(2015) 12 KL CK 0012

In the High Court Of Kerala

Case No : Writ Petition (C) No. 18742 of 2007 and 16783 and 17861 of 2009

Manakunnam Village Padasekhara Samrakshana Samithi — APPELLANT

Vs

State of Kerala — RESPONDENT

Date of Decision : 16-12-2015

Acts Referred:
Constitution of India, 1950 — Article 226
Kerala Conservation of Paddy Land and Wetland Act, 2008 — Section 3

Citation : (2016) 2 KHC 84

Hon'ble Judges : Mr. Ashok Bhushan, CJ. and Mr. P.R. Ramachandra Menon, J.

Bench : Division Bench

Advocate : Sr. Government Pleader Sri. P.I. Davis, for the Respondent Nos. 1 to 5 and 7; Sri. A.X. Varghese Sri. A.V. Jojo, Advocate, for the Petitioner; Sri. E. K. Nandakumar Sri. K. John Mathai Sri. P. Benny Thomas Sri. P. Gopinath Sri. V.J. Anand, Advocates, for the Respondent No. 8; Sri. Philip T. Varghese Sri. Thomas T. Varghese, Advocates, for the Respondent No. 6

Final Decision : Disposed Off

Judgement

Ramachandra Menon, J. - Common grievance involved in these writ petitions, stated as filed in public interest, is in respect of the alleged illegal reclamation of paddy land/wet land, mostly lying water logged, for commercial activity in connection with setting up of a resort involving Crores of rupees, causing much environmental hazards and damage to the eco-system, adversely affecting the free flow of water, blocking water channels joining the backwater (Vembanadu Kayal) bordering the northern boundary of the property in question; that too, in violation of the Coastal Zone Regulations.

2. It is contended that illegal reclamation and construction activities are being pursued, based on the orders/clearance obtained without revealing the actual facts and figures and also without obtaining any sanction from the Ministry of the Environmental and Forest, Government of India in terms of the Coastal Zone Regulation Notification 1999. It is asserted from the part of the petitioners that the reclamation and construction is within the ''No Development Area'' in the

Coastal Regulation Zone, i.e. within the prohibited distance from the High Tide Line. It is also alleged that, because of the activities being pursued for making use of the paddy land for other purposes, the peaceful living of the nearby inhabitants has been quite adversely affected, causing water logging in the area and affecting their means of livelihood, who eke out their living as agricultural labourers, and hence the challenge.

3. Petitioner is the same in W.P.(C) No. 18742 of 2007 and W.P.(C) No. 17861 of 2009, which is a ''Padhasekhara Samrakshaka Samithi''; whereas the petitioners in the other case i.e. are stated as the nearby residents/affected persons, also styling themselves as public spirited persons. All these petitions are filed as the ''Public Interested Litigation'' and the disputed activity is being pursued by the respondent company.

4. According to the petitioner in W.P(C) No. 18742 of 2007, the illegal reclamation was going on for quite long at the hands of several parties, even much prior to the activities now being conducted by the respondent company. Met with the en-mass filling/reclamation of paddy land in the area and the order passed by the concerned Revenue Divisional Officer under Clause 6 (2) of the Kerala Land Utilization Order 1967, permitting the owners of the land to make use of the paddy land for activities other than agriculture, the petitioner organization had approached this Court by filing O.P. No. 20484 of 1997. The said case was disposed of vide Ext. P2 judgment dated 19.11.1998, observing that there was disputed question of fact, thus relegating the petitioner to move the appellate authority to have the matter considered. Considering the submission that an Expert Committee had already been constituted by the Government to deal with the situation; the Government was directed to take steps to implement the recommendation, if any, submitted by the committee. Though the above petitioner challenged the verdict for not staying the order of the Revenue Divisional Officer, by filing W.A. No. 2654 of 1998, interference was declined and the concerned petitioner/appellant was set at liberty to move for interim relief as well, vide Ext. P3 judgment.

5. Pursuant to Exts. P2 and P3 verdicts, the matter was considered by the Commissioner for Land Revenue/appellate authority, who passed Ext. P4 order on 20.03.2000, whereby the impugned order passed by the Revenue Divisional Officer was set aside and the matter was remanded for fresh disposal of all the cases, after obtaining a report from the Agricultural Officer. What transpired thereafter in respect of the affairs with the party respondents in Exts. P2/P3 judgments is not revealed in the writ petition. However, referring to an order dated 03.01.2014 passed by the Revenue Divisional Officer staying reclamation of paddy lands by the named persons and the further activities being pursued in violation of the said order effecting reclamation and filling up of paddy lands by such named persons, petitioner approached the District Collector, Ernakulam by submitting Ext. P5 representation dated 18.05.2005, followed by Ext. P6 representation dated 13.02.2006 before the Commissioner for Land Revenue,

Thiruvananthapuram; seeking for immediate enquiry and interference and appropriate action against all concerned. Allegedly since nothing transpired, the petitioner moved the Hon''ble Chief Minister of Kerala by filing Ext. P8 representation on 28.08.2006.

6. In the meanwhile, the 8th respondent Company herein (Lakshmi Paper Industries Limited) came to be aggrieved of two orders dated 23.11.2005, whereby the District Collector Ernakulam rejected the prayer in a petition filed under Clause 6 (2) of the Kerala Land Utilization Order to make use of the property purchased by them in the previous year for other purposes than agriculture. The said Company approached the Commissioner for Land Revenue by filing appeals in respect of different extents of the property involved in the concerned cases. The appellant Company was heard on 06.03.2006, when it was observed;

- that the land was actually converted in 1984 after getting order from the District Collector;

- that it was fallow land earlier, not used for cultivation;

-that the Agricultural Department as well as the Coconut Development Board had recommended for conversion (vide letter dated 23.01.1984 from the Agricultural Department and vide letter dated 17.01.1984 from the Coconut Development Board);

- that coconuts palms have been planted and the age of coconut palms was about 25 years, as confirmed by the RDO;

- that the Panchayat/local authority had issued No objection Certificate to effect conversion;

- that the site was inspected by the Revenue Officials of different ranks, who had confirmed that the land was not suitable for paddy cultivation;

- that the appellant Company was proposing to put up a Tourist Resort, who was already running a Tourist Hotel in Rajasthan and that it will uplift face of tourism

7. Based on the above observations, it was held that the land was totally unsuitable for paddy cultivation and accordingly, the appeal was allowed and conversion was permitted. These orders, produced as Ext. P9, are sought to be set aside by issuing writ of certiorari. It is also pointed out that the petitioners approached the Government (Secretary for Environmental Labour, Thiruvanathapuram) by filing Ext.P10 dated 21.07.2007 seeking for interference. Ext. P11 is a No Objection Certificate issued by the Panchayat/Local Authority dated 09.08.2006 stating that the provisions of the Kerala Municipal Building Rules 1999 have not been enforced in the Panchayats and as such NOC is not required for the proposed construction of beach resort at Poothotta, in the said Grama Panchyath, however alerting the respondent Company that the construction work should be effected only in accordance with the mandate of

Section 220B of the Kerala Panchayath Raj Act 1994 and the provisions under the Coastal Regulation Zone Notification 1991.

8. The respondent Company has filed counter affidavit, pointing out that the property having a total extent of nearly 28.61 acres was purchased by them as per four different sale deeds of the year 2005, for construction of an Eco-friendly Resort conforming to International Standards. It is stated that the property was originally a ''paddy land'', described as "Nilam" in the basic tax register, but no cultivation was being effected for nearly five decades due to various reasons, including high salinity of water and the continuous crop loss. In the said circumstances, the predecessor-in-interest had obtained permission from the District Collector to convert it as an Agricultural-cum-Aquaculture unit in the year 1984, vide Ext. R8(a) proceedings issued under clause 6 (2) of the KLU Order. Pursuant to the said order, the property was reclaimed and Coconut saplings were planted. It is stated that almost entire area as on date, except few man made artificial water channels, was having Coconut palms of approximate age of 20-30 years, as seen from Ext. R8(b) photographs. It is added that, because of high salinity, coconut palms are not yielding and that the property is not suitable for any gainful agriculture or aquaculture operation. In the said circumstances, the respondent Company made an application before the District Collector for conversion of the properties. Pursuant to the said application, the Village Officer - Manakunnam, Thahasildar - Kanayannur, Revenue Divisional Officer - Fort Kochi and the authorities of the local authority - Udayamperoor panchayath had inspected the properties and certified that the proposed conversion will not cause any ecological problem and it will not lead to any water logging in the adjacent property, nor will it cause any unemployment. Certificates issued by the said authorities are produced as Exts. R8(c) to R8(f) respectively. The Deputy Collector (LR) had also inspected the property, reporting that it was a coconut garden and was protected by fencing. As such, all the authorities have reported that the property had already been reclaimed and converted as coconut plantation. It is without any regard to the above reports, that the District Collector, Ernakulam passed an order on 23.11.2005 rejecting the application for conversion, placing reliance on G.O. (Rt).No. 157/02 dated 05.02.2002, whereby the Government had instructed to disallow applications for conversion of land having more than 5 cents and discouraging conversion for commercial purposes. This made the respondent Company to prefer appeals before the Commissioner for Land Revenue, ultimately leading to Ext. P9 orders which are under challenge in the writ petition.

9. The crux of the contention of the aforesaid Company is that, the land was converted decades back in the year 1984, when there was no complaint from any corner and that the objection arose only when the respondent Company sought to set up an eco-friendly resort in the property. It is stated that people in the locality had even taken law into their hands, which necessitated filing of W.P.(C) Nos. 880 and 893 of 2007, leading to Ext. R8(i) judgment granting police protection. Then the construction of the resort was sought to be intercepted with

the involvement of the local authority - Udayamperoor Panchayath, causing to prevent user of the Panchayath road, which was interfered by this Court as per the judgment in W.P.(C) No. 6725 of 2007, based on which the Panchayath granted permission to use their road, subject to certain conditions. It is also pointed out;

- that the petitioner has no ''locus standi'' to file the writ petition;

- that writ petition is filed with malafides;

- that the respondent Company was never party to Exts. P2, P3, P4 and P5 proceedings.

The third respondent/Commissioner for Land Revenue has filed a counter affidavit seeking to sustain Ext. P9 order passed by the said authority, adding that the land is totally unsuitable for paddy cultivation as reported by the Agricultural Department and the Revenue Department and as such, the writ petition is devoid of any merit.

10. The very same petitioner who has filed W.P.(C) No. 18742 of 2007 has approached this Court again, by filing W.P.(C) No. 17861 of 2009, seeking for issuance of a writ of mandamus directing the concerned respondents to ensure that no conversion activities are being undertaken by the respondent Companies in the No Development Zone of the CRZ in Manakunnam village and also to cause redemption of the property already converted in such no-development zone, at the expense of the companies. The sequence of events, till passing the order dated 10.03.2006 by the Commissioner for Land Revenue enabling the conversion is admitted. Ext. P2 complaint preferred by the petitioner before the Government, on being aggrieved of the said order (which is same as Ext. P10 in W.P.(C) No. 18742 of 2007), is stated as forwarded to the Executive Vice President of KSCST&E [Kerala State Council for Science, Technology and Environment], who was also the Chairman of the Kerala Coastal Zone Management Authority, to see whether there was any violation of the CRZ Rules. Pursuant to this, Ext. P3 report was submitted before the Government (report of a ''3 member committee'') pointing out;

- that the property was bordering a backwater by name Vembanadu Kayal, which has salinity of more than 5 ppt.;

- that the position is demarcated in the Kerala Coastal Zone Management plan map 32A which has been approved by the Ministry of Environment and Forest, Government of India;

- that the CRZ regulations were applicable, which as applicable to the State of Kerala revealed that the Coast Regulation was 100 m. from the High Tide line;

- that there are canals inside the survey plots and reclamation of these canals would affect free flow of water and part of the flow through CRZ;

- that paddy was not cultivated in the areas since 1985;

- that coconut palms in the plot were of the age between 15 to 20 years;

- that reclamation, construction/setting up of new industries etc were prohibited in the CRZ areas, thus requesting the matter to be intimated to the Commissioner for Land Revenue and the District Collector, Ernakulam and also the Secretary to Udayamaperror Panchayat for further action.

Based on the said report, the Government as per Ext.P4 dated 07.08.207 (in W.P.(C) 17861 of 2009), directed the above three authorities to take further steps and to report the matter accordingly.

11. The interference made by the above authorities, based on Ext.P4, made the 9th respondent Company/Lakshmi Paper Industries Pvt. Ltd., feel aggrieved, who approached this Court by filing W.P(C)No.31848 of 2007, pointing out that no opportunity of hearing was ever given to them by the Government, before passing Ext.P4 order. Same was the position with regard to Ext.P3 dated 25.07.2007 issued by the KSCSTE (Kerala State Council for Science Technology and Environment), which was the basis for having issued Ext.P4 order by the Government. It was accordingly, that the first respondent and 4th respondent in the said writ petition (Government and KSCSTE respectively) were directed to reconsider the concerned orders (produced as Ext.P15 and Ext.P16 there, which are Exts.P3 and P4 herein i.e. in W.P(C) No.17861 of 2009) and to pass fresh orders after hearing the concerned Company/writ petitioner therein. What action has been pursued by the KSCSTE pursuant to Ext.P5 judgment in WP(C) 31848 of 2007 as aforesaid is not discernible. But the Government took up the matter and after hearing the Company, Ext.P4 order (Ext.P16 in Ext.P5 judgment) was recalled as per Ext.P6 order dated 29.03.2008, observing that the impugned order was issued by the Government, apprehending (from the report of the KSCSTE) that the Company may violate the CRZ Notification. But on re-examination, it was found that there was no need for the Government instruction, for the reason that conditional clearance has already been obtained from the Kerala Coastal Zone management Authority, the Local authority and other statutory functionaries; but for alerting such authorities/functionaries who have issued the clearance for the project, that they will ensure that the conditions under which the project was cleared or permission granted, were not violated.

12. The 9th respondent Company has filed a counter affidavit in the capacity as the power of attorney holder of the Director/Managing Director of both the respondent Companies, producing copies of the relevant title deeds as Ext. R9(e) and R9 (f). It is asserted that the said properties are not paddy fields and that the properties purchased by the Companies were actually converted long back in the year 1984 into coconut plantations, after getting an order of the District Collector. The orders issued by the Commissioner for Land Revenue on 10.03.2006 permitting conversion of lands for putting up the resort project are Exts. R9(g) and R9(h) [in respect of the 9th respondent 5.1973 hectors + 0.7123 hectors (as per Ext.R9(h)] and in respect of the 10th respondent ? 1.0027

hectors + 3.5578 hectors + 1.1097 hectors as per Ext.R9(g)].

13. It is stated that the respondent company/Boutique Hotels India Ltd., actually intended to construct only in a part of the area of the land having the total extent of more than 30 acres and that the balance will be retained as ''coconut garden'' and ''fish farm''. A copy of the CRZ clearance for construction of the Resort, issued by the Kerala Coastal Zone Management authorities, based on the report of the CESS (Centre for Earth Science Studies, Thiruvananthapuram) has been produced as Ext.R9(i) dated 12.05.2006; adding that the proposed site is not within the ''No Development Zone". It is also stated that, it is actually beyond 100 metres towards landward side and that the activities have been done as per the instructions and directions given by the 7th respondent/Coastal Zone Management Authority vide Ext.R9(i) order.

14. The 7th respondent Coastal Zone Management Authority has filed a counter affidavit, pointing out that the Government of India has issued CRZ notification 1991 for regulating the activities in the Coastal zone of the entire country, in exercise of the powers under Sections 3(1) and 3(2)(V) of the Environment Protection Act 1986, read with Rule 5(3)(a) of the Environment Protection Rules 1986. As per the notification, reclamation is prohibited in the CRZ area which lies upto100 metres from the High Tide line as applicable in the State of Kerala or equivalent to the width of the river whichever is less; adding that reclamation of canals inside the plot would affect free flow of water in the parts of the canals in the CRZ area. It is also stated that construction can be permitted outside the CRZ area, without disturbing free flow of tidal water and further that construction violating the provisions of CRZ Notification cannot be regularised. Ext.P8 building permit has been issued by the Grama Panchayat /Local Authority on 4.11.2008, making it clear that the same will be subject to the conditions laid down in the CRZ clearance, which was having validity till 03.11.2011.

15. The 9th respondent Company/Lakshmi Paper Industries Ltd has filed an additional counter affidavit, mainly to the effect that the provisions of Act 28 of 2008 (Conservation of Paddy Land and Wet Land Act) are not attracted to the case in hand, as the property was not remaining as ''paddy land/wet land'' as on the date of commencement of the Act and was actually converted decades back, after obtaining permission of the District Collector. It is stated that as per CRZ notification 1991 and as clarified by the subsequent CRZ notification of the year 2011, ''Coastal Regulation Zone'' in the instant case would only be 100 metres from the High Tide Line and the regulations contemplated by the CRZ notification apply only in respect of the areas that fall within the CRZ; whereas the area beyond that limit does not fall within the CRZ. It is stated in paragraph 12 of the said affidavit that the Company would confirm that, as on date no construction activities in connection with the proposed Tourist Resort have been commenced on the lands falling within or beyond the CRZ area and that before such construction activities commence, the Company would obtain all necessary clearance/licences including that of the Central Government in accordance with

the relevant provisions of law. It is also stated that, since construction activities have not yet been commenced on the land, the petitioners have no ''locus standi'' to seek for any relief to restrain the Company from proceeding with their project.

16. A reply affidavit dated 28.09.2012 has been filed by the petitioner in response to the said additional affidavit of the 9th respondent rebutting the facts and figures (in W.P.(C)No.17861 of 2009). It is seen from the proceedings that this Court had passed a common interim order on 27.07.2009 in the above writ petition (in W.P.(C)17861 of 2009), clubbing along with W.P(C) 16783 of 2009, observing that the construction proposed was based on the permit issued by the local authority, and the clearance given by the Coastal Zone Management Authority (Exts.P8 and Ext.R9(i) respectively) who have imposed stringent conditions for the construction. Accordingly, this Court had permitted the respondent Company to proceed with the construction, subject to the conditions imposed by the Local authority and Coastal Zone Management Authority. However, based on the submission made on behalf of the petitioners to have an independent assessment by the Court, as to the apprehended impact on the environment, an Advocate Commissioner was appointed to conduct a site inspection and to submit a report.

17. The Advocate Commissioner originally appointed by the Court submitted an interim report on 28.08.2009 and sought for further time to complete the measurement, as the property was mostly water logged and that the measurement can be conducted through the ''ridges'' by using country boats. Subsequently, in view of the difficulties expressed by the said Commissioner, she was discharged and another Advocate Commissioner was appointed as per order dated 27.06.2011. The newly appointed Advocate Commissioner proceeded with further steps, who submitted an interim report dated 15.07.2011, followed by final report dated 26.09.2011.

18. W.P.(C) No.16783 of 2009, was originally filed to direct the respondents 1 to 5 (State/Police/Local Authority) to prevent the respondent 6 and 7 (Companies ? Boutique Hotels Pvt. Ltd and Lakshmi Paper Industries Ltd.) from reclaiming and/ or converting the properties in the concerned Survey Number in Manakkunam village, in violation of the Conservation of Paddy Land and Wet Land Act. Subsequently, the writ petition was got amended, also seeking to set aside Ext.R6(h) and R6(i) - which are orders dated 10.03.2006 passed by the Commissioner for Land Revenue permitting conversion of land in question and Ext.R6(m) - which is the clearance dated 12.05.2006 given by the Coastal Zone Management Authority.

19. The attempt of the respondent Company to bring in loads of red soil in lorries for reclamation of the paddy land and adverse consequences, which would be resulted if the activities are permitted to go on, that too, in violation of the CRZ notification, have been highlighted in the writ petition.

20. A joint counter affidavit has been filed on behalf of the respondent Companies producing copies of the relevant documents (most of which have already been discussed in previous paragraphs with reference to the proceedings in the connected writ petitions). The pleadings raised by the Companies in the connected cases have been reiterated in this case as well.

21. The respondent Companies have filed an additional counter affidavit dated 15.07.2009, also producing a copy of the report of the CESS as Ext.R6(p). It is stated that the respondent Companies intend to effect the construction only in an area of 6.5 acres of land, out of the total of about 30 acres, and the balance extent of land will be retained as coconut garden and as fish farm.

22. It is pointed out that the coastal zone plan of the State of Kerala has been approved by the Ministry of Environment and Forest, New Delhi, subject to certain conditions, by virtue of which the width of the CRZ with respect to rivers and back waters is only 100m or width of the creek, river or back water, whichever is less. It is stated that any construction beyond 100m. towards the landward side shall be carried out as per the directions and restrictions imposed by the Coastal Zone Management by way of Ext. R6(m), which apparently does not contemplate any prior permission from the Ministry of Environment and Forest and further that such clearance given, since is based on the report of the CESS - competent authority approved by the Ministry of Environment and Forest, the challenge raised by the petitioners is not correct or sustainable.

23. The petitioners have filed a reply affidavit in response to the counter affidavit and additional counter affidavit filed by the respondent companies, also producing some additional documents. Ext. P5 is a copy of the G.O.(Rt) 157/02/ AD dated 05/02/2002 issued by the Government of Kerala; as to the modalities of implementation of the KLU order. The stipulations given are:

- that the direction issued to District Collectors vide reference read as first paper above will be withdrawn. This would mean that applications for conversion can be considered and disposed of by the Revenue Divisional Officers/District Collectors in accordance with the provisions of the KLU Order and related standing instructions. The Land Revenue Commissioner will hear appeals and the Government (in the Agriculture Department) will exercise revisional powers as provided for in the KLU Orders.

- that the District Collectors will ensure the conversions, which are likely to render irrigation investments infructuous, are not allowed. Similarly large scale conversion for Commercial purpose should be discouraged.

- that in all cases, where conversion is allowed, Collectors/Revenue Divisional Officers must ensure that drainage for neighbouring or nearby plots is not blocked or rendered impossible.

- that conversion of land for construction of houses for individuals, up to 5 cents, should generally be allowed. However, large-scale conversion of land by artificial partitioning into small plots of less than 5 cents should be detected and disallowed.

- that the revenue machinery at the taluk and village level should be activated to ensure in future, conversions or attempted conversions without sanction are promptly detected and proceeded against. Conversions should not presented as a ''fait accompli'' which have to be inevitably regularised.

- that the Government will examine the suggestions of Collectors/Principal Agricultural Officers for changes to the KLU Order to make the penal provisions more effective and also for levying as on conversion.

24. It is stated that Ext. P6 NOC given by the Grama Panchayat/local authority on 02.10.2005 is with reference to the application dated 07.10.2005 and the ''assurance'' stated as given by the Company in the said application. On making a request under the Right to Information Act to serve a copy of the said application dated 07.10.2005 to ascertain the ''assurance'' given (vide Ext. P7), it stands replied by the local authority/concerned Panchayat vide Ext. P8 dated 14.07.2009, that such application is ''not seen received'' and that the authority was not in a position to say what the ''assurance'' given by the Company was. The counter affidavit filed by the Panchayat in the earlier round of litigation i.e. W.P.(C) No. 31848 of 2007 has been produced as Ext. P9; wherein the Grama Panchayath has disputed the version of the Company;

- that the paddy cultivation has not been done in the property more than 50 years is not correct;

- that their claim that the water channels in the property are artificial water channels is incorrect;

- that the water channels in the property of the petitioner are natural water channels; which are subject to tidal action;

- that the formation of sluices cannot enable the petitioner to content that the water channels are artificial;

- that the filling up of water channels will result in water logging in the locality;

- that obstructing the free flow of tidal water will affect the entire locality and result environmental damage and hence the writ petitioner company was not entitled to have any relief.

25. As revealed from the preliminary report dated 28.08.2009 submitted by the Advocate Commissioner appointed earlier, the points to be noted, as requested by the petitioner in W.P(C) No. 17861 of 2009, were:

(a) Report whether there are canals inside the survey No. 795 and 797.

(b) Report whether there is any reclamation activities in the canals in Survey No. 795 and 797

(c) Report whether there is newly dump gravels in Sy. No. 795 and 797

(d) To report whether any adequate financial provisions has been made for environmental protection measures.

(e) To report whether there were any provision for rain water harvesting for meeting the water requirements.

(f) To report whether construction of swimming pool, extraction of sand and levelling or digging of sandy stretches are carrying out except for structural foundation building.

(g) To report whether construction activities are carrying out in No Development Zone, i.e. 100 metres away from the high tide line.

(h) To report whether any building is situated on the banks of the Vembanadu kayal i.e. within the limits of high tide line.

(i) To report whether there is any effluent treatment provisions.

(j) To report lie and nature of the property in Sy. No. 795 and 797.

26. The points sought to be noted by the petitioners in W.P.(C) No. 16783 of 2009 were in the following terms :

(a) Ascertain and report the western boundary of Respondent 6 & 7 property.

(b) Is there any "kayal purambokku" converted and constructed retaining wall in the shore side.

(c) Measure, ascertain and report the purambokku land existed in the total extent of land covered by the title deed of respondent 6 & 7.

(d) Possibility of leaving purambokku land in case if it comes within the boundary of respondent''s property.

(e) Feasibility of separating the purambokku land in case it comes within the boundary of 6th and 7th respondent''s property.

(f) The extent of purambokku land may be calculated and equivalent extent may open to the public in any of the side of the total extent of land. The measurement may be made with the assistance of Village Officer/Taluk Surveyor.

(g) Nature of the land when the sanction was obtained for the construction of the building as per the approved plan of the Panchayat.

27. The points sought to be noted as per work memo dated 08.10.2009 by the counsel for the respondent Companies are as given below :

1. Measure out the property of Respondents 6 and 7 on the basis of Sale Deed Nos. 3388/2005, 3389/2005, 3390/2005 and 3391/2005 all of SRO Ernakulam with the relevant survey records and the assignment records and sketches.

2. Report whether there is a compound wall on the eastern side of the property belonging to Respondents 6 and 7 and report about the height of the said wall.

3. Inspect and report whether the petitioners in W.P.(c) No. 16783 of 2009 has got any immovable property sharing the boundary of the property belonging to Respondents 6 and 7 and the approximate distance of the petitioners'' property from respondents 6 and 7.

4. Report such other matters as requested by the counsel for Respondents 6 and 7 at the time of inspection.

28. Gist of the observations of the above Commissioner are as given below :

- that the entire property of about 30 acres was having canals and ridges where coconut trees are planted;

- that coconut palms were seen planted after dumping mud in the paddy field;

- that though a number of coconut palms are seen in the property, it cannot be said that it is a coconut garden;

- that there is sluice on the boundary of the property from which there could be free flow of water from the Vembanadu kayal to the property and vice versa, but the sluice is blocked by pieces of wood and hence the flow of water is restricted;

- that the southern boundary of the property is a panchayat road leading to ''kadavu'', which is used by inhabitants of the nearby island;

- that there is a terraced residential building numbered as 536/IX of the Udayamperoor Grama Panchayat with electricity and water connection on the south western portion of the property;

- that some sheds/buildings were there on the northern side of the main building (fire wood house, motor shed etc)/prawn peeling shed etc.;

- that the boundaries of the property are covered with wire fencing, with concrete base;

- that the Commissioner was not in a position to say whether there was any encroachment from purambokke land without the assistance of the surveyor;

- that reclamation activities were going on, in the southern portion of the property and that about 2 ? acres of property were reclaimed with red sand;

- that the courtyards of the house on the eastern side of the property in question and the nearby properties were water logged;

- that on the northern side of the property there was another paddy field;

29. Subsequently, the very same Advocate Commissioner submitted an interim report dated 08.04.2010, producing a letter dated 01.02.2010 issued by the Taluk Surveyor and sketch prepared by the Taluk Surveyor as Annexures 1 and

2. Essential aspects pointed out as per the said interim report are;

- that the total extent of land in Re-Survey No. 795 covered by documents 3388/05 and 3390/05 was 6.2000 hectares, whereas on measurement the actual extent available was revealed as 6.0572 hectares;

- that the entire land covered under re-survey No. 795 was ''thodu'' and ridges and the coconut palms were situated on the ridges;

- that though the total extent of property in Resurvey No. 797/1 covered under documents 3388/05 and 3389/05 was shown as 4.6675 hectares, on measurement, the actual extent available was revealed as 4.6234 hectares;

- that there is no boundary separating the properties in re-survey Nos. 795 and 797/1;

- that the property in re-survey No. 797/1 is ''thodu'' and ridges, where an extent of 2.97 cents (shaded in red colour and identified as item No.8 in the sketch) was filled with gravel, which portion was originally water logged and subsequently reclaimed, where construction activities are going on;

- that the property shown as item No. 9 in the sketch is in re-survey No. 43/1 and it is situated on the western side of the other properties mentioned above, bordering Vembanadu kayal.

- that the petitioner in W.P.(C) No. 16789 of 2009 has no immovable property sharing the boundaries of the property of the respondent companies;

- that the surveyor has sought for time for measuring the property in Re-Survey No. 43/1;

- and that only after measuring the said property, an answer can be given whether there was any encroachment of purambokku or whether any violation of CRZ.

30. Another interim report dated 29.11.2010 was submitted by the very same Advocate Commissioner pointing out that the measurement was completed by the Surveyor on 10.07.2010, a second sketch was prepared and a report was handed over on 25.11.2010, which however did not show whether the respondent companies were in possession of any ''purambokke'' land or not and hence clarification was sought for vide letter dated 29.11.2010, which was awaited. The report dated 22.12.2010 of the Taluk Surveyor is produced along with the sketch by the Advocate Commissioner with her report dated 23.12.2010 stating that Taluk Surveyor has not clarified the point sought for. The 10th respondent, who is the Coastal Zone Management Authority, has filed their counter affidavit (giving the version as already given in the connected writ petition). In response to the contention of the writ petitioner in Ground H of the writ petition [that since the land cost is more Rs. 5 Crores, the Kerala Coastal Zone Management Authority could not have been given any clearance to the project], it is stated that the project cost was shown as less than Rs.5 Crores and

it was in the said circumstances, that the clearance was given (paragraph 7).

31. Coming to the subsequent course and events, as already mentioned above, the second Advocate Commissioner appointed by this Court, pursuant to the interim order dated 27.06.2011 has filed an interim report dated 15.07.2011, stating that since the details about physical condition, location, boundary.. etc. have already been reported by the previous Advocate Commissioner, it is not repeated, to avoid duplication. The independent assessment of the apprehended adverse impact as given in the above interim report is as follows :

- that the property is lying as narrow and long body lying north - south bordering the ''Kalathodu'' and ''Vembanadu kayal'';

- that the natural canals in the property as shown in Annexure A2 sketch of the Taluk Surveyor have been filled with earth and gravel beyond the land marks granite pillars at 100 mts. put by the respondents;

- that as per Ext. P4 judgment in W.P.(C) No. 16783 of 2009 (in respect of some other parties) rendered by learned single Judge of this Court ''No Development Zone'' was 200 m. to the landward side from the High Tide Line; whereas Ext. R6(m) clearance issued by the Kerala Coastal Zone Management Authority was by stipulating the coastal regulation zone as 100m landward side from the High Tide Line.

32. Objections have been filed by the respondent Companies to the above interim report on 04.08.2011 stating; - that the measurement has already been carried out and as such no further necessity is there to measure the property again;

- that the present Commissioner is trying to exceed the scope of his authority and trying to assume the role of a final adjudicator in the matter;

- that the description of the property as narrow and long body is incorrect;

- that the width of the nearby ''kalathodu'' stated by the Commissioner as of about 100 m. is not correct and the same does not have a width of more than 70m;

- that most of the observations made by the Commissioner are irrelevant and incorrect;

- that as per the relevant notification applicable to the State of Kerala and as marked by the competent authority, the CRZ at the project cite could only be 100m;

- that Ext. P4 judgment is not a precedent and further that the property in question is bounded by ''Back waters'' and not by Sea;

- that the Advocate Commission forgot to mention the coconut palms standing in the property, most of which are of the age 20 - 35 years;

- that reclamation was obtained and carried out by the predecessor in title, decades back, which cannot be reopened at this stage;

- that the observation in paragraph 15 of the said report that the channels in the properties are natural canals is not correct and they are artificial channels created by the predecessor-in-title for carrying out prawn and fish farming;

33. The second Advocate Commissioner has filed final report dated 26.09.2011 producing copies of different documents and photographs as Exts. C2(a) to C2(k); the gist of which are;

"As per Ext.C2(a) map the property lying on the east of the disputed site is marked as filtration pond and that filtration pond come in CRZ (i) category, thus making it obligatory to fix the No Development Zone from its western, northern and eastern boundaries; the northern and western sides being bounded by the Vemabanad Lake and Kalalthodu respectively

"that Ext.R6(p) issued by CESS (Centre for Earth Science Studies) is of February, 2006., whereas Ext.P3 in W.P.(C) 17861 OF 2009 (Ext.P2 herein in W.P(C)16783 of 2009) prepared by the three eminent scientists are of subsequent date .

"that the canals in the site that were intact at the time of issuance of Ext.P3 in W.P.(C) 17861 of 2009 has been substantially filled up by party respondents despite the prohibition in the CRZ are"

The Commissioner has collected some additional documents from the petitioners which revealed that the petitioner (in W.P(C) 17861 of 2009 had filed Ext. C2(d) representation before the Land Revenue Commissioner on 13.02.2006 and as such, the Land Revenue Commissioner ought not to have issued Ext.R6(h) and R6(i) orders dated 10.03.2006 without hearing the petitioner in W.P.(C)17861 of 2009"

" that as per CRZ notification 1991 the area upto 200 metres landwards from High Tide Line was to be earmarked as No Development Zone;

" that the Commissioner visited the site on 15.09.2011 on his own and collected further data, also observing water logging in the area;

"that Ext.C2(e) to C2(k)photographs show existence of filtration ponds in the property lying on the eastern side of the property of the respondent company."

34. The respondent Companies have filed detailed objection dated 18.10.2011 to the final report as well, contending that the Advocate Commissioner has virtually joined hands with the petitioners and that the report is a biased one. Crux of the said objections is in the following terms:

"....The commissioner has exceeded its jurisdiction and no authority was given by this Court to collect additional evidence (that too on his own) visiting the property on 15.09.2011, that too without any notice to the respondent companies. Pursuant to the judgment of this Court in W.P. (C)31848 of 2007, the matter was reconsidered by the Government, who issued Ext.R6(r) order dated 29.03.2008, after hearing, whereby Ext.P3 (in W.P.(C) 31848 of 2007) stands modified to the said extent; ".....that there is no filtration pond on the eastern side of the respondent companies'' property as alleged by the Commissioner ;

" .....that the Advocate Commissioner has exceeded the scope of appointment and he has gone to the extent of pronouncing judgment on the permission granted by the Coastal Zone Management Area virtually assuming an adjudicatory role.

35. Based on the above pleadings and proceedings, Mr. A.X. Varghese the learned Counsel appearing for the petitioners in W.P(C) Nos.18742 of 2007 and 17861 of 2009 and Mr. P.K. Ravi Sankar, the learned Counsel for the petitioner in W.P(C) 16783 of 2009 submitted that violation is quite evident and that the respondent Companies, under no circumstance, can proceed with reclamation or construction of the hotel project in the site in question. It is also stated that the project cost is much above Rs.5 crores and that the land value itself will be much more than that, under which circumstance, ''prior clearance'' of the Ministry of Environment, New Delhi is a sine-quo-non to have reclamation/construction for putting up the hotel project in the area, which comes within the purview of Coastal Zone Regulations.

36. Mr. Gopinatha Menon, the learned Counsel appearing for the respondent Companies asserted the position as pleaded in the counter affidavit, additional counter affidavit/objection to the commissioner''s report and added that no violation of the coastal zone regulations or any other provisions including Kerala Conservation of Paddy Land and Wet Land Act,2008 (''Paddy Land Act'' in short) is involved in the instant cases. It is stated that permission to convert the property under Clause 6(2) of the KLU was given to the predecessor-in-title by the concerned District Collector, way back in the year 1984, as there was no paddy cultivation for several years, it being a non-cultivable land and it was accordingly, that the property was converted as coconut plantation and for fish farming. This being the position, the property was never continuing as a paddy land or wet land as defined under Section 2(xii) or 2(xviii) of the ''Paddy Land Act''. If the properties are not paddy land or wet land as per the aforesaid Act, the provisions of the said Act are not attracted and the matter has to be dealt with under the relevant provisions of the KLU Order, in view of the law declared by this Court in Praveen v. Land Revenue Commissioner (2010 (2) KLT 617). For the very same reason, the law declared by this Court in Adani Infrastructure & Developers Pvt. Ltd. Mumbai and others v. State of Kerala and others, (2015(1)KLT 651) holding that, until final data bank is prepared and published in accordance with law, the draft data bank register is to be followed) is having no application; more so, when the properly was reclaimed after getting orders under Clause (6) of the KLU Order. The learned Counsel also submits that the competent authorities have considered the matter and it was accordingly, that

necessary sanction was issued by the Coastal Zone Management Authority to proceed with further steps, subject to the conditions stipulated therein. The factual position with regard to permission for conversion granted in 1984 by the District Collector and the subsequent developments including the inspection conducted by the authorities of the Revenue Department at different levels and the Local Authority have been taken note of by the Commissioner for Land Revenue, leading to the order dated 10.03.2006, permitting the conversion sought for by the respondent Companies, which hence are not assailable under any circumstances.

37. With regard to the project cost, it is stated that construction sought to be effected is of minimal in nature and that only an extent of 6.5 acres, out of the total of about 30 acres, is sought to be made use of and as such, the project cost was much less of Rs.5 crores. It is stated that cost of the land is not liable to be included as project cost. The learned counsel however submits that, as pointed out in the counter affidavit, no construction has been effected so far and construction will be effected only after getting clearance from the Ministry of Environment, New Delhi in terms of relevant CRZ notification. The learned Counsel also adds that CRZ Notification 1991 insisting for prior clearance of the Ministry of Environment is having no sanctity as on date, by virtue of the subsequent turn of events, including the EIA Notification 2006 and the Coastal Zone Notification of the year 2011, where no such stipulation as contained in CRZ Notification 1991 does exist. It was however added that the actual construction will be effected by the respondent Companies only after leaving the No Development Zone to an extent of 100 metres from High Tide Line and in conformity with the conditions stipulated by the Coastal Zone Management Authority (while granting clearance); by the concerned Grama Panchayat/local authority (while granting permit) and also in tune with the stipulations insisted by other statutory authorities like the Pollution Control Board.

38. We have heard the learned Counsel for the Coastal Zone Management Authority and other concerned respondents as well, besides the learned Government Pleader appearing for the State/Department. It is contended by the learned Counsel for the respondent Companies that the writ petitions have been filed as a malafide attempt to harass them and that the petitioners do not have any ''locus standi'' to file the same. It is also contended that the alleged cause of action itself is barred by limitation as the orders passed by the Commissioner for Land Revenue, which have been subjected to challenge in the concerned writ petitions, were passed as early as on 10.03.2006; whereas the writ petitions came to be filed much there after. Similarly Exts.R6(h), (i) and (m) which were passed on 10.03.2006 and 12.05.2006 came to be challenged in W.P.(C) 16783 of 2009 only after causing the writ petition to be amended in the year 2012. As such, there is culpable delay in approaching this Court and hence the writ petitions are liable to be dismissed on this score alone. It is further pointed out that under similar circumstances, another party had approached this Court by filing a writ petition with similar contentions wherein interference was declined on

the ground of delay/laches and the matter was dismissed in limine.

39. With regard to the above submission, it is asserted by the learned Counsel for the petitioners that their locus standi cannot be doubted in any manner as no personal interest is discernible from the pleadings and proceedings. The adverse circumstances likely to be caused because of the mass filling and reclamation of paddy lands, causing serious water logging and other detrimental consequences alone have been highlighted, that too since there is flagrant violation of the provisions of the Coastal Zone Regulations and such other statutory provisions.

40. After hearing both the sides and after going through the materials on record, this Court finds that the petitioner Organisation has been pursuing the matter, against the unauthorised filling/reclamation of the properties in the area by such other persons/owners way back from 1997 onwards, by filing O.P.20484 of 1997 (when such attempt was made by St. Mary''s Properties Ltd and others). Various representations and proceedings were being filed against all the concerned wrongdoers before the departmental authorities /State and also before this Court at different points of time. The properties came to the hands of the respondent Companies only in the year 2005 and when similar course was being pursued by the respondent Companies and since the grievance raised before the competent authorities did not turn to be fruitful, the petitioner Organisation constrained to approach this Court by filing W.P(C)18742 of 2007; followed by W.P(C)No.17861 of 2009 in view of subsequent developments. The petitioners in the other case, i.e., W.P(C)No.16783 of 2009 are also having similar grievance and on finding that the issue was similar to the one involved in the other two writ petitions, this Court found it fit and proper to hear the petitioners in the said case as well, clubbing all the matters together. This Court does not find it proper to non-suit the petitioners on the ground of alleged delay or the ''locus standi''. The position stands answered in favour of the petitioners.

41. Two things are mainly arise for consideration . The First one is whether the property concerned is a ''paddy land'' or ''wet land'' and whether there is any violation of the provisions under this head. Even if it is not a paddy land or wet land, the next question is whether there is any violation of the Coastal Zone Regulations and whether the respondent Companies could be permitted to effect construction in the land in question without getting clearance from the Ministry of Environment, Govt. of India, New Delhi. What should be the further course of action in respect of the proceedings finalised by the Commissioner for Land Revenue vide Exts.R6(h) and R6(i) (produced and challenged in W.P.(C) 16783 of 2009 and Ext.R6(m) clearance given by the Coastal Zone Management Authority, (challenged in the very same writ petition) and also as to the orders passed by the Government pursuant to the judgment in W.P(C) 31848 of 2007; are the other points to be looked into.

42. The term ''paddy land and ''wet land'' as defined under Section 2(xii) and 2(xviii) of the Act 28 of 2008 are extracted below:

"(xii) ''paddy land'' means all types of land situated in the State where paddy cultivated at least once in a year or suitable for paddy, cultivation but uncultivated and left fallow, and includes its allied constructions like bunds, drainage channels, ponds and canals;

(xviii) ''wetland'' means land lying between terrestrial and aquatic systems, where the water table is usually at or near the surface or which is covered by shallow water or characterized by the presence of sluggishly moving or standing water, saturating the soil with water and includes backwaters, estuary, fens, lagoon, mangroves, marshes, salt marsh and swamp forests but does not include paddy lands and rivers."

It is contended by the petitioners that the properties involved herein have been shown either as ''paddy land'' or ''wet land'' in the draft data bank register prepared and published by the concerned authority. But the fact remains that the properties, which were originally lying as paddy lands, were not being cultivated for several years because of ''high salinity'' and such other reasons. It was accordingly, that the predecessors-in-title were permitted to make use of the property for other purposes than agricultural purpose, by allowing the petition filed under clause 6(2) of the KLU order by the concerned District Collector way back in 1984. It was thereafter, that coconut palms were planted and part of the property was being used for prawn farming/fish farming. The inspections conducted by the authorities of the Revenue Department at different levels, such as Village officer Tahsildar, RDO etc., as revealed from their reports produced as Exts. R8 series in W.P.(C)No.18742 of 2007 are quite categoric that no paddy cultivation was being carried out there for past several years. It was also certified that the property was not at all fit for paddy cultivation. The pleadings and materials produced before this Court persuade this Court to come to an irresistible conclusion that the property cannot be used for paddy cultivation any more, by virtue of the high extent of salinity (also as expressed in the opening sentence of ''Three member Expert Committee'' of CRZ in W.P(C)No. 17861 of 2009) and such other reasons, including the subsequent conversion allowed by the District collector in 1984 to have the property converted for planting coconut palms and also for doing prawn farming/fish farming. This being the position, the version of the petitioners that the rights and liberties of the nearby inhabitants and agriculturists have been adversely affected and they have been prevented from eking out their livelihood as agricultural workers is far from the track of truth and is not liable to be acted upon by this Court.

43. However, this Court cannot fully agree with the contention of the respondent companies that the entire properties were converted/reclaimed by the predecessor-in-title, pursuant to the permission given by the concerned District Collector in the year 1984, on a petition filed under clause 6(2) of the KLU order. Even though this Court does not find it safe to rely upon the Advocate Commissioner''s report on many aspects, the undisputed facts and figures with regard to the nature, lie and topography etc of the property, as discernible

therefrom cannot be ignored. The picture that emerges from such discussion is that the properties concerned herein is a mix of ridges and water logged area, of course, with coconut palms of 15 to 30 of age, wherever planted. The properties are also having close proximity to the ''Vembanad Kayal'' on the northern side and ''Kalathodu'' on the western side. Water canals situated in the properties are connected to the back water through a ''sluice'' to control the inflow and outflow, which was seen blocked at the relevant time, as noted by the Advocate Commissioner. The property was lying as "partly water logged" even at the time of purchase in the year 2005, as revealed from the documents produced by the respondent Companies themselves.

44. Ext. R6(c) to Ext. R6(f) [in W.P.(C)16783 of 2009] are copies of the relevant documents /title deeds, whereby the properties having different extents were purchased by the Company as per documents bearing Nos.3388/05, 3389/05, 3390/05 and 3391/05 of the Sub Registry, Ernakulam. The description in respect of the above properties as given in the Schedule are as given below:

(1) Document/Sale Deed No: 3388/05

Total extent: 4.5605 hectares.

Description: All that part and parcel of 4.5605 Hectares (11 acres 27 cents) of partly water logged and partly filled land comprised in Re.Sy.Nos.795 and 797/1 (Old Survey No.7/1) in Block No.19 of Manakunnam Village and in Thandaper Account No.8112 with all rights and improvements therein.

(2) Document/Sale Deed No; 3389/05

Total extent: 1.1097 hectares Description: All that part and parcel of 1.1097 Hectares (2 acres 74 cents) of land comprised in Re.Sy.No.797/1 (Old Survey No.7/1) in Block No.19 of Manakkunam Village and in Thandaper Account No.8114 with all rights and improvements therein.

(3) Document/Sale Deed No; 3390/05

Total extent : 5.1973 Hectares

Description: All that part and parcel of 5.1973 Hectares (12 acres 84 cents) of partly water logged and partly filled land comprised in Re.Sy.Nos.795 (Old Survey No.7/1 and 314/6-1) in Block No.19 of Manakunnam Village and in Thandaper Account No.8113 with all rights and improvements therein.

(4) Document/Sale Deed No; 3391/05

Total extent: 0.7123 hectares

Description: All that part and parcel of 0.7123 Hectares (1 acres 76 cents) of land comprised in Re.Sy.No.43/1 (Old Survey No.314/1 & 314/6/1) in Block No.18 of Manakunnam Village and in Thandaper Account No.443 with all rights and improvements therein.

45. The above documents were executed on 15.04.2005 and when the vendors and vendee (respondent Companies) concede that the properties were ''partly water logged and partly filled'' even as on 15.04.2015 (which is almost the peak of summer in Kerala), the position during other season can also be visualised without much difficulties. If this be the position, the version of the respondents that the entire properties were reclaimed and converted years back by the predecessor-in-title is not fully correct. This is supported by further observation made by two different Advocate Commissioners as per their reports as to the water logging in the nearby areas as well. Under such circumstances, if further reclamation is permitted to be carried out so as to facilitate construction of the hotel/resort, will it adversely affect the rights and interests of others concerned; also affecting the free flow of water or will it cause any impact on the environment or Eco system is a matter for consideration.

46. The version of the Coastal Zone Management Authority as disclosed from their counter affidavit is that, they granted Ext. R6 (m) clearance, subject to ''General Conditions'' and ''Specific conditions'' with reference to CRZ, as given below:

"(a) General:

(i) The construction of the structures should be undertaken as perm the plans approved by the concerned local authority/local administration conforming to the existing local and central rules and regulations including the provisions of CRZ Notification.

(ii) No objection Certificate from the Kerala State Pollution Control Board must be obtained

(iii) The proponents have to provide all the safety norms including fire extinguishers and other equipment as per regulations.

(iv) Adequate financial provision has to be made for environmental protection measures.

(b) Specific to CRZ:

(v) The minimum plot size required is 0.4 hectares and the maximum allowed FSI is 0.33. The overall height of the building permissible is 9m and the construction should be limited to 2 floors.

(vi) Construction of swimming pool, extraction of sand and levelling or digging of sandy stretches, except for structural foundation of building are not permitted.

(vii) At least a gap of 20 m width will have to be provided between any two hotels/beach resorts and one gap within 500m.

(viii) Construction of building within No Development Zone, i.e. 100 m from the High Tide Line is not permissible.

(ix) The project proponent should not exploit ground water in the CRZ area and should provide provisions for rainwater harvesting for meeting the water requirement for the resort.

(x) Any change in the project profile shall be informed to KCZMA and prior approval for the same shall be obtained.

(xi) The effluents generated from the Beach resort should not be dumped into the backwater

(xiii) The project proponent should provide necessary facilities for the visit of the officials from Coastal Zone Management Authority/Science and Technology Department for inspection of the project and its premises at any time.

47. The version of the Coastal Zone Management Authority is that, such clearance was given only since the project cost was stated as below Rs.5 crores ; but for which clearance of the Central Government/Ministry of Environment was necessary. It is revealed from Ext. R6(n) consent to establish given by the Kerala State Pollution Control Board, that the project cost declared by the respondent Companies for setting up a hotel having the built up area of 19831 Sq.M was of Rs.27.36 Crores and the same was included in ''ORANGE'' category. This by itself is more than sufficient to show that the project cost was never less than Rs.5 crores as contended by the respondent Companies. The valuation of the land purchased as per Sale Deed Nos. 3388/05, 3389/05, 3390/05 and 3391/05 of the Sub Registry, Ernakulam itself is more than Rs. 5 crores. In the said circumstance, this Court is of the view that the respondent companies can be permitted to proceed with the project only subject to clearance to be given by the Ministry of Environment, Govt. of India, New Delhi.

48. It is seen that the building permit issued by the local authority was valid only for a period of three years from 04.11.2008 to 03.11.2011. Similarly Ext. R6(n) consent to establish given by the Pollution Control Board was also valid only till 14.10.2011 and the tenure is over. Sanction given by the District Collector in the year 1984 under Clause 6(2) of the KLU order was only to convert the properties for planting coconut palms and also for prawn farming/fish farming. If the land in question however came to be filled up/reclaimed earlier and is lying as a reclaimed land, construction of hotel/resort is a permissible activity under CRZ III, it being in CRZ III category; subject to the conditions imposed by the competent authorities and further that no reclamation/construction is effected in the No Development Zone to an extent of 100 Metres from the High Tide Line. The feasibility of such construction without any threat to the environment or Eco system has to be ascertained; more so since the project cost is much more than Rs.5 crores, requiring clearance of the Ministry of Environment, New Delhi., in terms of CRZ notification of 1991.

49. In the above circumstances, the writ petitions are disposed of with liberty to respondent Companies to move the 8th and 9th respondents (in W.P.(C)No.16783 of 2009) for getting clearance and they can proceed with further steps, subject to such clearance to be obtained from the Ministry and subject to

conditions/stipulations, as specified by the statutory/competent authorities in this regard. No reclamation/conversion or construction shall be effected in furtherance to the project till such time. Implementation of Ext.P9 in W.P(C)No.18742/2007, Ext.R6(h) and R6(i) in W.P.(C) No.16783 of 2009 and implementation of Ext.R9(i) sanction dated 12.05.2006 issued by the Coastal Zone Management Authority in W.P(C)17861 of 2009 (same as Ext.R6(m) in W.P.(C) 16783 of 2009) shall be subject to the outcome of the clearance to be given by the Govt. of India as aforesaid. The parties shall bear their cost.

