

(2011) 01 KL CK 0044

In the High Court Of Kerala

Case No : Writ Petition (C) No"s. 12623 and 22707 of 2010

Ansari Komath

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 24-01-2011

Acts Referred:

Constitution of India, 1950 — Article 77
Environment (Protection) Act, 1986 — Section 2, 23, 3(1), 3(2), 3(3)
Environment (Protection) Rules, 1986 — Rule 4, 4(2), 4(3)

Citation : (2011) 2 CivCC 518 : (2011) 1 KLJ 610 : (2011) 1 KLT 1043 : (2011) 5 RCR(Civil) 87

Hon'ble Judges : J. Chelameswar, C.J.; Thomas P. Joseph, J

Bench : Division Bench

Advocate : P. Sanjay, A. Parvathy Menon and M. Mohammed Shafi, for the Appellant; T.P.M. Ibrahim Khan, Asst. Solicitor General, Benny Gervasis, Sr. Government Pleader, K.V. Sohan, Sreeja Sohan, P.B. Sahasranaman, T.S. Harikumar and P.U. Shailajan, for the Respondent

Judgement

Thomas P. Joseph, J.—Parties hereto and the exhibits are referred as they are arrayed and exhibited in W.P. (C) No. 22707 of 2010.

2. Pappinissery Eco Tourism Society (for short, "the Society"), Petitioner in W.P. (C) No. 22707 of 2010 is a Society registered in March, 2009 under the Travancore-Cochin Literary, Scientific & Charitable Societies Registration Act, 1955. It established and started operating a Mangrove Theme Park (for short, "the Theme Park") on the banks of Valapattanam river and its branch in Pappinissery Village, Pappinissery Panchayat in Kannur District. Alleging that the Theme Park is situated in Coastal Regulation Zone-I (for short, "the CRZ-I") classified under the Coastal Regulation Zone Notification, 1991 (for short, "the CRZ Notification") issued by the Ministry of Environmental and Forest (for short, "MoEF") as per the Environmental Protection Act (for short, "the Act") and Environmental Protection Rules (for short, "the Rules"), that for establishment of the said project, mangrove forest was extensively destroyed and that the project

even encroached into the river, a Public Interest Litigation was filed in this Court on April 07, 2010 by One Ansari Kannoath as W.P. (C) No. 12623 of 2010 arraying the said Society as Respondent No. 6 and praying for a writ of mandamus or any other writ, order or direction directing the said Society to close down the Theme Park; to declare that all acts of construction and developmental activities undertaken by the Society on the banks of the Valapattanam river are in violation of the Coastal Zone Management Plan and are therefore illegal, and for other reliefs. While so, a representation dated April 15, 2010 from the local Member of Parliament was received by the MoEF indicating alleged violation in CRZ in establishing the Theme Park. Pursuant to the said representation the MoEF obtained Ext.P2, report (in W.P. (C) No. 22707 of 2010) from Dr. Susarla, Scientist, MoEF Based on the said report and other relevant materials the Additional Director, MoEF by order dated July 14, 2010(Ext. P1 W.P (C) No. 22707 of 2010) directed the Society to stop all activities relating to the Theme Park since according to him the Society is operating the Theme Park in violation of the CRZ Notification, 1991 approved by Kerala State Coastal Zone Management Authority (for short, "the KSCZMA") on September 27,1996. Challenging the said order (Ext.PI), the Society has filed W.P. (C) No. 22707 of 2010. This Court passed interim order on August 19, 2010 staying operation of Ext. P1, order subject to the condition that no new constructions shall be made, no commercial activities shall be carried out and no alienation (of the project) shall be made (by the Society). Respondent No. 1, Union of India challenged that order in the Supreme Court in SLP (C) No. 24857 of 2010. The Supreme Court disposed of the SLP by order dated August 31,2010 directing the Additional Director, MoEF to issue notice to the Society (Respondent No. 1 in the SLP) under Rule 4 of the Rules within one week (from 31.8.2010). It was directed that the Society shall file its reply within two weeks from the date of receipt of notice and that the Additional Director was to decide the matter in accordance with the law. Pursuant to the said order, the Additional Director, MoEF issued Ext.P6, notice dated September 3,2010 to the Society directing that the "matter will be heard by the undersigned on 20.9.2010 at 10.30 a.m. in conference room No. 402 of MoEF Paryavaran Bhavan, CGO Complex, Lodhi Road, New Delhi". The Society was also informed that as per the order of the Supreme Court referred to above, the Society was to file its reply within two weeks from date of receipt of notice. Accordingly the Society gave Ext.P7, reply under Rule 4(3a) of the Rules taking up various contentions. In view of the said reply, the Additional Director, MoEF heard the Society and others. He issued Ext.P16, order dated October 06, 2010 as per which the Society was directed to stop all developmental activities relating to construction of the Theme Park and to withdraw the brochure titled "Pappinissery Eco Tourism Society". Certain directions were also issued. The Society thereon, with the leave of this Court amended Writ Petition No. 22707 of 2010 whereby apart from the original challenge to Ext.P1, Exts.P6 and P16 are also challenged on various grounds. The Society has sought for a writ of certiorari or other appropriate writ, direction or order calling for the records leading to Exts.P1, P6 and P16 and quash the said orders and notice and to issue

a writ, direction or order declaring that categorization of property of the Society in Map No. 66A of the Kerala State Coastal Zone Management Plan (for short, "the KSCZMP") as arbitrary and illegal. The Society contends that Ext. P16, order has been passed in violation of the principles of natural justice in that, the Society was not given sufficient opportunity to place its case before the Additional Director who issued Ext.P16, order. Exhibit P6, notice has been issued in violation of Rule 4 of the Rules. Nor does Ext.P6 contain the materials based on which the Society was required to give its reply. Exhibit P16, order is not in accordance with Rule 4 of the Rules. The Central Government has delegated its power u/s 5 of the Act to the State Government as per Notification dated February 10, 1988 and hence it was the State Government which had the authority to issue any order u/s 5 of the Act. The Central Government therefore, has no authority to interfere in the matter. At any rate u/s 5 of the Act, it is "the Central Government" which has the power to issue any order and order has to be issued in the name of the President of India under Article 77 of the Constitution of India. Hence the Additional Director, MoEF could not have issued Exts.P1, P6 and P16. It is also contended that the Theme Park is not situated in CRZ-I as contended by the MoEF. Since the Central Government, the State Governments or the KSCZMA has not prepared a local coastal zone management plan till date, restrictions as per the coastal zone regulations cannot be included within the KSCZMP of the local Panchayat concerned. Accordingly the property where Theme Park is situated cannot be brought within the category of CRZ areas. It is also contended that Map No. 66A prepared by the KSCZMA is arbitrary and illegal. The said Map does not specify the area regarding which it is prepared. There is no measurement, resurvey or other particulars of the land given in there said Map to identify the property. It is not a plan marking the CRZ area and cannot be adopted for any purpose, it is contended.

3. Respondent Nos. 1 to 3 filed statement in answer to the averments in the Writ Petition concerning them. It is contended that as per information provided by the KSCZMA who are the custodian of Coastal Zone Management Plan of Kerala the site (where the Theme Park is established) falls within the CRZ-I and attracted provisions of the Coastal Regulation Zone Notification, 1991 and hence all developmental activities in the CRZ shall only be in accordance with the CRZ Notification of 1991. No permission has been sought for or obtained by the Society from the MoEF for establishment of the Theme Park. It is contended that direction of the Supreme Court in the order in the SLP was fully complied. Exhibit R1(a) is the copy of the report submitted by the Additional Director. MoEF in the matter stating the steps taken for hearing and replying, to the submissions made on behalf of the Society at the time of hearing pursuant to Ext.P6.

4. Respondent No. 4, the KSCZMA has filed a counter affidavit contending that the property of the Society where Theme Park is established falls within CRZ-I where larger part is covered by mangroves. The mangrove areas on the banks of Valapattanam river in Kannur District are classified as CRZ-I (category I) areas which are ecologically sensitive and important. Although the object of the Society

is to promote eco-tourism, the same is not a permissible activity under para 6(2) of the Norms for Regulation of Activities under the CRZ Notification, 1991. The area is clearly demarcated in the approved Coastal Zone Management Plan (for short, "the CZMP") of the State in Map No. 66A, copy of which was given to all the Panchayats. Mangrove area being classified as CRZ-I does not require a map to identify the CRZ status. As per guidelines issued by the MoEF, demarcation of High Tide Line (for short, "the HTL") and Low Tide Line (for short, "the LTL") shall be made on the Coastal Zone Management Map of Scale 1:12,500 prepared by authorised agencies identified by the Central Government. Accordingly, the Centre for Earth Science Studies (for short, "the CESS") has prepared the Kerala Coastal Zone Management Plan in 1995 which was approved by the MoEF. As per Map No. 66A, property where the Society has established the Theme Park is within the CRZ-I. In the said Map, name of the river adjoining the bridge and the National Highway are shown. As per the CRZ Notification, (1991) mangrove areas are considered ecologically sensitive and important. Before establishing the Theme Park, the Society did not obtain clearance from the KSCZMA. It is contended that the Society has established Theme Park in R.S. No. 216 and 217. Mangrove areas on the banks of Valapattanam river in Kannur District are classified as CRZ-I. The Theme Park is developed on the land which are tidal flats with mangroves vegetation. Within the Park a number of facilities have been established on raised platforms by digging the surrounding area and using excavated soil. That has changed the mangrove eco system drastically in the CRZ-I. Boardwalk, boat jetty and roads have been constructed inside the Park. The Society has constructed observation platforms right on the water in the river which is an encroachment on public property. Road was constructed by widening and raising the existing bund. All those activities are violation of the CRZ Notification, 1991 and those activities do not come within the permitted activities under the said Notification. Exhibit R-4a is the report dated August 11, 2010 submitted by the KSCZMA to the MoEF on the Mangrove Theme Park of the Society.

5. Respondent No. 5, the Grama Panchayat has filed a counter affidavit in W.P.(C) No. 12623 of 2010 claiming that the area is already an industrially developed area and denying that Valapattanam river area comes within CRZ-I. The entire area on the banks of Valapattanam river (within the Panchayat) is not CRZ-I. The Society requested permission to put up two temporary boat jetty and a wooden bridge over "vachal thodu". The area was unoccupied and a dumping place for waste materials. When the Society came up with the idea of protecting the area, the Panchayat after deliberations decided to grant permission without affecting ecology and environment.

6. The Society has filed a reply affidavit dated January 3, 2011 disputing the contentions raised by the contesting Respondents and asserting averments in the Writ Petition. It is contended that the Society has not effected any change to the nature and condition of the property from that in the year, 1991. Contesting Respondents have not even whispered about the oldness of mangroves in the

property. It is not correct to say that a local level map is not required to identify the CRZ status. Map No. 66A cannot be relied. Attempt of the Society is only to implement Exts.P20 and 21, projects. The Society is getting requests from various educational and other organisations to provide facility to conduct study and research about the mangroves and related eco-system. (See Exts.P22 to P24). The existing facilities and nature of the property are helpful for students and research scholars to conduct their study. It is contended that action has been taken against the Society only due to political reasons.

7. We have heard the learned Counsel for the parties to the Writ Petitions. Learned Counsel for the Society raised the following points for our decision:

(1) Principles of natural justice is violated as no sufficient opportunity was given to the Society to give its reply and at any rate Ext.P6, notice does not comply with the requirements of R.4 of the Rules and hence is illegal.

(2) The Additional Director, MoEF who issued Exts.P1, P6 and P16 has no authority to issue such orders and notice and the same therefore, are illegal.

(3) Property of the Society is not shown to be under CRZ-I. Map No. 66A prepared by the KSCAMA cannot be relied upon, is arbitrary and illegal.

8. Point No. 1: It is contended that the Society was not given sufficient opportunity to give its reply and place all its materials before the Additional Director, MoEF who passed Ext.P16, order. Learned Counsel contended that under Rule 4 of the Rule any direction issued u/s 5 of the Act shall be in writing and specify the nature of the action to be taken and the time within which it shall be complied by the person, officer or authority to which direction is given. Under sub-rule (3a) of Rule 4, the person, officer or authority to whom any direction is sought to be issued shall be served with a copy of the proposed direction and shall be given not less than 15 days from the date of service of notice to file, with an officer designated in that behalf the objections if any to the issue of the proposed direction. According to the learned Counsel, sufficient time as stated above was not given to reply to Ext.P6, notice. It is contended that Ext.P6, notice does not contain details of materials on which action is proposed, nature of the action proposed and hence is violative of the Rules and principles of natural justice.

9. It was contended before the Additional Director, MoEF on behalf of the Society (at the time of hearing on September 20, 2010) that Ext.P6, notice was served on the Society on 8.9.2010 and under Rule 4(3a) of the Rules it had time upto 20.9.2010 to give reply while as per Ext.P6, notice the Additional Director has limited that time till 17.9.2010 and thus violated Sub-rule 3(a) of Rule 4 and the order of the Supreme Court in the SLP. In response to that contention, it is stated in Ext. R1A (inner page 3) that during the hearing the Additional Director had agreed to the request for providing four (4) more days i.e., till 24.9.2010 to all the parties to submit additional information including those sought during the hearing. Accordingly, letter No. 2-3/2010-IA-III dated 21st September, 2010 was

issued. In response to that letter, the Society has given additional information (Ext.P14) which was received by the Additional Director on September 27, 2010. This fact is not disputed. Thus sufficient time was granted to the Society and others concerned to supply additional information on the subject and that has been availed by the Society.

10. The requirement of compliance with principles of natural justice is that there must be fair play in the action. Mere technical infringement of natural justice is not sufficient. Unless prejudice is shown, violation of principles of natural justice ipso facto will not be accepted as a ground to quash a decision. The question whether there is a violation of principles of natural justice depends on the facts of the case, see *Thrippunithura Municipality v. Dr. M. Leela and Ors.* 1997 (2) KLT 278 : 1997 (2) KLJ 345 and *Sudheer T. Vs. M.V. Susheela and Others*, . The Additional Director, MoEF has given further time to the Society to file additional information and accordingly the Society has given additional information. No prejudice is shown to be caused, in the circumstances due to limiting of time to file reply (in Ext.P6) till September 17, 2010. Hence the plea of violation of natural justice on the above count cannot stand.

11. Yet another contention advanced is that ExtP6, notice does not state the materials on which action is proposed or the nature of proposed action. In Ext.P6, the Additional Director (who issued Ext.P6, notice) has only stated that the matter will be heard by him on 20.9.2010 at 10.30 a.m. (at the place mentioned in Ext.P6). Rule 4(3a) of the Rules states that the person, officer or authority to whom any direction under S.5 of the Act is stated to be issued shall be served with a copy of the proposed action. Sub-rule (2) states that the direction shall specify the nature of action to be taken. We bear in mind that Ext. P6 notice was issued in the background of Ext. P1, order dated July 14, 2010 and in the light of the order passed by the Supreme Court in the Special Leave Petition. We stated that this Court granted stay of operation of Ext.P1, order subject to certain conditions which was challenged by Respondent No. 1 in the Supreme Court in SLP (C) No. 24857 of 2010. The SLP was disposed of by the Supreme Court by order dated August 31, 2010. Relevant portion of order of the Supreme Court is as below:

Having heard learned Advocates on both sides, we hereby direct the Additional Director, Ministry of Environment and Forest, to issue notice to Respondent No. 1 Society under Rule 4 of the Environment (Protection) Rules, 1986, within one week from today. On receipt of the notice, Respondent No. 1-Society will file its reply within two weeks from today, the Additional Director, Ministry of Environment and Forest, will hear and dispose of the matter in accordance with law giving reasons...

After the order is passed it would be open to die parties to move the High Court in the pending Writ Petition.

Subject to above, the SLP is disposed of.

We must note that it is not as if Ext. P1, order was effaced as is also clear from the fact that even after Exts. P6 and P16 and even as the Writ Petition (in W.P. (C) No. 22707 of 2010) is amended after Exts. P6 and P16, it contains a prayer to quash Ext. P1 as well. Contention raised by the Society in the Writ Petition originally filed was that Ext. P1, order was issued without notice to the Society. It is in view of that contention that the Supreme Court has directed the Additional Director to issue notice to the parties concerned under Rule 4 of the Rules, hear them and pass orders in accordance with the law. Ext. P1, order shows the materials on which action is proposed and the nature of action proposed. It is also seen that pursuant to Ext.P6, notice the Society has given Ext.P7, reply and additional information (Ext.P14) as referred to in Ext. R1A (inner page 2) where the Society has taken up all its contentions about the materials referred to and the action directed to be taken in Ext. P1. It is not as if the Society did not have the opportunity to understand nature of the proposed action and was unable to give effective reply. In Ext.P7, reply (see inner page 5) also there is reference to Ext.P1, order. Thus it is not a case where, on account of non-mention of materials or proposed action in Ext.P6, the Society was misled or was not able to give its reply effectively and take proper defence. We find from the materials on record that the Society was given sufficient opportunity and it has availed of that opportunity as well to state its defence. We therefore, are not impressed by the contention that Ext.P6 and PI 6 are illegal for noncompliance with the principles of natural justice. We reject the said contention.

12. Point No. 2: It is argued on behalf of the Society that the Additional Director, MoEF had no authority to issue Exts.PI, P6 and P16. Contention in this regard is three pronged: Firstly, authority vested with the Central Government under S.5 of the Act to issue directions of the nature contained in Exts. P1 and P16 has been delegated to the State Government, by virtue of power u/s 3(3) of the Act. Hence, only the State Government or the KSCZMA as the case may be could initiate action in the matter; secondly, at any rate it is neither stated in Exts. P1, P6 or P16 nor shown elsewhere that notwithstanding such delegation of power, "in the opinion of the Central Government", it should initiate action in the matter and, thirdly, at any rate, u/s 5 of the Act, the authority is vested with the Central Government, it is the executive function of the Central Government and hence as per Article 77 of the Constitution of India, such executive function could be exercised only in the name of the President of India. The Government of India (Allocation of Business) Rules, 1967 did not empower the Additional Director, MoEF (Respondent No. 2) to pass orders on behalf of the Central Government. There is no order of the Central Government constituting the Additional Director as an Officer of the Central Government u/s 4 of the Act. In the said circumstances Exts. P1, P6 and P16 are without authority, it is contended.

13. Section 5 of the Act confers power on the Central Government notwithstanding anything contained in any other law but subject to the provisions of the Act to issue directions including closure, prohibition or regulation of any industry, operation or process or stoppage or regulation of

supply of electricity or water or any other service. Section 3 of the Act deals with the power of the Central Government to take measures to protect and improve environment. Sub-section (2) states what all such measures may include and which the Central Government is envisaged to take in the matter. Sub-section (3) states that the Central Government may, if it considers it necessary or expedient so to do for the purposes of the Act, by order published in the Official Gazette constitute authority or authorities by such name or names as may be specified in the order for the purpose of exercising and performing such of the powers and functions (including the power to issue directions u/s 5) of the Central Government. On such delegation such authority or authorities may, subject to the supervision and control of the Central Government and the provisions of such order, exercise the powers or perform the functions or take the measures so mentioned in the order as if such authority or authorities had been empowered by the Act to exercise those powers or perform those functions or take such measures. The authority for delegation of power of the Central Government is contained in Section 23 of the Act. That provision empowers the Central Government to delegate its powers, without prejudice to the provisions of Section 3(3) of the Act to any officer, State Government or other authority.

14. In exercise of that power, the MoEF (Department of Environment, Forests and Wildlife) has on February 10, 1988 issued notification delegating the powers of the Central Government u/s 5 of the Act to the State Government mentioned therein including Kerala,

Subject to the condition that the Central Government may revoke such delegation of powers in respect of all or any one or more of the State Governments or may itself invoke the provisions of Section 5 of the Act, if in the opinion of the Central Government such a course of action is necessary in public interest.

By such delegation of power, the Central Government does not stand, in our view denuded of its authority to initiate action u/s 5 of the Act. Instead by delegation, power is conferred on the delegate as well. The notification referred to above itself is clear of that, as the Central Government retained the authority to initiate action if in its opinion

such action is necessary in public interest. Ext. P1 refers to the various materials received by the MoEF in the matter of (alleged) violation of CRZ Notification, 1991, that it was of the opinion that the Society is operating (the theme park) in violation of the said notification and hence power u/s 5 of the Act is being invoked.

15. Not doubt, it is not specifically stated in Exts. P1, P6 of P16 that in the opinion of the Central Government it was necessary for itself to initiate action in public interest. But it is relevant to note that the Supreme Court in the order dated August 31, 2010 in SLP (Civil) No. 24857 of 2010 after hearing the Society also has directed Respondent No. 2, the Additional Director, MoEF to give notice to the

Society and pass appropriate orders in the matter in accordance with law. It is profitable to refer to Section 4 of the Act which empowers the Central Government to appoint officers with such designation as it thinks fit for the purpose of the Act and entrust to them such of the powers and functions under the Act as it may deem fit. It is not as if, in the circumstances there was lack of power or jurisdiction for the Central Government and Respondent No. 2, the Additional Director, MoEF to initiate action in the matter. In the circumstances the contention that Respondent No. 2 had no authority to issue Exts. P1, P6 and P16 is not well founded. Equally unsustainable is the contention that action should have been taken in the name of the President of India in view of Article 77 of the Constitution.

16. Point No. 3: Next question is whether the property where Theme Park is established and operated comes within CRZ-I and whether Map No. 66A is arbitrary and illegal. Learned Counsel has contended that in the absence of a local level CRZ plan prepared by the authorities and no declaration having so far been made by any authority that the property came in CRZ-I, restriction imposed by the CRZ notification cannot apply to the property of the Society. Without demarcation of the High Tide Line (HTL), identification of the CRZ area is not possible. Reference is made to Ext.P3, the letter dated January 4, 1999 of the Joint Secretary to the Government of India where guidelines are issued for demarcation of HTL and LTL (Clause i) and it is directed that local level CZM maps shall be prepared for use by officials of local bodies for "accurate determination of the Coastal Regulation Zone" which are to be prepared on a cadastral scale in accordance with the CZM maps approved by the Government of India (Clause ii of Ext.P3). It is also contended that the area in question is not included in any of the CRZ category as per notification issued in the year, 1991. According to the Society mangroves were planted in its property in the year 2004 and hence cm account of the alleged presence of mangroves the said area could not have been brought within any of CRZ either in 1991 or in 1995 when Map No. 66A was prepared by the Centre for Earth Science Studies. Map No. 66A which is now pressed in to service by Respondent Nos. 1 to 4 was prepared by the Government of Kerala in accordance with the KSCZMP in the year 1995 and hence the area in question where mangroves were planted only in the year, 2004 could not have been included in CRZ-I in the year 1991 on account of presence of mangroves. Reliance is placed on Exts. P10 and P11, photographs taken from the satellite shown in the "Google Earth" on December 3, 2003 to support the contention that during that time even, there was no presence of mangroves in the property of the Society. It is contended that Ext. P2, report of Dr. Susarla is not acceptable as it was not prepared with notice to the Society. Even that report does not mention oldness of mangroves found in the property. It is not shown that the said property is within 500 metres of coastal area so that it could be brought under CRZ-I. Exhibits P2 series, P12 and P13 are relied on to show that there is no destruction of mangroves or encroachment into the Valapattanam river. Respondent Nos. 1 to 3 and 4 rely on Exts.P2 and Ext. R4(a), reports in

connection with the Theme Park of the Society.

17. The MoEF has issued CRZ Notification on February 19, 1991 invoking its powers under Sections 3(1) and 3(2)(v) of the Act and Rule (5) of the Rules after considering the need for protection of coastal areas and to ensure that use and activities in the coastal area are consistent with the principles and requirements of environmental conservations. The CRZ's are classified into four categories/ Ecologically sensitive areas are categorized as CRZ-I wherein no construction is possible. As per Annexure-I of the said Notification CRZ-I is notified as follows:

Category I (CRZ-I)

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

(ii) Area between Low Tide and the High Tide Line.

Clause (2) of the Notification describes the prohibited activities within the CRZ. Sub-clause (viii) states about prohibition of land reclamation, bunding or disturbing the natural course of sea water except those required for conservation or modernisation or expansion of ports, harbours, jetties, wharves, quays, slipways, bridges and sea-links and for other facilities that are essential for activities permissible under the Notification or for control of coastal erosion and maintenance or clearing of waterways, channels and ports or for prevention of sandbars or for tidal regulators, storm water drains or for structures for prevention of salinity ingress and sweet water recharge. Sub-clause (xi) of Clause (2) of the Notification prohibits construction activities in CRZ-I except as specified in Annexure-I of the Notification (which admittedly does not cover activities of the Society). Sub-clause (xii) of Clause (2) prohibits construction activity between Low Tide Line and High Tide Line except facilities for carrying treated effluents and waste water discharge into the sea, facilities for carrying sea water for cooling purposes, oil, gas and similar pipe lines and facilities essential for activities permitted under the Notification. Rule 5 of the Rules deals with prohibition, restriction and location of "industry" or the carrying on "of processes and operations" in different areas. Sub-rule (3) of Rule 5 states that where it appears to the Central Government that it is expedient to impose prohibition or restrictions on the location of an "industry" or the carrying on "of processes and operations" in an area it may by Notification in the Official Gazette and in such other manner as the Central Government may deem necessary from time to time give notice of its intention to do so, Section 5 of the Act read with Rule 5 of the Rules make it clear that the Central Government has the power to

prohibit or restrict "an industry or the carrying on of processes and operations in an area" which is classified as CRZ-I. The words "industry", "processes" and "operations" are not defined either in the Act or Rules and hence they are to be given its normal meaning.

18. In *Secretary, Madras Gymkhana Club Employees' Union Vs. Management of the Gymkhana Club*, referring to the Industrial Disputes Act, 1947 it is held that the definition of "industry" is in two parts, in its first part it means any business, trade, undertaking, manufacture or calling of employers. That part of the definition determines an "industry" by reference to occupation of employees in respect of certain activities. By the second part of the definition any calling, service, employment, handicraft or industrial operation or avocation of workman is included in the concept of industry. In *Management of The Federation of Indian Chambers of Commerce and Industry Vs. Their Workman, Shri R. K. Mittal*, also referring to the Industrial Disputes Act, 1947 it is held that the linch pin of the definition of "industry" is to ascertain the systematic activity which the organisation is discharging viz. whether it partakes the nature of a business or trade or is an undertaking or manufacture or calling of employers. In the present case while contending that there is no "process" or "operation" as mentioned in the Rules, the Society did not contend that its activity in the area in question is not an "industry". The word "process" is defined in *Nurse v. Morganite Crucible Ltd.* (1989) 1 All ER 113 as to mean any operation or series of operations being an activity of more than a minimal duration. According to Shorter Oxford English Dictionary, the word "process" means a continuous and regular action or succession of actions taking place or carried on in a definite manner. The word "operation" means the exercise of power, physical, mechanical or moral action, exertion of power, method of working. The Society has taken up a systematic activity whether it is for amusement or study in the property in question by providing various facilities Such as Boardwalk inside the park, sheds, huts, Boat landing, raised platforms, conversion of tidal flats into pool by excavation and other facilities. Having regard to the nature of the activities the Society has undertaken in the area in question, we have no hesitation to hold that it came within the expressions "industry, process or operation" as referred to in S.5 of the Act and Rule 5(3a) of the Rules.

19. Challenge is to Map No. 66A of the Coastal Zone Management Plan of Kerala. In accordance with the provisions of the Act the Central Government directed the State Governments and Union territories to prepare coastal zone management plans with High Tidal regulation, 500 metres regulation line, other boundaries and different categories of coastal areas for approval of MoEF. Accordingly the KSCZMA has prepared coastal zone management plan for Kerala and got it approved by the Central Government. That plan was prepared by the project group after interaction with various authorities including the Panchayat Director. In page 37 of the Coastal Zone Management Plan (CZMP) of Kerala prepared by the Centre for Earth, Science and Space, Category I (CRZ-I) is described as follows:

Entire area between Low Tide Line and High Tide Line stretching all along the Kerala coast comes under this category. In addition there are the ecologically sensitive and other important notified areas coming under this category. Though the Notification gives a long list of parameters to determine the sensitiveness of the coast, only the following are relevant to Kerala.

- (1) mangroves;
- (ii) areas close to breeding and spawning grounds of fish and other marine life;
- (iii) areas of outstanding natural beauty;
- (iv) Historical/heritage areas;
- (v) areas rich in genetic diversity;
- (vi) areas likely to be inundated due to rise in sea level consequent upon global warming and
- (vii) any other areas as may be declared by the State/Central Government from time to time.

Mangroves Though Kerala was bestowed with rich mangrove forests in the past, they are heavily denuded all along the coast. Skeletal remnants are available in a few locations near Yypeen, Valapattanam, Ettikulapy etc. Considering their important role in the coastal ecosystem, particularly fisheries, they deserve utmost care, preservation and development. The Notification also provides it with the "Category I" status with this view. They also come under the criteria of areas of rich genetic diversity and are likely to be included due to rise in sea level. Hence, all those areas, even with a thick mangrove habitat are identified and broadly classified as "mangrove ecosystem areas" and categorised as CRZ-I (Fig. 14).

Spawning and breeding grounds of fish

Since, mangroves are the spawning and breeding grounds of fish, a 50 m belt around them is also categorised as CRZ-I. Another fish spawning/breeding area is the so called "Filtration Ponds (EP). These are shallow water bodies adjoining the backwater system (Fig. 12) where certain species of fish are grown in large numbers. The 50 m belt adjoining it is also demarcated as CRZ-I (eg. Alappuzha, Ernakulam and Kannur coast). Since this area is low-lying, it is likely to be inundated due to SLR.

In page 43, it is stated thus:

Areas rich in genetic diversity

Along the Coastal Regulation Zone, the mangroves and inter tidal zones are the areas that are rich in genetic diversity. All these are categorized as CRZ-1...

In page 69 of the Coastal Zone Management Plan of Kerala, areas in Kannur

District coming within the said zones are given. Relevant portion is extracted:

"Palliyamoola - Azhikkal (Map No. 66) Valapattanam - Naratt (Map 66A)

It has a prominent lateritic promontory at Meenkunnu. Towards norm of the promontory very wide beaches are present upto Valapattanam river mouth. No sea walls are constructed in this stretch. Sea walls are present south of Meenkunnu with a frontal beach. A cargo harbour is under construction at Azhikkal. The Coastal Regulation Zone-III area between Meenkunnu and Azhikkal is sparsely populated. Mangroves areas (Coastal Regulation Zone-I) are present in the upstream of Valapattanam river.

Accordingly for Valapattanam -Naratt, Map No. 66A is drawn up. As per that, the banks in the upstream of Valapattanam river which even in the year, 1995 had mangroves are brought in CRZ-I. Map Nos.66 and 66A show the lie of Valapattanam river leading to the Arabian Sea (Maps are drawn in 1:12,500 scale). Map No. 66A shows Mangrove area situated on the banks of Valapattanam river and its branch.

20. As per classification of CRZ-I in accordance with Annexure-I Notification, 1991 referred to above, area that are ecologically sensitive and important such as national parks, marine parks, sanctuaries, reserve forests, wildlife habitats, mangroves, etc., may be declared by the Central Government or the concerned authorities at the State/Union Territory level from time to time as coming within CRZ-I. It is not disputed that Theme Park of the Society is situated on the northern bank of Valapattanam river and its branch. Various photographs produced by either sides and the photograph from Google Earth produced by the Society make that, abundantly clear. Exhibit P2 is the report prepared by Dr. Susarla, Scientist, MoEF on the Theme Park of the Society. The Society challenges Ext.P2, report on the ground that it was prepared without notice to it. But it is seen that Dr. Susarla inspected the Theme Park in the presence of the Vice President of the Society. We do not find good reason to reject or discard Ext.P2, report. In that report it is specifically stated that the site is in Pappinissery Panchayat on the north of Valapattanam river and banks of minor branch of Valapattanam river (as seen in Map No. 66A prepared by the KSCZMA). Exhibit P2 states that at the time of inspection both those water bodies (Valapattanam river and minor branch of that river) were influenced by tidal action, the site under development consisted of mangroves and abandoned filtration ponds and that at the time of visit (by Dr. Susarla) the area was under high tide. In this connection it is apposite to refer to the Notification dated February 19, 1991 referred to above where it is stated that in exercise of the powers conferred under clause (d) of Sub-rule (3) of Rule 5 of the Rules and all other powers vesting in its behalf the Central Government have declared the coastal stretches of seas, bays, estuaries, creeks, rivers and back waters which are influenced by tidal action (in the land way side) upto 500 metres from High Tidal Line and the line between Low Tidal Line and High Tidal Line as CRZ-I ("Estuary" means tidal inlet or mouth of a river partly enclosed body of water

that forms where river is mixed with and diluted by sea water). Exhibit P2 not only states that Valapattanam river and its branch (on the banks of which the Theme Park is established) are influenced by tidal action but also that at the time of visit (by Dr. Susarla) the said river and branch were under the influence of High Tide. Ext.P2 states that the area is included in CRZ-I as per Map No. 66A prepared by the KSCZMA and that the Map indicated that major part of the area is mangrove eco system and that the area is ecologically sensitive and important. In this connection it is relevant to refer to Map No. 66 and 67C prepared by the KSCZMA where also the northern bank of Valapattanam river is shown as forming part of CRZ-I.

21. Reference can also be made to Ext. R4(a), report submitted by Respondent No. 4, the KSCZMA to the MoEF in connection with the Theme Park of the Society which also, we find no reason to reject or discard. Page 12 of Ext. R4(a) contains figure 1 land use land form in 2010 and shows that Theme Park of the Society is on the banks of Valapattanam river and its branch. It is revealed from Ext. R4(a) that the Theme Park is established in a stretch of mangrove forest on the banks of the said river and its branch.

22. Contention advanced by learned Counsel is that in so far as no separate location plan has been prepared by the local authority including the area in question as within CRZ-I, Map No. 66A prepared by the KSCZMA is arbitrary and illegal. It is clear that Map No. 66A prepared by the KSCZMA in the year 1995 is approved by the Central Government. It is indicated by the stand of the Society also that the area in question is included in Map No. 66A prepared by the KSCZMA in that the Society has sought for a declaration in its Writ Petition and that the said plan is arbitrary and illegal. We have referred to the criteria based on which CRZ-I is categorized. Coastal line is only one of the considerations and not the only consideration for inclusion in CRZ-I. We also referred to the observations in Ext.P2, report and Ext.R4(a) that the Theme Park is situated on the banks of Valapattanam river and its branch and that even at the time of inspection (by Dr. Susarla), the area was under high tide. Therefore it is clear that the area is within the High Tide line from the Arabian Sea on the west. Though reliance is placed by the Society on Exts. P10 and P11, the photographs taken in December, 2003 from Google Earth (marking the property of the Society) to contend that even as in December, 2003 there were no mangroves in the property of Petitioner, we are not inclined to accept that contention based on Exts. P10 and P11. Google Earth gives only a satellite imagery and need not always having regard to the existence of clouds, etc., give a clear picture of the area. There is no reliable evidence to show that mangroves were planted in the property in question only in the year, 2004. Map No. 66A itself belies that contention. Nor are we impressed by the contention that if mangroves are planted after the notification, it will not attract CRZ-I. Exts. P10 or P11 cannot override Map No. 66A which is approved by the appropriate authority. We do not find reason to declare that Map No. 66A prepared by the KSCSMA is arbitrary or illegal as claimed by the Society. Materials on record are sufficient to hold that

the area in question comes within the CRZ-I as per Notification dated February 19, 1991 issued by the Central Government and Map No. 66A prepared by the KSCZMA and approved by the Central Government.

23. Learned Counsel for the Society has brought to our notice the decision of this Court in Citizens Interest Agency Vs. Lakeshore Hospital and Research Centre Pvt. Ltd., . There, the contention that the area in question was within the CRZ-I was not accepted mainly for the reason of lack of materials on record. A reading of the decision would show that the building in question was constructed on the side of a Canal (artificial) unlike the banks of a river or its branch. That decision cannot have any application to the facts of this case.

24. As to the activities the Society has undertaken, in Ext. R4(a) it is stated that it involved a number of interventions mainly in the form of modification of landscape including clearance of mangroves and erection of structures both temporary and permanent which included raised mud platforms, widened roads/paths, temporary sheds board walks through mangroves, children's play area, observation tower, conference hall, etc. There is significant interventions in the stretch of mangrove forest on the banks of Valapattanam river and its branch. The total area covered by different constructions is estimated as about 1.63 acres of which, 35 cents had dense mangroves and remaining 1.28 acres had tidal flats with sparse mangroves. The activities affected mangroves. Immediate impact on account of changes in the landscape reported Ext. R4(a) is that damage has been severe in the area closed to the main river where most of the construction activities are concerned and which had spares mangrove growth. That has affected multitude of species of dependent on the area and natural process including hydrology and nutrient fluxes. The positive side of the Park also is reported in Ext. R4(a) as opportunity for enhancing environmental awareness about mangroves and to inculcate interest of conservation. But heavy ingress of visitors will have severe negative impact on the fragile on the eco system. On going through Exts.P2 and R4(a) and other materials on record, it is revealed that the Society has undertaken an industry, process or operation as understood in Rule 5(3a) of the Rules admittedly without permission from the authorities concerned and indisputably by acts which are prohibited in CRZ-I as per the CRZ Notification, 1991, the Act and the Rules and it has adverse effect on the fragile ecological system of the area.

25. The Act is intended to provide protection and improvement of environment and formatters connected therewith. Environment is defined in Section 2(a) of the Act as including, water, air and land and the inter relationship which exists among and between water and air and land and human beings and other living creatures plants, micro organisms and property. Aldo Leopold in "A Sand County Almanac" at page 188 states:

Wilderness is the raw material out of which man has hammered the artifact called civilization. Wilderness was; never a homogeneous raw material. It was very diverse, and the resulting artifacts are very diverse. These differences in the

end-product are known as cultures. The rich diversity of the world's cultures reflects a corresponding diversity in the wilds that gave them birth.

For the first time in the history of the human species, two changes are now impending. One is the exhaustion of wilderness in the more habitable portions of the globe. The other is the world-wide hybridization of cultures through modern transport and industrialisation. Neither can be prevented, and perhaps should not be, but the question arises whether, by some slight amelioration of the impending changes, certain values can be preserved that would otherwise be lost. To the labourer in the sweat of his labor, the raw stuff on his anvil is an adversary to be conquered. So was wilderness an adversary to the pioneer. But to the labourer in repose, able for the moment to cast a philosophical eye on his world, the same raw stuff is something to be loved and cherished, because it gives definition and meaning to his life. This is a plea for the preservation of some tag-ends of wilderness, as museum pieces, for the edification of those who may one day wish to see, feel, or study the origins of their cultural inheritance.

The (fragile) ecology of the area has to be protected and preserved.

26. Activities undertaken by the Society, we found, violate provisions of the Act and the Rules and the CRZ Notification, 1991 It affects the fragile ecological system of the area involved. The Supreme Court in *Goa Foundation Goa v. Diksha Holdings Pvt. Ltd.* AIR 2001 SC 184 has held that the courts must scrupulously try to protect the ecology and environment. This Court cannot in the circumstances stated, give its assent to the activities of the Society in the property in question. The challenge to Exts. P1, P6 and P16 has to fail.

27. Though Respondent No. 4 has a contention that the Society lacks title to the property in question, we do not deem it necessary to go into that question in these proceedings as lack of title was not set up as a ground in Exts. P1 or P16. We leave that question open.

28. So far as Writ Petition No. 12623 of 2010 is concerned we stated that the said petition was filed on April 07, 2010 seeking direction to the Society to close down the Theme Park. It is thereafter that Exts.P1, P6 and P16 orders and notice were issued. In the light of Exts.P1, P6 and P16 and in the light of the decision we have arrived at in W.P. (C) No. 22707 of 2010 it is not necessary to grant reliefs prayed for in that Writ Petition.

29. In view of what we have above stated we hold that Petitioner in W.P. (C) No. 22707 of 2010 is not entitled to the reliefs prayed for.

The result is:

(i) Writ Petition No. 22707 of 2010 is dismissed.

(ii) In the light of Exts. P1, P6 and P16 (in W.P. (C) 22707 of 2010) and the decision we have taken in that case, W.P. (C) No. 12623 of 2010 is closed.