

(2016) 04 KL CK 0018

In the High Court Of Kerala

Case No : W.A. No. 2745 of 2015 in W.P. (C) 26377/2015 and W.A. Nos. 2767, 2768 of 2015, 57 of 2016

State of Kerala and Others

APPELLANT

Vs

Biju Ramesh and Others

RESPONDENT

Date of Decision : 05-04-2016

Acts Referred:

Constitution of India, 1950 — Article 14, Article 162, Article 19, Article 226, Article 300A, Article 300-A, Article 31
Disaster Management Act, 2005 — Section 2, Section 2(d), Section 2(e), Section 2(g), Section 31, Section 33, Section 34, Se

Citation : (2016) 2 KerLJ 405 : (2016) 3 KLT 16

Hon'ble Judges : Ashok Bhushan, C.J. and A.M. Shaffique, J.

Bench : Division Bench

Advocate : K.P. Dandapani, Advocate General and C.S. Manilal, Sr. Govt. Pleader, for the Appellant; V.V. Asokan, Sr. Adv., K.I. Mayankutty Mather, R. Jaikrishna and V. Suresh, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Ashok Bhushan, C.J.

1. These Writ Appeals raise an important issue pertaining to the extent of power which can be exercised by the District Disaster Management Authority (for short, "the DDMA") in reference to a disaster management, i.e., Whether in exercise of the power under Section 34 of the Disaster Management Act, 2005 (hereinafter referred to as "the 2005 Act"), the District Management Authority can direct for demolition of the construction belonging to a private individual standing on an underground canal so as to carry out renovation and repair works of the said canal which became imminent due to the fact that the structure of the canal has outlived its life and would have led to a disaster within the meaning of the 2005 Act?

2. Writ Appeal Nos. 2745, 2767 and 2768 of 2015 have been filed against the

common judgment dated 23.09.2015 rendered by the learned Single Judge in three Writ Petitions filed by respondent No. 1 in the above appeals. Writ Appeal No. 57 of 2016 has been filed by the petitioner in Writ Petition No. 26246 of 2015 in so far as the learned Single Judge by the same judgment has refused to grant relief to the Writ Petitioner therein.

3. All the Writ Appeals raising common questions of facts and law have been heard together and are being decided by this common judgment. WA No. 2745 of 2015 arising out of W.P.(C) No. 26377 of 2015 is being treated as leading writ appeal and reference of facts and pleadings in the above case shall suffice for deciding all the writ appeals.

4. Facts of each Writ Appeal needs to be noted separately.

W.A No. 2745/2015

5. More than a Century ago, in the year 1901, the Maharaja of Travancore (now known as Thiruvananthapuram) for the purpose of drainage, constructed a Canal, viz., Thekkinikara Canal which starts from Karimadam flood balancing tank in Thiruvananthapuram Taluk, flows through a covered drain northwards into the Attakulangara school premises from where it flows westwards through an underground arch conduit through the southern portion of the Fort premises, exits at the Vazhappally Junction and further flows down as an open canal to Parvathi Puthanar. The Canal was reconstructed and repaired in the year 1936. After the formation of the State of Travancore-Cochin, the then Government issued an order dated 02.02.1950 regarding allocation of property between the State and Maharaja of Travancore. Various Properties as detailed in Government Order dated 02.02.1950 were retained by the Maharaja of Travancore. One of the survey numbers which was retained was Sy. No. 560/364 of Vanchiyoor Village. On 21.12.1972, mother of the petitioner, Smt. B. Indira Devi, obtained a deed of sale executed by the Power of Attorney of the Maharaja of Travancore for an area of 75 cents comprised in Sy. No. 560/364 along with certain buildings existing thereon. By settlement deed dated 02.12.2010 Smt. Indira Devi made a settlement of 19.5 cents in Sy. No. 560/364-3 in favour of the petitioner along with buildings. Petitioner and his mother renovated and repaired the buildings existed in Sy. No. 560/364. Petitioner started paying land tax and ownership of the building was also transferred in the name of the petitioner.

6. The 2005 Act was enacted by the Parliament for prevention and mitigation of effects of disasters and for undertaking a holistic, co-ordinated and prompt response to any disaster situation and to provide requisite institutional mechanisms for drawing up and monitoring the implementation of the disaster management plans. Under the 2005 Act the State Government issued State Disaster Management Policy, dated 19.06.2010 under which "District Management Plan, Thiruvananthapuram-2014" was prepared. The city of Thiruvananthapuram on account of incessant rains had been witnessing floods, water logs, disruption of traffic and an operation, viz., Operation Anantha" was

initiated for mitigating the floods in Thiruvananthapuram City under which water drains and canals were inspected for the purpose of identifying and removing encroachments prior to desilting and repairing of the canal. During the inspection made it was revealed that Thiruvananthapuram City is in an extremely precarious condition since the mortar and plastering of the brick works of the Canal had disintegrated having constructed more than 75 years ago. Persons whose constructions were standing on the drains and Canal were identified and notices were issued to them to vacate the premises and remove their buildings existing over the Canal. A report was submitted that the petitioner has encroached upon an extent of 2.90 Ares of Government land in Sy. No. 560/364 under which the Canal is passing within the Fort area. A notice dated 08.05.2015 was issued to the petitioner by the Revenue Divisional Officer to vacate the poramboke land occupied by him since it has become imperative to increase the depth of drains and canal for free flow of water. Petitioner filed W.P(C) No. 18578 of 2015 challenging the notice dated 08.05.2015. Writ Petition was disposed of by this Court on 22.06.2015 recording the statement of the respondents that notice is being withdrawn. The Court observed that if at all the Government intends to take any proceedings for eviction, then that shall be with notice, with specific details provided as to the property from which the eviction is to be made and giving a reasonable opportunity to file objections as also affording a hearing.

7. On 29.06.2015, a notice was issued by the Chairman, DMMA under Section 34(k) of the 2005 Act directing the petitioner to remove the structures constructed over the arched conduit situated in Sy. No. 560/360. Along with the notice a map showing the encroached area, google earth map and cross section map of the Canal were enclosed. The encroached portion was detailed along with sketch and map appended to the notice and was stated to be 2.90 Ares (5.5 x 52.9 mts). Petitioner on receipt of the notice submitted a petition on 11.06.2015 to the Minister for Revenue raising his objections to the notice. In the petition dated 11.06.2015, petitioner himself has stated that during the recent times due to unseasonal and incessant rains in the area, the entire area gets waterlogged, which resulted in threat to the life and property of human beings who are residing in the area. The petitioner noted that a decision was taken by the Cabinet of the State to devise effective ways and means to alleviate the problems faced by the people of the locality. Petitioner stated that on inspection it was found that natural water courses are blocked and consequently when there is heavy rain fall, water in the Canal gets over flooded which blocked the railway tracks and roads and also causes bursting of water pipes leading to traffic jam on the roads which causes miseries, loss and damage to the people. On the petition submitted by the petitioner to the Minister, report dated 16.06.2015 was submitted by the Tahsildar where it was mentioned that as part of "Operation Anantha", notices were issued to persons who are occupying Government lands in areas and encroached upon the water courses, thus blocking the free flow of water. It was mentioned that several persons have vacated the place and demolished the constructions. However petitioner has resisted the movement.

The report states that most of the parts of the walls of the canal which are plastered have got deteriorated and they may get damaged and fall down at any time.

8. Petitioner filed W.P(C) No. 20945 of 2015 challenging the notice dated 29.06.2015 as well as report dated 16.06.2015. Learned Single Judge disposed of the Writ Petition directing for joint inspection of the area. Petitioner was also directed to be supplied the five documents demanded by the petitioner. After judgment of this Court dated 10.07.2015, notice was given to the petitioner informing about the joint inspection to be held on 10.08.2015. Petitioner requested for postponement of the joint inspection which request was declined. Joint inspection took place on 10.08.2015 in the presence of petitioner's counsel. Petitioner was heard and he requested to cross-examine the Tahsildar and Village Officer and a few other persons. Petitioner was permitted to cross-examine the Tahsildar and Village Officer. Petitioner also filed certain materials including Commission report in O.S. No. 1474 of 2015 where the dispute was with regard to one shop room. Dates were fixed for hearing. Petitioner participated in the hearing and also raised objections regarding the proceedings. After hearing the petitioner and considering the materials on record including joint inspection report, the Chief Executive Officer, DMMA, Additional District Magistrate, Thiruvananthapuram issued proceedings dated 21.08.2015 wherein relevant issues raised were considered. It was held that the conduit portion of the Canal is passing through the building constructed by the petitioner and passes through the western side and exits at Valiyapally Junction and the Canal was in extremely precarious condition, since the mortar and plastering were disintegrated in major parts of the Canal. Exercising power under Section 34(k) of the 2005 Act, direction was issued to the petitioner to demolish and remove the structures and building above the underground arched conduit in Sy. No. 560/364 within 15 days. Aggrieved by the said proceedings petitioner had filed W.P(C) No. 26377 of 2015 wherein the following reliefs have been sought for by the petitioner:

"i) Call for the records of the case leading to the issuance of Ext. P32 order, Ext. P28 Joint Inspection Report, Exts. P12 and P12(a) reports and quash the same by means of a writ of certiorari or other appropriate writ or order.

ii) Issue an appropriate writ or order declaring that the situation involved in the matter is not at all amenable to an action under the provisions of the DM Act and interdict respondents 3 to 7 from taking any action against the petitioner in respect of his registered holdings and structures therein covered under Exts. P1 and P2.

iii) Issue a writ of mandamus or other appropriate writ or order forbearing the respondents 3 to 7 from taking any coercive action against the petitioner in respect of the his registered holding covered under Ext. P1 document on the strength of Ext. P32 order.

iv) Grant such other orders or incidental reliefs that this Honourable Court may

deem fit to grant under facts and circumstances of this case."

W.A No. 2767/2015

9. This Writ Appeal arises out of W.P(C) No. 26246 of 2015 filed by the first respondent, M/s. Karimpanal Arcade Owners Welfare Association. Petitioner claimed to be the registered owner of apartment in the building Karimpanal Arcade situated in the property having an extent of 1.03 Acres. Petitioner's case is that the property originally belonged to the Maharaja of Travancore which was transferred to one Smt. Ponnamma Pothan and thereafter it came into the ownership of the petitioner. It was stated that inspection was made by the District Collector and Additional District Collector of the petitioner's property. On 22.08.2015 certain persons came to the site along with heavy machineries and they have taken possession of 5.5 metres of the northern portion of the property and erected electric post. Petitioner states that the Additional District Magistrate has taken action under Section 34 of the 2005 Act. Petitioner on the aforesaid ground has prayed for the following reliefs:

"i. Set aside the impugned judgment of the learned Single Judge dated 23.09.2015 in W.P(C) No. 26246 of 2015 to the extent of interfering with the action taken by the respondents under the Disaster Management Act.

ii. Dismiss the Writ Petition and allow the Writ Appeal.

iii. Declare that the findings and observation of the learned Single Judge in respect of the invocation of the Disaster Management Act be held ultra vires."

W.A No. 2768/2015

10. This Writ Appeal arises out of W.P(C) No. 28130 of 2015 filed by Smt. Chitra Ramesh, sister of Dr. Biju Ramesh, petitioner in W.P(C) No. 26337 of 2015. Smt. Chitra Ramesh also claimed settlement of 37 cents in Sy. No. 560/364-3-1 by settlement deed No. 1747 of 1979 from her mother Smt. B. Indira Devi. Petitioner claims to be the owner and paying land tax. Petitioner was also served with notice under the 2005 Act. Petitioner's case is that she is sharing part of the building Complex, viz., Rajadhani Buildings. Petitioner's brother Dr. Biju Ramesh has received a notice under the 2005 Act directing to demolish the building situated in the land. Petitioner filed the Writ Petition praying for the following reliefs:

"i. Direct the respondents not to proceed against the petitioner's property covered under Exts. P1 to P6 by way of issuance of a writ of prohibition or any other appropriate writ direction or order.

ii. Issue a writ of mandamus or any other appropriate writ, direction or order, commanding the respondents to act only in accordance with the mandate of Articles 14 and 300A of the Constitution.

iii. Direct the respondents not to forcefully evict the petitioner from his properties.

iv. Direct the respondents not to cause any destruction to the petitioner's properties.

v. Grant such other and incidental reliefs as this Hon'ble Court may deem just and necessary on the facts and circumstances of this case; and

vi. Allow this Writ Petition (Civil) with costs to the petitioner."

W.A No. 57/2016

11. This Writ Appeal has been filed by M/s. Karimpanal Arcade Owners' Association, petitioner in W.P(C) No. 26246 of 2015. As noted above, petitioner had filed the Writ Petition challenging the action of the respondents by which they have taken action for possession of the northern portion of the property, 5.5 metres in the east-west direction. Petitioner in paragraph 3 of the Writ Petition has stated that in the northern extremity of the property there exists an underground drainage intended for the purpose of evacuating the rain water falling in the compound of the building. It is stated that members of the Association are using that portion for parking the vehicles. The following was stated in paragraph 3:

"It is respectfully submitted that on the northern extremity of the property wherein M/s. Karimpanal Arcade situates there exist an underground drain intended for the purpose of evacuating the rain water falling in the compound of the building to Amizhinjam public canal. The drainage inside the compound is having a depth of 10 feet and width of 2 metres covered by an arch brick cover, with 3 manholes at 30 metres apart. There was no occasion of the obstruction of the drainage or its over flowing at any point of time. The members of the association are using the portion for parking the vehicles. On the north west corner of the property 2 transformers were erected by the KSEB for the purpose of supplying electricity to the various commercial establishments in the building and also to major portion of the East for area. Adjacent to the transformers, the electrical room with various distribution system and metering systems of the occupants in the building is situated. A portion of the transformers and the electrical room comes over a portion of the underground drainage."

Petitioner in the Writ Petition has prayed for a direction to the respondents not to take possession of the property belonging to the petitioner and comprised in Sy. Nos. 646, 647, 648, 649 and 650/02. One of the reliefs claimed by the petitioner was "to issue a writ of mandamus or any other appropriate writ, to remove the unauthorized construction made within the petitioner property and to restore the property to its original position within a time limit fixed by this Hon'ble Court."

12. Learned Single Judge decided all the Writ Petitions by judgment dated 23.09.2015. Learned Single Judge however had not granted relief to the petitioner as prayed in relief No. (ii). Aggrieved by that part of the judgment, Writ Appeal No. 57 of 2015 has been filed praying that judgment of the learned Single Judge be set aside to the extent it declined to grant relief No. (ii) to the

petitioner and further to allow that prayer.

13. In W.P(C) No. 26377 of 2015 a detailed counter affidavit was filed by the Additional District Collector, 5th respondent to which reply affidavit was filed by the petitioner. An additional counter affidavit was also filed by the 5th respondent on 07.09.2015 bringing on record the Disaster Management Plan, Thiruvananthapuram, 2014 and certain other materials. Petitioner also filed an additional reply affidavit. A further affidavit and a memo were filed by the State.

14. Learned Single Judge after hearing the parties decided all the Writ Petitions by judgment dated 23.09.2015. Learned Single Judge dwelled into the provisions of the 2015 Act and opined that the disaster management can be broadly classified into three categories as emergency measures, long term measures and hybrid measures. The DMMA can exercise power under Section 65, i.e., the power of requisition of sources, vehicles for rescue operation, etc. Learned Single Judge further held that there is no provision in the 2005 Act enabling the authorities to dispossess evict or acquire property of persons permanently by using the power of eminent domain. Learned Single Judge held that the 2005 Act "the DM Act in circumstances of public need in conflict with the private interest did not envision the Authority to act upon, other than through the mechanism of ordinary law except in emergency situation as a temporary measure. Thus, in order to acquire or dispossess or evict the property or land of a private person permanently, the Authority needs to rely upon allied or related laws like Land Acquisition Act." Learned Single Judge further held that on long term measures, for prevention and capacity building, the authority has no such power as envisaged under Section 34 read with Section 65. Learned Single Judge however, held that Canal is flowing subjacent to the building in so far as petitioners in W.P. (C) Nos. 26637 and 26246 of 2015 are concerned. With regard to the petitioner in W.P(C) No. 28130 of 2015 is concerned, it was held that petitioner was using the space over the Canal for parking cars and other allied activities. Learned Single Judge held that in the absence of any emergency situation, the DMMA had to rely upon Land Acquisition Act and if any person is in illegal occupation of Government land, it has to be dealt under the Land Conservancy Act. Learned Single Judge, however, rejected the plea of mala fide and violation of natural justice. The Writ Petitions were thus disposed of. The operative portion of the judgment is contained in paragraph (19) which is to the following effect:

"19. In view of the discussion of common issue, this Court is of the view that status quo has to be maintained. The petitioners' building or other structures can be interfered only in accordance with the due procedure established under law. If the Authority has a case that the land in question is a Government land and the petitioners are in illegal occupation, they are free to resort to the provisions under the Land Conservancy Act. If the Authority has a case that it is a private land, they can resort to the provisions under the Land Acquisition Act. Thus, the Authority is restrained from proceeding further in interfering with the building structure or premises of the petitioners, otherwise than by invoking the

provisions of the Land Acquisition Act or the Land Conservancy Act as the case may be."

15. We have heard Shri K.P. Dandapani, learned Advocate General appearing for the State assisted by Shri C.S. Manilal, learned Senior Government Pleader, Shri K.I. Mayankutty Mather and R. Jayakrishnan, learned counsel for the petitioner in W.P(C) 26377 of 2015. Shri N. Nandakumara Menon, learned Senior Counsel with Shri P.K. Manoj Kumar for the Corporation of Thiruvananthapuram. Shri P.G. Jayashankaran has appeared for the petitioner in W.P(C) No. 28130 of 2015. Shri John Joseph Vettikad and Joseph Johny appeared for the petitioner in W.P(C) No. 26246 of 2015 and appellant in W.A. No. 57 of 2016.

16. Learned Advocate General appearing for the State contended that the Thekkinikkara Canal is a public Canal which vests with the Government and maintained by the Irrigation Department since 1956. The Canal which was initially constructed by the Maharaja of Travancore in 1901, was renovated and repaired in 1936 and now vests in the State as a public Canal which is used for drainage of water through several important areas of the city of Thiruvananthapuram including the palace area. The Canal being a Government Canal no one has any right to make any construction over the Canal. The bricks and motor of the Canal are in precarious condition, have deteriorated and outlived their life which being constructed 75 years ago. District plan has been prepared under the 2005 Act and for implementation of the plan notices were issued by the DMMA to those who have encroached or made construction on the superjacent area of the Canal. More than 75 persons had encroached the Canal area and made constructions and after issue of notices all of them who have encroached the Canal area removed their structures and vacated the buildings to permit renovation and repair of the Canal and it is only the Writ Petitioners who are objecting and have challenged the action of the DMMA. The DMMA was fully entitled to take preventive measures without the actual disaster to happen. Learned Single Judge classified the measures into three categories, i.e., emergency measures, long term measures and hybrid measures. No such demarcation is contained in the Statute. View of the learned Single Judge that the DMMA cannot exercise power under Section 34 of the 2005 Act with regard to long term measures is erroneous. Learned Single Judge committed error in holding that the State has to first resort to the Land Acquisition Act/Land Conservancy Act before carrying out any work under the disaster management. Superjacent area of the arched conduit can very well be directed to be evicted in exercise of the powers under the 2005 Act. The 2005 Act has an overriding effect which provision has not been considered by the learned Single Judge. It was submitted that the report of the Tahsildar and expert report of the Executive Engineer would reveal graphic description of the deteriorated condition of the Canal which may at any time be vulnerable for collapse and needs renovation of the building as well, as there are every possibility of the building constructed on the Canal to crumble down, in which event the heritage building and other protected archaeological structures face danger of collapse. It was contended

that the above mentioned aspects warrant urgent invocation of the provisions of the 2005 Act and the learned Single Judge committed error in interdicting the proceedings under the 2005 Act. The 2005 Act has been enacted to protect and safeguard the person and property of the citizens from impending disasters and the Act cannot be interpreted in a manner to restrict the DMMA to exercise power without resorting to the provisions under the Land Acquisition Act and the Land Conservancy Act. Public interest has to prevail over private interest of the Writ Petitioners. The Writ Petitions deserves to be dismissed.

17. Learned counsel appearing for the petitioners, refuting the submissions of the learned Advocate General contended that the property from which the petitioners are being directed to be evicted after removing the structures are properties owned by the petitioners, they were recorded as owners in Thandaper of Vanchiyoor Village and they are paying land tax and asking the petitioners to vacate the portion and remove the building is nothing but violation of the petitioners' right guaranteed under Article 300A of the Constitution of India. Petitioners cannot be deprived of their right in the property. Learned Single Judge has rightly observed that the State is free to proceed under the Land Acquisition Act for acquiring property for carrying out its measures. It is contended that the Canal was the private property of the Maharaja of Travancore and cannot be treated as a Public property. The property having sold to the petitioners' predecessor in interest by Maharaja, all rights in the property belonged to the petitioners. The properties are not poramboke land of the State nor is it recorded as poramboke in the revenue records. The State has wrongly proceeded against petitioners under the 2005 Act treating the property to be poramboke. Even though the Canal may be beneath to the properties of the petitioners, petitioners shall not lose their proprietary right over the entire land. In addition to the above, learned counsel for the appellant in W.A No. 57 of 2016 submitted that the respondents have no right to trespass into the property of the petitioners and take possession of a portion and they had no right to fence portion of the petitioners' property without any procedure of law. Learned Single Judge has committed error in not granting relief to the petitioner in W.P(C) No. 26246 of 2015 by which the petitioner has prayed for removal of the fence.

18. We have considered the submissions of learned counsel for the parties and perused the records. From the submissions made by the learned counsel for the parties and the pleadings on record, the following are the issues which arise for consideration:

"1. Whether the Thekkinikara Canal is a Government Canal?

2. Whether the Thekkinikara Canal being a private canal constructed by the Maharaja of Travancore by transfers made by Maharaja of respective survey numbers in favour of the predecessor-in-interest of the petitioners, the petitioners have acquired proprietary rights in the canal and superjacent area of the canal?

3. Whether the measures to be taken by the DDMA can be compartmentalized under three heads, i.e., emergent measures, hybrid measures, and long term measures and the power under Section 34 of the 2005 Act cannot be exercised by the DDMA in event the measures to be taken is a long term measure?
4. Whether in the facts of the present case there were sufficient grounds for the District Disaster Management Authority to implement the "Disaster Management" Plan with regard to Thekkinikara Canal situated in the city of Thiruvananthapuram?
5. Whether the actions taken by the DDMA directing the petitioners to remove their structures from the superjacent area of the underground canal (Arch Conduit) on the basis of a Disaster Management Plan under Section 34 of the 2005 Act are beyond the power of the DDMA and a premises can be requisitioned only as per the provisions of Section 65 of the 2005 Act?
6. Whether the background facts and circumstances under which the DDMA proceeded to take steps to get all constructions on the superjacent area of the canal removed was within the scope of exercise of the powers under Section 34k of the 2005 Act?
7. Whether the proceedings taken against the petitioners under the 2005 Act directing the petitioners to vacate and remove the constructions over the superjacent area of the canal violates the petitioners' right guaranteed under Article 300A of the Constitution of India?
8. Whether the view of the learned Single Judge that State Disaster Management Authority before directing demolition of constructions of the petitioners standing over superjacent area of the canal, the Authority was required to first resort to the provisions of the Land Acquisition Act or Land Conservancy Act is based on correct interpretation of the provisions of 2005 Act?
9. To what relief, if any, the appellants are entitled in the Writ Appeals filed by them?"

Issue Nos. 1 & 2:

19. These issues being interconnected, are being taken together. Thekkinikara Canal was constructed by Maharaja of Travancore in the year 1901 in the city of Thiruvananthapuram for drainage of storm water. The canal starts from Karimdom flood balancing tank and flows through a covered drain northwards into the Attakulangara School premises from where it flows westwards through an underground arched conduit through the Southern portion of Fort premises, exits at the Vazhappally Junction and further flows down as an open canal to the Parvathi Puthanar. On the basis of a detailed drainage scheme which was approved by the Government of Travancore, the Canal was reconstructed and repaired in the year 1936.

20. The petitioner, in paragraph 13, has himself pleaded the following:

"13. To ensure the overflow of the excess water from Padmatheertha Pathrakulam (which now stands reclaimed) and the other tanks situated within the Padmanabha Swami Temple complex, during the administration of the erstwhile Maharaja, a special artificial canal had been built by Maharaja, which is high enough i.e. upto 15 feet height and a width of 10 feet and named as "Thekkinikara Canal". Thekkinikara Canal so constructed flows only through the property of Maharaja. Till date there had been no blockage to the said canal. The canal passes through a portion of the property of the petitioner and also the neighbouring property owners and Temple Trust buildings in the east-west direction and then passes through the other registered holdings of the neighbouring property holders."

21. On the formation of United State of Travancore and Cochin in the year 1949 the then Government had issued an order on 02.02.1950 regarding allocation of properties between the State and Maharaja of Travancore. In the present case we are concerned with Survey No. 560/364 of Vanchiyoor Village (that Survey number was retained by Maharaja) which consists of an area of 35 Acres and 63 Cents on which various structures including Krishna Vilasom Palace and other Palaces and building were standing. On formation of the State of Kerala with effect from 01.11.1956 the canal is being maintained by the Irrigation Department of the State of Kerala. The canal as noted above was constructed for drainage purpose and has been serving and is part of important drainage system of the City of Thiruvananthapuram. The canal has generally 15 feet height and width of 10 feet. The construction of the canal by Maharaja was for public purpose, i.e for drainage system of City of Thiruvananthapuram which continued to be serviced by the said canal even after formation of State of Kerala and it is specifically pleaded by the State that Canal is maintained by the Irrigation Department of the State from 1956 and the fact that the Canal is being maintained by the Irrigation Department is also admitted by the petitioner which is apparent from his own petition dated 11.06.2015, Ext. P11, which was submitted by the petitioner to the Minister for Revenue of the State after receipt of the notice dated 08.05.2015. In his petition Ext. P11, following has been stated by the petitioner, "this Canal is being supervised and maintained by the Irrigation Department of the State and there were number of old and new structures built over this canal". From the materials brought on record it is clear that Canal was constructed for public purpose i.e for drainage and the Canal now vests in the State of Kerala and is maintained by the Irrigation Department of the State. From the above conclusion it is discernible that the Canal is a Government Canal.

22. Learned Advocate General has in this Context referred to Section 3 of the Kerala Land Conservancy Act, 1957. Section 3 of the Act defines the property of the Government. Section 3 (1) of the Act is as follows:

"3. Property of Government defined.--(1) All public roads, streets, lanes and paths, the bridges, ditches, dykes and fences on or beside the same the bed of

the sea and of harbours and creeks below high water mark, the beds and banks of rivers, streams, irrigation and drainage channels, canals, tanks lakes, backwaters and water courses, and all standing and flowing water, and all lands wheresoever situated, save in so far as the same are the property of-

- (a) Jenmies, Wargdars or holders of Inams; or
- (b) persons registered in the revenue records as holders of lands in any way subject to the payment of land revenue to the Government; or
- (c) any other registered holder of land in proprietary right; or
- (d) any person holding land under grant from the Government otherwise than by way of a lease or licence; or
- (e) any person claiming through or holding under any of the persons referred to in clauses (a), (b), (c) or (d), are, and are hereby declared to be, the property of Government, except as may be otherwise provided by any law for the time being in force, subject to all rights of way and other public rights and to the natural and easement rights of other land owners and to all customary rights legally subsisting.

Explanation I.--Lands once registered in the name of a person but subsequently abandoned or relinquished, and all lands held by right of escheat, purchase, resumption, reversion or acquisition under the Land Acquisition Act for the time being in force, are the property of Government within the meaning of this section.

Explanation IA.--Where the ownership and possession, or the possession, of any land are or is vested in the Government under Section 86 or Section 87 of the Kerala Land Reforms Act, 1963 (1 of 1964), such land shall, so long as it is in the possession of the Government, be the property of Government within the meaning of this section.

Explanation II.--In this section, the expression "high water mark", means the highest point reached by the ordinary spring tide at any season of the year.

Explanation III.--Where, in regard to roads, lanes and canals, survey stones had been, in the original demarcation under the Survey Act in force planted for the sake of convenience and safety inside compound walls and gates of compounds, in house verandhas, door steps, porticoes, masonry drains and similar structures of a permanent nature, such walls, gates, verandhas, etc., shall not be deemed to be the property of Government within the meaning of this section.

Explanation IV.--(1) Lands belonging to the Government of any other State in India or the Kerala State Electricity Board or to a University established by law or to any Panchayat as defined in the Kerala Panchayat Raj Act, 1994 (13 of 1994) or any Municipality as defined in the Kerala Municipality Act, 1994 (20 of 1994) owned or controlled by the Government of Kerala or to a Municipal Corporation shall be deemed to be the property of Government within the meaning of this section.

(2) All unassessed lands within the limits of private estates used or reserved for public purposes or for the communal use of villagers, and all public roads and streets vested in any local authority shall, for the purpose of this Act, be deemed to be the property of Government."

23. The above definition clearly indicates that the irrigation and drainage canals are all properties of the Government, save in so far as the same are properties those indicated in Clause (a) to Clause (e). The last sentence of Section 3(1) before Clause (a) reads "and all lands wheresoever situated, save in so far as the same are the property of-". Thus the definition intended that all lands wherever situated shall be the property of Government except when the same is property of those mentioned in Clause (a) to Clause (e). Section 3(1) does not contemplate that the beds and banks of river irrigation and canals, backwater were to be properties of those mentioned in Clause (a) to (e). Irrigation and drainage canals are thus have to be treated as vested in the State within the meaning of Section 3(1). From the existence, i.e., from 1901, the canal flows through different survey numbers including survey No. 560/364 of Vanchiyoor village. The petitioner's claim of right through deeds obtained by their predecessor in interest from The Maharaja of Travancore, for eg., in W.P.(C) No. 26377 of 2015 the petitioner claims that 75 cents of land was purchased by petitioner's mother Smt. Indiradevi by sale deed dated 21.12.1972 executed by power of attorney of Maharaja out of survey No. 560/364. Out of 75 cents, purchased by petitioner's mother, a settlement deed dated 21.12.1972 has been executed in favour of petitioner for an area of 19.5 cents in survey No. 560/364 a copy of the sale deed dated 21.12.1972 was filed by the petitioner as Exhibit P5.

24. W.P.(C) No. 18578 of 2015 was filed by the petitioner which was disposed by the learned Single Judge on 22.06.2015. We have looked into Exhibit P5 from the records of W.P.(C) No. 18578 of 2015 and the document does not give any indication that the Maharaja has also transferred the canal flowing underneath the survey No. 560/364. The canal being Government canal, the same was also not capable of being transferred after the canal became property of the State of Kerala after the formation of Government of Kerala with effect from 01.11.1956. By the documents from which the petitioner traces his title to the land does not indicate that the public canal flowing underground, owned by the Government, shall stand transferred to the petitioner by transfer of the respective area situated in the above mentioned Survey number.

25. Sri.Mayankutty Mather, the learned counsel appearing for the petitioner lays much emphasis that the canal being private canal of Maharaja, it shall not vest in the Government and the nature of the canal shall continue to be private canal of Maharaja.

26. The sequence of events and the fact that since 1956 it is the Irrigation Department of the State of Kerala which is managing the canal, clearly proves that the canal is a Government canal and proprietary right cannot be claimed on

the canal and the superjacent area of the canal by the petitioner. No portion of the Government canal was transferred to the petitioner or was capable of being transferred to the petitioner by the erstwhile Maharaja by deed of transfer from Maharaja executed in the year 1972/1959.

27. Shri K.I. Mayankutty Mather, learned counsel for the petitioner submitted that Sy. No. 560/364-3 area, 19 cents and the buildings standing therein are owned by the petitioner and can in no manner be regarded as poramboke land. He submits that ownership of the buildings stood transferred in the name of the petitioners as per ownership certificate dated 01.01.2015. It is contended that even if the Canal is going beneath the buildings, the Government cannot be treated as the owner of the land or buildings above the Canal.

28. Learned Advocate General refuting the submissions of the learned counsel for the petitioner submitted that in the settlement records prepared in 1920 the property has been described as "Kandu Krishi Thanathu" which was covered by the Kandu Krishi Thanathu Proclamation, 1124 (1949) and on such nature of the land no proprietary right can be obtained by the petitioner and according to Kandu Krishi Land Assignment Rules, 1958 an assignment has to be obtained. Learned Advocate General submitted that petitioner having never obtained assignment of patta over the superjacent area over the Canal under the Kandu Krishi Land Assignment Rules, petitioner's contention that the land is not poramboke is absolutely untenable. Kandu Krishi Thanathu Register which was maintained by the Revenue, the area through which the Canal was flowing, was described as Kandu krishi Thanathu, which means a Government land. Exhibit R5(e) is relied by the State for the above submission.

29. Petitioner submitted that he has asked for information under the Right to Information Act from the Revenue Authorities and under the said Act, the petitioner was given reply that Sy. No. 560/364 is not included in the poramboke register and is not poramboke land.

30. After considering the above submissions of the learned counsel for the parties, we are of the view that it is not necessary for us for the purpose of these cases to enter into discussion over the nature and character of rights of both parties with regard to the superjacent area of the Canal flowing beneath the property of the petitioner. Petitioner is recorded as owner of the buildings situated on the superjacent area of the Canal. We thus proceed on the premise that petitioner is the owner of the buildings situated on the superjacent area of the Canal portion flowing beneath the buildings of the petitioner.

Issue No. 3:

31. As noted above the learned Single Judge after noticing various provisions of Disaster Management Act, 2005, has classified the Disaster Management in three compartments, i.e (i) emergency measures (ii) long term measures and (iii) Hybrid measures. The learned Single Judge further held that when the authority is implementing a long term measure, the authority has no such power as

envisaged in Section 34 read with Section 65. The view taken by learned Single Judge that for implementing a long term measure of Disaster Management, the Authority cannot exercise power under Section 34, has been attacked by learned Advocate General in these appeals.

32. Elaborating his submission, learned Advocate General has contended that there is no such classification as has been found by learned Single Judge in his judgment and the exercise of power by the authority cannot be restricted in that manner. It is useful to refer to certain observations made by learned Single Judge. In paragraphs 10.i, learned Single Judge has explained the Emergency measure, in 10.ii long term measures and in 10.iii Hybrid measures. After analysing the provisions of Sections 34 and 65, following conclusions were made by learned Single Judge in paragraph 11.ii of the judgment:

"11.ii. These powers under Section 34 of the DM Act read with the powers under Section 65 of the DM Act clearly indicate that the Authority has unbridled power to respond in a situation of rescue operation or in the event of actual disaster or when threat of disaster is imminent. However, on long-term measures, for prevention and capacity-building, the Authority has no such power as envisaged under Section 34 read with Section 65. It has to workout the plan prepared under Section 31 with the aid of other statutory provisions, if necessary. The eminent domain power of the State has not been relegated to the Authority as an inbuilt mechanism to implement the plan. The eminent power must explicit by statutory provision as otherwise it would offend the persons' right protected under Article 300A of the Constitution of India."

33. Now we revert to the provisions of the Disaster Management Act, 2005 to examine as to whether the above view taken by learned Single Judge is based on the correct interpretation of the provisions of the Disaster Management Act 2005? The Disaster Management Act, 2005 was enacted to provide for effective management of the Disaster and matters connected there with or incidental thereto. Section 2 is the definition Clause. Section 2(d) defines the term "disaster" which is as follows:

"(d) "disaster" means a catastrophe, mishap, calamity or grave occurrence in any area, arising from natural or man made causes, or by accident or negligence which results in substantial loss of life or human suffering or damage to, and destruction of, property, or damage to, or degradation of, environment, and is of such a nature or magnitude as to be beyond the coping capacity of the community of the affected area; "

Section 2(e) defines the term "disaster management" which is as follows:

"(e) "disaster management" means a continuous and integrated process of planning, organising, coordinating and implementing measures which are necessary or expedient for-

(i) prevention of danger or threat of any disaster;

- (ii) mitigation or reduction of risk of any disaster or its severity or consequences;
- (iii) capacity-building;
- (iv) preparedness to deal with any disaster;
- (v) prompt response to any threatening disaster situation or disaster;
- (vi) assessing the severity or magnitude of effects of any disaster;
- (vii) evacuation, rescue and relief;
- (viii) rehabilitation and reconstruction;"

34. As the definition of Disaster Management indicates, the disaster management is a continuous act and process of planning, organising, co-ordinating and implementing measures which are necessary or expedient for; prevention of danger or threat of any disaster, mitigation or reduction of risk of any disaster or its severity or consequences. The disaster management includes thus the prevention of danger of any threat of disaster and evacuation, rescue, relief, rehabilitation and reconstruction. The disaster management thus contemplates planning, co-ordination and implementation prior to happening of disaster and planning, organisation, co-ordination and implementation after happening of disaster. The measures thus broadly can be divided into two parts, i.e, steps for planning, organisation, co-ordination and implementation of measures prior to actual disaster and measures which are to be taken after the disaster. For prevention of danger or threat of any disaster or for mitigating or reduction of any risk of any disaster or its severity or consequences, both the long term measures and short term measures can be taken which depends on the planning. It is true that certain provisions of the Act may deal with the rescue operations as detailed in Section 65, payment of compensation Section 66 etc. Section 65 has been referred to by learned Single Judge in paragraph 14 (relevant portion) as follows:

"14. xx xx The situation referred in Section 65 of the DM Act is sine qua non for exercise of power for emergency or hybrid measures. In the absence of such a situation, any exercise of power intermeddling with premises or land in which persons have ownership or possessory right or occupancy right will be illegal and arbitrary. In the absence of emergency measures, the Authority can alone resort to long term measures either to prevent or to build up capacity. If disaster is not in the immediate vicinity, the Authority cannot resort to provisions under Section 65 of the DM Act to dispossess or evict a person from the premises. While taking long term measures, if the premises belong to private persons, the remedy of the Authority is to resort to the provisions under the Land Acquisition Act. If the premises are in a Government land, the Authority is free to invoke the provisions under the Land Conservancy Act to evict such persons..... "

35. A reading of Section 65 does not indicate that the said power is to be exercised by the authorities only when actual disaster has happened. The power

of requisition of resources can be exercised for the purposes of prompt response or when it is needed or likely to be needed for the purpose of rescue operation. The exercise of power under Section 65 is towards achieving the object of disaster management. There is no indication in the Act that power under Section 65 cannot be exercised by the authority before an actual disaster happens. There is no such indication in the provision also. The view of learned Single Judge that Section 65 can be enforced only as emergency measure cannot be accepted. Of course, the power under Section 65 is available when there is emergency of any kind or situation warrants. But the power cannot be hedged by any condition or situation which are not provided for in the Statute.

36. Now we come to Section 34 of the Act which has been interpreted by learned Single Judge. Section 34 is part of Chapter IV of the Act which deals with "District Disaster Management Authority". Section 34 of the Act reads as follows:

"34. Powers and functions of District Authority in the event of any threatening disaster situation or disaster.--For the purpose of assisting, protecting or providing relief to the community, in response to any threatening disaster situation or disaster, the District Authority may-

- (a) give directions for the release and use of resources available with any Department of the Government and the local authority in the district;
- (b) control and restrict vehicular traffic to, from and within, the vulnerable or affected area;
- (c) control and restrict the entry of any person into, his movement within and departure from, a vulnerable or affected area;
- (d) remove debris, conduct search and carry out rescue operations;
- (e) provide shelter, food, drinking water and essential provisions healthcare and services;
- (f) establish emergency communication systems in the affected area;
- (g) make arrangements for the disposal of the unclaimed dead bodies;
- (h) recommend to any Department of the Government of the State or any authority or body under that Government at the district level to take such measures as are necessary in its opinion;
- (i) require experts and consultants in the relevant fields to advise and assist as it may deem necessary;
- (j) procure exclusive or preferential use of amenities from any authority or person;
- (k) construct temporary bridges or other necessary structures and demolish structures which may be hazardous to public or aggravate the effects of the disaster;

(l) ensure that the non-governmental organisations carry out their activities in an equitable and non-discriminatory manner;

(m) take such other steps as may be required or warranted to be taken in such a situation."

37. The heading of the Section contemplates two events i.e. a) in the event of any threatening disaster situation, or (b) disaster. The very first sentence of Section 34 states : "For the purpose of assisting, protecting or providing relief to the community, in response to any threatening disaster situation or disaster, the District Authority may-". Section 34 thus clearly contemplates action by District Authority in both situation i.e. a) in response to any threatening disaster situation or (b) disaster. The powers under Section 34 are fully available in response to any threatening disaster or disaster. The term "Disaster Management" is specifically defined in Section 2(e) of the Act which means a continuous and integrated process of planning, organising, coordinating and implementing measures which are necessary or expedient for prevention of danger or threat of any disaster. Thus any disaster measures to prevent disaster are statutorily contemplated and are the most important part of exercise by all authorities. Further, Section 2(g) defines "District Plan" which means:

"District Plan" means the plan for disaster management for the district prepared under Section 31."

38. When a plan as contemplated by Section 2(g) for disaster management is to be prepared, the plan should necessarily include the measures for prevention of danger or threat of any disaster. In a case long term plans have been made for prevention of danger or threat of any disaster, the power under Section 34 to implement such plans can in no manner be denied to the Authority and the view of learned Single Judge that the power under Section 34 cannot be exercised, for execution of long term plan, even if any such compartmentalization is accepted, cannot be approved. In the event any measure is included in a plan, where a statutory plan is framed under the Act, all powers are available to execute the said plan and there cannot be any classification on the ground that it is a long term plan and power under Section 34 cannot be exercised or the power under Section 34 can be exercised only when it is an emergency measure. No such dichotomy is reflected from the statutory provisions of the Disaster Management Act.

39. For accepting the interpretation as put forth by learned Single Judge to the provisions of Section 34 and to read compartmentalization of various measures as temporary measures, hybrid measures and long term measures, we need to add words in the Statute which is impermissible. It is a cardinal rule of a statutory interpretation that the Court shall not add or subtract word from a Statute. The Statute is to be read as it is. It is useful to refer to the judgment of Apex Court in Rohitash Kumar and others v. Om Prakash Sharma and others [, 2013 (11) SCC 451], where following was laid down by the Apex Court in

paragraphs 27, 28 and 29:

"27. The Court has to keep in mind the fact that, while interpreting the provisions of a Statute, it can neither add, nor subtract even a single word. The legal maxim "A Verbis Legis Non Est Recedendum" means, "From the words of law, there must be no departure". A section is to be interpreted by reading all of its parts together, and it is not permissible, to omit any part thereof. The Court cannot proceed with the assumption that the legislature, while enacting the Statute has committed a mistake; it must proceed on the footing that the legislature intended what it has said; even if there is some defect in the phraseology used by it in framing the statute, and it is not open to the court to add and amend, or by construction, make up for the deficiencies, which have been left in the Act. The Court can only iron out the creases but while doing so, it must not alter the fabric, of which an Act is woven. The Court, while interpreting statutory provisions, cannot add words to a Statute, or read words into it which are not part of it, especially when a literal reading of the same, produces an intelligible result. (Vide: Nalinakhya Bysack v. Shyam Sunder Halder and Others, , AIR 1953 SC 148; Sri Ram Ram Narain Medhi v. State of Bombay, , AIR 1959 SC 459; M. Pentiah and Others v. Muddala Veeramallappa and Others, , AIR 1961 SC 1107; The Balasinor Nagrik Co - operative Bank Ltd. v. Babubhai Shankerlal Pandya and Others, , AIR 1987 SC 849; and Dadi Jagannadham v. Jammulu Ramulu and Others,, , 2001 (7) SCC 71).

28. The Statute is not to be construed in light of certain notions that the legislature might have had in mind, or what the legislature is expected to have said, or what the legislature might have done, or what the duty of the legislature to have said or done was. The Courts have to administer the law as they find it, and it is not permissible for the Court to twist the clear language of the enactment, in order to avoid any real, or imaginary hardship which such literal interpretation may cause.

29. In view of the above, it becomes crystal clear that, under the garb of interpreting the provision, the Court does not have the power to add or subtract even a single word, as it would not amount to interpretation, but legislation."

40. We thus hold that the power under Section 34 of the Disaster Management Act, 2005 can be exercised by the District Disaster Management Authority to take any measure in implementing the statutory disaster management plan or to take any measure towards Disaster Management.

Issue No. 4:

41. The State of Kerala vide its Notification dated 09.09.2008 (published in the Gazette on 22.10.2008) established the District Disaster Management Authority for Thiruvananthapuram District. The District Disaster Management Plan, Thiruvananthapuram, 2014 was framed by the District Committee which has been brought on the record as Ext. R5(j). Table 28 deals with Crisis management Plan - flooding is part of disaster management plan. The Table includes different

situations of extremely heavy rainfall, very heavy rainfall and heavy rainfall. For each circumstances following is one of the Disaster Management Plan; (relevant portion):

". Shall identify bottlenecks/encroachment/silt accumulation/waste accumulation in major drains of flood affected/to be affected areas and immediately take steps to remove the same under provisions of Disaster Management Act, 2005. Shall cur through/open up new drains in poramboke/private lands, if such actions would mitigate the flooding situation in flood affected/to be affected areas."

42. The District Disaster Management Authority has thus already prepared a Disaster Management Plan with regard to the identification of encroachments in major drains of flood affected areas and to take steps under the Disaster Management Act. Now we look into the materials on record to indicate as to whether there was sufficient grounds for implementing the Disaster Management Plan. We may at this stage observe that, whether there are circumstances for implementing Disaster Management Plan are in the domain of authorities who are to implement the plan and normally this Court should not substitute its opinion in the place of opinion of experts who are entrusted with the Disaster Management. We, however, proceed to examine the relevant materials and pleadings in the above context.

43. Before we look into the pleadings of the State, it is relevant to note the case set up by the petitioner before the respondents in the above context. We have already referred to paragraph 13 of the writ petition where petitioner himself has pleaded that to ensure overflow of excess water from Padmathreertha pathrakulam and other tanks situated within the Padmanabha Swami Temple complex during the administration of the erstwhile Maharaja, a special artificial canal has been built up. Notice dated 29.06.2015 was issued to the petitioner asking him to remove his building above the portion of the canal standing over the canal. Petitioner after receipt of the notice immediately sent a petition dated 11.06.2015 to the Minister of Revenue. Copy of which has been annexed by the petitioner as Ext. P11. Petitioner himself in the petitioner Ext. P11 has made following statement of facts:

"However, during recent times, due to unseasonal and incessant rains in the area, the entire area gets waterlogged, especially the areas covered by Thambanoor, Kizhakkekottah, Manacaud, Karimattom Colony, Ganganagar, Yamuna Nagar, Attakulangara Bye-pass, which had resulted in threats to the life and property of the human beings, who are residing in the area, whereupon the Cabinet of the State met and discussed the matter threadbare and authorised the Chief Secretary and the District Collector, to devise effective ways and means to alleviate the problems faced by the people of the locality, and after holding a personal inspection of the locality, by the team headed by the Chief Secretary, District Collector and other concerned officials it was found out that the natural water-courses are blocked and consequently when there is heavy rain-fall, water in the canal gets over flooded and blocks the railway tracks, roads and also

causes bursting of water-pipes, leading to traffic jam on the roads and obstruction and delay in rail traffic, and at times, there will be traffic jam for hours together which causes miseries and loss and damage to the life and property of the people. Therefore, by virtue of the provisions contained in section 34 of the Disaster Management Act, 2005, steps have been taken to remove the block against free flow of water, especially to the natural water course."

44. The above statement of the petitioner himself is sufficient to conclude that there was unseasonal and incessant rain in the area by which the entire area was waterlogged resulting threat to the life and property of the human beings who are residing in the area.

45. After receipt of the above petition dated 11.06.2015 from the petitioner it was stated that on the complaint by the petitioner, a report dated 16.06.2015 was submitted by the Tahsildar to the District Collector, Thiruvananthapuram which is produced as Ext. P12. The report on the basis of site inspection stated as follows:

"Pursuant to the directions contained in the letter under reference, a thorough scrutiny of the poramboke Register, Sketch and other records of the Government" lands has been made and a personal inspection was held when it has been revealed that Shri. Biju Ramesh, Rajadhani, Kottakakam, Trivandrum is in unauthorised occupation of the land comprised in Sy. No. 560/364 of Block No. Survey No/Resurvey No. 560/364, over the canal, and is blocking the free flow of water through the canal/drain.

With a view to find out this unauthorised occupation, the services of the Taluk Surveyor were utilised. It is requested that urgent and necessary steps may be taken to evict the unauthorised occupant, by giving notice to him under the provisions of the Disaster Management Act, 2005."

46. The Executive Engineer, Irrigation Department, Thiruvananthapuram has also submitted a report dated 07.08.2015 to the District Collector, Thiruvananthapuram which has been filed as Ext. R5(d). The report stated as follows:

"Thekkanakara canal off takes from karimadom Tank inside Karimadom Colony and ends in Parvathy Puthanar. The canal passes through central school, East Fort, Vazhapally, Kothalam, crosses NH By pass at Muttathara before joining Parvathy Puthanar. The closed portion of the canal is from Karimadom tank to Vazhapally. The rest of the portion is a lined open canal.

The closed portion of the canal is made of brick arch constructed approximately 85 years back by the erstwhile Travancore royal family. The construction of the canal was using brick and lime/surkhi mortar. The canal has a width of 2.5 m and depth of 2.5 m to 3.00 m.

During the cleaning of canal under "Operation Anantha" between Karimadom tank and Karimpanal Arcade various portion of the brick arch were opened. It

was found that in almost all places the arch has been worn out and not in a stable condition. It was also observed that the arch cannot bear any more load or vibrations since the life of the brick arch is over. The photographs taken as a part of Operation Anantha is attached for your perusal and this itself is self explanatory.

The portion of canal M/s. Karimpanal Arcade upto Vazhapally which is fully covered was not explored during the past 20 years by the department. As the brick arch canal was constructed during the same period using the same material the condition of canal in the unexplored portion also will be same as that of the upstream portion of the canal now restored by the department during Operation Anantha."

47. The above materials on record clearly proves that the measures were required to be taken towards the Disaster Management Plan with regard to Thekkinikara Canal, the renovation and repair of canal and removal of the encroachments from the Canal area had become necessary and there was sufficient grounds to exercise the power by the Authority under the Disaster Management Act, 2005.

48. The DDMA while undertaking proceedings dated 21.8.2015 has noted the facts of the case, contentions raised by the petitioners, four issues were framed by the District authority and all issues were answered after due consideration. One of the issues framed by Disaster Management Authority was, whether it is a threatening disaster situation warranting action under Section 34 sub section (k) of the 2005 Act. The following findings have been recorded by the authority.

"The Executive Engineer Irrigation Division, Thiruvananthapuram in his report No. D6/1678/15 dated: 17.08.2015 has reported that the Thekkenankara Canal off takes from Karimadom Tank inside Karimadom Colony and ends in Parvathy Puthanar and Canal passes through Central School, East Fort, Vazhappally, Kothalam, Crosses NH by pass at Muttathara before joining Parvathy Puthanar. He has also reported that the closed portion of the Canal from Karimadom Tank to Vazhappally and rest of the portion is a lined open canal. It also reported that the closed portion of the Canal made of brick arch constructed approximately 75 years back by the erstwhile Travancore royal family and construction of the canal was using brick and lime/surkhi mortar. The width of the Canal is 2.5m and depth is 2.5m to 3.00m. It was also reported that during the cleaning of Canal under Operation Anantha between Karimadom Tank and Karimpanal Arcade various portion of the brick arch were opened and founded that in almost all places the arch has been worn out and not in a stable condition. It was also reported that the arch cannot bear any more load or vibrations since the life of the brick arch is over. It was also reported that the portion of Canal from Karimpanal Arcade to Vazhapally, which is fully covered, was not explored during the past 20 years by the Irrigation department and brick arch canal was constructed during the same period using the material condition of the canal in the unexplored portion will also be the same as that of upstream portion of the

case now restored.

The physical inspection on multiple occasions, by the District Administration along with the engineers of Minor Irrigation, Major Irrigation, PWD Roads, KSUDP, KRFB and City Corporation, have clearly shown on ground that the Thekkenankara Canal is an extremely precarious condition since the mortar and plastering of the brickwork has disintegrated, having been constructed more than 75 years ago. The Tahsildar, Thiruvananthapuram has also reiterated the same facts when he deposed during the cross examination held on 10.08.2015. I have also conducted the joint site inspection as per the direction of the Hon'ble High Court of Kerala along with the counsel of the Counter Petitioner on 10.08.2015 and assessed the facts. During the inspection I was convinced that the underground arched conduit portion of the Thekkenankara Canal is passing through the buildings constructed by the Counter Petitioner and passes through the Western side and exits at Vazhappally Junction and that it was in an extremely precarious condition since the mortar and plastering of the brickwork has disintegrated in major parts of the canal."

Issue Nos. 5 & 6:

49. The learned Single Judge as noted above has held that the power under Section 34 of the Act can be exercised only when the premises are needed or likely to be needed for the purpose of rescue operations as envisaged under Section 65 of the 2005 Act. Power under Section 34 as noted above can be exercised by the District Authority both in response to any threatening disaster situation or disaster. Section 65 empowers the authority to request for resources or provisions that is likely to be needed for the purpose of rescue operation etc. There is no basis to interpret any precondition in Section 34 and Section 65, that, only when authority exercises power under Section 65, the power under Section 34 can be exercised. There is no warrant to interpret Section 34 and Section 65 in the above manner. The purpose of Section 65 is entirely different. We thus reiterate that power under Section 34 can be exercised both in response to threatening disaster situation or actual disaster. The Disaster Management Plan consisting of measures for prevention of danger or threat of any disaster can very well be implemented while exercising the power under Section 34.

50. The contention which has been much pressed by learned counsel for the petitioner is that there is no power under Section 34(k) of the Act in directing demolition of portion of construction of the petitioner's building/parking place standing on superjacent area of the canal. There is no dispute between the parties that the portion of the canal is beneath the building of the petitioners in W.P.(C) 26377 of 2015 and W.P.(C) No. 28130 of 2015. With regard to petitioner in W.P.(C) No. 26246 of 2015, the canal passes through the parking area of M/s. Karimpanal Arcade.

51. The petitioner in W.P.(C) No. 26377 of 2015 in his reply dated 07.08.2015 to the notice has clearly stated in paragraph 9 that the canal passes through the

portion of his property in eastern direction and then passes through property of other registered holders. He has also pleaded so in paragraph 13 of the writ petition as noted above.

52. In the reply affidavit filed by the petitioner to the counter affidavit filed by the 5th respondent, following was pleaded in paragraph 18:

"18. The petitioner without prejudice to the larger contentions taken by him against the impugned proceedings begs to submit before this Hon"ble Court that if the Government really wanted the flow of alleged storm water through the canal (Thekkinkikkara Canal) passing beneath my building and property, I am prepared to maintain that portion of the canal at my cost and expenses, so that the proposed proceedings to demolish a portion of my five storied building can be avoided. I am constrained to make this submission only on account of the fact that the proposed demolition is through the staircase portion of my multi storied building belonging to me and my sister."

53. In the Disaster Management Plan as noted above, measures were included for removing the encroachment on drains and after spot inspection it was identified that there are large scale encroachment on the canal both on the covered drain and arched conduit area. There was no lack of the jurisdiction of the authority to exercise power under Section 34(k). The provision of Section 33 of the Act further throw sufficient light on the powers given to the authority under the Disaster Management Act, 2005. Section 33 of the Act empowers the District Authority to issue any direction to any Department of the District level or any local authority to take such measures for prevention or mitigation of the disaster. Section 33 of the Act is quoted as below:

"33. Requisition by the District Authority.--The District Authority may by order require any officer or any Department at the district level or any local authority to take such measures for the prevention or mitigation of disaster, or to effectively respond to it, as may be necessary, and such officer or department shall be bound to carry out such order."

54. In this context it is useful to refer to provisions of Section 411 of the Kerala Municipality Act, 1994. Under Section 411 the Secretary of the Local Authority is empowered to direct the owner or occupier to demolish or repair any structure dangerous to the passers-by or to the occupiers of neighbouring structures. Further where immediate action is necessary the Secretary before giving any notice can demolish any such structure. Section 411 of the Kerala Municipality Act, 1994 is quoted below:

"411. Precautions in case of dangerous structures.--(1) Where any structure is deemed by the Secretary to be in a ruinous state and dangerous to the passers-by or to the occupiers of neighbouring structures, the Secretary may by notice require the owner or occupier of such structure to fence off, take down, secure, demolish or repair the same so as to prevent any danger therefrom.

(2) Where immediate action is necessary, the Secretary shall, before giving such notice or before the period of such notice expires, cause to fence off, take down, secure, demolish or repair such structures, or fence off a part of any street or take such temporary measures as he deems fit to prevent danger, and the cost thereof shall be recoverable from the owner or occupier in the manner provided in Section 538.

(3) Where in the opinion of the Secretary the said structure is imminently dangerous to the inmates thereof, the Secretary shall order the immediate evacuation thereof, and any person disobeying the order may cause to be removed if necessary, with the assistance by a police officer."

55. The power given under Section 411 to local authority in public interest is to get dangerous buildings removed. Object is to save any disaster. Thus when local authority is empowered to direct for demolition of any dangerous structure, it cannot be assumed that the authority under Disaster Management Act has not been clothed with any such power. More so when under Section 33 of the Disaster Management Act, 2005, the District Authority can direct the local authority to take such measure which may include direction to demolish a building. There is no basis to assume that such power cannot be exercised by the District Authority itself. Further, under Section 34(k) when the power has been given to "demolish structures which may be hazardous to public or aggravate the effects of the disaster", such power cannot be read as a power hedged by any precondition. Further more Section 72 of the Act gives an over riding effect. Section 72 of the Act reads as follows:

"72. Act to have overriding effect.--The provisions of this Act, shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act."

56. In view of the foregoing discussion we are of the considered opinion that there is no lack of jurisdiction in District authorities to direct for demolition of structures in exercise of power under Section 34(k) and the impugned order passed by the District Authority, Ext. P32, was well within the jurisdiction of the District Disaster Management Authority under Section 34(k) of the Act.

Issue Nos. 7 & 8:

57. The submission which has been pressed by the learned counsel for the petitioners is that the action taken by the authorities directing the petitioners to remove their construction on the superjacent area of the canal violates the rights guaranteed under Article 300A of the Constitution of India. It is contended that although the right to property is not a fundamental right, but is still a Constitutional right guaranteed under Article 300A of the Constitution. The petitioners cannot be deprived of their property without authority of law. It is contended that the learned Single Judge has rightly taken the view that in event the District Authorities want the petitioners to remove their buildings, they were

obliged to acquire the land by invoking the provisions under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. Whether the action of the District Authorities asking the petitioners to vacate the superjacent area of the canal and remove their constructions therefrom can be said to violate Article 300A is the moot question. Article 300A provides as follows:--

"300A. Persons not to be deprived of property save by authority of law.--No person shall be deprived of his property save by authority of law."

58. What is protected under Article 300A is that no one is to be deprived of his property except by authority of law, which clearly means that by executive fiat Government cannot ask anybody to vacate his property or demolish his building. But such actions are saved from being hit by Article 300A which are backed by authority of law. Learned counsel for the petitioners have relied on certain decisions in support of their contention based on protection under Article 300A. They have placed reliance on the judgment of the Apex Court in *State of U. P. and others v. Manohar* [, (2005) 2 SCC 126].

59. The above case was a case where an area of 1.01 acres of land of the respondent was forcibly taken by the State of U.P, on which structures were also constructed in the year 1955. In spite of repeated requests, the land owner was not paid the compensation. In the correspondence with the Special Land Acquisition Officer and the Collector, the facts were noted that his land was taken in the year 1955 on which a block office was constructed. The writ petition was allowed by the High Court in the said context directing payment of compensation. The State of U.P had filed appeal against the judgment of the High Court. In the above context, the appeal was dismissed making the following observation.

"8. This is a case where we find utter lack of legal authority for deprivation of the respondent's property by the appellants who are State authorities. In our view this case was an eminently fit one for exercising the writ jurisdiction of the High Court under Art.226 of the Constitution. In our view, the High Court was somewhat liberal in not imposing exemplary costs on the appellants. We would have perhaps followed suit, but for the intransigence displayed before us."

The above case was clearly distinguishable. The above case was a case where land was taken and constructions were made. The above case does not help the petitioners in the present case.

60. Another decision relied on by the learned counsel for the petitioners is *Tukaram Kana Joshi and Others v. Maharashtra Industrial Development Corporation and others* [, (2013) 1 Supreme Court Cases 353]. The above case was a case where the petitioners' land were taken possession of by Maharashtra Industrial Development Corporation in 1964, after initiating proceedings under the Land Acquisition Act by issuing notification under Section 4 on 6.6.1964. However, the land acquisition proceedings were not finalised and again, 1981

notification under Section 4 was issued and proceedings were not finalised. Consequently, the petitioners were never given any compensation for the land which was taken in the year 1964. The Maharashtra Industrial Development Corporation transferred the land in 1998 to the City Industrial Development Corporation of Maharashtra. Ultimately, the petitioners filed the writ petition in the year 2009 which was dismissed by the High Court only on the ground of delay and non availability of certain documents against which judgment, the petitioners filed the appeal. Looking into the special facts and circumstances of the case, the Apex Court held that Article 300A limits the power of the State and no person can be deprived of his property save by authority of law. In paragraph (8) of the judgment, the following was stated:

"8. The appellants were deprived of their immovable property in 1964 when Article 31 of the Constitution was still intact and the right to property was a part of fundamental rights under Article 19 of the Constitution. It is pertinent to note that even after the right to property ceased to be a fundamental right, taking possession of or acquiring the property of a citizen most certainly tantamounts to deprivation and such deprivation can take place only in accordance with the "law", as the said word has specifically been used in Article 300-A of the Constitution. Such deprivation can be only by resorting to a procedure prescribed by the statute. The same cannot be done by way of executive fiat or order or administration caprice. In *Jiubhai Nanbhai Khachar v. State of Gujarat*, it has been held as follows:

"48. In other words, Article 300-A only limits the powers of the State that no person shall be deprived of his property save by authority of law. There is no deprivation without due sanction of law. Deprivation by any other mode is not acquisition or taking possession under Article 300-A. In other words, if there is no law, there is no deprivation."

61. In the above case, the Apex Court dealt with the issue of delay and came to the conclusion that in the facts of the above case, it was not permissible for any welfare State to uproot a person and deprive him of his rights. In paragraphs (19) and (22) following was stated:

"19. The appellants have been seriously discriminated against qua other persons, whose land was also acquired. Some of them were given the benefits of acquisition, including compensation in the year 1966. This kind of discrimination not only breeds corruption, but also disrespect for governance, as it leads to frustration and to a certain extent, forces persons to take the law into their own hands. The findings of the High Court, that requisite records were not available, or that the appellants approached the authorities at a belated stage are contrary to the evidence available on the record and thus, cannot be accepted and excused as it remains a slur on the system of governance and justice alike, and an anathema to the doctrine of equality which is the soul of our Constitution. Even under valid acquisition proceedings, there is a legal obligation on the part of the authorities to complete such acquisition proceedings at the earliest, and to

make payment of requisite compensation. The appeals, etc. are required to be decided expeditiously, for the sole reason that, if a person is not paid compensation in time, he will be unable to purchase any land or other immovable property, for the amount of compensation that is likely to be paid to him at a belated stage.

22. Be that as it may, ultimately, good sense prevailed, and the learned Senior Counsel appearing for the State came forward with a welcome suggestion stating that in order to redress the grievance of the appellants, the respondent authorities would notify the land in dispute under Section 4 of the Act within a period of 4 weeks from today. Section 6 declaration will be issued within a period one week thereafter. As the appellants have full notice and information with respect to the proceedings, publication in the newspapers either of the notification or of the declaration under the Act are dispensed with. Notice under Section 9 of the Act will be served within a period of 4 weeks after the publication of Section 6 declaration and award will be made within a period of three months thereafter. The deemed acquisition proceedings would thus be concluded most expeditiously. Needless to say, the market value of the land in dispute will be assessed as it prevails on the date on which the Section 4 notification is published in the Official Gazette. Payment of compensation/award amount will be made to the claimants/persons interested immediately thereafter, along with all statutory benefits. The appellant shall be entitled to pursue the statutory remedies available to them for further enhancement of compensation, if so desired."

62. The above case was a case where Land Acquisition Proceedings were initially initiated and in consequence of which, possession was taken. But, they were never finalised. Ultimately, before the Supreme Court the respondents agreed for issuing a fresh notification under Sections 4 and 6 with which direction, the civil appeals are decided. The above case is again on its own facts and does not help the appellants in the present case.

63. The case on which further reliance has been placed by the petitioners is on the Division Bench judgment of this Court in *Autumn Wood Resorts (Cloud 9) v. State of Kerala* [, 2014 (3) KLT 526]. The above was a case where petitioner's land was resumed by the Collector. On appeal filed by the petitioner before the Land Revenue Commissioner, the order of the Collector was set aside being in violation of natural justice and the matter was remitted back to the Collector. The contention raised before the Division Bench was that the Collector has no jurisdiction to invoke Rule 28 of Cardamom Rules, 1935 since the competent authority is the Government. In the above context, the Division Bench laid down the following in paragraph (13):

"When land in possession of a person is resumed or taken possession by the Government or any other person, it can be done only by observing due process of law. When the District Collector, an officer of the Government invokes his power for resumption of land in the possession of a person, necessarily he can

act only within the powers available to him under a particular statute. The Constitution Bench in *Bishan Das* (supra) held that "the action of the Government in taking the law into their hands and dispossessing the petitioners by the display of force, exhibits a callous disregard of the normal requirements of the rule of law apart from what might legitimately and reasonably be expected from a Government functioning in a society governed by a Constitution which guarantees to its citizens against arbitrary invasion by the executive of peaceful possession of property." After referring to *Wazir Chand* (supra) it is held that "the State or its executive officers cannot interfere with the rights of others unless they can point to some specific rule of law which authorises their acts." In *Bishamber Dayal Chandra Mohan* (supra) the Supreme Court, held that Art.300A provides that no person shall be deprived of his property save by authority of law and the State Government cannot take recourse to the executive power of the State under Art.162 to deprive a person of his property. Such power can be exercised only by authority of law and not by a mere executive fiat or order. It is further held that "The word "law" in the context of Art.300-A must mean an Act of parliament or of a State legislature, a rule, or a statutory order, having the force of law, that is positive or State made law." This position of law has also been reiterated by a Division Bench of this Court in *M.Far Hotels* (supra). Having regard to the above settled legal position, the question to be considered is whether the District Collector has passed Ext. P1 order, with reference to any statutory provision."

64. There cannot be any dispute with regard to the proposition laid down by the Division Bench in the above case. Land in possession of a person can only be resumed by observing due process of law. Thus, the question to be looked into in the present case is as to whether the petitioners have been directed to vacate from the superjacent area of the canal and remove their constructions from the said area is in accordance with due process of law and whether the action taken by the State authorities is backed by law. In the case before the Division Bench, one of the arguments which was accepted was that the property was not a Government land. Hence, the proceedings under the Land Conservancy Act could not have been invoked. Following was observed in paragraph (18) of the judgment.

"Another argument raised by the respondent authority is that they are entitled to invoke land conservancy proceedings under the Land Conservancy Act. According to the petitioner, they have valid title and they have been paying tax in respect of the property in question. The property has been mutated in their names as evident from the basic tax register. Land Conservancy Act can be invoked only if the land belongs to the Government. Property of Government is described under Section 3 of the Land Conservancy Act, which reads as under:--

"3. Property of Government defined.--(1) All public roads, streets, lanes and paths, the bridges, ditches, dykes and fences on or beside the same the bed of the sea and of harbours and creeks below high water mark, the beds and bans of

rivers, streams, irrigation and drainage channels, canals, tanks, lakes backwaters and water courses, and all standing and flowing water, and all lands wheresoever situated, save in so far as the same are the property of.--

(a) Jenmies, Wargdars or holders of Inams; or

(b) persons registered in the revenue records as holders of lands in any way subject to the payment of land revenue to the Government; or

(c) any other registered holder of land in proprietary right; or

(d) any person holding land under grant from the Government otherwise than by way of a lease of licence; or

(e) any person claiming through or holding under any of the persons referred to in clauses (a), (b), (c) or (d), are, and are hereby declared to be, the property of Government, except as may be otherwise provided by any law for the time being in force, subject to all rights of way and other public rights and to the natural and easement rights of other land owners and to all customary rights legally subsisting."

In so far as the petitioner has been paying tax for the property in question, and claims to be the successor of a grantee from the Government, he comes within the exemption of Section 3(1)(b) and (d) read with clause (e). Hence the said property cannot prima facie be termed as Government land. Under such circumstances, we do not think that the respondent can invoke land conservancy proceedings in respect of the property in question."

65. The facts of the present case as noted above are entirely different. Beneath the property of the petitioner in an area 5.5 metres x 52.9 metres (34+18.9 metres)=290.95 sq.metres which is the area superjacent to the canal is being asked to be vacated. The action has been taken by the State authorities in exercise of the powers under the 2005 Act. The petitioners are not being asked to vacate the premises by an executive fiat or by a direction which is not backed by any law. Other aspects of the present case have already been discussed in the preceding paragraph. We, thus, in view of the foregoing discussions are of the view that present is not a case which can be said to be a case where rights of the petitioners under Article 300A of the Constitution have been violated. Whether the action taken directing the petitioners to vacate from the above area of the canal is in accordance with the 2005 Act is the question which has already been separately considered and answered.

66. As noted above, the learned Single Judge has taken the view that before directing the petitioners to vacate from the aforesaid area of the canal, they were required to acquire the land in accordance with the Land Acquisition Act. Whether in the facts of the present case it was incumbent on the District Authorities to acquire the land from the petitioners by following the procedure under Act, 2013 is the question to be looked into.

67. The Disaster Management Act, 2005 is enacted with a definite object. Various powers have been given to the different authorities, including the DDMA to achieve the objects of the Act. Various statutory plans are to be prepared for Disaster Management. In event it is to be accepted that with regard to taking any action with regard to a premises which is in occupation/possession/ownership of a private person, the authorities have first to draw proceedings under the Land Acquisition Act and then issue any order under the 2005 Act is to defeat the entire purpose and object of the 2005 Act. The legislature being well aware of the legal consequences have already engrafted Section 72 of the Act which gives overriding effect to the provisions of the 2005 Act, notwithstanding anything consistent therewith contained in any other law. Section 72 of the Act is as follows.

"72. Act to have overriding effect.--The provisions of this Act, shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act."

68. While considering the nature and effect of non obstante clause, the Apex Court in *Union of India and Another v. G.M. Kokil and Others* [, 1984 (Suppl) Supreme Court Cases 196] held the following in paragraph (11) (relevant portion):

"..... It is well-known that a non obstante clause is a legislative device which is usually employed to give overriding effect to certain provisions over some contrary provisions that may be found either in the same enactment or some other enactment, that is to say, to avoid the operation and effect of all contrary provisions. Thus the non obstante clause in Section 70, namely, "notwithstanding anything contained in that Act" must mean notwithstanding anything to the contrary contained in that Act and as such it must refer to the exempting provisions which would be contrary to the general applicability of the Act..... "

69. To the similar effect is the pronouncement of the Apex Court in *State (NCT of Delhi) v. Sanjay* [(2014) 9 Supreme Court Cases 772] where the following was laid down in paragraph (63):

"It is well known that a non obstante clause is a legislative device which is usually employed to give overriding effect to certain provisions over some contrary provisions that may be found either in the same enactment or some other enactment, that is to say, to avoid the operation and effect of all contrary provisions."

70. The learned Single Judge has also held in his judgment that in event the land which is a Government land, the State has to first draw the proceedings under the Land Conservancy Act, 1957 before directing the occupier to vacate the premises or to remove the constructions thereon. The Disaster Management Act, 2005 clothe the authorities such powers and measures as enumerated in the Act which are in no manner hedged with the provisions of Land Conservancy Act,

1957. Section 72 of the Act shall be fully applicable and the DDMA without drawing any proceedings under the Land Conservancy Act, 1957 can very well direct an occupier of Government land to vacate and remove his construction in the process of planning or managing, conducting or implementing measures for prevention of danger or threat of any disaster.

71. We, thus, are of the view that the view of the learned Single Judge that before issuing any direction to the petitioners to vacate from superjacent area of the canal and to remove their buildings, constructions from the said area, the authorities were obliged to resort to proceedings under the Act, 2013 and Land Conservancy Act, 1957 cannot be supported, which interpretation is not in accordance with the scheme of the 2005 Act.

72. As noted above, all local authorities, Municipal Corporations are already clothed with power to direct an owner to remove a ruinous or dangerous building and as per Section 411 sub-section (2), the Secretary of a local authority can demolish any such structure where immediate action is necessary even without any notice. The power given to the local authorities under Section 411 cannot be said to violate the rights guaranteed under Article 300A. We have already observed that under Section 33 of the Act, the District Authority may require any local authority to take such measures for the prevention of mitigation and disaster as may be necessary and such local authority shall be bound to carry out such order. Thus, for example, when the District Authority can direct a local authority to get a building which is a threatening disaster to be demolished, there cannot be any lack of jurisdiction in the District Authority itself to issue appropriate direction under Section 34 sub-section (k) for demolition of any structure which may be hazardous to the public or aggravate the effects of disaster. We, thus, conclude that.--

"(i) The action taken by the District Authority directing the petitioner to vacate the superjacent area of the canal and to remove the constructions existing thereon does not violate Article 300A of the Constitution of India.

(ii) The view of the learned Single Judge that District Authority has to first resort to the proceedings under the Land Acquisition Act/Land Conservancy Act before issuing such direction is not in accordance with the scheme of the 2005 Act."

73. One more relevant aspect needs to be noted is that the District Authority is not asking the petitioners to demolish the entire building nor the District Authority is intending to take possession of entire building or area of the petitioners. What is specifically directed by the District Authority is to vacate the superjacent area of the canal on which, constructions are standing. Along with the notice given to the petitioners dated 29.6.2015 (Ext. P8), necessary map and sketch were forwarded. Ext. P8(d) is the sketch detailing the area above the canal which is required to be vacated. Dimensions have been given as the width has been mentioned as 5.5 metres and length as 52.9 metres (34+18.9 metres). The State neither intends to take possession of entire area of the petitioners nor

directs them to remove the entire building in their possession. The State only intend to clear the area above the canal so that repair and renovation works in the canal may be undertaken. The notice dated 29.6.2015 itself mentions that on inspection it was revealed that the canal, particularly its underground arched conduit passing through the fort area, which was constructed in the 1940s, is in an extremely precarious condition since the mortar and plastering of the brickwork has disintegrated, having long outlived its expected life span ending in 1970 and that the said underground conduit is likely to collapse at any time, particularly in the context of the increased flow of storm water caused by the recent desilting of storm water drains taken up under Operation Anantha. Thus, the action of the District authorities was fully in accordance with power given to the District authority under the 2005 Act.

74. In so far as the petitioner of W.P(C) No. 26246 of 2015 is concerned, it is on record that underground canal is passing through parking area of the petitioner M/s. Karimpanal Arcade Owners' Welfare Association. In exercise of the power under Section 34(k), the District Authority has already taken possession of only that area beneath which, the canal was flowing for carrying out repair and renovation works. The area was separated by erecting a mesh. The submission of the learned counsel for the petitioner that possession of the aforesaid parking area was taken without following any provisions of law cannot be accepted nor the act of the respondents can be said to be a case of forcible trespass as alleged by the petitioner.

Issue No. 9:

75. Now we come to the question of relief to which, the appellants are entitled in these appeals.

76. We having already upheld the action of the DDMA directing the petitioners to vacate and remove their construction existing on the superjacent area of the canal passing beneath their property which are in accordance with the provisions of the 2005 Act, we are of the view that the petitioners were not entitled for any reliefs in the writ petitions.

77. In W.A No. 2745 of 2015, the petitioner has brought on record a list of encroachers evicted in different villages through which the canal is passing viz., Manacaud village, Vanchiyoor village, Sasthamangalam and Muthathara village, along with memo dated 29.2.2016. It has been stated that in the aforesaid villages, 74 persons including various Temples, other entities have already vacated from different areas as mentioned therein. With regard to Vanchiyoor village, following is the list of persons who stated to have been vacated from different portions over the canal area:

78. Majority of persons who had occupied the superjacent area of the canal and the covered drain have vacated and it is the case of the respondents that it is only the petitioner who have objected and raised various objections.

79. Along with the affidavit dated 26.11.2015, petitioners have brought on record various photographs of different portions of the canal, including the portion of the canal flowing in front of Rajadhani building beneath the building owned by the petitioners. Petitioners have also brought on record Government order dated 12.05.2015 by which, the Government have accorded sanction for an amount of Rs. 10 Crores to State Disaster Management Fund for meeting the expenses for co-ordinating various works of the Governmental agency for evicting unauthorised encroachers over the canal and controlling the free flow of water in Thiruvananthapuram city in the name "Operation Anantha".

80. We are satisfied that the action taken by the District Authority is within the four corners of the 2005 Act and the petitioners had no ground to challenge the detailed proceedings dated 21.8.2015 which was under challenge in W.P (C) No. 26377 of 2015, being based on due consideration of all aspects of the matter cannot be fault with. Learned Single Judge committed error in interfering with the said proceedings by directing the appellants to take recourse to the Land Acquisition Act and Land Conservancy Act which was unwarranted.

In the result, all the writ appeals filed by the State i.e. W.A Nos. 2745, 2767 and 2768 of 2015 are allowed. The judgment of the learned Single Judge dated 23.9.2015 is set aside and the writ petitions are dismissed. W.A No. 57 of 2016 is dismissed. However, the respondents while exercising the powers under Section 34(k) of the 2005 Act, i.e. while carrying the demolition of building/structures standing on the superjacent area of the canal shall carryout the measures in the manner so as to cause only necessary and minimum damage to the building/structure standing thereon. Parties shall bear their own costs.