
(2005) 12 KL CK 0057

In the High Court Of Kerala

Case No : O.P. No's. 34321 of 2002, WPC No's. 10282, 15589 etc of 2005

A.C. Parthan and Others

APPELLANT

Vs

Nayarambalam Grama Panchayath and Others

RESPONDENT

Date of Decision : 16-12-2005

Acts Referred:

Constitution of India, 1950 — Article 14

Environment (Protection) Act, 1986 — Section 3, 3(1), 3(2)(v)

Citation : (2006) 3 ILR (Ker) 465 : (2006) 2 KLJ 916 : (2006) 3 KLT 734

Hon'ble Judges : A.K. Basheer, J

Bench : Single Bench

Advocate : P.B. Sahasranaman and T.S. Harikumar, for the Appellant; C.A. Chacko, Vaheeda Babu (GP) and John Varghese (ASG), for the Respondent

Judgement

A.K. Basheer, J.—The petitioners in this bunch of writ petitions are stated to be residents of some "small islands" (as the petitioners would call them) like Vypeen, Mulavukadu, etc. in Ernakulam District. According to the petitioners, these "small islands" are by and large surrounded by Arabian Sea as well as backwaters. Since they are included under CRZ III category, the area upto 200 meters from the High Tide Line has been ear-marked as "no development zone". Resultantly, no construction/reconstruction/renovation of dwelling units or other structures is permitted. However, in Lakshadweep and small islands which are included in CRZ IV, discretion is vested with the appropriate authority to decide the distance from the High Trade Line, depending on the size of the islands, to grant permission for construction of buildings. But in the case of coastal areas included in CRZ III category, the authorities are prohibited from permitting any construction except for repairs of existing authorised structures and that too not exceeding the existing plinth area, density, etc. The grievance of the petitioners is that because of the inclusion of the entire coastal area comprising these small islands in CRZ III, they are deprived of their right to construct any dwelling house or other buildings in their properties. The primary prayer in these writ petitions is to issue a writ of mandamus or such other

appropriate writ or direction to the Kerala Coastal Zone Management Authority to make necessary modification or amendment in the Coastal Zone Management Plan of Kerala in such a way as to allow the residents of these small islands to make construction in their respective properties. In other words, the prayer is to include these small islands like Vypeen, Mulavukadu, Vallarpadom etc. under CRZ IV category as in the case of Andaman and Nicobar islands, Lakshadweep and other small islands.

2. On December 15, 1990 the Ministry of Environment and Forests had issued a notification u/s 3 of the Environment (Protection) Act, 1986 (for short "the Act") inviting objections prior to the issuance of "Coastal Regulation Zone Notification". Thereafter, on February 19, 1991 the Govt. of India issued the notification invoking the power under Sections 3(1) and 3(2)(v) of the Act and also under, clause (d) of sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986. By the said notification, it was declared by the Government that the coastal stretches of seas, bays, estuaries, creeks, rivers and backwaters which are influenced by tidal action (in the landward side) upto 500 meters from the High Tide Line (HTL) and the land between the Low Tide Line (LTL) and the HTL shall be classified as Coastal Regulation Zone under four categories, namely, CRZ-I, CRZ-II, CRZ-III and CRZ-IV. By the same notification several restrictions were imposed for setting up and expansion of industries, their operations, processes, etc. in the said Coastal Regulation Zone. The notification inter-alia further dealt with prohibited activities, permissible activities, procedure for monitoring and enforcement, etc. Under Annexure I of the notification, the coastal regulations and developmental regulations were classified.

3. As mentioned earlier, "coastal stretches" were classified as CRZ I, CRZ II, CRZ III and CRZ IV. Since the issues involved in this bunch of writ petitions relate to CRZ-III and CRZ-IV, it may be relevant to extract only those two categories; which read thus:

CRZ-III

(I) The area upto 200 metres from the High Tide Line is to be earmarked as "No Development Zone".

Provided that such area does not fall within any notified Special Economic Zone.

No construction shall be permitted within this zone except for repairs of existing authorised structures not exceeding existing FSI, existing plinth area and existing density, and for permissible activities under the notification including facilities essential for such activities. However, the following uses/activities may be permissible in this zone agriculture, horticulture, gardens, pastures, parks, play fields, forestry, projects relating to the Department of Atomic Energy, mining of rare minerals, salt manufacture from sea water and facilities for receipt and storage of petroleum products and liquefied natural gas as specified in Annexure III appended to this notification and facilities for regasification of liquefied natural gas subject to the conditions as mentioned in para (ii), facilities for generating

power by non conventional energy sources, desalination plants, weather radars and construction of airstrips and associated facilities in the Islands of Lakshadweep and Andaman and Nicobar.

(ia) Construction of dispensaries, schools, public rain shelters, community toilets, bridges, roads and provisions of facilities for water supply, drainage, sewerage which are required for the local inhabitants may be permitted, on a case basis, by the Central Government or Coastal Zone Management Authority constituted for the State/Union Territory.

Provided that construction of units or ancillary thereto for domestic sewage treatment and disposal shall be permissible notwithstanding anything contained in sub-paragraph (iv) of paragraph 2 of this notification.

(ib) The No Development Zone may be reduced to a minimum of 50 mts in the identified stretches of the Islands in the Union Territory of Andaman and Nicobar Islands selected and declared by the Central Government for promotion of tourism, based on integrated coastal zone management study conducted or commissioned by the Ministry of Environment and Forests;

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

(iia) Facilities for receipt and storage of petroleum products and liquified natural gas as specified in Annexure III appended to this notification and facilities for regasification of liquefied natural gas subject to the conditions as mentioned in para 2(ii),

(iib) storage of non hazardous cargo such as edible oil, fertilizers and food grain in notified ports.

(iic) desalination plants.

(iid) facilities for generating power by non conventional energy sources.

(iie) construction of airstrips and associated facilities in the Island of Lakshadweep and Andaman & Nicobar.

(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 gaothans. Building permission for such construction/reconstruction will be subject to the conditions that the total number of dwelling units shall not be more than twice the number of existing units; total covered area on all floors shall not exceed 33 percent of the plot size; the overall height of construction shall not exceed 9 metres and construction shall not be more than 2 floors ground floor plus one floor. Construction is allowed for permissible activities under the notification including

facilities essential for such activities. An authority designated by State Government/Union Territory Administration may permit construction of public rain shelters, community toilets, water supply, drainage, sewerage, roads and bridges. The said authority may also permit construction of schools and dispensaries, for local inhabitants of the area, for those panchayats the major part of which falls within CRZ if no other area is available for construction of such facilities.

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

(v) In notified SEZ, construction of non-polluting industries in the field of information technology and other service industries, desalination plants, beach resorts and related recreational facilities essential for promotion of SEZ as approved in its Master Plan by SEZ Authority may be permitted."

CRZ-IV

Andaman & Nicobar Islands:

(i) No new construction of buildings shall be permitted within 200 meters of the HTL;

(ii) The buildings between 200 and 500 meters from the High Tide Line shall not have more than 2 floors (ground floor and first floor), the total covered area on all floors shall not be more than 50 per cent of the plot size and the total height of construction shall not exceed 9 meters;

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

(iv)(a) Corals from the beaches and coastal waters shall not be used for construction and other purposes.

(b) sand may be used from the beaches and coastal waters, only for construction purpose upto the (30th day of September, 2001) and thereafter it shall not be used for construction and other purposes.

(v) Dredging and underwater blasting in and around coral formations shall not be permitted; and

(vi) However, in some of the islands, coastal stretches may also be classified into categories CRZ-I or II or III with the prior approval of Ministry of Environment and Forests and in such designated stretches, the appropriate regulations given for respective categories shall apply.

Lakshadweep and small islands:

i) For permitting construction of buildings, the distance from the High Tide Line shall be decided depending on the size of the islands. This shall be laid down for each island, in consultation with the experts and with approval of the Ministry of

Environment & Forests keeping in view the land use requirements for specific purposes vis-a-vis local conditions including hydrological aspects erosion and ecological sensitivity:

ii) The buildings within 600 meters from the HTL shall not have more than 2 floors (ground floor and first floor), the total covered area on all floors shall not be more than 50 per cent of the plot size and the total height of construction shall not exceed 9 meters;

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

iv) Corals and sand from the beaches and coastal waters shall not be used for construction and other purposes;

v) Dredging and underwater blasting in and around coral formations shall not be permitted; and

vi) However, in some of the islands, coastal stretches may also be classified into categories CRZ-I or II or III, with the prior approval of Ministry of Environment & Forests and in such designated stretches, the appropriate regulations given for respective categories shall apply.

4. A perusal of the clauses in CRZ III clearly shows that the area upto 200 metres from High Tide Line is to be earmarked as "No Development Zone. No construction other than repairs of existing authorised structures and exceeding existing FSI, existing plinth area and existing density shall be permitted within this zone. As regards development of vacant plots between 200 and 500 metres of High Tide Line in designated areas of CRZ-III, construction shall be permitted for hotels/beach resorts for temporary occupation of tourists/visitors with prior approval of Ministry of Environment and Forests. Thus, it is clear that no new dwelling house or building can be constructed upto an area of 200 metres from the High Tide Line at all. Similarly, in the vacant plots situated between 200 and 500 metres of High Tide Line also no permanent structures or buildings shall be allowed; but that would be permitted is only construction of hotels/beach resorts for temporary occupation of tourists/visitors. The local inhabitants are thus deprived of their right to construct any dwelling house or building upto 500 metres from the High Tide Line.

5. It is true that clause (iii) allows construction/reconstruction of dwelling units between 200 and 500 metres of High Tide Line, so long as it is "within the ambit of traditional rights and customary uses such as existing fishing villages and gaothans". But permission will be granted only subject to the condition that total number dwelling units shall not be more than twice the number of existing units and that total covered area on all floors shall not exceed 33 percent of the plot size; the overall heights of construction shall not exceed 9 metres and that construction shall not be more than 2 floors (ground floor plus and floor).

6. In Coastal stretches coming under CRZ IV also, no new construction of

buildings shall be permitted within 200 metres of High Tide Line. But clause (ii) of CRZ IV indicates that buildings between 50 and 500 metres from the High Tide Line with not more than two floors, shall be permitted on certain conditions. In the case of Lakshadweep and small islands in CRZ IV, discretion is vested with the competent authority to decide the distance of the coastal area from the High Tide Line where permission for construction can be granted. Clause (i) further stipulates that "the distance shall be laid down for each island on the basis of integrated coastal zone management study and with approval of the Ministry of Environment & Forests, keeping in view the land use requirements for specific purposes vis-a-vis local conditions including hydrological aspects, erosion and ecological sensitivity." (emphasis supplied). It is thus clear that relaxation is possible in the distance rule in the case of small islands in appropriate cases. The competent authority of course, has to necessarily keep in view the local conditions and the land use requirements of the residents of the coastal area in those cases. The thrust appears to be on maintaining a balance between the "land use requirements" of the coastal area concerned and preservation and protection thereof.

7. As noticed earlier, construction/reconstruction of dwelling units or other buildings and development of vacant plots on the coastal area under CRZ III is restricted to a great extent. It is pointed out by the learned counsel for the petitioners that the inhabitants of these small islands are put to great disadvantage by the ban/restriction imposed on construction of dwelling houses. These islands being very small in size, the distance rule as stipulated in CRZ III is highly irrational and arbitrary, it is contended. If only the Coastal Zone Management Authority had bestowed its attention to the Predicament of the inhabitants of these small islands, this anomalous situation could have been avoided. It is further contended by the learned counsel that the Department of Science Technology and Environment, Government of Kerala while preparing the Coastal Zone Management Plan applicable for the State ought to have included these small islands under CRZ IV. Learned counsel contend that non-inclusion of these small islands in CRZ IV category is highly discriminatory and violative of Article 14 of the Constitution of India. The petitioners have highlighted the respective grievances of the inhabitants of these small islands in great detail. It is pointed out by the learned counsel that if the competent authority applies its mind with a proper emphasis on the ground realities, the grievances of the inhabitants can be redressed.

8. My attention is invited to sub-clause (i) of clause II of Ext. P3 notification dated January 4, 2002 in this connection. By virtue of the said notification, the Government of India had constituted the Kerala State Coastal Zone Management Authority by invoking the power under sub-sections (i) and (iii) of Section 3 of the Act. Laying heavy emphasis on clause II(i) of the above notification, Shri P.B. Sahasranaman, learned counsel for the petitioners submits that the authority is vested with power to take measures for protecting and improving the quality of the coastal environment while simultaneously preventing, abating and controlling

environmental pollution in the coastal areas. Similarly, the authority is empowered to examine the proposals for change or modification in classification of areas coming under different Coastal Regulation Zones and also in the Coastal Zone Management Plan prepared by the Govt. of Kerala.

9. It is contended by the petitioners that the residents of these small islands have been clamouring for necessary modification in the classification of zones, so as to enable them to enjoy their respective properties in a better manner. But precious little has been done by the Government in this regard. No orders have been passed on the several representations submitted by the residents from time to time, with the result that a large number of buildings which were constructed/reconstructed/renovated, have not been assigned numbers by the local statutory authorities. For want of occupancy certificate, thousands of residents have been deprived of the benefit of ration cards, and a large number of them have been denied even the basic amenity of electricity. Whenever the residents approach the local statutory authorities, they express their helplessness. It is further pointed out by the petitioners in some of the cases that certain local statutory authorities have been a little lenient and they have been issuing occupancy certificates, flouting the regulations under the CRZ. I do not propose to go into individual grievances ventilated in these writ petitions at this stage, in view of the stand taken by the Ministry of Environmental Forests, Union of India.

10. In the statement filed on behalf of the Union of India, it is averred that the State Government concerned is empowered to formulate the Coastal Zone Management Plan identifying and classifying the CRZ areas within their respective territories in accordance with the guidelines. It is also stated that the approved Coastal Zone Management Plan can be modified or amended if the State Government puts forward such a proposal.

11. But in the counter affidavit filed by the Under Secretary, Department of Science, Technology and Environment, Government of Kerala, it is contended that areas like Vypeen, Mulavukadu, etc. do not fall in the category of marine islands. In fact, these islands are backwater islands and therefore they cannot be treated on par with Andaman & Nicobar Islands and Lakshadweep and other small islands surrounding them. The relevant portion in the counter affidavit is extracted hereunder:

The contention of the petitioner that Vypeen has to be included in CRZ IV and its inclusion in CRZ III is not valid. The CRZ Notification states that "CRZ IV includes areas not categorized as CRZ I, CRZ II and CRZ III in Andaman & Nicobar, Lakshadweep and shall islands". Different parts of Vulpine is already categorized as CRZ I, CRZ II and CRZ III. Moreover, the CRZ notification mentions "small islands" along with Andaman & Nicobar and Lakshadweep which are marine islands. There are many other marine islands in India such as Sindhydurg of Malvan, Maharashtra; Dharmadam Island near Thalassery in Kerala, Grandi Islands of Goa, Basavaradanadurg, Murudeswar of Karnataka etc. Vulpine is nor a marine island, but an island bordering a backwater system. It may also be noted

that the "Marine Island" echo system is totally different from that of an island bordering a backwater. Marine island is isolated from the mainland and is totally cut off for 4-5 months during the monsoon. These are also exposed to hazardous situation like cyclones and high waves. None of these are valid for Vulpine or similar back water islands. There is already a provision in the CRZ Notification (para I(ii)) to reduce the regulation zone from 500 m to 100 m or less for the backwaters which is not there for marine islands. Accordingly the CRZ on the backwater side of Vulpine Island is only 100 m or less on the backwater side. Instead of this provision for backwater islands, the provision for categorization under CRZ IV is given for marine islands.

12. Significantly, respondent No. 3 has further stated in the counter affidavit that the petitioners would be free to approach the Coastal Zone Management Authority and highlight their grievances regarding the non-inclusion of these small islands under CRZ IV. Learned counsel submit that the petitioners are prepared to await the decision of the said authority. But their only prayer is that the State must take a decision keeping in view clause II(i) of Ext. P3 notification issued by the Ministry of Environment and Forests. It is further submitted that the authority may be directed to afford an opportunity to be heard to the local self Government institutions and other organisations also before any decision is taken in the matter.

13. In my view, the above submission made by the learned counsel appears to be only just and reasonable. It has to be remembered that every citizen of this country has got an indefeasible right to enjoy his property, of course, subject to the restrictions imposed by any statute, law or regulation. In the matter of restrictions imposed in enjoyment of the property in the coastal area coming under the Coastal Zone Regulations, the authority concerned must necessarily consider the ground realities applicable to that particular area. No generalisation may be possible in the matter of formulation of a rule or regulation pertaining to Environment or Ecology in a vast country like India with extremely diverse and contrasting geographical terrains, climatic variations, etc., particularly in a small State like Kerala which happens to be a narrow strip of land running along the Arabian sea coast.

14. It is an incontrovertible reality that there are several "small islands" in Kerala which are surrounded by backwaters. It may be true, these small islands cannot be treated as "marine islands" as contended by the Department of Science, Technology and Environment. But the fact remains that the people of these small islands which are surrounded either by backwaters or lagoons formed as a result of the confluence of the Arabian Sea and various rivers, are undoubtedly facing a very peculiar problem. Strict implementation of the provisions of the various Acts and Regulations pertaining to environment, ecology, etc. may understandably cause some inconveniences and hardships to the inhabitants of certain regions in a small State like Kerala. A prudent and reasonable balance therefore has to be struck, keeping in view "land use requirements" for specific purposes, in

juxtaposition to the local conditions of the coastal area concerned. These vital aspects must be necessarily borne in mind by the authority concerned before a decision is taken in the matter. If these small islands cannot be included in CRZ-IV as claimed by the petitioners, certainly some other adequate and appropriate provision can be made in the Management Plan to alleviate their grievances. I do not propose to elaborate on this aspect since I am sure that the entire matter will be considered by the authority concerned in its proper perspective.

15. These writ petitions are therefore disposed of with a direction to the Department of Science, Technology and Environment under the Govt. of Kerala or such other appropriate authority, to take immediate steps to move the Kerala State Coastal Zone Management Authority and request the said authority to take a decision for modification or amendment of Coastal Zone Management Plan appropriately in the light of the observations made above. It will be open to the said authority to take a decision on the basis of the merit of the contentions raised by the petitioners and other organisations representing them.

16. I hasten to add that the observations made above are not to be interpreted to mean that the statutory mandate to preserve and protect the pristine beauty and delicate nature of the river beds, estuaries, lagoons, sea coasts, etc. should be overlooked; but those observations should be understood only as a reflection of the anxiety and concern of the large number of people living in those small islands.

17. The authority concerned shall afford sufficient opportunity to the representative groups of these islanders as well as the local statutory bodies before any decision is taken in the matter. It will be open to the petitioners or such other organisations representing them, to approach the department concerned and submit a detailed representations in this regard. Representations, if any, shall be submitted by the petitioners or their organisations, within one month from the date of receipt of a copy of this judgment. On receipt of the said representation, the Department of Science, Technology and Environment shall take necessary steps to place them before the authority within one month therefrom. The appropriate authority shall conduct necessary enquiry and take a decision within six months and forward it to the Govt. of India, in turn, shall process the recommendations of the authority and take an appropriate decision expeditiously. The interim orders passed by this court in these writ petitions shall remain in force till a final decision is taken by the Govt. of India in the light of the recommendations that may be made by the Kerala Coastal Zone Management Authority.