THE KERALA STATE COASTAL ZONE MANAGEMENT AUTHORITY

v.

THE STATE OF KERALA MARADU MUNICIPALITY & ORS.

(Civil Appeal Nos. 4784-4785 of 2019)

MAY 08, 2019

[ARUN MISHRA AND NAVIN SINHA, JJ.]

Environmental Laws : Coastal areas notified as CRZ-III – Appellant authority empowered to deal with the environmental issues relating to the notified CRZ – Allegation that there was violation in issuance of building permits by the Panchayats – The dispute was that respondent builders were carrying out construction activities on the shores of the backwaters in Ernakulam in the State of Kerala which supports large biologically diversity and constitutes one of the largest wetlands in India – The area in which the respondents carried out construction activities is part of a tidally influenced water body and the construction activities in those areas are strictly restricted under the provisions of CRZ Notifications – Government directed concerned bodies to revoke all the flawed building permits exercising its powers under rr.16 and 23 of Kerala Municipality Building Rules, 1999 – Notice issued to the builders asking to show cause why the building permits issued to them be not cancelled – Writ petition against the notice was allowed on the ground that permit holders could not be taken to task for the failure of local authorities in complying with the statutory provisions and notifications – Appellant authority filed the instant appeal – A Committee was constituted by this court which gave findings that the area in dispute fell in CRZ-III of Coastal Zone Regulations – Held: With respect to CRZ-III, the relevant notification dated 19.2.1991 indicated that the area of 200 meters from High Tide Line is no development zone and no construction was permissible within this zone except for repairs of the authorized structures not exceeding existing FSI – 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

A *the appellant authority – Admittedly, Panchayat did not forward any such applications for building permissions – As such, once a due inquiry was held by the Committee, there was no escape from the conclusion that the area fell within CRZ-III and it was wholly impermissible and unauthorised construction within the prohibited area – Kerala Municipality Building Rules, 1999 – rr.16 and 23 –*
B *Environment Protection Act, 1986.*

Judicial notice: Judicial notice 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 – In
C *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, directions passed to remove all the structures within a period of one month – Environment Protection Act, 1986 – Kerala Municipality*
D *Building Rules, 1999 – rr.16 and 23.*

Piedade Filomena Gonsalves v. *State of Goa* **(2004) 3 SCC 445 : [2004] 2 SCR 1135 ;** *Vaamika Island (Green Lagoon Resort)* v. *Union of India & Ors.* **(2013) 8 SCC 760 – relied on.**

E *Ratheesh* v. *State of Kerala* **2013 (3) KLT 840 – approved.**

Indian Council for Enviro-Legal Action v. Union of India **(1996) 5 SCC 281 : [1996] 1 Suppl. SCR 507 – referred to.**

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Case Law Reference

[1996] 1 Suppl. SCR 507	**referred to**	**Para 3**
[2004] 2 SCR 1135	**relied on**	**Para 4**
(2013) 8 SCC 760	**relied on**	**Para 14**
2013 (3) KLT 840	**approved**	**Para 16**

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CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 4784-4785 of 2019.

From the Judgment and Order dated 02.06.2015 of the High Court of Kerala at Ernakulam in W.A. No. 132 of 2013 and order dated 11.11.2015 in Review Petition No. 787 of 2015.

With

Civil Appeal Nos. 4790-4793, 4786-4789 of 2019.

Romy Chacko, Shapti Chand J., Vishant Singh, Advs. for the Appellant.

V. Giri, Jayanth Muthraj, Sr. Advs., Ranjan Kumar, Mohammed Sadique T.R., Anu K. Joy, Amith Krishnan, Alim Anvar, G. Prakash, Jishnu M.L., Mrs. Priyanka Prakash, Mrs. Beena Prakash, M.T. George, Avishkar Singhvi, Nipun Katyal, Advs. for the Respondents.

The following Order of the Court was passed

O R D E R

1. Leave granted.

2. Applications for intervention are allowed.

3. The appeals have been filed by the Kerala State Coastal Zone Management Authority aggrieved by the judgment and order dated 11.11.2016 passed by the High Court in Writ Appeal No.132 of 2013 and other connected appeals.

4. 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* [(1996) 5 SCC 281] 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 Regulations 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.

A 5. The decision of this Court in *Piedade Filomena Gonsalves* v. *State of Goa* [(2004) 3 SCC 445] 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 B in Ernakulam in the State of Kerala which supports exceptionally large biological diversity and constitutes one of the largest wetlands in India.

6. 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 C 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 D 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.

E 7. As per the appellant, these constructions 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 F directed the concerned bodies 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 Rules of 1999').

8. A show cause notice was issued under Rule 16 of the Rules of 1999, asking the builders to show cause why the building permit issued G to them be not cancelled. Writ Petitions were filed questioning the same. The learned Single Judge allowed the writ petitions. The Division Bench dismissed the appeals. The High Court has observed that the permit holders cannot be taken to task for the failure of local authorities in

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complying with the statutory provisions and notifications. Review petitions were also dismissed. Hence, the appeals by special leave have been preferred.

9. 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 :

> "1. The writ petitions filed questioning the show cause notice dated 4.6.2007 issued for the 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 10.09.2012, 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 02.06.2015.
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> 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 CategoryIII. We deem it appropriate to call for the findings on the aforesaid aspect.
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> 3. We constitute a Three-Member Committee consisting of the Secretary to the Local Self Government Department, the Chief Municipal officer of the concerned Municipality and the Collector of the District, to hear the objections and to give a finding in terms of Notification dated 19th February 1991.
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> 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

A which category the area in question is to be categorized 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."

B 10. 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 Zone Regulations. We have heard the learned counsel at length again after receipt of the report. The Committee consisted of the C following members :

1. K. Gopalakrishna Bhat, IAS
Local Self Government (Rural)
In-Charge.
2. K. Mohammed Y. Safirulla, AIA,
D District Collector,
Ernakulam.
3. Subhash P.K.,
Municipal Secretary,
Maradu Municipality.

E 11. 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 F 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.

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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 the Map numbers 33, 33A

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and 34 of CZMP 1996. These maps are attached as Annexure 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 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 is applicable after 6th January 2011 i.e., the date on which Government of India published Coastal Zone Management Plan (CZMP).

i) The islands within the backwaters shall have 50 mts width from the High Tide Line on the landward side as the CRZ area;

ii) 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;

iii) 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 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 mts 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 Government of India for approval. Until Government of India approved the draft notification CZMP 1996 stands valid."

A 12. 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 meters from the High Tide Line is no development zone. No construction shall be permitted within this zone except for repairs of the authorized structures not exceeding existing
B FSI. The notification dated 19.02.1991 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.
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> C i. The area up to 200 meters 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
> D 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,
> E playfields, forestry and salt manufacture from sea water.
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> ii.Development of vacant plots between 200 and 500 meters of High Tide Line in designated areas of CRZ-III with prior approval of Ministry of Environment and Forests (MEF permitted for construction of hotels/beach resorts for temporary occupation of
> F tourists/visitors subject to the conditions as stipulated in the guidelines at Annexure-II.
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> iii. Construction/reconstruction of dwelling units between 200 and 500 meters of the High Tide Line permitted so long it is within the ambit of traditional rights and customary uses such as existing
> G 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 percent of the plot size; the overall height of construction

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shall not exceed 9 meters 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."

13. It is also relevant to take note of Rule 23(4) of the Rules of 1999 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."

14. 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.

15. This Court in *Vaamika Island (Green Lagoon Resort)* vs. *Union of India & Ors.* [(2013) 8 SCC 760], has observed:-

"26. The petitioner had affected 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. 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 1991 as well as 2011 Notifications and the report of the Expert Committee constituted by the Kerala State Committee on Sciences 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.

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 decisions of this Court in *Piedade Filomena Gonsalves* v. *State of Goa* [(2004) 3 SCC 445], 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."

16. In *Piedade Filomena Gonsalves* vs. *State of Goa & Ors.* [(2004) 3 SCC 445], this Court has observed :

"4. We do not think that any fault can be found with the judgment of the High Court 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 meters of HTL, it is writ large that the appellant has indulged into misadventure of raising a construction without securing permission from the competent authorities. That apart, the learned counsel for the respondent, 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 25.9.96 passed in writ petition No. 102 of 1996.

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. 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 meters of the HTL and the construction had been

A 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.

B 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."

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17. Further, reference has also been made to a decision of the Kerala High Court in *Ratheesh* v. *State of Kerala [2013 (3) KLT 840]*. The same is extracted below :

"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 WP(C).NO.19564/11 & CON.CASES 21 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

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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 WP(C).NO.19564/11 & CON.CASES 22 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.

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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 WP(C).NO.19564/11 & CON.CASES 24 terms does so at his own peril. The fait accompli of constructions being made which

A are in the teeth of the Notification cannot present, but a highly vulnerable argument."

18. We find that the view taken by the Kerala High Court in the aforesaid decision is appropriate.

19. In the instant case, permission granted by the Panchayat was
B 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.

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

Devika Gujral Appeals allowed.