

**BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI**

Application No. 13 of 2014 (SZ)

IN THE MATTER OF:

Dr. Premchand,
S/o P.N. Purushothaman,
Kannuthara,
Kuthayathode. P.O.

..... Applicant

AND

1. Pattanakkad Grama Panchayat,
Rep. by its Secretary,
Pattanacaud. P.O,
Alapuzha District,
Karala – 688 531.
2. Ministry of Environment and Forests,
Union of India,
Rep. by its Secretary,
CGO Complex, Lodhi Road,
New Delhi – 110 00.
3. The Kerala State Coastal Zone Management Authority,
Rep. by its Secretary,
Sasthra Bhavan, Pattom,
Thiruvananthapuram,
Kerala - 695 004.

..... Respondent(s)

Counsel appearing for the Applicant:

M/s. P.B. Sahasranaman & K. Jagadeesh

Counsel appearing for the Respondents:

Mr. K.R. Harin for R1

Mrs. Me. Sarashwathy for R2

Mr. T.N.C. Kaushik for R3

ORDER

PRESENT:

HON'BLE SHRI JUSTICE M.S. NAMBIAR, JUDICIAL MEMBER

HON'BLE SHRI P.S. RAO, EXPERT MEMBER

Dated 20th September, 2016

Whether the Judgement is allowed to be published on the Internet – Yes/No
Whether the Judgement is to be published in the All India NGT Reporter – Yes/No

1. The application is filed under Section 14 of the National Green Tribunal (NGT) Act, 2010 to set aside the order dated 03.01.2014 passed by the Pattanakkad Grama Panchayat directing demolition of the construction made by the applicant alleging that it is in violation of the Coastal Regulation Zone (CRZ) Notification, 2011 as well as the provisions of Kerala Panchayat Building Rules, 2011.

2. The case of the applicant is that the property initially having an extent of 10 cents consisting of a residential building having the number 1/159 of Pattanakkara Grama Panchayat was owned by him. The applicant additionally purchased some more lands, which included an ice plant. According to the applicant, he extended a room to the existing old building of the ice plant and the said room is used as a guest house. According to him, he received a notice from the 1st respondent, Grama Panchayat stating that the said extension was in violation of the Kerala Panchayat Building Rules, 2011 and also the CRZ Notification, 2011. The Grama Panchayat passed a provisional order on 20.11.2013 directing the applicant to demolish the unauthorised construction or to show cause why the order is to be made final.

3. The applicant would contend that the building is not within 200 meters of High Tide Line (HTL) and hence, is not in violation of CRZ Notification, 2011. The applicant would also contend that the new Coastal Zone Management plan under CRZ Notification 2011 is not come into effect, and therefore, the question whether the building falls on the prohibited area cannot be settled and pointing out these facts, he had sent a letter to the Grama Panchayat. But, without accepting his contentions, the impugned order was passed holding that the construction is in violation of CRZ Notification, 2011 as well as Kerala Panchayat Building Rules.. The applicant would contend that the Panchayat has no jurisdiction to consider the question of violation of CRZ Notification 2011, as the said jurisdiction exclusively vests with the third respondent, the Kerala Coastal Zone Management Authority. It is also contended that in any case, as the construction is beyond 200 meters from High Tide Line, (HTL) the impugned order is unsustainable.

4. Only the 2nd respondent, Ministry of Environment and Forests and Climate Change (MoEF & CC) filed a reply reiterating the provisions of CRZ Notification, 2011. The 1st respondent, Grama Panchayat though appeared, did not file any reply controverting the contentions. The 3rd respondent, Kerala State Coastal Zone Management Authority also did not any reply.

5. Learned counsel appearing for the third respondent submitted that in view of the decision of the Hon'ble Supreme Court dated 25.05.2003, relied on by the applicant, in the case of P.A.Fazal Gafoor Vs State of Kerala and others (Civil Appeal No.5038 of 2002), the jurisdiction to resolve the question vests only with the

3rd respondent and therefore, 1st respondent is not legally competent to pass the impugned order to the extent of violation of the CRZ Notification 2011.

6. We heard the learned counsel appearing for the applicant and the respondents.

7. Though the impugned order was challenged, the challenge is only with regard to the finding on the violation of the provisions of CRZ Notification, 2011. The impugned order was passed directing demolition of the construction made not only for violation of Coastal Regulation Zone Notification, 2011 but also for the violation of the Provisions of Kerala Panchayat Building Rules.

8. Learned counsel appearing for the applicant would submit that the impugned order does not specify the nature of the violation under Buildings Rules. Be that as it may, it is not for the Tribunal to decide the said question and therefore, we are restricting the question only with regard to the violation of the CRZ Notification, 2011 in this application. The applicant is at liberty to challenge the order with regard to the violation of Kerala Panchayat Building Rules, 2011, in accordance with law before the appropriate forum.

9. Though the learned counsel appearing for the applicant has contended that as Coastal Zone Management Plan (CZMP) for Kerala under CRZ Notification 2011 has not yet been formulated, the violation cannot be fixed, the argument has no merit. The CRZ Notification 2011 specifically provides that till the CZMP under

the CRZ 2011 Notification is formulated, the CZMP prepared under CRZ Notification 1991 will be valid. The period so fixed is being extended from time to time and is in force even now.

10. The question whether the Grama Panchayat is competent to pass an order for demolition of the building constructed in violation of the provisions of CRZ Notification, 2011, has been settled by the Hon'ble Supreme Court in the case of Fazal Gafoor, supra. That was a case where permission was sought to construct a residential building at Kozhikode by the petitioner before the Hon'ble Supreme Court. Before getting the permission, construction was completed. Meanwhile, he received a notice from the Secretary of the Local Panchayat to the effect that the construction of the building was in violation of the decision of the Hon'ble Supreme Court dated 12.12.1994 and the building has been constructed within 500 meters of High Tide Line from the sea shore and is against the CRZ Notification, 2011. The Panchayat issued a notice directing demolition of the building, which was challenged before the Hon'ble High Court of Kerala under Article 226 of the Constitution of India. When the Writ Petition was dismissed, it was challenged before the Hon'ble Supreme Court. The Hon'ble Supreme Court held :

“ The counsel for the respondents points out that the proper authority to decide such question is the Coastal Zone Management Authority constituted by the State. According to the appellant the Coastal Regulations Zone Notification is not applicable to the construction made by the appellant. Anyway, that aspect can also be considered by the Coastal Zone Management Authority. The appellant may file an application before the Coastal Zone Management Authority within a period of six weeks from today and on furnishing such application, the Coastal Zone Management Authority shall decide as to whether the construction made by the appellant is in contravention of the Regulation or not. The authority shall give notice to both the parties before the decision is taken. The authority can also

consider whether the Coastal Zone Regulation itself is applicable to the construction made by the appellant or not. If the appellant fails to make any application within six weeks from today, the respondent, Panchayath would be at liberty to pursue the matter on the basis of impugned notice.”

11. In view of the above dictum, it can only be found that it is for the 3rd respondent, Coastal Zone Management Authority to decide whether there is any violation of the provisions of CRZ Notification 2011. The applicant is to approach the 3rd respondent within a period of six weeks from today by filing an application and the 3rd respondent shall decide the dispute as to whether the construction made by the applicant is in contravention of the provisions of CRZ Notification, 2011. The third respondent Authority shall give notice to both the applicant as well as the Grama Panchayat and thereafter, pass an appropriate order in accordance with law without delay. The impugned order for demolition of the building passed by the 1st respondent, Grama Panchayat for violation of CRZ Notification, 2011 stands set aside.

12. The application is disposed of accordingly, with no order as to costs.

Justice M.S. Nambiar
Judicial Member

P.S. Rao
Expert Member