



2024:KER:29708

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE AMIT RAWAL

MONDAY, THE 4TH DAY OF MARCH 2024 / 14TH PHALGUNA, 1945

WP(C) NO. 32639 OF 2015

PETITIONER/S:

AJAY PETER
AGED 34 YEARS
S/O.PETER THOMMEN, PATTAPARAMBIL HOUSE, PANAMPALLY
NAGAR, KADAVANTHARA, ERNAKULAM, KOCHI - 682 036.

BY ADVS.
SRI.P.B.SAHASRANAMAN
SRI.T.S.HARIKUMAR
SRI.K.JAGADEESH
SRI.RAAJESH S.SUBRAHMANIAN

RESPONDENT/S:

- 1 KERALA COASTAL ZONE MANAGEMENT AUTHORITY
REPRESENTED BY ITS SECRETARY, SASTHRA
BHAVAN, THIRUVANANTHAPURAM - 695 008.
- 2 KADAMAKUDY GRAMA PANCHAYATH
REPRESENTED BY ITS SECRETARY, PIZHALA -682 027.

BY ADVS.
SRI.K.R.SUNIL, KERALA COASTAL ZONE MANAGEMENT AUTHORITY
SRI.K.M.VARGHESE
Prakash M P, SC, KCZMA

Sr. GOVERNMENT PLEADER Sri. Vipindas

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR HEARING ON
04.03.2024, ALONG WITH WP(C).1078/2009, 4659/2010 AND CONNECTED
CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE AMIT RAWAL

MONDAY, THE 4TH DAY OF MARCH 2024 / 14TH PHALGUNA, 1945

WP(C) NO. 1078 OF 2009

PETITIONER/S:

JOHNSON

AGED 39 YEARS, VALIYAVEETIL HOUSE, MUNAMBAM KARA,, KUZUPPILLY
VILLAGE, KOCHI TALUK.

BY ADVS.

SRI.T.V.GEORGE

SRI.JIMMY GEORGE THADATHIL

RESPONDENT/S:

- 1 PALLIPURAM GRAMA PANCHAYATH REP.
BY ITS SECRETARY, PALLIPPURAM, CHERAI, KOCHI TALUK
- 2 UNION OF INDIA REPRESENTED BY ITS
PRINCIPAL SECRETARY, MINISTRY OF ENVIRONMENT AND, FOREST,
"PARYAVARAN BHAVAN", C.G.O COMPLEX,, LODI ROAD, NEW DELHI.
- 3 STATE OF KERALA REPRESENTED BY ITS
CHIEF SECRETARY, GOVERNMENT SECRETARIAT,, THIRUVANANTHAPURAM.
- 4 KERALA COASTAL ZONE MANAGEMENT AUTHORITY
REPRESENTED BY ITS CHAIRMAN SCIENCE TECHNOLOGY, AND
ENVIRONMENT COMMITTEE AND EX.OFFICIO PRINCIPAL, SECRETARY,
SCIENCE, TECHNOLOGY AND ENVIRONMENT, DEPARTMENT, SASTHA
BHAVAN, THIRUVANANTHAPURAM

BY ADVS.

SRI.M.A.ASIF

ACHUTH KRISHNAN R

SRI.T.A.SHAJI

SRI.PRAKASH C.VADAKKAN. J., SC, KCZMA

Prakash M P, SC, KCZMA

Sr. GOVERNMENT PLEADER Sri. T.K Vipindas

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR HEARING ON 04.03.2024,
ALONG WITH WP(C).32639/2015 AND CONNECTED CASES, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE AMIT RAWAL

MONDAY, THE 4TH DAY OF MARCH 2024 / 14TH PHALGUNA, 1945

WP(C) NO. 4659 OF 2010

PETITIONER/S:

- 1 DOMANIC JAMES AND OTHERS
THAIPARAMBIL HOUSE, MUNAMBAM, KUZHUPILLY VILLAGE,, KOCHI
TALUK, RESIDING AT MIYAPUR, HYDERABAD,, R.R.DISTRICT, ANDHRA
PRADESH.
- 2 FELEENA JAMES WO.JAMES
THAIPARAMBIL HOUSE, MUNAMBAM, KUZHUPILLY VILLAGE,, KOCHI
TALUK, RESIDING AT MIYAPUR, HYDERABAD,, R.R.DISTRICT, ANDHRA
PRADESH.
- 3 MARY PAMEELA WO.VARGHESE
MALATHURUTHIL HOUSE, RESIDING AT MIYAPUR,, HYDERABAD,
R.R.DISTRICT, ANDHRA PRADESH.

BY ADV SRI.M.B.NANUTHAMBI

RESPONDENT/S:

- 1 PALLIPURAM GRAMA PANCHAYATH AND OTHERS
REPRESENTED BY ITS SECRETARY, PALLIPPURAM,, CHERAI, KOCHI
TALUK.
- 2 UNION OF INDIA REPRESENTED BY ITS
PRINCIPAL SECRETARY, MINISTRY OF ENVIRONMENT AND, FOREST,
PARYAVARAN BHAVAN, C.G.O.COMPLEX,, LODI ROAD, NEW DELHI.
- 3 STATE OF KERALA REPRESENTED BY ITS
CHIEF SECRETARY, GOVERNMENT SECRETARIAT,, THIRUVANANTHAPURAM.
- 4 KERALA COASTAL ZONE MANAGEMENT AUTHORITY
REP.BY ITS CHAIRMAN, SCIENCE, TECHNOLOGY AND, ENVIRONMENT
COMMITTEE AND EX-OFFICIO PRINCIPAL,
SECRETARY,SCIENCE,TECHNOLOGY AND ENVIRONMENT,
DEPARTMENT,SASTHRA BHAVAN,THIRUVANANTHAPURAM.

BY ADVS., SRI.M.A.ASIF, MINI GOPINATH -CGC .
SRI.T.A.SHAJI, SRI.PRAKASH C.VADAKKAN. J., SC, KCZMA
Prakash M P, GP SRI. T.K VIPINDAS

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR HEARING ON 04.03.2024,
ALONG WITH WP(C).32639/2015 AND CONNECTED CASES, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

JUDGMENT

[WP (C) Nos. 32639/2015, 1078/2009, 4659/2010, 5252/2010, 29/2017, 6678/2009, 6481/2010, 11469/2010, 13882/2010, 8690/2016, 14315/2008, 14334/2008, 12311/2014, 18087/2009, 14092/2015, 18656/2008, 19291/2009, 19508/2009, 20265/2009, 21019/2009, 21658/2009, 15897/2017, 22372/2008, 24802/2009, 27498/2009, 28168/2009, 28199/2012, 28895/2009, 30962/2009, 30371/2008, 36599/2009, 32697/2016, 35415/2017]

1. Litigation in the nature of various writ petitions laying challenge to the action taken by the Panchayat and various other Authorities for withdrawing the permits issued for the purpose of construction of residences, shops and other commercial establishments are pending in this Court.

2. Before dealing with the matters individually prelude of the controversy leading to promulgation of various notifications by the Central Government on the basis of the power vested in Environmental Law is required to be mentioned.

3. In 1982 working groups were set up by the Ministry of Environment and Forests with the aim to prepare 'Environmental Guidelines' for the development of beaches and coastal areas requiring the State Governments to prepare a status report for obtaining situation of the coastal areas, as a



pre-requisite to environmental management of the area which was required to be followed by a 'Master Plan' identifying the areas required for conservation, preservation, development and other activities.

4. The Ministry of Environment and Forests after having invited objections and considering the objections, issued a notification dated 19th of February, 1991 in exercise of the powers conferred on it by clause (d) of sub-rule (3) of Rule 5 of the Environment Protection Rules, 1986.

5. The said notification declared the coastal stretches of seas, bays, estuaries, creeks, rivers and backwaters influenced by tidal action (in the landward side) upto 500 metres from the High Tide Line (hereinafter referred to as 'HTL') and land between Low Tide Line (hereinafter referred to as 'LTL') as Regulation Zones.

6. Various restrictions for setting up and expansion of industries, operation or processes were imposed and it was clarified that for the purpose of implementation of the notification HTL was required to be defined as the line up to which the highest high tide reaches at springtime.

7. The salient features of the Notification were as



under:-

"(i) setting up of new industries and expansion of existing industries, except those directly related to waterfront or directly needing foreshore facilities;

(ii) manufacture or handling or storage or disposal of hazardous substances as specified in the notifications of the Government of India in the Ministry of Environment and Forests No. SO 594(E) dated 28-7- 1989, SO 966(E) dated 27-11-1989 and GSR 1037(E) dated 5-12-1989:

(iii) setting up and expansion of fish processing units including warehousing (excluding hatchery and natural fish drying permitted areas);

(iv) setting up and expansion of units mechanisms for disposal of wastes and effluents, except facilities required for discharging treated effluents into the watercourse with approval under the Water (Prevention and Control of Pollution) Act, 1974 except for storm water drains;

(v) discharge of untreated wastes and effluents from industries, cities or towns and other human settlements; schemes shall be implemented by the authorities concerned for phasing out the existing practices, if any, within a reasonable time period not exceeding three years from the date of this notification;

(vi) dumping of city or town wastes for the purposes of landfilling or otherwise the existing practice, if any, shall be phased out within a reasonable time not exceeding



three years from the date of this notification;

(vii) dumping of ash or any wastes from thermal power stations;

(viii) land reclamation, bunding or disturbing the natural course of sea water with similar obstructions, except those required for control of coastal erosion and maintenance or clearing of waterways, channels and ports and for prevention of sandbars and also except for tidal regulators, storm water drains and structures for prevention of salinity ingress and for sweet water recharge;

(ix) mining of sands, rocks and other substrata materials, except those rare minerals not available outside the CRZ areas;

(x) harvesting or drawal of groundwater and construction of mechanisms therefore, within 200 m of HTL; in the 200 m to 500 m zone it shall be permitted only when done manually through ordinary wells for drinking, horticulture, agriculture and fisheries;

(xi) construction activities in ecologically sensitive areas as specified in Annexure I of this notification;

(xii) any construction activity between the Low Tide Line and High Tide Line except facilities for carrying treated effluents and waste water discharges into the sea, facilities for carrying sea water for cooling purposes, oil, gas and similar pipelines and facilities essential for



activities permitted under this notification; and

(xili) dressing or altering of sand-dunes, hills, natural features including landscape changes, 50 per cent of the plot size and the total height of construction shall not exceed 9 metres."

The aforementioned Notification also provided for regulation of Permissible Activities (*Emphasis supplied*). All coastal States and Union Territory Administrations were required to prepare, within one year from the date of the main Notification, Coastal Zone Management Plans (hereinafter referred to as 'CZMP') for the purpose of identification and clarification of the Regulation Zones areas within respective territories in accordance with the guidelines contained in the 1991 main Notification.

8. In anticipation that the Management Plans would take time, all the States and Union Territories were required to ensure adherence to the main Notification.

9. The aforementioned Notification contained Annexure-I and Annexure-II.

10. Annexure-I consists of Coastal Area Classification and Development Regulations.

11. Annexure-II is the specific provision containing the



guidelines for development of beach resorts/hotels in the designated areas of Coastal Regulation Zone-III for temporary occupation of tourists/visitors.

12. Annexure-I provided a classification of coastal regulation, stretches within 500 metres of HTL of the landward side and classified into following four categories:

“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 historical 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 the Low Tide Line and the High Tide Line.

Category-II (CRZ-II):

The areas that have already been developed upto or close to the shore-line. 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, Lakshadweep and small islands except those designated as CRZ-I, CRZ-II or CRZ-III.

Norms for Regulation of Activities,

6(2) The development or construction activities in different categories of CRZ areas shall be regulated by the concerned authorities at the State/Union Territory level, in accordance with the following norms:

CRZ-I

No new construction shall be permitted within 500 metres of the High Tide Line. No construction activity, except as listed under 2(xii), will be permitted between the Low Tide Line and the High Tide Line.

CRZ-II

(i) Buildings shall be permitted neither on the seaward



side of the existing road (or roads proposed in the approved Coastal Zone Management Plan of the area) nor on seaward side of existing authorised structures. Buildings permitted on the landward side of the existing and proposed roads existing Authorised structures shall be subject to the existing local Town and Country Planning Regulations including the existing norms of FSI/FAR.

(ii) Reconstruction of the authorised buildings to be permitted subject with the existing FSI/FAR norms and without change in the existing use.

(iii) The design and construction of buildings shall be consistent with the surrounding landscape and local architectural style.

CRZ-III

(1) The area upto 200 metres 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. However, the following uses may be permissible in this zone- agriculture, horticulture, gardens, pastures, parks, play fields, forestry and salt manufacture from sea water.

(ii) Development of vacant plots between 200 and 500 metres of High Tide Line in designated areas of CRZ-III with prior approval of MEF 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 metres 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 goanthans. 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 per cent of the plot size : the overall height of construction shall not exceed 9 metres and construction shall not be more than 2 floors (ground floor plus one floor).

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

13. Annexure-II provided following guidelines for development of Beach resorts/hotels in the designated areas of CRZ-III for temporary occupation of tourist/visitors:-

"7(1) Construction of beach resorts/hotels with prior approval of MEF in the designated areas of CRZ-III for temporary occupation of tourists/visitors shall be subject to the following conditions:

(i) The project proponents shall not undertake any construction (including temporary constructions and fencing or such other barriers) within 200 metres (in the



landward side) from the High Tide Line and within the area between the Low Tide and High Tide Line:

(ii) The total plot size shall not be less than 0.4 hectares and the total covered area on all floors shall not exceed 33 per cent of the plot size i.e. the FSI shall not exceed 0.33. The open area shall be suitably landscaped with appropriate vegetal cover:

(iii) The construction shall be consistent with the surrounding landscape and local architectural style:

(iv) The overall height of construction upto the highest ridge of the roof, shall not exceed 9 metres and the construction shall not be more than 2 floors (ground floor plus one upper floor):

(v) Ground water shall not be tapped within 200 m of the HTL; within the 200 metre- 500 metre zone it can be tapped only with the concurrence of the Central/ State Ground Water Board:

(vi) Extraction of sand. levelling or digging of sandy stretches except for structural foundation of building, swimming pool shall not be permitted within 500 metres of the High Tide Line."

14. In 1994 a committee constituted called Vohra Committee recommended certain amendments for causing a Notification dated 18.8.1994.

15. Persons showing concern for the protection of



ecology and for preventing irreversible ecological damage to the coastal areas of the country invoked the writ jurisdiction under Article 32 of the Constitution of India before the Supreme Court in the matter **Indian Council for Enviro-Legal Action v. Union of India and others** [(1996) 5 SCC 281]. It was during the pendency of the aforementioned writ petition I.A. was filed for challenging the Notification of 1994. Distinction between 1991 Notification and 1994 Notification has been extracted in paragraph 29 of the aforementioned judgment, the same reads as under:-

	"Main CRZ Notification dated 19.2.1991 issues for relaxation	Vohra Committee recommendation	Amending notification dated 18.8.1994
1	200 metres from HTL is no-development zone	Relaxation allowed rocky and hilly areas; no limit specified	Blanket relaxation for all areas up to HTL if Central Government so desires.
2	No-development zone for rivers, creeks and backwaters 100 metres.	Clarification demanded about limits; no relaxation suggested.	No-development zone relaxed to 50 metres.
3	No levelling or digging of sand-dunes or sand.	Allows destruction of sand-dunes	No destruction of sand-dunes allowed. However, goalposts, net posts, lampposts allowed.
4	No-development	Recommends no-	Relevant section not



	zone area cannot be used for FSI calculations.	development zone area be permitted for FSI calculations.	amended but explanation added as an afterthought in the notification permitting no-development zone area to be included for FSI calculations.
5	No basements allowed area not to be included in FSI.	Basements permitted.	Basements allowed.
6	No fencing permitted within 200 metre-zone from HTL.	Only green fencing permitted, no barbed wire fencing allowed.	Allows green and barbed wire fencing."

16. Noticing that the six amendments caused by the 1994 notification was a clear departure from the recommendations of the Vohra committee, the Supreme Court quashed the newly added proviso in Annexure-II in paragraph 7 of sub-paragraph (1) of item No.i which gave Central Government arbitrary, uncanalized and unbridled power to relax the entire 6000 kms long coastal zone of India. It was also noticed that some compensation was liable to be allowed to the private owner whose land falls in the No Development Zone (NDZ).

17. In paragraph 43 of the aforementioned judgment it was noticed that there would be likelihood of the instances of infringement of main notification and also of Management Plans



whenever framed. Instead of agitating the question before the Supreme Court, the general principles, which have already been laid, it was observed that, it would be more appropriate that action with regard to the infringement, if any, relating to violation of fundamental rights should first be raised before the High Court having territorial jurisdiction over the area in question. During the pendency of the aforementioned writ petition there was an interim order dated 12.12.1994 wherein all the States including the State of Kerala while granting time to file their counter-affidavits, issued the following directions: *"The respondents/States shall not permit setting up of any industry or construction of any type on the area at least up to 500 metres from the sea-water at the maximum high tide."*

18. The aforementioned interim order was modified vide order dated 9th of March, 1995 in the following manner:-

"We modify our order dated 12-12-1994 and direct that all the restrictions, prohibitions regarding construction and setting up of industries or for any other purpose contained in the notification dated 19-2-1991 issued by the Ministry of Environment and Forests, Government of India under clause (d) of sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986 shall be meticulously followed by all the States concerned. The activities which have been declared as



prohibited within the Coastal Regulation Zone shall not be undertaken by any of the respondent-States. The regulations of permissible activities shall also be meticulously followed. The restrictions imposed by the Coastal Areas Classification and Development Regulations contained in Annexure I to the abovesaid notification shall also be strictly followed by the respondent-States."

19. On perusal of the aforementioned orders, the court was of the view that the regulation of the permissible activities was required to be meticulously followed by all the States. In the aforementioned judgment, the Supreme Court noticed that the States, which had not filed the Management Plans with the Central Government, were directed to file complete plans by 30th of June, 1996, whereafter, Central Government shall finalise and approve the said plans with or without modification within three months. Noticing that there could have been instances of not accepting the plans in toto, it was ordered that returning of the plan for modification and re-submission in such circumstances would become unnecessary, time consuming and futile exercise, and direction was issued that the plans when submitted will be examined by the Central Government which will inform the State Government or the Union Territory with regard to any shortcomings or modifications as Ministry of



Environment and Forests may suggest and if necessary, a discussion amongst the representatives of the State Governments and the Ministry of Environment and Forests should take place and thereafter the plans should be finalised. Pending finalisation of the plans, the interim orders passed by the Court were ordered to continue. By that time it was also noticed that many other States including Kerala had not submitted the Management Plans to the Central Government.

20. State of Kerala had submitted a Coastal Zone Management Plan (CZMP) to the Central Government on 29th of January, 1996 and as per the letter dated 27th of September, 1996 of Government of India, Ministry of Environment and Forests conveyed the approval subject to incorporating certain conditions, the relevant conditions are extracted hereinbelow:-

".....(vii) The State Governments which have prepared maps on 1:25,000 scale through Satellite Imagery for the purpose of delineating the HTL, should submit these maps to the Chief Hydrographer, Govt. of India for the purpose of demarcation. Those State Governments which were not in a position to prepare the maps in this manner, should submit them to the Chief Hydrographer, Govt. of India for the purpose of vetting. It is advisable that whenever there is any doubt, any development activity should only be permitted after ground measurements from the HTL. taking into consideration marks left by water, presence of mangroves, mudflats and beach.



(viii) The Government of Kerala shall delineate LTL, HTL, 200 metres, 500 metres lines and other relevant lines in respect of creeks, backwaters and rivers affected by tidal action so that distances can be measured, whenever required.

(ix) All uninhabited islands are being classified as CRZ-I (subject to continuation of existing traditional rights, social rights and customary uses) except those islands which have been approved by MOEF as CRZ-IV. In case of uninhabited islands classified as CRZ-I, in exceptional cases should a carrying Capacity Study establish that the proposed development will not have adverse ecological impacts, those particular islands could be reclassified as CRZ-IV, subject to prior approval of Ministry of Environment & Forests.

(x) Government of Kerala shall ensure that all development and activities in CRZ areas take place within the framework of the approved Coastal Zone Management Plan. Violation shall be subject to the provisions of Environmental (Protection) Act, 1986 and other relevant laws.

(xi) Government of Kerala or any other Authority so designated shall be responsible for monitoring and enforcement of the provisions of CRZ Notifications and CZMP.

(xii) Approval of this CZMP would not imply approval of any proposed project such as roads, airports, jetties, ports and harbours, buildings etc, indicated in the plan/map.

(xiii) All mangroves with an area of 1000 square metres or more would be classified as CRZ-I with a buffer Zone of at least 50 metres.-

(xiv) Dredged material will not be disposed within the CRZ area.



(xv) Sand dunes will be classified a CRZ-I. a

(xvi) Parks, Play grounds, regional parks, green zones and other non-buildable areas falling within CRZ-II areas are categorised as CRZ-III.

(xvii) Government of Kerala will not make any changes in the approved categorisation of CRZ areas without prior approval of Ministry of Environment & Forests, Government of India.

(xviii) Government of Kerala will give wide publicity to CZMP and indicate the list of places where it is available/can be inspected.

B. Special Conditions/Modifications/Classifications

(1) Details requested for determining various areas proposed for CRZ-II categorisation, namely Kasaragod, Kanhangad, Payyannur, Kannuar. Tellicherry, Badagara, Kozhikode, Tirur, Ponnani, Chavakkad, Kodungallur, Cochin, Parur, Tripunithura, Alappuzha, Kayamkalam, Cherthala, Kollam, Paravur, Varkala, Thiruvananthapuram, Vaikkam have not been furnished by the Government of Kerala. In view of this, it is decided that a Committee may be set up under the Chairmanship of Chief Secretary with at least two NGOs as Members to identify and demarcate CRZ-II areas within the proposed CRZ-II areas. For the purpose of, determining whether an area is substantially built-up, the ratio of built-up plots to that of total plots is to be ascertained. Where this ratio is 50 per cent or more, such areas (built-up and buildable) are to be classified as CRZ-II provided the same conforms to the criteria of CRZ-II as per CRZ Notification. The remaining areas will be classified as CRZ-I or III as applicable.

A copy of the final categorisation of CRZ-II so made will be set to this Ministry for record.

(ii) All areas of outstanding natural beauty/historical/heritage



areas mentioned in the plan namely Puvar south, Pulinkudi-Kovalam, Sankumugnam, Veli, Papanasam-Varkala, Edava, Kappil, Pozhikkara, Mundakkal (Jonnapuram), Thirumullavaram, Palliyamturuth, Alappuzha, Fort Kochi Cherai, Bekal, Kottikulam, Vettukad, Papanasam, Pozhikkara-Paravur, Neendakara, Arthungal, Kottukal, Anjengo fort. Thangasseri, Karunagapally. Ambalapuzha, Vaikom, Mattancheri, Chennamangalam, Parur, Chemanchery-Quilandy, Bekal will be marked as CRZ-I after identifying spatial extent of these areas, even if these areas are surrounded by CRZ-II or CRZ-III areas.

(iii) The distance from High Tide Line to which the CRZ regulations will apply in case of rivers, creeks and backwaters shall be kept as 100m (not 50m as proposed) or width of the rivers, creeks or backwaters whichever is less."

And it was observed that the plan submitted by the Government of Kerala vide communication dated 29th of January, 1996 was not in conformity with the conditions indicated above and suggested that the modifications may be made with a modification plan and maps should be sent to the Ministry within a period of two (2) months. It is pertinent to mention here that distance from High Tide Line to CRZ in case of river, creeks and backwaters was categorized as 100 metres not as 50 metres as proposed.

21. In the meantime an expert committee under the Chairmanship of Pro.N.Balakrishnan Nair was constituted on



30th of December, 1996 to examine the specific issues with respect to Kerala State for implementation of 1991 CRZ Notification. The facts noticed by the aforementioned committee in the report were that many Grama Panchayats are 'substantially built-up' and incorrectly shown in CRZ-III but should have been in CRZ-II. The aforementioned suggestion was on the ground that habitation pattern of Kerala clearly showed that there is really no rural/urban divide in the State. The coastal stretches of the State are heavily developed with a well developed network of roads, electricity, telephone connections and water supply. Committee suggested the following amendments:-

"I. The arbitrary definition of CRZ, merely in terms of substantially built up areas within municipalities and corporations has to be amended. The coastal panchayats designated as part of metropolitan areas (33 in numbers) have to be redesignated under CRZ-II. CRZ-II must also include those areas designated as 'census towns' in the census of India, 1991. (35 coastal census towns have been demarcated, apart from the one included in the metropolitan areas above). "The details of such areas as extracted from the Census of India are appended as Annexure-3.

In addition, to reflect the settlement pattern of the state all areas where the density of population is above



1000 persons per Sq. Km should be brought under the definition of CRZ - II.

II. The set back in the case of rivers, creeks and backwaters may be amended as 50 meters or the width of the rivers, creeks, estuaries or backwaters whichever is less, in the case of Kerala. The extent of the coastal zone inland into rivers, creeks, estuaries or backwaters should be restricted to 500 meters (this criteria has been adopted in the revised CZMP submitted by Government of Kerala to MOEF in September 1996)."

22. There was a problem amongst the affected parties of not being provided of the CZM plans. Jurisdiction of this Court was invoked in O.P.No.20278 of 1997 and this Court vide order dated 2nd of June, 1998 issued directions to make available in all Districts, Taluks, Grama Panchayats, Municipal Offices, Corporations, Taluk offices, Public Libraries copies of Coastal Zone Management Plan (CZMP) and also to publish the same in the Kerala Gazette and in two local newspapers.

23. After letter of 1996 Ministry of Environment and Forests vide communication dated 4th of January, 1999 intimated all the heads of the States the names of five institutions/agencies authorised by the Central Government for demarcating HTL and LTL. Out of the five centres one centre is "Center for Earth Sciences Studies, Thiruvananthapuram".



Guidelines were also laid down for the purpose of demarcation of both HTL and LTL. It was directed to prepare CRZ Maps on a cadastral scale (1:3960 or nearest scale) to ascertain the Coastal Regulation Zone with precision.

24. It is pertinent to mention here that the said exercise so far was not taken by the State Government and previous CZMP 1996 continued to stand in its defective nature.

25. A public interest litigation on behalf of the Citizens Interest Agency was preferred in this Court against Lakeshore Hospital & Research Centre Pvt. Ltd. inter alia on the ground that a 350 bed hospital and a show room was sought to be demolished for the reason that the construction raised was in violation of the notification of 1991 issued by the Central Government under Section 3 of the Environment (Protection) Act, 1986 (hereinafter referred to as 'Act, 1986').

26. The inadequacy in the mapping of CZMP 1996 need to be corrected by preparing CRZ maps in cadastral scale was admitted by State Government and noticed by the Division Bench of this Court in paragraph 32 of the judgment, the same reads as under:-



"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 1/2 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."

27. Writ Petition challenging CZMP 33A, 34 & 34A was closed as infructuous giving liberty to approach if need arises after revising of CZMP. It would not be out of place to mention here that in paragraph 22, Division Bench noticed that canals were man-made and had been constructed many years back. CZMP without cadastral number preferred in 1995 was returned and rejected in 1996.

28. The then Hon'ble President of India constituted High Power Committee under the Chairmanship of Dr.M.S.Swaminathan for the purpose of recommendation with regard to the implementation of Coastal Regulation Zone Notification 1991. The Committee found that the HTL maps are classified and were not accessible by common man which



would put into great difficulties even to construct small dwelling units, schools, village roads, etc. The demarcation of HTL could not be afforded by small entrepreneurs thus, recommended simplified procedure. On the basis of over all analysis, the Committee found that the CRZ Notification, 1991 and the Coastal Zone Management Plan (CZMP) of 1996 (Kerala) contained lots of mistakes and factual errors. The operative part of the same reads as under:-

"3.4.23 Categorization of the CRZ Areas.

The CRZ Notification, 1991 [para 6(i) and 6(ii)] categorizes the CRZ areas into CRZ- I, II, III and IV. The para 6(ii) lists specific activities that can be taken in each of these categories. The categorization of the CRZ area is based on the eco-sensitivity of the coastal zone and the extent of development. But it is seen from the list under CRZ-I it includes several of the eco-sensitive areas and areas, which are very subjective and cannot be defined for example, areas of outstanding natural beauty, areas rich in genetic diversity. Such subjective and broad base terminologies have led to problems in demarcating CRZ-I areas by the State Governments in their CZMP maps. The Committee is of the opinion that there needs to be a clearly defined terminology alongwith a boundary for the purpose of Administration of such identified areas. Similarly. under CRZ-II and III the terminologies used are highly vague and subjective such as 'developed area, substantially built up. relatively undisturbed areas, legally designated urban areas etc For the purpose of implementation and enforcing the



CRZ policy the Committee is of the view that there needs to be a clearly detined terminologies along with the administrative boundaries. In the absence of such clarity, there will be confusion within the enforcing machinery, which will lead to hardship for the local communities and also for taking up developmental activities.

4.24 Demarcation of High Tide Line, Low Tide Line and CRZ Boundaries

As per para 1(1), of the notification High Tide Line needs to be demarcated uniformly by an authorized demarcating agency. For this purpose the Ministry has issued guidelines and also identified 7 Central and State Government agencies for demarcating the HTL, and LTL The Committee has noted that the definition given for High Tide Line demarcation has led to confusion among various authorized agencies. The guidelines issued are also being interpreted differently by the different agencies. Since, each of the authorized agency employ different inethodologies for demarcation there is significant variation between the High Tide Lines drawn by one agency to that of the other for the same area, Further, there is also no clarity with regard to the scale at which the demarcations have to be carried out. Mest of the High Tide Line maps are classified hence cannot be accessible by common man. This has put the local communities into great difficulties even to construct small dwelling units, schools, village roads etc. Further the expense towards High Tide Line demarcation cannot be afforded by small entrepreneurs.

In view of the above difficulties and the complications involved in the entire process. the Committee is of the opinion that this procedure of High Tide Line demarcation should be simplified or done away with. The Ministry may



think of the other methods such as considering permanent structures (safe for the period of last 20 years along the sea front as a line of setback) in the metropolitan cities and towns. In case of eco-sensitive areas the administrative boundary or the biological boundaries drawn by some of the scientific"

29. It is pertinent to mention that the judgment of the Supreme Court (supra) noticed that the Pollution Control Board is already overburdened, vide order dated 26th of November, 1998 constituted an authority called Kerala Coastal Zone Management Authority (hereinafter referred to as 'KCZMA') consisting of following seven (7) persons:-

1	<i>Secretary Department of Health & Family Welfare Government of Kerala</i>	<i>Chairman</i>
2	<i>Secretary Department of Revenue Government of Kerala</i>	<i>Member</i>
3	<i>Member Secretary Kerala State Pollution Control Board</i>	<i>Member</i>
4	<i>Dr.M.Baba Director Central for Earth Science and Studies Thiruvananthapuram</i>	<i>Member</i>
5	<i>Director Central Marine Fisheries Research Institute, Cochin</i>	<i>Member</i>
6	<i>Prof Balakrishnan Nair Emeritus Scientist Swati, Residence Road, Thycaud Thiruvananthapuram</i>	<i>Member</i>



7	<i>Director Science, Technology and Environment Government of Kerala</i>	<i>Member Secretary</i>
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30. On 6th of January, 2011, Central Government passed a new notification S.O.No.19(E) in supersession of the earlier Notification of 1991. The said new notification gave a special status to Backwater Islands in the State of Kerala. Detailed guidelines were laid down on the material issues, i.e., preparation of maps, mapping of CRZs for the purpose of corrections in the reclassification. On 1st of July, 2011, Central Government issued an Office Memorandum. The proposal for reclassification shall be addressed while preparing maps, i.e., CZMPs under the new notification of 2011. Clause 2 of the aforementioned proved that HTL shall be demarcated within one year from date of notification, *ibid*.

31. In the notification of 2011 special CRZ for Kerala was carved out because of the unique coastal systems of backwater and backwater islands in the coastal stretches of State of Kerala wherein activities were required to be regulated in the following manner:-

"(i) all the islands in the backwaters of Kerala shall be



covered under the CRZ notification;

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

(iii) within 50mts 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 50mts 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;

(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 50mts width from HTL of these backwater islands."

32. In the 2011 Notification distance was reduced to 50 metres.

33. The approval of the plan prepared under 2011 notification came into being by the Ministry of Environment and Forests for Climate Change on 28.2.2019. Regulation 5 (xii) of



2011 Notification, provided that the Coastal Zone Management Plan already approved by the Ministry of Environment and Forests shall be valid upto 31st July 2018, or till such time the approval is given by that Ministry to fresh Coastal Zone Management Plans made under the said notification, whichever is earlier. The aforementioned section (xii) was inserted with effect from 30.12.2015.

34. It is pertinent to mention here, by this time Coastal Zone Management Plan of 1999 without any cadastral, had been approved.

35. Department of Local Self Government issued Government Order dated 27th of September, 2014, covering illegal buildings constructed in accordance with the valid building permits and directed that if there was any irregularity or violations detected in the building permits and caused financial loss, officers concerned would be responsible. The case did not stop here. The Ministry of Environment and Forests passed another CRZ notification on 18th of January, 2019 wherein the CRZ area was reduced to 20 metres from HTL which would be effective only on approval of cadastral maps, i.e., Coastal Zone Management Plans (CZMP).



36. It is pertinent to mention here that a new notification on 18.1.2019 came into being ie., prior to the approval of the Coastal Regulation Zone plan under 2011 notification. Clause 2.3.1 of 2019 provided that densely populated CRZ-III areas where the population density is more than 2161 per square kilometer as per 2011 census base, shall be designated as CRZ -III A and in CRZ-III A, area up to 50 meters from the HTL on the landward side shall be earmarked as 'No Development Zone (NDZ)', provided the CZMP as per this notification, framed with due consultative process, has been approved, failing which, a NDZ of 200 meters shall continue to apply.

37. Clause 6 of 2019 notification, provided that all coastal States and Union territory administrations shall revise or update their respective coastal zone management plan (CZMP) framed under CRZ Notification, 2011 as per provisions of this notification and submit to the Ministry of Environment, Forest and Climate Change for approval at the earliest and all the project activities attracting the provisions of this notification shall be required to be appraised as per the updated CZMP under this notification and until and unless the CZMP is so revised or updated, provisions of this notification shall not apply



and the CZMP as per provisions of CRZ Notification, 2011 shall continue to be followed for appraisal and CRZ clearance to such projects.

38. Noticing the errors in the CZMP prepared by Kerala, Ministry of Environment and Forests vide communication dated 28th of February, 2019 approved the Coastal Zone Management Plans of various districts including Ernakulam district (Emphasis supplied) which reads as under:-

"This has reference to letter no. B3/40/2019/Env, dated 23.02.2019 regarding Coastal Zone Management Plans (CZMPs) of Kasaragod, Kannur, Kozhikode, Malappuram, Thrissur, Ernakulam, Kottayam, Alappuzha, Kollam and Thiruvananthapuram districts, in Kerala, drawn as per the provisions of the Coastal Regulation Zone Notification, 2011.

2 In this regard, it is to state that based on the recommendations of the National Coastal Zone Management Authority (NCZMA) in its 37th Meeting held on 25.02.2019 and recommendations of the Technical Scrutiny Committee held at NCSCM, Chennai on 18.02.2019, the Ministry of Environment, Forest and Climate Change hereby conveys its approval of the CZMPs of the districts of Kasaragod, Kannur, Kozhikode, Malappuram, Thrissur, Emakulam, Kottayam, Alappuzha, Kollam and Thiruvananthapuram, in Kerala.

This issues with the approval of the Hon'ble Minister



(EFCC)."

39. In the meantime Government had issued a notification dated 26th June 2019 specifying steps for preparation of CZMP. The notification and clauses (b), (c) and (d) read as under:

***The CRZ Notification, 2011**, has been superseded by the CRZ Notification issued vide Notification No. GSR 37(E), dated the 18th January, 2019 (herein referred to as the CRZ Notification, 2019). In accordance with para 6 of the CRZ Notification, 2019, the coastal State Government and Union Territory Administrations are required to revise or update the Coastal Zone Management Plans (CZMPs) of their respective state or UT, as per the provisions contained in the CRZ Notification 2019. In this regard, I am directed to enclose herewith the guidelines for facilitating the state government/ UP administration in updation of the CZMPs. 2) This issues with the approval of Competent authority.*

Clause (b) Data to be provided by the States/UTs to the authorized agencies

- (i) Database of the CZMPs prepared and approved based on CRZ notification 2011, including HTL, LTL, ESAs, CVCA, Hazard line and coastal land use, along with hard copies/pdf of approved CZMP and land use maps.
- (ii) Details of Village-wise survey numbers pertaining to government land in the format (bearing Taluk name, Village name, Survey No/Part Survey No. etc) for deciding/enabling ease in demarcation of buffers around mangrove areas.



(iii) Digitized geo-referenced Census village boundary maps in shapefile format as per 2011 census base and the corresponding 2011 census (population) data of villages in digital/soft copy/xls format for demarcation of CRZ-IIIA and CRZ-III Bareas.

(iv) Stakeholder data such as Municipal maps, Notifications for legally designated urban areas etc., for new CRZ-II areas, fishing Zones in the water bodies and fishing village boundaries, breeding and spawning grounds of fish and the like, for updating the CZMP, as applicable.

(v) Infrastructure facilities such as roads, jetty, port, fish landing centers, etc.

(vi) Existing authorised structures on the seaward side and features like cyclone shelters, rain shelters, helipads and other infrastructure including road network for the purpose of rescue and relief operations during cyclones, storms, tsunami and the like.

(c)CRZ buffers

The CRZ limits will be revised or updated as per provisions contained in the CRZ notification, 2019, as follows:

No Development Zone (NDZ)/Buffers of tidally influenced waterbodies (water bodies influenced by tidal effects from sea in the bays, estuaries, rivers, creeks, backwaters, lagoons, ponds that are connected to the sea) - 50 meters or width of the creek, whichever is less.

NDZ for CRZ-IIIA areas (sea front) - 50 m

NDZ for CRZ-III Bareas(seafront) - 200m

NDZ for inland islands in the coastal backwaters and islands along the mainland coast - 20 m

**(d) Processing of Census data**

All census maps and the corresponding census data of 2011 of all rural or urban areas demarcated in the CZMPs prepared as per CRZ Notification 2011, will have to be analyzed for computing the corresponding density of population for each village. All rural or urban areas with population more than 2161 per sq. km will be classified as CRZ-IIIA and the remaining CRZ-III areas will be classified as CRZ-IIIB. After demarcation of CRZ-IIIA and CRZ-IIIB areas, the Census maps shall be taken out of the CZMP and will be kept in the database separately. Only Cadastral maps with Survey No. information shall be superimposed to the CZMP. CRZ-II areas demarcated in the CZMPs prepared as per CRZ Notification 2011, need to be retained as such, without any change. However, new CRZ-II areas, if any, may be added.

41. On 16th of October, 2019, State Government constituted a Coastal District Committee (CDC) in ten coastal districts to prepare the list of violations of CRZ Notifications across the State. Three interim reports on following dates: (1) 31st of October, 2019, (2) 31st of November, 2019 and (3) 20th of December, 2019 were submitted and comments/suggestions were ordered to be collected by the district collectors.

42. On 18th of March, 2020, State Government in order to cover



large number of violations, issued an order delegating the powers to the District Level Committees to treat the applications submitted for CRZ Clearance for residential buildings constructed up to 26th of February, 2020 which also provided condonation of delay also. On similar lines fresh notification was issued by Kerala Coastal Zone Management Authority on 22nd of November, 2021 whereby District Level Committees of KCZMA was directed to treat the applications submitted for CRZ of already constructed buildings upto 8th of November, 2021 without obtaining prior clearance which were otherwise permissible as per the prevailing CRZ Notification as late application and also to condone the delay.

43. It is pertinent to mention here the amendment in the 2019 notification again was caused on 1st of May, 2020. The aforementioned notification was challenged in this Court and this Court held that KCZMA cannot take a stand that the applicant in a case coming under the first limb of CRZ-III A(ii) should also satisfy the criteria of being a traditional fisherman community member or a local inhabitant.

44. Since the matter with regard to the preparation of the Coastal Zone Management Plan (cadastral) was pending



consideration, as per the communication of the Ministry of Environment, Forests and Climate Change dated 7th of September, 2022 addressed to the Secretary (Environment), Kerala was placed before the 45th meeting of the National Coastal Zone Management Authority (NCZMA) on 1st September, 2022. It was noticed that the Government of Kerala had submitted a representation relating to their Coastal Zone Management Plan as per 2019 Notification and pointed out that the term 'legally designated urban area' has not been defined under the CRZ Notifications. Therefore, 'Urban Areas' designated by the Acts or Rules or the Census Towns as per 2011 Notification ought to be considered as 'Legally Designated Urban areas'. Sixty six (66) panchayats included in Kerala's notification of 2011 and One hundred and seventy five (175) panchayats included in Kerala's notification of 2021 were notified as Census Towns. Based upon this, it was informed that the National Coastal Zone Management Authority (NCZMA) in the meeting held on 1st of September, 2022 decided and informed that sixty six (66) category-I Coastal Grama Panchayats notified before the issue of CRZ Notification, 2019 can be considered as 'other existing legally designated urban



areas' as per CRZ Notification, 2019 with a further direction to the Government to provide infrastructure facility in proposed area as per the norms of Municipality and prepare detailed Disaster Management and Mitigation Plans. It was also made clear that the areas specified by the Department of Atomic Energy in the aforementioned sixty six (66) Coastal Panchayats shall not be categorized in CRZ-II. Any construction within 50 metres would be violation or not is to be determined on the basis of the cadastral maps, CRZ Maps and the demarcation.

45. In the letter dated 7th of September, 2022 list of sixty six (66) Grama Panchayats from CRZ-III to CRZ-II was also notified. For Ernakulam District, the following Grama Panchayats were notified:-

- 1 Chellanam
- 2 Cheranelloor
- 3 Elankunnapuzha
- 4 Kadamakkudy
- 5 Kumbalam
- 6 Kumbalangi
- 7 Mulavukad
- 8 Nayarambalam
- 9 Njarakkal



10 Varappuzha

46. Department of Environment, Government of Kerala prepared a draft report on Coastal Zone Management Plan for Ernakulam District. The same was published by National Centre for Earth Science Studies. The features pertaining to Ernakulam District were as follows:-

"The remarks column in Annexure 2 of the Report (Page 53) says that "Coastal villages such as Kuzhuppilly (Block 1), Pallupuram, Kuzhupilly (Block 3), which are parts of Pallipuram Panchayat, Kuzhupilly Panchayat respectively are categorized as CRZ IIIA, based on the guideline of CZMP preparation as per CRZ Notification 2019. In such villages, NDZ has been redrawn as 50 meters from the HTL against 200 meters as stipulated in the previous CRZ Notification, 2011..."

Other legally designated urban areas as per the CRZ Notification, 2019, the Panchayats that met the criteria of built-up area and developmental infrastructure are categorized as CRZ II."

47. The other 'legally designated urban area' as referred to in the communication of 7th September, 2022 prescribed that the Panchayats which meet with the criteria of built up area and developmental infrastructure could be categorized as

**CRZ-II.**

48. CRZ-II in 2011 Notification was defined as under:-

“(ii) CRZ-II,-

The areas that have been developed upto or close to the shoreline.

Explanation.- For the purposes of the expression "developed area" is referred to as that area within the existing municipal limits or in other existing legally designated urban areas which are substantially built-up and has been provided with drainage and approach roads and other infrastructural facilities, such as water supply and sewerage mains."

49. Based on the aforementioned facts and the events taken place from time to time, the matters pending before this Court including the lead case have to be decided.

50. In W.P.(C)No.28199 of 2012 - K.G.A.Hotels & Resorts Pvt.Ltd. -

Brief facts:-

It is a Private Limited Company represented by Director which had a purpose of setting up a Five Star Deluxe Hotel in a land bearing 5.64 acres in Survey No.212/7, 213/1, 213/3, 213/10, 213/13, 213/15 and 213/16 in Maradu Village in Kanayannur Taluk. The aforementioned plot is located in the



vicinity of Kundannur Junction having a frontage to National Highway-47 bypass on its west and bounded by 'Kundannur Canal' on its south. In November, 2010, the Maradu Grama Panchayat was upgraded by the Government of Kerala to Municipality. Company in order to contribute to the tourist and business scenario decided to construct a five star hotel and submitted an application dated 18th of December, 2006 prior to coming into force of the Municipality and obtained a permit (Ext.P1) from the erstwhile Panchayat for construction of multi-storied Hotel Complex consisting of ground plus twelve upper floors.

51. On 18th May, 2007, Government of Kerala issued a letter (Ext.P2) to the Panchayat to invoke Rule 16 of the Building Rules and revoke the number of the building permit on the allegation of violation of CRZ-III norms and zonal violation. Consequent on the same, the permit was withdrawn by the erstwhile Panchayat vide Ext.P3 on 24th of July, 2007.

52. The aforementioned action was challenged before this Court in W.P.(C)No.36500 of 2007. By interim order dated 11th of December, 2007 this Court stayed impugned revocation of the permit order and permitted to continue with the



construction at own risk. The project had an estimate cost of around 250 crores and therefore required Environmental Clearance of the Expert Appraisal Committee under the Ministry of Environment and Forest, Government of India. An application was submitted to the Ministry of Environment and Forest. Expert Appraisal Committee considered the application in their 52nd and 59th meetings held in November, 2007 and April, 2008 and vide communication (Ext.P5) dated 24th of April, 2008 intimated the petitioner, recommendation (Ext.P6) of the project for Environmental Clearance and awarded 'Silver' grading to the project.

53. On 14th of February, 2008, Pollution Control Board also granted consent (Ext.P7).

54. An application was submitted to the Municipality, upgraded in 2010 for numbering of the building which was rejected leading to litigation in this Court which resulted into interim order dated 13th of March, 2012 in W.P.(C)No.1137 of 2012. Vide interim order this Court the petitioner was directed to submit an application for regularization of the additional construction with a further observation that the Municipality would be at liberty to consider and take appropriate decision.



55. Accordingly, the petitioner submitted an application along with 'as built' drawings of the buildings. The Municipality vide communication dated 24th of March, 2011 informed the Divisional Officer, Fire and Rescue Service, Ernakulam for obtaining NOC, which was issued on 25th of April, 2012 (Ext.P10).

56. After having completed the electrical work, power allocation was also issued vide order (Ext.P12) dated 13th of April, 2012. However, on the question with regard to the numbering of the building the petitioner was constrained to submit an interim application in the previous writ (W.P. (C)No.36500 of 2007) and this Court vide interim order dated 30th of May, 2012 issued a direction to the Municipality to consider the numbering of the petitioner's building. Accordingly, building numbers as X1/641A and XI/641B were assigned. Copy of the occupancy certificate and property tax receipts are produced herewith as Exts.P15, P16(a) and P16(b) respectively.

57. On 03rd of July, 2012, Kerala Coastal Zone Management Authority (KCZMA) issued a notice referring to a Government letter dated 15th of April, 2009 that the building



was constructed in violation of the CRZ-III regulations in a Non Development Zone as contained in CRZ notification 1991, called upon to show cause within fifteen (15) days as to why action under Section 5 of the Environmental Protection Act should not be taken. The aforementioned letter was allegedly based upon some field inspection report.

58. The petitioner vide detailed representation Ext.P19 explained that the project is located in a vast expanse of land having an extent of about 5.5 acres and is located beyond 50 metres of HTL from the alleged water body beyond Coastal Regulation Zone as applicable to Kerala, i.e., CRZ Notification 2011 meant for Kerala, therefore construction was perfectly in tune with the new CRZ Notification 2011 as also the Government Order dated 31st of May, 2007 concerning Zoning and sub-division Regulations. Copy of the sketch plan of the plot and building issued by the Taluk Surveyor, Kanayannur Ext.P20 was enclosed. The construction of the Hotel was completed on 27th of October, 2012.

59. To the utter shock of the petitioner, the 4th respondent issued an order vide Ext.P22 dated 08th of November, 2012 ordering demolition of substantial part of the



petitioner's building stated to be constructed in violation of CRZ Notification of 1991. Stop memo was issued. It was alleged that there were two violations, namely, zoning and CRZ-III building is shown as upto 72 metres of the CRZ 1991 and 2011 notification and issued stop memo. Construction was in CRZ-III. The said notice was challenged before this Court on the following grounds:-

60. Petitioner's submissions:-

(i) The land in question, where the hotel has been set up, is not in a coastal stretch.

(ii) Kundannur Canal is on the southern side and cannot be considered to be a water body influenced by tidal action in terms of CRZ Notifications 1991 and subsequently 2011. KCZMA has not yet prepared Coastal Zone Management Plan and have been seeking time to prepare from time to time as evident from the minutes of the meeting dated 24th of January, 2012 of National Coastal Zone Management Authority (Ext.P28).

(iii) Kundannur Canal is not a natural water body. It is an artificial canal. Both sides are protected by rubble walls.

(iv) Department of Environment and Climate Change, Thiruvananthapuram vide communication (Ext.P26) dated 25th



of October, 2012 informed the petitioner/company that the project was appraised by the Expert Appraisal Committee in the 52nd, 59th and 63rd meeting and recommended for Environmental Clearance in the 63rd meeting. The petitioner's project was recommended by the Expert Appraisal Committee, much less, did not receive any communication from the Ministry of the Environment and Forests within a period of forty five (45) days. Permission, which is already granted, is with effect from September, 2008. Notice is cryptic and unintelligible. The average distance is beyond 50 metres on the landward side from the HTL, i.e., the alleged water body, thus, beyond the Coastal Regulation Zone as applicable to Kerala.

(v) In the counter affidavit filed by the fourth respondent - KCZMA in W.P.(C)No.36500 of 2007 it is stated that since Grama Panchayat is a well developed area it could be considered as falling within CRZ-II category.

(vi) Order (Ext.P22) has been issued by the Member Secretary; whereas, as per the previous notification (1998) there are seven (7) members and present notification (2023) there are 13 members. The order is without jurisdiction. Reliance was laid to the first marked notification notifying the



constitution of Kerala Coastal Zone Management Authority (KCZMA).

(vii) The Chief Secretary of Government of Kerala had filed an affidavit dated 16th of October, 2020 in the Supreme Court in one of the cases by pointing out that total number of reported cases, as per the Coastal District Committee, were 27,735, but, as per the available record, it was not sufficient to arrive at a conclusion that the reported cases were actual violations. The actual distance from the High Tide Line (HTL) of sea/tidal influenced water body to the constructed building, existence of authorised structures and other relevant geomorphological details are required to be verified. The cases listed as potential violation may also include instances of structures that have received exemptions.

(viii) The previous coastal zone maps had certain errors and only twenty three (23) procured map whereby illegally designated area has been categorized in CRZ-II. Thus, it was too premature for the Authorities to take action against the petitioner of alleged violation of 1991 notification as much water has flown during the pendency of the writ petition, much less, impugned order of demolition of the part of the building



was under stay vide order dated 27th of November, 2012.

(ix) In the judgment of **Lakeshore**, as per the assertions of the State Government, Kerala had not prepared the cadastral map and the hospital which had been given permission is also in the same vicinity, where the present hotel is constructed. It was noticed that it is man made canal and not natural, much less there is no tidal action. In the judgment of the Supreme Court in **Kerala State Coastal Zone Management Authority v. State of Kerala, Maradu Municipality and others** [(2019) 7 SCC 248] it was found that the map prepared in 1996 after 1991 Notification was full of errors as per the communication of the Central Government dated 27th of September, 1996. The said plan came to be passed only in 2019. The Coastal Zone Management Plan of various districts including Ernakulam was approved only in 2019 as per the communication dated 28th of February, 2019. Thus, in the absence of any demarcation or determination of the area much less the impugned notice recalling permit and demolition notice were wholly illegal, arbitrary, preposterous and capricious.

(x) In 2011 notification Coastal Regulation Zone for Kerala was defined in a different context, keeping into consideration



the unique coastal system, distance to be taken was 50 metres. None of the notices or the decision of the 4th respondent was backed by any demarcation plan except one report which had not seen light of the day or annexed with the counter affidavit. Environmental Clearance is the testimony that there was no such violation of the environment but has not been taken into consideration while issuing the impugned notices.

61. Submission of Mr.Prakash, Standing Counsel for the KCZMA :

(i) Kundannur 'thodu' is influenced by the tidal action. The said act is covered in map No.34A of Kerala Coastal Zone Management Plan prepared in view of 1991 notification. As per the said notification the construction should be away from 100 metres of High Tide Line of water body. The construction in question is "72" metres from HTL of the water body and the issuance of the building permit was on a condition that the construction shall be carried out only in accordance with CRZ Rules. The petitioner failed to obtain CRZ permit prior to the commencement of the construction nor did apply for



clearance.

(ii) The site inspection was conducted on 1st November, 2008 and in the report it was found that construction started above 39 metres landward of HTL on eastern side and 50 metres landward of HTL on western side.

(iii) In 2007, vide Ext.P17 the erstwhile Grama Panchayat revoked Ext.P1 permit vide Ext.P3 proceedings based upon the Government letter dated 18th May, 2007 (Ext.P2). KCZMA is the Authority to issue the clearance, thus clearance from the Ministry of Environment without notifying to the 4th respondent was in violation of the provisions of the Environmental Laws as the cost of the project was more than five(5) crores.

(iv) CRZ notification of 1991 was superseded by 2011 notification which provided special dispensation for backwater islands by reducing CRZ to 50 metres landward from HTL of the backwater island. Therefore, the existing violations cannot be condoned, because, the State CZMA has to act under



Section 5 of the Environment (Protection) Act, 1986.

(v) KCZMA had never provided or recommended CRZ clearance as per the CRZ 1991 notification. Therefore, it cannot be recognized. Environment clearance is to be issued by the Ministry of Environment and Forests on the recommendation of National Coastal Zone Management Authority (NCZMA).

(vi) The decision of the KCZMA was in accordance with the provision of CRZ notification. It was mentioned that the State Government is in process of preparation of coastal zone management plan based upon CRZ Notification 2011. But, till the completion of the process the provisions of CRZ Notification would be in force.

62. In rebuttal, petitioner raised following submissions: Centre for Earth Science Studies (CESS) prepared a report in May, 2011. In the absence of any preparation or the availability of the cadastral map famous institutions; 1) M/s.DM Healthcare Pvt.Ltd. 2) M/s.DM Medicity Hospitals India Pvt. Ltd. and 3)



M/s.Ambady Infrastructure Pvt. Ltd. submitted application for obtaining the clearance for development of a Hospital under the name and style 'Aster' in Survey Nos.198, 199, 200, 201 to 221 in Cheranallur Village in Kanayannur Taluk, Ernakulam District which is an island in Vembanadu backwater system and close to the Coastal Regulation Zone (CRZ) on the banks of Edayakunnam canal/'thodu' connected to Kothad river and falls in the earlier map No.35A. Map was prepared in 1991 and approved in 2019. CESS, Thiruvananthapuram was assigned a duty to delineate the HTL and LTL and also to prepare CRZ status report. After examination, it was summarised and recommended that no doubt the Kothad in Cheranallur Panchayat is in the island of Vembanadu backwater and the distance now has been assigned as 50 m. from HTL on the landward side. The CRZ notification (2011) has defined Critical Vulnerable Coastal Areas (CVCA) which includes Vembanadu in Kerala. Being a backwater island, the CRZ on the landward side of Kothad is limited to 50 metres landward from the HTL and granted permission for construction.

63. Similarly, for Lulu Convention and Exhibition Centre Pvt. Ltd., which is also part of an island in the backwaters



considering that it is outside 50 metres and the site proposed for development was reclaimed from Vembanad backwater during 2005-06, permission was granted.

64. The notices sent in the instant case were based upon CRZ notification 1991 which prescribed a different distance, i.e., 100 metres; whereas the 2011 notification meant Coastal Regulation Zone for Kerala as 50 metres. The construction of the present hotel is also beyond 50 metres which fact has not been denied. In the counter affidavit it is stated as 72 metres. In other words, construction less than 50 metres is not permissible. Thus, the whole purpose of initiating the process is required to be quashed or atleast reconsidered.

65. In other writ petitions grievance of all writ petitioners have been that Grama Panchayat, after having granted the permission, recalled the permission, refused to allot the building number or cancelled permits and in certain cases, when permission was sought from the Kerala Coastal Zone Management Authority, decision had been rendered by the Member Secretary and not by the Committee members constituted from time to time. The grounds taken in the leading writ petition are also the grounds taken in the other writ



petitions i.e., like non-preparation of the cadastral maps, coastal zone management plans, demarcation, promulgation of 2019 notification whereby the distance in CRZ-III has been reduced from 200 metres to 50 metres only on approval of the plan which has now been prepared in 2023 but pending approval of the Central Government and in few matters committee rejected approval.

66. In all these cases there has been an interim order regarding the demolition or issuance of the permits, raising of the construction at their peril.

67. I have heard counsel for the parties and appraised the paper books.

68. On analysis of the prelude, pleadings and arguments, following points emerge for determination:-

i) Whether the notices Exts.P17 and P22 issued by the 4th respondent KCZMA in view of the notification issued under CRZ 2011 (for Kerala) prescribing the distance of 50 metres would be sustainable in view of the categorical stand taken in the counter?

ii) Whether the notices Exts.P17 and P22 issued by Member Secretary in the absence of signatures by the other



members of the Committee in view of constitution of the Committee in 1998 and 2023 would be without jurisdiction?

iii) Whether it would be conducive in view of the subsequent communications extracted above permitting the regulation of the violations and condoning the delay from time to time and re-consider the issue? Particularly cadastral map which is still under finalization in view of 2019 notification.

69. Reasoning:-

Admittedly, the distance as per the 1991 notification was 100 metres for bringing any construction in CRZ. As per the 2011 CRZ Notification, KCZMA as noticed above granted permission to Lulu Convention Centre and Exhibition Center Pvt. Ltd. in February, 2012 and Aster in May 2011 by recommending as under:-

“Summary & Recommendations

Kothad in Cheranallur panchayat, where the proposed site for development is located, is an island in the Vembanadu backwater system

In view of the unique coastal systems of backwater and backwater islands, the CRZ (on the landward side) in the islands within the backwaters of Kerala have been defined as 50 m from the HTL on the landward side (MoEF 2011).



The CRZ Notification (2011) has defined Critical Vulnerable Coastal Areas (CVCA) which also includes 'Vembanad in Kerala.

Project site was a tidal marsh which was reclaimed by the Kochi Corporation through dumping of municipal wastes.

HTL and CRZ mapping was done for the coastal regulation zone of the project site.

The position of HTL, LTL and CRZ categories are demarcated in large scale (1:4000) cadastral maps.

The HTL and LTL are demarcated by taking into consideration the geomorphic signatures that were discernible in the field.

Being a backwater island, the CRZ on the landward side of Kothad is limited to 50 m landward from the HTL

The Kothad river and Edayakunnam canal and the bed are CRZ IV

The CRZ of Kothad where the project area is located is CRZ III as per the CZMP of the State.

"Summary & Recommendations

A major part of the site proposed for development was reclaimed from Vembanad backwater during 2005-06

The position of HTL, LTL and CRZ categories are demarcated in large scale (1:4000) cadastral map.



The HTL and LTL are demarcated by taking into consideration the geomorphic signatures such as embankments.

Bolgatty in which the development is proposed, is an island. Hence the CRZ landward from the HTL extends only upto 50 m (CRZ 2011, vide para 8V 2(ii)).

Proposed development site is in CRZ III.

The waterbody (Ernakulam kayal/Vembanad backwater) adjoining the proposed development site and the bed is CRZ IV.

As per the lay out provided, the proposed structure is outside the 50 m CRZ."

70. In the judgment in **Indian Council for Enviro-Legal Action v. Union of India and others** [(1996) 5 SCC 281] question has been left open to the High Court to decide the matters individually as per the findings rendered in paragraph 42 extracted hereinbelow:-

"42. As far as this Court is concerned, being conscious of its constitutional obligation to protect the fundamental rights of the people, it has issued directions in various types of cases relating to the protection of environment and preventing pollutioits For effective orders to he passed, so as to ensure that there can be protection of environment along with development, it becomes



necessary for the court dealing with such issues to know about the local conditions. Such conditions in different parts of the country are supposed to be better known to the High Courts. The High Courts would be in a better position to ascertain facts and to ensure and examine the implementation of the anti-pollution laws where the allegations relate to the spreading of pollution or non-compliance of other legal provisions leading to the infringement of the anti-pollution laws. For a more effective control and monitoring of such laws, the High Courts have to shoulder greater responsibilities in tackling such issues which arise or pertain to the geographical areas within their respective States. Even in cases which have ramifications all over India, where general directions are issued by this Court, more effective implementation of the same can, in a number of cases, be effected, if the High Courts concerned assume the responsibility of seeing to the enforcement of the laws and examine the complaints, mostly made by the local inhabitants, about the infringement of the laws and spreading of pollution or degradation of ecology."

71. Writ petitions are pending adjudication in this Court since 2008 onwards with interim orders on raising of construction subject to outcome of writ petitions.

72. In 2011 notification, for Kerala zone extracted above, distance has been provided 50 metres from the High Tide Line (HTL) on the landward side, 50 metres from the HTL of backwater island existing dwelling units of local communities



with the prior permission of the Grama panchayat.

73. In the letter dated 27th September, 1996 following suggestions were recommended:-

"B. Special Conditions/Modifications/Classifications

(i) Details requested for determining various areas proposed for CRZ-II categorisation, namely Kasaragod, Kanhangad, Payyannur, Kannuar. Tellicherry, Badagara, Kozhikode, Tirur, Ponnani, Chavakkad, Kodungallur, Cochin, Parur, Tripunithura, Alappuzha, Kayamkalam, Cherthala, Kollam, Paravur, Varkala, Thiruvananthapuram, Vaikkam have not been furnished by the Government of Kerala. In view of this, it is decided that a Committee may be set up under the Chairmanship of Chief Secretary with at least two NGOs as Members to identify and demarcate CRZ-II areas within the proposed CRZ-II areas. For the purpose of, determining whether an area is substantially built-up, the ratio of built-up plots to that of total plots is to be ascertained. Where this ratio is 50 per cent or more, such areas (built-up and buildable) are to be classified as CRZ-II provided the same conforms to the criteria of CRZ-II as per CRZ Notification. The remaining areas will be classified as CRZ-I or III as applicable.

A copy of the final categorisation of CRZ-II so made will be set to this Ministry for record.

(ii) All areas of outstanding natural beauty/historical/heritage areas mentioned in the plan namely Puvar south, Pulinkudi-Kovalam, Sankumugnam, Veli, Papanasam-Varkala, Edava, Kappil, Pozhikkara, Mundakkal (J onnapuram),



Thirumullavaram, Palliyamturuth, Alappuzha, Fort Kochi Cherai, Bekal, Kottikulam, Vettukad, Papanasam, Pozhikkara-Paravur, Neendakara, Arthungal, Kottukal, Anjengo fort. Thangasseri, Karunagapally. Ambalapuzha, Vaikom, Mattancheri, Chennamangalam, Parur, Chemanchery-Quilandy, Bekal will be marked as CRZ-I after identifying spatial extent of these areas, even if these areas are surrounded by CRZ-II or CRZ-III areas.

(iii) The distance from High Tide Line to which the CRZ regulations will apply in case of rivers, creeks and backwaters shall be kept as 100m (not 50m as proposed) or width of the rivers, creeks or backwaters whichever is less.

(iv) The existing discrepancies in the plan i.e. between the running notes, the tables and the map will be rectified.

The plan submitted by Govt. of Kerala vide Chief Secretary's D.O. letter No. 221/B 1/94/ STED dated 29th January, 1996 is not in conformity with the conditions indicated above. These modifications may be made and the modified plan and maps should be sent to this Ministry, within a period of two months, for record.

74. Non-preparation of cadastral map was noticed in paragraph 32 of **Lakeshore** extracted above.

75. Ministry of Environment and Forests granted sanction to the maps only in 2019 as per the contents of the letter dated 28th of February, 2019 extracted above.

76. The permission granted to Lulu and Aster extracted,



herein above, in February, 2012 and May, 2011 was though in pursuance of 2011 notification which reduced the distance/area from 100 metres to 50 metres, concededly, the area as per the stand taken by the 4th respondent in the lead case is beyond 50 metres. The relevant portion of the pleadings extracted from counter affidavit reads as under:-

“Since the construction in question was within 72 metres from the HTL of water body, the building permit was issued on condition that construction shall be carried out only in accordance with CRZ Rules.”

77. On perusal of the fact it has come to the light that the construction of the building (in the lead case) in question is at a distance beyond 50 metres of HTL of the alleged water body. Therefore, it is beyond Coastal Regulation Zone as applicable to Kerala. The previous Grama Panchayat comes within the meaning of developed area as prescribed in category II of Coastal Area Classification and Development Regulations. The preparation of the Coastal Zone Management Plans had been undergoing changes as noticed above earlier in 1996 and approved in 2019 and now in May, 2023 again has been prepared showing the survey numbers, i.e, cadastral pending



approval from Central Government. Concededly Kundannur canal is not a natural water body.

77A. Expert Appraisal Committee in Ext.P6 recommended to give Environmental Clearance to the petitioner's project (in the lead case) and the fourth respondent did not raise any objection in view of the letter (Ext.P26) dated 25th of October, 2012, the contents of the same read as under:-

"Attention is invited to the reference cited on the subject matter. On close scrutiny of the copies of records submitted by you and also in viewing the Minutes of the 63 Meeting of the Expert Appraisal Committee available in the website of the Ministry of the Environment & Forest, Govt. of India, it is seen that your project was appraised by the Expert Appraisal Committee at its 52, 59 and 63 meeting. It is also observed that the Expert Appraisal Committee has recommended the project for Environmental Clearance at its 63 meeting held in the Bhabha Chamber, SCOPE Complex, Opp. Jawaharlal Nehru Stadium, Lodhi Road, New Delhi-110 003 on 16-18 July, 2008

EIA Notification, 2006 and subsequent amendments at its Para 7 describes the stages in Environmental Clearance for projects and Para 8 describes the procedure for grant or rejection of prior Environmental Clearance. As per Para 8(1) & (iii) of the said notification, in the event that the decision of the regulatory authority is not communicated to the applicant within a period of forty-five-days-of the receipt of the recommendation of the Expert Appraisal Committee or in other words within one hundred five days of the receipt of the complete application with requisite documents, the applicant may proceed as if the Environmental



Clearance sought for has been granted or rejected by the regulatory authority in terms of the final recommendations of the Exper Appraisal Committee. Since your project is seen recommended by the Expert Appraisa Committee for Environmental Clearance at its 63 meeting held on 16-18th July, 2008 and from Exhibit P26-2

the records submitted by you it is observed that there is no communication received from Ministry of Environment & Forests within the time limits prescribed in sub Para (1) and (ii) of Para 8, it is clarified that you may proceed as if the Environmental Clearance sought for has been granted from September, 2008 in view of Para 8(iii) of EIA Notification 2006.

It is however, emphasized that this clarification is based on the information and documents submitted by M/s KGA Hotels & Resorts Pvt. Ltd., for their hotel project at Maradu, Kanayannur Taluk, Ernakulam District, Kerala to this office and it is the responsibility of the project proponent to prove the authenticity and truthfulness of the information in case of any clarification in future. It is also based on the information available in the website of Ministry of Environment & Forests, Government of India."

78. Building in the lead case has been assigned with building number by the Municipality as noticed above. Ext.P17 letter of the Government issued on 15th of April, 2009 is based upon the notification of 1991; whereas the impugned notice Ext.P22 is dated 8th of November, 2012 when the new CRZ Notification of 2011 had already come into force. Ext.P17 in



such circumstances would be wholly inconsequential to act upon.

79. The area of 50 metres was reduced on the basis of the recommendation of Dr.Swaminathan extracted above. It is on that background the Notification 2011 came to be passed. As late as in 2020, Kerala Government had undertaken before the Supreme Court by way of an affidavit that they were not in a position to make the actual distance from the HTL, whether it is influenced by HTL of sea or tidal influenced water body to the constructed building, existence of authorised structure or other relevant geomorphological details in the absence of availability of full record. Paragraphs 8 and 9 of the affidavit dated 16th of October, 2020 submitted in Civil Appeal Nos.4784-4785 of 2019 and various other connected cases read as under:-

"8. It is submitted that the total number of cases reported by the Coastal District Committees is 27,735 it was compiled by the concerned local bodies based on the available records. It is pointed out that the available records itself are not sufficient to arrive at a conclusion that the reported cases are actual violations. It is also submitted that the actual distance from High Tide Line (HTL) of Sea/tidal influenced water body to the constructed building, existence of authorised structures and other relevant geomorphological details from the site are required to verify the violations reported The



cases listed as potential violations may also include instances of structures that have received exemptions, be involved in on-going litigation etc.

9. It is submitted that the complaints made by the public against the list of CRZ violations may be confirmed after the field verification /site inspection with satellite Imageries and field data collection using advanced geo-info matics tools such as Differential Global Positioning System, Electronic Total Station etc. It is also submitted that the field ventication is planned to be carried out by the officials of the concerned local body, revenue, town planning and technical experts."

80. Mr.M.P.Prakash, learned Standing Counsel for the KCZMA relied upon the judgment in **Kapico Kerala Resorts Pvt. Ltd. v. State of Kerala and others** [2020 (1) KHC 368] to contend that already the violation has been brought to the notice of the authorities by the CRZ. The cases under the vulnerable area as rejected by the Division Bench of this Court would be a decision binding upon the present case. In my considered view each case had to be decided on the facts and circumstances of the case. The construction in the afore cited case was basically within non-permissible zone. In the instant cases there was no reference of any cadastral map or survey number on which the building is constructed to bring within the



purview of prohibited zone. Moreover the construction in the cited judgment was in the Critically Vulnerable Coastal Area (CVCA); whereas, as per the stand extracted above, it does not fall within the said category rather the action of the respondents in issuing the demolition notice is discriminative vis-a-vis the permissions granted to “the Aster Medicity” and “Lulu Convention Centre” as noticed above.

81. In **Kerala State Coastal Zone Management Authority v. State of Kerala, Maradu Municipality and others** [(2019) 7 SCC 248] the committee constituted by the Supreme Court relied upon a map No.33-A which was previously agreed to be redrawn in **Lakeshore** (supra) as per paragraph 32 extracted above and gave a report that the area was falling under CRZ-III and CZMP based on 2011 notification had not yet been approved. It is pertinent to mention here that the said CZMP based on 2011 was relied for granting approval for Aster Medicity in Cheranallur in 2011. On 22nd November, 2021, KCZMA came out with a notification with an intent that the building already constructed upto 08th of November, 2021 without obtaining the prior clearance would be permissible as per the CRZ Notification on submission of late applications. The



contents of the notification dated 22nd November, 2021 read as under:-

“ORDER

*As per order read as 2nd paper above Kerala Coastal Zone Management Authority had delegated the power to the District level Committees of KCZMA to treat all the applications submitted for CRZ Clearance for the residential buildings constructed **up to 26.02.2020** that are otherwise permissible as per the prevailing CRZ Notification as late application and also condone the delay occurred in such applications subject to assessment of the merits of the case for residential purpose.*

Later, several applications for CRZ Clearance for the residential buildings constructed after 26.02.2020 are being received in KCZMA. The 117th meeting of KCZMA held on 08.11.2021 discussed the matter in detail and decided to direct all District level Committees of KCZMA to treat the applications submitted for CRZ Clearance of already constructed residential buildings up to 08.11.2021 without obtaining prior clearance that are otherwise permissible as per the prevailing CRZ Notification as later application and to condone the delay occurred in such applications based on the merits of the case.

*In the circumstances, Kerala Coastal Zone Management Authority hereby delegates the power to all District level Committees of KCZMA to treat the application submitted for CRZ Clearance of already constucted residential buildings **up to 08.11.2021** without obtaining prior clearance that are otherwise permissible as per the prevailing CRZ Notification as late application and also to condone the delay occurred in such applications based on the merits of the case. The District Level*



Committees of KCZMA shall verify the date of commencement and completion of construction and the permissibility of plinth area as per the prevailing CRZ Notification. If permissible, the delay shall be condoned by the District Level Committee based on the merit of the case for residential purpose.

*The District Level Committee's meetings that consider the later applications shall strictly be presided over by the District Collector concerned and the **POWER SHALL NOT BE DELEGATED** to any other officer for the purpose.*

DLO meeting not chaired by the District Collector shall be deemed invalid."

82. In March, 2023, during the course of hearing, this Court was handed over the draft report on Coastal Development Plan for Ernakulam District prepared by the Department of Environment, Government of Kerala published by National Centre for Earth Science Studies. In the remarks column of Annexure-A2 of the report it says that "Coastal villages such as Kuzhuppilly (Block 1), Pallipuram, Kuzhupilly (Block 3), which are parts of Pallipuram Panchayat, Kuzhupilly Panchayat respectively are categorized as CRZ IIIA, based on the guideline of CZMP preparation as per CRZ Notification 2019. In such villages, Non Development Zone has been redrawn as 50 meters from the HTL against 200 meters as



stipulated in the previous CRZ Notification of 2011. The other legally designated urban areas as per the CRZ Notification of 2019, the Panchayats that met the criteria of built-up area and developmental infrastructure are categorized as CRZ II."

83. Keeping in view this situation, the State of Kerala with regard to the density of the population and considering of natural backwaters, sea shores and tidal action in pursuance of the directions of the judgment in **Indian Council for Enviro-Legal Action v. Union of India and others** [(1996) 5 SCC 281] finally came out with a plan of 2023 reducing the area from 100 metres to 50 metres.

84. Grama Panchayat is instrumental in conveying and issuing the demolition order on receipt of the information or decision from Kerala Coastal Zone Management Authority. It is seen that the Management Authority had been acting as per the notifications promulgated from time to time by the Ministry of Environment and Forests and had also been granting permissions in view of the subsequent notifications promulgated in 2011 in respect of the cases cited above whereby the distance from 100 metres had been reduced to 50 metres falling in CR-II Zone. Newly inserted clauses in 2019



notification are required to be extracted, which reads as under:

2.3.1 CRZ-III A. - Such densely populated CRZ-III areas, where the population density is more than 2161 per square kilometer as per 2011 census base, shall be designated as CRZ-III A and in CRZ-III A, area up to 50 meters from the HTL on the landward side shall be earmarked as the 'No Development Zone (NDZ)', provided the CZMP as per this notification, framed with due consultative process, have been approved, failing which, a NDZ of 200 meters shall continue to apply.

2.3.2 CRZ-III B.- All other CRZ-III areas with population density of less than 2161 per square kilometer, as per 2011 census base, shall be designated as CRZ-III B and in CRZ-III B, the area up to 200 meters from the HTL on the landward side shall be earmarked as the 'No Development Zone (NDZ)'.

2.3.3 Land area up to 50 meters from the HTL, or width of the creek whichever is less, along the tidal influenced water bodies in the CRZ III, shall also be earmarked as the NDZ in CRZ III.

85. Challenge is also on the ground that decisions of the Kerala Coastal Zone Management Authority had been not in terms of the provisions of the Act as the Chairman on his own rejected the permission whereas it should have been by the members of the Committee. In support of the contentions, had referred to the judgment of the Division Bench of this Court to



contend that Chairman is not competent to take the decision for either rejecting or accepting the permission. It may not be out of place to mention here that Ministry of Environment, Forest and Climate Change by notification dated 21.3.2023, in terms of the provisions of sub Section 3 of Section 3 of the Environment (Protection) Act, 1986 constituted the Coastal Zone Management Authority consisting of following persons for a period of three years. The same reads as under:

S.O. 1317(E)- In exercise of the powers conferred by sub-section (3) of section 3 of the Environment (Protection) Act, 1986 (29 of 1986) (hereinafter referred to as the said Act), the Central Government hereby constitutes the Kerala Coastal Zone Management Authority (hereinafter referred to as the Authority) consisting of the following persons, specified in Column (2) of the Table below, for a period of three years with effect from the date of publication of this Order in the Official Gazette, namely: -

Sl.No	Name of the persons	Designation
1	2	3
1	Additional Chief Secretary, Environment Department, Government of Kerala, Government Secretariat, Thiruvananthapuram, Kerala -695001	Chairman, ex officio:



2	Principal Secretary, Local Self Government Department, Government of Kerala, or his representative not below the rank of Joint Secretary, Government Secretariat, Thiruvananthapuram, Kerala -695001	Member, ex officio,
3	Principal Secretary, Industries Department, Government of Kerala, or his representative not below the rank of Joint Secretary, Government Secretariat, Thiruvananthapuram, Kerala-695001	Member, ex officio
4	Principal Secretary, Forest and Wild Life Department, Government of Kerala, or his representative not below the rank of Joint Secretary, Government Secretariat, Thiruvananthapuram, Kerala -695001	Member, ex officio;
5	Principal Secretary, Fisheries Department, Government of Kerala, or his representative not below the rank of Joint Secretary, Government Secretariat, Thiruvananthapuram, Kerala - 695001	Member, ex officio;
6	Principal Secretary, Revenue Department, Government of Kerala, or his representative not below the rank of Joint Secretary, Government Secretariat, Thiruvananthapuram, Kerala - 695001	Member, ex officio;
7	Secretary, Urban Affairs Department, Government of Kerala, or his representative not below the rank of Joint Secretary, Government Secretariat, Thiruvananthapuram, Kerala - 695001	Member, ex officio;



8	Dr.K.K.Vijayan, 6 AB, BCG Midtown Apartments, Near KMA Building, Panambilli Nagar, Kochi, Kerala - 682036	Expert Member
9	Dr.Richard Scaria, Assistant Professor, Department of Geography, Government College Chittur, Palakkad, Kerala-678104	Expert Member
10	Dr.C.Revichandran, House No. 1, Panchajanyam,UdayaNagar, Kathrikadavu, Kochi, Ernakulam, Kerala 682017	Expert Member
11	Smt.Amrutha Satheesan, Assistant Professor, Mar Gregorios College of LawNalanchira, Thiruvananthapuram,Kerala	Expert Member
12	Head of Malabar Natural History Society, Susheela Mandir, B G Road, NadakkavuP.O., Calicut, Kerala - 673011	Member, Non Government Organization,
3	Director, Directorate of Environment and Climate Change, Government of Kerala, 4 ^a Floor, KSRTC Bus Terminal, Thampanoor, Thiruvananthapuram, Kerala -695001	Member Secretary, ex officio

However, in this case and in many cases notices have been issued only by the member Secretary and not by all members and therefore they are not sustainable.

86. In lead case, I would have directed the Coastal Zone



Management Authority to reconsider the permissions but that would also lead to a great confusion for, as of now, 2011 notification is in vogue and 2019 would come into play only when the plan prepared in 2023 receives the sanction/accord from the Central Government.

87. In 2019 notification CR-III zones permitted the construction within 200 metres has also been reduced to 50 metres. Thus, the said exercise in the present scenario would be in-futility.

88. There is another aspect that the Ministry of Environment, Forest and Climate Change, Government of India issued a letter dated 7.10.2022 addressed to the Secretary, Environment Department, Government of Kerala in respect of issues related to preparation of Coastal Zone Management Plan of Kerala as per CRZ notification, 2019. The same reads as under:

Sub: Issues related to preparation of Coastal Zone Management Plan of Kerala as per the CRZ Notification, 2019 reg.

1.This has reference to the DO letters from Chief Secretary. Government of Kerala dated 2nd December, 2021, 31st May, 2022 & 26 July, 2022 and communications dated 14th June, 2022 and 21 June, 2022 from the



Environment Department, Government of Kerala.

2. The matters related to preparation of Coastal Zone Management Plan (CZMP) of Kerala as per the CRZ Notification, 2019 was placed in the 45th meeting of the National Coastal Zone Management Authority (NCZMA) held on 1st September, 2022.

3. The Government of Kerala made a presentation related to their CZMP as per 2019 Notification and pointed out that the term 'legally designated urban areas' is not defined under the CRZ Notifications and therefore, 'Urban Areas' designated by the Acts or Rules or the Census Towns as per 2011 Notification ought to be considered as 'Legally Designated Urban areas'. The Solid Waste Management Rules, 2016 notified by the Ministry vide S.O 1357 (E), dated 8th April, 2016 under the E(P) Act 1986, mentions, "Census Town" means the Urban Area as defined by the Registrar General and the Census Commissioner. The State of Kerala opined that the 'Census Town' as defined in the Ministry's Solid Waste Management Rules, 2016 may be considered as 'legally designated urban areas' for the purposes of the CRZ Notification, which is also notified under the E(P) Act.

It was informed that 66 Panchayats included in Kerala's notification of 2011 and 175 Panchayats included in Kerala's notification of 2021 were notified as Census Towns. It was submitted that 175 Panchayat notified by Government of Kerala as Legally designated Urban Areas be considered for the purposes of classification under CRZ-II as per the CRZ Notification, 2019.

4. In this regard, based on recommendations of the



45th meeting of the National Coastal Zone Management Authority held on 1/9 / 2022 it is to inform that 66 Category- I Coastal Grama Panchayats notified before the issue of CRZ Notification. 2019 can be considered as 'other existing legally designated urban areas" as per the CRZ Notification, 2019 i.e. existing as on the date of issue of CRZ Notification 2019 Such Category-1 Panchayats meeting the criteria of built up area and developmental infrastructure could be considered for classification as falling under CRZ-II area.

However, the Kerala Government shall provide all the infrastructure facility in the proposed area as per the norms of Municipality and shall prepare detailed Disaster Management and Mitigation Plans. The areas specified by the Department of Atomic Energy in the proposed aforementioned 66 Coastal Panchayats shall not be categorized as CRZ-II, and shall be classified as CRZ-IIIA or CRZ-IIIB as per the norms, and such areas shall be contiguous in nature.

5. This issues with the approval of the Hon'ble Minister, EFCC.

89. The writ petitions as noticed above have been pending since many years with stay order and valuable right had accrued in favour of the petitioners and other similarly situated persons. Owners of various land falling in the prohibited area by virtue of the notifications, may not, in



certain cases, be able to raise construction despite relaxation and exemption issued from time to time, and would certainly have a right to claim compensation as the said provision would be violative of Article 300A of the Constitution of India.

90. On analysis of all the aforementioned facts and documents, it is irresistibly concluded that the notices Ext.P17 issued in 2009 and Ext.P22 in 2012 (in lead case W.P. (C)No.28199 of 2012 - K.G.A.Hotels & Resorts Pvt.Ltd.) are beyond jurisdiction and are not sustainable, for, the construction raised, concededly as per the stand of the respondent No.4 KCZMA as beyond 50 metres, is 72 metres. Though Notices have been issued only by Member Secretary and not all members but would not deem it appropriate to remand to KCZMA to reconsider but issue direction to grant permission in terms of the observation herein-above.

91. As an upshot of my findings, I allow all other writ petitions, quash the impugned notices, in all matters/writs, issued by gram panchayats or KCZMA, even if they are issued by the committee or not, with further direction that the Kerala Coastal Zone Management Authority or other competent authorities would consider/reconsider request for sanction or



take action only when the Cadastral Map of 2023 is approved by the Government whereby the distance of 200 metres in CRZ-III has been reduced to 50 metres and then examine each and every case, pending or future applications, depending upon the location, situation and the extent of construction, permitted or prohibited.

The other relief with regard to claim for recasting of the notifications and claim with regard to classification of the Grama Panchayat and challenge to the notification is hereby rejected.

sab

Sd/-
AMIT RAWAL
JUDGE