

**BEFORE THE NATIONAL GREEN TRIBUNAL**

**SOUTHERN ZONE**

**Application No.286 of 2014**

In the matter of

Fair Log Warehousing and Trading (P) Ltd.,  
Kochi – 682 025  
Rep. by its Director M.A. Mohiyudeen

.. Applicant

1.Kerala Coastal Zone Management Authority,  
Science and Technology (A) Department,  
Thiruvananthapuram.

2.Kottuvally Grama Panchayat,  
Rep. by its Secretary, Koonammavu P.O.

And

. Respondents

Counsel appearing for the applicant

M/s. P.B. Sahasranaman, Kamaleshkannan  
Subramanian & S. Sai Sathiya Jith

Counsel appearing for the respondents

Shri T.N.C. Kaushik for R1

Present

Hon'ble Shri Justice Dr.P. Jyothimani, Judicial Member  
Hon'ble Prof.Dr.R. Nagendran, Expert Member

**O R D E R**

Delivered by Hon'ble Justice Dr.P. Jyothimani, Judicial Member

1. Whether the judgment is allowed to be published on the internet  
...Yes/No

2. Whether the judgment is to be published in the All India NGT Report  
...Yes/No

15th September, 2015

This application is filed to set aside the order of the Kerala Coastal Zone Management Authority viz, the 1st respondent, passed pursuant to the 64th meeting held on 10th June, 2014, pertaining to the property of the applicant consisting of 91.70 ares of land, comprised in Survey Nos.3/3A1, 3/3A2, 3/3B1/ 3/3C1 and 3/3C2 of Kottuvally Village, Ernakulam District, Kerala State.

2) The case of the applicant is that in the above said lands which belong to the applicant it is proposed to put up a warehouse in an extent of 2431 sq.m on the ground floor. It is with that proposal, the applicant has approached the 2nd respondent panchayat for the purpose of obtaining building permission.

3) The 2nd respondent panchayat, under the notion that the applicant's property lies within the CRZ Zone and therefore the Coastal Regulation Zone Notification, 2011 will apply, has referred the matter to the 1st respondent Kerala Coastal Zone Management Authority.

4) The 1st respondent, pursuant to the reference made by the 2nd respondent, has sent Dr.P. Harinarayanan, one of its members, to inspect the land in question. It appears that he has inspected the land and found that the land of the applicant is about 2 km away. However, there appears a report from Dr. P. Harinarayanan who has informed the 1st respondent that the property is situated within the Non-Development Zone (NDZ) and therefore no permission should be granted for the purpose of constructing the warehouse. The report appears to give a reason that even though the High Tide Line (HTL) is nearly 2 km away from the property of the applicant, there is a possibility of the water to wash into the land due to the reason that in between the property of the applicant and the High Tide Line (HTL) there is a marshy land. It is taking note of that recommendation about the existence of the marshy land and that there is a possibility of water entering into the property of the applicant, the permission was refused.

5) The meeting of the 1st respondent has taken a decision not to grant approval since it comes under CRZ Zone which is a Non-Development Zone (NDZ). It is challenging the said order, the applicant has approached this Tribunal on various grounds, including that

when once under the CRZ Notification, 1991 the State Government has already prepared Coastal Zone Management Plan and the High Tide Line (HTL) has been fixed, it is not open to any of the officers of the 1st respondent to change the High Tide Line (HTL), since such change will result in inconsistency and will alter the national policy on the Coastal Zone Management as such.

6) In the order, it is stated by the 1st respondent that when once its member who is a responsible Expert has visited the spot and found that there is a possibility of the water to approach near the place of the applicant, the Expert Report has to be given respect to. The 1st respondent has also stated that the status report prepared by the Institute of Remote Sensing, Anna University, Chennai cannot be accepted. The view of the 1st respondent was revisited during the meeting regarding the earlier decision of the authority. In fact it is the case of the 1st respondent that the breach of the notification should be given effect to and the possibility of the water movement during various circumstances must be taken into consideration.

7) The learned counsel appearing for the applicant has relied upon a report filed by the Institute of Remote Sensing, Anna University, Chennai. He would also submit that under the CRZ Notification, for the purpose of demarcation of the High Tide Line (HTL) or Low Tide Line (LTL) a few accredited agencies have been approved by the Government of India in the Notification dated 4th January, 1999 and the agencies which are approved are:

- 1.Space Application Centre, Ahmedabad
- 2.Center for Earth Sciences Studies, Thiruvananthapuram
- 3.Institute of Remote Sensing, Anna University, Chennai
- 4.Institute of Wetland Management and Ecological Designs, Calcutta.
- 5.Naval Hydrographer's Office, Dehra Dun

The learned counsel would submit that in as much as the Institute of Remote Sensing, Anna University, Chennai is a recognised agency for the purpose of demarcating High Tide Line (HTL), the report submitted by the Anna University has to be taken note of. He has referred to the report as well as the sketch filed by the Institute of Remote Sensing, Anna University,

Chennai which in clear terms show that the High Tide Line (HTL) is beyond the property of the applicant. He has also submitted that this practice of the first respondent sending his Scientist for the purpose of changing High Tide Line (HTL) has to be deprecated.

8) .He would rely upon the decision of the Hon'ble Supreme Court reported in NIZAMUDEEN v. CHEMPLAST SANMAR LTD (2010 (4) SCC 240) to substantiate his contention that for the purpose of demarcating the High Tide Line (HTL) there should be a consistent stand taken by the government and it cannot be changed as per the whims and fancies of the authorities. He has also relied upon the earlier judgment of the Supreme Court reported in INDIAN COUNCIL FOR ENVIRO-LEGAL ACTION v. UNION OF INDIA (1996) 5 SCC 281) which has been subsequently considered in detail by the judgment reported in NIZAMUDEEN v. CHEMPLAST SANMAR LTD (2010 (4) SCC 240).

9). On the other hand Mr. Kaushik, the learned counsel appearing for the 1st respondent would submit that if there is a natural variation of the movement of water, the Experts of the 1st respondent have got every authority to realign High Tide Line (HTL) and on this factual matrix the Tribunal's power to interfere is very limited. He has also relied upon the decision of the Supreme Court wherein the Hon'ble Supreme Court has relied upon the Expert's view on various occasions in respect of the findings on High Tide Line (HTL).

10) .After hearing both the learned counsel appearing for the applicant as well as the 1st respondent and perusing the report of the Institute of Remote Sensing, Anna University, we are of the view that the stand taken by the learned counsel appearing the applicant is perfectly acceptable. It is relevant to note that originally the CRZ Notification was issued in the year 1996, based on which the State Governments were directed to prepare their Coastal Zone Management Plan and the State Government of Kerala has prepared such plan as early as in 1996. The plan of the State Government has been approved subsequently by the MoEF & CC. The CRZ Notification 1990 has been superseded by the CRZ Notification 2011. Under the CRZ Notification 2011, various zones have been formulated out of which CRZ – III is deemed to be Non-Development Zone (NDZ) in which no development activities shall be permitted. In the report filed by the Institute of Remote

Sensing, Anna University and the map annexed therein it is very clear that the High Tide Line (HTL) is far beyond the property of the applicant and it is not disputed by the 1st respondent that the distance between the High Tide Line (HTL) which has been prescribed as per the CRZ Notification, 1996 and the property of the applicant lies within 2 kms. But only difficulty is that the 1st respondent has taken note of the subsequent inspection by one of its members who has found that in between the property of the applicant and High Tide Line (HTL), there is a marshy land and there is a possibility that in respect of marshy land the water is likely to approach near the applicant's property whenever there is exigency. Therefore, the High Tide Line (HTL) or the Low Tide Line is the view taken by the member of the 1st respondent.

11) This issue was squarely considered by the Hon'ble Supreme Court in M. NIZAMUDEEN v. CHEMPLAST SANMAR LTD (2010) 4 SCC 240/ That was also a similar case where the High Tide Line (HTL) which has been declared as per the CRZ Notification, 2011 and also the earlier Notification of the year 1991, the National Institute of oceanography has taken a different stand to show a High Tide Line (HTL) and Low Tide Line (LTL) plan prepared differently under the CRZ Notification, 1996. Rejecting the contention raised on behalf of the company that there is every possibility for changing the HTL based on the exigencies, circumstances and situation the Hon'ble Supreme Court has held that when once the Coastal Zone Management Plan is approved by the MoEF & CC no other authority including the National Institute of Oceanography can make any change. This was the decision rendered due to the reason that there should be consistency in respect of the National Coastal Zone Regulation. Even when the case was discussed by the Hon'ble Supreme Court, the difference between the High Tide Line (HTL) and the place where the construction sought to be done by the company was not 2 km. The Supreme Court has observed that the authorities who are authorised to demarcate the HighTide Line (HTL) cannot over ride the plan prepared and approved under para 3 (3) (i) as the said paragraph leaves no manner of doubt that Coastal Zone Management Plan prepared by the Coastal

**Zone Management Authority and duly approved by MoEF & CC is a relevant plan for identifying and classification of the areas.**

12) For the better appreciation of the stand taken by the Hon'ble Supreme Court. It is relevant to extract the same which reads as follows:

***"It is perfectly true that at the time of preparation and approval of the 1996 Plan, the amendments of 29.12.1998 and 21.5.2002 in the 1991 Notification had not seen the light of the day and the declaration made in first para that the coastal stretches of seas, bays, estuaries, creeks, rivers and backwaters which are influenced by tidal action (in the landward side) upto 500 metres from HTL and the land between LTL and HTL are CRZ was kept in view but in the absence of any modification carried out thereafter, the 1996 Plan remains operative. The authorities authorised to demarcate HTL, we are afraid cannot override the plan prepared and approved under Para 3 (3) (i) as the said paragraph leaves no manner of doubt that Coastal Zone Management Plan prepared by the coastal State (or for that matter the State Coastal Zone Management Authority) and duly approved by the MoEF is the relevant plan for identification and classification of CRZ areas. The plan prepared by NIO thus, cannot be said to have superseded the 1996 plan for the Cuddalore coastal stretch.***

***More so, while giving approval on 27.9.1996 to the 1996 Plan, the MoEF appended, inter alia, a condition that the Government of Tamil Nadu would not make any change in the approved categorisation of CRZ area without its prior approval. Seen thus, the 1996 Plan for the purposes of demarcation and classification of CRZ area in the State of Tamil Nadu has to be treated as final and conclusive and has been rightly treated as such by the MoEF. We hold, as it must be, that Uppanar River and its banks at the relevant place where the pipelines laid by Chemplast pass do not fall under CRZ III area as per the 1996 Plan and no environmental clearance is needed for such pipelines. The stand***

***of the MoEF is, which seems to us to be correct, that they have granted permission to the onshore pipelines insofar as these pass through CRZ abutting the sea i.e., 500 metres from HTL and no clearance has been granted as it was not required for laying of pipelines under Uppanar River.”***

13) The Hon'ble Supreme Court in INDIAN COUNCIL FOR ENVIRO-LEGAL ACTION v. UNION OF INDIA (1996) 5 SCC 281) while referring to CRZ Notification and also the Coastal Zone Management Plan which are approved by MoEF & CC has in categorical terms held that the decision taken by the MoEF & CC shall be final and binding upon all. The Supreme Court, after taking note of the contention raised about the threat to the environmental degradation has ultimately held:

***“The decision of the Ministry of Environment in this regard shall be final and binding”.***

The said judgment of the Hon'ble Supreme Court in categorical terms shows about the binding effect of the Notification issued by the MoEF & CC and that view as held by the Hon'ble Supreme Court cannot be changed by the officers of the 1st respondent or any other authority. In the factual matrix, **when the accredited agency viz., Institute of Remote Sensing, Anna University, Chennai has clearly indicated the HTL, there is no reason for the 1st respondent to go beyond that.** It is not even the case of the 1st respondent that the Institute of Remote Sensing, Anna University has acted against the provisions of the CRZ Notification, 1991.

14) In such view of the matter, we are of the considered opinion that the impugned decision taken by the 1st respondent has no legal basis to stand at all. The decision taken by the 1st respondent in the impugned proceedings dated 10 June, 2014 stands set aside with a direction to the second respondent to consider the application for building permission on merits and in accordance with law on the ground that it is not within the CRZ and pass appropriate orders within four weeks from the date of receipt of the copy of this order.

The application stands allowed in the above terms. There is no order as to cost.

As the main application stands allowed, M.A.32 of 2015 is closed as no orders are necessary.



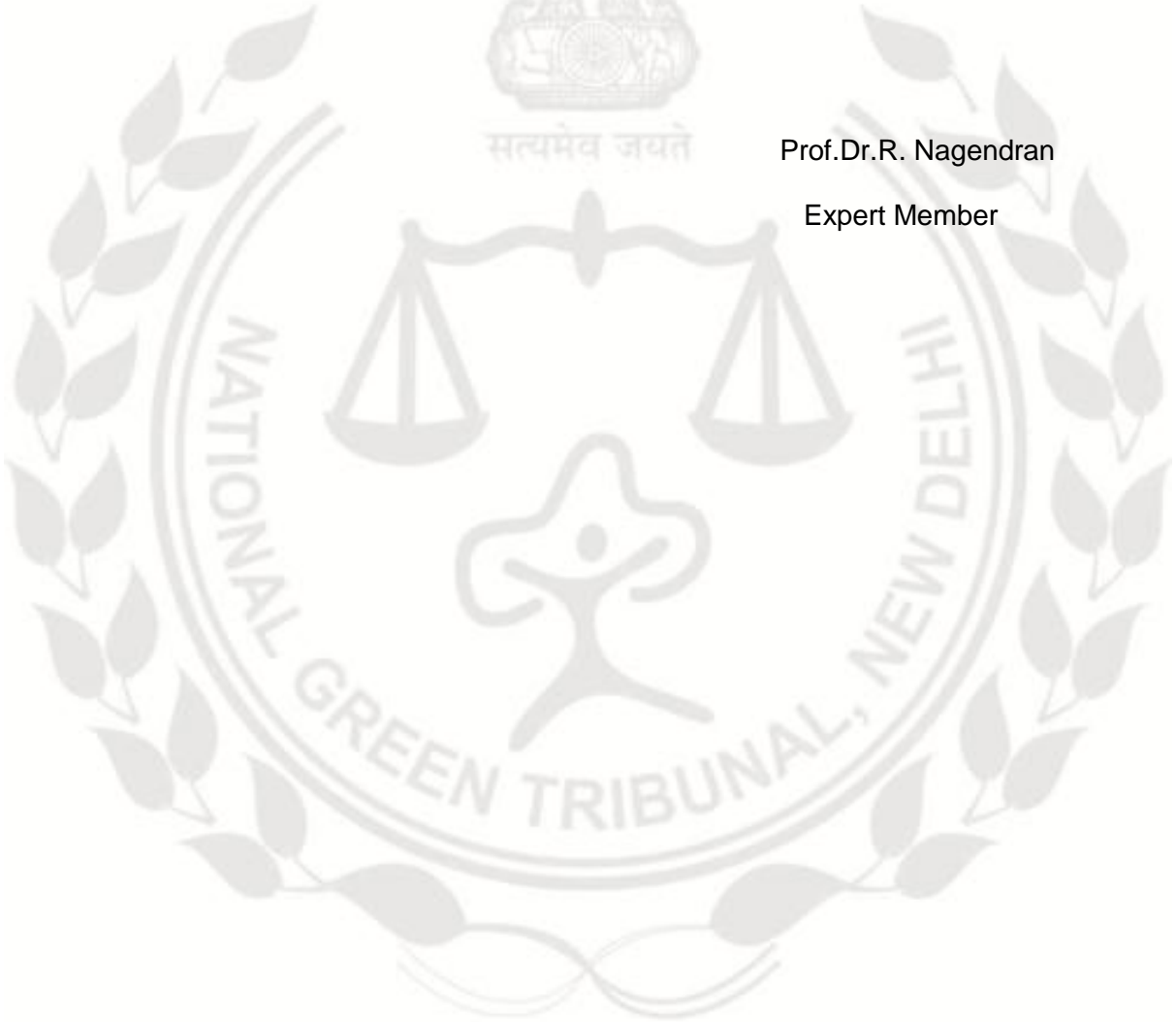
Justice Dr.P. Jyothimani

Judicial Member

सत्यमेव जयते

Prof.Dr.R. Nagendran

Expert Member



# NGT