

**(2003) 02 KL CK 0088**

**High Court Of Kerala**

**Case No:** O.P. No"s. 33089 and 34936 of 2001 and 22314, 32025, 38036 and 38219 of 2002

Citizens Interest Agency

APPELLANT

Vs

Lakeshore Hospital and  
Research Centre Pvt. Ltd.

RESPONDENT

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**Date of Decision:** Feb. 19, 2003

**Acts Referred:**

- Environment (Protection) Act, 1986 - Section 3

**Citation:** (2003) 2 ILR (Ker) 522 : (2003) 3 KLT 424

**Hon'ble Judges:** Jawahar Lal Gupta, C.J; M. Ramachandran, J

**Bench:** Division Bench

**Advocate:** K. Ramakumar, C.P. Mohammed Nias, V. Jaya Prasad, Tojan J. Vathikulam, N Subramanian, M.S. Narayanan, Bechu Kurian Thomas and Antony Dominic, P.S. Sreedharan Pillai, C.G.S.C., Rajan Joseph, A.A.G, for the Appellant; A.K. Jayasankar Nambiar, S. Chandrasekharan and M.K. Sarin, for the Respondent

**Final Decision:** Dismissed

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**Judgement**

Jawahar Lal Gupta, C.J.

Should the buildings - A 350 bed hospital and the show room, be ordered to be demolished? Have respondent No. 7 and 8 raised construction in violation of the notification, dated February 19, 1991 issued by the Central Government u/s 3 of the Environment (Protection ) Act, 1986? This is the primary issue that arises for consideration in the three petitions, viz., O.P. 34936 and 38089 of 2001 and 22314 of 2002. The other three petitions have been filed by respondent Nos. 7 to 9 apparently as a counter-blast. They challenge the validity of National Coastal Zone Management Plan issued by the State of Kerala. Counsel for the parties have referred to the facts as averred in O.P. No. 38089 of 2001. These may be briefly noticed.

2. The petitioner claims to be a resident of Village Nettoor in District Ernakulam. He claims to be interested in the environment and its protection. He asserts that the

ecological balance in the coastal area has to be maintained. The authorities are not performing their duties. The building have been constructed in violation of law. Thus, he has approached this Court in public interest and in the discharge of his duties under Art. 48A of the Constitution of India.

3. The petitioner alleges that respondent Nos. 7 and 8 have illegally raised construction in Kundannoor area, which falls in the jurisdiction of the Maradu Grama Panchayat. He points out that "the Coastal Regulation Zone Notification was issued in exercise of powers conferred under the Environment (Protection) Rules, 1986". By this notification, the Central Government had declared that the coastal stretches of sea, bays, estuaries creeks, rivers and backwaters" which are influenced by tidal action up to 500 meters from the High Tide Line (H.T.L.) shall fall within the Coastal Regulation Zone. Even the land between Low Tide Line (L.T.L.) and High Tide Line was also included in the prohibited area. Thus, with effect from February 19, 1991, restrictions were imposed on the setting up or expansion of industries, operations or process in the Coastal Regulation Zone. According to the petitioner, Kundannoor area is included in C.R.Z. I category. It is described in the Coastal Zone Management Plan of Kerala as Map No. 33A. Relevant extracts have been produced as Exts. P-1 and P-2. In Ext. P2, the construction raised by respondent No. 7 has been shown in blue and that by the 8th respondent in red colours. The land reclaimed by the 9th respondent has been identified in green. The petitioner further alleges that in the C.R.Z. I, no construction is permitted within 500 meters of the High Tide Line. Despite that the two respondents have raised construction. Respondent Nos. 1 to 6 have failed to check it. The petitioner points out that in response to a complaint, the 4th respondent had issued directions to the 5th respondent, vide letter dated October 22, 2001. A copy of the letter has been produced as Ext. P-3. Despite that, no action has been taken. On these premises, the petitioner prays that the construction raised by respondent Nos. 7 and 8 be declared illegal and respondent Nos. 1 to 6 be directed to demolish it. The Counsel are agreed that the pleas raised in the two other petitions, viz., O.P. Nos. 34936/2001 and 22314/2002 are identical. Thus, these need not be separately noticed.

4. Counter affidavits have been filed on behalf of some of the respondents.

5. In the counter-affidavit filed on behalf of the first respondent, viz., the Union of India, it has been inter alia averred that the Coastal Regulation Zone Notification, 1991 "prohibits certain activities and regulates those activities which require water front and foreshore facilities within the Coastal Regulation Zone (C.R.Z.) area. This ministry is not aware of the averments made with regard to illegal reclamation and construction activities being carried out in violation of C.R.Z. Notification, 1991". The permissible developmental activities can be undertaken after obtaining necessary permission from the authorities. The Kerala State Coastal Zone Management Authority "has been empowered to take necessary action against the violators of C.R.Z. Notification under the E.P.A., 1986". Violation of the notification attracts

punitive action.

6. In the reply filed by the 4th respondent, it has been inter alia pointed out that a meeting of the Coastal Zone Management Authority was held on 15th July, 2002. The Principal Secretary was directed to get the relevant documents from the 7th respondent. The requisite information was supplied by the 7th respondent. It had submitted "all the clearances obtained along with the certificate from the Water Resources Department (erstwhile Irrigation Department) ....". The authority had forwarded the application of the 7th respondent "as a special case for C.R.Z. clearance" to the National Coastal Zone Management Authority. It has been further submitted that the Coastal Zone Management Plan of the State "is prepared in 1:12,500 on a base map enlarged from Survey of India top sheets of 1:50,000 scale with the use aerial photograph and satellite imageries. Hence, it will be difficult to arrive at exact conclusions on the CRZ status of the disputed area". Vide letter dated 4th January 1999, the Ministry of Environment and Forest has directed the State Government to prepare local level C.R.Z. maps in cadastral scale (1:3960 or the nearest scale) to ascertain the Coastal Regulation Zone. The actual status of the disputed construction can be "ascertained only with the help of such large scale map which has not been prepared for this purpose". The decision of the National Coastal Zone Management Authority has not been received.

7. Separate counter-affidavits have been filed by respondent Nos. 7, 8 and 9. The affidavit on behalf of the 7th respondent was filed by Dr. Philip Augustine, the Managing Director of the respondent-Company. It has been inter alia averred that the Company was established for the setting up of a modern, well equipped, multi-speciality Hospital and Research Centre. It had acquired 1.03 hectares of land in June/July 1996. It had started constructions after obtaining all the required permission and sanction by about April, 1997. The construction was completed by October 2000. The "Panchayat door number" was granted by the 5th respondent on 1st October 2000. Property tax for the building is being paid from that date. A License to run the Hospital was issued vide Order dated 14th November 2002. An amount of Rs. 50 crores was spent.

8. On merits, it has been pointed out that the petition has been filed "only in private interest instigated by the parties who are against the project initiated by the 7th respondent". The petitioner does not come to the Court with clean hands. He has claimed to be a resident of Nettoor. However, in the affidavit filed in support of the petition, he has given his address of Ernakulam. The respondent further states that it has not violated any of the provisions of the Coastal Regulation Zone Notification. The building does not fall within the prohibited area. In fact, Map No. 33 A is wholly wrong. Its validity has been challenged by the said respondent in O.P. No. 32025 of 2002. Still further, the respondent has given the details of the properties, which exist, in the area. Particular reference has been made to the Club House, which had been constructed by Yousef in the year 1983. Thus, the claim on behalf of the

petitioner that the building has been raised by reclamation of any coastal area is wrong. In fact, the 7th respondent maintains that the land was "garden" area. Part of it was covered by paddy fields. Thus, the very basis on which the petition has been filed is nonexistent. On these premises, the 7th respondent prays that the Writ Petition is dismissed.

9. The averments in the affidavits filed on behalf of respondent Nos. 8 and 9 are on the same lines. Thus, it is not necessary to notice these in detail.

10. These are the pleadings of the parties.

11. Mr. Ramakumar, learned counsel for the petitioner, has contended that the construction raised by respondent Nos. 7 and 8 does not conform to the Notification dated 19th February 1991. This fact is borne out from the communication dated 22nd October 2001 sent by the 4th respondent to the Panchayat. Despite that, no action has been taken by the competent authority. Thus, the buildings have to be demolished. Similarly, Mr. Tojan, learned Counsel for the petitioner in O.P. No. 22314/2002 has submitted that originally, they were filtration ponds. They were reclaimed. Thereafter, construction was made. Mr. Jaya Prasad, learned Counsel for the petitioner in O.P. No. 34936/2001 has submitted that the action of respondent No. 7 and 8 is in violation of the Notification issued on 19th February 1991. Thus, the Court may direct the authorities to the demolish the structures.

12. On the other hand, Mr. Rajan Joseph, learned Additional Advocate General appearing for respondent Nos. 2, 3 and 4 has submitted that the buildings are located near a man-made canal. They are not proved to be within the prohibited area. This information was received from the said respondents. It was forwarded to the concerned authorities. No decision has been received from the Central authority. Thus no action is being taken against the respondents.

13. Learned Counsel for respondent Nos. 7 to 9 have questioned the bona fides of the petitioners in the three cases. They have contended that there is nothing on record to support the plea that the construction has been raised in a prohibited area. In fact, requisite permission was obtained from the competent authority before commencing the construction. The Writ Petitions have been filed after the respondent Nos. 7 and 8 had invested substantial amounts of money and completed the construction. These are not bonafide. The petitions are not in public interest. Thus, these deserve to be dismissed. The 9th respondent owns the land.

14. The short question that arises for consideration is- Have respondent Nos. 7 to 9 acted in violation of the Notification dated 19th February 1991?

15. A copy of the notification dated 19th February 1991 has been produced as Ext. P-1 with O.P. No. 22314 of 2002. This notification was issued u/s 3 of the Environment (Protection) Act, 1986 read with the Environment (Projection) Rules, 1986. A perusal of this notification shows that the Central Government had declared

"coastal stretches of seas, bays estuaries, creeks, rivers and backwaters which are influenced by tidal action (in the landward side) upto 500 metres from the High Tide Line (HTL) and the land between the Low Tide Line (LTL) and the HTL as Coastal Regulation Zone.....". Still further, with effect from the date of the issue of the notification, restrictions were placed on the setting up of industries etc. Prohibited activities were specified in Clause 2. Learned Counsel for the petitioners have referred to the prohibition contained in Sub-clause (xii). It reads as under:

"(xii) Any construction activity between the Low Tide Line and High Tide Line except facilities for treated effluents and waste water discharges into the sea facilities for carrying sea water for cooling purposes, oil, gas and similar pipelines and facilities essential for activities permitted under this notification."

16. On a perusal of the above, it is clear that no construction activity can be undertaken on the land between the Low Tide Line and the High Tide Line after the 19th of February, 1991.

17. Counsel for the petitioners in these three cases have contended that the land on which the construction has been raised by respondent Nos. 7 and 8 was actually a filtration pond. It was reclaimed. Thereafter, it has been used for the purpose of raising the buildings. Is it so?

18. Learned Counsel were repeatedly asked as to when was the land reclaimed. There is no material on the record to indicate any time. Mr. Tojan, learned Counsel for the petitioner in O.P. No. 22314 of 2002 has vaguely submitted that it was sometime in the year 1996. However, learned Counsel was unable to specify as to who had done it. Even in the Writ Petitions, no specific allegation regarding the time of reclamation has been given. No other evidence regarding any fish culture has been produced or pointed out. In this situation, it is clear that there is no evidence on the record to show that there was any filtration pond at the site. In fact, the evidence on record as produced on behalf of the respondents shows that construction has existed at the site since the year 1983. The Club House building has been charged to property tax by the Village Panchayat for the year 1983-84. A copy from the Panchayat record has been produced as Ext. R7(a) with the counter-affidavit filed by the 7th respondent. In fact, in the counter petition filed by the respondents, there is an indication of the existence of other buildings even prior to 1983. In view of the evidence produced by the respondents, the contention as sought to be raised on behalf of the petitioner that there was a filtration pond at the site and it has been reclaimed, cannot be sustained.

19. Mr. Ramakumar has, however, contended that the land falls within 500 metres of the High Tide Line. Is it so?

20. Despite being repeatedly asked, none of the Counsel for the petitioners was able to indicate from the plan produced by them that the land in question falls within 500 metres of the High Tide Line. In fact, Counsel are not even able to point out as to

where the High Tide Line or Low Tide Line can be said to start. There is nothing on the record, which may even remotely suggest that the land falls within the tide (low or high). In this situation, it cannot be said that the construction has been raised by the respondents within the prohibited zone.

21. Learned Counsel for the petitioners have submitted that the canal is very close to the buildings. This is the tidal zone and thus the construction is within the prohibited zone. Is it so?

22. A copy of the plan has been produced as Ext. P2. A perusal of this plan shows that Nettoor River runs at a considerable distance from the buildings. However, there is a canal passing by the side of the buildings. This canal, according to the counter-affidavit filed by the 4th respondent, is a man-made canal. This position seems to be factually correct. A perusal of the plan as well as the photograph produced by the petitioners shows that the canal is totally straight. It is lined with heavy pieces of stone uniformly cut. It has cemented walls on both sides. If it was a natural canal, it would not have been lined with cement on both sides and the line would not normally have been straight. Still further, the respondents have produced a certificate from the Executive Engineer as Ext. R7(c) in which it has been inter alia averred that on local enquiry, he had found that it is a man-made canal and had been constructed many years back. Even in the counter-affidavit filed by the 8th respondent, there is a categorical averment that it is an irrigation canal maintained by the Irrigation Department of the Government of Kerala. It forms part of the Nettoor River. A copy of the contract for maintenance executed by the Executive Engineer has also been produced as Ext. R-8(a). This evidence gives a clear indication of the fact that the canal on the basis of which the whole edifice has been raised by the petitioners is actually not a part of the restricted zone. Thus, the land does not fall within the prohibited area. Consequently, it cannot be said that the construction has been raised in violation of the Notification dated 19th February 1991.

23. Learned Counsel for the petitioners have submitted that the prohibited Zone is not confined to the area affected by the tide. It is undoubtedly true that according to the notification, even the bays, estuaries, and backwaters are included. However, it is clear that the canals are outside the purview of the notification. Thus, we find that the construction raised by the respondents does not fall within the mischief of the notification dated 19th February, 1991.

24. There is another aspect of the matter. Admittedly, the respondents had started construction many years back. The 7th respondent had commenced construction in the year 1997. The building was contemplated in the year 2000. The respondent claims to have spent more than Rs. 50 crores approximately. Similarly, the 8th respondent had started and completed the construction well before the filing of the petitions. So far a respondent No. 9 is concerned, it had raised no construction. Considerable effort and expenses have gone into the buildings. The photographs produced on record indicate that the 7th respondent has constructed a big hospital.

It has raised a 10 storeyed building. It is a 350 bed hospital with facilities of 30 clinical departments. In the circumstances of the case, we find that the petitioners had approached the Court after a long and avoidable delay.

25. Mr. Ramakumar submits that the petitioner was waiting for the decision in O.P. No. 3243 of 1997, which had been filed to challenge the notification of 19th February 1991. We are not satisfied with the explanation. The petitioner has not even produced a copy of the notification dated 19th February 1991. Obviously, he did not have it. He has also not disclosed as to when he had actually become aware of the fact that the notification was under challenge. The source of information has not also been disclosed. Still further, it is his own case that he is a resident of Village Nettoor. He lives in the close by area. Construction had admittedly commenced in the year 1997, If the construction was being wrongly undertaken by the 7th or the 8th respondent, he could have easily moved for restraining the said respondents from proceeding further with the construction. He chose not to. Why? There is no satisfactory explanation. In these circumstances, we find that all the three petitions suffer from the vice of laches. Still further, we are not satisfied that it would be in public interest to order the demolition of the buildings, which have already been completed.

26. Faced with the factual position, the Counsel for the petitioners have raised a curious contention. They complain that the hospital would cater to the needs of the rich only. It is of no use to the common man. The cars would be purchased from the 8th respondent by the rich and not by the poor. Thus, there would be no harm in ordering the demolition of the buildings.

27. The contention is misconceived. Today, it is difficult to build. Any fool can destroy. We think the submission does not deserve any further consideration.

28. No other point has been raised.

29. In view of the above, we find that there is no illegality in the action of respondent Nos. 7 and 8 in raising the construction. No ground for ordering the demolition is made out. As far as the 9th respondent is concerned, it has only sold the area to the respondents for the construction of the buildings. It has no building at the site. Thus, the question of ordering any demolition does not arise.

30. In view of the above, O.P. Nos. 34936 and 38089 of 2001 and 22314 of 2002 are dismissed.

31. While the petitioners in the above-mentioned three cases claim to have approached this Court in public interest, the petitioners in O.P. Nos. 32025, 38036 and 38209 of 2002 have come to this Court for protecting their personal interest. They complain that the plans contained in Map 33 A issued by the Coastal Zone Management plan of Kerala, is totally contrary to the facts. It is, thus, illegal and should be quashed.

32. Mr. Rajan Joseph, learned Additional Advocate General appearing for the official respondents, states that the original plan was prepared on the basis of the plan given by the Survey of India and the Satellite imageries. These plans are prepared in 1:12,500 and 1:50,000 scale. He points out that depicting an area of 12 1/2 thousand sq. kms. in one inch is a difficult job. Similarly, in the case of the scale prepared in the ratio 1:50,000, it is still more difficult. In view of this situation, the Government is preparing cadastral plans. Thereafter, a fresh plan and map shall be issued. In view of the factual position, learned Counsel states that the three petitions are premature.

33. In view of the statement made on behalf of the respondents, learned Counsel for the petitioners pray that they may be permitted to withdraw these petitions with liberty to approach the Court again in case an occasion arises.

34. Leave and liberty granted. The petitions are dismissed as withdrawn. It is clarified that since we have expressed no opinion on the merits of the case, it shall be open to the petitioners in these three cases to raise such pleas as may be available to them including those which had been raised in these three petitions.

35. As a result of the above, O.P. Nos. 34936 and 38089 of 2001 and 22314 of 2002 are dismissed on merits. O.P. Nos. 32025, 38036 and 38209 of 2002 are dismissed as withdrawn. The parties are left to bear their own costs.