

M/s. Vaamika Island (Green Lagoon Resort)

v.

Union of India & Others

(Supreme Court Of India)

HON'BLE MR. JUSTICE K.S. RADHAKRISHNAN HON'BLE MR. JUSTICE
A.K. SIKRI

Special Leave to Petition (Civil) No. 24390-24391 Of 2013 | 08-08-2013

K.S. Radhakrishnan, J.

1. Vembanad Backwater is a Critically Vulnerable Coastal Area (for short "CVCA"), which supports exceptionally large biological diversity and constitutes the second largest wetlands in India. There are several islands in and around Vembanad Backwaters of which Vettilla Thuruthu is one amongst them.

2. SLP - petitioner preferred a Writ Petition (Civil) No. 2947 of 2013 before the High Court of Kerala seeking a declaration that few items of its properties, described therein, approximately 5.21 acres were wrongly included in Map No. 32A of the Coastal Zone Management Plan (for short "CZMP") prepared by the Kerala Coastal Zone Management Authority (for short "KCZMA") and hence ultra vires the Coastal Regulation Zone (CRZ) Notification, 1991 (for short "Notification 1991") and CRZ Notification, 2011 (for short "Notification 2011"). Petitioner has also sought for a declaration that classification of its properties situated in Vettilla Thuruthu Island as Filtration Pond (for short "FP") and the consequent categorization of the same under CRZ-I is unconstitutional, being ultra vires CRZ 1991 as well as CRZ 2011. The KCZMA took up the stand that CZMP for the State of Kerala was prepared based on the guidelines issued by the Ministry of Environment and Forests (for short "MoEF"), Government of India. CZMP (1995) of the State indicates the entire Vettilla Thuruthu as FP (fig. 1 : Map No. 32A of the CZMP). Notification 1991, therefore, shows the entire Vettilla Thuruthu as CRZ-I, and as per CRZ 2011, it is either CRZ-I, CRZ-III or CRZ-IV. Notification 2011 has defined Vembanad backwater as CVCA.

3. MoEF also filed a statement before the High Court, wherein it was stated that the CZMP for Kerala was prepared by the MoEF on 27.9.1996 and that the construction of beach resorts within CRZ area requires prior clearance from MoEF, based on the recommendation of the KCZMA. Further, it was also pointed out, that Category I (CRZ-I) includes the area that are ecologically sensitive and important and that the Government of India, in exercise of the powers conferred under Sub-sections (1) and (3) of Section 3 of the Environmental (Protection) Act, 1986, has notified the KCZMA as the authority for the implementation of the provisions of both Notification 1991 as well as 2011 Notification.

4. We notice that another Writ Petition No. 8299 of 2012 was preferred by the 8th respondent herein seeking a Writ of Certiorari to quash the building permit dated 30.4.2012 issued to respondents 7 and 8 therein by the Panavalli Grama Panchayath. Direction was also sought for to direct the District Collector, Alappuzha to measure and demarcate the Kayal area stated to have been encroached by respondents 7 and 8 at Vettilla Thuruthu and to declare that all such encroachment as illegal Vonstruction and liable to be demolished and removed and to restore the area in its original position and for other consequential reliefs.

5. The Division Bench of the High Court heard the above mentioned writ petitions, along with few other writ petitions, and rendered the impugned judgment, against which these SLPs have been filed.

6. Shri R.F. Nariman, learned senior counsel appearing for the petitioner, submitted that inclusion of the petitioner's property within CRZ in terms of the CZMP and Map 32A prepared thereunder and the classification of the same as FP and the categorization as CRZ-I is illegal and ultra vires the 1991 as well as 2011 Notifications. Learned senior counsel submitted that there are no "FPs" in the Island in question and no part of the island is in an area where fish are grown in large number and several families are staying on the island and, therefore, describing the same as FPs in 1995 is grossly arbitrary and illegal. Learned senior counsel submitted that although the Notification 1991 under Category I included areas to be inundated due to rise in sea level, Notification 2011 has deliberately and consciously excluded the said classification. Therefore, the categorization of the petitioner's property as CRZ-I cannot be

justified, both under the Notification 1991 as well as 2011 Notification. Shri Nariman also pointed out that assuming that the same falls within Notification 1991, the same can be included only in Category IV and not under Category I. Shri Nariman also submitted that KCZMP was prepared in a haphazard and hasty manner without conducting any scientific study and that the satellite images cannot be blindly accepted and the authenticity of such measures has to be substantiated by verification of proper ground study and no notice was ever issued to the petitioner before such a study was conducted.

7. Learned senior counsel also submitted that, by virtue of the amendment in 2002, it was mandated that the distance to which the tidal effects are experienced shall be determined based on salinity concentration of 5 parts per thousand (ppt), but no such salinity test was conducted. Salinity measurement, it was pointed out, ought to have been done for the purpose of demarcation of the notification and, without such demarcation and salinity measurement, Vettilla Thuruthu also cannot be categorized so as to fall within CRZ. Learned senior counsel also submitted that an ex parte report of Dr. Thomas was relied upon by the High Court to hold that the construction effected by the petitioner was in violation of the 1991 as well as 2011 Notification. Learned Senior Counsel also submitted that the High Court was grossly erred in placing reliance on the CZMP of 1996 which had lapsed in view of 2011 Notification. Learned senior counsel also submitted that, since the disputed questions on facts are involved, the High Court ought to have referred the matter to the National Green Tribunal, which is an expert body, constituted under the National Green Tribunal Act, 2010.

8. We are of the view that the High Court has rightly entertained the writ petition taking into consideration the larger public interest and the contention that the matter should have been referred to the National Green Tribunal cannot be accepted, in the facts and circumstances of the case, especially when the petitioner itself, has invoked the jurisdiction of the High Court.

9. We have gone through the impugned judgment, the SLP and the written statement filed by MoEF in Writ Petition No. 8299 of 2012, counter affidavit filed by KCZMA in WP (C) No. 2947 of 2013 before the High Court and the report of Dr. K. V. Thomas of CESS and Dr. Kokkal, Director, KSCSTE.

10. We are, in this case, concerned with an Island named Vettilla Thuruthu in the Vembanad Lake in the State of Kerala. Vembanad Lake plays an important role in the ecology and economy of the South-West Coast of India. Vembanad lake, along with adjacent Kol lands, wetland, is a complex system of backwaters, marshes, lagoons, mangrove forests, reclaimed land and an intricate network of natural, manmade canals etc. Lake is fed by six rivers falling from Western Ghats: Achenkovil, Pampa, Meenachil, Manimala, Muvattupazha and Periyar. Vembanad Lake is declared as a Ramsar Site in the year 2002. Ramsar list was published in response to Article 2.1 of the Convention on Wetlands (Ramsar, Iran, 1971). Wetlands included in the list acquire a new status at the national and international level and the Convention mission is the conservation and wise use of such Wetland, through local, regional and national actions and international cooperation as a contribution towards achieving sustainable development. India is a signatory to the Ramsar Convention.

11. Vembanad backwater has been defined as a CVCA as per Notification 2011. 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 the 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 the MoEF. State of Kerala has also decided to establish Vembanad Eco- Development Authority towards implementation of project for restoration and re-generation of Vembanad Lake. The shrinkage of Vembanad Lake as a result of land reclamation, has been the most damaging environmental consequence 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.

12. We have referred the above aspects only to highlight the importance of Vembanad Lake, which has got national and international recognition, and is one of the most productive eco-system.

13. We have several small islands in and around Vembanad Lake, the protection of them is of considerable importance. Proper legal framework for protecting and conserving the lake and its resources, regulation of tourism, construction of resorts on the banks, industrial, domestic, agriculture pollution etc. calls for urgent attention. The High Court, while dealing with writ petition No. 8299 of 2012, has noticed that some action has been initiated against the company under the Land Conservancy Act and that the High Court has directed to proceed with that action in accordance with law, leaving it open to the petitioner to raise all their contentions before the authorities.

14. We are, in these petitions, primarily concerned with the question as to the legality or otherwise of Map 32A of CZMP and the inclusion of the petitioner's property in the Island of Vettilla Thuruthu in the map and the question as to whether there is any illegality in the preparation of Map and whether the same is ultra vires Notifications 1991 and 2011.

15. CRZ notification was issued by MoEF in February 1991 as a part of the Environmental Protection Act of 1986 with an object to protect the coastal area from eroding and to preserve its natural resources. Under Notification 1991, the entire coastal stretch from the lowest low tide to highest high tide line and the coastal land within 500 m from the high tide line on the landward side is termed as CRZ. CRZ is classified into four categories depending on the sensitivity of the zones and prohibited and regulated activities have been listed for each zone. Later, a notification dated 18.8.1994 was issued making six amendments to the main notification and those were made on the basis of the report submitted by the B.B. Vohra Committee which was set up by the Central Government. It was noticed that having issued the main notification, no follow-up action was taken either by the coastal States, Union Territories or by the Central Government. The provisions of the main Notification appeared to have been ignored and violated with impunity and there was complete laxity in the implementation of the Act and other related statutes including the preparation of the Coastal Management Plans by the various Coastal States. In *Indian Council for Enviro-Legal Action v. Union of India* (1996) 5 SCC 281, this Court elaborately dealt with the scope of CRZ-I, CRZ-II, CRZ-III and CRZ-IV and noted with concern the delay on the part of the various States in not implementing the main notification as well as not preparing the Coastal Management Plans for proper implementation of Notifications 1991 as well as 1994. The Court directed the Central Government to set up, under Section 3 of the Environmental Protection

Act, State Coastal Management Authorities in each State or Zone and also the National Coastal Management Authority.

16. The Central Government, following the directions given by this Court as well as in exercise of its powers conferred by Sub-sections (1) and (3) of Section 3 of the Act, constituted KCZMA vide its notification dated 21.7.2008 which was published in the Gazette of India :Extraordinary Part II. The Authority has been entrusted with the power to examine the proposals for changes or modification in classification of CRZ areas and in CRZMP received from the State Government and to make specific recommendations to the National Coastal Zone Management Authority. It has also the power to deal with environmental issues relating to CRZ which may be referred to it by the State Government, the National Coastal Zone Management Authority or the Central Government. The Authority is also entrusted with the power to identify ecologically sensitive areas in the CRZ and to formulate area-specific management plans for such identified areas. The Authority is also empowered to identify coastal areas highly vulnerable to erosion or degradation and formulate area-specific management plans for such identified areas. The authority is further obliged to submit the plans prepared by it to the National Coastal Zone Management Authority for examination and its approval. Various other powers have also been entrusted to KCZMA by the above mentioned notification.

17. CZMP, 1995 of the State shows the entire Vettala Thuruthu as FP (Fig.1:Map No. 32A of CZMP). CZMP described FP as : another fish spawning/breeding ground and these are shallow water bodies adjoining the backwater system where certain species of fish are grown in large numbers. The 50m belt adjoining it is also demarcated as CRZ-I, since this area is low lying, it is likely to be inundated due to Sea Level Rise (SLR). Hence, the entire Vettala Thuruthu is described as CRZ-I as per Notification 1991 and, as per Notification 2011, it is described as either CRZ-I, CRZ-III or CRZ-IV. New constructions are not permitted in CRZ-I, the No Development Zone of CRZ-III and in CRZ-IV. Repairs of existing structures can be permitted in No Development Zone of CRZ-III subject to conditions for permissible activities as per the notification. Tourism activity is also not permitted in the No Development Zone of CRZ-III or CRZ-I.

18. CRZ for Kerala in CRZ 2011 also prohibits new construction within 50 mtr. from High Tide Line and only dwelling units of local communities could be repaired or re-constructed.

19. KCZMP was prepared, as already indicated, based on the guidelines of MoEF, taking care of the Maps prepared by the Survey of India (Government of India) and cadastral maps prepared by the Survey Department of Kerala Government were used as base map for preparation of CZMP of the State. The area between Low Tide Line and High Tide Line is also CRZ-I. The FPs, as already indicated, are shallow water bodies which are spawning/breeding area of fishes and hence, as per notification, they are CRZ-I.

20. CRZ 2011 has been made applicable with effect from 06.01.2011. CZMP is being prepared on CRZ 2011, at that time the plan prepared on the basis of 1991 Notification would be 'in force'. Coastal Plan prepared on the basis of 1991 Notification, clearly shows Vettala Thuruthu as 'FP'. We do concur with the view of the High Court that islands could be coastal stretches of river or backwater or backwater islands in Kerala are clearly covered by CRZ-I. It cannot fall under either on CRZ-III or CRZ-IV. We also fully endorse the view of the High Court that even before the Salinity Test was incorporated in the year 2002, reliance was placed on that test, on the basis of 5 ppt, which was made as per standard measurements technique in Pails per thousand. Satellite imagery is also, in our view, is one of the best scientific indicators to know, when was the construction effected in violation of CRZ which, in our view, has been correctly applied in this case.

21. We, therefore, find no illegality in the Map prepared by CZMP as well as the techniques employed to ascertain works/constructions have been made in violation of CRZ 1991 as well as 2011.

22. The Petitioner had effected the construction in violation of the provisions of Notifications 1991 and 2011 as well as Map 32A, so found by the High Court. Factual details of the same and where actually the portion of some of the properties of the petitioner in the Vettala Thuruthu will fall, has been elaborately dealt with by the High Court in its judgment in paragraphs 109 to 119. We notice that the High Court has dealt with the issue pointing out that so far as

buildings which have been constructed by the petitioner during the currency of the notification issued in 1991 are concerned, they are clearly in violation of this notification, hence, action has to be taken for the removal of the same. The Director of Panchayat also vide letters dated 7.3.1995, 17.7.1996 directed all the Panchayats to strictly follow the provisions of CRZ Notification which it was found, not followed by granting permission. The High Court has also found on facts that reconstruction work appeared to have been done during the currency of Notification 2011 and two buildings (193/D and 193/E) were also constructed illegally. The High Court has also noticed another new construction underway. These all are factual findings which call for no interference by this Court. The High Court has clearly noticed that reconstruction work has been done contrary to the 1991 as well as 2011 Notification and the report of the Expert Committee constituted by the Kerala State Committee on Sciences Technology and Environment (KSCSTE) was accepted.

23. We are of the considered view that the above direction was issued by the High Court taking into consideration the larger public interest and to save the Vembanad Lake which is an ecologically sensitive area, so proclaimed nationally and internationally. The Vembanad Lake is presently undergoing severe environmental degradation due to increased human intervention and, as already indicated, recognizing the socio-economic importance of this water body, it has recently been scheduled under "vulnerable wetlands to be protected" and declared as CVCA. We are of the view that the directions given by the High Court are perfectly in order in the above mentioned perspective.

24. Further, the directions given by the High Court in directing demolition of illegal construction effected during the currency of CRZ Notifications 1991 and 2011 are perfectly in tune with the decision of this Court in *Piedade Filomena Gonsalves v. State of Goa and Others* (2004) 3 SCC 445, wherein this Court has held that such notifications have been issued in the interest of protecting environment and ecology in the coastal area and the construction raised in violation of such regulations cannot be lightly condoned.

25. We, therefore, find no reason to interfere with the judgment of the High Court. The Special Leave Petitions are accordingly dismissed.

