

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONAL BENCH, CHENNAI**

ORIGINAL APPLICATION No. 34 of 2022

K. G. Prathapa Simhan : Applicant

Vs.
Union of India and others : Respondents

INDEX TO TYPED SET OF PAPERS

Sl.No.	Date	Particulars	Pg.No
1.	22.05.2020	Counter Affidavit filed by the 3 rd Respondent in W.P.No.9959/2020 before the Hon'ble High Court of Kerala	1
2.	13.01.2021	Order passed in W.P.No.9959/2020 before the Hon'ble High Court of Kerala	7
3.	05.07.2021	Writ Petition filed by the Applicant in W.P.No.14014/2021 before the Hon'ble High Court of Kerala	18
4.	25.08.2021	Counter Affidavit filed by the 3 rd Respondent in W.P.No.14014/2021 before the Hon'ble High Court of Kerala	35
5.	13.08.2021	Order passed by the Hon'ble Supreme Court in S.L.P.No.15447/2021	50
6.	25.09.2021	Special Leave Petition filed by the Applicant before the Hon'ble Supreme Court	51

The above documents are certified to be the true copies of the original.

Dated at Chennai on this the 1st day of September, 2022.

Counsel for the 3rd Respondent

BEFORE THE HON'BLE HIGH COURT OF KERALA
AT ERNAKULAM

W.P.(C).No. 9959 of 2020

Joe Joseph : Petitioner
Vs.
Union of India and Others : Respondents

COUNTER AFFIDAVIT FILED BY THE 5TH RESPONDENT


I, Shaji P Janardhanan, S/o. late P.A Janardhanan, aged 50 years, General Manager (Water Transport), Kochi Metro Rail Limited, JNL Metro Station, 4th Floor, Kaloor, Ernakulam-682 017, do hereby solemnly affirm and state as follows.

1. I am the General Manager (Water Transport) of the 5th respondent in the above Writ Petition and I am conversant with the facts of the case.

2. All the averments and allegations in the writ petition are denied except those that are specifically admitted hereunder.

3. The above Writ Petition is filed by the petitioner seeking a direction to respondents 2 and 3 to give necessary directions to the 5th respondent not to construct building of permanent nature having a total height of 18meters over the boat jetty terminal to be constructed in the back waters at Ernakulam near Marine Drive and further direct the 5th respondent to construct the boat jetty terminal with a height of 9meters in accordance with the permissions granted by the competent authorities and seeking other reliefs. It is submitted that the petitioner is not entitled to any of the reliefs sought for in the Writ Petition.

4. It is humbly submitted that Kochi Metro Rail Limited was assigned the task of executing an Urban Water Transport Project named as the "Kochi Water Metro Project" on behalf of the Government of Kerala. The

 P. J. Shaji
General Manager
(Water Transport)
Kochi Metro Rail Limited
Kochi - 682 017


2

Kochi Water Metro Project envisages to connect 38 jetties and provide inter-Modal connectivity between jetties, bus terminals and metro networks across 78 kilometers. In a nutshell, the project envisions a holistic development of the areas being connected by waterways as well as integrating the waterway system as a part of the entire public transport system of the city with focus on connecting people.

5. It is further submitted that the layout for 38 terminals was designed to be disabled friendly and will have waiting areas for passengers. The terminals have been designed with CCTV systems, Access control and fare gate systems to ensure the inclusiveness and security to the most vulnerable groups. The boat is designed to be a twin-screw aluminium catamaran with electric propulsion. It will be powered by Lithium-titanate batteries. The boat will sail with speed upto 11 knots. Electrical propulsion used for operation will make the system environmental friendly. Boarding and disembarkation of passengers will be carried out from floating pontoons which makes the system disabled friendly.

6. It is humbly submitted that, Clearance/No-objection as required for construction of Boat Terminals including High Court and Mattanchery Terminals of Kochi Water Metro Project was obtained by this respondent from Kochi Municipal Corporation, Kerala State Wetland Authority and Kerala Coastal Zone Management Authority. Further, Ministry of Environment, Forest and Climate change has given its final clearance for the Project on 01.10.2019.

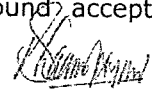
7. In Kerala, where monsoons and monsoon winds are prevalent during the better half of the year, the natural architecture evolved with pitched and gabled roofs. Buildings with pitched roofs are better suited to


R. J. Shaji
General Manager
(Water Transport)
Kochi Metro Rail Limited
Kecm - 602 017

the environment of Kerala to withstand rain and the vagaries of nature. Accordingly, the Rules evolved under the Kerala Municipality Building Rules, 2019 (in short KMBR 2019), aptly define the height of pitched and gabled roof buildings. This evident from the "height of building" defined under Section 2 (bf).

8. It is humbly submitted that the proposed High Court and Mattanchery Water Metro Terminals falls within the CRZ IV Category. As per Clause 5.4(ii) of the Coastal Regulatory Zone Notification 2019, Land reclamation, bunding etc. for foreshore facilities like ports, harbour, Jetties, wharves, quays, slipways, bridges, sea links and hover ports for coast guard are permitted. This was permitted by the Ministry considering the fact that residents of our coastal belt mostly constitute fishermen or people involved with agriculture in coastal areas (pokkali farms, fish farms etc.) who require transport across the water bodies. Alienating a class of citizens merely based on their place of residence or means of livelihood, by restricting their freedom of movement and livelihood guaranteed under Article 14, 19 & 21 of the Constitution of India was not just and hence permitted in the CRZ notification. Public Transport infrastructure is essential to the life and livelihood of people residing in Mulavukad, Chittoor, Cheranalloor, Varapuzha and Pizhala Grama Panchayaths.

9. It is to be noted that building plans of each of the proposed terminals were submitted separately by this respondent along with application to all the Authorities concerned mentioned earlier. It is pertinent to note that, roof structures are not included in the height of the building as per KMBR 2019 as well as KMBR 1999. The High Court Terminal & Mattanchery terminal elevation & plans was found acceptable in



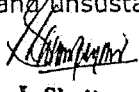
P. J. Shaji
General Manager
(Water Transport)
Kochi Metro Rail Limited
Kochi - 682 017

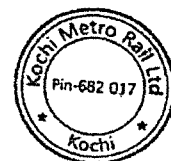
4

accordance with local town planning rules and accordingly the necessary clearance was given.

10. It is humbly submitted that the height of the buildings of the proposed Boat Terminals at High Court and Mattanchery as per KMBR definition are less than 9 m and the allegations to the contrary are incorrect. The height of the building for High Court Terminal is 8.80 m and Mattanchery Terminal is 6.1 meters as per the definition provided in KMBR 2019. Among other things, the height of the buildings as per Plan was also examined by Kerala Coastal Zone Management Authority and recommendation for clearance was given by the second respondent, KCZMA on 15.06.2019 after considering all relevant aspects. The copies of communications between KCZMA and this respondent is produced herewith and marked as **Exhibit R 5 (a)**. Final clearance was given by the first respondent, Ministry of Environment, Forest and Climate change on 01.10.2019, a copy of which is produced herewith and marked as **Exhibit R 5 (b)**.

11. It is further submitted that the height of 18 meter is conveniently quoted by the petitioner with ulterior motives and the same is not the defined height of building as per the statutory rules. The allegation that 6 floors are being constructed is totally baseless and it will be evident from the building plan that only two floor Boat Jetty is proposed for High Court Terminal. Jetty building catering the needs and convenience of the passengers is necessarily to be constructed. The sectional elevation showing relevant height is produced herewith and marked as **Exhibit R 5 (c)**. Hence it is amply clear that the height of the building is only 8.80 meter as per the local town planning rules (here KMBR 2019) and the allegation of the petitioner is absolutely baseless and unsustainable.

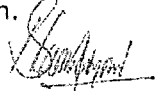

P. J. Shaji
General Manager
(Water Transport)
Kochi Metro Rail Limited
Kochi - 682 017



5

12. It is humbly submitted that the allegations in paragraph 12 and 13 are totally incorrect and baseless. Construction of 6 floors is not envisaged for any of the Terminals. The further allegation of the petitioner that he will be deprived of free air and light due to the construction of the Kochi Water Metro Jetty is baseless and exaggerated. It is submitted that the proposed building is planned at a distance of approximately 23 meters away from the existing line of the petitioners residence, (which is even more than the distance between buildings on one side of the M.G Road and building on the other side of the M.G Road). Petitioner is therefore not at all aggrieved by the construction of Jetty. Moreover, a pitched roof structure will not restrict wind or air movement like a flat roofed structure and is more suitable for the area in question. Considering the above it is humbly submitted that the petitioner's grievance is baseless which does not even consider the fundamental rights of average citizens in Kochi who require water transport. Considering the larger public interest, there is no justification for interfering with the Project.

13. It is humbly submitted that the allegation of the petitioner that the 6th respondent has illegally reclaimed 3000 Sq. ft. of backwaters to commence the construction is absolutely false. The bunding done by the 6th respondent is purely a temporary arrangement to commence piling. The said method is the most efficient and safe method to commence the construction in order to avoid damage to the adjoining structures. Other options will require extensive dredging near to the shore to install pile rigs which may weaken the adjoining structures and lead to collapse of the existing broadwalk. The 6th respondent has adopted the most appropriate and safe measures to commence construction activities and will restore the area to its original state on completion of the construction.


P. J. Shaji
General Manager
(Water Transport)
Kochi Metro Rail Limited
Kochi - 682 017

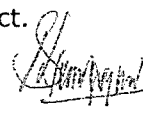
6

14. It is submitted that the 5th respondent while attempting to empower the ordinary citizen and ensure their right to livelihood and free movement by implementing the project, has also ensured the same to be inclusive and environmentally friendly. The Kochi Water Metro project is an essential means of transportation for the residents of island communities around Kochi, especially during floods when other modes of transportation are literally non-operational. The Kochi Water Metro is thus an essential service which is required to establish transport with island communities around Kochi especially in times of flood. It is reiterated that the building plan and elevation are totally in consonance with the Statutes and Rules and the same was duly considered by all statutory bodies before granting the necessary Environmental Clearance.

In the above circumstances, it is humbly submitted that the writ petition is filed without making any enquiries with Respondents 1 to 4 as to whether the proposed construction is in accordance with their clearances and hence the petition is devoid of merit and bereft of bonafides. The petitioner is not entitled for any of the reliefs sought for in the Writ Petition. Therefore, it is humbly prayed that the above Writ Petition may be dismissed with costs to this respondent.

All what is stated above are true and correct.

Dated this the 22nd day of May, 2020.


P. J. Shaji
General Manager
(Water Transport)
Depo~~ment~~ Metro Rail Limited
Kochi - 682 017

Solemnly affirmed and signed before me by the deponent who is personally known to me on this the 22nd day of May, 2020 in my office at Ernakulam.

Advocate

7

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE N. NAGARESH

WEDNESDAY, THE 13TH DAY OF JANUARY 2021/23TH POUSHA, 1942

WP(C) No. 9959 OF 2020(T)

PETITIONER:

JOE JOSEPH,
AGED 49, S/O.M.D. JOSEPH,
FLAT NO.A-63, ASHOKA APARTMENT,
SHANMUGHAM ROAD, HIGH COURT JN,
MARINE DRIVE, ERNAKULAM-682 031.

BY ADV. SRI. ELVIN PETER P.J.

RESPONDENTS:

- 1 UNION OF INDIA REPRESENTED BY
ITS SECRETARY, MINISTRY OF ENVIRONMENT,
FOREST AND CLIMATE CHANGE,
INDIRA PARYAVARAN BHAWAN,
JORBHAH ROAD, NEW DELHI-110 003.
- 2 KERALA COASTAL ZONE MANAGEMENT AUTHORITY,
REPRESENTED BY ITS SECRETARY, DIRECTOR OF
ENVIRONMENT AND CLIMATE CHANGE, 4TH FLOOR,
KSRTC BUS TERMINAL, THAMPANOR,
THIRUVANANTHAPURAM-695 001.
- 3 STATE WETLAND AUTHORITY KERALA (SWAK),
REPRESENTED BY ITS SECRETARY, 4TH FLOOR,
KSRTC BUS TERMINAL, THAMPANOR,
THIRUVANANTHAPURAM-695 001.
- 4 STATE OF KERALA REPRESENTED BY
ITS SECRETARY, LOCAL SELF GOVERNMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695 001.

8

WP(C) No.9959/2020

: 2 :

- 5 KOCHI METRO RAIL LIMITED,
REPRESENTED BY ITS MANAGING DIRECTOR,
8TH FLOOR, REVENUE TOWER,
PARK AVENUE, KOCHI-682 011.
- 6 M/S.MARY MATHA INFRASTRUCTURE PRIVATE LIMITED,
REPRESENTED ITS MANAGING DIRECTOR,
MARY MATHA SQUARE, ARAKAZHA ROAD,
MOOVATTUPUZHA-686 661.

R1 BY ADV. SHRI.P.VIJAYAKUMAR, ASG OF INDIA
R2-R3 BY ADV. SRI.M.P.PRAKASH
R5 BY SRI.K.JAJU BABU, SC, KOCHI METRO RAIL LTD
R5 BY SMT.M.U.VIJAYALAKSHMI, SC, KOCHI METRO
RAIL LTD.
R6 BY ADV. SRI.P.SHANES METHAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 13-01-2021, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

J U D G M E N T

~ ~ ~ ~ ~

Dated this the 13th day of January, 2021

The petitioner, a resident of 'Ashoka' Flats facing backwaters of Vembanadu Lake, is aggrieved by the proposed construction of a 18 meter high building over the boat jetty terminal near Marine Drive, Ernakulam.

2. As part of the Kochi Water Metro Project, the 5th respondent-Kochi Metro Rail Limited submitted a proposal to construct a boat terminal near the High Court, adjacent to the flat where the petitioner is residing. The petitioner submits that the area is covered by CRZ Regulations. The 5th respondent has submitted Ext.P1 plan and the State of Kerala exempted construction of the boat terminal from the provisions contained in the Kerala Municipality Building Rules, 1999 as per Ext.P2.

3. The 5th respondent approached the Kerala Coastal Zone Management Authority for permission for construction of 41 boat jetty terminals for implementing Kochi Water Metro Project. The Coastal Zone Management Authority accorded permission for construction of boat terminals, as per Ext.P4. In Ext.P4, the Coastal Zone Management Authority has imposed a specific condition that the height of the proposed construction shall not exceed 9 m.

4. The State Wetland Authority also granted permission to the petitioner as per Ext.P5 observing that except boat jetty, no other building having permanent nature within 50 m. from the boundary of wetland is a permissible activity. The said condition was imposed in accordance with Rule 4 of the Wetlands (Conservation and Management) Rules, 2017. The petitioner therefore contended that the 5th respondent has no authority or power to construct any structure other than boat jetty within 50 m. from the mean high flood level.

5. The petitioner states that the 5th respondent thereafter moved the Union of India for approval and approval was granted with a specific condition that the restrictions and conditions imposed by the statutory authorities shall be strictly complied with. The 5th respondent has entrusted the construction work with the 6th respondent-builder. The 5th respondent is now proposing to construct a building of a height of 18 m. over the boat jetty which is highly illegal. Construction of such a high-rise building will deprive the petitioner and other residents of 'Ashoka' flats of free air and light since the building which is coming over the boat jetty terminal is very close to the 'Ashoka' flats. The petitioner would further allege that the 6th respondent has illegally reclaimed nearly 3000 square feet of backwaters to commence the alleged construction, violating rules. The 5th respondent is therefore compellable not to construct the building of permanent nature over the boat jetty terminal to a height of 18 m.

12

WP(C) No.9959/2020

: 6 :

6. The 5th respondent resisted the writ petition filing counter affidavit. The 5th respondent stated that all the requisite clearances/no objection have been obtained by the 5th respondent from Kochi Municipal Corporation, Kerala State Wetland Authority and Kerala Coastal Zone Management Authority. The Ministry of Environment, Forest and Climate Change has also given its final clearance to the Kochi Water Metro Project.

7. The 5th respondent stated that the proposed Water Metro Terminal falls within CRZ IV Category, where ports, harbour, jetties, warves, quays, slipways, bridges, sea links and hover ports for coast guard, are permitted. The Kerala Municipal Building Rules, 2019 (KMBR, 2019) define the height of structures and gabled roof buildings. Roof structures are not included in the height of building as per the KMBR, 1999. The height of the building for High Court terminal is 8.80 m. The petitioner has projected the height as 18 m. with ulterior motive. The 5th respondent is not constructing six floors as alleged by the petitioner. Only two floor boat jetty is

proposed. The proposed building is planned at a distance of approximately 23 m. from the existing lines of the petitioner's residence. The petitioner therefore cannot have any grievance that the roof structure will restrict wind and air movement.

8. The 2nd respondent-Kerala Coastal Zone Management Authority filed counter affidavit. According to the 2nd respondent, the 5th respondent has submitted NOC from State Wetland Authority, Kerala. The Kerala Coastal Zone Management Authority is not the authority to issue clearance for this project. Height restriction is not applicable to the activities in CRZ II area in which the proposed boat terminal is coming up. The terminal is therefore subject only to the existing local town and country planning regulations. The 2nd respondent also stated that the height of the proposed High Court boat terminal to mid point of pitched roof/gable roof is 8.8 m. Therefore, there is no merit in the contentions of the petitioner.

9. I have heard the learned counsel for the petitioner, learned ASGI appearing for the 1st respondent, learned

Standing Counsel appearing for the 2nd respondent, learned Government Pleader appearing for the 4th respondent, learned Standing Counsel appearing for the 5th respondent and the learned counsel appearing for the 6th respondent.

10. The question is whether the proposed construction of boat terminal as part of the Kochi Metro Water Project undertaken by the 5th respondent violates Coastal Zone Regulations or any other statutory provision. The petitioner contends that proposed construction includes a building having six floors, of 18 m. height, which would violate CRZ Regulations. The 5th respondent has stated that the height of the building for the proposed High Court terminal is only 8.80 m., as per the definition of height of building in the Kerala Municipal Building Rules.

11. Height of building is defined under Section 2(bf) of the Kerala Municipal Building Rules, 1999, according to which height of building means vertical distance measured from average proposed ground level contiguous to the building, to the midpoint between the eaves level and the ridge, in the case

of pitched roofs and gabled roofs. The 2nd respondent has stated that the height of the construction proposed by the 5th respondent is only 8.8 m.

12. The argument of the petitioner that KMBR is not applicable to the construction and hence the definition of height of the building contained therein cannot be appreciated. The petitioner has not brought to the notice of this Court any other definition, statutory or otherwise, which should be made applicable to the construction in question. As KMBR is the basic statutory material governing Building Rules in Kerala, in the absence of any other provision defining height of building, reliance placed on the definition in KMBR cannot be found fault with. The contention of the petitioner relying on the judgment of the Apex Court in **A.N. Sehgal and others v. Raje Ram Sheoram and others** (AIR 1991 SC 1406) also cannot be applied in the facts of the case.

13. The further arguments of the counsel for the petitioner is that Rule 4(1)(vi) of the Wetlands (Conservation and Management) Rules, 2010, prohibits any construction of a

permanent nature except for boat jetties within 50 m. from the mean high flood level observed in the past 10 years calculated from the date of commencement of these rules. In the present case, the construction proposal is for a boat jetty. The term 'boat jetty' would include not only the landing terminal but also appurtenant building. The proposed construction therefore cannot be said to violate the Wetlands (Conservation and Management) Rules, 2010.

14. As regards the argument of the petitioner to the effect that construction of the proposed boat jetty would deny free air and light to the petitioner and other residents of 'Ashoka' flats, the said argument cannot be accepted since the proposed boat jetty is 23 m. far from the apartment building where the petitioner resides.

For all the above reasons, this Court finds no merit in the writ petition filed by the petitioner. The writ petition is therefore dismissed.

Sd/-
N. NAGARESH, JUDGE

aks/11.01.2021

APPENDIXPETITIONER'S EXHIBITS:

- EXHIBIT P1 TRUE COPY OF THE PLAN SUBMITTED BY THE 5TH RESPONDENT FOR THE CONSTRUCTION OF BOAT JETTY TERMINALS AND APPROVED BY THE COMPETENT AUTHORITIES
- EXHIBIT P2 TRUE COPY OF THE GAZETTE NOTIFICATION DATED 07.12.2019
- EXHIBIT P3 TRUE COPY OF THE PERMISSION NO.696/8/CA/AMASR DATED 16.03.2019 ISSUED BY THE OFFICE OF THE COMPETENT AUTHORITY
- EXHIBIT P4 TRUE COPY OF THE PERMISSION NO.3560/A1/2018/KCAMA DATED 15.06.2019 ISSUED BY THE KERALA COASTAL ZONE MANAGEMENT AUTHORITY.
- EXHIBIT P5 TRUE COPY OF THE PERMISSION NO.SWAK/A1/33/19 DATED 10.07.2019 ISSUED BY THE STATE WETLAND AUTHORITY KERALA
- EXHIBIT P6 TRUE COPY OF THE PLAN PROPOSED BY THE 5TH RESPONDENT FOR CONSTRUCTION OF BUILDING OVER THE BOAT JETTY TERMINAL

RESPONDENTS' EXHIBITS

- EXHIBIT R5(a) TRUE COPY OF THE COMMUNICATION VIDE NO.KMRL/WM/CORRES-STAKEHOLDER/F-33/143-19 DATED 31.05.2019 ISSUED BY THE 5TH RESPONDENT TO THE MEMBER SECRETARY, KERALA COASTAL ZONE MANAGEMENT AUTHORITY.
- EXHIBIT R5(b) TRUE COPY OF THE FINAL CLEARANCE DATED 01.10.2019 ISSUED BY THE 1ST RESPONDENT TO THE KOCHI METRO RAIL LTD.
- EXHIBIT R5(c) TRUE COPY OF THE SECTIONAL ELEVATION SHOWING RELEVANT HEIGHT.

ncd

95
18

IN THE HIGH COURT OF KERALA, AT ERNAKULAM
[SPECIAL ORIGINAL JURISDICTION]

Writ Petition.(Civil).No. 14014 of 2021

K.G.Prathapa SimhanPetitioner

Vs.

Union of India and others.....Respondents

INDEX ☐

Sl.No.	Particulars	Pages
1	Synopsis	01-03
2	Writ Petition	04-14
3	Affidavit	15
4	<u>Exhibit.P.1.</u> True photostat copy of the letter sent by the 2 nd respondent to the 1 st respondent, dated 15-06-2019.	16-17
5	<u>Exhibit.P.2.</u> True photostat copy of the Environmental Clearance granted by the 1 st respondent for the Kochi Water Metro Project No.F.No.10-39/2017-IA-III, dated 01-10-2019.	18-29
6	<u>Exhibit.P.3.</u> True photostat copy of the "Layout of the High Court Terminal" prepared by the 3 rd respondent.	30
7	<u>Exhibit.P.4.</u> Some photographs of the constructions commenced by the 3 rd respondent for the High Court - Major Terminal of Kochi Water Metro Project as on 01-07-2021.	31-32

19

8	<u>Exhibit.P.5.</u> Some photographs of the Ernakulam Boat jetty at Marine Drive maintained by the State Water Transport Department.	33-34
9	<u>Exhibit.P.6.</u> True photostat copy of the letter sent by the petitioner to the 2 nd respondent by email.	35
10	<u>Exhibit.P.7.</u> True photostat copy of the letter sent by the petitioner to the 1 st respondent.	36
11	<u>Exhibit.P.8.</u> True photostat copy of the judgment of this Hon'ble Court in W.P.(C) No.9959 of 2020, dated 13-01-2021.	37-47

Dated this the 5th day of July, 2021.

Counsel for the petitioner

IN THE HIGH COURT OF KERALA, AT ERNAKULAM
[SPECIAL ORIGINAL JURISDICTION]

Writ Petition.(Civil).No. 14014 of 2021

K.G.Prathapa SimhanPetitioner

Vs.

Union of India and others.....Respondents

SYNOPSIS

This public interest litigation is filed challenging the reclamation and construction of High Court jetty, Major Terminal (a huge building) as part of Kochi Metro Project in the *Vembanad* Backwaters on the western side of the Cochin Marine Drive walkway. The 3rd respondent obtained CRZ and Environmental Clearances for the entire project wherein they have only allowed constructing of "jetty". A construction of "jetty" will not affect the free flow of natural water whereas the reclamation for the construction of a terminal building will affect the free flow of natural course of sea water. The first condition of EC itself indicates that it prohibits construction in violation of CRZ; which is being violated. *Vembanad* backwater is reclaimed by disturbing the natural flow of sea water. Activity which is severely damaging the ecology.

CHRONOLOGY OF EVENTS

15-06-2019	2 nd respondent recommending the project of Kochi Water Metro Project to the 1 st respondent. [Ext.P.1]
01-10-2019	Environmental Clearance granted by the 1 st respondent for the Kochi Water Metro Project. [Ext.P.2]

POINTS FOR CONSIDERATION

1. Whether the 3rd respondent has got a right to reclaim the *Vembanad* backwaters and construct building in an area which is classified as CRZ-IVA in the Coastal Zone Management Plan of Kerala prepared as per CRZ Notification, 2011?
2. Whether construction of a terminal is equivalent to jetty which is constructed over the water to reach the vessel or boat?

DECISIONS AND BOOKS RELIED ON:

- Coastal Regulation Zone Notification, 2011

Extracts from various dictionaries: -

Jetty

On open seacoast, a structure extending into a body of water, and designed to prevent shoaling of a channel by littoral materials and to direct a confine the stream or tidal flow jetties are built at the mouth of a river or tidal inlet to help deeper and stabilize a channel. (Glossary of Geology, AGI). [Extracted from the *Manual on High Tide Line and preparation of CZMP of the Coast of India prepared by the Committee on Standardisation of the Methodology for Demarcation of HTL/LTL-2015*]

23
22

Jetty. A projection, a kind of pier.

A "jetty" is an approach to a steamer and a landing place for the passengers travelling on such steamer. So a 'jetty' is part of a steamers which is included within the word 'railway' within the meaning of Sec.82-A of the Act. Mohammed Khaliluddin v. Union of Indi. AIR 1962 Pat 109. 112 [Indian Railways Act (9 of 1890). Ss.3 (2), 82A (i)]

[Extract from the Law Lexicon. The Encyclopedic Law Dictionary. 3rd Edition 2012]

Jetty, a 'jetty' is included within the word 'ferry' and as such, it would be considered to be part of a 'steamer' and a landing place for the passengers travelling on such steamer. Mohammed Khaliluddin v. Union of Indi. AIR 1962 Pat 109

[Extract from Whartons Law Lexicon. 15th Edition. Universal Law Publishing Co.]

Decisions relied on: -

S.Jagannath vs Union of India. AIR 1997 SC 811

Vellore Citizens Welfare Forum vs. Union of India AIR 1996 SC 2715=(1996) 5 SCC 647

Kerala State Coastal Zone Management Authority vs State of Kerala. (2019) 7 SCC 248: 2019 (3) KLT 9 (SC)

Dated this the 5th day of July, 2021.

Counsel for the Petitioner

IN THE HIGH COURT OF KERALA, AT ERNAKULAM
[SPECIAL ORIGINAL JURISDICTION]

Writ Petition.(Civil).No. 14014 of 2021

BETWEEN

PETITIONER:

K.G.Prathapa Simhan, aged 82 years, Son of Gopala Panickker, A-53, Ashoka Apartments, High Court junction, Ernakulam, Cochin-682031.

Vs.

RESPONDENTS:

1. Union of India, Ministry of Environment, Forests and Climate Change, Represented by its Deputy Director General of Forests (C), Regional Office (SZ), Kendriya Sadan, 4th Floor, E&F Wings, 17th Main Road, Koramangala II Block, Bangalore -560034.
2. Kerala Coastal Zone Management Authority, Represented by its Secretary, Directorate of Environment & Climate Change Devikripa, Pallimukku, Pettah P.O., Thiruvananthapuram-695024.
3. Kochi Metro Rail Ltd., represented by its Managing Director, Registered Office, 3rd floor, Mathew Sons Building, opposite Vyttila Hub, Vyttila, Kochi-682019.

All process to the petitioner be served on his counsel M/s. P.B.SAHASRANAMAN & T.S.HARIKUMAR, Advocates, Sahasram Associates, Narayaneeyam Buildings, Chittoor Road, Cochin-682011.

All process to the respondents be sent on their above addresses or on their advocates, if any engaged.

WRIT PETITION FILED UNDER ARTICLE. 226 OF THE
CONSTITUTION OF INDIA

92
24

Statement of Facts.

The petitioner above named most respectfully submits as follows:

1. The petitioner has filed this public interest litigation challenging the construction of building under the guise of constructing a "jetty" by reclaiming *Vembanad* backwaters in gross violation of the Coastal Regulation Zone Notification, 2011 causing serious adverse threat to the coastal ecology. The petitioner is residing in Ashoka Apartments which lies on the eastern side of the said illegal construction. He has not filed any public interest litigation before. On seeing the said illegal reclamation of the backwater and constructions this petitioner has collected materials from the public domain and other resources and filed this public interest litigation.
2. The 3rd respondent is a joint venture company formed with equal contribution from the Government of Kerala and Government of India for the implementation of the "*Metro Rail Project*". The rail works are still going on. While so it has undertaken a project called "*Kochi Water Metro*" project which envisages the plying of vessels and includes construction of 38 jetties across the *Vembanad* backwaters. They are acquiring 9.51 ha of land for the said purpose. As per the Coastal Regulation Zone Notification, 2011 (Notification No. S.O.19 (E), dated 6-11-2011 the waterbody where the jetty is to be constructed falls with the Coastal Regulation Zone (CRZ)

25

area. It requires CRZ Clearance from the 2nd respondent. The 2nd respondent has sent a letter on 15-06-2021 to the 1st respondent recommending the entire project for Environmental Clearance. A true photostat copy of the letter sent by the 2nd respondent to the 1st respondent, dated 15-06-2019 is produced herewith and marked as **Exhibit.P.1.**

3. The first respondent also granted Environmental Clearance for the project on the basis of Exhibit.P.1 recommendation made by letter on 01-10-2019. This order is not uploaded in the web site of the 3rd respondent till date. A specific condition was put to the effect that construction activity shall be carried out only in accordance with the Coastal Regulation Zone Notification, 2011. A true photostat copy of the Environmental Clearance granted by the 1st respondent for the Kochi Water Metro Project No.F.No.10-39/2017-IA-III, dated 01-10-2019 is produced herewith and marked as **Exhibit.P.2.**

4. The Major Terminal of the Kochi Metro Project is on the western side of the Cochin Marine Drive Walkway. It is named as 'High Court jetty' in their documents. The said construction involves a ground area of 2432 sq meters. Out of which 2376 sq. meters are on the water portion where the backwater is reclaimed for the said purpose. It is on the western side of the present Marine Drive Walkway. A true photostat copy of the "Layout of the High Court Terminal" prepared by the 3rd respondent is produced herewith and marked as **Exhibit.P.3.**

5. It is submitted that the proposed construction of Terminal is on the backwater by reclamation. The said area is categorized as CRZ-IVA in the approved Coastal Zone Management Plan of Kerala, Map. KL-32. As per CRZ Notification, 2011, clause 8 (IV) the activities in such areas are regulated except for traditional fishing and related activities. But Clause 4 regulates certain activities in such areas wherein clearance shall be given for any activity within the CRZ only, if it requires water front and foreshore facilities. The present construction though named as "jetty" is actually a building. Jetty means a long structure that is built out into water and used as a place to get on, get off, or tie up a boat. It is intended to help the people to enter a boat or vessel safely. It does not contemplate the construction of a building like the one which is intended for other purposes which does not require waterfront. A building construction intruding on water does not get the protections of an activity which requires waterfront and foreshore facilities. The test is whether such an activity can be done without water. The project proponent can construct ticket counter, waiting shed and other places on the land. What is required is only an entry to the boat, which is called as "jetty".
6. Reclamation of land for the construction of buildings is a prohibited activity. Being a prohibited activity the 3rd respondent ought to have not to have done it. The 2nd respondent being the authority to prevent it has not taken any steps to prevent it.

7. Therefore, it is an undisputed fact that the no construction is possible on the backwater side. Such reclamation will disturb the natural course of sea water and has adverse effect on the coastal ecology.
8. The 3rd respondent has now started the construction. It is on the water part. What is now constructed is a huge building impinging on the backwater, CRZ-IVA area and not a jetty. Such construction of buildings under the guise of jetty is not contemplated under law. Some photographs of the constructions commenced by the 3rd respondent for the High Court – Major Terminal of Kochi Water Metro Project as on 01-07-2021 is produced herewith and marked as **Exhibit.P.4.**
9. The Government of Kerala is having a water transport system under its State Water Transport Department from 1968. The Kerala Tourism Department has rebuilt the boat jetty on Marine Drive, for providing more berthing facility to boats and to construct an aesthetically-designed office building. The project will help in extending the Marine Drive walkway in a north-westerly direction. A restaurant in the first floor, air-conditioned passenger lounge, toilets and solar lighting are also part of this project. But none of these constructions are made not on the water but at the adjoining land. Some photographs of the Ernakulam Boat jetty at Marine Drive maintained by the State Water Transport Department is produced herewith and marked as **Exhibit.P.5.**
10. It is respectfully submitted that construction of buildings over waterbody will be equivalent to trespassing into waterbody which is not an environmentally viable proposition.

The Cochin Port Trust, Kerala State Tourist Department, and several others who have constructed jetties across the Vembanad backwaters. Vembanad backwaters is a critically vulnerable area. The construction of a such a huge building has severe ramifications on the coastal ecology of that area. The entire microorganisms beneath the construction will be destroyed. It is because of the said reason the CRZ Notification does not permit such constructions. Constructions are permitted only on CRZ-II and CRZ-III areas subjected to conditions. The construction of Terminals for keeping passengers waiting and for other facilities does not require any waterbody.

11. The purpose of CRZ notification is to protect the ecological fragile coastal areas and to safe guard the aesthetic qualities and uses of the sea coast. Hon'ble Supreme Court has laid down the rule that the setting up of modern shrimp aquaculture farms right on the sea coast and construction of ponds other infrastructure thereon is per se hazardous and is bound to degrade the marine ecology, coastal environment and the aesthetic uses of the sea coast. Therefore, the Court held that shrimp culture industry is neither "directly related to water front" nor "directly needing foreshore facilities". The setting up of shrimp culture farms within the prohibited areas under the CRZ notification cannot be permitted. [*S.Jagannath vs Union of India. AIR 1997 SC 811*]
12. The CRZ Clearance and Environmental Clearance was obtained suppressing the material fact that construction actually a building by reclaiming backwater and not mere jetty. The respondents 1 and 2 are bound to cancel the said

Clearances granted to them for the sole reason that material facts were suppressed. Fraud has been played on them. The petitioner sent a request to the 2nd respondent to cancel the CRZ clearance granted to the High Court Terminal granted to them on 01-07-2021. It was sent by email to: kczmasandtd@gmail.com. A true photostat copy of the letter sent by the petitioner to the 2nd respondent by email is produced herewith and marked as Exhibit.P.6. Similar letter was also sent to the 1st respondent by email on 1-7-2021. A true photostat copy of the said letter sent by the petitioner to the 1st respondent is produced herewith and marked as Exhibit. P. 7.

13. It has come the knowledge of this petitioner Joe Joseph has filed a writ petition to restrain the construction of the very same building at a height of 18 meters. The said writ petition was dismissed for other reasons. The issue whether the reclamation and construction of Terminal building on the reclaimed land is not being not raised or considered. A true photostat copy of the judgment of this Hon'ble Court in W.P.(C) No.9959 of 2020, dated 13-01-2021 referred to and marked as is produced herewith and marked as Exhibit.P.8.

14. Massive constructions are being carried out by the 3rd respondent by reclaiming the backwaters. Exhibit.P.4 photographs will show how massive the constructions are made. If the constructions are continued it will have severely ramifications on the coastal ecology. The 3rd respondent has no right make constructions damaging the coastal ecology. In these circumstances it is proper that an ad interim order be

19
30

passed restraining the 3rd respondent from proceeding with the constructions. As this petitioner has no other effective alternate remedy this writ petition is filed so to invoke this Court's extraordinary jurisdiction under Article.226 of the Constitution of India on the following among other grounds:

G R O U N D S

- A. The 3rd respondent has no right to reclaiming the backwaters restraining the free flow of backwater and construct building on it under the guise of "jetty". Such a construction will have adverse impact over the coastal ecology. The respondents 1 and 2 ought to have taken immediate steps to stop such illegal activities and cancelled the Clearances granted to the 3rd respondent for the Kochi Metro Project. The respondents 1 and 2 have miserably failed in discharging their duties entrusted to them under Art.48A of the Constitution of India.
- B. The water part impinging the Cochin Marine Drive walkway, where the 3rd respondent proposed to construct the "High Court Terminal" is Coastal Regulation Zone area, Category -IVA as per CRZ Notification, 2011. Construction of buildings on such area is not a permitted activity. Only activity which require water front facilities are permitted as per Clause 8 (IV). The 3rd respondent cannot construct a building under the guise of jetty.
- C. There is a difference between terminal and jetty. Jetty is a structure of wood or stone extended into the sea to influence the current or tide, or to protect a harbor or

beach. Whereas terminal is a place where people can wait till, they are called for boarding. Such place does not require water front.

D. The place where huge constructions are now carried out are on the *Vembanad Lake*. *Vembanad* in Kerala is referred to as the ecologically sensitive area. It has been found by the Hon'ble Supreme Court of India that *Vembanad Lake* is presently undergoing severe environmental degradation due to increased human intervention. [*Vaamika Islands vs Union of India*. 2013 (3) KLT 677 (SC)] Suo moto proceedings were initiated against several persons who have made constructions by the Hon'ble Supreme Court of India. Subsequently, the said proceedings were transferred to this Hon'ble Court for consideration as writ petition. The said writ petition is still pending consideration before this Hon'ble Court as In Re *Vembanad Lake Kerala*, W.P.(C)No. 25460 of 2016.

E. While granting environmental clearance a condition was imposed to the effect that it should be in accordance with the CRZ Notification, 2011. The present activity of reclamation of backwater and construction on the said land is violation of CRZ Notification, 2011. The respondents 1 and 2 ought to have taken action for doing such illegal activities.

For the reasons set out above and, in the affidavit, filed herewith the petitioner prays that the following:

RELIEFS

- i. To issue a writ of *certiorari* calling for the records leading to Exhibits.P.1 recommendation and P.2 environmental clearance and quash the same in so far as it allows the reclamation and construction of 'High Court Terminal' as a part of "Kochi Water Metro Project";
- ii. To issue a writ, direction or order in the nature of *mandamus* commanding the 3rd respondent to remove the constructions which is already made in the backwaters under the guise of High Court Terminal' as a part of "Kochi Water Metro Project" and restore the water body within a time limit failure to which the 2nd respondent be directed to take immediate steps to remove the said construction;
- iii. To issue a writ, direction or order in the nature of *mandamus* or such other appropriate writ, direction or order commanding the 2nd respondent to consider Exhibit.P.5 representation made by this petitioner to cancel the Exhibit.P.1 CRZ clearance granted to the 3rd respondent in so far as it relates to the High Court jetty, Major Terminal as part of Kochi Metro Project;
- iv. To issue a writ, direction or order in the nature of *mandamus* or such other appropriate writ, direction or order commanding the 1st respondent to consider Exhibit.P.6 representation made by this petitioner to cancel the Exhibit.P.2 environmental clearance given to the 3rd respondent in so far as it relates to the High Court jetty, Major Terminal as part of Kochi Metro Project;

- v. Such other relief's which this Hon'ble Court deems fit and necessary in the circumstances of the case and the costs of this case so as to protect the coastal ecology of the *Vembanad* backwaters.

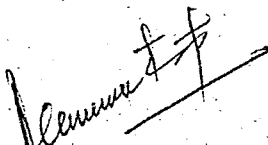
Court Fees paid under the Kerala Court Fees and Suits Valuation Act. Schedule-II, Art-(I) 11 (I)(2)(iii).....₹.100/-

INTERIM RELIEF

For the reasons stated in the writ petition and the accompanying affidavit it is humbly prayed that this Hon'ble Court be pleased to pass an interim order restraining the 3rd respondent from proceeding with the construction of High Court jetty, Major Terminal as part of Kochi Metro Project pending the disposal of the above writ petition.

Dated this the 5th day of July, 2021.

Counsel for the Petitioner.


Petitioner

IN THE HIGH COURT OF KERALA, AT ERNAKULAM
[SPECIAL ORIGINAL JURISDICTION]

Writ Petition.(Civil).No. . of 2021

K.G.Prathapa SimhanPetitioner

Vs.

Union of India and others.....Respondents

AFFIDAVIT

I, K.G.Prathapa Simhan, aged 82 years, Son of Gopala Panickker, A-53, Ashoka Apartments, High Court junction, Ernakulam, Cochin-682031, do hereby solemnly affirm and state as follows:-

1. I am the petitioner in the above case. I know the facts of this case.
2. The accompanying public interest litigation is prepared by my counsel on my instructions. The petitioner is espousing in public cause and he has no personal or private interest other than the public have. There is no authoritative pronouncement by the Supreme Court or the High Court on the question raised and the result of the litigation shall not lead to any undue gain to himself or to anyone associated with him. I have gone through the petition and state that the facts stated therein are true and correct to the best of my knowledge and belief. I also declare that I have not filed any petition seeking similar relief's in respect of this cause of action.
3. The Exhibits produced along with the writ petition are true copies which have been provided by me to my counsel. If the interim prayer as prayed for it not granted petitioner will be put to irreparable loss and injury.

What is stated above are true and correct to the best of my knowledge, information and belief.

Dated this the 5th day of July, 2021.

Deponent:

Solemnly affirmed and signed before me by the deponent who is personally known to me at Ernakulam on this the 5th day of July, 2021.

P.B.SAHASRANAMAN
ADVOCATE, ERNAKULAM

35

BEFORE THE HON'BLE HIGH COURT OF KERALA
AT ERNAKULAM

W.P.(C).No. 14014 of 2021

K. G. Prathapa Simhan : Petitioner
Vs. :
Union of India and others : Respondents

COUNTER AFFIDAVIT FILED BY THE 3RD RESPONDENT

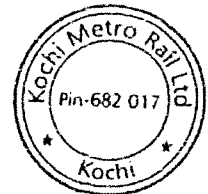
I, Shaji P.J., aged 51 years, S/o Late P.A. Janardhanan, General Manager (Water Transport), Kochi Metro Rail Ltd. presently residing at Dulcet- 4A, Olive Courtyard, Edachira, Kakkanad, Kochi-682030, do hereby solemnly affirm and state as follows.

1. I am the General Manager (Water Transport) of the 3rd respondent in the above Writ Petition and I am conversant with the facts of the case.

2. All the averments and allegations in the writ petition are denied except those that are specifically admitted hereunder.

3. The above Writ Petition is filed challenging Ext.P1 recommendation by the 2nd respondent and Ext.P2 Environmental and Costal Regulation Zone (CRZ) clearance granted by the 1st respondent for construction of Kochi Water Metro Project, so far as it allows reclamation and construction of High Court Terminal, to remove the constructions already made in the backwaters under the guise of High Court Terminal as a part of Kochi Water Metro Project as well as other reliefs.


P. J. Shaji
General Manager
(Water Transport)
Kochi Metro Rail Limited
Kochi - 682 017



4. The petitioner has filed the Writ Petition as a probono litigation and filed an affidavit stating that he has no personal or private interest in the matter. The petitioner is admittedly residing at Apartment No.A53, Ashoka Apartment, High Court Junction. The resident of Apartment No.A-63 in the very same Ashoka Apartment approached this Hon'ble Court earlier filing W.P.(C).No.9959/2020. In paragraph 13 of the said Writ Petition, the said petitioner averred as follows;

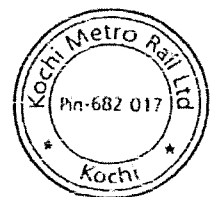
The petitioners are aggrieved by the action of the 5th respondent to construct building over the Boat Jetty Terminal, having a height of 18 meter because the petitioners who are residing in the 5th floor of Ashoka Flat (which is very near to the proposed Boat Jetty Terminal) be deprived of free air and light since the building is coming over the boat jetty terminal and is very close to the flat of the petitioners. The 6th respondent has illegally reclaimed nearly 3000 sq.ft of backwaters to commence the alleged construction and the same is against the rules.

A copy of the said Writ Petition and affidavit alone is produced herewith and marked as **Exhibit.R3(a)**. In the said Writ Petition, a counter affidavit was filed on behalf of 5th respondent, the 3rd respondent herein. Copy of the said counter affidavit without exhibits is produced herewith and marked as **Exhibit.R3(b)**.

5. The said Writ Petition is dismissed by this Hon'ble Court as per Ext.P8 judgment. The allegation of backwater reclamation



P. J. Shaji
General Manager
(Water Transport)
Kochi Metro Rail Limited
Kochi - 682 017



made in paragraph 5 of the Writ Petition was also an allegation in the said Writ Petition which was categorically answered in paragraph 13 of the counter affidavit. Hence, substantially the very same issues have been considered by this Hon'ble Court and rejected as evident from Ext.R4(a) and Ext.P8 judgment. This being the factual position, the attempt of the petitioner to once again approach this Hon'ble Court under the pretext of public cause and on the premises that there is no authoritative pronouncement on the question raised in the Writ Petition and the result of the litigation does not result in any undue gain to himself or anyone associated with him as sworn to him in the affidavit along with the Writ Petition is neither correct nor with any bonafides. The original petition containing identical allegations on the very same premises amounts to abuse of process of the court. Hence the above Writ Petition lacks genuine public interest but seems to be a litigation with vested interest/private interest discernable from Ext.P8 judgment. Hence the Writ Petition is liable to be dismissed on that short ground.

6. When both the Writ Petitions were filed, wide media publicity was given, which has adversely affected the smooth and timely implementation of the project. Apart from this, the contractor doing the work of the High Court terminal had approached this Hon'ble Court by filing W.P.(C).No.2099/2021 seeking police protection confronted with obstruction, which was disposed of by this Hon'ble Court as per judgment dated 12.07.2021 with appropriate directions. A copy of the judgment dated 12.07.2021 is produced herewith and marked as



P. J. Shaji
General Manager
(Water Transport)
Kochi Metro Rail Limited
Kochi - 682 017

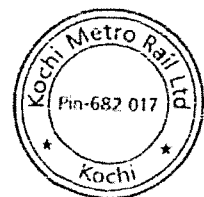
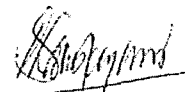


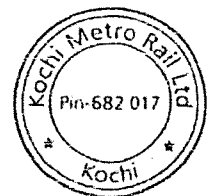
Exhibit.R3(c). The contractor who is the 6th respondent in Ext.P8 judgment is not made a party to the above Writ Petition, which can only be deliberate. Hence the above Writ Petition is bad for non-joinder of necessary parties.

7. Without prejudice to the preliminary objections as above, it is respectfully submitted that this respondent was assigned with the task of executing an Urban Water Transport Project named the 'Kochi Water Metro Project' on behalf of the Government of Kerala (GoK). The Project is ideated as a user oriented and socially inclusive transport system with intermodal connectivity between jetties, bus terminals and metro network to ensure that the waterway system is integrated with the entire public transport system of the city with focus on 'Connecting People.' On implementation, it will be an environment friendly transport system of such wider dimensions for the first time in the world. The Project envisions fifteen (15) identified routes connecting thirty-eight (38) terminals across ten (10) island communities across 78.2 km channel length and 2 boatyards.

8. It is further submitted that the layout for all 38 terminals were designed to offer seamless accessibility to all including differently abled and includes waiting area for passengers. The terminals have been designed with CCTV systems, access control and fare gate system to ensure inclusiveness and security to even the most vulnerable groups. The boats are electrically propelled twin-screw aluminum catamaran powered by Li-titanate batteries and are environment friendly. Boarding and disembarkation of



P. J. Shaji
General Manager
(Water Transport)
Kochi Metro Rail Limited
Kochi - 682 017



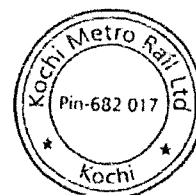
passengers will be carried out from floating pontoons which makes the system differently abled friendly.

9. It is respectfully submitted that the contract for construction of High Court Terminal was awarded to Mary Matha Infrastructure Pvt. Ltd. (Contractor) in 2019. The High Court Terminal is designed as an open pile structure with floating pontoons to facilitate natural free flow of water. The design together with the plan and elevation was approved by the 2nd respondent and the State Wetland Authority of Kerala (hereinafter referred to as SWAK) after extensive and rigorous scrutiny. All necessary clearances and no-objection certificates as are required for the High Court Terminal were obtained from the various statutory authorities. The final clearance for the Project was given by the 1st respondent (MoEF&CC) on 01.10.2019.

10. It is further submitted that while the construction works were progressing, Mr. Joe Joseph, a resident of Ashoka Apartments situated near the proposed High Court Terminal filed WP(C).9959/2020 raising frivolous and baseless allegations with a view to defeat implementation of the Project. The foremost claim was that the terminal was proposed to be an 18 meter high building which will deprive free air and light to residents of Ashoka Apartments. It was also alleged that nearly 3000 Sq. Ft. backwaters have been illegally reclaimed to commence the construction. This respondent (5th respondent in said case) had filed Ext.R3(b) counter affidavit elucidating all the factors and especially in paragraph 13 regarding the alleged reclamation as follows;

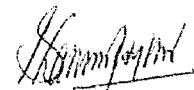


P. J. Shaji
General Manager
(Water Transport)
Kochi Metro Rail Limited
Kochi - 682 017

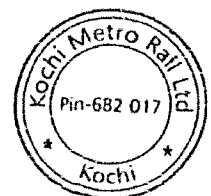


'It is humbly submitted that the allegation of petitioner that the 6th respondent has illegally reclaimed 3000 Sq. Ft. of backwaters to commence the construction is absolutely false. The bunding done by the 6th respondent is purely a temporary arrangement to commence piling. The said method is the most efficient and safe method to commence the construction in order to avoid damage to the adjoining structures. Other options will require extensive dredging near to the shore to install pile rigs which may weaken the adjoining structures and lead to collapse of the existing broad walk. The 6th respondent has adopted the most appropriate and safe measures to commence construction activities and will restore the area to its original state on completion of the construction.'

The Hon'ble Court while considering the said writ petition took due notice of the submission made by this respondent and dismissed the writ petition as per Ext.P8 judgment. It is significant to note that Ext.P8 judgment was not challenged in appeal and hence has attained finality. The above writ petition which is also in similar lines filed by the resident in the adjacent flat in the very same Ashoka Apartment is presumed to be yet another attempt by the very same persons jointly acting against implementation of the Project which will be a boon to the underprivileged islanders of Kochi. The present writ petition, based on substantially similar questions as in WP(C).9959/2020 is devoid of any merits and is liable to be dismissed in-limine. Hence the above Writ Petition based on substantially similar questions as discernable in Ext.P8 judgment is devoid of any merit and is liable to be dismissed as devoid of bonafides also. It may not be out of place at this instance to point out that while the Kochi Water Metro Project involves construction of 38 terminals for connecting 10 island communities through 15 identified routs, repeated attempts are being made to disrupt the construction of high court terminal,



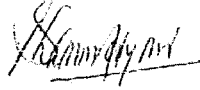
P. J. Shaji
General Manager
(Water Transport)
Kochi Metro Rail Limited
Kochi - 682 017

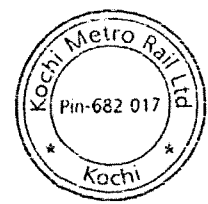


which is a key terminal with an intention to defeat the smooth implementation of the entire water metro project.

11. The averments contained in paragraph 1 are frivolous and preposterous, hence denied. No permanent reclamation or violation of Coastal Regulation Zone Notification, 2011 (CRZ Notification, 2011) is planned or professed as claimed. The present writ petition, camouflaged as a PIL is marred with clandestine personal interests of the petitioner. Had he been genuinely interested in public interest, he would have welcomed the earliest implementation of the Project, which will alleviate and soothe the multi decade long mobility extremity faced by the islanders of Kochi. The averment that illegal constructions are undertaken by illegal reclamation of backwater is not true, frivolous and vitiated by malevolence and hence denied in its entirety.

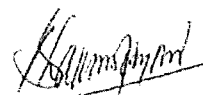
12. The averments contained in paragraphs 2 to 3 regarding implementation of the Project by this respondent and grant of necessary clearances and approvals by the 1st and 2nd respondent for the same are correct. The averments contained in paragraph 4 of the writ petition are twisted with a view to mislead this Hon'ble Court. The averment that a Major Terminal of the Kochi Water Metro Project is on the western side of Cochin Marine Drive Walkway is a misleading statement and hence denied. There is no Terminal of Water Metro called 'Major Terminal,' but the said area will house the High Court Terminal of the Project. The averment that backwater is reclaimed for accommodating 2376 Sq. Meters of the High Court Terminal is frivolous and preposterous, hence denied. It is submitted that the temporary bund or land fill method


P. J. Shaji
General Manager
(Water Transport)
Kochi Metro Rail Limited
Kochi - 682 017

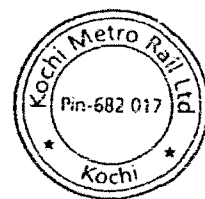


is only a temporary measure to carry on the piling activities and to create a platform for stationing and operating construction equipment. The said option is adopted as the most appropriate and safe method to conduct the piling activities in order to avoid damage to the adjoining structures. Other options will require extensive dredging near the shore to install pile rigs which may weaken the adjoining structures and lead to collapse of the existing broad walk and approach which is still open to the general public. It is respectfully submitted that in line with the assurance made by this respondent in Ext.R3(b), restoration of the area has already commenced. The works including piling, pile cap construction and grade beams have been completed. The slab construction has been on hold for removal of the landfill and the delay in the entire process was due to the COVID pandemic and resultant shortage of manpower to the Contractor. It is respectfully submitted that Ext.P3 is not a legible document and hence the genuineness of the same is disputed.

13. It is respectfully submitted that the averments contained in paragraph 5 are frivolous and preposterous, hence denied. All necessary statutory clearances have been obtained by this respondent for implementation of the Project. The layout of the terminal was submitted before and was rigorously scrutinised by the 2nd respondent and recommendation for clearance was given after considering all relevant aspects. The copies of communication between this respondent and 2nd respondent are produced herewith and marked as **Exhibit.R3(d)**. Pursuant to the said recommendation, the final clearance was given by the first



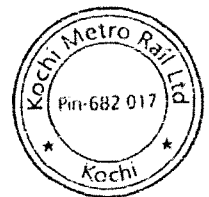
P. J. Shaji
General Manager
(Water Transport)
Kochi Metro Rail Limited
Kochi - 682 017



respondent on 01.10.2019. The averment that the Terminal is being constructed in area categorised as CRZ - IV A is preposterous and fallacious, hence denied. The area in which the High Court Terminal is proposed falls in CRZ - II area and the said aspect was pointed out by the 2nd respondent also in its counter affidavit filed in WP(C) 9959/2020. The averment that the present construction though named as 'jetty' is a building is a twisted statement aimed at creating a misleading impression before this Hon'ble Court that the High Court Terminal is a building being constructed for some other purpose. While dealing with similar arguments, the Learned Single Judge in Ext. P8 had specifically laid down that the term 'boat jetty' would include not only the landing terminal but also appurtenant building. The narrow meaning attributed by the petitioner that 'jetty' is a long structure built out into water and used as a place to get on, get off, or tie up a boat is nonsensical and is not at all applicable to the present scenario. Water Metro is not akin to the conventional system where tickets are offered inside the boat and where boats are tied up to piers used for boarding and disembarkation of people. The Water Metro Terminal encompasses landing area, passenger waiting area and ticket counter which all cater to the operation of water metro and it is ludicrous to state that 'jetty' does not contemplate the construction of a building. It is respectfully submitted that the test shall be whether the Terminal is for facilitating the operation of Water Metro or for other purposes. Constructing different buildings for ticket counter, waiting area and other facilities is infeasible, will entail higher costs and will only be a loss to the public exchequer. It is highly regretful to note




P. J. Shaji
General Manager
(Water Transport)
Kochi Metro Rail Limited
Kochi - 682 017

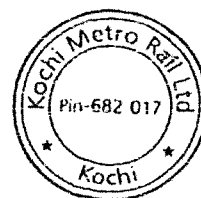


that the petitioner is challenging the statutory clearances after nearly 2 years and when critical works have already been completed spending substantial amount of public money. It is also pertinent to note that the petitioner was not concerned even during the pendency of WP(C) 9959/2020 and the sudden concern expressed by the petitioner after keeping mum all these years points to his surreptitious motives to defeat implementation of the Project.

14. It is respectfully submitted that the averments contained in paragraphs 6 and 7 are frivolous and unfounded, hence denied. This respondent has not resorted to permanent reclamation for construction of the High Court Terminal as averred by the petitioner. The construction of temporary bund was only aimed at facilitating the construction activities for the reasons stated in paragraph 10 above. The process of restoration of the area has already commenced and there will not be any disturbance to the natural flow of water or adverse impact on coastal ecology as averred.

15. It is respectfully submitted that the averments contained in paragraph 8 are misleading and baseless, hence denied. The averment that 'the 3rd respondent has now started the construction' itself points to the malice of the petitioner. The construction activities in the area has started as early as in 2019 itself. The averments that a huge building is constructed impinging the backwater, CRZ -IVA area under the guise of jetty are frivolous and preposterous, hence denied. The construction of the High Court Terminal for operation of the Water Metro is

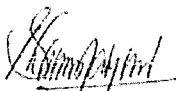

P. J. Shaji
General Manager
(Water Transport)
Kochi Metro Rail Limited
Kochi - 682 017

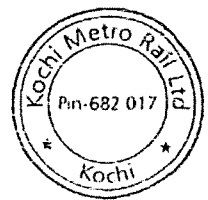


undertaken in CRZ II area and all necessary statutory clearances are obtained and in vogue.

16. It is respectfully submitted that the averments contained in paragraph 9 is only specious and the conventional water transport system is incomparable with the Water Metro Project which have wider implications. Such a comparison will be akin to comparing conventional railway system with metro railway. It is respectfully submitted that the Water Metro is envisaged as an inclusive system aimed at intermodal connectivity with seamless accessibility and facilities even to differently abled people.


17. It is respectfully submitted that the averments contained in paragraph 10 are misconceived and misleading, hence denied. The averment that building is constructed over water body is incorrect and hence denied. The temporary bund constructed is only a temporary measure to facilitate construction of the building for the reasons stated in paragraph 10 above and now the restoration works have also commenced. The averments that the construction of building will have severe ramifications on the coastal ecology and will lead to destruction of entire microorganisms beneath the construction are specious and are devoid of any merits. The High Court Terminal is designed as an open pile structure with floating pontoon to facilitate natural free flow of water which will create an ecosystem for marine life. The plan and structure of the building has undergone the rigours of scrutiny by various statutory authorities including the 2nd respondent and the SWAK before final recommendation/approval and is not in violation of the CRZ norms.

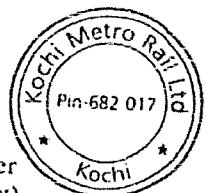

P. J. Shaji
General Manager
(Water Transport)
Kochi Metro Rail Limited
Kochi - 682 017



18. The averments contained in paragraph 11 have no nexus with the Water Metro Project. The decision of Hon'ble Supreme Court in S. Jagannath Vs. Union of India has no application in the present scenario. Setting up of shrimp aquaculture farms cannot be equated with Water Metro which is essentially a water transport system. It is respectfully submitted that the construction activities are not going on in any prohibited areas as averred, rather it is undertaken in accordance with the statutory norms complying with all the directions/ mandates laid down by the 1st and 2nd respondents. All contra averments are incorrect and aimed at misleading this Hon'ble Court, hence are liable to be rejected in limine.

19. It is respectfully submitted that the averments contained in paragraph 12 is not true and malevolent hence denied. The averment that the statutory clearances are obtained suppressing material fact of construction of building by reclaiming backwater and not mere 'jetty' is devoid of any merits and is hence vehemently denied. All relevant aspects including the plan and structure of the building were rigorously scrutinised by the 1st and 2nd respondents as well as SWAK before according the clearances. All aspects were considered in detail by the 2nd respondent and the same is evident from Ext.R3(d) communications. Moreover, there is no permanent reclamation of backwaters for construction of any building as averred. The averment that this respondent played fraud on the 1st and 2nd respondent in obtaining clearances is a defamatory statement aimed at maligning the reputation of this respondent. It is respectfully submitted that Exts. P6 and P7



P. J. Shaji
General Manager
(Water Transport)
Kochi Metro Rail Limited
Kochi - 682 017

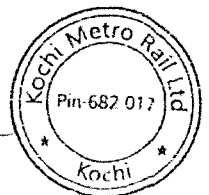


alleged to be issued by the petitioner for cancellation of the clearances without any basis proves the malice of the petitioner and sheds light on his covert design to thwart implementation of the Project.

20. It is respectfully submitted that the averments contained in paragraph 13 are not fully correct. The averment that reclamation and construction of building on the reclaimed land is not raised or considered in WP(C).9959/2020 is incorrect as evident from Ext.R3(a) and R3(b) and hence denied. There were specific pleadings alleging reclamation in the said writ petition and this respondent has filed counter affidavit specifically denying and explaining the said allegations as stated earlier. The learned Single Judge has inquisitively considered the said aspects while dismissing the writ petition as lacking merit. The petitioner who should be aware of the said aspect evident from Ext.R3(b) as filed in the above Writ Petition without disclosing those material aspects from this Hon'ble Court with a view to make it appear that he is approaching this Hon'ble Court in public interest against reclamation. It is reasonably suspected and apprehended that the petitioner being a resident of Ashoka Apartments, like the petitioner in WP(C).9959/2020, has filed above writ petition in personal interest under the guise of public interest.

21. The averments contained in paragraph 14 is devoid of any merits and are hence denied in its entirety. The questions raised by the petitioner has already been set to rest by Ext.P8 judgment which has attained finality. The petitioner without perceiving the basic technical aspects of the Project is attempting to draw a


P. J. Shaji
General Manager
(Water Transport)
Kochi Metro Rail Limited
Kochi - 682 017



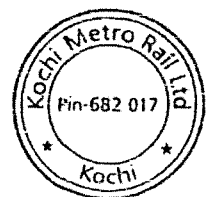
narrow definition for 'jetty' to make an impression that the Water Metro Terminal is not a jetty. This respondent has conducted necessary studies and analysis, passed the rigors of scrutiny and inspection by relevant statutory authorities and had obtained all requisite permissions including environmental clearance for implementation of the Project. The construction activities undertaken by this respondents are in line with the statutory provisions, statutory clearances and CRZ norms. The petitioner has no locus standi to approach this Hon'ble Court. The petitioner has approached this Hon'ble Court with untidy hands and malevolent intention. As such, there is nothing in the present writ petition requiring intervention of this Hon'ble Court.

22. It is respectfully submitted that as submitted before this Hon'ble Court in WP(C) 9959/2020, after the piling activities, removal of the temporary bunding has started and about 40% of the area is restored to its original condition. The removal will be completed in the month of September 2021. The inauguration of the Water metro Boat service is also expected during September 2021. Any interference at this point of time will adversely affect the implementation of the Project as well as the time line for completion and may also tend to reduce confidence of the foreign lender in the Project implementation. Moreover, delay of any sort at this juncture will also result in cost escalation and claims from the contractor which in turn will have an unpropitious effect on the state exchequer as well.

In the above circumstances, it is humbly prayed that the petitioner is not entitled to any of the reliefs prayed for in the writ




P. J. Shaji
General Manager
(Water Transport)
Kochi Metro Rail Limited
Kochi - 682 017

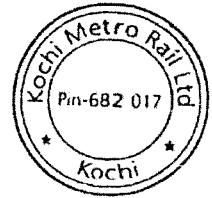


petition. The questions raised in the writ petition have already been considered and settled by this Hon'ble Court in Ext.P8 judgment. The present writ petition, marred by malafides and blemished with clandestine personal interests may be dismissed with costs to this respondent.

All what is stated above are true and correct.

Dated this the 25th day of August, 2021


P. J. Shaji
General Manager
(Water Transport)
Kochi Metro Rail Limited
Kochi - 682 017



Deponent

Solemnly affirmed and signed before me by the deponent who is personally known to me on this the 25th day of August, 2021 in my office at Ernakulam.

M.U.Vijayalakshmi
Advocate

ITEM NO.3

Court 7 (Video Conferencing)

SECTION XI-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

50

Petition(s) for Special Leave to Appeal (C) No(s). 15447/2021

(Arising out of impugned final judgment and order dated 31-08-2021 in WPC No. 14014/2021 passed by the High Court of Kerala at Ernakulam)

K.G. PRATHAPA SIMHAN

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(IA No.124331/2021-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date : 10-12-2021 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S. ABDUL NAZEER
HON'BLE MR. JUSTICE KRISHNA MURARI

For Petitioner(s) Mr. K.parameshwar, AOR

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

We are not inclined to interfere with the impugned judgment passed by the High Court. Special Leave Petition is dismissed.

Pending applications, if any, also stand disposed of.

(NEELAM GULATI)
ASTT. REGISTRAR-cum-PS

(KAMLESH RAWAT)
COURT MASTER (NSH)

DIARY NO - 22307/2021
IN THE SUPREME COURT OF INDIA

110
57

ORDER XXI RULE 3 (1) (a)

CIVIL APPELLATE JURISDICTION

(Under Article 136 of the Constitution of India)

SPECIAL LEAVE PETITION (C) NOS. _____ OF 2021

WITH PRAYER FOR INTERIM RELIEF

{Arising from the impugned final Judgment and Order dated
31.08.2021 passed by the Hon'ble High Court of Kerala at Ernakulam
in W.P. (C) No 14014 of 2021}

IN THE MATTER OF :-

K.G.Prathapa Simhan

...PETITIONER

VERSUS

Union of India and Others

...RESPONDENTS

WITH
I.A. No. of 2021
In

Application for exemption from filing Certified copy of impugned order

PAPER BOOK

(FOR INDEX KINDLY SEE INSIDE)

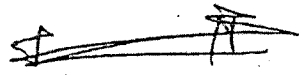
ADVOCATE FOR THE PETITIONER: SANAND RAMAKRISHNAN

52

DECLARATION

DIARY NO. 22307/2021
- /2021

All defects have been duly cured. Whatever has been added/ deleted / modified in the petition is the result of curing of defects and nothing else. Except curing defects, nothing has been done, paper books are complete in all respects.


Signature

Sarad Ramakrishna
Advocate on Record

Date 25/9/2021

Contact No. 9654626991

54

INDEX

1	Particulars of Documents	Page No. Of part to which it belongs		Remarks
		Part I (Contents of Paper Book)	Part II (Contents of file alone)	
(i)-	(ii)	(iii)	(iv)	(v)
1.	Office Report of Limitation	A	A	
2.	Listing Proforma	A1-A2	A1-A2	
3.	Cover Page of Paper Book		A-3	
4.	Index of Record of Proceedings		A-4	
5.	Limitation Report permanently the Registry		A-5	
6.	Defect List		A-6	
7.-	Note Sheet		NS1 to	
8.	Synopsis and List of Dates	B-L		
9.	Impugned Order Copy of the Final Judgment and Order dated 31.03.2021 passed by the High Court of Kerala at Ernakulam in W.P.(C) 14014 of 2021	1-16		
10.	Special Leave Petition with Affidavit	17-33		
11.	(i) Copy of the list of Ramsar sites in India (ii) Copy of the relevant Portion of Costal Regulation Zone Notification Ministry of	34-37 38-53		

	Environment and Forest dated 6.01.2011 (iii) Copy of the Rule 4 (vi) of the Wetlands (Conservation and Management) Rules, 2017 (iv) Copy of the Judgment titled as 'Vaamika Island (Green Lagoon Resort) v Union of India and Others' reported in 2013 (8) SCC 760	54-57 58-66		
11.	Annexure-'P-1' A few photographs of the construction	67-70		
12.	Annexure-'P-2' Copy of letter dated 15.06.2019	71-72		
13	ANNEXURE 'P- 3' Copy of clearance/ recommendation letter for the project dated 01.10.2019	73-84		
14	ANNEXURE 'P- 4' Copy of email by the petitioner to the respondent No.2	85-86		
15	ANNEXURE 'P- 5' Copy of writ petition No. 14014 of 2021 filed before the High Court of Kerala at Ernakulam in dated 5.07.2021	87-97		

56

16	Annexure-'P-6' Copy of the counter affidavit filed before the High Court of Kerala at Ernakulam in W.P. No 14014 of 2021 dated 25.08.2021	98-112		
23	Application for exemption from filing Certified Copy of Impugned Order	113-114		
24	F/M		115	
25	V/A		116	

107
57
A

IN THE SUPREME COURT OF INDIA
✓
Civil/~~Criminal~~ Appellate Jurisdiction

Special Leave Petition (C.A.) No. _____ of 2021

BETWEEN :

K A Pruthi Singh

...Petitioner(s)

Versus

Union of India & Ors

...Respondent (s)

OFFICE REPORT OF LIMITATION

- ✓ 1. The Petition is/are within time.
2. The Petition is barred by time and there is delay of _____ days in filling the same against order dated _____ and petition for condonation of _____ days delay has been filed.
3. There is delay of _____ days in refilling the petition and petition for condonation of _____ days delay in refilling has been filed.

BRANCH OFFICER

New Delhi
Dated:

17/9/21

58

No. F.5/Judl(I)/2018, dated: 29/10/2018
w.e.f. 29th October, 2018

ANNEXURE 'X'

PROFORMA FOR FIRST LISTING

SECTION

XFA

The case pertains to (Please tick/check the correct box):

- ☐ Central Act: (Title) U/A 136 of the Constitution of India
- ☐ Section: NA
- ☐ Central Rule: (Title) Rule 31(a)
- ☐ Rule No(s) ORDER file 31(a)
- ☐ State Act: (Title) NA
- ☐ Section: NA
- ☐ State Rule: (Title) NA
- ☐ Rule No(s) NA
- ☐ Impugned Interim Order: (Date) NA
- ☐ Impugned Final Order/Decree: (Date) 31/08/21
- ☐ High Court: (Name) High Court of Kerala at Kozhikode
- ☐ Names of Judges: Honble Mr J. S. Manikumar & Honble Mr J. Shreyas F. Ue
- ☐ Tribunal/Authority: (Name) NA

1. Nature of matter: ☒ Civil ☐ Criminal
2. (a) Petitioner/appellant No.1: K. G. Prathapa Simhan
(b) e-mail ID: NA
(c) Mobile phone number: NA

: 2 :

3. (a) Respondent No.1: Union of India 40%
 (b) e-mail ID: NA
 (c) Mobile phone number: NA
4. (a) Main category classification: 12
 (b) Sub classification: 1207 other
5. Not to be listed before: NA
6. (a) Similar disposed of matter with citation, if any, & case details: NO similar matter is disposed off
 (b) Similar pending matter with case details: NO
7. Criminal Matters:
- (a) Whether accused/convict has surrendered: ☐ Yes ☒ No. NA
 (b) FIR No. NA Date: NA
 (c) Police Station: NA
 (d) Sentence Awarded: NA
 (e) Period of sentence undergone including period of detention/custody undergone: NA
8. Land Acquisition Matters:
- (a) Date of Section 4 notification: NA
 (b) Date of Section 6 notification: NA
 (c) Date of Section 17 notification: NA
9. Tax Matters: State the tax effect: NA
10. Special Category (first petitioner/appellant only):
- ☐ Senior Citizen > 65 years ☐ SC/ST ☐ Woman/child ☐ Disabled
- ☐ Legal aid case ☐ In custody, NA
11. Vehicle Number (in case of Motor Accident Claim matters): NA

Date: 17/9/21

AOR for petitioner(s)/appellant(s)
 (Name) Savand Ramalochan
 Registration No. 1332
(Savand Ramalochan)

SYNOPSIS

B

1. The main issue that arises for consideration in the present Special Leave Petition is as to whether after obtaining sanction for the construction of a 'jetty', a 'terminal' wherein passengers can sit and refresh, having a plinth area of 2432 sq meters, out of which 2376 sq m is in the area reclaimed from the Vembanad backwaters can be constructed, as part of the Kochi Water Metro Project, in view of the following:-

- (i) the area has been declared as a Ramsar Site in the year 2002, in response to Article 2.1 of the Convention on Wetlands (Ramsar, Iran, 1971);
- (ii) the area is a part of Vembanad Backwaters, which is defined as a Critically Vulnerable Coastal Area in the Coastal Zone Regulations, 2011;
- (iii) the area is classified as falling within CRZ-IV in the Coastal Zone Management Plan of Kerala prepared as per CRZ Notification, 2011 and as per Clause 8 (IV) in such areas, activities impugning on the sea and tidal influenced water bodies will be regulated except for traditional fishing and related activities undertaken by local communities and therefore the construction of a terminal is a regulated activity;
- (iv) this Hon'ble Court has accorded its imprimatur upon the 'area' being of immense conservation importance as it supports a large aquatic bio-diversity and is an important migrating birds'

185

61

habitat in its judgment titled '*Vaamika Island (Green Resort) v Union of India*' reported in 2013 (8) SCC 760;

(v) Rule 4 (vi) of the Wetlands (Conservation and Management) Rules, 2017, expressly prohibits any construction of a permanent nature except for boat jetties within 50 metres from the mean high flood level observed in the past ten years calculated from the date of commencement of the aforesaid Rules;

(vi) When the requisite permissions/ clearances were taken for construction of a 'jetty' with a maximum height of 8.8 metres and when the structure under construction is expected to reach a height of 18 metres, Hon'ble High Court ought not to have taken a casual approach and instead ought to have made an effort to examined whether the said construction is strictly in consonance with the statutes.

(vii) the activity of reclamation of backwater disturbs the natural flow of sea water, which will adversely damage the ecology.

2. The approach of the Hon'ble High Court in directing Respondent No:2 to merely consider the representations made by the Petitioner, completely turning a blind eye to the construction activity being carried on in violation of a plethora of statutes described above, is not just and proper, especially in view of the judgment titled '*Vaamika Island (Green Resort) v Union of India*' reported in 2013 (8) SCC 760, wherein this Hon'ble Court has accorded its imprimatur upon the 'area' being of immense conservation importance, as it is part of Vembanad Backwaters.

3. Hence, the present Special Leave Petition.

62

D

LIST OF DATES AND EVENTS

SL No.	DATES	EVENTS
01.		<p>Petitioner herein is an octogenarian, who is concerned about the serious damage to the environment and ecological system due to blatant abuse of the clearance given to the Respondent No.3 herein for "<i>Kochi Water Metro Project</i>" and is also a resident of Ashoka Apartments, Ernakulam, Kochi, which lies adjacent to the project site where the reclamation and constructions are going on.</p> <p>Respondent No:1 is the Ministry of Environment, Forests & Climate Change, represented by the Deputy Director General.</p> <p>Respondent No:2 is the Kerala Coastal Zone Management Authority, represented by its Secretary.</p> <p>Respondent No:3 is the Kochi Metro Rail Ltd, represented by its Managing Director.</p> <p>The Petitioner has filed this Public Interest Litigation before the Hon'ble High Court of</p>

E

63

		Kerala at Ernakulam challenging the construction of High Court Jetty, Major Terminal (Huge Building) under the guise of constructing a "jetty" by reclaiming <i>Vembanad</i> backwaters in gross violation of the Coastal Regulation Zone Notification, 2011 causing serious adverse threat to the coastal ecology.
02.		Respondent No:3 is a Joint Venture Company formed with equal contribution from the Government of Kerala and Government of India for the implementation of the " <i>Metro Rail Project</i> ". The rail works are still going on. While so it has undertaken a project called " <i>Kochi Water Metro</i> " project, which envisages the plying of vessels and includes construction of 38 jetties across the <i>Vembanad</i> backwaters. Respondent No:3 is acquiring 9.51 hectares of land for the said purpose.
03.	06.11.2011	As per the Coastal Regulation Zone Notification, 2011 (Notification No. S.O.19 (E), dated 6-11-2011, the waterbody, where the jetty is being constructed falls with the Coastal Regulation Zone (CRZ) area. As per the said Notification, any construction would require

64 ●

F

		CRZ Clearance from the Kerala Coastal Zone Management Authority i.e. Respondent No:2.
04.	2017-2018	<p>The proposed construction of Terminal is on the backwater by reclamation. The said area is categorized as CRZ-IVA in the approved Coastal Zone Management Plan of Kerala, Map. KL-32, which was mapped in 2017-2018, strictly prepared as per the CRZ Notification 2011.</p> <p>As per CRZ Notification, 2011, clause 8 (IV) the activities in such areas are regulated except for traditional fishing and related activities. However, Clause 4 regulates certain activities in such areas, wherein clearance shall be given for any activity within the CRZ only, if it requires water front and foreshore facilities. The present construction though named as "jetty" is actually a building.</p> <p>Jetty means a long structure that is built out into water and used as a place to get on, get off, or tie up a boat. It is intended to help the people to enter a boat or vessel safely. It does not contemplate the construction of a building</p>

6

65

		<p>like the one which is being constructed on the backwaters by reclamation.</p> <p>A building construction intruding on water does not get the protection of an activity which require waterfront and foreshore facilities. It is respectfully submitted that the test is whether such an activity can be done without water. In the instant case, the project proponent can construct ticket counter, waiting shed and other places on the land and what is required is only an entry to the boat, which is called as "jetty".</p> <p>A few photographs of the construction is being annexed hereto and marked as Annexure-'P-1'. (67-70)</p>
05.	15.06.20219	<p>Respondent No.2 vide its letter dated 15.06.0219 issued to Respondent No.1, recommended and forwarded the proposal of Respondent No.3 for considering grant of CRZ clearance. A copy of letter dated 15.06.2019 is annexed herewith and marked as ANNEXURE-'P-2'. (71-72)</p>
06.	01.10.2019	<p>Respondent No 1 in response to the ONLINE proposal submitted by Respondent No.3</p>

66

H

		<p>dated 05.03.2019 for grant of Environmental and CRZ Clearance in terms of the provisions of Environment Impact Assessment (EIA) Notification 2006 & Coastal Regulation Zone (CRZ) Notification , under the Environment Protection Act 1986 gave the clearance on the ground of strict compliance of the conditions mentioned therein. A copy of clearance/ recommendation for the project dated 01.10.2019 issued by Respondent No.1 is annexed herewith and marked as ANNEXURE-'P-3'. (73-84)</p>
07.		<p>Petitioner herein wrote an email to the Respondent No.2 pointing out that though the Respondent No.3 herein is claiming that height of the construction for High Court terminal would be merely 8.80 meters with two floors , the overall height of the building would go up to 18.9 meters, which is much beyond the permissible, as per conditions, and therefore sought immediate intervention and revocation of the clearance granted. A copy of email by the petitioner to the respondent No.2 is annexed herewith and marked as ANNEXURE-'P-4'. (85-86)</p>

I

67

08.	08.07.2021	<p>Since the authorities have shut their eyes to the wrong done to the environment as a concerned citizen the petitioner herein preferred a writ petition styled as Public Interest Litigation interalia seeking following reliefs:</p> <p>(i) To issue a writ of <i>certiorari</i> calling for the records leading to Exhibits.P.1 recommendation and P.2 environmental clearance and quash the same in so far as it allows the reclamation and construction of "High Court Terminal" as a part of "Kochi Water Metro Project";</p> <p>(ii) To issue a writ, direction or order in the nature of mandamus commanding the 3rd respondent to remove the constructions which is already made in the backwaters under the guise of High Court Terminal" as a part of "Kochi Water Metro Project" and restore the water body within a time limit failure to which the 2nd respondent be directed to take immediate steps to remove the said construction;</p> <p>(iii) To issue a writ, direction or order in the nature of <i>mandamus</i> or such other</p>
-----	------------	---

	<p>appropriate writ, direction or order commanding the 2nd respondent to consider Exhibit.P.6 representation made by this petitioner to cancel the Exhibit.P.1 CRZ clearance granted to the 3rd respondent in so far as it relates to the High Court jetty, Major Terminal as part of Kochi Metro Project;</p> <p>(iv) To issue a writ, direction or order in the nature of <i>mandamus</i> or such other appropriate writ, direction or order commanding the 1st respondent to consider Exhibit.P.7 representation made by this petitioner to cancel the Exhibit.P.2 environmental clearance given to the 3rd respondent in so far as it relates to the High Court jetty, Major Terminal as part of Kochi Metro Project;</p> <p>(v) Such other relief's which this Hon'ble Court deems fit and necessary in the circumstances of the case and the costs of this case so as to protect the coastal ecology of the <i>Vembanad</i> backwaters. A copy of the writ petition No. 14014 of 2021 filed before the High Court of Kerala at Ernakulam in dated</p>
--	---

K

69

		5.07.2021 is annexed herewith and marked as ANNEXURE-"P-5" . (87-97)
09.	26.08.2021	<p>Respondent No. 3 filed their counter affidavit, a copy of the counter affidavit filed before the High Court of Kerala at Ernakulam in W.P. No 14014 of 2021 dated 25.08.2021 is annexed herewith and marked as ANNEXURE-"P-6". (98-112)</p> <p>NOTE:- It is respectfully submitted that the High Court did not give any opportunity to the petitioner to file their affidavit in rejoinder in the aforementioned matter and proceeded in haste to dispose off the Writ Petition.</p>
10.	31.08.2021	<p>It is most respectfully submitted that the impugned judgment contains 15 pages of which 8 pages are taken up in reproducing the contents of the counter affidavit filed by Respondent No:3. There is no discussion, much less, even an effort to discuss the issue raised by the petitioner. The Hon'ble High Court has disposed off the Writ Petition with a direction that the representation given by the petitioner to the Respondent No.1 be considered in one month.</p>

70.

L

		<p>It is most respectfully submitted that Hon'ble High Court has failed to discharge their constitutional duties to ensure the strict compliance OF law with regard to the environment, for the construction in and around Vembanad Backwaters area which is critically vulnerable coastal area and supports exceptionally large biological diversity and constitute the second largest wetland in India. The Vembanad lake was declared as a Ramsar in response to Article 2.1 of the Convention on wetlands (Ramsar, Iran 1971). Therefore, even a slightest negligence in such area would lead to disaster to environment and ecology of the area.</p>
11.	17.09.2021	Hence, the present Special Leave Petition.



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

TUESDAY, THE 31ST DAY OF AUGUST 2021 / 9TH BHADRA, 1943

WP(C) NO. 14014 OF 2021

PETITIONER/S:

K.G.PRATHAPA SIMHAN
AGED 82 YEARS
SON OF GOPALA PANICKER, A-53, ASHOKA APARTMENTS,
HIGH COURT JUNCTION, ERNAKULAM, COCHIN 682 031
BY ADVS.
P.B.SAHASRANAMAN
T.S.HARIKUMAR

RESPONDENT/S:

- 1 UNION OF INDIA
MINISTRY OF ENVIRONMENT, FORESTS AND CLIMATE CHANGE,
REP. BY ITS DEPUTY DIRECTOR GENERAL OF FORESTS (C),
REGIONAL OFFICE (SZ) KENDRIYA SADAN, 4TH FLOOR, E AND
F WINGS, 17TH MAIN ROAD, KORAMANGALA II BLOCK,
BANGALORE 560 034
- 2 KERALA COASTAL ZONE MANAGEMENT AUTHORITY
REP. BY ITS SECRETARY, DIRECTORATE OF ENVIRONMENT AND
CLIMATE CHANGE DEVIKRIPA, PALLIMUKKU, PETTAH P.O.,
THIRUVANANTHAPURAM 695 024
- 3 KOCHI METRO RAIL LTD.
REP. BY ITS MANAGING DIRECTOR, REGISTERED OFFICE, 3RD
FLOOR, MATHEW SONS BUILDING, OPPOSITE VYTTILA HUB,
VYTTILA, KOCHI 682 019
BY ADVS.
SRI.P.VIJAYAKUMAR, ASG FOR R1
K.JAJU BABU (SR.) FOR R3
M.P.PRAKASH, SC FOR R2
SMT.M.U.VIJAYALAKSHMI, SC FOR R3
SRI.S.VAIDYANATHAN, CGC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
31.08.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

72



JUDGMENT

S. Manikumar, C. J.

Petitioner has sought for the following reliefs:-

"i. To issue a writ of certiorari calling for the records leading to Exhibits. P1 recommendation and P2 environmental clearance and quash the same in so far as it allows the reclamation and construction of "High Court Terminal" as a part of "Kochi Water Metro Project";

ii. To issue a writ, direction or order in the nature of mandamus commanding the 3rd respondent to remove the constructions which is already made in the backwaters under the guise of "High Court Terminal" as a part of "Kochi Water Metro Project" and restore the water body within a time limit failure to which the 2nd respondent be directed to take immediate steps to remove the said construction;

iii. To issue a writ, direction or order in the nature of mandamus or such other appropriate writ, direction or order commanding the the 2nd respondent to consider Exhibit P6 representation made by this petitioner to cancel the Exhibit P1 CRZ clearance granted to the 3rd respondent in so far as it relates to the High Court jetty, Major Terminal as part of Kochi Metro Project;

73



iv. To issue a writ, direction or order in the nature of mandamus or such other appropriate writ, direction or order commanding the 1st respondent to consider Exhibit P7 representation made by this petitioner to cancel the Exhibit P2 environmental clearance given to the 3rd respondent in so far as it relates to the High Court jetty, Major Terminal as part of Kochi Metro Project"

2. Short facts leading to the writ petition are as hereunder:-

Instant public interest writ petition is filed challenging the reclamation and construction of High Court jetty, Major Terminal as part of Kochi Metro Project in Vembanad Backwaters on the western side of the Cochin Marine Drive walkway.

According to the writ petitioner, the Kochi Metro Rail Ltd., represented by its Managing Director, Kochi, the 3rd respondent, obtained CRZ and Environmental Clearances for the entire project, wherein they have only allowed constructing of "jetty". Petitioner has contended that construction of "jetty" will not affect the free flow of natural water, whereas, reclamation for the construction of a terminal building will affect the free flow of natural course of sea water. It is further contended that the first condition of EC itself indicates that it prohibits construction in violation of CRZ, which is being violated. It

4



is also contended that Vembanad backwater is reclaimed by obstructing the natural flow of sea water, an activity which is severely damaging the ecology.

3. When the matter came up for admission on 22.07.2021, we directed Mr. P. Vijayakumar, learned Assistant Solicitor General of India, to take notice on the 1st respondent. Mr. M. P. Prakash took notice for the 2nd respondent. Ms. M. U. Vijayalakshmi, Standing Counsel, took notice on behalf of the 3rd respondent.

4. Kochi Metro Rail Ltd., represented by its Managing Director, Kochi, the 3rd respondent, has filed a detailed counter affidavit. Relevant paragraphs are extracted hereunder:-

"11. The averments contained in paragraph 1 are frivolous and preposterous, hence denied. No permanent reclamation or violation of Coastal Regulation Zone Notification, 2011 (CRZ Notification, 2011) is planned or professed as claimed. The present writ petition, camouflaged as a PIL is marred with clandestine personal interests of the petitioner. Had he been genuinely interested in public interest, he would have welcomed the earliest implementation of the Project, which will alleviate and soothe the multi decade long mobility extremity faced by the islanders of Kochi. The averment that illegal constructions are undertaken by illegal reclamation of backwater

5



75

is not true, frivolous and vitiated by malevolence and denied in its entirety.

12. The averments contained in paragraphs 2 to 3 regarding implementation of the Project by this respondent and grant of necessary clearances and approvals by the 1st and 2nd respondent for the same are correct. The averments contained in paragraph 4 of the writ petition are twisted with a view to mislead this Hon'ble Court. The averment that a Major Terminal of the Kochi Water Metro Project is on the western side of Cochin Marine Drive Walkway is a misleading statement and hence denied. There is no Terminal of Water Metro called 'Major Terminal,' but the said area will house the High Court Terminal of the Project. The averment that backwater is reclaimed for accommodating 2376 Sq. Meters of the High Court Terminal is frivolous and preposterous, hence denied. It is submitted that the temporary bund or land fill method is only a temporary measure to carry on the piling activities and to create a platform for stationing and operating construction equipment. The said option is adopted as the most appropriate and safe method to conduct the piling activities in order to avoid damage to the adjoining structures. Other options will require extensive dredging near the shore to install pile rigs which may weaken the adjoining structures and lead to collapse of the existing broad walk and approach which is still open to the general public. It is respectfully submitted that in line with the assurance made by this respondent in Ext.R3(b), restoration of the area has already commenced. The works including piling, pile cap construction and grade beams have been completed. The slab construction has

6



been on hold for removal of the landfill and the delay entire process was due to the COVID pandemic and resultant shortage of manpower to the Contractor. It is respectfully submitted that Ext.P3 is not a legible document and hence the genuineness of the same is disputed.

13. It is respectfully submitted that the averments contained in paragraph 5 are frivolous and preposterous, hence denied. All necessary statutory clearances have been obtained by this respondent for implementation of the Project. The layout of the terminal was submitted before and was rigorously scrutinised by the 2nd respondent and recommendation for clearance was given after considering all relevant aspects. Pursuant to the said recommendation, the final clearance was given by the first respondent on 01.10.2019. The averment that the Terminal is being constructed as CRZ-IVA is preposterous and fallacious, hence denied. The area in which the High Court Terminal is proposed falls in CRZ -II area and the said aspect was pointed out by the 2nd respondent also in its counter affidavit filed in WP(C) 9959/2020. The averment that the present construction though named as 'jetty' is a building is a twisted statement aimed at creating a misleading impression before this Hon'ble Court that the High Court Terminal is a building being constructed for some other purpose. While dealing with similar arguments, the Learned Single Judge in Ext. P8 had specifically laid down that the term 'boat jetty' would include not only the landing terminal but also appurtenant building. The narrow meaning attributed by the petitioner that 'jetty' is a long structure built out into water and used as a place to get on, get off, or tie up a boat is nonsensical

7



77

and is not at all applicable to the present scenario. Water Metro is not akin to the conventional system where tickets are offered inside the boat and where boats are tied up to piers used for boarding and disembarkation of people. The Water Metro Terminal encompasses landing area, passenger waiting area and ticket counter which all cater to the operation of water metro and it is ludicrous to state that 'jetty' does not contemplate the construction of a building. It is respectfully submitted that the test shall be whether the Terminal is for facilitating the operation of Water Metro or for other purposes. Constructing different buildings for ticket counter, waiting area and other facilities is infeasible, will entail higher costs and will only be a loss to the public exchequer. It is highly regretful to note that the petitioner is challenging the statutory clearances after nearly two years and when critical works have already been completed spending substantial amount of public money. It is also pertinent to note that the petitioner was not concerned even during the pendency of WP(C) 9959/2020 and the sudden concern expressed by the petitioner after keeping mum all these years points to his surreptitious motives to defeat implementation of the Project.

14. It is respectfully submitted that the averments contained in paragraphs 6 and 7 are frivolous and unfounded, hence denied. This respondent has not resorted to permanent reclamation for construction of the High Court Terminal as averred by the petitioner. The construction of temporary bund was only aimed at facilitating the construction activities for the reasons stated in paragraph 10 above. The process of restoration of the area has already commenced and there will not be any

78

8



disturbance to the natural flow of water or adverse impact on coastal ecology as averred.

15. It is respectfully submitted that the averments contained in paragraph 8 are misleading and baseless, hence denied. The averment that 'the 3rd respondent has now started the has now started the construction' itself points to the malice of the petitioner. The construction activities in the area has started as early as in 2019 itself. The averments that a huge building is constructed impinging the backwater, CRZ -IV A area under the guise of jetty are frivolous and preposterous, hence denied. The construction or the High Court Terminal for operation of the Water Metro Water Metro is undertaken in CRZ II area and all necessary statutory clearances are obtained and in vogue.

16. It is respectfully submitted that the averments contained in paragraph 9 is only specious and the conventional water transport system is incomparable with the Water Metro Project which have wider implications. Such a comparison will be akin to comparing conventional railway system with metro railway. It is respectfully submitted that the Water Metro is envisaged as an inclusive system aimed at intermodal connectivity with seamless accessibility and facilities even to differently abled people.

17. It is respectfully submitted that the averments contained in paragraph 10 are misconceived and misleading, hence denied. The averment that building is constructed over water body is incorrect and hence denied. The temporary bund constructed is only a temporary measure to facilitate construction of the building for the reasons stated in paragraph 10 above and

9



79

now the restoration works have also commenced. The averment that the construction of building will have severe ramifications on the coastal ecology and will lead to destruction of entire microorganisms beneath the construction are specious and are devoid of any merits. The High Court Terminal is designed as an open pile structure with floating pontoon to facilitate natural free flow of water which will create an ecosystem for marine life. The plan and structure of the building has undergone the rigours of scrutiny by various statutory authorities including the 2nd respondent and the SWAK before final recommendation/approval and is not in violation of the CRZ norms.

18. The averments contained in paragraph 11 have no nexus with the Water Metro Project. The decision of Hon'ble Supreme Court in S. Jagannath Vs. Union of India has no application in the present scenario. Setting up of shrimp aquaculture farms cannot be equated with Water Metro which is essentially a water transport system. It is respectfully submitted that the construction activities are not going on in any prohibited areas as averred, rather it is undertaken in accordance with the statutory norms complying with all the directions/mandates laid down by the 1st and 2nd respondents. All contra averments are incorrect and aimed at misleading this Hon'ble Court, hence are liable to be rejected in limine.

19. It is respectfully submitted that the averments contained in paragraph 12 is not true and malevolent hence denied. The averment that the statutory clearances are obtained suppressing material fact of construction of building by reclaiming backwater and not mere 'jetty' is devoid of any merits



and is hence vehemently denied. All relevant aspects including the plan and structure of the building were rigorously scrutinised by the 1st and 2nd respondents as well as SWAK before according the clearances. All aspects were considered in detail by the 2nd respondent and the same is evident from Ext.R3(d) communications. Moreover, there is no permanent reclamation of backwaters for construction of any building as averred. The averment that this respondent played fraud on the 1st and 2nd respondent in obtaining clearances is a defamatory statement aimed at maligning the reputation of this respondent. It is respectfully submitted that Exts. P6 and P7 alleged to be issued by the petitioner for cancellation of the clearances without any basis proves the malice of the petitioner and sheds light on his covert design to thwart implementation of the Project.

20. It is respectfully submitted that the averments contained in paragraph 13 are not fully correct. The averment that reclamation and construction of building on the reclaimed land is not raised or considered in WP(C).9959/2020 is incorrect as evident from Ext.R3(a) and R3(b) and hence denied. There were specific pleadings alleging reclamation in the said writ petition and this respondent has filed counter affidavit specifically denying and explaining the said allegations as stated earlier. The learned Single Judge has inquisitively considered the said aspects while dismissing the writ petition as lacking merit. The petitioner who should be aware of the said aspect evident from Ext.R3(b) as filed in the above Writ Petition without disclosing those material aspects from this Hon'ble Court with a view to make it appear that he is approaching this Hon'ble Court



in public interest against reclamation. It is reasonably suspected and apprehended that the petitioner being a resident of Ashoka Apartments, like the petitioner in WP(C).9959/2020, has filed above writ petition in the personal interest under the guise, of public interest.

21. The averments contained in paragraph 14 is devoid of any merits and are hence denied in its entirety. The questions raised by the petitioner has already been set to rest by Ext.P8 judgment which has attained finality. The petitioner without perceiving the basic technical aspects of the Project is attempting to draw a narrow definition for jetty to make an impression that the Water Metro Terminal is not a jetty. This respondent has conducted necessary studies and analysis, passed the rigors of scrutiny and inspection by relevant statutory authorities and had obtained all requisite permissions including environmental clearance for implementation of the Project. The construction activities undertaken by this respondents are in line with the statutory provisions, statutory clearances and CRZ norms. The petitioner has no locus standi to approach this Hon'ble Court. The petitioner has approached this Hon'ble Court with untidy hands and malevolent intention. As such, there is nothing in the present writ petition requiring intervention of this Hon'ble Court.

22. It is respectfully submitted that as submitted before this Hon'ble Court in WP(C) 9959/2020, after the piling activities, removal of the temporary bunding has started and about 40% of the area is restored to its original condition. The removal will be completed in the month of September 2021. The inauguration of the Water Metro Boat service is also expected

12



during September 2021. Any interference at this point of time will adversely affect the implementation of the Project as well as the time line for completion and may also tend to reduce confidence of the foreign lender in the Project implementation. Moreover, delay of any sort at this juncture will also result in cost escalation and claims from the contractor which in turn will have an unpropitious effect on the state exchequer as well. In the above circumstances, it is humbly prayed that the petitioner is not entitled to any of the reliefs prayed for in the writ petition.

The questions raised in the writ petition have already been considered and settled by this Hon'ble Court in Ext.P8 judgment. The present writ petition, marred by malafides and blemished with clandestine personal interests may be dismissed with costs to this respondent."

5. Based on the above, Mr. Jaju Babu, learned Senior Counsel appearing for the 3rd respondent, submitted that earlier, construction of the Jetty, was challenged by a neighbour of the writ petitioner, and that a learned Single Judge by judgment dated 13.01.2021 in W. P. (C) No. 9959 of 2020, dismissed the writ petition.

6. Learned Senior Counsel further submitted that after the piling activities, removal of the temporary building has started, and that about 40% of the area has been restored to its original condition. He also submitted that inauguration of the Water Metro Boat Service is

13



83

likely to be completed in September 2021.

7. The Union of India, Ministry of Environment, Forests and Climate Change, represented by its Deputy Director General of Forests (C), Bangalore, the 1st respondent, and the Kerala Coastal Zone Management Authority, represented by its Secretary, Thiruvananthapuram, the 2nd respondent, are yet to file their respective counter affidavits. Posed with a question as to why the petitioner has not moved the National Green Tribunal, for appropriate reliefs, Mr. P. B. Sahasranaman, learned counsel for the petitioner, submitted that Ext. P2 dated 01.10.2019, has not been uploaded in the website, and thus, the petitioner could not move the National Green Tribunal.

8. However, going through the reliefs sought for, though petitioner has prayed to issue a writ of certiorari to quash Ext. P1 recommendation and Ext. P2 environmental clearance, at prayer No. 3, he has also sought for a mandamus directing the Kerala Coastal Zone Management Authority, represented by its Secretary, Thiruvananthapuram, the 2nd respondent, to consider Ext. P6 representation dated 15.06.2019, submitted by the petitioner, to the Chairman, Kerala Coastal Zone Management Authority,

84

14



Thiruvananthapuram, to cancel Ext. P1 clearance granted to Kochi Metro Rail Ltd., represented by its Managing Director, Kochi, the 3rd respondent, in so far as it relates to High Court Jetty, Major Terminal as part of Kochi Metro Project.

9. In relief No. 4, he has also sought for a direction to the Union of India, Ministry of Environment, Forest and Climate Change, represented by its Deputy Director General of Forests (C), Bangalore, the 1st respondent, to consider Ext. P7 representation dated 01.10.2019, submitted by the petitioner, to cancel Ext. P2 environmental clearance given to the Kochi Metro Rail Ltd., represented by its Managing Director, Kochi, the 3rd respondent, in so far as it relates to the High Court Jetty, Major Terminal as part of Kochi Metro Project.

When the abovesaid representations Exts. P6 and P7, respectively, having been submitted to the authorities stated supra, for canceling Exts. P1 and P2 certificates, for the reasons contained therein, it would not be appropriate for this Court to quash the same by issuance of a writ of certiorari. If Exts. P6 and P7, as stated by the writ petitioner, have been submitted to respondents 2 and 1



respectively, and if the same are pending on the file of the above said respondents, Exts. P6 dated 15.06.2019 and Ext. P7 dated 01.10.2019, be disposed of by the competent authorities, as expeditiously as possible, within one month from the date of receipt of a copy of this judgment.

With the above directions, writ petition is disposed of.

Sd/-

S. MANIKUMAR
CHIEF JUSTICE

Sd/-

SHAJI P. CHALY
JUDGE

Eb

///TRUE COPY///

P. A. TO JUDGE

16



APPENDIX OF WP(C) 14014/2021

PETITIONER EXHIBITS

- EXHIBIT P1 TRUE PHOTOSTAT COPY OF THE LETTER SENT BY THE 2ND RESPONDENT TO THE 1ST RESPONDENT, DATED 15.6.2019
- EXHIBIT P2 TRUE PHOTOSTAT COPY OF THE ENVIRONMENTAL CLEARANCE GRANTED BY THE 1ST RESPONDENT FOR THE KOCHI WATER METRO PROJECT NO.F.NO.10-39/2017 -IA-III, DATED 1.10.2019
- EXHIBIT P3 TRUE PHOTOSTAT COPY OF THE 'LAYOUT OF THE HIGH COURT TERMINAL' PREPARED BY THE 3RD RESPONDENT
- EXHIBIT P4 SOME PHOTOGRAPHS OF THE CONSTRUCTIONS COMMENCED BY THE 3RD RESPONDENT FOR THE HIGH COURT-MAJOR TERMINAL OF KOCHI WATER METRO PROJECT AS ON 1.7.2021
- EXHIBIT P5 SOME PHOTOGRAPHS OF THE ERNAKULAM BOAT JETTY AT MARINE DRIVE MAINTAINED BY THE STATE WATER TRANSPORT DEPARTMENT
- EXHIBIT P6 TRUE PHOTOSTAT COPY OF THE LETTER SENT BY THE PETITIONER TO THE 2ND RESPONDENT BY EMAIL
- EXHIBIT P7 TRUE PHOTOSTAT COPY OF THE LETTER SENT BY THE PETITIONER TO THE 1ST RESPONDENT
- EXHIBIT P8 TRUE PHOTOSTAT COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN W.P.(C) NO.9959 OF 2020, DATED 13.1.2021

HON'BLE COURT IN W.P.(C) NO. 14014 OF 2021

RECEIVED

my

IN THE SUPREME COURT OF INDIA

ORDER XXI RULE 3 (1) (a)

CIVIL APPELLATE JURISDICTION

(Under Article 136 of the Constitution of India)

SPECIAL LEAVE PETITION (C) NOS. _____ OF 2021

WITH PRAYER FOR INTERIM RELIEF

{Arising from the impugned final Judgment and Order dated 31.08.2021 passed by the Hon'ble High Court of Kerala at Ernakulam in W.P. (C) No 14014 of 2021)

IN THE MATTER OF:

PARTIES POSITION

		In the High Court	Before Hon'ble this Court
	K.G.PRATHAPA SIMHAN AGED 82 YEARS SON OF GOPALA PANICKKER, A-53, ASHOKA APARTMENTS, HIGH COURT JUNCTION, ERNAKULAM, COCHIN 682 031, KERALA	Petitioner	Petitioner
	Versus		
1	UNION OF INDIA MINISTRY OF ENVIRONMENT, FORESTS AND CLIMATE CHANGE, REP. BY ITS DEPUTY DIRECTOR GENERAL OF FORESTS (C), REGIONAL OFFICE (SZ) KENDRIYA SADAN, 4TH FLOOR, E AND F WINGS, 17TH MAIN ROAD, KORAMANGALA II BLOCK, BANGALORE 560 034, KARNATAKA	Respondent No.1	Contesting Respondent No.1

98

18

2	KERALA COASTAL ZONE MANAGEMENT AUTHORITY REP. BY ITS SECRETARY, DIRECTORATE OF ENVIRONMENT AND CLIMATE CHANGE DEVIKRIPIA, PALLIMUKKU, PETTAH P.O, THIRUVANANTHAPURAM 695 024, KERALA	Respondent No.2	Contesting Respondent No.2
3	KOCHI METRO RAIL LTD. REP. BY ITS MANAGING DIRECTOR, REGISTERED OFFICE, 3RD FLOOR, MATHEW SONS BUILDING, OPPOSITE VYTILA HUB, VYTILA, KOCHI 682 019, KERALA	Respondent No.3	Contesting Respondent No.3

To
THE HON'BLE THE CHIEF JUSTICE OF INDIA
AND HIS COMPANION JUSTICES OF
THE SUPREME COURT OF INDIA

THE HUMBLE PETITION OF
THE PETITIONERS ABOVE NAMED

MOST RESPECTFULLY SHOWETH:

1. That the Petitioner prefers this Special Leave Petition against the impugned final Judgment and Order dated 31.08.2021 passed by the Hon'ble High Court of Kerala at Ernakulam in W.P. (C) No 14014 of 2021, whereby the Hon'ble High Court disposed off the writ petition with a direction to consider the representation made by the petitioner to respondents No. 1 and 2 in haste, without granting an opportunity to the petitioner to file a rejoinder affidavit to the counter affidavit filed by respondent No. 3, especially in a matter involving CRZ violations.

2. QUESTIONS OF LAW:-

2.1 Whether after obtaining sanction for the construction of a 'jetty', a 'terminal' wherein passengers can sit and refresh, having a plinth area of 2432 sq meters, out of which 2376 sq m is in the area reclaimed from the Vembanad backwaters can be constructed, as part of the Kochi Water Metro Project, in view of the following:-

(i) the area has been declared as a Ramsar Site in the year 2002, in response to Article 2.1 of the Convention on Wetlands (Ramsar, Iran, 1971)?

(ii) the area is a part of Vembanad Backwaters, which is defined as a Critically Vulnerable Coastal Area in the Coastal Zone Regulations, 2011?

(iii) the area is classified as falling within CRZ-IV in the Coastal Zone Management Plan of Kerala prepared as per CRZ Notification, 2011 and as per Clause 8 (IV) in such areas, activities impugning on the sea and tidal influenced water bodies will be regulated except for traditional fishing and related activities undertaken by local communities and therefore the construction of a terminal is a regulated activity?

(iv) this Hon'ble Court has accorded its imprimatur upon the 'area' being of immense conservation importance as it supports a large aquatic bio-diversity and is an important migrating birds habitat in its judgment titled '*Vaamika Island (Green Resort) v Union of India*' reported in 2013 (8) SCC 760?

100
90

20

(v) Rule 4 (vi) of the Wetlands (Conservation and Management) Rules, 2017, expressly prohibits any construction of a permanent nature except for boat jetties within 50 metres from the mean high flood level observed in the past ten years calculated from the date of commencement of the aforesaid Rules?

(vii) the activity of reclamation of backwater disturbs the natural flow of sea water, which will adversely damage the ecology?

2.2 Whether the High Court has not acted in haste, by disposing the Writ Petition, without granting an opportunity to the petitioner to file his affidavit in rejoinder, so as to enable him to point out the incorrect statements made in the Counter Affidavit of Respondent No:3? Was the entire approach of the High Court in disposing of the Writ Petition, relying only on the affidavit filed by Respondent No:3, without giving the petitioner an opportunity of Rejoinder and without waiting for the affidavits of Respondents No:1 and 2, just and proper?

2.3 Whether the approach of the High Court in disposing of the Writ Petition directing the Respondents, who turned a blind eye in granting the necessary clearances to Respondent No:3, without having regard to the clause 8 (IV) of Coastal Regulation Zone 2011, Rule 4 (iv) of the Wetlands (Conservation and Management) Rules, 2017, judgment titled '*Vaamika Island (Green Resort) v Union of India*' reported in 2013 (8) SCC 760, to consider the representation of the petitioner, is just and proper, in a matter which has widespread ecological and environmental ramifications?

21 91
2.4 Whether the Hon'ble High Court ought not to have taken the services of the independent bodies to verify the allegation regarding violation of CRZ Act & Rules?

2.5 When the requisite permissions/ clearances were taken for construction of a 'jetty' with a maximum height of 8.8 metres and when the structure under construction is expected to reach a height of 18 metres, Hon'ble High Court ought not to have taken a casual approach and instead ought to have made an effort to examine whether the said construction is strictly in consonance with the statutes?

2.6 Whether the 3rd respondent has got a right to reclaim the *Vembanad* backwaters and construct building in an area which is classified as CRZ-IV in the Coastal Zone Management Plan of Kerala prepared as per CRZ Notification, 2011?

2.7 Whether construction of a building in the name of "High Court terminal" can be equated to construction of a "Jetty" which is constructed over the water to reach the vessel or boat, in terms of the impact on the environment?

3. DECLARATION IN TERMS OF RULE 3(2):

The petitioner state that no other petition seeking Leave to Appeal has been filed by the petitioners against the impugned final Judgment and Order dated 31.08.2021 passed by the Hon'ble High Court of Kerala at Ernakulam in W.P. (C) No 14014 of 2021.

92

22

4. DECLARATION IN TERMS OF RULE 5:

Annexure P1 to P-6 produced along with the Special Leave Petition are the true copies of the documents which form part of the records of the case in the court below against whose order leave to appeal is sought for in this petition.

5. **GROUND:-**

5.1 That it is most respectfully submitted that after obtaining sanction for the construction of a 'jetty', a 'terminal' wherein passengers can sit and refresh, having a plinth area of 2432 sq meters, out of which 2376 sq m is in the area reclaimed from the Vembanad backwaters cannot be constructed, as part of the Kochi Water Metro Project in view of the following:-

- (i) the area has been declared as a Ramsar Site in the year 2002, in response to Article 2.1 of the Convention on Wetlands (Ramsar, Iran, 1971);
- (ii) the area is a part of Vembanad Backwaters, which is defined as a Critically Vulnerable Coastal Area in the Coastal Zone Regulations, 2011;
- (iii) the area is classified as falling within CRZ-IV in the Coastal Zone Management Plan of Kerala prepared as per CRZ Notification, 2011 and as per Clause 8 (IV) in such areas, activities impugning on the sea and tidal influenced water bodies will be regulated except for traditional fishing and related activities undertaken by local communities and therefore the construction of a terminal is a regulated activity;

(iv) this Hon'ble Court has accorded its imprimatur upon the 'area' being of immense conservation importance as it supports a large aquatic bio-diversity and is an important migrating birds habitat in its judgment titled '*Vaamika Island (Green Resort) v Union of India*' reported in 2013 (8) SCC 760;

(v) Rule 4 (vi) of the Wetlands (Conservation and Management) Rules, 2017, expressly prohibits any construction of a permanent nature except for boat jetties within 50 metres from the mean high flood level observed in the past ten years calculated from the date of commencement of the aforesaid Rules;

(vii) the activity of reclamation of backwater disturbs the natural flow of sea water, which will adversely damage the ecology.

5.2 Because the Hon'ble High Court ought to have appreciated the dictum of this Hon'ble Court in the matter titled '*Vamika Island (Green Lagoon Resort) Vs Union of India & Ors*' reported in 2013 (8) SCC 760, wherein this Hon'ble Court has specifically dealt with the environmental issue with regard to the Vembanad wet land. The Court has at paras 13 & 14 underlined the importance of Vembanad Lake:-

'13...Vembanad lake plays an important role in the ecology and economy of the South West coast of India. Vembanad lake along with adjacent Kol land, wetlands is a complex system of backwaters, marshes, lagoons, mangrove forests, reclaimed land and an intricate network of natural, man-made canals. The lake is fed by six rivers falling from Western Ghats. Vembanad lake was declared as a

Ramsar Site in the year 2002. Ramsar site was published in response to Article 2.1 of the Convention on Wetlands (Ramsar, Iran 1971).....'

'14.... Vembanad Backwaters has been defined as a CVCA (Critically Vulnerable Coastal Area) as per 2011 Notification. The lake has immense conservation importance as it supports a large aquatic biodiversity and the most important migrating birds habitat. Vembanad Lake conserves as a habitat to a variety of fin and shell fish and a nursery of several species of aquatic life. Considering the fragile ecosystem of the wetland, deterioration of water quality and consequent damage to aquatic organisms and shrinkage of Vembanad Lake, this wetland system was included in the National Lake Conservation Programme (for short 'NLCP') by the National River Conservation Authority under MoEF. which supports exceptionally large biological diversity and constitute the second largest wetland in India. There are several islands in and around Vembanad Backwaters. The State of Kerala had decided to establish Vembanad Eco-Development Authority towards the implementation of projects for restoration and regeneration of Vembanad Lake. The shrinkage of Vembanad lake as a result of land reclamation has resulted in damaging environmental consequences of various human interventions. Vembanad Lake, it is well known, is undergoing severe environmental degradation due to increased human interventions which is of serious concern for the State of Kerala as well as the country at large.'

25 95

5.3 Because the Hon'ble High Court failed to appreciate that the clearance granted by Respondent No.1 for construction of Kochi Water Metro Project, has granted not only reclamation but building of High Court Terminal in CRZ, which is in complete violation of Rules and land.

5.4 That the Hon'ble High Court failed to appreciate that Respondent No:3 had no right to reclaim the backwaters impeding the free flow of backwater and construct building on it under the guise of "jetty". Such a construction will have an adverse impact over the coastal ecology. Respondents No: 1 & 2 ought to have taken immediate steps to stop such illegal activities and cancelled the clearances granted to Respondent No:3 for the Kochi Metro Project. Respondents No:1 & 2 have miserably failed in discharging their duties entrusted to them under Article 48A of the Constitution of India.

5.5 That the Hon'ble High Court failed to appreciate that the water part impinging the Cochin Marine Drive Walkway, where Respondent No:3 proposed to construct the "*High Court Terminal*" is Coastal Regulation Zone area, Category -IV as per CRZ Notification, 2011. Construction of buildings on such area is not a permitted activity. Only activity which require water front facilities are permitted as per Clause 8 (IV). Respondent No:3 cannot construct a building under the guise of jetty.

5.5.1 For ready reference, Clause 8 (IV) of the CRZ, 2011 is reproduced hereunder:

"8. Norms for regulation of activities permissible under this notification,

(IV) In CRZ-IV areas, - The activities impugning on the sea and tidal influenced water bodies will be regulated except for traditional fishing and related activities undertaken by local communities as follows:-

(a) No untreated sewage, effluents, ballast water, ship washes, fly ash or solid waste from all activities including from aquaculture operations shall be let off or dumped. A comprehensive plan for treatment of sewage generating from the coastal towns and cities shall be formulated within a period of one year in consultation with stakeholders including traditional coastal communities, traditional fisherfolk and implemented;

(b) Pollution from oil and gas exploration and drilling, mining, boat house and shipping;

(c) There shall be no restriction on the traditional fishing and allied activities undertaken by local communities."

5.6 The Hon'ble High Court failed to appreciate that there is a vast difference between a terminal and jetty. Jetty is a structure of wood or stone extended into the sea to influence the current or tide, or to protect a harbour or beach, whereas a terminal is a place where people can wait till they are called for boarding. Such places do not require water front.

5.7 That the Hon'ble High Court failed to appreciate the place where huge constructions are now being carried out are specifically referred to as ecologically sensitive areas. It has been found by this Hon'ble Court that *Vembanad* Lake is presently undergoing severe environmental degradation due to increased human intervention in the matter titled '*Vaamika Islands vs Union of India*' reported in 2013 (8) SCC 760. Suo moto proceedings were initiated against several persons who have made constructions by this Hon'ble Court. Subsequently, the said proceedings were transferred to this Hon'ble Court for consideration as writ petition. The said writ petition is still pending consideration before this Hon'ble Court as *In Re Vembanad Lake Kerala*, W.P.(C)No. 25460 of 2016.

5.8 The Hon'ble High Court ought to have appreciated that while granting environmental clearance, a condition was imposed to the effect that it should be in accordance with the CRZ Notification, 2011. The present activity of reclamation of backwater and construction on the said land is in absolute violation of CRZ Notification, 2011. Respondents No: 1 & 2 have miserably failed in their statutory duties to ensure strict compliance of the same and allowed illegal constructions in the name of public transport system.

5.9 The Hon'ble High Court failed to appreciate that Respondent No.3 was allowed to construct a boat jetty with the specific condition that except the boat jetty, no other building having permanent nature within 50 meters from the boundary of wetland is

a permissible activity. The above restriction was in consonance with the provisions contained in Rule 4 of the Wetlands (Conservation & Management) Rules 2017.

5.10 That the Hon'ble High Court failed to appreciate Rule 4(iv) of the Wetlands (Conservation & Management) Rules 2017 which read as under ;

"4. (1) *Restrictions of activities in wetlands: The wetlands shall be conserved and managed in accordance with the principle of 'wise use' as determined by the Wetlands Authority.*

(2) *The following activities shall be prohibited within the wet lands , namely*

i....

ii....

vi... *Any construction of permanent nature except for boat jetties within fifty meters from the mean high flood level observed in the past 10 years calculated from the date of the commencement of these Rules."*

Therefore, construction of the "High Court Terminal" is absolutely Illegal.

6. GROUNDS FOR INTERIM RELIEF:-

6.1 That the Petitioner has prima facie good case and balance of convenience is also in his favour. The Petitioner has fair chance of success before this Hon'ble Court. It is therefore just and necessary that this Hon'ble Court may be pleased to stay the operation of the impugned order to the Petitioner during the pendency of the Special Leave Petition.

29

99

7. PRAYER

In the light of the aforesaid facts and circumstances of the case and in the interest of justice, the Petitioner most respectfully pray that this Hon'ble Court may be graciously pleased to:

- (a) grant Special Leave to Appeal against the impugned final Judgment and Order dated 31.08.2021 passed by the Hon'ble High Court of Kerala at Ernakulam in W.P. (C) No 14014 of 2021 ; and
- (b) pass such other and other order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

8. - PRAYER FOR INTERIM RELIEF:

- a) Pass an ad-interim ex-parte order staying the operation of impugned final Judgment and Order dated 31.08.2021 passed by the Hon'ble High Court of Kerala at Ernakulam in W.P. (C) No 14014 of 2021; and
- b) stay further construction activities made under the guise of '*High Court Terminal*' as part of the Kochi Water Metro Project, during the pendency of the present Special Leave Petition;

100

30

- c) pass such other order or orders as deem fit and proper in the facts and circumstances of the case.

AND FOR THIS ACT OF KINDNESS, THE PETITIONER AS IN DUTY BOUND, SHALL EVER PRAY.

Drawn and Filed by:

**SANAND RAMAKRISHNAN
ADVOCATE FOR THE PETITIONER**

Drawn on : 16.09.2021

Filed on 17.09.2021

Place: New Delhi

31 101

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
SPECIAL LEAVE PETITION © No: OF 2020**

IN THE MATTER OF :-

K.G. Prathapa Simhan

...PETITIONER

VERSUS

Union of India and Others

...RESPONDENTS

CERTIFICATE

Certified that the Special Leave Petition is confined only to the pleadings before the Court whose order is challenged and the documents relied upon in those proceedings. No additional facts, documents or grounds have been taken or relied upon in the Special Leave Petition. It is further certified that the copies of the documents/annexures attached to the Special Leave Petition are necessary to answer the questions of law raised in the Petition or to make out grounds urged in the Special Leave Petition for the consideration of this Hon'ble Court. This certificate is given on the basis of the instructions given by the Petitioners authorized by the Petitioners whose affidavit is filed in support of the SLP.

Filed by:

**(SANAND RAMAKRISHNAN)
Advocate for the Petitioner**

Place: New Delhi
Dated: 17.09.2021

102

32

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (C) No: OF 2021

IN THE MATTER OF:

K.G. Prathapa Simhan

...PETITIONER

VERSUS

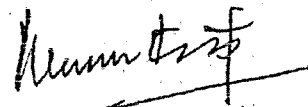
Union of India and Others

...RESPONDENTS

AFFIDAVIT

I, K.G.Prathapa Simhan, aged 82 years, Son of Gopala Panickker, Residing at A-53, Ashoka Apartments, High Court junction, Ernakulam, Cochin-682031, Presently at New Delhi, do hereby solemnly affirm and state as under :-

1. That I am the petitioner in the above matter and am conversant with the facts and circumstances of the case. As such I am competent to swear this affidavit.
2. That I have read and understood the contents of para Nos. 1 to on page Nos. 12 to 33 of the accompanying Special Leave Petition and state that the facts stated in the petition are true to my knowledge and belief. Parties to the present Petition are the same as they were before the Court below.
3. That I have read the accompanying list of dates and events from page B to Land prayers for Interim Reliefs and say that what is stated therein is true to my knowledge and belief.



**BEFORE THE HON'BLE NATIONAL
GREEN TRIBUNAL
SOUTHERN ZONAL BENCH,
CHENNAI**

**ORIGINAL APPLICATION No. 34 of
2022**

K. G. Prathapa Simhan :
Applicant

Vs.
Union of India and others
:
Respondents

INDEX TO TYPED SET OF PAPERS

Handwritten signature or initials, possibly 'T/c' with a flourish below.

M/s.FOX MANDAL & ASSOCIATES

Counsel for the 3rd Respondent