

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
(SOUTHERN ZONE BENCH, CHENNAI)
IN
ORIGINAL APPLICATION NO. 128 OF 2021 (SZ)**

**PRELIMINARY REPORT FILED BY THE EXECUTIVE ENGINEER, PUBLIC
WORKS DEPARTEMENT, PATHANAMTHITTA**

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Dated at Chennai on this the 3rd day of March, 2022.

M/s. E.K.KUMARESAN

Standing Counsel for State Government of Kerala - NGT(SZ) Chennai Bench

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REPORT SUBMITTED BY EXECUTIVE ENGINEER, PWD BUILDINGS DIVISION, PATHANAMTHITTA

With respect to Original Application No. 128 of 2021 (SZ) before the National Green Tribunal, Southern Zone, Chennai filed as Ibrahim Karim, Munnar Versus The State of Kerala, Rep. by the Chief Secretary, Thiruvananthapuram and Ors. I would like to bring the following facts before your goodself.

1. In its Order dated 02.02.2022 the Hon'ble National Green Tribunal, Southern Zone, Chennai has directed to file proper report answering the queries raised by the Hon'ble Tribunal regarding the construction in the proposed site and the matter is posted to 24.02.2022 for consideration of further reports and hearing.
2. It is respectfully submitted that regarding the construction in issue before The Hon'ble National Green Tribunal, Writ Petition (C) No. 13713 of 2019 was pending before the Hon'ble High Court of Kerala at Ernakulam on the ground of 'Environment Impact' and the Hon'ble National Green Tribunal has already taken note of the said Writ Petition. The Hon'ble High Court of Kerala has dismissed the said Writ Petition (C) No. 13713 of 2019 on 05.01.2022 specifically finding that:

"We do not find there is any illegality or dereliction of duty, as alleged."

Copy of the Judgment in Writ Petition (C) No. 13713 of 2019 dtd. 05.01.2022 is annexed along with this report.

3. Further, with respect to the said construction, a meeting of the District Collector, other Govt. Representatives and the Public Works Department is fixed to 1st week of March 2022 for a detailed discussion about the project.
4. There is absolutely no chance of any impact in the environment due to the subject matter construction and the Original Application before the Hon'ble Tribunal is an abuse of the process, without any foundation, and is filed with the ulterior motive of obstructing the project for the public good, and it is not maintainable on the basis of the Judgment of the Hon'ble High Court after considering the 'Environment Impact' in detail.
5. This report is submitted for your kind perusal and some more time may be given for filing a detailed report in the matter, including the decisions taken in the meeting of Govt. Officials and the other developments.

23.02.2022


EXECUTIVE ENGINEER

IN THE HIGH COURT OF KERALA AT ERNAKULAM



PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR. S. MANIKUMAR

&

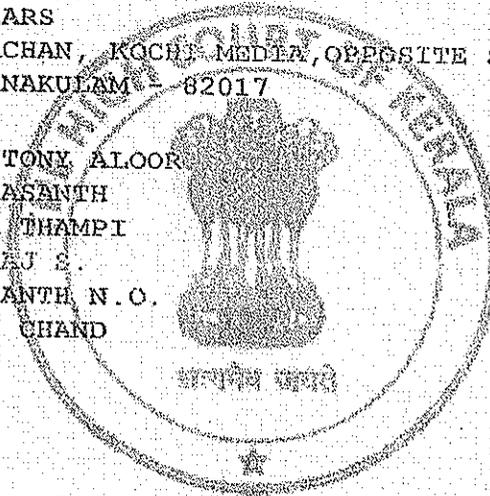
THE HONOURABLE MR. JUSTICE SHAJI P. CHALY

WEDNESDAY, THE 5TH DAY OF JANUARY 2022 / 15TH Pousha, 1943

WP (C) NO. 13713 OF 2019

PETITIONERS:

K. O. JOHNEY
 AGED 56 YEARS
 S/O. PAPPACHAN, KOCCHI MEDIA, OPPOSITE ST. ANTONY'S CHURCH,
 KALOOR, ERNAKULAM - 62017
 BY ADVS.
 SRIBIJU ANTONY ALOOR
 SRI. K. P. PRASANTH
 SMT. BHAVNA THAMPI
 SHRI. ARUNRAJ S.
 SHRI. PRASANTH N. O.
 R. G. RAGESH CHAND



RESPONDENTS:

- 1 DISTRICT COLLECTOR
 PATHANAMTHITTA CIVIL STATION, KERALA
 PATHANAMTHITTA DISTRICT - 689 645.
- 2 KERALA STATE ENVIRONMENTAL IMPACT ASSESSMENT
 PALLIMUKKU, PETTAH P.O, THIRUVANANTHAPURM, KERALA - 695
 024 REPRESENTED BY ITS CHAIRMAN.
- 3 RANNI - PAZHAVANGADI GRAMA PANCHAYATH
 PANCHAYATH OFFICE, RANNI, PATHANAMTHITTA DISTRICT - 689
 673.
- 4 SECRETARY
 RANNI- PAZHAVANGADI GRAMA PANCHAYAT OFFICE, RANNI,
 PATHANAMTHITTA DISTRICT - 689 673.
- 5 STATE OF KERALA
 REPRESENTED BY SECRETARY, DEPARTMENT OF REVENUE,
 SECRETARIAT, THIRUVANANTHAPURAM - 695 001.
- 6 PUBLIC WORKS DEPARTMENT
 BUILDING DIVISION, PATHANAMTHITTA - 691 523,
 REPRESENTED BY THE EXECUTIVE ENGINEER.
- 7 PRINCIPAL SECRETARY FOREST, FOREST AND WILD LIFE

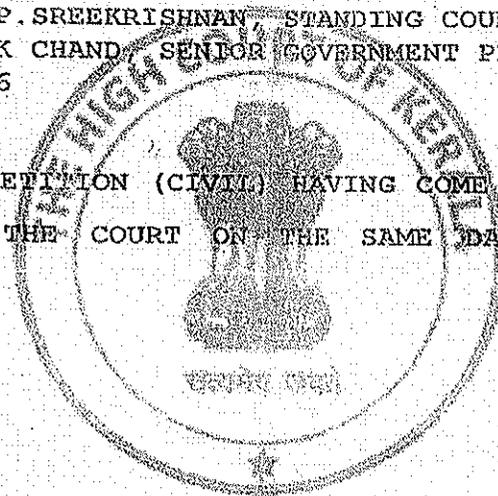


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DEPARTMENT, GOVERNMENT OF KERALA, SECRETARIAT,
1ST FLOOR, MAIN BLOCK, THIRUVANANTHAPURAM.

- 8 CHIEF TOWN PLANNING OFFICER, DEPARTMENT OF TOWN
AND COUNTRY PLANNING, GOVERNMENT OF KERALA, SWARAJ
BHAVAN, 2ND FLOOR, NANTHANCOD, KOWDIAR. P.O.,
THIRUVANANTHAPURAM.
- 9 STATE OF KERALA, REPRESENTED BY CHIEF SECRETARY,
SECRETARIAT, THIRUVANANTHAPURAM DIST. - 695001.
BY ADVS.
SRI.M.P.SREEKRISHNAN, STANDING COUNSEL FOR R2
SRI.TEK CHAND, SENIOR GOVERNMENT PLEADER FOR R1,
R5 & R6

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 05.01.2022, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



HIGH COURT OF KERALA
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JUDGMENT

Dated this the 5th day of January, 2022

S. MANIKUMAR, C.J.

Petitioner has sought for the following reliefs:

(i) Issue a writ of mandamus or any other appropriate writ directing respondent Nos. 1 to 6 to ensure that no building construction more than 20,000 square meter is carried out in the Government land by any person including the 6th respondent without obtaining all statutory permission and licenses, including prior environmental clearance.

HIGH COURT OF KERALA

(ii) Issue a writ of mandamus or any other appropriate writ directing 1st respondent to do the needful to take cognizance of the offence under the Environment (Protection) Act, 1986 against the persons concerned.

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2. Grounds raised by the petitioner in support of the reliefs are as hereunder:

"A. The constructional activity carried out by the 6th respondent in the property of the 5th respondent without obtaining various clearances and permissions under the provisions of the EIA Notification, 2006, Kerala Panchayat Raj Act, 1994 and Kerala Land Utilization Order, 1967 is *per se* illegal and is liable to be stopped immediately.

B. The constructional activity carried out by the 6th respondent by working hand in glove with the respondents herein according to their whims and fancies without any proper supervision by the proper statutory authorities is clear exploitation of the tax payer's money. Since, the construction is being carried out by the 6th respondent without any clearances or permissions, there is no accountability for the same. Since, the respondents No 1 to 3 who are the competent authorities curtail the act of the 6th respondent, is sitting mum over the petitioner's complaint, the petitioner has no other option than to approach this Hon'ble Court for the redressal of his grievance.

C. The petitioner has no other alternate or efficacious remedy than to approach this Hon'ble Court for the invocation of the extra ordinary jurisdiction under Article 226 of the Constitution of India.

D. It is evident from Exhibit P1 that the project of the 6th respondent

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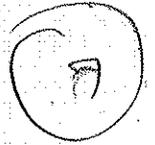


exceeds more than 20,000 square metres and hence the same requires prior environmental clearance from the 2nd respondent before starting any construction. However, it is seen from Exhibit P3 communication that no prior clearance has been granted to the 5th or 6th respondent till date for constructing the multi utility complex. This is clear violation of the provision of the EIA Notification, 2006.

E. The 6th respondent ought to have preferred an application under Section 235 F of the Kerala Panchayat Raj Act, 1994 and obtained a building permit from the 3rd and 4th respondents before starting any constructional activities. However, it is seen from Exhibit P5 communication that no permission has been accorded from the office of the Secretary of the 3rd respondent till date to start the constructions activities of the multi utility complex till date. This is clear cut violation of the provisions of the Kerala Panchayat Raj Act, 1994 and the Kerala Panchayat Building Rules.

F. The petitioner has also come to learn from the local residents that the land in question was a nilam till some time back. However, it is learnt reliably that neither the 5th respondent nor the 6th respondent has obtained any permission under the Kerala Conservation of Paddy Land and Wetland Act, 2008 or the Kerala Land Utilization Order, 1967 for use of land for any other purpose. This is per se illegal and is to be curtailed by the 1st respondent.

G. The inaction on the part of the respondents No. 1 to 3 on the illegality committed by the 5th and 6th respondents is clear dereliction of duty



and clearly indicates that the respondents are working hand in glove to perpetuate the illegality to extort the tax payer's money from the public ex-chequer.

H. The careless manner in which the construction materials are being dumped in the construction site is posing huge threat to the life of the local residents, pedestrians as well as motorists. This is unacceptable and stringent action has to be taken against the illegality done against the public at large."

3. Refuting the averments, the Executive Engineer, Public Works Department, Building Division, Pathanamthitta has filed a counter affidavit dated 1st August, 2019, wherein it is contended thus:

"3. It is respectfully submitted that the project in question was proposed by the Member of Legislative Assembly of Ranni Legislative Assembly Constituency as a multi-storied pilgrim centre for Sabarimala Pilgrims within the limits of Ranni Pazhavangadi Grama Panchayath. The 3rd respondent acquired necessary land required for construction of the Pilgrim Centre based on the Order of the Government No. GO(RI) No. 3598/08/LSGD /Tvm. dated 07.10.2008. The administrative sanction for the work was obtained vide GO(RI) No. 1550/13/PWD dated 27.11.2013 - for an amount of Rs. 16.5 Crores. The technical sanction was obtained



by Order No. CE/L/PTA/2597/11 dated 05.03.2014 of the Chief Engineer, PWD. After obtaining the necessary sanction, the work was tendered and site was handed over to M/s. Rojer Mathew and Company as per Agreement No. 23/SCVSC/14-15 dated 30.09.2014. Pursuant to the handing over of the site to the Contractor for construction, the piling works commenced at the site. It is apposite to mention here that there is no pathway inside the site and trespassers were not allowed to enter the site. No building materials are kept outside the premises where the construction is effected so as to obstruct pedestrian movement. Therefore, the allegation to the effect that the entire area is in a chaotic mess, as a result of building materials being strewn all over obstructing the pathway of pedestrians is made only to suit the Writ Petition.

4. It is respectfully submitted that the allegation in the Writ Petition to the effect that the 2nd respondent has not issued any prior environmental clearance to the 5th or 6th respondent till date for construction of the multi-utility complex is unfounded, in as much as the building now under construction is only having a total area of 18,720.4 M², due to non-availability of funds earmarked for the project. The total area has been reduced to 18,720.4 M² from the proposed area of

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22351.90 M². Under the circumstances, there is no necessity for prior environmental clearance for construction of the work as the total area of the building in question is less than 20,000 Sq. M. Further as per Rule 5 of the Kerala Panchayath Building Rules, application for development permit is not necessary as the construction is for a State Government Department. Likewise, 6th respondent has confirmed with the stipulations necessitated as per Rule 7 of the Kerala Panchayath Building Rules."

4. The said respondent has also filed an additional affidavit dated 28th October, 2019, wherein it is contended thus:

"3. It is respectfully submitted that the split up area of the floor in the building in question is given in a tabular form hereunder.

FLOOR	AREA IN SQ.M
Ground Floor	1406.9
Parking	1888.1
First Floor	1228.2
Second Floor	1741.5
Typical Floor (3,4,5,6,7,8 & 9th Floors)	1741.5 X 7 =12190.5
Terrace Floor	
Total Area	18720.4

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The Plan of ground floor, 1st floor, 2nd floor and the floors from 3 to 9 are produced herewith and marked as Exhibit R6(a). The above would show that the total area of the building is 18,720 M² excluding 10th & 11th floor. Under the circumstances, this Honourable Court may be pleased to find that no Environmental Clearance is required as a total area of the building is less than 20000 M² and the contention to the contrary is devoid of merit.

In view of the above, this Honourable Court may be pleased to dismiss the Writ Petition and permit the respondents to proceed with the construction of the pilgrimage centre at Ranji, in the interest of justice."

5. Going through the material on record, we found that the respondents have taken a stand that the construction proposed is for Sabarimala pilgrims and that the total area of construction has been reduced to 18720.4 M² from the proposed area of 22351.90 M².

6. As there was no supporting materials for the said contention, we directed proof to be filed. Accordingly, a memo dated 8th June, 2020 has been filed by the Senior Government Pleader substantiating the contention that construction has been reduced to 18720.4 M² and not beyond 20000 M², as provided under the Environment Impact Assessment Notification, 2006.



7. Proceedings of the Chief Engineer, Public Works Department (Buildings), Thiruvananthapuram dated 3rd January, 2020, restricting the total area of construction to 18720.4 M², is reproduced hereunder:

*"PROCEEDINGS OF THE CHIEF ENGINEER, PUBLIC WORKS DEPARTMENT
(BUILDINGS), THIRUVANANTHAPURAM*

(Present: ~~Mr. Haygheen Albert~~)

Sub:- PWD -Sanctioning of Environmental Clearance for the Construction of Pilgrim Centre at Ranni Ittiyappara. Order issued:- reg:

Read: 1) Letter No. 18/PWD(B)SCTVPM/3299/2013 dated 08/11/2019 of the Superintending Engineer of PWD Buildings South Circle, Thiruvananthapuram Read: ~~18/01/2019~~

2) Writ Petition No. 13713/2019 filed by Mr. K.O. Johnny

3) Letter received from Sri. Raju Abraham, M.L.A. of Ranni

Constituency dated 23.01.2019

HIGH COURT OF KERALA

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ORDER NO: CE/BL/PTA/A1/5266/2018 DATED 03/01/2020

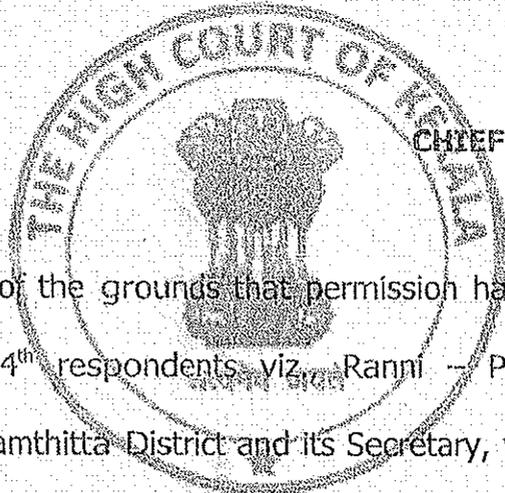
The Superintending Engineer of PWD Buildings South Circle, Thiruvananthapuram has reported vide ref. cited 1st that due to inadequacy of funds for construction of the Pilgrim Centre at Ittiyappara and based on the request of the Hon'ble M.L.A. of Ranni Constituency, by excluding the construction of the 10th and 11th floors, the area of the building would be only 18720/M2 and prior Environmental Clearance is not

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required. And also, the Hon'ble MLA of Ranni Constituency requested vide letter cited 3rd to rearrange the work by excluding construction of the 10th and 11th floors of the proposed building.

Hence sanction is hereby accorded to fix the total area of the building as 18720/M2 by excluding the construction of the 10th and 11th floors of the proposed building.



Sd/-
"CHIEF ENGINEER"

8. In respect of the grounds that permission has not been required from the 3rd and 4th respondents viz. Ranni -- Pazhavangadi Grama Panchayath, Pathanamthitta District and its Secretary, we are satisfied with the reasons assigned in the counter and additional affidavits filed by Public Works Department, Building Division, Pathanamthitta, represented by the Executive Engineer -- the 6th respondent. We do not find there is any illegality or dereliction of duty, as alleged.

9. Thus, when respondents have filed the proof of restricting the construction of the proposed building to 18720.4 M², there is no need to obtain clearance from the Authorities under the EIA Notification -- 2006.

HIGH COURT OF KERALA
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W.P.(C) No.13713 of 2019

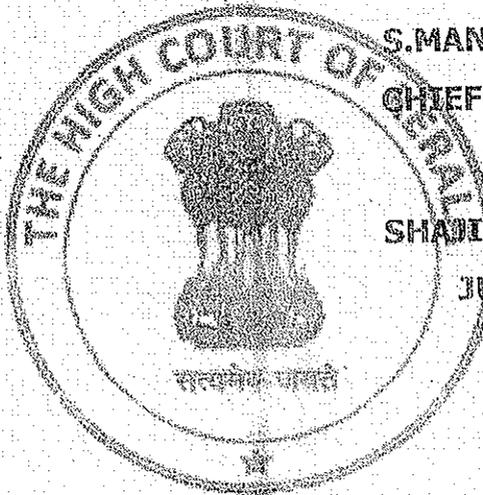
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10. Placing on record the above, we are of the view that there is no need to issue any mandamus, as sought for.

Writ petition is dismissed accordingly.

Sd/-



S.MANIKUMAR
CHIEF JUSTICE

Sd/-

SHANT P.CHALY
JUDGE

smv

HIGH COURT OF KERALA
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APPENDIX OF WF(C) 13713/2019

PETITIONER EXHIBITS

EXHIBIT P1 TRUE PHOTOCOPY OF THE REPLY DATED 16.04.2019 ISSUED FROM THE OFFICE OF THE 6TH RESPONDENT TO THE PETITIONER ALONG WITH ITS ENGLISH TRANSLATION.

EXHIBIT P2 A TRUE COPY OF THE REPLY DATED 30.07.2018 ISSUED FROM THE OFFICE OF THE 2ND RESPONDENT TO THE PETITIONER ALONG WITH ITS ENGLISH TRANSLATION.

EXHIBIT P3 A TRUE PHOTOCOPY OF THE DETAILED REPRESENTATION THROUGH EMAIL DATED 14.08.2018 PREFERRED BY THE PETITIONER BEFORE THE 1ST RESPONDENT ALONG WITH ITS ENGLISH TRANSLATION

EXHIBIT P4 A TRUE PHOTOCOPY OF THE COMMUNICATION DATED 14.08.2018 ISSUED FROM THE OFFICE OF THE 1ST RESPONDENT TO THE PETITIONER BEFORE THE 1ST RESPONDENT ALONG WITH ITS ENGLISH TRANSLATION.

EXHIBIT P5 A TRUE PHOTOCOPY OF THE COMMUNICATION DATED 20.12.2018 ISSUED BY THE SECRETARY OF THE 3RD RESPONDENT TO THE PETITIONER ALONG WITH ITS ENGLISH TRANSLATION.

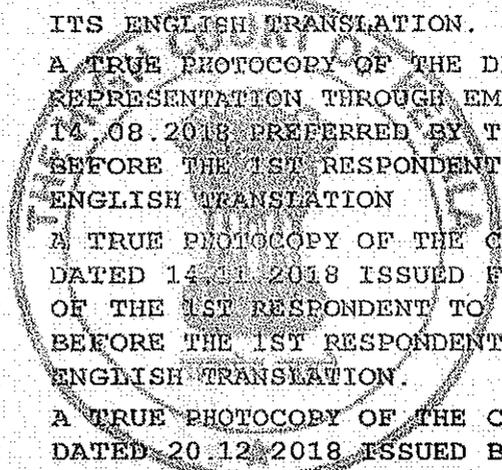


EXHIBIT P6: TRUE COPY OF THE PHOTOGRAPHS

RESPONDENT EXHIBITS

EXHIBIT R6(a) TRUE COPY OF THE PLAN OF GROUND FLOOR 1ST FLOOR, 2ND FLOOR AND THE FLOORS FROM 3 TO 9.

CERTIFIED COPY

Signature valid

Digitally signed by S R SIVAPRASAD
Date: 2022.01.07 11:57:05 +05:30

