within the CRZ shall not violate the provisions of this Notification. State Governments and Union Territory Administrations shall ensure adherence

to these regulations and violations, if any, shall be subject to the provisions of the Environment (Protection) Act, 1986." Even though it could be said that the plan showing the islands as "F.P." was approved only on 27.9.1996, it is inconceivable that after 27.9.1996 when the islands were shown as marked with "F.P." and it fell under CRZ-I that the No Objection Certificate can still, in any way, assist the company to violate the terms of the said Notification.

Effect of the 2011 Notification:

100. There are differences between the 1991 Notification and the 2011 Notification. We have already referred to the manner in which the Coastal Regulation Zone itself is defined in the 2011 Notification. That apart, in the 1991 Notification, areas close to breeding and spawning of fish and other marine life, is included in CRZ-I. Marine parks are included both in the 1991 Notification and 2011 Notification under CRZ-I. In the 2011 Notification, areas close to breeding and spawning of fish and other marine life, is conspicuous by their absence. Therefore, it is our understanding that areas close to breeding and spawning of fish and other marine life, does not fall within CRZ-I after 06.01.2011. But then, what is the effect of the provision in the Notification by which it is provided that the plan prepared under the 1991 Notification will continue to hold the field for a period of 24 months. Admittedly, no new plan has been made under the 2011 Notification as such. In the plan prepared under the 1991 Notification, as we have understood, areas close to breeding and spawning of fish and other marine life have been marked with the word "FP". Till 06.01.2011, any activity which was undertaken in regard to these areas, the islands in question which are admittedly marked with the words "FP" would fall foul of the terms of the Notification. But then, what is the effect of the non-inclusion of the words "areas close to breeding and spawning of fish and other marine life" in the categories under CRZ-I in the 2011 Notification. Can it be argued that it would still fall under CRZ-I for the reason that it is ecologically sensitive as provided in the main heading of the CRZ-I in the 2011 Notification. Does the 2011 Notification in regard to CRZ-I contemplate areas which are ecologically sensitive being comprehended under CRZ-I even though such areas are not specifically enumerated thereunder. Is it the requirement of the 2011 Notification that areas must not only be ecologically sensitive, but is there a further requirement in terms of the geomorphological features which play a role in maintaining the integrity of the coasts. This is for the reason that under CRZ-I, what is provided is that the areas that are ecologically sensitive and geomorphological features which play a role in maintaining the integrity of the coasts. Still further, we notice that unlike the CRZ-I category in the 1991 Notification, there is no provision providing for power with the Central Government or the concerned authorities in the State or Union Territory level to declare further areas from time to time. The words "such as" are used in the 1991 Notification. The Apex Court in the decision rendered, no doubt under the Andhra Pradesh General Sales Tax Act, 1957, held, inter alia, as follows:

> "So far as the words "such as" is concerned, there is no dispute that they are meant to be illustrative and not exhaustive." (See *Royal Hatcheries Pvt. Ltd.* v. *State of A.P.* - 1994 Supp (1) SCC 429).

101. We are of the view that in view of the absence of the words "areas close to breeding and spawning of fish and other marine life" in the category of CRZ-I in the 2011 Notification, merely because the plan prepared under the 1991 Notification was to hold good for a period of 24 months from 06/01/2011, such areas would not fall under the 2011 Notification. We cannot overlook the fact that by the 2011 Notification, the terms of the 1991 Notification was superseded. The effect of the supersession of the 1991 Notification is that we must ignore the 1991 Notification and instead we must give effect to the 2011 Notification from 06.01.2011. Even while it is true that the 2011 Notification mandates that the plan prepared under the 1991 Notification must hold good for a period of two years, in so far as CRZI is worded differently in the

2011 Notification in contrast to the words used in the 1991 Notification, unless an area falls under CRZ in the 2011 Notification, by a mere reference to the plan prepared giving effect to the terms of the 1991 Notification which, no doubt, is to hold good for two years from 06.01.2011, it can be understood as only meaning that the plan will hold good to the extent that it is in conformity with the mandate of the 2011 Notification.

102. However, we should hasten to notice that as far as the company is concerned, its case is undoubtedly that it commenced construction pursuant to the No Objection given in 1996 and continued the construction under the permit issued in 2007, both being points of time when the 1991 Notification was in force. Therefore, the construction was at least partly effected or rather it was begun when the 1991 Notification was very much in force.

Therefore, such constructions are patently illegal.

The issue of laches:

103. The first Writ Petition to be filed in relation to the company is W.P. (C). No. 19564/11 which was filed on 18.7.2011. The second Writ Petition is the Writ Petition filed by the company seeking police protection (W.P. (C). No. 28485/11) which was filed on 25.10.2011. It was thereafter that W.P. (C). No. 34799/11 (public interest litigation) was filed on 16.12.2011. The next Writ Petition in relation to the company is filed by the company as W.P. (C). No. 4808/12 which was filed on 24.02.2012. Finally, W.P. (C). No. 12965/12 was filed on 04.6.2012. According to the company, the company commenced construction on the strength of the No Objection Certificate dated 02.8.1996 issued by the panchayat. It was also their case that substantial progress was made in finishing the foundation work for construction of the resort. It is their further case that further construction could not be completed. The Building Rules were made applicable from 06.6.2007. Thereafter, they applied for permit which was granted in 2007 and on the strength of the same, they made further construction. The company filed W.P. (C). No. 28485/11 seeking police protection and it obtained an order of police protection at the admission stage itself and thereafter this Court passed an order dated 21.8.2012 in W.P. (C). No. 34799/11 which reads as follows:

> "This is an application for a direction to respondents 1 to 6 to take action to immediately stop any further construction of buildings or structures, pavements, boundary walls or fences for Kapico Resorts and the use of any buildings/structure constructed in full or part or any portion thereof for any business, recreation or any other purpose, by the 7th respondent on the banks of Vembanad Kayal which comes under CRZ and under area of Critical Vulnerable Area (ACVA) within the limits of the first respondent Panchayath and to direct the 7th respondent to stop any further construction therein or use of the premises for any business, recreation or any other purpose.

2. We heard the learned senior counsel for the petitioner and learned counsel for the parties appearing in this I.A. We had by our order dated 17.08.2012 called for certain details. A memo has been filed by the State Attorney. Therein, it is inter alia stated as follows:

> "Out of the total 65 numbers of permanent structures, Panchayat has issued building numbers for 54 numbers. For one structure for which building permit has been given and number has to be issued by the Panchayat on completion. Ten numbers of structures including water treatment plant, sewage treatment plant, bridge, maid sheds (two number), building for Yoga, piling work for a structure, reportedly viewing gallery, and other two building under construction at southern corner and a building between villas 279/A12 and 279/A13 are not numbered by the Panchayat. Balance 7 numbers are temporary sheds including old damaged urinal shed at southern end. Whether sanction is obtained from the authorities for

the construction of these structures or the construction is as per approval is not verified as sanctioned plan is not available. Outer bund road is seen constructed and the resort owners clarified that it will be demolished and will be submerged into the lake when construction is over. The legality of the constructions and the question of encroachment of lake is not looked into."

54. items of buildings have been brought under the category of structures as on 19.08.2012 for which building numbers were issued by the Panchayath. 12 numbers of structures have been shown separately under the caption stage of structures as on 19.07.2012 for which building numbers have not issued by the Panchayat.

3. We are only considering the question of interim relief. On the one hand, it is the case of the senior counsel for the petitioner that this is a case where in gross violation of the law relating to coastal regulation, the 7th respondent company has proceeded to put up various structures. Accordingly, it is that the application is filed and pressed before us. Per contra, the learned counsel appearing on behalf of the 7th respondent would submit that the petitioners are guilty of laches. According to him, huge investment has been made. A writ petition is filed by the 7th respondent questioning the legality of imposing the notification itself on it. In such circumstances, he would submit that the court may not grant any order stopping the constructions.

4. We have already heard the learned counsel for the Panchayath, the learned counsel for the Coastal Zone Management Authority, and Sri. Ibrahim, the learned counsel for the 9th respondent in W.P. (C). No. 19564 of 2011 and Shri. Bechu Kurian Thomas. We have also heard Shri. Raman Kartha, the learned counsel for the petitioner in W.P. (C). No. 12965/2012. We heard the learned Government Pleader also.

5. We bear in mind the fact that originally there was a notification issued in 1991. Subsequently, with effect from January 2011, it stands superseded by another notification under which, even according to the 7th respondent, Islands in back waters of the State of Kerala are explicitly covered in the manner provided therein, no doubt. We are of the view that interests of justice would be satisfied if we categorised the construction into two as broadly done by the District Collector, namely the structures for which building numbers were issued by the Panchayath and the structures for which building numbers have not been issued. As far as the structures for which building numbers have been issued, it would appear that the structures have been completed and what remains to be done is flooring, painting, sealing, finishing works, electrical and sanitary fittings etc. As far as structures 1 to 54 forming part of building structures for which building numbers have been issued, we are not inclined to pass an order stopping the further activities as such, which are remaining to be done going by the report of the District Collector. But, necessarily we add the rider that any work which they undertake of the nature which is indicated in the report given by the Collector will be entirely at their risk and that they will not be permitted to raise any equity, if it is later found that the activity is illegal and it will be subject to the result of the writ petition and further orders to be passed by this court.

6. As far as item Nos. 1 to 9 of the structures for which building numbers have not been issued by the Panchayath, we are of the view that further construction must be stopped. Accordingly, we direct that the 7th respondent shall not carry on any further construction in respect of item Nos. 1 to 9 are concerned. We further direct that respondents 4 and 5 will enforce our direction that there will be no construction by the 7th respondent in so far as item Nos. 1 to 9. We further record the undertaking given by the learned counsel for the 7th respondent that

construction of no new structures shall be commenced till the disposal of the writ petition."

It is undoubtedly true that considerable construction work was done by the company. No doubt, according to the petitioner in W.P. (C). No. 12965/12, no permit was obtained and no construction work was being done on account of objection. It must be true that there was objection as it is evident that the company itself had filed Writ Petition against obstruction in the construction work. Learned counsel for the company would, no doubt, point out that going by the CD relied on by the petitioner in W.P. (C). No. 19564/11 which was filmed in the year 2009, the petitioner must be attributed with the knowledge of activities being carried out by the company since earlier.

104. The other aspect of the matter is that this is a case where, in our view, the company has clearly brazenly violated the law of the land as contained in the Notification issued in the year 1991. It has chosen to make a huge investment as it claims without even caring to ascertain what is the purport of the Notification. Even in the permit issued in the year 2007, there is reference to the fact that the Notification applies. It does not have a case that it has made any further enquiries. No doubt, the conditions in the building permit are most mischievous and perhaps even misleading. As already noticed by us, it has not even cared to apply for permission from the Ministry of Environment and Forest, at least for the reason that the investment being made is more than Rs. 5 crores as contemplated in paragraph 3(v) of the Notification. Construction of hotels and beach resorts are permissible on prior permission from the Ministry of Environment and Forest (MoEF) under the 1991 Notification only in vacant plots between 200 metres and 500 metres of High Tide Line and that in designated areas falling in CRZ-III. No new construction is permissible of the type involved in CRZ-I. In short, this appears to us to be the case where the company has chosen to flout the law with impunity. We cannot overlook the fact that this is a case where the company has proceeded to put up large number of structures in disregard with the Notification. As already noticed, the island is classified as falling under CRZ-I. We cannot overlook the fact that as early as in 1996, by its Judgment in *Indian Council for Enviro-Legal Action* v. *Union of India* ((1996) 5 SCC 281) (supra), the Apex Court had specifically directed that petitions complaining of violation of the Coastal Regulation Zones be filed in the High Court concerned. We may notice that the Apex Court has expressed its disquiet at the attitude of the authorities in matters relating to violations of environmental law.

105. We may in this regard notice that the stand of the Central Government and the Authority is that the actions of the company cannot be supported. In such circumstances, in as much as we have already rejected the company's Writ Petition seeking to wriggle out of the 1991 Notification and the Plan prepared thereunder, necessarily action is bound to be taken. In this regard, we may notice Section 5 of the Environment (Protection) Act, 1986 under which the Notifications have been issued. It reads as follows:

"5. Power to give directions.- Notwithstanding anything contained in any other law but subject to the provisions of this Act, the Central Government may, in the exercise of its powers and performance of its functions under this Act, issue directions in writing to any person, officer or any authority and such person, officer or authority shall be bound to comply with such directions.

Explanation.- For the avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct—

(a) the closure, prohibition or regulation of any industry, operation or process; or

(b) stoppage or regulation of the supply of electricity or water or any other service."

Besides, there are Sections relating to penal provisions. Thus, there is power with the authority to take action to ensure that the action of the company in violation of the law is set at naught.

106. In W.P. (C). No. 28485/11 filed by the company, it is true that the company obtained an interim order directing police protection be given. It was apparently on the strength of the same that overlooking the objections, the construction was proceeded with. Since there was objection being raised, the company obtained interim order. When a party obtains an interim order and finally it is found that the company did not have a case in law for getting the interim order, it is settled law that the interim orders will not stand in the way of the Court reversing the injustice brought about by the interim order being acted upon (See in this regard *Amarjeet Singh* v. *Devi Ratan* ((2010) 1 SCC 417 and *Indian Council For Enviro-Legal Action* v. *Union of India* ((2011) 8 SCC 161). Clearly, the police protection writ petition is liable to be dismissed. In such circumstances of this case, we are of the view that the constructions being in the teeth of the Coastal Regulation Zone cannot be allowed to stand as such.

107. At this stage, we must deal with the argument raised before us by the company. It is submitted that a world class resort has been put up which will promote tourism in a State like Kerala which does not have any industries as such and where tourism has immense potential and jobs will be created. It is submitted that the Court may bear in mind that the company is eco-friendly and if at all the Court is inclined to find against the company, the Court may, in the facts of this case, give direction to the company and the company will strictly abide by any safe-guards essential for the preservation of environment.

108. We do not think that this Court should be detained by such an argument. The Notification issued under the Environment (Protection) Act is meant to protect the environment and bring about sustainable development. It is the law of the land. It is meant to be obeyed and enforced. As held by the Apex Court, construction in violation of the Coastal Regulation Zone Regulations are not to be viewed lightly and he who breaches its terms does so at his own peril. The fait accompli of constructions being made which are in the teeth of the Notification cannot present, but a highly vulnerable argument.

The Specific Issues Relating to Vettilathuruthu Island:

109. We have already repelled the contention of the island owner that back water islands of the State of Kerala are not covered by the 1991 Notification as also other common arguments. Admittedly, Vettilathuruthu island is located in Vembanad lake. Vembanad lake is admittedly a backwater in the State of Kerala. In the plan prepared by the authority, Vettilathuruthu island is marked with the words "FP" indicating filtration ponds over it. It is part of the Panavally Grama Panchayat. In regard to Vettilathuruthu also, there were satellite imageries and aerial photographs which formed the basis for the conclusion that the area is filtration pond. It is accordingly classified as filtration pond, indicating the island to be an area close to breeding and spawning of fish and other marine life. We have already dealt with the argument that there are no reliable material and we have rejected the same. Therefore, we proceed on the basis that even in regard to the Vettilathuruthu island, it will fall under CRZ-I under the 1991 Notification. Constructions are shown to be in progress, going by the google image taken in 2006. Quite clearly, such construction would be in the teeth of the terms of the 1991 Notification. As far as the 2011 CRZ Notification is concerned, according to the Expert and the report, the entire island is either CRZ-I, III or IV, that is to say, the case of the expert would appear to be as follows:

Part of the island would have to be classified under CRZ-I on account of the presence of mangroves. Another part would come under CRZ-III for the reason that it

is part of a panchayat area and which is not developed. The reason why another portion would come under CRZ-IV is as follows:

CRZ-IV(B) takes in water area of the tidal influenced water body from the mouth of the water body at the sea upto the influence of tide which is measured as five parts per thousand during the driest season of the year. The following are the Norms for regulation in CRZ-IV:

"(IV) In CRZ-IV areas,-

The activities impugning on the sea and tidal influenced water bodies will be regulated except for traditional fishing and related activities undertaken by local communities as follows:—

(a) No untreated sewage, effluents, ballast water, ship washes, fly ash or solid waste from all activities including from aquaculture operations shall be let off or dumped. A comprehensive plan for treatment of sewage generating from the coastal towns and cities shall be formulated within a period of one year in consultation with stakeholders including traditional coastal communities, traditional fisherfolk and implemented;

(b) Pollution from oil and gas exploration and drilling, mining, boat house and shipping;

(c) There shall be no restriction on the traditional fishing and allied activities undertaken by local communities."

According to the island owners, they have only carried out the repairs and re-construction pursuant to Ext.P1 in their Writ Petition. Ext.P1 permit issued by the Panchayat is dated 30.4.2012. It is granted for three years, that is till 29.4.2015. It is granted for repairing or reconstruction works of existing buildings. It is to be done in accordance with the approved plan and various provisions of the Kerala Panchayat Building Rules, 2011. It is categorically provided in Ext.P1 that the conditions of CRZ should be strictly adhered to. The existing plinth area which is shown as 999.23 sq. metres is not to be enhanced in any circumstances. The existing building Numbers are shown as 1/93, 94, 95, 93A, 93B and 93C. The survey numbers are also given. The proposed construction is shown as 869.20 sq. metres. According to the Statement of the Government, there are 13 number of buildings existing belonging to the island owner. The stand of the authority is that the authority has initiated enquiry, CESS has been directed to enquire and report and that it will be placed for necessary action. There is a report prepared and submitted by CESS and it is in the said report that it is, inter alia, found that the entire Vettilathuruthu is shown as filtration pond in the 1995 plan, the island is on the Vembanad backwater which is a lake influenced by the tidal action as defined in the Notification and the entire island falls under CRZ-I, III and IV of the 2011 Notification. The conclusions in the report are as follows:

"4. Conclusions:

The part of Vembanad backwater adjoining Vettila thuruthu and the connected water bodies such as lagoons and filtration ponds are influenced by tidal action as defined in CRZ notification 1991 and 2011. The salinity is > 5ppt during the driest month in an year.

The referred site (Vettila thuruth) where constructions are in progress lies in CRZ as per the approved CZMP (1995) of the State (Map no. 32A of the CZMP).

The entire Vettila thuruth is in CRZ as per the provisions of CRZ (2011) also.

All the constructions already carried out and the ongoing landscape modifications and new constructions by M/s. Vaamika Resorts in Vettila thuruth island are in violation of the provisions of CRZ Notifications 1991 and 2011.

The local body and the project proponents violated the directions of the Hon. Courts and the concerned departments in implementing the provisions of CRZ notification."

110. As regards the buildings for which Ext.P1 permit has been granted is concerned, the following details are forthcoming in the Additional Counter Affidavit of the panchayat in W.P. (C). No. 8299/12:

As on the date of the issue of reconstruction permits, there were thirteen buildings and eight were already having building numbers. As far as building No. 1/93 is concerned, the original owner is shown as one Ayyani Kochilan. The original number is shown as existing from 1973 onwards. 1/94 is also existing from 1973 onwards and the original owner is shown as Kochupilly Sankaran. As far as 1/95 is concerned. It is shown as existing from 1993 onwards and the original owner is Kochilan. In regard to 1/93A and 1/93B (year 2002), the original owner is shown as M/s. Muddy Waters (the name of the island owner with which it was initially incorporated). As far as 1/93C is concerned, the original number is shown as 2003 onwards and the original owner is shown as M/s. Muddy Waters. There are two other building numbers were given, 1/93D and 1/93E. Both have been shown as numbered in the name of M/s. Muddy Waters and the original Number is from 2011 onwards. It is stated that the first six mentioned were given reconstruction permits in 2012. The island owners have filed a Counter Affidavit in regard to the Additional Counter Affidavit of the panchayat. Therein, it is, inter alia, stated as follows:

The structures in the property which were in existence in 1991 also, the predecessors in interest of the island owners and their family members who were residing in the property had constructed several structures and had been using the same. There are twelve buildings in the property of which eight have been numbered by the panchayat. All the buildings have been in existence even in 1991, ie. even prior to the purchase of the property by the petitioner. The unnumbered buildings are presently used for storing of materials and for the staying of labourers who are residing in the property in connection with renovation works, etc. It is further stated as follows:

> "4. It is respectfully submitted that the 7th and 8th respondents were running a hotel in their property from the year 2006-2007 onwards in the authorized structures existing in the said property. Subsequently, as is the general practice in the hospitality industry, some of the authorized structures needed to be renovated ion order provide comfortable stay for the guests. In such circumstances, it was decided to reconstruct six of the authorized structures within the limitations of existing floor space index and less than the existing plinth area and for this purpose permit had been applied for and granted. Along with the same, interiors are also being renovated in terms of electrical and lighting fightings, beddings, bathrooms etc."

In regard to the new building seen referred to in the Additional Counter Affidavit of the panchayat for which no permission was obtained, what is stated is that in view of Rule 10 of the Rules, for buildings upto 150 sq. metres, building permit is not required, and that it is on the said understanding of the provision that a separate building permit was not applied for. The said structure is having a plinth area of less than 150 sq. metres and is constructed beyond the 50 metre CRZ limit.

111. We can conclude that building Nos. 1/93A to 1/93C have been put up by the island owner during the time when the 1991 Notification was in force and at the time when the island was falling in the CRZ-I Zone. It is to be noted that it is in respect of the said three buildings also that the island owner has been given permit by the panchayat purporting to be for reconstruction.

In other words, as far these three buildings are concerned, they have been put up violating the 1991 Notification. The panchayat has proceeded to number the same. May be, at that time, the Municipal Building Rules were not applicable, as they were made applicable to the panchayat only on 06.6.2007. In 2011, again we notice, two

buildings are seen numbered, namely 193/D and 193/E. Besides these eight buildings, there are five buildings which are apparently not numbered. We cannot hold as to when the construction began and was completed. We notice that the building Nos. 193A to 193E, that is, all the five buildings in the name of the island owner were put up from 2000 to 2011. At any rate, even proceeding on the basis that they were existing buildings (six in numbers), they have been reconstructed pursuant to permit in 2012. We will deal with the effect of the reconstruction later on. A new building is also being constructed for which no permit is obtained. The panchayat has promised action.

112. In view of our finding, as far as buildings 4 to 6 are concerned, they have been put up during the operation of the 1991 Notification, when no construction was permissible in the CRZ-I area. The panchayat has proceeded to number the same. Admittedly, no permission was even sought from the authority. As far as building Nos. 193 and 194 are concerned, they are existing buildings. In regard to the same also, reconstruction has been carried out pursuant to permit issued in 2012 (30/04/2012). As on that date, the 1991 Notification had been superseded and the 2011 Notification was in force. Under the 2011 Notification areas close to breeding and spawning of fish and other marine life are not seen included in CRZ-I. In fact, CRZ-I is sought to be made applicable on the basis that it is an area where there are mangroves. Such a case is not specifically set up either in the Counter Affidavit and it is not adverted to in the report of the team which is alleged to have visited the island. It is true that photographs are produced showing the presence of mangroves. No doubt, going by the Judgment of this Court in *Ansari Komath* v. *State of Kerala* (2011 (1) KLT 1043) which we have referred to, even if mangroves are planted after the Notification, it would attract the Notification. A plea as such has not been taken also that there are mangroves. The plan under the 2011 Notification is to be prepared.

113. As far as activity in regard to the area falling in CRZ-III is concerned (we must notice that it is the case of the island owner that if the island falls in a Zone, it must fall in CRZ-III), the case of the island owner is that it is only doing repair and reconstruction which is permissible activity under the 2011 Notification.

114. We notice that the island owners have a definite case that the report of the committee is prepared without giving notice to the island owners. There is no case for the authority that notice was given. The report itself does not appear to indicate that notice was given. We may notice that the stand of the authority is that under the Notification, the entire island is covered under CRZ-III or IV of the 2011 Notification. The authority has decided to take action. We record the following findings:

> Admittedly, after 06.01.2011, the backwater islands are covered by the 2011 Notification. Vettilathuruthu island is a backwater island in the State of Kerala which is covered by the 1991 Notification. Going by the materials in the form of the plan of 1995 made under the 1991 Notification, the island fell under CRZ-I. If any construction was commenced or carried out during the currency of the 1991 Notification in the island, it would be clearly hit by the 1991 Notification. Photograph produced along with the report is produced to indicate that the constructions of buildings were underway in the year 2006. The island owners have a case that a hotel was begun in the year 2007. Apparently, the case sought to be projected is that a hotel was commenced in an existing building and there was no construction.

115. It is relevant to recall that under the 2011 Notification, under the caption "CRZ for Kerala", it is provided as follows:

> "2. CRZ for Kerala
>
> In view of the unique coastal systems of backwater and backwater islands along with space limitation present in the coastal stretches of the State of Kerala, the

following activities in CRZ shall be regulated as follows, namely:—

(i) all the islands in the backwaters of Kerala shall be covered under the CRZ notification;

(ii) the islands within the backwaters shall have 50 mts width from the High Tide Line on the landward wide as the CRZ area;

(iii) within 50 mts. from the HTL of these backwater islands existing dwelling units of local communities may be repaired or reconstructed however no new construction shall be permitted.

(iv) beyond 50 mts. from the HTL on the landward side of backwater islands, dwelling units of local communities may be constructed with the prior permission of the Grama Panchayath."

Thereafter, clause (v) provides for various foreshore facilities which may be taken up within 50 metres which are not relevant for our purpose. Thus, 50 metres from the High Tide Line on the landward side, is to be the CRZ area in regard to the backwater islands in Kerala. Under clause (iii) within 50 metres from the High Tide Line, existing dwelling units of local communities may be repaired or reconstructed. No new construction is to be permitted. Beyond 50 metres, dwelling units of local communities may be constructed with permission. It is clear that the island owner cannot claim the benefit of the aforesaid clause, aswhat is permitted is dwelling unit of local community. The island owner which is also a corporate body, cannot be treated as local community. But then, Shri. K. I. Mayankutty Mather would submit that under the 2011 Notification, what is provided as aforesaid, is a further relaxation and what is contemplated is to locate the island in the appropriate zone. Thus, if the island falls in CRZ-III, then the relevant clause therein would also apply. We deem it necessary to refer to Ground Nos. 44 and 47 in W.P. (C). No. 2947/13 filed by the island owners. They read as follows:

"44. It is further submitted that this respondent is entitled to re-construct authorized structures as the same is permitted under CRZ Notification, 2011. It is respectfully submitted that category V creates a separate category in respect of backwater islands. Within CRZ V, i.e. Within 50 metres from the High Tide Line, the categorization would have to be done on the basis of CRZ I, II and III. It is submitted that in respect of the petitioner's land being situated in the Panchayat area, the same would have to necessarily be classified as Category III. In respect 4 of CRZ III, although there is the concept of No-Development Zone, it is submitted that re-construction of existing authorized structure not exceeding the existing floor space index and existing plinth area is permitted, even within the No-Development Zone. In this view of the matter, it is respectfully submitted that the works carried on by this respondent in the matter of reconstruction of existing authorized structures pursuant to the valid building permit issued by the Panchayat is perfectly legal and valid.

47. It is further submitted that the restriction placed in CRZ V is that no new construction shall be permitted in the CRZ area of 50 metres from the High Tide Line. Reconstruction of existing authorized structures is permitted."

116. Let us consider the relevant provisions in CRZ-III. It, inter alia, reads as follows:

"III. CRZ-III,- A. Area upto 200 mts. from HTL on the landward side in case of seafront and 100 mts. along tidal influenced water bodies or width of the creek whichever is less is to be earmarked as "No Development Zone (NDZ)"-

(i) the NDZ shall not be applicable in such area falling within any notified port limits;

(ii) No construction shall be permitted within NDZ except for repairs or reconstruction of existing authorized structure not exceeding existing Floor

Space Index, existing plinth area and existing density and for permissible activities under the notification including facilities essential for activities; Construction/reconstruction of dwelling units of traditional coastal communities including fisherfolk may be permitted between 100 and 200 metres from the HTL along the seafront in accordance with a comprehensive plan prepared by the State Government or the Union territory in consultation with the traditional coastal communities including fisherfolk and incorporating the necessary disaster management provision, sanitation and recommended by the concerned State or the Union territory CZMA to NCZMA for approval by MoEF;

(iii) however, the following activities may be permitted in NDZ-

(a) agriculture, horticulture, gardens, pasture, parks, play field, and forestry;

(b) projects relating to Department of Atomic Energy;

(c) mining of rare minerals;

(d) salt manufacture from seawater;

(e) facilities for receipt and storage of petroleum products and liquefied natural gas as specified in Annexure-II;

(f) facilities for regasification of liquefied natural gas subject to conditions as mentioned in subparagraph (ii) of paragraph 3;

(g) facilities for generating power by non conventional energy sources;

(h) Foreshore facilities for desalination plants and associated facilities;

(i) weather radars;

(j) construction of dispensaries, schools, public rain shelter, community toilets, bridges, roads, provision of facilities for water supply, drainage, sewerage, crematoria, cemeteries and electric sub-station which are required for the local inhabitants may be permitted on a case to case basis by CZMA;

(k) construction of units or auxiliary thereto for domestic sewage, treatment and disposal with the prior approval of the concerned Pollution Control Board or Committee;

(l) facilities required for local fishing communities such as fish drying yards, auction halls, net mending yards, traditional boat building yards, ice plant, ice crushing units, fish curing facilities and the like;

(m) development of green field airport already permitted only at Navi Mumbai." Thereafter, under Clause B, area between 200 metres to 500 metres, it is stated that various activities which are mentioned in clauses (i) and (x) are permissible. of the same, we feel that clauses (i), (vii) and (ix) are relevant and they are extracted hereunder:

"B. Area between 200 mts. to 500 mts.-

The following activities shall be permissible in the above areas;

(i) development of vacant plot in designated areas for construction of hotels or beach resorts for tourists or visitors subject to the conditions as specified in the guidelines at Annexure-III;

(vii) construction or reconstruction of dwelling units so long it is within the ambit of traditional rights and customary uses such as existing fishing villages and goathans.

(ix) reconstruction or alteration of existing authorised building subject to sub-paragraph (vii),

(viii);"

Apparently, the island owners are claiming the benefit of clause A (ii) under CRZ-III. In regard to the same, we record the following reasoning and conclusions:

The No Development Zone under CRZ-III extends to 100 metres in respect of islands (there is no case that the width of the water body is less than 100 metres). What is permitted is the construction by way of repairs or reconstruction of existing authorised structure, not exceeding existing floor space index, existing plinth area and existing density. More important is the further requirement. The repair or reconstruction must be for permissible activities under the Notification including facilities essential for activities. It is apparently for running the resorts/hotel that the reconstruction work was done (In this connection we must notice that the permit granted by the panchayat states that it is for reconstruction). No doubt, in the provision relating to conditions, there is also reference to repair. Whatever that be, the question arises whether, is the running of a hotel or resort permissible activity under the Notification. Furthermore, the next question which would arise is whether, if it is permissible, permission was sought and obtained from the Authority empowered under the Notification.

117. We have already referred to the Norms for regulation of activities which are permitted in the No Development Zone. They include agriculture, horticulture, gardens, pasture, parks, play field, forestry, projects relating to Department of Atomic Energy, mining of rare minerals, salt manufacture from sea water, facilities for receipt and storage of petroleum products and liquefied natural gas, facilities for generating power by non conventional energy sources, construction of dispensaries, schools and other facilities, etc. Tourism related activities, namely running a hotel or resort are clearly not seen among the permitted activities in the No Development Zone. Thus, even if it is for reconstruction or repairs, it must be in respect of an existing authorised structure. Apart from requirements as to floor space index, plinth area and density, the reconstruction or repairs must be for carrying out permissible activities. It is only between 100 and 200 metres. Construction/reconstruction or repairs of dwelling units of traditional coastal communities including fisher folk is permitted along the sea front in accordance with the comprehensive plan prepared by the Government in consultation with the concerned community and incorporating the necessary disaster management provision, sanitation and recommended by the concerned State for approval by MoEF. Therefore, in this case, even though the panchayat granted building permit for reconstruction, under Rule 26(4) of the Kerala Panchayat Building Rules 2011, the reconstruction can only be in conformity with the terms of the Notification.

118. Under paragraph 4 of the 2011 Notification dealing with regulation of permissible activities in CRZ areas it is, inter alia, provided under clause (ii)(a) that those activities not enlisted in the EIA Notification 2006 require clearance from MoEF. The reconstruction/repair for running a resort which is essentially tourism activity does not appear to be covered by the EIA Notification 2006. The island owners do not even have a case that they have obtained any permission from the MoEF for the activity. In fact, if one goes by the permissible activities under CRZ-III which we have already referred to in the No Development Zone and in respect of which zone, in fact, the island owners lay their claim, as already noted by us, the reconstruction/repair is not for any permissible activity and the question of granting permission itself may not arise. Though it could be said that what is not prohibited under Paragraph (3) can be treated as permitted under the Notification, provided, no doubt, that it required water front and foreshore facilities, since what is permitted in the No Development Zone (1 to 200 metres) in CRZ-III is specifically provided for in CRZ-III and it does not include tourism projects, the construction (reconstruction) is insupportable. (Even bringing it under clause (ii)(a) of paragraph 3 as mentioned above, clearly the activities would require clearance from the Ministry of Environment and Forest (MoEF). Admittedly, no such permission is obtained. Therefore, we have no hesitation in taking the view that the activity of reconstruction which has been done, is patently illegal. In fact, we uphold the contention of the Authority in this regard that the activities of the

island owner which are tourism related, are impermissible in the No Development Zone.

119. We are not inclined to take a different view of the matter, even though it could be said that the No Development Zone as such is not marked in the plan prepared in the year 1995. Going by the case of the island owners in grounds Nos. 44 and 47, it is clear that the reconstruction was done within fifty metres of the High Tide Line. In the plan prepared in the year 1995, the entire island was treated as CRZ-I under the 1991 Notification. The new plan is not yet prepared. But, at the same time, if construction has been done in the No Development Zone of the CRZ-III area, as appears to be the case, then such reconstruction is insupportable and must be dealt with. We must further also notice that under the caption "CRZ for Kerala", the zone has been determined at 50 metres from the High Tide Line on the landward side. Beyond 50 metres from the HTL, all that is permitted under "CRZ for Kerala" is the putting up of dwelling units of local community with the prior permission of the Grama Panchayat. Thus, whichever way one looks at it, the construction or rather reconstruction work done by the island owners appears to us to be patently illegal, even though the plan as such is not yet prepared under the 2011 Notification. The island owners cannot claim protection from the wrath of the terms of the Notification which are clear. It becomes clear that even assuming that the six structures mentioned in the building permit issued to the island owner were existing in 1991, since they have been reconstructed as per the building permit issued on 30.4.2012, when the 2011 Notification was in force and in violation of the same, the said reconstructed buildings are clearly illegal. In fact, of the six buildings, we have already noted that building Nos. 193A, 193B and 193/C are seen numbered with the island owner as the original owner and they are seen numbered from 2002 and 2003 onwards. Even 1/95 is shown as numbered from 1993 onwards. The reconstruction activity, as already held by us, is seen to have been done by the island owners themselves in the No Development Zone and they cannot be allowed to stand. Equally, there cannot be any doubt that the new construction referred to by the panchayat itself and which is admitted by the island owner, is patently illegal. Even if the structure does not require a permit and even if it is beyond fifty metres, in so far as the Notification under CRZ-V, does not appear to permit the same, the said construction is illegal. The terms of the 2011 Notification are not challenged. Then there remains the question of building Nos. 193/D and 193/E. The island owner is shown as the original owner. It is stated by the panchayat that they are the owners from 2011 onwards. There is no denial of the said fact in the Counter Affidavit by the island owner. That is to say, there is no case that the island owner is not the original owner and that too from the year 2011 onwards. The 1991 Notification has been there from 19.02.1991. At least from 24.9.1994 under the 1991 Notification, new constructions were forbidden in the CRZ-I area. Proceeding on the basis of the CRZ 2011, and that it fell within CRZ-III, also constructions as done cannot be done within fifty metres from the High Tide Line. In fact, there is no case that the said buildings are mentioned in the sale deeds under which the island owners have acquired the property. In such circumstances, we would think that we can safely conclude that either they were constructed during the currency of the 1991 Notification or the construction was completed during the currency of the 2011 Notification by the island owner. If it was commenced and completed in 2011 also, it falls foul of the Notification of the year 2011. We would think that in regard to the said structures also, namely 193/D and 193/E, it can be concluded that they were put up by the island owners. 193/D is incidentally shown as four rooms having concrete flooring and it is from 2011 onwards, it is stated. As far as building No. 193/E is concerned it is shown to be from 2011 onwards with three rooms and cement flooring. As regards the unnumbered buildings - five in number, are concerned, according to the island owners, they have a case apparently that they are used for storing of

materials and for the staying of labourers who are residing in the property in connection with the renovation works, etc. They have a case that there are twelve buildings and that all the buildings have been in existence even in the year 1991. We cannot positively find as to when these buildings have been put up. The authority is to consider and take action with opportunity to the island owner in regard to the said unnumbered buildings. The exact width of the island is, no doubt, not before us. But, there is no case for the island owner that the island has a width of more than 200 metres.

120. The next area where we must consider the question is the effect of the reference to Vembanad Lake as falling in Critical Vulnerable Coastal Area (hereinafter referred to as CVCA). The CVCA is referred to under areas requiring special consideration for the purpose of protecting the critical coastal environment and difficulties faced by local bodies. They are referred to as the Sunderban regions of West Bengal and other ecologically sensitive areas identified as under the Environment (Protection) Act and managed with the involvement of the coastal communities including fisher folk. It is thereafter that it is provided that the entire Sunderban mangrove area and other ecologically important areas, such as, Vembanad in Kerala among other areas, shall be declared as CVCA through a process of consultation with the local fishermen and other communities inhabiting the area and depend on its resources for their livelihood with the objective of promoting conservation and sustainable use of coastal resources and habitats. It is also provided that the process of identifying planning, notifying and implementing the CVCA shall be detailed in the guideline which will be developed and notified by the Ministry of Environment and Forest in consultation with the stake holders, like the State Government, local communities and fisher fake and the like inhabiting the area. There is reference to integrated management plan being prepared taking into account various elements which are detailed. It is further provided that till such time as the plans are approved and notified, construction of dispensaries, school, public rain shelters, community toilets, bridges, roads, jettys, water supply shall be permitted on a case to case basis as required by the inhabitants. The stand of the authority is that Vembanad has been notified as CVCA. There are two ways of looking at the issue. Vembanad in Kerala is referred as an identified ecologically important area. The provisions contemplate declaring Vembanad as a CVCA. The authority would take the stand that it has so been declared. The provisions contemplate that the process of identifying, planning, notifying and implementing the CVCA will be detailed in the guideline. The guideline is to be developed and notified by the Ministry of Environment and Forest (MoEF). The guideline is to be made on the basis of consultation with various stake holders. We are not apprised of the guidelines. The actual process declaring the Vembanad as CVCA through the process of consultation with the local fisher and other communities who inhabit the area and depend on the resources for their livelihood, has not been done. But, we notice that till such time as the integrated management plan are approved and notified only certain facilities required for the traditional inhabitants are to be permitted on a case to case basis by the authority with due regard to the views of the coastal communities including the fisher folk.

121. In this regard, we may notice one feature. Vembanad in Kerala is referred to as the ecologically sensitive area. The process of declaring the same as CVCA on the basis of consultation is apparently an ongoing process. We may pose a question. The whole purport of the CVCA is that it is an ecologically sensitive area. As we understand, the whole idea behind the CVCA is that it becomes a ecologically sensitive area by reason of the fact that it requires special consideration for protecting its environment. The underlying crucial assumption is that there are local fisher and other communities inhabiting the area and depend on its resources for their livelihood. In the islands in question, as on the date of the 2011 Notification, could it be said that

there are local fisher or local communities as such, as the company and island owners have virtually own the substantial portion and the rest, appears to be puramboke. If that is so, could it be said that the islands also fall within the Vembanad of Kerala and, therefore, is a CVCA. The other way of looking at it is Vembanad is declared as ecologically sensitive. The Vembanad, a wet land system was included in the list of wet lands of international importance, as defined by the Ramsar Convention for the conservation and sustainable utilization of wet lands in 2002. When the whole of Vembanad lake is seen included as a Critical Vulnerable Coastal Area (no doubt to be declared through a process of consultation which is yet to take place), a view may have to be taken which serves the purpose of the area being treated as ecologically sensitive area and hence Critical Vulnerable Coastal Area. Apparently, the underlying concept and the focus is on the fisher folk. Any developmental activity on the islands may have an impact on the fishing activities and the rights of the fishermen operating in the area.

122. It may be noticed that in the 1991 Notification and the 2011 Notification, marine parks are specifically mentioned as falling under CRZ-I. In the CRZ-I under the 1991 Notification, apart from marine parks, there is reference to areas close to breeding and spawning of fish and other marine life. In the 2011 Notification, however, while retaining the marine parks, the words "areas close to breeding and spawning of fish and other marine life" are not present. Likewise, under the 1991 Notification, the areas likely to be inundated due to rise in sea level consequent upon global warming are shown under CRZ-I. This category is not seen included in CRZ-I in the 2011 Notification. Therefore, it is a conscious decision to exclude such areas from the ambit of CRZ-I. However, the words "breeding and spawning grounds of fish" are found used in connection with the words "ecologically sensitive areas" in Annexure III guidelines relating to development of beach resorts or hotels in designated areas of CRZ-III and CRZ-II.

123. As far as Vettilathuruthu Island is concerned, there are three ways to look at the issue. In so far as buildings which have been constructed by the island owner during the currency of the Notification issued in 1991 are concerned, they are clearly in the teeth of the 1991 Notification and action must necessarily be taken for removal of the same. Secondly, reconstruction work appears to have been done during the currency of the 2011 Notification. Two buildings (193/D and 193/E) were also constructed illegally. Also another new construction was admittedly underway. We have already recorded our findings. It appears to be clear to us that the so-called reconstruction work has been done contrary to the 2011 Notification which was in force and, therefore, the construction also attracts Rule 26(4) of the Kerala Panchayat Building Rules, 2011 and also there was no permission even sought or obtained from the Authority under the Notification and hence action must necessarily would have to be taken for the removal of the same also. If the constructions have been made in respect of the area falling in CRZ-IV of 2011 Notification, clearly that would be illegal. Here, we have no material to hold as to whether any construction has been made in CRZ-IV. It is to be noticed that CRZ-IV under the 2011 Notification, is the water area from the Low Tide Line to 12 nautical miles on the sea ward side and also the water area of the tidal influenced water body from the mouth of the water body at the sea upto the influence of the tide which is measured as 5 Parts Per Thousand during the driest season of the year. We will proceed on the basis that the construction is done in the CRZ-III area, but as found by us, it is illegal. The third aspect of the matter is that in so far as the islands fall in the Vembanad in Kerala, going by Clause 4(e) of Paragraph 8 of the 2011 Notification which we have adverted to, till such time as the integrated management plan are approved and notified, only certain constructions required by the traditional inhabitants are to be permitted which include Dispensary, Schools, Bridges, Roads and the like. If that is so, any construction which is not

covered by Clause 4(e) may be impermissible. In so far as the islands in question are concerned, they are clearly in the Vembanad. Therefore, they would be subject to the special provision relating to the Vembanad which permits construction of certain public utility buildings which we have already adverted to. Impliedly, any construction as such would appear to be tabooed. It is pertinent to note in this regard that the island owners have claimed that what they have done is only reconstruction works which are not constructions. The word "construction" is used as the opening words of Paragraph 8 would show as construction activities, inter alia. Thereafter, there is reference to the words "new construction" used in CRZ-I. Further, the words used are "no construction is to be permitted in the No Development Zone under CRZ-III except for repairs or re-construction". Under clause B(i) of CRZ-III it is stated "development of vacant plots in designated areas for construction of hotels or beach resorts". Since therein, the words used are "development of vacant plot", the construction intended obviously must be a new construction. The words "reconstruction or alteration of existing authorised building" are found in clause B(ix) under CRZ-III. Therefore, we notice that under the concept of "construction", various activities are specifically referred to as new construction, repairs, reconstruction and also alteration. If one goes by clause 4(b), all that is to be permitted are dispensary, schools, etc. Therefore, the activity of the island owner does not appear to fall within what is permitted. Therefore, it is clear that the structures put up by the island owner may not stand when placed side by side the terms of the Notification.

124. We do not deem it necessary to go into the question raised that the guidelines framed under the 1991 Notification permitting development of vacant plots for construction of hotels and beach resorts, are intended to apply only to the beach resorts or hotels meaning thereby that it is not intended to apply for the constructions done on the islands. There is also a case for the island owners that they have only started the hotels in the existing buildings. We may only notice that the word "beach" is defined in the Oxford Dictionary as, inter alia, the seashore or lakeshore covered with pebbles or sand. As far as construction activity is concerned, the further question may also arise whether it is the construction of the building housing the tourist activities or the operation of a building for the purpose of resort or hotel or both which are covered. The housing of a resort or a hotel in an existing building may also produce deleterious impact on the environment. No doubt, the guidelines issued under the 1991 and the 2011 Notifications prohibit construction of beach resorts and hotels in ecologically sensitive areas which include areas of breeding and spawning of fish. We do not wish to pronounce on the said issue as such.

125. As far as the question of encroachment by the island owners is concerned, we notice that a Statement is already filed stating that there is no encroachment by the island owner.

Reliefs:

126. We see that no ground has been made out for granting any relief in W.P. (C). Nos. 2947/13 and 28485/11. We also see no ground has been made out to grant relief in W.P. (C). No. 4808/12. No ground has been made out to interfere with Exts.P5 and P6 in W.P. (C). No. 4808/12. The contention raised that the Plan was prepared in a hurry and this is evident from the Judgment of the Apex Court in *Indian Council for Enviro-Legal Action* v. *Union of India* ((1996) 5 SCC 281), cannot be accepted. The Plan has been approved by the Central Government. There is no basis for the challenge made by the company.

127. What is the relief to be granted in W.P. (C). Nos. 8299/12, 19564/11, 34799/11 and 12965/12. As far as the company is concerned, the case of the company is that they have started construction on the basis of the No Objection granted on 02.8.1996. Its further case is that in the year 2007, it was issued building

permit by the panchayat and on the strength of the same, constructions proceeded. As already noted, it is true that the earliest of the Writ Petitions was filed in the year 2011 against the construction. At the same time, we must, as already noted by us, even according to the company it obtained building permit in which we have already referred to the conditions 3 and 4. Even according to those conditions, the construction was to be compliant with the Coastal Regulation Notification. We have also already noticed that under Section 23(4) of the Building Rules, even with a building permit, it is not open to the company to ignore the Notification. We have already commented on the magnitude and scale of the constructions. We would think that those constructions were undertaken which can only be described as a misadventure, without having regard to the consequences on the environment and in utter disregard of the law. The company must be treated as being cognizant of the Coastal Regulation Notification and must be treated as cognizant of the breach they were committing. The company cannot justify the naked violation of the mandatory terms of the Notification in the circumstances of the case. The relief is sought by the petitioners for demolition of the structures.

128. This is a matter relating to depredation of the environment. Violation of the environmental law, it has been held, is not to be viewed lightly. There is no power under the Notification or the Environment (Protection) Act to regularise such illegal constructions unlike the power available under the Building Rules. Having regard to the object of the Act and the Notification which is to preserve such sensitive areas as such, also it becomes necessary to order the demolition of the constructions. An order for demolition would in other words advance the object of the law and the Notification. At this juncture, we may also consider that even if the island is not treated as falling under CRZ-I where constructions of the nature put up by the company is completely prohibited and treating it as falling under CRZ-III in which zone alone the company can fall, the constructions which have been put up by the company are clearly uncontemplated by the provisions relating to CRZ-III. Therefore, whichever way we look at it, the conclusion is inescapable that permitting the constructions to remain, will be a affront to the rule of law and allowing the breach of the Notification to remain unremedied. We have already been referred to Section 5 of the Environment (Protection) Act which endows the concerned authority with power to issue any direction in the performance of its duties and functions to any person and which is binding on the person.

129. As far as the island owners are concerned also, regarding the illegality of constructions made during the currency of the 1991 Notification is concerned, we see no reason to take a different view. At any rate, those constructions along three earlier constructions became the subject matter of re-construction under the permit issued in the year 2012 which was done during the pendency of the Writ Petition. Here also, we have found that the concerned activity based on the reconstruction is a palpable violation of the Notification in force. We see no reason to take a different view. The same is the position with regard to constructions numbered in 2011 and another noted as underway.

130. The threat of global warming has assumed alarming proportions. In matters relating to the protection of the environment, a short sighted and myopic approach, may satisfy some and may be many in the short run. But, the Court when it enforces laws in protection of the environment becomes the custodian of the interests of not only the present generation, but also of posterity. While it is convenient and even may sound as just to overlook the mandate of a cumbersome or seemingly oppressive law, both the law giver and the Courts have to enforce the law and cannot but act with vision. Prompt and effective enforcement of such laws will in due course result in the inculcation of the values embedded in the law as habits which will be followed by the future generations.

131. The upshot of the above discussion is as follows : W.P. (C). Nos. 4808/12, 2947/13 and 28485/11 will stand dismissed. W.P. (C). Nos. 8299/12, 19564/11, 34799/11 and 12965/12 are disposed of as follows:

As far as encroachment by the company is concerned, we notice that already action has been taken under the Land Conservancy Act. We only direct that the said action will be proceeded with in accordance with law and we also reiterate that it will be open to the company to take up all the contentions available in law. We decline jurisdiction in so far as reliefs relating to compensation and the restoration of stake nets are concerned in W.P. (C). No. 19564/11. But, we make it clear that the petitioners are free to agitate their grievances in any competent forum.

132. There will be a direction to the Government of India/Authority to ensure that the constructions which have been made by the company in the Nediyathuruthu island are removed in so far as it violates the terms of the 1991 Notification, as held by us. Action in this regard shall be taken within a period of three months from the date of receipt of a copy of this Judgment.

133. We further direct that till such time as our directions as above are complied with, the company shall not proceed to make any further constructions. The company cannot carry out any kind of operations in the structures constructed in the island till the removal as ordered. As far as the island owners are concerned also, we direct that they will not carry out any further operations in the structures which are the subject matter of these cases after one week from today till such time as the direction given by us is complied with. We are allowing one week, as according to them, they are running the business. Thereafter, no kind of operations shall be done in those structures.

134. We further direct the Government of India/Authority to take action against the island owner to ensure that the unauthorised structures which have been put up on the basis of the permit issued by the panchayat in 2012 and the buildings bearing Nos. 193/D and 193/E are removed within a period of three months from the date of receipt of a copy of this Judgment. This direction will also embrace any new construction which has been noted by the panchayat itself. We are not pronouncing on the issue of mangroves being present as there is no plea as such raised.

135. We further direct the Government of India/Authority to consider taking action in regard to the unnumbered buildings found on Vettilathuruthu island as per law as against the island owners.

136. We are constrained to make certain observations which we consider highly essential in the interest of justice. The cases which we are disposing of by this Judgment characterise the total indifference and non-application of mind by the authorities and particularly the local bodies. The Notifications issued are intended to protect the coasts, the environment in general and to achieve the sustainable development, particularly of the fisher folk and other local population. The Notifications are meant to be enforced with full vigour. Circulars have been issued to the local bodies. We notice, however, that only lip service is being paid if at all to the terms of the Notifications. By such callous indifference and consequent blatant violation of the Notifications, a law which is meant to address serious environmental issues which adversely affect the present and future generations, is being completely undermined. If only the local body was vigilant and had conformed to the law, the matters would not have come to the sorry state of affairs the parties find themselves in. The non-preparation of the cadastral survey, though specifically directed to be done by the local bodies, is indefensible. The action of the Assistant Engineer in incorporating the conditions in the permit issued to the company is to say the least, most intriguing and unsupportable. We would hope that all the authorities including the Governments, both Central and State, will put their heads together and bring about not only

dissemination of clear information regarding the Notification, but also implement its terms in an effective manner.

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(2019) 7 Supreme Court Cases 248

(BEFORE ARUN MISHRA AND NAVIN SINHA, JJ.)

KERALA STATE COASTAL ZONE MANAGEMENT AUTHORITY .. Appellant;

Versus

STATE OF KERALA, MARADU MUNICIPALITY AND OTHERS .. Respondents.

Civil Appeals Nos. 4784-85 of 2019† with Nos. 4790-93 of 2019‡ and 4786-89 of 2019††, decided on May 8, 2019

A. **Environment Law — Water/River/Coastal Pollution — Coastal Zone Management Plan (CZMP) — Coastal Regulation Zones (CRZ) — Critically vulnerable notified CRZ-III areas — Construction activities in question, found to be in violation of CRZ, and hence demolition/removal directed**

— Cancellation of building permits by authorities, affirmed after Committee appointed for said purpose by Court in *Maradu Municipality*, 2018 SCC OnLine SC 3352, after giving opportunity of hearing, opined that it fell under CRZ-III area — Permission granted by Panchayat illegal and void — All constructions directed to be removed forthwith within one month — Environment (Protection) Act, 1986 — S. 3 — Kerala Municipality Building Rules, 1999, Rr. 16 and 23 (Paras 3 to 19)

B. **Environment Law — Regulatory Framework, Bodies and Judicial Intervention — National and State Coastal Zone Management Authority — CRZ notifications — Need of compliance with, by local authorities while issuing sanctions for buildings and constructions**

— Panchayat granting building permission without concurrence of Kerala State Coastal Zone Management Authority and without following the restrictions imposed by CRZ notifications, held, illegal — Local Government — Town Planning — Building plans/Rules/Regulations/Bye-Laws/Building permission — Housing and Real Estate — Building/Planning Norms — Development Permission/Occupancy Certificate/NoC (Paras 13 to 19)

Held :

The construction activities of the respondent builders are on the shores of the backwaters in Ernakulam in the State of Kerala which supports exceptionally large biological diversity and constitutes one of the largest wetlands in India. (Paras 3 and 4)

† Arising out of SLPs (C) Nos. 4227-28 of 2016. Arising from the Judgment and Order in *Kerala State Coastal Zone Management Authority* v. *Maradu Municipality*, 2015 SCC OnLine Ker 33807 (Kerala High Court, Ernakulam Bench, Review Petition No. 787 of 2015, dt. 11-11-2015) and *Maradu Municipality* v. *State of Kerala*, 2015 SCC OnLine Ker 16228 (Kerala High Court, Ernakulam Bench, WA No. 132 of 2013, dt. 2-6-2015)

‡ Arising out of SLPs (C) Nos. 4231-34 of 2016

†† Arising out of SLPs (C) Nos. 4238-41 of 2016

The area in which the respondents have carried out construction activities is part of the tidally influenced water body and the construction activities in those areas are strictly restricted under the provisions of the CRZ notifications. Uncontrolled construction activities in these areas would have devastating effects on the natural water flow that may ultimately result in severe natural calamities. The expert opinions suggest that the devastating floods faced by Uttarakhand in recent years and Tamil Nadu this year are the immediate result of uncontrolled construction activities on river shores and unscrupulous trespass into the natural path of backwaters. The Coastal Zone Management Plan (CZMP) has been prepared to check these types of activities and construction activities of all types in the notified areas. The High Court has ignored the significance of approved CZMP. (Para 5)

As per the appellant, these construction activities are taking place in critically vulnerable coastal areas which are notified as CRZ-III. The Panchayats have issued these permissions in violation of relevant statutory provisions and CRZ notifications. The Vigilance Section of Local Self-Government Department, Government of Kerala detected these violations and anomalies in the issue of building permits and hence directed the bodies concerned to revoke all the flawed building permits exercising its powers under Rules 16 and 23 of the Kerala Municipality Building Rules, 1999 (the 1999 Rules). (Para 6)

A show-cause notice was issued under Rule 16 of the 1999 Rules, asking the builders to show cause why the building permits issued to them be not cancelled. The High Court by the impugned orders should not have allowed the writ petitions. (Para 7)

Kerala State Coastal Zone Management Authority v. *Maradu Municipality*, 2018 SCC OnLine SC 3352, *referred to*

It is necessary for the local authority to follow the restrictions imposed by the notification, as amended from time to time. Thus, it was not open to the local authority i.e. Panchayat, in view of the notification of 1991 to grant any kind of permission without the concurrence of Kerala State Coastal Zone Management Authority. Admittedly, Panchayat has not forwarded any such applications for building permissions and there is no concurrence or permission granted by the Kerala State Coastal Zone Management Authority. As such, once a due inquiry has been held by the Committee, there is no escape from the conclusion that the area fell within CRZ-III, it was wholly impermissible and unauthorised construction within the prohibited area. Judicial notice is taken of recent devastation in Kerala which had taken place due to heavy rains compounded by such unbridled construction activities resulting in colossal loss of human life and property due to such unauthorised activity. (Para 13)

Indian Council For Enviro-Legal Action v. *Union of India*, (1996) 5 SCC 281; *Piedade Filomena Gonsalves* v. *State of Goa*, (2004) 3 SCC 445; *Vaamika Island (Green Lagoon Resort)* v. *Union of India*, (2013) 8 SCC 760, *relied on*

Felix Menino Jesus Serrao v. *State of Goa*, 2000 SCC OnLine Bom 120 : AIR 2001 Bom 294, *held, affirmed*

Goa Foundation v. *State of Goa*, Writ Petition No. 102 of 1996, order dated 25-9-1996 (Bom), *cited*

The Notification issued under the Environment (Protection) Act is meant to protect the environment and bring about sustainable development. It is the law of the land. It is meant to be obeyed and enforced. Construction in violation of the Coastal Regulation Zone Regulations are not to be viewed lightly and he who breaches its terms does so at his own peril. The fait accompli of constructions being made which are in the teeth of the Notification cannot present, but a highly vulnerable argument. (Para 16)

Ratheesh K.R. v. *State of Kerala*, 2013 SCC OnLine Ker 14359 : (2013) 3 KLT 840, *approved*

In the instant case, permission granted by the Panchayat was illegal and void. No such development activity could have taken place in prohibited zone. In view of the findings of the Enquiry Committee, let all the structures be removed forthwith within a period of one month from today and compliance be reported to the Supreme Court. (Para 18)

The appeals are accordingly allowed with the aforesaid direction. Interlocutory applications, if any, stand disposed of. (Para 19)

Kerala State Coastal Zone Management Authority v. *Maradu Municipality*, 2015 SCC OnLine Ker 33807; *Alfa Ventures (P) Ltd.* v. *State of Kerala*, 2012 SCC OnLine Ker 22135; *Maradu Municipality* v. *State of Kerala*, 2015 SCC OnLine Ker 16228; *M. Mukundan Menon* v. *State of Kerala*, 2012 SCC OnLine Ker 31813 : (2012) 4 KLJ 647, *reversed*

SS-D/62462/C

Advocates who appeared in this case :
Romy Chacko, Shapti Chand J. and Vishant Singh, Advocates, for the Appellant;
V. Giri and Jayanth Muth Raj, Senior Advocates (Ranjan Kumar, Mohammed Sadique T.R., Anu K. Joy, Amith Krishnan, Alim Anvar, G. Prakash, Jishnu M.L., Ms Priyanka Prakash, Ms Beena Prakash, M.T. George, Avishkar Singhvi and Nipun Katyal, Advocates) for the Respondents.

Chronological list of cases cited ***on page(s)***

1. 2018 SCC OnLine SC 3352, *Kerala State Coastal Zone Management Authority* v. *Maradu Municipality* 252*c-d*, 252*d*
2. 2015 SCC OnLine Ker 33807, *Kerala State Coastal Zone Management Authority* v. *Maradu Municipality* **(reversed)** 251*a-b*, 252*c*
3. 2015 SCC OnLine Ker 16228, *Maradu Municipality* v. *State of Kerala* **(reversed)** 252*b-c*, 252*e-f*
4. (2013) 8 SCC 760, *Vaamika Island (Green Lagoon Resort)* v. *Union of India* 256*b*
5. 2013 SCC OnLine Ker 14359 : (2013) 3 KLT 840, *Ratheesh K.R.* v. *State of Kerala* 256*b-c*, 258*b*, 259*e*
6. 2012 SCC OnLine Ker 31813 : (2012) 4 KLJ 647, *M. Mukundan Menon* v. *State of Kerala* **(reversed)** 252*e*
7. 2012 SCC OnLine Ker 22135, *Alfa Ventures (P) Ltd.* v. *State of Kerala* **(reversed)** 252*b-c*
8. (2004) 3 SCC 445, *Piedade Filomena Gonsalves* v. *State of Goa* 251*d-e*, 257*a*, 257*b*
9. 2000 SCC OnLine Bom 120 : AIR 2001 Bom 294, *Felix Menino Jesus Serrao* v. *State of Goa* 257*c*, 258*a-b*
10. (1996) 5 SCC 281, *Indian Council For Enviro-Legal Action* v. *Union of India* 251*b*
11. Writ Petition No. 102 of 1996, order dated 25-9-1996 (Bom), *Goa Foundation* v. *State of Goa* 257*e-f*

ORDER

1. Leave granted. Applications for intervention are allowed.

2. The appeals have been filed by the Kerala State Coastal Zone Management Authority aggrieved by the judgment and order dated 11-11-2015[1] passed by the High Court in Writ Appeal No. 132 of 2013 and other connected appeals.

3. The appellant authority has been constituted by the Government of India in compliance with the directions issued by this Court in *Indian Council For Enviro-Legal Action* v. *Union of India*[2] as well as in the exercise of the powers conferred under Section 3 of the Environment (Protection) Act, 1986. The appellant authority is empowered to deal with the environmental issues relating to the notified Coastal Regulation Zones (in short "CRZ"). Construction activities in the notified CRZ areas can be permitted only in consultation with and prior concurrence of the appellant authority. It is the binding duty of the local self-government, the competent authority before issuing building permits to forward an application for building permission to the appellant authority along with the relevant record. The appellant authority has issued circulars to all Gram Panchayats, Municipalities, and Municipal Corporations directing them to follow the provisions of CRZ notifications and to act in accordance with the procedures provided in the notifications.

4. The decision of this Court in *Piedade Filomena Gonsalves* v. *State of Goa*[3] has also been relied upon which explains the significance of CRZ notifications in the interest of protecting environment and ecology in the coastal area and the construction raised in violation of the regulations cannot be lightly condoned. The construction activities of the respondent builders are on the shores of the backwaters in Ernakulam in the State of Kerala which supports exceptionally large biological diversity and constitutes one of the largest wetlands in India.

5. The area in which the respondents have carried out construction activities is part of the tidally influenced water body and the construction activities in those areas are strictly restricted under the provisions of the CRZ notifications. Uncontrolled construction activities in these areas would have devastating effects on the natural water flow that may ultimately result in severe natural calamities. The expert opinions suggest that the devastating floods faced by Uttarakhand in recent years and Tamil Nadu this year are the immediate result of uncontrolled construction activities on river shores and unscrupulous trespass into the natural path of backwaters. The Coastal Zone Management Plan (in short "CZMP") has been prepared to check these types of activities and construction activities of all types in the notified areas. The High Court has ignored the significance of approved CZMP.

1 *Kerala State Coastal Zone Management Authority* v. *Maradu Municipality*, 2015 SCC OnLine Ker 33807
2 (1996) 5 SCC 281
3 (2004) 3 SCC 445

6. As per the appellant, these construction activities are taking place in critically vulnerable coastal areas which are notified as CRZ-III. The Panchayats have issued these permissions in violation of relevant statutory provisions and CRZ notifications. The Vigilance Section of Local Self-Government Department, Government of Kerala detected these violations and anomalies in the issue of building permits and hence directed the bodies concerned to revoke all the flawed building permits exercising its powers under Rules 16 and 23 of the Kerala Municipality Building Rules, 1999 (in short referred to as "the 1999 Rules").

7. A show-cause notice was issued under Rule 16 of the 1999 Rules, asking the builders to show cause why the building permits issued to them be not cancelled. Writ petitions were filed questioning the same. The learned Single Judge allowed[4] the writ petitions. The Division Bench dismissed[5] the appeals. The High Court has observed that the permit-holders cannot be taken to task for the failure of local authorities in complying with the statutory provisions and notifications. Review petitions were also dismissed[1]. Hence, the appeals by special leave have been preferred.

8. After hearing the appeals for two days, we constituted the Committee to hear the parties. Following is the order passed by this Court on 27-11-2018[6]: (*Kerala State Coastal case*[6], SCC OnLine SC paras 1-5)

> "*1*. The writ petitions filed questioning the show-cause notice dated 4-6-2007 issued for removal of the buildings, which according to show-cause notice were falling within the prohibited area of CRZ Category. Various violations were mentioned in the show-cause notice. Without availing the remedy of filing reply to the show-cause notice, writ petitions were filed directly in the High Court. The Single Bench of the High Court vide its judgment and order dated 10-9-2012[7], allowed the writ petition. Aggrieved thereby, the Municipality preferred writ appeals before the Division Bench, which were dismissed by the impugned judgment and order dated 2-6-2015[5].
>
> *2*. Considering the peculiar facts and circumstances of the case, as there is no categorical finding recorded either by the Single Bench or by the Division Bench that whether the area in question is in CRZ Category-III, Category-I or Category-II. It was claimed by the petitioner before the Single Bench that they fell within the CRZ Category-II, whereas the case set up by Coastal Zone Management Authority in this Court is that area is of CRZ Category-III. We deem it appropriate to call for the findings on the aforesaid aspect.

4 *Alfa Ventures (P) Ltd.* v. *State of Kerala*, 2012 SCC OnLine Ker 22135
5 *Maradu Municipality* v. *State of Kerala*, 2015 SCC OnLine Ker 16228
1 *Kerala State Coastal Zone Management Authority* v. *Maradu Municipality*, 2015 SCC OnLine Ker 33807
6 *Kerala State Coastal Zone Management Authority* v. *Maradu Municipality*, 2018 SCC OnLine SC 3352
7 *M. Mukundan Menon* v. *State of Kerala*, 2012 SCC OnLine Ker 31813 : (2012) 4 KLJ 647

3. We constitute a Three-Member Committee consisting of the Secretary to the Local Self Government Department, the Chief Municipal officer of the Municipality and the Collector of the District concerned, to hear the objections and to give a finding in terms of Notification dated 19-2-1991.

4. Let the Committee hear the affected parties as well as Kerala State Coastal Zone Management Authority and State Government and consider the matter as submitted by the parties and send a report to this Court as to legality of construction and precisely in which category the area in question is to be categorised and whether building is in prohibited zone. Let the exercise be done within a period of two months and a report be submitted to this Court.

5. Let the report be submitted covering the aspect that may be urged by the parties as to the legality of construction."

9. The aforesaid order was passed in order to cut short the litigation in respect of the show-cause notice issued by the authorities as the only question to be decided was as to whether the area falls in CRZ-III of Coastal Regulation Zone Regulations. We have heard the learned counsel at length again after receipt of the report. The Committee consisted of the following members:

1. K. Gopalakrishna Bhat, IAS Local Self-Government (Rural) In-Charge.

2. K. Mohammed Y. Safirulla, AIA, District Collector, Ernakulam.

3. Subhash P.K., Municipal Secretary, Maradu Municipality.

10. The Committee has given the opportunity of hearing and has dealt with the case set up by all the stakeholders in extensive detail. Following findings and conclusion have been recorded by the Committee:

"The Committee evaluated all arguments raised by the parties and KCZMA, existing Rules and Statutes and examined the Google map produced at the time of the meeting.

The findings of the committee are as follows:

(1) Marad Panchayat which was formed in 1953 was upgraded into a municipality in November 2010.

(2) The Coastal Zone Management Plan (CZMP of Kerala currently applicable is the one that was approved in 1996. As per the said CZMP, Marad has been marked as Panchayat area and hence falls in the Coastal Regulation Zone (CRZ) category of CRZ-III. The area is represented in Map Nos. 33, 33-A and 34 of CZMP 1996. These maps are attached as Annexures 1 and 2. A mosaic of the three maps showing the Marad area is attached as Annexure 3. Since the Panchayat has been upgraded to Municipality in the year 2010, the same has been shown as CRZ-II category in the draft CZMP prepared as per the CRZ Notification 2011 and submitted to the MoEF & CC of the Government

of India recently. Until the Government of Kerala/KCZMA receives a communication from the Government of India on the approval of the CZMP draft submitted, the CZMP of 1996 stands valid. Hence, as on date, Maradu area being a backwater island the provisions as detailed below are applicable after 6-1-2011 i.e. the date on which the Government of India published Coastal Zone Management Plan (CZMP):

(*i*) The islands within the backwaters shall have 50 m width from the high tide line on the landward side as the CRZ area;

(*ii*) within 50 m from the HTL of these backwater islands existing dwelling units of local communities may be repaired or reconstructed however no new construction shall be permitted;

(*iii*) beyond 50 m from the HTL on the landward side of backwater islands, dwelling units of local communities may be constructed with the prior permission of the Gram Panchayat;

(*iv*) foreshore facilities such as fishing jetty, fish drying yards, net mending yard, fishing processing by traditional methods, boat building yards, ice plant, boat repairs and the like, may be taken up within 50 m width from HTL of these backwater islands.

CONCLUSION

The Coastal Zone Management Plan (CZMP) of Kerala currently applicable is the one that was approved in 1996. As per the said CZMP Maradu has been marked as Panchayat area and hence falls in the Coastal Regulation Zone (CRZ) category of CRZ III. Maradu Panchayat has been upgraded to Municipality in the year 2010 and hence in the draft CZMP prepared as per CRZ Notification 2011, it is shown as CRZ II category. The new draft CZMP is submitted to MoEF & CC of the Government of India for approval. Until the Government of India approved the draft notification CZMP 1996 stands valid."

11. It is apparent that at the relevant time when the construction has been raised by the respondents in the matters, the area was within CRZ-III. With respect to CRZ-III, the relevant Notification dated 19-2-1991 indicates that the area of 200 m from the high tide line is no-development zone. No construction shall be permitted within this zone except for repairs of the authorised structures not exceeding existing FSI. The Notification dated 19-2-1991 relating to CRZ-III is extracted below:

"(*III*) The design and construction of buildings shall be consistent with the surrounding landscape and local architectural style:

(*i*) The area up to 200 m from the high tide line is to be earmarked as "no-development zone". No construction shall be permitted within this zone except for repairs of existing authorised structures not exceeding existing FSI, existing plinth area, and existing density, and for permissible activities under the notification including facilities

essential for such activities. An authority designated by the State Government/Union Territory Administration may permit construction of facilities for water supply, drainage, and sewerage for requirements of local inhabitants. However, the following uses may be permissible in this zone: agriculture, horticulture, gardens, pastures, parks, playfields, forestry and salt manufacture from sea water.

(*ii*) Development of vacant plots between 200 and 500 m of high tide line in designated areas of CRZ-III with prior approval of Ministry of Environment and Forests (MoEF permitted for construction of hotels/beach resorts for temporary occupation of tourists/visitors subject to the conditions as stipulated in the guidelines at Annexure-II.

(*iii*) Construction/reconstruction of dwelling units between 200 and 500 m of the high tide line permitted so long it is within the ambit of traditional rights and customary uses such as existing fishing villages and gaothans. Building permission for such construction/ reconstruction will be subject to the conditions that the total number of dwelling units shall not be more than twice the number of existing units; total covered area on all floors shall not exceed 33% of the plot size; the overall height of construction shall not exceed 9 m and construction shall not be more than 2 floors ground floor plus one floor. Construction is allowed for permissible activities under the notification including facilities essential for such activities. An authority designated by State Government/Union Territory Administration may permit construction of public rain shelters, community toilets, water supply, drainage, sewerage, roads and bridges. The said authority may also permit construction of schools and dispensaries, for local inhabitants of the area, for those Panchayats the major part of which falls within CRZ if no other area is available for construction of such facilities.

(*iv*) Reconstruction/alterations of an existing authorised building permitted subject to (*i*) to (*iii*) above."

12. It is also relevant to take note of Rule 23(4) of the 1999 Rules which is extracted below:

"**23. (4)** Any land development or redevelopment or building construction or reconstruction in any area notified by the Government of India as a coastal regulation zone under the Environment (Protection) Act, 1986 (29 of 1986) and rules made thereunder shall be subject to the restrictions contained in the said notification as amended from time to time."

13. It is necessary for the local authority to follow the restrictions imposed by the notification, as amended from time to time. Thus, it was not open to the local authority i.e. Panchayat, in view of the notification of 1991 to grant any kind of permission without the concurrence of Kerala State Coastal Zone Management Authority. Admittedly, Panchayat has not forwarded any such applications for building permissions and there is no concurrence or

permission granted by the Kerala State Coastal Zone Management Authority. As such, we find that once a due inquiry has been held by the Committee, there is no escape from the conclusion that the area fell within CRZ-III, it was wholly impermissible and unauthorised construction within the prohibited area. We also take judicial notice of recent devastation in Kerala which had taken place due to heavy rains compounded by such unbridled construction activities resulting in colossal loss of human life and property due to such unauthorised activity.

14. This Court in *Vaamika Island (Green Lagoon Resort)* v. *Union of India*[8], has observed: (SCC pp. 767-68, paras 26-28)

> "*26*. The petitioner had effected the construction in violation of the provisions of 1991 and 2011 Notifications as well as Map No. 32-A, so found by the High Court[9]. The factual details of the same and where actually the portion of some of the properties of the petitioner in Vettila Thuruthu will fall, has been elaborately dealt with by the High Court in its judgment in paras 109 to 119. *We notice that the High Court has dealt with the issue pointing out that so far as buildings which have been constructed by the petitioner during the currency of the Notification issued in 1991 are concerned, they are clearly in violation of this notification, hence, action has to be taken for the removal of the same*. The Director of Panchayat also vide letters dated 7-3-1995, 17-7-1996 directed all the Panchayats to strictly follow the provisions of CRZ notification which it was found not followed by granting permission. The High Court has also found on facts that reconstruction work appeared to have been done during the currency of the 2011 Notification and two buildings (193/D and 193/E) were also constructed illegally. The High Court has also noticed another new construction underway. These all are factual findings which call for no interference by this Court. The High Court has clearly noticed that reconstruction work has been done contrary to the 1991 as well as 2011 Notifications and the report of the Expert Committee constituted by the Kerala State Council for Science, Technology and Environment (KSCSTE) was accepted.
>
> *27*. We are of the considered view that the above direction was issued by the High Court taking into consideration the larger public interest and to save Vembanad Lake which is an ecologically sensitive area, so proclaimed nationally and internationally. Vembanad Lake is presently undergoing severe environmental degradation due to increased human intervention and, as already indicated, recognising the socio-economic importance of this waterbody, it has recently been scheduled under "vulnerable wetlands to be protected" and declared as CVCA. We are of the view that the directions given by the High Court are perfectly in order in the abovementioned perspective.

8 (2013) 8 SCC 760
9 *Ratheesh K.R.* v. *State of Kerala*, 2013 SCC OnLine Ker 14359 : (2013) 3 KLT 840

28. Further, the directions given by the High Court in directing demolition of illegal construction effected during the currency of the 1991 and 2011 CRZ notifications are perfectly in tune with the decision of this Court in Piedade Filomena Gonsalves v. *State of Goa*[3]*, wherein this Court has held that such notifications have been issued in the interest of protecting environment and ecology in the coastal area and the construction raised in violation of such regulations cannot be lightly condoned.*" (emphasis supplied)

15. In *Piedade Filomena Gonsalves* v. *State of Goa*[3], this Court has observed: (SCC pp. 446-47, paras 4-6)

"*4*. We do not think that any fault can be found with the judgment of the High Court[10] and the appellant can be allowed any relief in exercise of the jurisdiction conferred on this Court under Article 136 of the Constitution. Admittedly, the construction which the appellant has raised is without permission. Assuming it for a moment that the construction, on demarcation and measurement afresh and on HTL being determined, is found to be beyond 200 m of HTL, *it is writ large that the appellant has indulged in misadventure of raising a construction without securing permission from the competent authorities*. That apart, the learned counsel for the respondents has rightly pointed out that the direction of the High Court in the matter of demarcation and determination of HTL is based on the amendment dated 18-8-1994 introduced in the Notification dated 19-2-1991 entitled the Coastal Regulation Zone Notification issued in exercise of the power conferred by Section 3(1) and Section 3(2)(*v*) of the Environment (Protection) Act, 1986, while the appellant's construction was completed before the date of the amendment and therefore, the appellant cannot take benefit of the order dated 25-9-1996 passed in *Goa Foundation* v. *State of Goa*[11].

5. It is pertinent to note that during the pendency of the writ petition, the appellant had moved two applications, one of which is dated 11-7-1995, for the purpose of regularisation of the construction in question. *The Goa State Coastal Committee for Environment, the then competent body constituted a sub-committee which inspected the site and found that the entire construction raised by the appellant fell within 200 m of the HTL and the construction had been carried out on existing sand dunes*. The Goa State Coastal Committee for Environment, in its meeting dated 20-10-1995, took a decision inter alia holding that the entire construction put up by the appellant was in violation of the Coastal Regulation Zone Notification.

3 (2004) 3 SCC 445
10 *Felix Menino Jesus Serrao* v. *State of Goa*, 2000 SCC OnLine Bom 120 : AIR 2001 Bom 294
11 Writ Petition No. 102 of 1996, order dated 25-9-1996 (Bom)

6. The Coastal Regulation Zone Notifications have been issued in the interest of protecting the environment and ecology in the coastal area. Construction raised in violation of such regulations cannot be lightly condoned. We do not think that the appellant is entitled to any relief. No fault can be found with the view taken by the High Court in its impugned judgment[10]." (emphasis supplied)

16. Further, reference has also been made to a decision of the Kerala High Court in *Ratheesh K.R.* v. *State of Kerala*[9]. The same is extracted below: (SCC OnLine Ker paras 98 & 107-108)

"*98.* However, we would rather rest our decision without pronouncing on the validity of the permits as such. We have found that the Notification is applicable to the island, the island falls in CRZ-I and construction is impermissible. *By merely getting a permit under the Building Rules, it cannot be in the region of any doubt that the company cannot arrogate to itself, the right to flout the terms of the Notification. We have already noticed Rule 23(4) of the Kerala Municipality Building Rules, 1999 and Rule 26(4) of the Kerala Panchayat Building Rules, 2011. In this case, we may also note that there is no permission sought from the authority.* It is apposite to note that para 3(*v*) clearly mandates that for investment of Rs 5 crores and above, permission must be obtained from the Ministry of Environment and Forests. In this case, the investment of the company is far above Rs 5 crores. In respect of investments below Rs 5 crores, for activities which are not prohibited, permission must be obtained from the authority concerned in the State. The company has not made any such attempt at getting permission. That apart, this is a case where, even if permission had been applied for, the terms of the Notification would stand in the way of any such permission being granted insofar as the island is treated as falling in CRZ-I. Construction of buildings as has been done by the company was absolutely impermissible. The fact that in a situation where the construction activity was permissible under the Notification and if the company had obtained permit from the local body, would have made its activities legal, cannot avail the company for the reason that under the terms of the Notification, such permit obtained from the panchayat will be of little avail to it in the light of the nature of the restrictions brought about by the Regulations in respect of CRZ-I in which zone the island falls. According to the panchayat, no doubt, the conditions have been imposed also as recommended by the Assistant Engineer who is alleged to have even visited the island. Whatever that be, as observed by us, in the light of the view we have taken, namely, that the 1991 Notification applies to the island, it is squarely covered by the same being included in CRZ-I and the constructions were begun even during the currency of the 1991

10 *Felix Menino Jesus Serrao* v. *State of Goa*, 2000 SCC OnLine Bom 120 : AIR 2001 Bom 294
9 2013 SCC OnLine Ker 14359 : (2013) 3 KLT 840

Notification. The conclusion is inescapable that it is in the teeth of the prohibition contained in the 1991 Notification and, therefore, it is palpably illegal.

* * *

107. At this stage, we must deal with the argument raised before us by the company. It is submitted that a world class resort has been put up which will promote tourism in a State like Kerala which does not have any industries as such and where tourism has immense potential and jobs will be created. It is submitted that the Court may bear in mind that the company is eco-friendly and if at all the Court is inclined to find against the company, the Court may, in the facts of this case, give direction to the company and the company will strictly abide by any safeguards essential for the preservation of environment.

108. We do not think that this Court should be detained by such an argument. The Notification issued under the Environment (Protection) Act is meant to protect the environment and bring about sustainable development. It is the law of the land. It is meant to be obeyed and enforced. As held by the Apex Court, construction in violation of the Coastal Regulation Zone Regulations are not to be viewed lightly and he who breaches its terms does so at his own peril. The fait accompli of constructions being made which are in the teeth of the Notification cannot present, but a highly vulnerable argument." (emphasis supplied)

17. We find that the view[9] taken by the Kerala High Court in the aforesaid decision is appropriate.

18. In the instant case, permission granted by the Panchayat was illegal and void. No such development activity could have taken place in prohibited zone. In view of the findings of the Enquiry Committee, let all the structures be removed forthwith within a period of one month from today and compliance be reported to this Court.

19. The appeals are accordingly allowed with the aforesaid direction. Interlocutory applications, if any, stand disposed of.

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9 *Ratheesh K.R.* v. *State of Kerala*, 2013 SCC OnLine Ker 14359 : (2013) 3 KLT 840

2020 SCC OnLine NGT 1468

In the National Green Tribunal[†]

(BEFORE K. RAMAKRISHNAN, MEMBER (JUDICIAL) AND SAIBAL DASGUPTA, MEMBER (EXPERT))

C.H. Balamohan … Applicant(s);

Versus

Union of India and Others … Respondent(s).

Original Application No. 04 of 2013 (SZ) with Appeal No. 18 of 2017 (SZ)

Decided on September 10, 2020, [Hearing on : 10.09.2020]

Advocates who appeared in this case:

Original Application No. 04/2013:

M/s. Niveditha S Menon represented Sri. A. Yogeshwaran. for the Applicant(s);

M/s. G.M. Syed Nurullah Sheriff for R1, R5. for the Respondent(s);

M/s. S.N. Parthasarathi for R6 to R8.

M/s. Stalin Abimanyu for R9, 10, R12, R13 & R20.

M/s. Madhuri Donti Reddy for R16.

M/s. Rema Smrithi V.K. for R17.

Appeal No. 18/2017:

M/s. Niveditha S Menon represented Sri. A. Yogeshwaran. for the Applicant(s);

M/s. G.M. Syed Nurullah Sheriff for R1, R2. for the Respondent(s);

M/s. Mani Gopi for R3.

ORDER

1. When the matter came up for hearing today through Video Conference, Niveditha S Menon represented Sri. A. Yogeshwaran, learned counsel appearing for the applicant in O.A. No. 04/2013 and appellant in Appeal No. 18/2017. Sri. G.M. Syed Nurullah Sheriff represented respondents 1 & 5 in O.A. No. 04/2013 and respondents 1 & 2 in Appeal No. 18/2017, Sri. S.N. Parthasarathi represented respondents 6 to 8 in O.A. No. 04/2013, Sri. Stalin Abimanyu represented respondents 9, 10, 12, 13 & 20, Smt. Madhuri Donti Reddy represented 16th respondent in O.A. No. 04/2013, Smt. Rema Smrithi V.K. represented 17th respondent in O.A. No. 04/2013 and Sri. Mani Gopi represented 3rd respondent in Appeal No. 18/2017.

2. The learned counsel appearing for the Ministry of Environment Forest & Climate Change (MoEF&CC) submitted that the Integrated Coastal Zone Management Plan (ICZMP) for 13 Coastal States of India are pending with the Cabinet Committee of Central Government for approval and once it is approved then, the work can be started.

3. As regards, the interim shore line management as a temporary measures suggested by the counsel for the applicant, learned counsel submitted that it also can be considered after getting approval from the Central Cabinet Committee.

4. The MoEF&CC is directed to submit their detailed stand as to how much time is required for the purpose of implementation of the Integrated Coastal Zone Management Plan (ICZMP) for 13 Coastal States or otherwise, this Tribunal will be compelled to dispose of the matter by giving certain directions within the time within which the same will have to be impleaded.

5. The Registry is directed to communicate this order to the Ministry of Environment Forest & Climate Change (MoEF&CC) and also to the State Coastal Zone Management Authorities of the 13 Coastal Zones who have been made parties in this case so as to

come with a concrete proposal as to how the matter can be resolved permanently.

6. For hearing, post on 29.10.2020.

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† Southern Zone, Chennai

2022 SCC OnLine Bom 1008

In the High Court of Bombay

(BEFORE DIPANKAR DATTA, C.J. AND V.G. BISHT, J.)

Public Interest Litigation (L) No. 23928 of 2021

Omkar Mahadeo Supekar and Another … Petitioners;

Versus

Municipal Corporation of Greater Mumbai, Through the Municipal Commissioner and Others … Respondents.

With

Interim Application No. 716 of 2022

In

Public Interest Litigation (L) No. 23928 of 2021

Zoru Darayus Bhathena … Applicant;

In The Matter Between

Omkar Mahadeo Supekar and Another … Petitioners;

Versus

MCGM and Others … Respondents.

And

Public Interest Litigation (L) No. 5111 of 2022

Vanashakti and Another … Petitioners;

Versus

Municipal Corporation of Greater Mumbai, Through the Municipal Commissioner and Another … Respondents.

Public Interest Litigation (L) No. 23928 of 2021, Interim Application No. 716 of 2022 and Public Interest Litigation (L) No. 5111 of 2022

Decided on May 6, 2022, [Reserved On : 25th April 2022]

Advocates who appeared in this case:

Mr. Rajmani Verma, Advocate for the Petitioners in PIL(L) No. 23928 of 2021.

Smt. Gayatri Singh, Senior Counsel a/w. Mr. Zaman Ali, Advocate for the Petitioner in PIL(L) No. 5111 of 2022.

Mr. Aspi Chinoy, Senior Counsel a/w. Mr. Joel Carlos and Ms. K.H. Mastakar, Advocate for the Respondent No. 1/MCGM in PIL(L) No. 23928 of 2021 and PIL(L) No. 5111 of 2022.

Mr. A.A. Kumbhakoni, learned Advocate General a/w. Mr. Abhay Patki, Additional Government Pleader for Respondent Nos. 3, 4, 6, 7, 8 and 12/State in PIL(L) No. 23928 of 2021.

Mr. H.B. Takke, AGP for Respondent No. 2/State in PIL(L) No. 5111 of 2022.

Mr. D.P. Singh a/w. Mr. Aditya Thakkar, Advocate for Respondent No. 11/UOI in PIL (L) No. 23928 of 2021.

Mr. D.A. Dubey a/w. Mr. Y.R. Mishra, Advocate for Respondent No. 4/UOI in PIL(L) No. 5111 of 2022.

Mr. C.M. Lokeshappa, Advocate for Respondent No. 10 in PIL(L) No. 23928 of 2021.

Mr. Anish Khandekar, Advocate for Respondent No. 2 in PIL(L) No. 23928 of 2021.

Mr. Manoj Shirsat i/by. Pushpa Thapa, Advocate for the Intervenor in I.A. No. 716 of 2022.

Mr. Sachindra Shetye, Advocate for (MPCB) Respondent No. 5 in PIL(L) No. 23928 of 2021 and for Respondent No. 3 in PIL(L) No. 5111 of 2022.

The Judgment of the Court was delivered by

V.G. BISHT, J.:— The petitioners in both these Public Interest Litigations (PILs) have raised a common and concerned question as to construction and reclamation activities for the project of cycling and jogging track undertaken inside Powai lake by respondent Municipal Corporation of Greater Mumbai (MCGM) in violation of provisions of the Maharashtra Regional Town Planning Act, 1966 (MRTP Act) and notified Development Control Regulation for Greater Mumbai 2034 (DCR) and hence they are disposed of by this common judgment and order.

2. Interim Application No. 716 of 2022 is allowed and stands disposed of.

3. The common facts leading to insitution of these PILs, in brief, are as follows:

(a) Petitioners are earnestly concerned about the Powai Lake Wetland and hazardous impact caused by the construction activities for a proposed Cycle Track over the Water Body, Catchment Area, Crocodile Habitat of the Powai Lake Wetland, carried by the respondent-MCGM by uprooting and cutting the trees, digging and dumping boulders and filling the sand crush and stones etc.

(b) According to petitioners, the Powai Lake is a notified wetland by National Wetland Atlas 2011 and has been included in the unified scheme - National Plan for Conservation of Aquatic Eco-systems (NPCA), after merging the National Lake Conservation Plan with National Wetland Conservation Program.

(c) Petitioners came to know that the respondent-MCGM had reclaimed the Powai Lake Wetland and are carrying out construction activities by uprooting the trees, digging the ground and dumping the stones, crushed-sand over the water body, water catchment area, crocodile habitat and ecologically sensitive and fragile wetland of Powai Lake. There are two construction sites, first being the reclamation water body adjacent to the Renaissance Hotel Compound Wall inside the Powai Lake riparian area, besides the Pipeline Road, Powai. The second site is known as Deer Park, besides the Ambedkar Udyan, Powai. The petitioners allege that site no. 1 has been exploited by the respondent-MCGM since July 2021 and around 100 meters of the area has been constructed over a natural water body. Similarly, the wetland area between site no. 1 and site no. 2 has been used by crocodiles as a basking site for a long time and during night the crocodiles come out of the water and rest there. The area between site no. 1 and site no. 2 is the "zone of influence" means that part of the catchment area of the wetland or wetland complex, developmental activities induce adverse changes in ecosystem structure and ecosystem services.

4. The petitioners then contend that any kind of reclamation followed by construction over water body, water catchment area/crocodile habitat and Powai Lake Wetland would destroy this pristine and rich shoreline food web, increase siltation and cause loss of native water plants that would be a critical turning point in eutrophication and destruction of the lake.

5. The petitioners have, therefore, filed these PILs to protect, conserve and restore the extremely vulnerable Powai Lake Wetland from reclamation and ongoing construction activities carried out by the respondents - MCGM and Maharashtra Tourism Development Corporation Ltd. (MTDCL).

6. Reply affidavit has been filed by respondent-MCGM wherein it contends that there is a dearth of community recreation spaces in the eastern suburbs of Greater Mumbai and there are practically no major community open space in this part of the city. Powai Lake, with its 10.2 km of waterfront, offers an opportunity to create a large community open space for the citizens of Mumbai. Powai Lake, after rejuvenation, has the potential of becoming a major community open space. Moreover, the said walkway

will enable MCGM's maintenance Department and staff to have ready access to all portions of the lake front.

7. It is next contended that by developing the proposed walkway along the periphery of the Powai Lake, the respondents will create an ecological destination which is accessible to the common citizen/public. The proposed cycle path and walkway closely follows the alignment of the existing motorable lake front road of NT Mumbai and thereafter the Renaissance Hotel compound wall and pathway. The proposed pathway will be situated substantially in the Natural Area beyond the perimeter of Powai Lake. Only some limited portions fall in areas which are covered by water during the monsoon season and the few months thereafter.

8. According to respondent-MCGM in order not to impede the flow of water into the lake as also the flow of lake waters during the monsoon months, the walkway is to be developed using 'Gabion Technology' which is porous and does not prevent the flow of water. 'Gabion Technology' consists of placing PVC coated galvanized iron wire mesh baskets in place, containing stones of various sizes, without any joinery, fixing or cement mortar. These wire baskets containing stones of diverse sizes are merely placed on the surface, without there being any foundation, or other means used to fix it to the earth. On top of the gabion wall there will be a thin layer of cement board/synthetic composite board and macadam/tar to enable walking/cycling. There is no dumping of debris into the lake, nor any reclamation in the lake. 'Gabion Technology' does not involve any construction or reclamation. Gabions also provide refuge for small acquatic life and have the potential of becoming a breeding ground for small and micro acquatic life. Therefore, the respondent-MCGM denies that development of the walkway using 'Gabion Technology' as aforesaid involves any reclamation of any part of the lake, or any construction activity in the vicinity of the lake front. In the light of these facts, the PILs are liable to be dismissed with costs, urges respondent-MCGM.

9. Another reply affidavit of respondent-Forest Department i.e. respondent nos. 3, 6 and 7 contends that there is also an "Original Application No. 68 of 2021" filed by an NGO, Vanashakti, which is pending before the National Green Tribunal, West Zone Bench at Pune, raising the identical issues about "Powai Lake". Therefore, it is desirable that both matters should be heard and decided by the same judicial forum. The said respondents have suggested various measures for preventing the further pollution of the Powai Lake and forming a team of Wildlife experts, who can suggest measures for avoiding the damage to the Powai Lake, habitat of crocodiles with a special emphasis on their basking and nesting sites.

10. Another reply affidavit of respondent-Maharashtra Pollution Control Board (MPCB) submits that it has not granted any consent to the alleged construction and the site of the alleged construction was visited by its Field Officer along with official of respondent-MCGM on 27th October 2021 and it was informed by the official of respondent-MCGM that it is a project for natural walkway, bicycle and jogging track along the periphery of Powai Lake and for rejuvenation and reinvigoration of the Powai Lake. At the time of the visit, about 100 mtrs. work of gabion (in which Gl net and stone used) was completed and remaining work was in progress. During visit gabion work was not in operation.

11. According to respondent-MPCB, respondent-Ministry of Environment, Forest & Climate Change (MoEF&CC), Government of India, vide letter 9th August 2021 informed it about alleged construction activities inside the water body of the Powai Lake and this respondent vide letter dated 28th October 2021 forwarded the said complaint to respondent-MCGM as the said activity does not come under its purview.

12. Another reply affidavit of respondents i.e. Maharashtra State, Environment Department and Maharashtra State Wetland Authority contends that till today the said

Powai Lake has not been notified to be a Wetland in accordance with the Notification dated 26th September 2017, Ministry of Environment, Forest and Climate Change, Government of India, New Delhi. According to them, the State Wetland Authority constituted under the provision of the Rules of 2017 has also designated and formed a Grievance Redresser Committee to look into the various complaints and grievances made by the general public with regard to the various activities concerning the Wetland within the State. One of the complaints submitted by Mr. Stalin D. i.e. the petitioner in PIL(L) No. 5111 of 2022 concerning the very activity of construction of cycle track on the periphery of the said Powai Lake, is presently being looked into by the Expert Committee constituted by the State Wetland Authority. In such circumstances, according to them, the present petitioners be directed to approach State Wetland Authority with all the details as regards the status of the Powai Lake and their grievance regarding construction of cycle track around the Powai lake.

13. The petitioners, by way of affidavit in rejoinder to the affidavit-in-reply of respondent-MCGM contends that the respondent-MCGM has devised a theory of using 'Gabion Technology' which is nothing but construction of a road under the garb of "board walk/walkway/cycle track which is evidently going to be a work of permanent construction and the same is also a prohibited activity and cannot be termed as "wise use". The claim that the so-called 'Gabion Technology' is porous and eco-friendly is incorrect and misleading which is clear from the averments made in paragraph 8(h) of the reply wherein the respondent-MCGM has admitted that "on the top layer of the gabion wall there will be a thin layer of cement board/synthetic composite board and macadam/tar to enable the walking/cycling". Hence, the respondent-MCGM's own claim about the porousness and it being eco-friendly are self-contradictory and incorrect.

14. After having noticed the pleadings of the rival parties elaborately, it is now time to consider the arguments of the learned counsel for the parties. We have heard the learned counsel for the petitioners and respondents at length. There are two-fold arguments raised on behalf of learned counsel for the petitioners. First, as part of the project on National Wetland Inventory and Assessment (NWIA), National Wetlands Atlas was prepared by Space Applications Centre, Indian Space Research Organisation (ISRO) and the same was sponsored by Ministry of Environment and Forest, Government of India. Powai Lake is, thus, notified as a wetland in the National Wetland Atlas in the map. Since Union of India is a signatory to "Ramsar Convention' on Wetlands, thus it is obigated to conserve and wise-use of all wetlands within its territory. Second, Government of Maharashtra, through its UDD in consultation with its Director, Town Planning Department under the provisions of the MRTP Act, 1966 notified DC Regulations for Greater Mumbai, 2034 (DCR). Part VII of DCR provides for Land Use Classification and Uses Permitted. Under this Part VII of Sub-Regulation 3.3 of Regulation 34 a specific regulation for Powai and Vihar Lake has been made, which contemplates that in order to prevent erosion of soil and silting in lakes, an exclusive green belt of 100 m shall be provided around the periphery of Vihar and Powai Lake in which no construction whatsoever shall be allowed. If within 100 m from the periphery of Vihar and Powai lake there exists Municipal/Public road, then buffer of green belt beyond Municipal/Public road may not be insisted.

15. As far as the first issue of Powai lake being a wetland is concerned, in our view, the respondent namely Member Secretary of Environment, Forest and Climate Change and as also State Wetland Authority, Maharashtra, rightly pointed out that the said Powai Lake has not been notified to be a wetland in accordance with Notification dated 26th September 2017 issued by Ministry of Environment, Forest and Climate Change, Government of India, New Delhi. Clause (3) of the said Notification deals with 'Applicability of Rules' which provides that these rules shall apply to the following wetlands or wetlands complexes namely -

(a) wetlands categorised as 'wetlands of international importance' under the Ramsar Convention;

(b) wetlands as notified by the Central Government, State Government and Union Territory Administration"

16. Clause 3(b) is very clear and categorically lays emphasis on Notification in respect of wetlands. In the case in hand, merely showing that the Powai Lake has been notified as a wetland in the National Wetlands Atlas in the map will not satisfy the requirement of aforesaid Notification dated 26th September 2017. It essentially requires a Notification. Powai Lake must and necessarily be notified to be a wetland in accordance with the Notification dated 26th September 2017 issued by Ministry of Environment, Forest and Climate Change, Government of India, New Delhi. Admittedly, no such Notification exists as of now notifying the Powai Lake to be a wetland. Therefore, as far as the first issue is concerned, we do not find merit in the submission of the learned counsel for the petitioners.

17. We have also gone through Part VII of DCR 2034 which provides for 'Land Use Classification and Uses Permitted'. Under Part VII of Sub-Regulation 3.3 of Regulation 34, a specific regulation for Powai and Vihar Lakes has been made which is as follows:

"(VII) Periphery of Vihar and Pawai Lake:

In order to prevent erosion of soil and silting in lakes, an exclusive green belt of 100 m shall be provided around the periphery of Vihar and Pawai Lake, in which no construction whatsoever shall be allowed. If within 100 m from the periphery of Vihar and Pawai Lake there exists Municipal/Public Road, then buffer of green belt beyond Municipal/Public Road may not be insisted."

18. A bare reading of the above Regulation would show that an exclusive green belt of 100 m would be provided around the periphery of Vihar and Powai Lakes and in order to prevent erosion of soil and silting in lakes, no construction activity of whatsoever nature shall be allowed. Apparently, the activity of the respondent-MCGM is in the teeth of this Regulation.

19. As against above, Mr. Chinoy, the learned senior counsel for respondent-MCGM has vehemently submitted that the jogging and cycling track-cum-walkway will be developed by using 'Gabion Technology' and such technology will not require construction or reclamation of the lake and that it will not impede the flow of water. The learned senior counsel has strenuously laid emphasis on the word "construction" and according to the learned senior counsel, since the 'Gabion Technology' does not involve the use of cement or mortar, by no stretch of imagination, the technology so used would amount to construction activity.

20. In our studied view, this is the core issue and the principle point on which the parties are at issue. It will be unwise to read too much into submission of the learned senior counsel, the same being essentially a self serving explanation.

21. Of major concern is the fact that the word "construction" is nowhere defined in DCR 2034. In absence thereof, a plain and natural meaning will have to be assigned. The *Oxford English Reference Dictionary*, Edition 1995 defines 'construct' and means make by fitting parts together, build, form. Similarly, in *Concise Oxford Dictionary*, Twelfth Edition, 2011, 'construct' means build or erect. Thus, simply stating, construction is the act to build or erect.

22. Apart from pleadings, we have also carefully glanced over the photographs of the site where the jogging and cycling track-cum-walk way is being developed by using 'Gabion Technology'. We may note here with alacrity that respondent-MCGM has not filed any material on record to satisfy us that 'Gabion Technology' is sufficiently proven technology or is backed and supported by scientific study about its utility sans failures. The petitioners [in PIL(L) No. 5111 of 2022] have enumerated various failures of 'Gabion Technology' in paragraphs 34, 35 and 36. There is no response on that

count from respondent-MCGM.

23. Although the acclaimed project undertaken by respondent-MCGM suggests 'rejuvenation and reinvigoration' of the physical and natural environment of Powai Lake, Mumbai, but the obtaining situation as discernible and decipherable from photographs, which is not disputed, shows land filling/reclamation, metallic frames raised on water body for dumping stones and laying of tar road along with peripheral area of the lake which cannot by any stretch of imagination be termed or construed 'rejuvenation and reinvigoration' of the physical and natural environment of Powai Lake. Common sense would prompt a disturbing conclusion that construction of cycle track or any slightest disturbance to the otherwise serene water body of the surrounding area would have far-reaching effects on the ecology and acquatic life of the lake, which already has excessive silting, sewage ingress and extended hyacinth growth leading to eutrophication of the lake water. Needless to say, the respondent-MCGM in the present case has induced itself to undertake the reclamation under the garb of use of 'Gabion Technology'. To show and submit that the project is being carried out to create a community access to the lake front and to enable access to the lake front for maintenance of lake, its periphery and for preservation of erosion, siltation and encroachment, is a bit hard to swallow, considering the material on record.

24. Viewed above and for the reasons stated aforesaid, these two PILs deserve to be allowed. We, therefore, pass the following order:

ORDER

1) PIL(L) Nos. 23928 of 2021 and 5111 of 2022 are allowed as under:

(a) In view of law as it stands, It is declared that the work of cycling and jogging track being carried out by respondent-MCGM inside the boundaries and its catchment area of the Powai Lake is illegal and respondent-MCGM is restrained from carrying out any reclamation or construction for the project of cycling and jogging track or for any other project inside Powai Lake, Mumbai and its catchment area.

(b) Respondent-MCGM is hereby directed to immediately remove all construction carried out in furtherance of the cycling and jogging track inside the Powai Lake and its catchment area and restore all reclaimed sites to its original position.

2) Both PILs stand disposed of accordingly.

25. Prayer for stay of the operation of the order made by Mr. Carlos, learned counsel for MCGM is considered and rejected.

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"Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

8. Having regard to this settled position of law, no importance can be attached to the subsequent clarification issued by the Government in Revenue and Forest Department, dated 3rd March, 1987. Besides this, the authority of the Revenue and Forest Department to issue the clarification is also questionable because the subject in question is dealt with by Social Welfare;, Cultural Affairs; Sports and Tourism Department of the Government of Maharashtra, as can be seen from the Government Resolution dated 10th of September, 1985. Be that, as it may; the calculations are not valid as they are not based on a rational theory. The factors, such as expenditure incurred, number of patrons etc. are not considered for calculating the actual profit. The profit earned by the exhibitor cannot be calculated on the basis of the rates for ticket sold. In fact, concession is given for screening the film because occupancy may be less than normal. As the very basis for calculation is not valid, contention of the petitioner that action of recovering the alleged excess amount of profit is not legal and valid, will have to be sustained. In the result, petition succeeds. Rule is made absolute in terms of prayer clause (b) and (c). However, in the circumstances of the case, there will be no order as to costs.

Petition allowed.

BOMBAY RENTS, HOTEL AND LODGING HOUSE RATES CONTROL ACT, SECTIONS 13(1)(b) AND 23

(Anoop V. Mohta, J.)

NAJAMA GULAB BAGWAN and others *Petitioners.*

vs.

LAXMIBAI RANGILDAS GUJAR since deceased by her heirs and LRs. VINODKUMAR RANGILDAS GUJAR and others *Respondents.*

Bombay Rents, Hotel and Lodging House Rates Control Act (57 of 1947), SS. 13(1)(b) and 23 — *Unauthorised permanent structure and/or repairs to the tenanted premises — Written permission from the landlord is a must insofar as permanent structure is concerned — In case of repairs, a fifteen days' written notice is necessary — Tenant cannot act unilaterally of his own, without the written permission for permanent construction and the written notice for any repairs, to keep the premises in good and tenantable condition.*

The basic aspect of intimation and/or notice as contemplated under the provisions of section 13(1)(b) read with section 23 of the Bombay Rent Act cannot be overlooked. There is nothing on the record to suggest or is borne out from the record, in any way, that any written notice, as contemplated under

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W. P. No. 3866 of 1991 decided on 8-8-2005. (Bombay)

R.F. 18

section 23, was issued. The case was made out only of oral request by the tenant. Section 23 read with section 13(1)(b), contemplates that the tenant, in such circumstances, before any such repairs and/or alteration or construction, must issue written notice and obtain written permission from the landlord. Except alleged oral request, not supported by any other witness, there is nothing to support the compliance of the said mandate of the provisions of law. Section 23 of the Act definitely imposes a duty on the landlord to keep the premises in good condition. He is, therefore, under an obligation to make necessary repairs. But, in case of the failure to keep the premises in good condition, there must be a notice or intimation by the tenant to point out the necessity of any such urgent repairs. If there is no such notice issued and the tenant on his own, unilaterally contract, without written intimation and permission of the landlord, such unauthorised permanent construction, in that case, definitely falls within the clutches of the mandate of section 13(1)(b) read with section 23 of the Act. This breach, therefore, raises no doubt that the landlord, in such circumstances, is entitled to claim the possession of the premises. 1989 Mah. RCJ 387 and 1995(1) Mh.L.J. 675, Dist. 1987(3) SCC 558, Ref. 1992(3) SCC 55, Rel. (Paras 10 to 14)

For petitioners : *P. K. Hushing*

For respondent Nos. 1 and 3 : *A. A. Kumbhakoni*

List of cases referred :

1. *Vimalabai Jayant Pawar vs. Laxmibai Jayawantrao Nandrekar, 1984 Bom.R.C. 363* (Para 5)
2. *Somnath Krishnaji Gangal vs. Moreshwar K. Kale and ors., 1995(1) Mh.L.J. 675* (Paras 5, 8, 11)
3. *Ramakant Ganpati Potdar and anr. vs. Madhav Ganesh Dixit, 1989 Mah. R.C.J. 387* (Paras 5, 9, 11)
4. *Shadisingh vs. Rakha, (1992) 3 SCC 55* (Paras 5, 7, 13)
5. *Surajmal vs. Indian National, AIR 1956 Cal. 187* (Para 5)
6. *Commissioner of Income-tax vs. Rana Sugar Mills, AIR 1952 Madras 689* (Para 5)
7. *Venkatlal G. Pittie vs. Bright Bros., (1987) 3 SCC 558* (Paras 5, 6, 14)
8. *Om Prakash vs. Amar Singh and anr., AIR 1987 SC 617* (Para 8)

ORAL JUDGMENT :— The petitioners are tenants. The respondents are landlords. The premises in question, as referred in the Plaint, consists of House No. 161, City Survey No. 450, situated at Ward No. 2 at Baramati District Pune, having 6 Khans area flat roofs i.e. "Malwadi" and "Kilasbandi" was let out at the rate of Rs. 250/- per month. Both the Courts, after considering the material placed on the record, including the rival contentions raised by the parties, granted the decree for possession on the ground of unauthorized permanent structure, as contemplated under section 13(1)(b) read with section 23 of the Bombay Rents, Hotel Lodging House Rates Control Act, 1947, (for short "The Bombay Rent Act"). Therefore, the present Writ Petition by the tenants.

2. Heard learned counsel Mr. P. K. Hushing for the petitioners and Mr. A. A. Kumbhakoni for the respondents. The undisputed position in the present case, as referred by the Additional District Judge, Baramati District Pune (for short "Appellate Court") is relevant to cover the rival contention of the parties (i.e. paragraph 17).

"17. The word permanent structure has not been defined under Bombay Rent Act. But the permanent or temporary character of the structure would have to be determined, having regard to the nature of the structure and the nature of the material used in the making of the structure and the manner in which the structure is erected. The test provided by the Legislation is thus an objective test and not a subjective test. The structure which fulfils the objective test by having a permanent element would not seized to be so merely because of the intention of the tenant. Whether a particular construction is a permanent structure or is merely of a temporary nature is a question which depends on the facts of each case in determining whether the structure is a permanent or not on certain things shall have required to be considered. Firstly, the nature of the structure. Secondly, the intention with which it is made. Thirdly, a citus and forthly the mode of annexation, where the purpose is that the structure should be permanently used, the structure is permanent whatever may be the nature of material applied for its construction. In the light of these tests, the present putting of 12 wooden rafters and tin sheet-roofs over the suit premises shall have to be considered. A permanent nature construction made on the roof putting rafters and placing tin sheet roofs thereon, falls within the mischief of Clause (b) of Sub-section (1) of section 13 of the Bombay Rent Act. Therefore, the trial judge has rightly held that the construction effected by the defendant-tenant comes within the purview of erection of permanent nature construction. It is not a temporary nature or a tenantable repairs as urged by the learned Advocate for appellant in this regard. Admittedly, the appellant-defendant have not obtained any permission in writing from the plaintiff land-lady before its construction. It is pertinent to note that the suit premises let out to the mother of defendant was having a flat roof Malwadi and Kilasbandi. This fact has not been denied on behalf of the defendant-tenant. It is also undisputed that the defendants have put 12 wooden rafters and placed 18 tin sheet roofs in place of that roof or Kilasbandi. Therefore, it is clear that the defendant-appellant have made a permanent alteration in the suit premises. The removing of flat roof or Kilasbandi and putting wooden rafters and tin sheet roofs over the suit premises which materially or substantially changed the existing structure of the suit premises which comes within the mischief of section 13(1)(b) of the Bombay Rent Act."

3. The Scheme of the Bombay Rent Act in regard to section 13(1)(b) read with section 23 is necessary to keep in mind, while deciding the merits of the matter. Section 13(1)(b) is reproduced with the explanation, as also section 23 as follows :

"13(1)(b) that the tenant has, without the landlord's consent given in writing, erected on the premises any permanent structure;

[Explanation, — For the purposes of this clause, the expression "permanent structure" does not include the carrying out of any work, with the permission, wherever necessary, of the local authority, for providing a wooden partition, standing cooking platform in kitchen,

door, lattice work or opening of a window necessary for ventilation, a false ceiling, installation of air-conditioner, an exhaust outlet or a smoke chimney; or];"

23. *Landlord's duty to keep premises in good repair.* — (1) Notwithstanding anything contained in any law for the time being in force and in the absence of an agreement to the contrary by the tenant, every landlord shall be bound to keep the premises in good and tenantable repair."

(2) If the landlord neglects to make any repairs, which he is bound to make under sub-section (1), within a reasonable time after a notice (of not less than fifteen days) is served upon him by post or in any other manner by a tenant or jointly by tenants interested in such repairs, such tenant or tenants, may themselves make the same and deduct the expenses of such repairs from the rent or otherwise recover them from the landlord;

Provided that where the repairs are jointly made by the tenants the amount to be; deducted or recovered by each tenant shall bear the same; proportion as the rent payable by him in respect of his premises bears to the total amount of these expenses incurred for such repairs (together with simple interest at the rate of fifteen per cent, per annum of such amount);

Provided further that the amount so deducted or recoverable in any year shall not exceed (one-fourth) of the rent payable by the tenant for that year.

(3) For the purposes of calculating the expenses of the repairs made under sub-section (2), the accounts together with the vouchers maintained by the tenants shall be conclusive evidence of such expenditure and shall be binding on the landlord."

Therefore, written permission from the landlord is a must insofar as permanent structure is concerned and so far as repairs, a fifteen days' written notice is necessary. In both these cases, tenant cannot act unilaterally of his own, without the written permission for permanent construction and the written notice for any repairs, to keep the premises in good and tenantable condition.

4. There are no definition of the words "permanent structure" and "repairs" or "reconstruction" under the Bombay Rent Act.

5. The learned counsel appearing for the respondent has relied on a catena of judgments in support of his submission, as well as, in support of the reasoning given by the Courts below. Those decisions are as follows. *Vimalabai Jayant Pawar vs. Laxmibai Jayawantrao Nandrekar, 1984 Bom.R.C. 363; Somnath Krishnaji Gangal vs. Moreshwar K. Kale and ors., 1995(1) Mh.L.J. 675, Ramakant Ganpati Potdar and anr. vs. Madhav Ganesh Dixit, 1989 Mah. R.C.J. 387, Shadisingh vs. Rakha, (1992) 3 SCC 55, Surajmal vs. Indian National, AIR 1956 Cal. 187, Commissioner of Income-tax vs. Rana Sugar Mills, AIR 1952 Madras 689, Venkatlal G. Pittie vs. Bright Bros., (1987) 3 SCC 558.*

6. The Apex Court in *Venkatlal* (supra), while considering the Bombay Rent Act and specially section 13(1)(b) read with section 108(p) of the Transfer of Property Act has observed as under :

"The High Court observed that, in judging whether the structures were permanent or not, the following factors should be taken into consideration referring to an unreported decision of Malvankar, J. in Special Civil Application No. 121 of 1968. These were (1) intention of the party who put up the structures; (2) this intention was to be gathered from the mode and degree of annexation; (3) if the structure cannot be removed without doing irreparable damage to the demised premises then that would be certainly one the circumstances to be considered while deciding the question of intention. Likewise, dimensions of the structure and (4) its removability had to be taken into consideration. But these were not the sole tests. (5) The purpose of erecting the structure is another relevant factor. (6) The nature of the material used for the structure and (7) lastly the durability of the structure. These were the broad tests. The High Court applied these tests. So had the trial court as well as the appellate Bench of Court of Small Causes."

7. The Apex Court, while considering the provisions of East Punjab Urban Rent Restriction Act, 1949, but related to the issue in question of "reconstruction" and "repairs" observed in *Shadisingh* (supra) as under :

"There is a distinction between effecting repairs and in its guise to make structural alteration or to restructure the building. The tenant cannot effect structural alteration or reconstruct the building. It is the right of the landlord alone to exclusively have it done, unless of course, the landlord having had the tenant evicted from the building for that purpose and demolished the building failed to reconstruct and redeliver possession thereof to the tenant. *In a given case if the tenant acts unilaterally and effects structural alterations or reconstruct the building, it itself may be a ground for eviction under the appropriate provision of the statute."* (emphasis supplied)

8. The Bombay High Court in *Somnath, 1995 (1) Mh.L.J. 675*, after considering the Scheme in question of the Bombay Rent Act and also after considering *Om Prakash vs. Amar Singh and anr., AIR 1987 SC 617* and other various judgments of the Bombay High Court concluded as under :

"In view of the decision of the Hon'ble Supreme Court and of this Court, my conclusions are as under :

(i) In deciding the question as to what is a "permanent structure", it is necessary to consider the mode and degree of annexation as also the intention of the party putting up the structure. The creation of such a work or addition thereof in order to amount to a permanent structure must cause and bring about a substantial improvement and change in the nature and form of accommodation.

(ii) If what has been done is by way of minor repairs for the better enjoyment and use of the premises, it cannot be regarded as a permanent structure. Similarly, if the object and purpose of annexation was only to better the mode of enjoyment of the demised premises as in the case of construction of the kitchen platform, it does not amount to a permanent structure within the meaning of section 13(1)(b) of the said Rent Act.

(iii) The essential element which needs consideration is as to whether the construction is substantial in nature and whether it alters the form, front and structure of the accommodation.

(iv) If what the tenant *does is large scale renovation like replacement of the entire roof, covering it with marble tiles, without obtaining permission of the landlord, it may amount to permanent structure within the meaning of section 13(1)(b) of the Rent Act.* (emphasis supplied)

(v) Similarly, if the tenant constructs a bathroom in the gallery which puts additional burden in the gallery which is harmful to the structure of the building, it would amount to a permanent structure."

9. Another aspect of the word "repairs" and "reconstruction" has been considered by the Bombay High Court in *Ramakant* (supra) and as relied by both the parties, is reproduced as under :

"7. The expression "repairs" and "reconstruction" are not defined in the Act. Therefore, in order to construe provisions of the Bombay Rent Act where the same words occur, one has to take recourse to the ordinary dictionary meaning of such words, and to find out what is the connotation which is in conformity and in harmony with the Act. The meaning of such words which further the purpose of the Act and its scope is the meaning that has to be adopted. The Act intends to give protection to tenants from their eviction by the landlords. Therefore, eviction of the tenant is permissible only when the grounds laid down in the Act itself are satisfied.

8. "Repair" means, according to the New Webster's Dictionary, to restore to a sound or good state after decay, injury, dilapidation, or partial destruction; to make amends for, as for an injury, by an equivalent; to give indemnity for. It also means restoration to a sound or good state of a part which requires reparation. The word "repair", therefore, connotes in common parlance an idea of mending or removing any damage or danger of injury to a particular thing.

By implication, such word indicates that for repairs, the thing should still has existence. If the thing cease to exist, there will be no question of mending or correcting it. In turn, the meaning of "reconstruction" is given in the same dictionary as the act of constructing again or rebuilding. This words, therefore, implies that *something that had existence has disappeared and is completely renewed.*"

10. In the present case, if we take note of the above legal position as a foundation for the purpose of deciding the issue following the undisputed position of facts, it further supports the reasoning given by the Court below. Even though, as contended that the permanent construction or alteration in question was only in the nature of repair and as the Commissioner's Report further supports the same and as the landlord failed to repair the roof in question in spite of oral request, the petitioner had no choice but to get it repaired without the written permission or consent of the landlord, the basic aspect of intimation and/or notice as contemplated under the provisions of section 13(1)(b) read with section 23 cannot be overlooked. Admittedly, there is nothing on the record to suggest or is borne out from the record, in any way, that any written notice, as contemplated under section 23, was issued in the present case. The case was

made out only of oral request by the tenant. As rightly pointed out by the learned counsel appearing for the respondents, section 23 read with section 13(1)(b), contemplates that the tenant, in such circumstances, before any such repairs and/or alteration or construction, must issue written notice and obtain written permission from the landlord. In the case in hand, except alleged oral request, not supported by any other witness, there is nothing to support the compliance of the said mandate of the provisions of law.

11. Admittedly there is no case made out or borne out even from the record that the repairs were so urgent that it was not possible for the petitioners-tenants even to wait for some period of time. It is difficult to accept the case of the petitioners-tenants that they repaired the part of the premises by putting the roof after the notice or intimation, as referred above. Therefore, it remains unrebutted that the tenant, without the written permission from the landlord and without giving any intimation and/or written notice as contemplated under the Act, made the permanent structure. In the present case, if we take the factual aspect, it is very clear that it was a permanent replacement of roof even though of 6 Khans as sought to be contended. It is not the case of just repairing as contemplated and as elaborated by the Courts as in *Ramakant* and *Somnath* (supra) reproduced above. If it is not repairing then the structure in question as reproduced and noted by the Commissioner and as observed by the Courts below rightly amounts to unauthorised permanent structure as contemplated under the Bombay Rent Act. In the present case, admittedly, only part of the premises were got repaired i.e. 3 Khans out of 6 Khans which were let out to the tenants. The contention, therefore, that it was part-repairing of the roof also nowhere supports the provisions of the Scheme of the Act. In the present case, the petitioner-tenant has "reconstructed" the roof. It was not the simple "repairing" as elaborated in *Ramakant* (supra).

12. The explanation to section 13(1)(b) further clarifies the meaning of the expression "permanent structure" as contemplated under the Bombay Rent Act. If ordinary definition of "permanent structure" is not available, then the intention of the legislature must be respected as reflected in section 13(1)(b) and specially the explanation. There is nothing which further supports the case of the petitioners even from the explanation that the tenants, in such circumstances, are entitled and/or have a right to repair the premises in question. The petitioner has not made out any case of exception as contemplated under section 13(1)(b) to Explanation to the expression "permanent structure". The construction made by the tenant falls within the meaning of "permanent structure" and/or "reconstruction" without written permission. It is not a case of minor repairs.

13. Section 23 of the Act definitely imposes a duty on the landlord to keep the premises in good condition. He is, therefore, under an obligation to make necessary repairs. But, in case of the failure to keep the premises in good condition, there must be a notice or intimation by the tenant to point out the necessity of any such urgent repairs. If there is no such notice issued and the tenant on his own, unilaterally contract, without written intimation and permission of the landlord, such unauthorised permanent construction, in that case, definitely falls within the clutches of the mandate of section 13(1)(b) read with section 23 of the Act. This breach, therefore, raises no doubt that the

landlord, in such circumstances, is entitled to claim the possession of the premises [*Shadisingh* (supra)]. As rightly pointed out and as observed by the Courts below that the tenant had no right to get the premises altered or reconstructed in such fashion. There is no such provision available under the Bombay Rent Act which compels the landlord to reconstruct or rebuild in each and every circumstances, except to keep the premises in good and tenantable repair. The tenant cannot unauthorisedly make permanent construction without written permission from the landlord.

14. The learned counsel appearing for the respondents has relied on *Venkatlal* (supra) to justify the reasoning given by the Courts below. The said case also was under the Bombay Rent Act. The Apex Court has observed as follows :

> "All the relevant factors had been borne in mind by the learned trial Judge as well as appellate Bench of the Court of Small Causes. Therefore, simply because another view is possible and on that view a different view is taken, will be interfering under jurisdiction under Article 227 of the Constitution which is unwarranted."

15. In this background, considering the reasoning given by the Courts below read with the provisions of law and specially the Scheme of the Bombay Rent Act, I am of the view that there is no case made out by the petitioners to interfere with the concurrent finding given by the Courts below.

16. Resultantly, the Writ Petition is dismissed. Rule is discharged. Interim stay vacated.

Writ petition dismissed.

MAHARASHTRA CO-OPERATIVE SOCIETIES RULES, RULE 58-A AND MAHARASHTRA CO-OPERATIVE SOCIETIES ACT, SECTIONS 73(1AB) AND 78

(S. A. Bobde, J.)

A. SANGAMESHWARAM and another — *Petitioners.*

vs.

DEPUTY REGISTRAR OF CO-OPERATIVE SOCIETIES, MUMBAI and others — *Respondents.*

Maharashtra Co-operative Societies Rules, R. 58-A and Maharashtra Co-operative Societies Act (24 of 1961), SS. 73(1AB) and 78 — *Elected member of Managing Committee has to execute bond within 15 days of his assuming the office — Member who fails to execute such bond within specified time, is deemed to have vacated office as a member of the Committee — Disqualification occurs upon failure to execute such bond.* (Para 7)

For petitioners : *N. Srivastava*

For respondent Nos. 1 to 4 : *S. K. Chinchalikar, Asstt. Government Pleader*

For respondent Nos. 5 and 6 : *H. J. Thakkar with B. Mohidin*

ORAL ORDER :— Rule, returnable forthwith. Mr. Chinchalikar, learned Asstt. Govt. Pleader, for the respondent Nos. 1 to 4 and Mr. Thakkar, learned counsel for the respondent Nos. 5 and 6, appear and waive service of rule.

W. P. No. 4031 of 2005 decided on 19-8-2005. (Bombay)

2021 SCC OnLine NGT 1024

In the National Green Tribunal[†]
(Through Video Conference)

(BEFORE K. RAMAKRISHNAN, MEMBER (JUDICIAL) AND SAIBAL DASGUPTA, MEMBER (EXPERT))

Jaya Mathachan … Applicant/Appellant(s);

Versus

Ministry of Environment, Forests & Climate Change, Represented by its Secretary … Respondent(s).

I.A. No. 17 of 2019 (SZ) in Appeal No. 31 of 2020 (SZ) Appeal Dy. No. 59 of 2019 (SZ)

Decided on April 9, 2021

Advocates who appeared in this case :

For Applicant(s) : Mr. Shibu Varghese.

For Respondent(s) : Mrs. M. Sumathi for R1.

Mr. E.K. Kumaresan for R2 to R4.

Mr. Baby Kuriakose for R5.

ORDER

1. This is an interlocutory application filed by the applicant/appellant to condone the delay of ***32 days*** in filing the appeal.

2. It is averred in the delay condonation application that the appeal was filed challenging the Environmental Clearance (EC) dated 07.12.2018 issued by the 2nd respondent in favour of the 5th respondent. The impugned Environmental Clearance (EC) dated 07.12.2018 was published in the official website on 26.03.2019 and the appeal ought to have been filed on or before 25.04.2019 as per the Section 16 of the National Green Tribunal Act, 2010.

3. It is also averred in the application that the appeal was filed only on 27.05.2019 and the delay was not wilful. When they got knowledge about the issuance of the Environmental Clearance (EC), they approached the lawyer at New Delhi and after making necessary research with required documents, they filed this appeal before the Principal Bench of National Green Tribunal, New Delhi, but the same has been returned with direction to file the same before the Southern Zone Bench at Chennai, as it comes within the jurisdiction of Southern Zone. Immediately, the same was filed before this Bench on 27.05.2019 and that was the reason for the delay occurred.

4. The 5th respondent filed counter affidavit to the delay condonation application stating that the appeal is not maintainable, as it was filed beyond 90 days. The Environmental Clearance (EC) granted on 07.12.2018 and the publication was made on 14.12.20218 in the local newspapers and that should be taken as date of knowledge as far as the appellant is concerned. Further, she had no case that she was not aware of the issuance of the Environmental Clearance (EC), as she is the sister-in-law of the 5th respondent and the 5th respondent had already started their activities during the month of December itself. So, it cannot be said that the appellant was not aware of the issuance of the Environmental Clearance (EC) in favour of the 5th respondent and there was no sufficient cause provided for condoning the delay. So, they prayed for dismissal of the application.

5. Though the 1st respondent has filed counter in the delay condonation application, they have not mentioned anything about the delay. But they only explained the circumstances under which the District Environmental Impact Assessment Authority

(DEIAA) had granted the Environmental Clearance (EC) and they also mentioned about the partial setting aside of the EIA Notification, 2016 by constituting District Environmental Impact Assessment Authority (DEIAA) for consideration of certain activities for issuing Environmental Clearance (EC) as per order in O.A. No. 186 of 2016 titled as *Satendra Pandey* v. *Ministry of Environment, Forests & Climate Change (MoEF&CC)* dated, 30.09.2018 and it is on that basis, the above appeal has been filed challenging the jurisdiction capacity of the District Environmental Impact Assessment Authority (DEIAA) in granting the Environmental Clearance (EC).

6. The 3rd respondent also filed counter affidavit without mentioning anything about the condonation of delay, but they have only justified the issuance of Environmental Clearance (EC) as per the existing laws. They also mentioned that certain Writ Petitions filed before the Hon'ble High Court of Kerala by some persons against considering the Environmental Clearance (EC), as the project proponent had made certain false declaration regarding the existence of water bodies etc. and the Hon'ble High Court of Kerala directed the 5th respondent to approach the competent authority under the Conservation Act for permission under Section 40(2) of the said Act and then approach the District Environmental Impact Assessment Authority (DEIAA) with proper application and only after considering the directions issued by the Hon'ble High Court, the District Environmental Impact Assessment Authority (DEIAA) has granted the Environmental Clearance (EC). According to them, the appeal deserves no merit.

7. The 4th respondent also filed counter affidavit more or less adopting the contentions of the 3rd respondent and also justifying the issuance of the Environmental Clearance (EC) by the District Environmental Impact Assessment Authority (DEIAA) being the Chairman of DEIAA.

8. Heard Mr. Shibu Varghese counsel appearing for the applicant/appellant, Mrs. M. Sumathi counsel appearing for 1st respondent, Mr. E.K. Kumaresan counsel appearing for respondents 2 to 4 and Mr. Baby Kuriakose counsel appearing for 5th respondent.

9. The learned counsel appearing for the applicant/appellant submitted that the delay has been properly explained and there was no undue delay and in fact, they have filed the appeal before the Principal Bench of National Green Tribunal, New Delhi on 26.04.2019. But it was returned with a direction to file the same before this Bench and thereafter, it was filed before this Bench and that was the reason for the delay.

10. On the other hand, the learned counsel appearing for the 5th respondent vehemently opposed the application on the ground that paper publication was effected much earlier. So, that will give the date of knowledge of issuance of Environmental Clearance (EC). Further, she is not a stranger but a close relative to the 5th respondent and she was well aware of the activities of the 5th respondent and also the conduct of the quarry. So, the delay has not been properly explained and the learned counsel had relied on the decisions reported in *Nature Club of Rajasthan (NGO)* v. *Union of India*, 2018 SCC OnLine NGT 1697 in Appeal No. 58 of 2018 (M.A. Nos. 628 & 629 of 2018) dated 22.11.2018 of National Green Tribunal, Principal Bench, *Paryavaran Bachav Samiti* v. *Ultratech Cement Limited* in M.A. No. 702/2018 in Appeal No. 68/2018 reported in 2019 SCC OnLine NGT 955 dated 13.02.2019, *Sunil Kumar Samanta* v. *West Bengal Pollution Control Board* in M.A. No. 573/2013 in Appeal No. 67/2013 reported in 2014 SCC OnLine NGT 5771 dated 24.07.2014, *The Commissioner of Sales Tax, U.P., Lucknow* v. *Parson Tools and Plants, Kanpur*, (1975) 4 SCC 22, *Chhattisgarh State Electricity Board* v. *Central Electricity Regulatory Commission*, (2010) 5 SCC 23, *Union of India* v. *Popular Construction Company*, (2001) 8 SCC 470 and *P.K. Ramachandran* v. *State of Kerala*, (1997) 7 SCC 556 in support of his case. Other counsel appearing for other respondents also supported the submissions of the counsel for 5th respondent.

11. It is an admitted fact that the Environmental Clearance (EC) in this case was

granted on 07.12.2018 and admittedly, it was uploaded in the official portal of the issuing authority only on 26.03.2019. The project proponent had published the fact regarding the issuance of Environmental Clearance (EC) on 14.12.2018 in the local newspapers.

12. It is also seen from the file that the appeal was originally filed before the Principal Bench of National Green Tribunal, New Delhi on 26.04.2019 and it was seen filed before this Bench on 27.05.2019 and thereafter, it was returned for curing defects and ultimately, represented on 07.09.2019 and lastly, it was represented on 10.07.2019 and thereafter, it was numbered by this Bench.

13. It was alleged in the application that she will have to consult a lawyer in New Delhi and collected certain materials and thereafter, filed the appeal before the Principal Bench and it was returned as the appeal will have to be filed before the Southern Zone Bench and accordingly, it was filed before this Bench.

14. There is no dispute regarding the dictum laid down in the decisions relied on by the counsel appearing for the 5th respondent regarding the discretion to be exercised by the Court in the matter of condoning the delay. In all these decisions, discretion has been given to the Court to exercise the same in a judicious manner and if the Court is satisfied that the delay was not deliberate or wilful, but reasonable, then Court can always incline to condone the delay.

15. It is also settled law that under Section 16 of the National Green Tribunal Act, 2010, the date of knowledge is not the date from which the limitation has to be reckoned for filing the appeal, but it is from the date of communication. The question regarding what is communication has been considered by the Principal Bench of National Green Tribunal in several matters and ultimately held that, it is the date on which it was uploaded by the issuing authority or by the project proponent and not only merely uploading, but it must be available uninterruptedly for downloading the same to enable the parties to proceed against the same as the date to be reckoned as the date of communication as the starting point of limitation.

16. So, the date will have to be reckoned not from the date of issuance of the Environmental Clearance (EC) namely, 07.12.2018 or on the date of publication made by the project proponent namely, 14.12.2018 but only from the date on which it was uploaded and available uninterruptedly for downloading for the parties who want to challenge the order.

17. Further, in this case, it has been seen that the appeal was filed before the Principal Bench of National Green Tribunal on 26.04.2019 i.e., 1 (one) day after the last date for filing the appeal. It is also clear from the endorsement that it has been returned to be presented before this Bench and it was represented before this Tribunal originally on 27.05.2019 and thereafter, it was returned for some defects and ultimately, after curing the defect on several occasions, it was represented on 10.07.2019 and thereafter, it was numbered. So, the delay in filing the appeal can be taken only as 32 days as contended by the counsel appearing for the applicant/appellant.

18. Further, in the recent decision in *Sridevi Datla* v. *Union of India* which was taken up by the appellant in that case against the order passed by the Tribunal in ***M.A. No. 231 of 2017 in Appeal No. 18/2020 as Civil Appeal No. 3136 of 2020 dated 31.07.2020*** holding that the appeal was filed beyond 90 days, as it was filed on the 91st day and also after holding that the delay of even 90 days has not been properly explained, but the Hon'ble Apex Court had observed that this Tribunal, while considering the delay condonation, should not have taken such a pedantic view that each day delay had not been properly explained, especially when the substantial environmental issues have been raised and set aside the order passed by this Tribunal and condoned the delay in filing the appeal and sent back the matter to this Tribunal

to consider the appeal on merit.

19. So, if the principle laid down in the above decision has been followed, the Court must be liberal in considering the condonable period of delay in filing the appeal and an opportunity must be given to the parties to meet the case on merit, instead of dismissing the appeal on technical ground of limitation.

20. In this case, the applicant/appellant had challenged the jurisdiction of District Environmental Impact Assessment Authority (DEIAA) in granting Environmental Clearance (EC), as it was granted after the Principal Bench had set aside the EIA Notification dated 15.01.2016 partially in *Satendra Pandey* v. *Ministry of Environment, Forests & Climate Change (MoEF&CC)*

21. So under such circumstances, since such a serious jurisdictional issue has been raised, this Tribunal feel that it is not proper to deny the opportunity for the appellant to meet the case on merit. So, this Tribunal is convinced that reasons stated by the applicant/appellant are sufficient and convincing and the same has to be condoned for giving an opportunity for the appellant to meet the case on merit.

22. So, this interlocutory application (I.A. No. 17/2019) is allowed and the delay of 32 days in filing the appeal is condoned. **I.A. No. 17 of 2019 (SZ) is disposed of accordingly**.

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† Southern Zone, Chennai

2012 SCC OnLine NGT 80

National Green Tribunal New Delhi
(Principal Bench)

(BEFORE A.S. NAIDU, A.C. AND R. NAGENDRAN, E.M.)

1. Dyaneshwar Vishnu Shedge R/o Mugaon, Taluka Mulshi District Pune, Maharashtra … Appellant(s)/Applicant(s)/Petitioner;

Versus

1. Union of India Ministry of Environment & Forests Through the Secretary Paryavaran Bhavan, CGO Complex Lodhi Road, New Delhi-110003
2. Maharashtra Pollution Control Board Through its Member Secretary Kalpataru Point, 3rd and 4th Floor Opp. Cine Planet, Sion Circle Mumbai-400022
3. M/s Lavasa Corporation Through the Chairman Hincon House, 247 Park, LBS Marg Vikhroli (West) Mumbai-400083 … Respondent(s).

Misc. Application No. 19 of 2012, Arising out of Appeal No. 9 of 2012
Decided on May 24, 2012

Counsel for Appellant:
Mr. Ritwick Dutta
Mr. Rahul Choudhary
Ms. Parul Gupta

Counsel for Respondents:
Ms. Neelam Rathore
Mr. Shekhar Naphde, Senior Advocate
Mr. Gaurav Joshi
Mr. Rishi Agrawal
Ms. Megha Mehta Agrawal

ORDER

A.S. NAIDU, (Acting Chairperson) PROF. DR. R. NAGENDRAN, (Expert Member):—

JUDGMENT BY THE BENCH

1. The Environment Clearance (EC) dated 9th November, 2012, issued by the Ministry of Environment & Forests (MoEF) to Lavasa Corporation Ltd., Respondent No. 3 for the development of hill station, township at Village Munshi appertaining to Velhi Talukas, District Pune, Maharashtra is sought to be assailed in Appeal No. 9/2012.

2. In consonance with Section 16 of the National Green Tribunal (NGT) Act, 2010 any person aggrieved by an order granting EC to any project, may within 30 days from the date on which the order or decision is communicated to him prefer an appeal before this Tribunal. Proviso to the said Section further stipulates that the Tribunal may, if it is satisfied that the Appellant was prevented by sufficient cause from filing the Appeal within the said period i.e., thirty days, allow it to be filed within a further period not exceeding sixty days.

In the case in hand, the Appeal was filed on 6th February, 2012 assailing the order granting EC dated 19th November, 2011. Thus the same was filed after lapse of 30 days but then within ninety days. The Appellant being conscious of the said fact filed a petition for condonation of delay which has been registered as Misc. Case and is the

subject matter of the present order.

3. The factual matrix of the case lies in a narrow compass and is stated herein below:—

The Appellant claims to be a project affected villager. According to him, several substantial questions relating to environment are involved and if the project comes up, the right of the Appellant as well as other poor villagers living in the vicinity shall be affected under Article 21 of the Constitution, in as much as they will be deprived of clean environment and healthy life. The Appeal it is submitted also involves issues related to the failure on the part of the Respondents to fulfil fundamental duties guaranteed under Article 48 A of the Constitution, which mandates the Authorities to protect and improve the environment. The action of the MoEF granting EC to the project it is alleged is not only arbitrary but also in violation of the principles enshrined under Article 14 of the Constitution of India. Referring to Article 51 A (g) of the Constitution it is stated that said Article casts a fundamental duty upon all the citizens of the country to protect and improve the environment and hence the Appeal has been filed. There are also several other allegations with regard to the faulty procedure adopted as well as de-relegation of Statutory provisions by the MoEF which according to the appellant goes to the root of the decision making process, consequently the EC granted suffers from the vice of non-consideration of relevant facts and law and cannot be sustained.

4. The delay in presenting the appeal has been explained in *extenso* in paragraph 2 to 5 of the Petition filed for condonation of delay. According to the Appellant, the delay of 59 days in filing the Appeal was unintentional. The delay had occurred as the project affected persons were not aware of the impugned order and its impact. After coming to know about it, they assembled and took a decision with regard to the further course of action for setting aside the order granting EC. It also took some time to the inhabitants, who belong to the lower *strata* of the society to understand the real impact of the order as the same was based on certain technical and environmental issues.

5. Further elucidating the reasons for delay it is stated that appellant came to know about the impugned order dated 9th November, 2011 about a week after i.e., on 15th November, 2011. But then, he was not able to procure the copy of the order. After deliberation among the villagers and project affected persons it was decided to obtain a copy of the impugned order taking help of a Learned Advocate, accordingly a Learned Counsel at Pune was contacted. As per the advice of the Learned Advocate, the appellant was able to download a copy of the EC dated 9th November, 2011, from the website of the MoEF only on 30th November, 2011.

6. After obtaining the copy, under the impression that Pune Zonal Bench of NGT has started functioning, the Appellant requested the Learned Counsel to prepare and file the Appeal. Learned Counsel tried to obtain instructions with regard to the facilities for filing Appeal at Pune, in view of the fact the NGT had held a Circuit Bench at Pune, but then it was found that filing of the cases were only possible at Delhi. Thereafter, on 21st of December, 2011, after arranging funds and other documents the appellant came to Delhi and consulted some Advocates who were not willing to file the Appeal as the Tribunal was closed. At last, on the last week of December, 2011, the appellant was able to finalize the draft through a Learned Counsel and presented the Appeal on 6th February, 2012, in the Principal Bench of NGT at New Delhi.

7. Under Solemn affirmation the Petitioner has narrated the facts and given the dates explaining the delay and prayed to condone the delay of 59 days in filing the Appeal as there was no deliberate latches on the part of the appellant who was sacrosanctly and diligently pursuing the *lis*, all along to best of his ability.

8. After receiving notice, the Respondent No. 3 has filed a detailed reply traversing

each and every averment made in the petition for condonation of delay. According to Respondent 3 the Appellant has not come to the court with clean hands, being a close associate of Ms. Sunita SR who had challenged the project before the High Court, The Appellant was aware about the date when the EC was granted to the project and the delay being deliberate, requires no consideration. Further, it is averred that the grant of EC to Respondent No. 3 by order dated 9th November, 2011, received wide publicity in the media and was published in a number of newspapers at Pune and thus the averment that the Appellant came to know about the impugned order only on 15th November, 2011 is not correct. Further, it is stated that the impugned order was uploaded on the website of the MoEF on 9th November, 2011 itself and nothing prevented the Appellant from downloading the same. The Appellant is an associate of several social activists, who were aware of the order and made statements in the media on the day when the order was passed i.e., 9th November, 2011 and soon thereafter. In short, according to Respondent No. 3 the Appellant has suppressed vital facts and came up with a concocted false story and is thus not entitled to any discretionary relief. Number of documents were also enclosed to the reply to substantiate the stand taken by Respondent No. 3.

9. To make the long story short, according to Respondent No. 3 the Appellant was well aware of the project and having sold lands belonging to him for the purpose of the project, is estopped from raising an objection to the EC granted and oppose the project. The *locus standi* of the appellant to file the Appeal as well as maintainability of the Appeal is also strenuously contended before this Tribunal.

However, the only question which needs to be determined at this stage is with regard to condoning the delay in presenting the Appeal. The question of maintainability of the Appeal as well as *locus standi* of the appellant to prefer this Appeal, involve intricate questions of facts and law which can be dealt with only in course of hearing of the Appeal. Therefore, we refrain ourselves from entering into the arena of controversy with regard to the maintainability of the Appeal on merits and or *locus standi* of the appellant to file this Appeal at this stage.

10. Admittedly, the Appeal has not been filed within thirty days of the impugned order. But then it has been filed within ninety days, thus, in consonance with the provision of Section 16 of the NGT Act, this Tribunal, if it is satisfied that the Appellant was prevented by sufficient cause from filing the Appeal, entertain the same, if the same is filed within 60 (Sixty) days after 30 (Thirty) days from the date of the order sought to be impugned.

11. As far as the explanation given by the Appellant that he approached and discussed with the local villagers and other project affected persons sought their approval and consent and thereafter travelled to Pune consulted an Advocate and on his advice downloaded the impugned order from the website of the MoEF and then proceeded to Delhi, contacted the Advocate and got the Appeal filed. A litigant is legitimately entitled to put forth in a proceeding like this and plead and explain the delay.

12. Respondent No. 3 repudiating the stand taken by the Appellant tried to convince this Tribunal that the Appellant took active part in the movement initiated to stop project implementation. Since long he had contacts with the social activists who are opposing the project, thus the plea of ignorance taken by the Appellant is only an afterthought and is neither *bonafide* nor justified.

13. On consideration of the submissions advanced *interse* by the parties, we feel in a case like the present one, where the Environmental impact of the project on local population in terms of their environmental harm, has to be assessed, the approach of this Tribunal, especially set up for the said purpose, should be liberal and not "hyper-technical".

14. The nature of the disputes, as would be evident, from the aims and objective of the NGT Act, this Tribunal is expected to adjudicate upon, is not really a lis between the litigant parties and or adversary litigation. The jurisdiction of this Tribunal is necessarily a wider one whereby the impact of the decision granting EC *vis-a-vis* the effect thereof on the local community or environment in general and ecology has to be considered. The Tribunal is expected to adopt a broad and liberal approach rather than narrow and cribbed one.

15. In view of the discussions made above, the delay being less than ninety days, this Tribunal after appreciating the pleadings and documents referred is satisfied that there was sufficient reasons and that deliberate latches cannot be attributed to the Appellant. The law as on date mandates that the EC granted under the Environment (Protection) Act, 1986 can only be challenged before this Tribunal, we condone the delay and allow the petition for condonation of delay.

Parties to bear their own cost.

List the Appeal for admission on 24th July, 2012. Respondents are directed to file their Replies to the Appeal in the meanwhile.

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prescribed by Section 19-A. The question of payment, remittance or deposit of rent by tenant in one of the modes provided by Section 19-A could have arisen if there was no suit or appeal pending between the landlord and the tenant and therein the tenant was not required to deposit, or could not have made deposit of, rent in court. The tenant, in the case before us, was not in default for the period 5-11-1983 to 28-7-1984 and no cause of action arose to the landlord for filing the second suit for eviction. The suit was entirely misconceived. The first appellate court deciding appeal in the second suit was, therefore, right in reversing the decree of the trial court and directing the second suit to be dismissed. The High Court has clearly erred in law in upholding availability of ground under Section 13(1)(*a*) of the Act to the landlord in the second suit.

9. The appeal is, therefore, allowed. The judgment and decree of the High Court is set aside. The suit for eviction filed by the landlord is directed to be dismissed. Costs to be borne as incurred.

10. Before parting, we would like to sound a note of caution. During the course of hearing a decision by the Rajasthan High Court in *Kamruddin* v. *Wahid Ali*[1] was brought to our notice wherein the view taken by the High Court is that compliance with Section 13 of the Act need not be made during the pendency of appeal. We have taken a view to the contrary. To obviate the unforeseen difficulty which the tenants are likely to face in those matters which may be pending in appeal we would like to clarify that before striking out the defence under sub-section (5) or denying the benefit of relief against eviction under sub-section (6), for failure to comply with sub-section (4), of Section 13 of the Act during the pendency of appeal, the appellate court shall afford the tenant a reasonable opportunity for compliance, on this decision coming to or being brought to its notice. However, this judgment shall not be a ground for reopening any matter which stands already concluded.

(2002) 3 Supreme Court Cases 195

(BEFORE M.B. SHAH AND B.N. AGRAWAL, JJ.)

RAM NATH SAO ALIAS RAM NATH SAHU AND OTHERS . . Appellants;

Versus

GOBARDHAN SAO AND OTHERS . . Respondents.

Civil Appeal No. 1704 of 2002†, decided on February 27, 2002

Civil Procedure Code, 1908 — Or. 22 Rr. 9(2) & (3) — "Sufficient cause" for setting aside abatement of suit and condonation of delay in taking steps for substitution of heirs and LRs — Liberal interpretation and balance between rights of parties, necessity of — Held, expression "sufficient cause" should be given a liberal interpretation to ensure that substantial justice is

1 (1987) 1 Raj LR 290

† From the Judgment and Order dated 11-1-2001 of the Jharkhand High Court in Ranchi, in LPA No. 533 of 1998 (R)

done, but only so long as negligence, inaction or lack of bona fides cannot be imputed to the party concerned — Whether or not sufficient cause has been furnished can be decided only on the facts of a particular case — Straitjacket formula not possible — Acceptance of explanation given should be the rule and refusal, the exception — However, at the same time, court must bear in mind that delay would have caused a valuable right to accrue to the other party and that such right should not be defeated by condonation of delay in a routine manner — Appellant-defendants were unlettered villagers who only learnt of the need for filing substitution applications (following deaths of Appellants 2, 3, 22 and 41) from their lawyer, whom they had gone to see as their first appeal was due for hearing — They then took immediate necessary action — Respondents did not make any allegations regarding mala fides against them — Applications for substitution were late by 130 days, 3 years and 5 years respectively — Held on facts, Division Bench of High Court erred in dismissing LPA of appellants and upholding order of Single Judge disposing of appellants' first appeal as abated and rejecting prayers for condonation of delay — Limitation Act, 1963, S. 5 — "Sufficient cause" — Abatement of appeal

Allowing the appeal and remitting the first appeal to the Single Judge of the High Court for decision on merits, the Supreme Court

Held :

The expression "sufficient cause" within the meaning of Section 5 of the Limitation Act, 1963 or Order 22 Rule 9 CPC or any other similar provision should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fides is imputable to a party. In a particular case whether explanation furnished would constitute "sufficient cause" or not will be dependent upon facts of that case. There cannot be a straitjacket formula for accepting or rejecting explanation furnished for the delay caused in taking steps. However, courts should not proceed with the tendency of finding fault with the cause shown and reject the petition by a slipshod order in over-jubilation of disposal drive. Acceptance of explanation furnished should be the rule and refusal, an exception, more so when no negligence or inaction or want of bona fides can be imputed to the defaulting party. On the other hand, while considering the matter the courts should not lose sight of the fact that by not taking steps within the time prescribed a valuable right has accrued to the other party which should not be lightly defeated by condoning delay in a routine-like manner. However, by taking a pedantic and hypertechnical view of the matter the explanation furnished should not be rejected when stakes are high and/or arguable points of facts and law are involved in the case, causing enormous loss and irreparable injury to the party against whom the lis terminates, either by default or inaction and defeating valuable right of such a party to have the decision on merit. While considering the matter, courts have to strike a balance between resultant effect of the order it is going to pass upon the parties either way. (Para 12)

State of W.B. v. *Administrator, Howrah Municipality*, (1972) 1 SCC 366; *Sital Prasad Saxena* v. *Union of India*, (1985) 1 SCC 163 : AIR 1985 SC 1; *Rama Ravalu Gavade* v. *Sataba Gavadu Gavade*, (1997) 1 SCC 261; *N. Balakrishnan* v. *M. Krishnamurthy*, (1998) 7 SCC 123, *relied on*

Shakuntala Devi Jain v. *Kuntal Kumari*, AIR 1969 SC 575 : (1969) 1 SCR 1006, *cited*

Advocates who appeared in this case :

Gaurav Agrawal and Prashant Kumar, Advocates, for the Appellants;

A. Sharan, Senior Advocate (Sujit K. Singh, Chander Shekhar Ashri and S.B. Upadhyay, Advocates, with him) for the Respondents.

Chronological list of cases cited ***on page(s)***

1. (1998) 7 SCC 123, *N. Balakrishnan* v. *M. Krishnamurthy* 200*a*
2. (1997) 1 SCC 261, *Rama Ravalu Gavade* v. *Sataba Gavadu Gavade* 199*f-g*
3. (1985) 1 SCC 163 : AIR 1985 SC 1, *Sital Prasad Saxena* v. *Union of India* 199*c*
4. (1972) 1 SCC 366, *State of W.B.* v. *Administrator, Howrah Municipality* 199*b*, 201*e-f*
5. AIR 1969 SC 575 : (1969) 1 SCR 1006, *Shakuntala Devi Jain* v. *Kuntal Kumari* 201*e-f*

The Judgment of the Court was delivered by

B.N. AGRAWAL, J.— Leave granted.

2. Order impugned in this appeal has been passed by a Division Bench of the Jharkhand High Court in letters patent appeal upholding order passed by learned Single Judge whereby regular first appeal filed by the defendants against decree passed in a partition suit involving approximately 116 acres of land allowing claim of the plaintiffs has been disposed of holding that the entire appeal has become incompetent as during the pendency of the appeal, Appellant 2-Kashinath Sao (Defendant 2), Appellant 3-Buchua Devi (Defendant 3), Appellant 22-Guru Dayal Sao (Defendant 19) and Appellant 41-Ugni Devi (Defendant 35) expired and as no steps for substitution of their heirs and legal representatives were taken within the time prescribed, the same abated and application for substitution of their heirs after setting aside abatement and condonation of delay was rejected after recording a finding that no sufficient cause was shown either for condonation of delay or setting aside abatement.

3. The short facts are that when First Appeal No. 307 of 1989 (R) was listed for hearing, the appellants' counsel wrote a letter intimating the client about listing of the matter, whereupon one of the appellants in the appeal came on 18-9-1998, met his counsel and during the course of discussion, it transpired that Appellants 2, 3, 22 and 41 had already expired whereupon the counsel instructed the client to go to the village and bring the vakalatnama from the heirs and legal representatives of the deceased persons for filing substitution application. After obtaining the vakalatnama, the client came back on 20-9-1998 and thereafter on 24-9-1998, substitution application was filed making a prayer therein for expunging the name of Appellant 2 and making a note that he died on 10-4-1997 leaving behind Appellants 5, 9 and 10 as his heirs and legal representatives who were already on the record, besides a daughter Sheela Devi for whom prayer was made for bringing her on the record in place of the appellant deceased as it is well settled that in such an eventuality, left-out heirs can be brought on the record at any time irrespective of the period of limitation. Further prayer was made in that application for substitution of the heirs and legal representatives named therein, of Appellants 3, 22 and 41 after condonation of delay in filing the application for setting aside abatement and to set aside abatement. Appellant

3 died on 19-12-1997, Appellant 22 died in the month of February 1993 and Appellant 41 died in the year 1995. In the said appeal, there were 41 appellants belonging to different families, villages and police stations. Some of the appellants who were contesting defendants were members of joint family of the plaintiffs and the contesting defendants whereas others were transferees. As some of the heirs of Appellant 2 were already on the record, his appeal did not abate and prayer for bringing on record one left-out heir was made for which there is no period of limitation. So far as Appellant 3 is concerned, there was delay of 130 days in filing the application for substitution. However, in relation to Appellant 22, the delay was of about five years and in relation to Appellant 41, the delay was about three years, both of whom were transferees and belonged to villages different than the village and police station in which members of joint family of the plaintiffs and contesting defendants resided. The appellants before the High Court were rustic and illiterate villagers and undisputedly no sooner their lawyer advised, steps were taken with utmost expedition without any loss of time.

4. In the said appeal on behalf of the respondents, a counter-affidavit was filed to the aforesaid petition for substitution in which it was not averred that the delay was mala fide, dilatory and/or intentional. Further, there was no denial that all the appellants were rustic villagers and except Appellant 6, all were illiterate.

5. A learned Single Judge of Ranchi Bench of the Patna High Court, as it then existed, by order dated 18-11-1998 directed for expunging the name of Appellant 2 from the record, making a note that Appellants 5, 9 and 10 were already on the record as his heirs and legal representatives and impleading the daughter who was not on the record. So far as the prayer for substitution of the heirs of Appellants 3, 22 and 41 is concerned, the same was refused as it was held that no sufficient cause was shown for condonation of delay in filing the application to set aside abatement and setting aside abatement. Against the said order, the appellants preferred a letters patent appeal before the Jharkhand High Court which was created by then, and the said appeal was dismissed on 11-1-2001. Hence, this appeal by special leave.

6. Shri Gaurav Agrawal, learned counsel appearing on behalf of the appellants, who was thoroughly ready both on facts as well as law, found out all the relevant decisions on the point in issue and by placing the same with fairness, submitted in support of this appeal that as the appellants, who were rustic and illiterate villagers, belonged to different families, different villages within different police stations and in the absence of anything to show that the delay was mala fide, intentional or any dilatory tactics were adopted, the same should have been condoned and abatement set aside as the expression "sufficient cause" should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fides is imputable to a party. On the other hand, Shri Amarendra Sharan, learned Senior Counsel appearing on behalf of the respondents, with his usual vehemence, submitted that the High Court was quite justified in holding that no sufficient cause was made out for condonation of delay and setting aside

abatement and accordingly no interference with the impugned order is called for in the exercise of discretionary powers of this Court under Article 136 of the Constitution of India.

7. The expression "sufficient cause" within the meaning of Section 5 of the Limitation Act, 1963 (hereinafter referred to as "the Act"), Order 22 Rule 9 of the Code of Civil Procedure (hereinafter referred to as "the Code") as well as similar other provisions and the ambit of exercise of powers thereunder have been the subject-matter of consideration before this Court on numerous occasions. In the case of *State of W.B.* v. *Administrator, Howrah Municipality*[1] while considering scope of the expression "sufficient cause" within the meaning of Section 5 of the Act, *this Court laid down that the said expression should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fides is imputable to a party.*

8. In the case of *Sital Prasad Saxena* v. *Union of India*[2] the Court was dealing with a case where in a second appeal, the appellant died and application for substitution after condonation of delay and setting aside abatement filed after two years by the heirs and legal representatives was rejected on the ground that no sufficient cause was shown and the appeal was held to have abated. When the matter was brought to this Court, the appeal was allowed, delay in filing the petition for setting aside the abatement was condoned, abatement was set aside, prayer for substitution was granted and the High Court was directed to dispose of the appeal on merits and while doing so, it was observed that *once an appeal is pending in the High Court, the heirs are not expected to keep a constant watch on the continued existence of parties to the appeal before the High Court which has a seat far away from where parties in rural areas may be residing inasmuch as in a traditional rural family the father may not have informed his son about the litigation in which he was involved and was a party.* It was further observed (at SCC p. 166, para 6) that courts should recall that "*what has been said umpteen times that rules of procedure are designed to advance justice and should be so interpreted as not to make them penal statutes for punishing erring parties*". (emphasis added)

9. In the case of *Rama Ravalu Gavade* v. *Sataba Gavadu Gavade*[3] during the pendency of the appeal, one of the parties died. In that case, the High Court had refused to condone the delay in making an application for setting aside abatement and set aside abatement, but this Court condoned the delay, set aside abatement and directed the appellate court to dispose of appeal on merit observing that the *High Court was not right in refusing to condone the delay as necessary steps could not be taken within the time prescribed on account of the fact that the appellant was an illiterate farmer.*

1 (1972) 1 SCC 366
2 (1985) 1 SCC 163 : AIR 1985 SC 1
3 (1997) 1 SCC 261

10. In the case of *N. Balakrishnan* v. *M. Krishnamurthy*[4] there was a delay of 883 days in filing application for setting aside ex parte decree for which application for condonation of delay was filed. The trial court having found that sufficient cause was made out for condonation of delay, condoned the delay but when the matter was taken to the High Court of Judicature at Madras in a revision application under Section 115 of the Code, it was observed that the delay of 883 days in filing the application was not properly explained and it was held that the trial court was not justified in condoning the delay resulting in reversal of its order whereupon this Court was successfully moved which was of the view that the High Court was not justified in interfering with the order passed by the trial court whereby delay in filing the application for setting aside ex parte decree was condoned and accordingly order of the High Court was set aside. K.T. Thomas, J., speaking for the Court succinctly laid down the law observing thus in paras 8, 9 and 10: (SCC p. 127)

> "*8.* The appellant's conduct does not on the whole warrant to castigate him as an irresponsible litigant. What he did in defending the suit was not very much far from what a litigant would broadly do. Of course, it may be said that *he should have been more vigilant by visiting his advocate at short intervals to check up the progress of the litigation. But during these days when everybody is fully occupied with his own avocation of life an omission to adopt such extra vigilance need not be used as a ground to depict him as a litigant not aware of his responsibilities, and to visit him with drastic consequences.*
>
> *9.* It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.
>
> *10.* * * *
>
> *The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. The time-limit fixed for*

4 (1998) 7 SCC 123

approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause."

(emphasis added)

11. The Court further observed in paragraphs 11, 12 and 13 which run thus: (SCC pp. 127-28)

"*11. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly.* The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim *interest reipublicae ut sit finis litium* (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

12. A court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words 'sufficient cause' under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide *Shakuntala Devi Jain* v. *Kuntal Kumari*[5] and *State of W.B.* v. *Administrator, Howrah Municipality*[1] .

13. It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should lean against acceptance of the explanation. While condoning the delay, the court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite large litigation expenses."

(emphasis added)

12. Thus it becomes plain that the expression "sufficient cause" within the meaning of Section 5 of the Act or Order 22 Rule 9 of the Code or any other similar provision should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fides is

5 AIR 1969 SC 575 : (1969) 1 SCR 1006

imputable to a party. In a particular case whether explanation furnished would constitute "sufficient cause" or not will be dependent upon facts of each case. There cannot be a straitjacket formula for accepting or rejecting explanation furnished for the delay caused in taking steps. But one thing is clear that the courts should not proceed with the tendency of finding fault with the cause shown and reject the petition by a slipshod order in over-jubilation of disposal drive. Acceptance of explanation furnished should be the rule and refusal, an exception, more so when no negligence or inaction or want of bona fides can be imputed to the defaulting party. On the other hand, while considering the matter the courts should not lose sight of the fact that by not taking steps within the time prescribed a valuable right has accrued to the other party which should not be lightly defeated by condoning delay in a routine-like manner. However, by taking a pedantic and hypertechnical view of the matter the explanation furnished should not be rejected when stakes are high and/or arguable points of facts and law are involved in the case, causing enormous loss and irreparable injury to the party against whom the lis terminates, either by default or inaction and defeating valuable right of such a party to have the decision on merit. While considering the matter, courts have to strike a balance between resultant effect of the order it is going to pass upon the parties either way.

13. In view of the foregoing discussions, we are clearly of the opinion that on the facts of the present case, the Division Bench of the High Court was not justified in upholding the order passed by the learned Single Judge whereby prayers for condonation of delay and setting aside abatement were refused and accordingly the delay in filing the petition for setting aside abatement is condoned, abatement is set aside and prayer for substitution is granted.

14. In the result, the appeal is allowed, impugned orders passed by the High Court are set aside and the matter is remitted back to the learned Single Judge for deciding the first appeal on merits in accordance with law. In the circumstances of the case, we direct that the parties shall bear their own costs.

(2002) 3 Supreme Court Cases 202

(BEFORE V.N. KHARE AND ASHOK BHAN, JJ.)

SAURASHTRA OIL MILLS ASSN., GUJARAT .. Appellants;

Versus

STATE OF GUJARAT AND ANOTHER .. Respondents.

Civil Appeals Nos. 3959-60 of 2001†, decided on February 19, 2002

A. **Essential Commodities — Gujarat Essential Articles (Licensing, Control and Stock Declaration) Order, 1981 — Cls. 24(1) and 3 — Imposition of limits on storage of edible oils and oilseeds — Validity —**

† From the Judgment and Order dated 19-4-2001 of the Gujarat High Court in LPA No. 330 of 2001 in SCA No. 9764 of 2000 with LPA No. 331 of 2001 in SCA No. 9446 of 2000

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

MISCELLANEOUS APPLICATION NO. 21 OF 2022
IN
MISCELLANEOUS APPLICATION NO. 665 OF 2021
IN
SUO MOTU WRIT PETITION (C) NO. 3 OF 2020

IN RE: COGNIZANCE FOR EXTENSION OF LIMITATION

WITH

MISCELLANEOUS APPLICATION NO.29 OF 2022

IN
MISCELLANEOUS APPLICATION NO. 665 OF 2021

IN
SUO MOTU WRIT PETITION (C) NO. 3 OF 2020

Order

1. In March, 2020, this Court took Suo Motu cognizance of the difficulties that might be faced by the litigants in filing petitions/ applications/ suits/ appeals/ all other quasi proceedings within the period of limitation prescribed under the general law of limitation or under any special laws (both Central and/or State) due to the outbreak of the COVID-19 pandemic.

2. On 23.03.2020, this Court directed extension of the period of limitation in all proceedings before Courts/Tribunals including this Court w.e.f. 15.03.2020 till further orders. On 08.03.2021, the order dated 23.03.2020 was brought to an end, permitting the relaxation of period of limitation between 15.03.2020 and 14.03.2021. While doing so, it was made clear that the period of limitation would start from 15.03.2021.

3. Thereafter, due to a second surge in COVID-19 cases, the Supreme Court Advocates on Record Association (SCAORA) intervened in the Suo Motu proceedings by filing Miscellaneous Application No. 665 of 2021 seeking restoration of the order dated 23.03.2020 relaxing limitation. The aforesaid Miscellaneous Application No.665 of 2021 was disposed of by this Court *vide* Order dated 23.09.2021, wherein this Court extended the period of limitation in all proceedings before the Courts/Tribunals including this Court w.e.f 15.03.2020 till 02.10.2021.

4. The present Miscellaneous Application has been filed by the Supreme Court Advocates-on-Record Association in the context of the spread of the new variant of the COVID-19 and the drastic surge in the number of COVID cases across the country.

Considering the prevailing conditions, the applicants are seeking the following:

i. allow the present application by restoring the order dated 23.03.2020 passed by this Hon'ble Court in Suo Motu Writ Petition (C) NO. 3 of 2020 ; and
ii. allow the present application by restoring the order dated 27.04.2021 passed by this Hon'ble Court in M.A. no. 665 of 2021 in Suo Motu Writ Petition (C) NO. 3 of 2020; and
iii. pass such other order or orders as this Hon'ble Court may deem fit and proper.

5. Taking into consideration the arguments advanced by learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of the M.A. No. 21 of 2022 with the following directions:

I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

II. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.

III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.

IV. It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.

6. As prayed for by learned Senior Counsel, M.A. No. 29 of 2022 is dismissed as withdrawn.

.....CJI.
(N.V. RAMANA)

.....J.
(L. NAGESWARA RAO)

.....J.
(SURYA KANT)

New Delhi
January 10, 2022

ITEM NO.301 Court 1 (Video Conferencing) SECTION PIL-W

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Miscellaneous Application No.21/2022 in MA 665/2021 in SMW(C) No.3/2020

IN RE: COGNIZANCE FOR EXTENSION OF LIMITATION

(FOR ADMISSION and IA No.1935/2022-APPLICATION UNDER SECTION LV RULE 6 OF THE SUPREME COURT RULES, 2013)

WITH
MA 29/2022 in MA 665/2021 in SMW(C) No. 3/2020 (PIL-W)
(FOR ADMISSION and IA No.3161/2022-APPLICATION UNDER SECTION LV RULE 6 OF THE SUPREME COURT RULES, 2013 and IA No.3444/2022-APPLICATION FOR PERMISSION)

Date : 10-01-2022 These matters were called on for hearing today.

CORAM :
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE L. NAGESWARA RAO
HON'BLE MR. JUSTICE SURYA KANT

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Ms. Shashi Pathak, Adv.

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Mr. Rahul Maheshwari, Adv.
Ms. Shivangi Malhotra, Adv.

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Mr. Siddhesh Kotwal, Adv.
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Mr. Abhimanyu Tewari, Adv.
Ms. Eliza Bar, Adv.

Mr. Avijit Mani Tripathi, AOR
Mr. T.K. Nayak, Adv.

UPON hearing the counsel the Court made the following

O R D E R

The Court is convened through Video Conferencing.

M.A. No.21 of 2022 is disposed of and M.A. No.29/2022 is dismissed as withdrawn, in terms of the signed Order.

(VISHAL ANAND)
ASTT. REGISTRAR-cum-PS

(R.S. NARAYANAN)
COURT MASTER (NSH)

(Signed Order is placed on the file)