
(2016) 12 KL CK 0081

In the High Court Of Kerala

Case No : W.A.No.1987 of 2014 and W.P. (C)Nos. 20555, 28102 and 33715 of 2015

DLF Universal Limited

APPELLANT

Vs

Antony A.V.

RESPONDENT

Date of Decision : 21-12-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 1 ILRKerala 280 : (2017) 1 KerLJ 489 : (2017) 1 KLT 438

Hon'ble Judges : Mr. P.R. Ramachandra Menon and Mr. Anil K. Narendran, JJ.

Bench : Division Bench

Advocate : Sri. Tom K. Thomas, Govt. Pleader and Sri. Saji Varghese Kakkattumattathil, Advocate, for the Respondent No. 6; Sri. N. Nagaresh, Assist. S.G. of India, for the Respondent No. 5; Sri. Prakash C. Vadakkan. J., S.C, for the Respondent No. 4; Sri. Babu Karuk

Final Decision : Dismissed

Judgement

P.R. Ramachandra Menon, J. - Can the concession given under the Coastal Zone Regulation Notification (CRZ Notification) enabling construction/re-construction of a building in a property, with reference to the imaginary line to be drawn towards the landward side, be extended to the other properties situated all along the coastal side of the State or should it be restricted to the next/adjoining plot as clarified by the Ministry vide their proceedings dated 08.09.1998 in response to the query raised by the State of Maharashtra, which stands accepted by the Division Bench of Mumbai High Court? Can the construction of the building (multistoreyed residential flats) completed much before getting CRZ clearance from the competent authority but for getting a permit issued by the Local Authority/Corporation could be ordered to be regularised, if there is any violation of the relevant provisions of law; more so when the integrated environmental clearance (under the EIA Notification, 2006) and the CRZ Clearance (under the CRZ notification) were admittedly obtained by the appellant only as per Ext.P22/Ext.R4 (e) dated 11.12.2013. If the aforesaid integrated clearance issued by the

State Environment Impact Assessment Authority (SEIAA), merely with reference to the recommendation made by Kerala State Zonal Management Authority [KSZMA] in the year 2010, without referring to the intervening developments, particularly seeking for the proceedings of the Central Expert Assessment Committee (EAC) mentioning the violations and also ordering to defer the clearance; (simultaneously noting the necessity to have the presence of the Member Secretary of the Kerala Coastal Zone Management Authority, to have further deliberations) and also omitting to note the earlier proceedings and without calling for the recommendations of the SEAC (State Environmental Assessment Committee) could be regarded as a valid clearance? If not, is there anything wrong on the part of the learned Single Judge, in holding that such proceedings issued during pendency of the writ petition filed against the appellant as null and void? If the finding is not wrong, can it be interfered with, merely for the reason that Ext.P22/Ext.R4(e) was not separately challenged by the writ petitioner or that SEIAA was not impleaded in the party array ? These are some of the main points to be dealt with in the appeal and the writ petitions.

2. The writ appeal arises from the verdict dated 08.12.2014 passed by the learned Single Judge in W.P (C)No. 27248 of 2012, whereby the multi-storeyed residential flat/complex constructed by the appellant has been ordered to be demolished, for violation of the relevant provisions of the Coastal Zone Regulations and such other reasons. The writ petition was filed in the year 2012 by the first respondent in the appeal, mainly contending that construction was being effected by the appellant/4th respondent in the writ petition illegally, by violating the Coastal Zone Regulations/Notifications. Prayer was made for causing the same to be demolished and to stop all further constructions, besides seeking to direct the Local Authority/Corporation of Kochi to implement the directions contained in Exts.P6 and P7 issued by them and not to issue occupancy certificate. The matter was contested by the appellant/4th respondent (Builder) contending that there was no violation of any of the provisions of the Coastal Zone Regulations; that the Builder had obtained all the requisite clearance/licences, particularly from the Pollution Control Board, Fire and Rescue Department, Naval Authorities, permit from the Local authority/Corporation of Kochi, etc. An interim order was passed by the Single Bench prohibiting the Corporation of Kochi from issuing any occupancy certificate. In the course of proceedings, the Builder was successful in getting Ext.P22 [Ext.R4(e)] Integrated Environment Clearance, authenticity of which was vehemently disputed by the writ petitioner. It was contended by the Builder that, by virtue of the turn of events, no interference was to be made. Various proceedings came to be filed during pendency of the matter and after hearing both the sides, the learned Single Judge held that there was clear violation of the relevant provisions of law and that the unauthorised construction effected by the Builder was never liable to be regularised and hence it was ordered to be demolished. This made the Builder to feel aggrieved, who has approached this Court by filing the writ appeal.

3. After passing the judgment as above, the appellant sought to challenge the

correctness and sustainability of Ext.P25 report prepared by the "Three Member Committee" appointed by the Kerala State Coastal Zone Management Authority, (which is filed as Ext.P25 in the writ petition No 27248 of 2012) by filing W.P(C) No. 18483 of 2014, mainly contending that it had been prepared on the instructions given by the Chief Secretary of the State [based on the "Note" prepared by him and submitted before the Chief Minister of the State in the year 2014]; that the Chief Secretary had no such power or authority to deal with the matter involving the Coastal Zone Regulations; that the Kerala State Coastal Zone Management Authority had already become "functus officio" on granting integrated clearance by SEIAA [the competent authority] and on such other grounds. It was disposed of by the learned Single Judge, holding that the "Note" could be treated only as a piece of information, observing that though there is no power to the Chief Secretary to deal with a proceeding under the Coastal Zone Regulation Notification, if any violation is pointed out, the State cannot remain as a mute spectator and is bound to initiate prompt/appropriate action through the competent authority who is to deal with the matter. It was also observed that, it would be open for the parties concerned to challenge the report of the Committee before the appropriate Court/Forum in accordance with law and hence the writ petition.

4. W.P.(C) Nos. 28102 of 2015 and 33715 of 2015 have been filed by the prospective purchasers of the residential flats constructed by the Builder, based on the relevant agreements executed in between. Apart from raising other contentions including that there is no violation of any provisions of law, it is added that, if the Local Authority has failed in complying with the requirements in issuing the permit, the purchasers cannot be taken to task. They have sought to direct the Local Authority/Corporation of Kochi to issue permanent building numbers/occupancy certificates to the Apartment Complex "DLF Riverside", Kochi.

5. All the above matters were heard together, treating Writ Appeal No.1987 of 2014 as the lead case.

6. We heard Mr. Krishnan Venugopalan, the learned Sr. Counsel appearing on behalf of the appellant in writ appeal and the petitioner in W.P(C)20555 of 2015, Mr. Saiby Jose Kidangoor, the learned counsel for the petitioners in W.P.(C) No.28102 and 33715 of 2015, Mr. Reji George, the learned counsel who appeared for the first respondent in the appeal/(writ petitioner), Mr. Babu Karukapadah, the learned Standing Counsel for the Local Authority/Corporation of Kochi, the learned Standing Counsel for the Kerala Coastal Zone Management Authority, the learned Sr. Government Pleader, who appeared for the State/Departmental authorities and the learned Assistant Solicitor General, who appeared on behalf of the additional 5th respondent in the writ appeal [Ministry of Environment and Forests, Government of India, New Delhi ? represented by the Secretary], who was impleaded "suo motu" as per the order dated 10.03.2016 passed by this Court.

7. Coming to the background and sequence of events, the Central Government issued Coastal Zone Regulation Notification invoking the power and procedure under the Environment (Protection) Act, 1986, which was brought into existence on 19.02.1991. The appellant purchased nearly 5.12 acres of property from different vendors, as per different title deeds, in the year 2006. The entire properties are situated on the eastern bank of "Chilvannoor river". With intent to construct a multi- storeyed residential complex of about 185 units, approval was obtained from different corners, such as NOC from the State Pollution Control Board, NOC from the Fire and Rescue Department, Building Permit from the Corporation of Kochi and Height clearance from the Navy; all in the year 2007 and applied to the Ministry of Environment & Forests for "Environmental Clearance" on 27.11.2007.

8. In the meanwhile, invoking the very same powers under the Environmental Protection Act, Environment Impact Assessment Notification was issued by the Central Government, which was brought into force from 14.09.2006. Admittedly, by virtue of the relevant notification/proceedings, the appellant had to obtain clearance under both the EIA Notification of 2006 and CRZ Clearance under the CRZ Notification, 1991. The Central Expert Appraisal Committee of the Ministry had approved the project for environmental clearance (rating it as "Silver category") with a condition that the project had to take CRZ clearance as well. On contacting the KCZMA , the appellant was required to obtain CRZ status report from the Centre for Earth Science Studies (CESS), Thiruvananthapuram (who was one of the seven authorised/identified agencies). An application was made on 23.09.2008, which was recommended by the CESS in May, 2009 pointing out that the project land was situated in CRZ II and that there was no CRZ(I)(i) in the project area or close to it.

9. On obtaining the CRZ Status report, the appellant applied in the prescribed form, for obtaining the CRZ clearance from the Kerala Coastal Zone Management Authority on 22.06.2009. On 29.10.2009, a Sub Committee appointed by the KCZMA visited the site and reported, as per Ext.P13, that constructions were being carried out without obtaining necessary clearance. The Sub Committee appointed by the KCZMA visited the site again on 19.07.2010 and as borne by Ext.P14, it was recommended that the minimum distance from the HTL should be 13.5 meters (presumably with reference to the distance to the HTL from the existing authorised structure in the neighbouring plot). Later, in the meeting of the KCZMA held on 20.03.2010, the application for CRZ clearance was considered and it was decided to recommend the project proposal to the Ministry of Environment and Forests MoEF).

10. In the meanwhile, new Coastal Zone Regulations were notified by the Central Government w.e.f. 06.01.2011. On 08.02.2011, an O.M. was issued by the MoEF, Government of India, clarifying the procedure for consideration of applications, which attracted the provisions of both the CRZ notification and the EIA notification of 2006. According to the appellant, the role of the Coastal Zone

Management Authority was only to recommend the project and the project proposal had to be dealt with for appraisal by the State Environment Impact Assessment Authority and that recommendation was still to be made by the Kerala Coastal Zone Management Authority, before whom the application was still pending.

11. While so, based on the request of the KCZMA, the CESS visited the site in June, 2011, pursuant to which, violations were reported in September, 2011, also observing that Lay Out of the Building complex needed to be superimposed on the local level CRZ Map, to get the exact distance from the HTL. In the meanwhile, because of complaints from different corners, the RDO, Fortcochi had issued a provisional stop memo to the appellant on 21.11.2011, to hold back all the constructions being effected in the property. On 23.11.2011, the Village Officer, Poonithura submitted Ext.P16 report to the effect that the appellant had illegally reclaimed about 50 cents of Chilavannoor river. Based on the intimation given by the KCZMA, the CESS visited the site again on 23.05.2012 and 26.07.2012, who reported vide Ext.P17, that the building was constructed by the appellant in violation of the provisions of the CRZ notification.

12. Based on the observations of the CESS, pursuant to site visit in June 2011, the Kerala Coastal Zone Management Authority directed the appellant (as borne by Ext.P18), as per the proceedings dated 07.12.2012 to submit CRZ Map of the project site with a construction super imposed on it, as the super imposed map submitted by the appellant was found to be at variance with the earlier Map prepared by the CESS.

13. It was at this juncture, that the writ petitioner (first respondent in the appeal) approached this Court by filing the writ petition seeking to interdict the appellant from effecting any further construction; and to direct the Corporation to implement the contents of Ext.P6/P7, and not to issue any occupancy certificate; and also to cause demolition of illegal construction effected by the appellant.

14. As mentioned already, the relief sought for in the writ petition was resisted from the part of the 4th respondent/Builder [appellant in Writ Appeal No. 1987 of 2014], virtually contending that there was no violation of the relevant provisions of the CRZ notifications or anything under the EIA notification and that the proceedings were pursued by them strictly in accordance with law. The course and events pursued in the meanwhile were also referred to and the integrated clearance issued by the SEIAA on 11.12.2013, pursuant to the 23rd and 24th meetings, was also brought to the notice of the Court, producing a copy of the sanction/clearance as Ext. R4(e). Proceedings were filed from both the sides, also producing additional documents. The correctness and sustainability of the clearance given by the SEIAA was also disputed by the writ petitioner; though it was not specifically sought to be set aside by amending the writ petition. The third respondent in the writ petition [i.e., KCZMA] had filed a counter affidavit dated 31.07.2014 referring to the sequence of events and also with reference to

the various reports submitted by the CESS and the violation committed by the 4th respondent/Builder. It was asserted from the part of the said respondent that the construction made in violation of the CRZ notification cannot be regularized under any circumstances.

15. Incidentally, it is to be noted that the Central Expert Appraisal Committee of the MoEF in its 122nd meeting held on March 25th/26th, 2013 had considered the matter and noting the violation as discernible from Ext. P19, it was observed as follows :

"During the discussion, the following points emerged:

(i) Committee noted from the google images that most of the building is already complete hence suggested to consider necessary action as per the OM on violation.

(ii) The Committee also noted that the SCZMA has recommended the project on 29.12.2012 after 3 year of receipt of application, based on the concept of Imaginary line hence suggested to check the validity of imaginary line and also suggested that the MS, KCZMA be invited to EAC whenever the project again comes for consideration.

(iii) Submit the details of the existing building which was used for drawing imaginary line along with coordinates and proof for authenticity.

In view of the forgoing observations, the committee decided to defer the proposal. The proposal shall be reconsidered after the above observations are addressed and submitted."

The said EAC of the MoEF considered the matter again in its 124th meeting held on 13th - 14th May 2013 and decided to consider only the Environmental Clearance under the EIA notification 2006 and not the CRZ clearance as discernible from the observations in Para 3.9 of Ext.P20, which is extracted below :

"3.9 Environmental Clearance for construction of multi-storeyed residential building ? DLF riverside housing project Chilavannoor ? Vyttila, Cohin, Kerala by M/s Adelie Builders & Developers Pvt. Ltd. [F. No. 21 -1154/ 2007 ? IA ? III]

The proposal was examined by the EAC in March, 2013 and sought additional information viz. Details of the existing building which was used for drawing imaginary line along with coordinates and proof for authenticity. Committee noted from the google images that most of building is already complete hence suggested to consider necessary action as per the OM on Violation, Committee also noted that the SCZMA has recommended the project on 29.12.2012 after 3 year of receipt of application, based on the concept of Imagery line hence suggested to check the validity of imaginary lince also suggested that the Member Secretary, KCZMA be invited to EAC whenever the project again comes for consideration.

Proponent submitted and presented that an existing building next to the site was used for drawing imaginary line and submitted proof for its existence prior to 1991.

The committee decided to consider only the EC under EIA Notification, 2006 and not the CRZ clearance since the project is to be regulated by KCZMA under CRZ Notification 1991/2011.

During the discussion, the following points emerged:

- (i) The Member Secretary of Kerala CZMA has not attended the meeting discussion with the KCZMA is essential to understand the issues involved in the matter prior to consideration of project for recommendation.
- (ii) The validity of imaginary line concept to be verified.
- (iii) As per the CESS report, HTL has been changed due to reclamation, the details are not there.
- (iv) Proponent shall submit Google images of 1991 to show the status of the site, existing building etc.
- (v) The Google map submitted by the proponent reveals a water body in the site was filled up by the proponent, details shall be submitted.
- (vi) The building has almost been constructed without the clearance, hence action shall be initiated for the violation.
- (vii) A backwater natural drain exists between the adjoining properties. Hence validity of the concept of imaginary line may be reviewed and commented by the team visiting the site.

In view of the above, the committee recommended to defer the project."

It is stated by the appellant that, pursuant to the said proceedings of the Central EAC of the MoEF in its 122nd and 124th meetings, had sought clarification on the observations and had requested the Ministry to transfer the file to SEIAA, as the SEIAA was the competent authority to deal with the matter in respect of "Category B" projects [as involved in the present case] and since the Ministry had already transferred all Category B projects to the respective SEIAA of various States. Accordingly, the Ministry transferred the file to SEIAA on 08.08.2013.

16. SEIAA considered the matter in its 23rd meeting held on 31.10.2013 and decided to issue notice to the appellant/Builder, to show cause why proceedings shall not be initiated against the appellant for violation of the CRZ Notification. However, without proper reference to the said proceedings, in the 24th meeting of the SEIAA held on 22.11.2013, it was decided to grant environmental clearance to the appellant. It was accordingly, that Ext.P22 [same as Ext. R4(e)] integrated CRZ cum environmental clearance was issued to the appellant on 11.12.2013; observing that it will be subject to the final orders to be issued by

the Court in W.P.(C) No. 27248 of 2012. It is very relevant to note that the reference made in Ext. P22/R4(e) is only to the proceedings of the KCZMA of the year 2010 and their letter dated 29.12.2012 forwarding the said recommendation, without making any reference to Ext.P19/P20 proceedings of March 2013 and May 2013 of the Central Expert Appraisal Committee of the MoEF to defer the proposal to grant Clearance and CRZ clearance, for violation of the relevant provisions and the incriminating circumstances noted therein.

17. In the meanwhile, complaints were preferred from other corners as well, with regard to the illegal constructions; based on which, a resolution was taken by the Executive Committee of the KCZMA in its 62nd meeting held on 17.02.2014, to constitute a "Three Member Committee" to enquire into the CRZ status of the project, also instructing the Corporation of Kochi to maintain "status quo". It is stated that the appellant objected to the above course and events before the Chairman of KCZMA and thereafter filed a complaint on 21.04.2014 before the Additional Chief Secretary, Environment Forest & Wildlife, Government of Kerala, who was the member Secretary of SEIAA. The member Secretary of SEIAA directed the Chairman KCZMA to forward the proceedings for necessary action to SEIAA and instructed to withdraw the "status quo" order issued to the Corporation of Cochin. This was given effect to by the Chairman and accordingly, the Chairman intimated the position to the Corporation of Kochi, withdrawing the order of "status quo". It appears that the above proceedings invited attention of the mass media, pursuant to which, Ext. P23 report was submitted by the Chief Secretary informing the position to the Chief Minister as to the violation of the CRZ notification; that construction was started without getting environmental clearance and further that no valid CRZ clearance was obtained till date. This report of the Chief Secretary was sought to be challenged by filing W.P (C) No. 18483 of 2014 by the appellant which was disposed of as per Annexure C judgment dated 19.08.2014 holding that it could only be treated as a piece of information and not binding on the parties.

18. Pursuant to the proceedings of the KCZMA with reference to the 62nd meeting held on 17.02.2014 constituting a Sub Committee, inspection was conducted by "Three Member Committee" who submitted Ext. P25 report on 27.01.2014 as to the illegal reclamation stated as made by the appellant and other violations of the CRZ notification. After hearing both the sides, the learned single Judge observed that Ext. P22/R4(e) integrated clearance procured by the Builder [issued by the SEIAA] was virtually a nullity in the eye of law and only to be ignored. After adverting to the facts and figures, a finding was rendered that the construction effected by the 4th respondent/Builder was in violation of the relevant provisions of law, particularly the CRZ notification and that such an illegal construction was not liable to be regularized. It was accordingly, that the building was ordered to be demolished as per the judgment dated 08.12.2014, which in turn is under challenge in the appeal.

19. On going through the contents of the CRZ Notification 1991 and that of

2011, classification of CRZ area is almost similar. Prohibited activities in the CRZ area are dealt with under Paragraph 3 of the CRZ Notification 2011, whereas Regulation of the permissible activities in the CRZ area is detailed in paragraph 4 of the CRZ Notification 2011 [paragraphs 2 and 3 respectively under the 1991 notification]. The substantial provisions/stipulations remain to be the same under both the notifications, though the procedure for granting clearance differs to some extent. After commencement of the Notification 2011, the proceedings in respect of Category B [identified as based on the extent of construction/cost of construction] which was still pending consideration before the Ministry were to be dealt with by the SEIAA of the State concerned, as the competent authority. As clearly stipulated in the notification [prescribing the procedure as to how it is to be dealt with] SEIAA can take decision only on the basis of the recommendation of the State Expert Approval Committee. Whether the matter was considered properly by the SEIAA while issuing Ext. P22/R4(e) integrated clearance will be dealt with in the due course.

20. The first and foremost contention raised by the writ petitioner is that the construction of the residential project is not a "permissible activity" in the land situated in CRZ area. But on going through the contents of the status reports furnished by the CESS [who is one of the seven authorities designated by the Central Government], no part of the property involved herein is under "CRZ I area", but in "CRZ II area", where the construction is only to be regulated in terms of the notification. As such, there is no total prohibition and this point is answered in favour of the appellant and against the writ petitioner.

21. The next contention raised by the writ petitioner is that construction of housing project involving multi-storied residential flats is never an activity to be regulated by paragraph 4 of the CRZ Notification 2011 [Section 3 of the CRZ Notification 1991]. The contention of the writ petitioner is that such regulated activity [except those prohibited paragraph 3] is permitted under the CRZ area only in respect of the industries/projects which require foreshore activities. But on going through the relevant provisions, it cannot but be said that the idea and understanding of the writ petitioner is quite wrong and misconceived. Though the construction of a Housing project is not an activity requiring foreshore facility, in so far as the classification involved is only CRZ II, construction is possible and the same is only to be regulated and that is all.

22. The writ petitioner contended that, by virtue of the mandate under the above provision, setting up of new industries and extension of existing industries other than those which are strictly related to water front and requiring foreshore facility are totally prohibited. Reliance was also sought to be placed on the verdict passed by the Apex Court in *S. Jaganad v. Union of India* [AIR 1997 SC 811] holding that shrimp culture industry is never related to water front activity, nor is it directly leading to any foreshore activity and hence it cannot be permitted to be set up in the CRZ area. But such observation is not with reference to CRZ II area coming under Paragraph 4 of the CRZ Regulation 2011

[Paragraph 3 of the CRZ Regulation 1991] which deals with the regulation and as such, the residential apartment project, though does not require any waterfront or foreshore facility, is of course a permissible activity in the CRZ II area, subject to the conditions to be imposed by the competent authority while granting the clearance.

23. With regard to the right of the Builder to put up construction towards the landward side of the existing authorised structure situated in the adjacent plot [belonging to the Choice group], it is contended that as per Annexure R1(A) site plan attached to the title deed of the 4th respondent/Builder [produced along with I.A. No. 1524 of 2015 in the writ appeal], the property was originally belonging to different persons and it was not a single plot till the 4th respondent purchased it in the year 2006. By virtue of paragraph 8 of the CRZ Notification 2011 [paragraph 6 (2) of the CRZ Notification 1991], building could be permitted on the landward side of the existing road or landward side of the existing authorised structures. According to the writ petitioner, the word "existing" should be with reference to the road or authorised structure which was in existence as on 19.02.1991, the date on which CRZ 1991 notification was brought into force. As it stands so, benefit if at all any, can be extended only to the immediately neighbouring plots [B, D and E marked in the sketch/plan] and never extendable to other plots purchased by the appellant and situated nearby. Since the construction is effected in the entire extent of land, the construction which is unauthorised/not permissible in the above context, is stated as liable to be demolished forthwith. Reliance was also placed on the clarification issued by the MoEF vide letter dated 08.09.1998, to the Chief Secretary of the State of Maharashtra [as quoted and affirmed by the Division Bench of Mumbai High Court in *Amita Shah v. State of Maharashtra* (2003 (5) Bom. CR. 95)] to the effect that the benefit with reference to the existing authorised structure can be extended only to the next/abutting/adjoining plot and never beyond.

24. The clarification dated 08.09.1998 issued by the MoEF, while extending the benefit to effect the landward side construction in a CRZ area with reference to the "existing authorised building" in the adjoining property, stipulates that it shall not cut cross any river/creek/stream etc. The canal which is stated as in existence on the northern side of the property of the appellant (bordering the southern side of the adjoining property belonging to the Choice Group) is stated as a "drainage canal" and not a natural stream suffering any tidal effect. On going through the materials forming part of the record, it is seen that such idea [that it was only a drainage canal] was given to the Committee by none other than the appellant/beneficiary, who wanted to project the same as a "drainage canal" and not a natural canal. The said proposition mooted by the appellant/Builder/beneficiary [that it was only a "drainage canal"] was simply accepted without any verification, which does not appear to be correct as such.

25. It is true, that as per the photographs produced by the appellant, strengthening of sides of the canal is seen effected by putting up construction

and at some places it is covered by concrete slabs as well. Reference is also made to some portions, where the curve is almost at 90 degrees and hence contends that such a drain can only be a "man made one" and not a natural one. This Court finds it difficult to agree. The primary question is whether any exploration was made by the Committee to conclude that it was a "drainage canal". If filth and waste are dumped by unscrupulous persons into a natural canal, which is connected with Chilavannoor River on the west joining the backwater (having tidal effect), the improvements, if any, effected to the canal by itself cannot be a reason to hold that it is a "drainage canal". No endeavour was made by the Committee to ascertain whether the version of the appellant/beneficiary was correct or not. No steps were taken to ascertain the particulars of the drain as to its origin, i.e. where does it come from and what was the position prior to the constructions which have come up after 1991, the date of CRZ notification 1991 (when no much number of buildings were there anywhere in the vicinity, but for the building complex belonging to the Choice Group). The materials on record reveal that the canal was having a width of nearly 5 metres at least at some points. That apart, in the sketch [Annexure R1(B)] of the property attached to Annexure R1(A) Sale deed No.4539/2006, by virtue of which, part of the property was purchased by the appellant/Builder (produced along with I.A.No.1524 of 2015 in the appeal), it is clearly shown that the northern boundary is a Purambokke Thodu. In the CRZ status report [Ext.R4(d)] prepared by the CESS, it is noted that there is a narrow inter-tidal zone as discernible from Ext.R4(d). Further, as per Annexure R1(B) Survey Sketch issued by the Taluk Surveyor, the northern boundary of the property belonging to the appellant/Builder is shown as "Purambokke Thodu". This factual position has been noted by the Central Expert Appraisal Committee in Ext.P20 Minutes of the 124th meeting on Infrastructure and Miscellaneous Projects & CRZ that a backwater natural drain exists on the boundary of the project site (between the adjoining properties). When the factual position is disclosed as to the existence of "natural drain" on the northern boundary and further when, even according to the title deed of the appellant/Builder executed in the year 2006, the nature of the drain is shown as a "Puramboke Thodu" (drain belonging to the State), how could it be simply branded as a "drainage canal" by the appellant/beneficiary, which proposition came to be glibly swallowed by the Committee "as agreed" is a matter of mystery. This Court, cannot but hold that the said drain is only a "natural canal" and not a drainage canal.

26. But then, the mandate in the "clarification letter" issued by the Ministry on 08.09.1998 requires to be considered in this context itself. As a matter of fact, as rightly contended by the learned Sr. Counsel for the appellant, no such stipulation was in existence, either in the original CRZ notification, 1991 not is it there in the subsequent CRZ notification, 2011. This Court finds force in the submission made by the learned Sr. Counsel for the appellant that the contents of the "Notification" issued by the Government cannot be modified or altered by the Ministry by issuing a "letter or clarification". In so far as the contents of the

said letter have not been notified to form part of the notification, by way of corrigendum/amendment, such a stipulation cannot be taken to the disadvantage of persons like the appellant. As such, this Court is of the view that existence of the "Puramboke Thodu" on the northern boundary of the appellant/builder adjoining southern boundary of the Choice Group cannot place any hurdle in assessing the right of the beneficiary to effect construction with reference to the authorised building exists as on 19.02.1991 in the adjoining property. The point stands answered in favour of the appellant to the said extent.

27. Now comes the question whether the finding of the learned Single Judge that no assessment was made by the competent authority to see whether the existing building belonging to the Choice Group was an "authorised building existing as on 19.02.1991". It is true that the documents produced reveal that the Choice Group had effected construction of an apartment complex in the neighbouring property on the northern side. Existence of the said structure prior to 19.02.1991 has been certified by the competent authorities as well. But the particular building, with reference to which the imaginary line is sought to be drawn, to compute the distance to HTL is "a changing room" situated on the corner of the swimming pool. The term "building" as defined under the statute/notification clearly gives an idea that it is a structure with covered roof. Whether the said "changing room" has been separately numbered by the local authority/ Corporation of Kochi; was it constructed along with the construction of the apartment complex by including it as part of the plan approved by the local authority or if it was subsequently constructed, was the plan submitted and got approved and if it was only a subsequent construction, when was it constructed and whether tax is being paid in respect of the said structure as well; whether water and electricity have been provided to the said room under separate connections or as part of the original connection issued to the main building, etc. were matters to be looked into, which unfortunately has not been done. But since there was no such case for any of the statutory authorities with regard to the granting of clearance at any point of time, this Court finds that a further probe in this regard is not warranted at this stage and this part stands answered in favour of the appellant.

28. A question may arise now. When this Court has already held that the stipulation in the letter/clarification issued by the Ministry on 08.09.1998 that the imaginary line to be drawn with reference to the existing authorised building shall never cut across a river/natural drain/stream (to have the benefit for effecting landward construction with reference to the existing authorised building) was not there either in 1991 CRZ notification or in the subsequent CRZ notification of 2011 and hence cannot be pressed into service; is it not reciprocal to hold that the further stipulation in the said letter/clarification issued by the Ministry that the benefit shall be restricted to the "immediately adjoining/ abutting" plot (with regard to the authorised building in existence as on 19.02.1991), is also liable to be declared as irrelevant and hold that the appellant/builder is entitled to proceed with the construction ? Here, it has to be

noted whether the stipulation in this regard is by way of confining or restricting the benefit flowing from the Original Notification. If the answer is "yes", the same consequence will follow. But, if the clarification is only by way of enlarging the scope of the original notification, which stands beneficial to the persons like the appellant and if the parties are made to act upon the said concession, it may not be possible to say that it has to be ignored, resulting in consequences detrimental to the rights and interests of such persons like the appellant. Hence, the scope and intent of the Original Notification has to be analysed , to have a clear picture in this regard.

29. The relevant portion of paragraph 8 of the CRZ Notification 2011 dealing with CRZ II [as involved in the present case] is (i) building shall be permitted only on the landwards side of the existing road, or on the landward side of existing authorised structures". It is relevant to note that the above stipulation is only an exception carved out to the main provision, which mandates the minimum distance to be left free, without effecting any construction, with reference to "HTL". The duties and responsibilities of every citizen to protect environment for the benefit of survival of all, including the future generation, need not be a subject matter of further scrutiny or debate as it is well settled by various provisions made in this regard by way of Statutes, Notifications and Regulations and also by virtue of binding judicial precedents on the point. The exception was carved out only to favour the adversely affected parties to a limited extent, though it would be a threat to the environment, but tolerable to some extent. In other words, the "Doctrine of tolerance" is applied and the limited exception is given to the requisite extent. The pertinent question is whether the exception is carved out to consider the eligibility of the immediately adjoining/abutting property, with reference to the existing road or the existing authorised building .

30. The first limb of the provision, with reference to the existing road between the property concerned where construction is intended to be effected and the HTL, construction is possible towards the landward side, if there exists a road in between. Let us visualise the situation where there is a water body on the western side of the property situated on the east and there exists a road in between as on 19.02.1991 [or a road was proposed as per the detailed town planning Scheme]. Owner of the property will get the benefit. Now, assume that properties of A and B are situated on the eastern side of the said road and property of "C" is situated further towards south, but directly bordering the water body. Road coming from the North proceeds to the South along the western side of the properties of "A" and "B" and stops on the northern boundary of "C". The benefit of the provision to effect construction with reference to road existing as on 19.02.1991 is available only to owners of the property A and B, which obviously is not available to the owner of the property C, as there is no road on the western side of "C", so as to permit landward side construction immediately towards the East of the road. Same may be the position, even if the road comes along the Western boundary of the properties of A and B, touches the property of "C" and turns and proceeds further to the East,

bordering the northern boundary of "C". The beneficiaries are "A" and "B" alone. Even if the very same road proceeds along the northern boundary of "C", the benefit is not available to "C" because, the road is not between the property and the water body. From the above, it is quite evident that what matters is not the proximity of the property to the road concerned, but, the lie & location/topography. In other words, only the property which is having such advantage of bordering the road between it and the water body is entitled for the benefit of effecting construction towards landward side, and never to any other property which is situated nearby.

31. Applying the same logic and reasoning with reference to the imaginary HTL to be drawn with reference to the "existing authorised building" as on 19.02.1991, the Notification actually contemplates the benefit to be given for effecting "construction" or "reconstruction" in the property where the authorised existing building is situated. The Notification does not say that such benefit will be given to the adjoining property or to such other properties till the imaginary line so drawn with reference to the authorised building existing in some property as on 19.02.1991, till it reaches the other end/tip of the State boundary, along the coast. That cannot be the purpose of Notification. The Notification itself was issued considering the bounden duty of the State to protect environment, preserving flora and fauna for the betterment of all concerned including the next generation. Only such an interpretation is possible, considering the need for protecting the Environment and preserving the ecological balance with the aid of Statutes, Notifications, Circulars, Clarification and the like. But, by the passage of time, concession was virtually extended by the Ministry as per the clarification dated 08.09.1998 [considered by the Mumbai High Court] to the effect that the benefit will stand extended [though the term used is "restricted"] to the immediately adjoining/abutting, with reference to the property where the authorised building is in existence as on 19.02.1991. At the same time, the Ministry also put a "rider", that such imaginary line to be drawn for permitting construction towards the landward side shall not cut across any river/canal/stream/creek etc. Since such a benefit was given by the Ministry, though by way of "clarification", inviting the persons concerned to act upon the same, it may not be proper for this Court to say that the benefit of "clarification" has to be strictly confined to the particular property where the authorised building is in existence, as intended in the Original Petition. In the said circumstances, benefit can be given only to the immediately abutting/adjoining property with regard to the existing authorised building [as on 19.02.1991]. It is declared accordingly.

32. Scope of the clarification given by the Ministry was considered in detail by a Division Bench of the High Court of Mumbai in *Ameeta Shah & others v. State of Maharashtra & Others* [(2003) 5 Bom CR 95]. The Bench specifically observed that the benefit can never be extended to any other property than the adjoining one situated next to the plot where the authorised building as on 19.02.1991 is situated. But there is a case for the appellant that the said clarification has been issued by the Ministry only in response to the queries raised by the State of

Maharashtra and is applicable only to the limits of the Corporation of Mumbai and never beyond. Pursuant to the interim order dated 10.03.2016 passed by this Court, "suo motu" impleading the Ministry of Environment and Forests in the party array to understand the scope of the said clarification, an affidavit dated 19.05.2016 has been filed on behalf of the additional 5th respondent/Ministry. The said affidavit has been filed pointing out that the clarifications dated 27.03.1998 and 08.09.1998 produced as Annexures R5(a) and R5(b) respectively - have been issued in response to the query raised by the State of Maharashtra. Nothing else is stated in this regard. It does not mean that, except in the Corporation of Mumbai, the landward construction can be effected based on the imaginary line drawn with reference to authorised existing building in one property, taking it through the nearby properties and much beyond, till it meets the other tip-boundary of the State. The position has already been explained by this Court in the preceding paragraphs. This Court is of the firm view, that the original notification issued by the Ministry intended the benefit to be given only to the particular property which was situated on the side of the road or with reference to the imaginary line to be drawn parallel to HTL with reference to the authorised existing building in the particular property. The MoEF as per letter dated 08.09.1998 having extended the benefit to the next/adjoining property as well, there cannot be any "U turn" from this point. But it cannot be extended or taken further, to the other properties.

33. Coming to the factual position, there is no dispute that the total extent of the properties [consisting of 5.12 acres] was purchased by the appellant as per different sale deeds from different vendors in the year 2006. The lie and location of the property, having different extents covered by different sale deeds are discernible from the records produced. The existing authorised building belonging to the "Choice Group" is situated on the northern side of the canal proceeding along the northern boundary of the property belonging to the appellant. Evidently, only the properties marked as "B, D and E" of the sketch share the boundary with the adjoining property belonging to Choice Group [with the canal in between] where the authorised existing building is situated. As such, the benefit of drawing imaginary line parallel to HTL with reference to the authorised structure in the adjoining property belonging to the Choice Group can be claimed, considered and given only in respect of the properties marked as B, D and E in the said sketch, which were purchased by the appellants in the year 2006. The other properties were never having any such common boundary with the property where the authorised existing building is located till the year 2006, when said properties were also purchased by the appellants [along with the properties B,D and E] thus making it a conglomeration of different plots. If the version of the appellant is to be accepted, it is possible for anybody to purchase properties side by side and claim the benefit to have construction to the landward side, till it reaches the other end, which will only defeat the purpose and provisions of the Coastal Zone Regulations. Contention of the appellant/builder is repelled accordingly.

34. With regard to the integrated clearance stated as obtained by the appellant [Ext. P22/Ext.R4(e)], we have already held that the said clearance issued by the SEIAA is not based on any recommendation made by the EAC. It was issued without any reference to the 122nd and 124th meeting of the Central EAC dated 25th-26th March, 2013 and 13th-14th May, 2013 deferring the matter. It was also without noting the contents of the 22nd and 23rd meeting of SEIAA held on 27.09.2013 and 31.10.2013. There is a contention for the appellant that the said order is not challenged by the writ petitioner, nor was the writ petition amended in any manner. It is also contended that, if at all the writ petitioner is aggrieved in any manner, it has to be raised before the National Green Tribunal and not before this Court, under Article 226 of the Constitution of India. It is further pointed out that writ petitioner had not chosen to implead the SEIAA in the party array and as such, the learned single Judge ought not to have set aside the said order/clearance, which hence is sought to be intercepted in the appeal.

35. At the very outset it is to be noted that the learned single Judge has not set aside Ext. P22/Ext.R4(e), but has only held that the said order/clearance given during pendency of the writ petition was to be treated as nullity in the eye of law. We also find that the said order was passed by the SEIAA, making it clear that it will be subject to the outcome of the writ petition pending before this Court. If the order is not sustainable in the eye of law, it is always open for this Court to declare so, which alone has been done by the learned single Judge. The acceptability of the said order is nil; for not having passed on the basis of any recommendation from the competent authority specified in this regard and without referring to the earlier proceedings of the Central EAC and even ignoring the 22nd and 23rd meetings of the SEIAA itself.

36. With regard to the alternative remedy, the National Green Tribunal is only an entity created as per the provisions of the National Green Tribunal Act. The said statutory body cannot oust the jurisdiction of this Court under Article 226 of the Constitution of India. It is always open for this Court to entertain writ petition in appropriate cases, as made clear by the Apex Court this Court in umpteen occasions, including in *Vanika Island [Greem Lagoon Resort] v. Union of India* [2013 (3) KLT 677 = (2013) 8 SCC 760] wherein it was held that in Environmental matters High Court entertain Writ Petitions without referring the matters to National Green Tribunal, taking in consideration, the larger public interest.

37. The next point to be considered is with regard to the consequence, for not having impleaded the SEIAA in the party array. The appellant contends that the order passed by the SEIAA is in its administrative capacity and not under any judicial/quasi judicial capacity, which proposition is opposed by the learned counsel for the respondent contending that it is never a ministerial act but a quasi judicial act, placing reliance on the verdict passed by the Apex Court in *Hari Vishnu Kamath v. Ahmad Ishaque and others* [AIR 1955 SC 233]. According to the learned senior counsel for the appellant, the SEIAA has necessarily to be

brought in the party array in a case, where its order is under challenge [the order as such was not under challenge, but the applicability was disputed] and reliance is sought to be placed on the dictum in *Jogendrasinhji Vijay Singhji v. State of Gujarat and others* [(2015) 9 SCC 1]. But on going through the contents of the said verdict, it is clear that the said requirement has been mentioned by the Apex Court only in a case where some or other insinuation is made against the decision making authority, so as to enable the said authority to answer the same separately. It means, if no such insinuation is there and case put forth is only against the correctness of the order, presence of the authority who passed the order is not necessary. That apart, presence of anybody in the party array is required to meet the principle of "Audi Alteram Partem" (nobody shall be condemned without hearing). Only the affected parties are required to be impleaded in the party array. By virtue of the order to be passed by this Court, either affirming the order passed by SEIAA or upholding the same, the affected party can only be either the appellant [in favour of whom the order was passed by the SEIAA] or the writ petitioner, who is challenging the illegal construction effected by the appellant. Since no prejudice is to be caused to the SEIAA in any manner, presence of the SEIAA is not at all warranted to have effective adjudication of the matter. The point stands answered against the appellant.

38. The remaining question is whether the verdict passed by the learned single Judge ordering demolition of the entire structure is correct or sustainable and whether the relief requires to be moulded in some other way.

39. Admittedly, the apartment project constructed by the appellant consists of as many as 185 units and is having a plinth area of 49,0000 sq. m. It also involves a project cost of more than 100 Crores and in the said circumstances, prior "Environmental Clearance" was mandatory before starting any construction work or preparation of the land by the Project Management as held by a Division Bench of this Court in *Forum for Rural & Urban Development and Service v. State of Kerala and Ors.* [2016 (1) KLJ 274] [to which one of us - PRRM (J) was also a member]. It is true that the appellant had obtained "Building Permit" from the Local Authority, which was subject to CRZ clearance. There is no dispute for the appellant that clearance under CRZ 1991 notification was mandatory to have effected the construction. Similarly, there is no dispute that the "Environmental Clearance" was necessary under the EIA Notification 2006 as well. Though the appellant contends that necessary application was preferred in this regard, there is no case that they had obtained the requisite clearance at any time before commencement of the construction in the year 2008 ? 2009. Admittedly, Ext. P22/Ext. R4(e) "integrated clearance" was obtained from SEIAA only on 11.12.2013. But by this time, the construction had already been completed, as conceded by the appellant. In response to the contention of the writ petitioner that construction was going on, even after the interim order dated 04.12.2012 granting interim stay and intercepting issuance of occupancy certificate, the version of the appellant was that they had already completed the entire structure by that time, i.e., before the interim order dated 04.12.2012 and the remaining

work was only with regard to the cosmetic touches/interior works. The question is whether the appellant was justified in starting the construction, continuing and completing it before 04.12.2012, without getting clearance under the CRZ Notification and also the clearance under the EIA Notification of the year 2006 ? The answer can never be anything other than in the negative, in view of the admitted fact, which does not require to be proved. It stands answered against the appellant.

40. From the above, it is quite obvious that the construction was completed by the appellant without getting requisite sanction from the competent authorities under the CRZ Notification as well as under the EIA Notification. It was in the said circumstances, that the ongoing construction was sought to be intercepted by filing the writ petition, also with a prayer to have the illegally effected construction to be demolished. The said prayer has been held as sustainable by the learned single Judge who has ordered demolition of the entire structure. The point to be considered is whether Ext. P22/Ext. R4(e) integrated clearance issued by the SEIAA would save the appellant, to justify the construction.

41. As mentioned already, the construction was commenced much ago and completed before 04.12.2012 - the date on which the interim order of stay was passed by this Court. No clearance, either under CRZ Notification or under EIA Notification, was available as on date and normally, there may not be anything wrong in having ordered demolition of the structure for want of necessary clearance. If the integrated clearance issued by the SEIAA was in terms of the relevant provisions of law, i.e., based on the recommendation issued by the State Expert Appraisal Committee and after referring to the developments pursuant the 122nd and 124th meeting of the Central EAC and that of the 23rd meeting of the SEIAA, it would have been easy for us to have persuaded ourselves to have taken a different stand to some extent. We are firm in our mind, to hold that since the construction effected by the appellant was without getting necessary clearance, it cannot but be an illegal construction.

42. There is a case for the appellant that the appellant stands on a much better footing, when compared with other Builders who have effected similar constructions on the other side of the Chilavannur river and elsewhere; namely Galaxy Homes, Puravankara Oceana Group and also by Lulu Group. The learned counsel pointed out with reference to the photographs produced, that the apartment complex constructed by Galaxy Homes is almost touching the river and that there are protrusions/encroachment into the Chilavannur river on the opposite side at many places, whereby width of the river has been reduced, which is not at the instance of the appellant. The learned counsel further pointed out that proceedings were initiated by the writ petitioner and the others concerned against "Nine" named institutions in Ext.P6 [where the name of the appellant was not included]. It was only in the course of further proceedings, while furnishing the details of the Builders who had moved for Building Permits issued by the Local Authority, that the name of the appellant also came to be

mentioned. It is added that, the appellant alone had applied for getting Environmental clearance and the CRZ clearance in the year 2007, whereas no clearance was ever applied for or obtained by the others. This Court is not called upon to consider the validity of the construction effected by M/s Galaxy Homes in the present proceedings. If the construction effected by anybody is illegal in any manner, it goes without saying that it requires to be proceeded against and appropriate course of action is still possible by the Government/Local Authority or such authorities in accordance with law, of course, after affording an opportunity of hearing to them. But that cannot deter this Court from dealing with the case projected herein, in an appropriate manner. In other words, merely for the reason that somebody else has been given some concession or relief by way of an improper or illegal exercise, such benefit cannot be sought to be extended to another person virtually perpetuating the mistake. We find force from the ruling rendered by the Supreme Court in AIR 1995 SC 705 [Chandigarh Administration and another v. Jagjit Singh and another]. We have already held that the construction admittedly commenced in 2008/2009 and completed by the appellant even before 04.12.2012 - the date on which the interim order was passed by this Court, was without getting clearance under CRZ notification and EIA notification and hence bad, being contrary to the relevant provisions of law. As such, the left over question is whether the demolition of the entire structure ordered by the learned single Judge holding that it is not liable to be regularised, is to be let to stand.

43. During the course of hearing held before this Court, the learned senior counsel for the appellant had submitted that, if for any reason this Court arrives at a finding that the construction effected by the appellant was illegal in any manner, the appellant was ready to remedy the situation by appropriate terms to be fixed by this Court. It was also added by the learned senior counsel that, according to the appellant, the scope of the provisions was not properly conceived by them before commencement and continuing the construction [having completed by 2012] on the basis of the Building Permit, NOC from the Fire and rescue Department, NOC from the Pollution Control Board and the Height clearance from Navy. It was also added by the learned senior counsel, that only a portion of the Building is situated in the objectionable area and that demolition of the entire structure at this stage, apart from causing huge loss to the appellant, to the investors and prospective purchasers like petitioners in W.P. (C) No. 28102 and 33715 of 2015 may cause more damage to the environmental/ecological balance. On weighing the entire facts and circumstances as a whole, this Court is of the view, that there is some point in the said submission. The Court is of course anxious to see that the damage already caused to the environment/ecological balance by virtue of construction already effected, without getting proper clearance both under the CRZ Regulation and EIA Notification is not to be let widened on causing demolition, leaving concrete rubbles and remains/debris in the area, to be dumped into the river or elsewhere once the demolition is implemented. It is relevant to note that demolition could

have been sustained without any second thought if it was in CRZ I area [where construction is prohibited] but in CRZ ? II area [where construction is possible, but to be regularized]. This is more so, since only a portion of the entire property is coming under CRZ II area and with regard to the other portion, the CRZ notification is having no application, but for the applicability of EIA clearance.

44. While considering the question whether the Building has to be demolished or not, some salient aspects and sequence of events have necessarily to be adverted to, as noted below:

..that the property is admittedly not in a CRZ I area [where construction is prohibited], but in CRZ II area [where it is permissible, but to be regulated]; by virtue of which the decision of the Apex Court in 2013 (3) KLT 677 = (2013) SCC 760 [cited supra] or (2004) 3 SCC 445 = AIR 2004 SC 3112 [Piedade Filomena Gonsalves v. State of Goa and Others]

..that the appellant/builder had voluntarily applied for getting EIA/CRZ clearance on 27.11.2007;

..that no complaint was raised against the appellant and their name was not mentioned in Ext.P6 referring to 9 other Builders who were stated as effecting unauthorised constructions;

..that several other multi-storeyed building have come up in the area on both sides of the Chilavannur river, as disclosed from the photographs and also as per the clearnace given by the competent authority in some cases;

..that nothing is mentioned by the competent authorities or the State/KCZMA as to the action taken against the other violators/Builders mentioned in Ext.P6 [9 builders such as (1) Galaxy Developers (2 locations), (2) Heera Waters, (3) Abad Lotus Lake, (4) Rain Tree Realms, (5) Ambadi Resorts, (6) Golden Kayaloram, (7) Jewel Home (8) Pearl Garden View and (9) Water front Enclave (Blue Lagoon)], whose constructions are with more proximity to the water body and yet sustained without being demolished;

..that Ext.P14 report of the Sub Committee dated 31.08.2010 holds and recommends that construction is possible there as the site is in CRZ II area, however observing that for CRZ violation, which is a serious lapse, the KCZMA may impose fine;

..that Annexure Q produced along with I.A.No.1652 of 2015 in the Writ Appeal (mistakenly numbered again as Annexure Q after making "Annexure Q" in I.A. No. 1578 of 2015) is a copy of the report of the KCZMA dated 29.12.2012 to the MoEF, recommending sanction to the project;

..that Ext.P25 report (dated 21.07.2014) of the "Three member Committee" deputed by the KCZMA, after completion of the building, does not give any picture with reference to the other similarly situated structures in the area warranting demolition ;

..that as per Annexures L,M,N,O,P and Q (produced along with I.A.No.1578 of 2015 in the Writ Appeal) are integrated clearance has been given by SEIAA to various Builders permitting constructions of multi-storeyed flats in and around the area including the Marine Drive and Bolgatty;

..that there was more than 2 years delay on the part of the KCZMA in forwarding Annexure Q to the MoEF, despite the fact the Sub Committee had submitted Ext. P14 report on 31.08.2010.

..that pursuant to impleading the MoEF as additional 5th respondent in the writ appeal, they have filed an affidavit dated 19.05.2010 stating in paragraph 20 that the said constructions are technically as per the provisions of the CRZ Notifications, 1991 and EIA notification, 2006 of MoEF, virtually supporting the Builder;

..that the learned counsel for the 1st respondent/writ petitioner, while projecting the bonafides of the writ petitioner/first respondent in the appeal, had submitted during the course of hearing, that the endeavour of the writ petitioner/first respondent was not to cause demolition of the building somehow or other, but to assert the rule of law that no construction should have been effected without valid sanction/clearance from all corners and hence that he was not pressing for demolition; but that relief could be moulded in appropriate terms as found to be fit and proper by this Court.

On evaluating the plus and minus points, with reference to the above vital aspects, this Court is of the view that causing demolition of the structure at this stage will be more detrimental than causing it to be retained; also with a view to lessen the probable additional damage to be caused to the environment in this regard. This in turn persuades this Court to save demolition, however making the appellant/Builder to pay for the mischief/damage already caused to the environment.

45. Considering the question as to the quantum of damage/cost to be imposed, it shall not be whimsical, but proportionate to the extent of mischief committed and the possible damage resulted for not having obtained EIA/CRZ clearance before commencement of the construction; whereas several other constructions are still remaining in the area, as permitted by the authorities concerned or because of noninterference by the authorities. For this, the estimated project as on the date of submitting the application for EIA/CRZ clearance could be looked into. At the same, it cannot be the "market value" which will include several other components as well. Striking a balance, considering the totality of the facts and circumstances with intent to promote and provide sufficient steps/measures for maintaining/upliftment of the environmental/ecological activities in the area [taking note of the extent of mischief committed by the appellant], we find it appropriate to order that the appellant should be mulcted with a penalty/fine/cost of Rs.1,00,00,000/- [One Crore only] to the public Exchequer. It is ordered accordingly.

46. The cost ordered above shall be deposited with the District Collector, Ernakulam, who shall keep the same in a separate account and it shall be used exclusively for building up the environment and to maintain ecological balance in the area situated on the eastern side of the Chilavannur river. It is also made clear that the amount shall never be diverted for meeting any other requirement, under any contingency and if any such instance is noted, everybody instrumental in this regard, including those who have prompted, persuaded or abetted diversion of such fund shall be liable and responsible to suffer the consequence. A periodical report shall be submitted before this Court at the end of "every six months", through the Registrar General of this Court as to the utilization of the amount and the results achieved in building up environment developmental measures. So as to facilitate such exercise, we "suo motu" implead the District Collector, Ernakulam as the additional 6th respondent in the appeal. The Registry shall forward a copy of the judgment to the District Collector, Ernakulam and also to the Chief Secretary of the State for information and further steps.

47. Coming to W.P (C) No. 20555 of 2015 (preferred by the appellant Company in Writ Appeal No. 1987 of 2014), the challenge is against Ext.P15 report submitted by a "Three Member Committee" appointed by the 4th respondent/Kerala Coastal Zone Management Authority. The main ground of challenge is that such Committee was constituted and report was called for as ordered/directed by the Chief Secretary of the State in Ext.P12 report dated 30.06.2014. It is contended that there is absolutely no power, jurisdiction or authority vested with the Chief Secretary to meddle with the affairs of the 4th respondent/Kerala Coastal Zone Management Authority, who is a separate entity created under the relevant Statute. The inference drawn by the Chief Secretary is also disputed as contrary to the facts, according to the petitioner. It is stated that exception to Ext.P12 report has been drawn by the Addl. Chief Secretary who has been indicted in the report of the Chief Secretary, besides the insinuation made against the then Chairman of the Kerala Coastal Zone Management Authority, vide Ext.P14 submitted before the Chief Minister of Kerala. It is in the said circumstance, that Ext.P15 report of the Committee is sought to be set aside. The prayers in the said writ petition are in the following terms :

(i) Call for the records leading up to Ext. P15 and quash the same by the issuance of a writ of certiorari or any other appropriate writ, order or direction.

(ii) Declare that Ext. P15 is illegal, arbitrary and without jurisdiction and further that the same cannot in any manner invalidate Ext. P11 (combined CRZ cum Environmental Clearance] issued by the State Environmental Impact Assessment Authority.

(iii) Declare that the findings in Ext. P15 cannot invalidate Exts. P2 to P6 building permits issued to the petitioner;

AND

(iv) Issue such other writs, order or direction which this Hon'ble Court may

deem fit and proper to issue in the facts and circumstances of the case;

48. The actual facts and figures have already been dealt with by this Court in detail, while considering and discussing the fate of the appeal in the foregoing paragraphs. We have already held that the integrated clearance (both under the CRZ notification and EIA notification) obtained by the writ petitioner/appellant from the SEIAA, copy of which has been produced in the writ petition as Ext.P11 dated 11.12.2013 [Ext. P22 = R4(a) in the Writ Appeal] is not valid or sustainable in law, having issued without getting the recommendation of State Expert Appraisal Committee as stipulated in the relevant provisions of law and further that it was issued without any regard to the earlier proceedings, particularly as to the 122nd Minutes of the meeting of the Central Expert Appraisal Committee held on March 25th/26th, 2013 and the Minutes of the 124th meeting of the Central Expert Appraisal Committee held on 13th - 14th May, 2013 intending to defer the project proposal and to call for further clarification from the Kerala Coastal Zone Management Authority, besides omitting to consider the minutes of the 23rd meeting of the SIEAA itself held on 31.10.2013. We have affirmed the view taken by the learned single Judge in W.P(C) 27248 of 2012 (subject matter of Writ Appeal No. 1987 of 2014) that the said clearance is "not valid in the eye of law" and cannot be acted upon. The only question is whether the "Three Member Committee" was constituted as dictated by the Chief Secretary of the State and whether Ext.P15 report submitted by the said Committee can be acted upon or is it to be set aside as sought for by the writ petitioner.

49. As mentioned already, Ext.P12 report dated 30.06.2014 issued by the Chief Secretary of the State (produced as Ext.P25 in W.P.(C)No.27248 of 2012 and discussed in W.A. 1987 of 2014) was sought to be challenged by the petitioner by filing W.P.(C) 18483 of 2014, which was disposed of as per Ext.P13 judgment passed by a learned Judge of this Court . In the said case, it was observed that the said report, though cannot have any binding effect upon the parties or on the Kerala Coastal Zone Management Authority, could however be taken as a piece of information to be acted upon, leaving it open for the aggrieved party to challenge the report, if any, pursuant to the said proceedings.

50. It is stated in the opening paragraph of Ext.P15 report that the alleged CRZ violation on the part of the writ petitioner was discussed in the 62nd meeting of the Kerala Coastal Zone Management Authority held on 17.02.2014. It is also evident therefrom, that the Kerala Coastal Zone Management Authority had decided to depute a Committee consisting of Professor Dr. A. Ramachandran (Director, School of. Industrial Fisheries, CUSAT and KCZMA member) , Dr. K. Padmakumar, Head of the Department of Aquatic Biology and Fisheries, University of Kerala and KCZMA member) and Dr. Kamalakshan Kokkal (Jt. Director and Head, Coastal and Environment Division, KSCSTE) vide proceedings dated 21.04.2014. It is further seen from the said paragraph that the said Committee had verified all the documents pertaining to CRZ status and satellite imageries,

as much as available of the project site before conducting the site visit on 21.07.2014. The Committee had also employed Remote sensing tools to decipher the CRZ status of the project site and its changes over a period of time, perusing the approved CZMP(Coastal Zone Management Plan 1996) as the baseline document.

51. This clearly reveals that Ext.P12 report dated 30.06.2014 of the Chief Secretary was having absolutely no connection whatsoever with regard to the 62nd meeting of the KCZMA held on 17.02.2014 or the "Three member Committee" constituted by the KCZMA as per the proceedings dated 21.04.2014. It was pursuant to the above proceedings that the Committee verified the documents and inspected the site on 21.07.2014. As such, the very foundation built up by the petitioner, to contend that the said report is liable to be set aside, for having submitted pursuant to the "direction" issued by the 2nd respondent/ Chief Secretary of the State, (who is having no power, jurisdiction or authority in this regard as per the CRZ Regulations) goes and is not liable to be accepted. This Court holds that it was never based on any such instruction given by the second respondent.

52. Ext.P12 report submitted by the 2nd respondent was before the Chief Minister and it was submitted by virtue of his being the Head of the State Administrative Machinery. Even though the said report may not have anything to do with the clearance to be obtained under the CRZ Regulations, since at least some of the Members of the statutory authorities like KCZMA or SIEAA (as the case may be) are the nominees of the Government, serving the Government under different official capacities and if there is any dereliction of duty or violation of law on their part, it is always open for the competent authority to take appropriate disciplinary action or such other proceedings against the delinquent personnel/nominees. It is stated on behalf of the first respondent in W.A. No. 1987 of 2014 that some vigilance case has been registered, particulars of which are however not revealed and this Court is not called upon to consider the course or fate of the said proceedings. We would only like to make it clear that there is nothing wrong on the part of the second respondent in having submitted Ext.P12 report before the Chief Minister as to the course and proceedings, for information and to consider whether any proceedings are necessary at Government level, if at all any mischief or misconduct has been committed by any of the officers of the State. We hold that the challenge raised against Ext.P15 is not sustainable and that the writ petition is only liable to be dismissed. We do so. We also find it fit and proper to clarify that we do not mean that collection of the data by the Committee or the finding rendered by them is completely correct or that this Court endorses or affirm the views expressed by the Committee in the said report, except to the extent, we have extracted the factual position as discussed in connection with W.A No.1987 OF 2014 rendering the finding on the relevant aspects.

53. The petitioners in W.P.(C) Nos. 28102 of 2015 and 33715 of 2015 as

mentioned already, are only the prospective purchasers of the residential apartments in the Apartment Complex constructed by the appellant in W.A.No.1987 of 2014. The prayer is to direct the Corporation of Kochi or Local Authority to issue "occupancy certificate". In view of our finding on the violation of the relevant provisions of the CRZ notification/EIA notification and that the construction was completed admittedly before obtaining any clearance under the EIA Notification 2006 and the CRZ Notification (including the integrated clearance issued by the SIEAA, which has already been declared as invalid), we find that these writ petitions are also not liable to be entertained and hence they also stand dismissed. However, in view of our observation and finding that the unauthorised structure (to the extent it is contrary to the relevant notifications) could be caused to be regularised, subject to satisfaction of cost of Rs.1,00,00,000/- [Rupees One Crore only] to be remitted before the District Collector for replenishing the environment by way of remedial/developmental activities in the area, we find that "occupancy certificate" could be sought to be obtained, subject to satisfaction of the Cost and regularisation of the construction.

54. In the result, the finding rendered by the learned single Judge in W.P(C) No. 27248 of 2012 that the construction effected by the appellant in W.A. No. 1987 of 2014 is unauthorised and illegal stands affirmed. However, for the reasons already discussed in the forgoing paragraphs, the appellant in W.A. No. 1987 of 2014 is set at liberty to save demolition on payment of shall be liable to pay damages for the mischief already committed, by effecting payment of a cost of Rs. 1,00,00,000/- [Rupees One Crore only] before the District Collector, Ernakulam to be deposited in a separate account, for being used exclusively for building up the environment, maintaining ecological balance in the area situated on the eastern side of the Chilavannur River, with further direction that the District Collector shall submit periodical reports before this Court as to the utilization of the amounts for the activities taken, in every six months. W.A. No. 1987 of 2014 stands disposed of in the above terms.

55. W.P.(C) Nos. 28102 and 33715 of 2015 preferred by the prospective purchasers stand dismissed, however, without prejudice to get the occupancy certificate for the building from the Local Authority, subject to the satisfaction of the cost ordered in W.A. No. 1987 of 2014 and regularization of the construction. W.P.(C) No. 20555 of 2015 [filed by the appellant in W.A. No. 1987 of 2014] also stands dismissed as devoid of merit.