Kottayam Nature Society Vs Union of India (UOI)

Court: High Court Of Kerala

Date of Decision: March 5, 2003

Acts Referred: Constitution of India, 1950 â€" Article 226
Environment (Protection) Act, 1986 â€" Section 3

Citation: (2003) 3 ILR (Ker) 180 : (2003) 3 KLT 1105

Hon'ble Judges: Jawahar Lal Gupta, C.J; Kurian Joseph, J

Bench: Division Bench

Advocate: V. Giri, Daisy Thampi and Ramesh Babu S, for the Appellant; P.S. Sreedharan Pillai, S.C.G.S.C., V.K. Beeran, A.A.G., Dushyant Dave Chandramohan Das and Antony Dominic, for the Respondent

Final Decision: Dismissed

Judgement

Jawahar Lal Gupta, C.J.
A joint venture between the Kerala State Tourism Development Corporation and the Oberoi Hotels is the bone

of contention in these three petitions. The location is the Pathiramanal Island. A piece of land measuring 48.2 acres has been given on lease for a

period of 30 years. The Island is in the Vembanad Lake. It has abundance of acquatic life. But it is ecologically fragile. It has a wealth of flora and

fauna. Flocks of migratory birds visit it. It is a ''sanctuary''. It is recreationally resourceful. On April 13,2000, the Government had decided to give

the land on lease without any environmental audit or impact assessment. Its pristine beauty is endangered. It provides a profound charm to the

innocent. It is sublimely satisfying for the curious Ornithologist. In a nutshell, the petitioners allege that the beginning of any kind of construction on

the Island would be the end of its beauty. Still more, the land was taken over by the State under the provisions of the Kerala Land Reforms Act,

1963. It can be used only for the purposes as envisaged in S.96 and for no other. The lease contravenes the provisions of the Act. Thus, the

petitioners pray that the decision to give the land on lease be quashed. The Counsel have referred to facts in O.P. No. 7104 of 2002. These may

be briefly noticed.

2. The petitioner is a society registered under the Travancore-Cochin Literary, Scientific and Charitable Societies Act, 1955. It is interested in the

preservation of the Pathiramanal Island as a bird sanctuary. The endangered species of flora and fauna are thriving on account of the efforts made

by the ""nature lovers and environmentally conscious populace"". The species of endangered plants have been identified. These need to be protected

and preserved.

3. The Island originally belonged to the Anthraper family. With the enforcement of the Kerala Land Reforms Act, 1963, the excess land in the

possession of the family was identified. The Island was one of the lands surrendered by the family in favour of the Government. Thus, it became

Government property which is nevertheless subject to the restrictions imposed by the Land Reforms Act both in the matter of alienation and

enjoyment"". However, in violation of the provisions of the statute, the Government has decided to give the land on lease to the Oberoi Kerala

Hotels and Resorts Limited, the fifth respondent for development as a tourist resort. The sixth respondent, viz., the East India Hotels is the holding

company of the fifth respondent. The establishment of a tourist resort would necessarily bring about ""a complete imbalance"" in the environment. It

would upset the ecology and destroy the fragile land. It would result in ""an almost complete decimation of the natural bird sanctuary which is now

found flourishing there"". At present, the Island is uninhabited. Tourists and Ornithologists visit it. It is slowly developing into one of the prominent

bird sanctuaries in the country. Construction of any building, which is bound to continue over a sustained period of time, would ""drive away the

birds"" from their natural habitat. Commercial tourism will affect ""the preservation of the ecology and environment. The Government of Kerala has

identified the Pathiramanal as a natural bird sanctuary and have taken steps to preserve it as such. The Department of Tourism has categorized the

Island as an ecologically fragile piece of land and home of endangered flora and fauna. Consistent with the policy of the Department of Tourism, it

is necessary that the Island be preserved in its currently available pristine form.

4. The petitioner alleges that there has been ""no environmental audit of the possible fall out either in the matter of preservation of natural birds

sanctuary as such or in a possible upsetting of the ecological balance of the Island if the fifth respondent or any other commercial institution is given

the permission to establish a resort in the Island. No steps worth the name have been undertaken in this direction either by the Government or any

other body"". It has been pointed out that the Department of Forest and Wild Life in association with the petitioner-society had undertaken a bird

count in the year 2001 in the Vembanad Lake. A copy of the report has been produced as Ext. P-l. The spurt in tourism related activity has been

described as the cause for the ""sharp decline in the bird population of Vembanad Lake since the last survey in 1993"". In the survey report, specific

recommendations for the preservation of wetlands, mangroves etc. have been made. Despite that, the Island has not ""found a place in the

protected area network of the State"".

5. The petitioner points out that ""The Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Bill, 2001 had been moved with a

view to maintain the ecological balance and to conserve the diversity. A copy of the Bill has been produced as Ext. P-2. Special reference has

been made to the objects and reasons stated in paragraph 2. The efforts made by the environmentally conscious organisations, the citizens, the

Department of Forest and Wild life as well as the petitioner-society have paid dividends. To prove this, a copy of the interim report regarding bird

count for 2002 has been produced as Ext. P3.

6. On the above-mentioned premises, the petitioner states that if the ""consistent cries of caution"" are not heeded, the Island shall be destroyed. It

maintains that on the grounds stated in the Writ Petition, the Government''s decision to handover the Island ""either in whole or in part by way of

lease to the fifth respondent-company"" deserves to be quashed.

7. The respondents contest the petitioner''s claim. Respondent Nos. 2 and 4 to 6 have filed counter-affidavits.

8. The second respondent has stated that the Writ Petition is not maintainable. The land was physically handed over to the Tourism Department

vide Government Order dated September 27, 1988. There was a specific condition that it would be developed as a tourist centre. Taking note of

the natural beauty, the Tourist Resorts Kerala Limited, a subsidiary of the Kerala Tourism Development Corporation, had placed the matter before

the Government for getting its sanction for the joint venture to establish a world-class tourist resort at Pathiramanal. The policy adopted by the

State Government is to utilize ""the vehicle of joint venture to develop, expand and fuel growth in the tourism sector"". With this objective, two

ventures, viz., the ''Taj Kerala Hotels and Resorts Limited'' and the ''Oberoi Kerala Hotels and Resorts Limited"" were incorporated. The Oberoi

group had approached the Government with the request 10 handover the land at Pathiramanal and at Bakel for developing it into tourism resorts.

The Oberoi group is one of the top international brands with network in India and abroad. It has 35 world-class hotels. On consideration of the

matter, the Government had found that the lease of land in question would help in the development of world-class resorts and tourism

infrastructure. It would enhance the Kerala Brand in Equity Structure. It was also felt that the development of the Island would help the backwaters

to acquire further international prominence. On March 29, 2000 the Cabinet had considered the issue of giving the land on lease to the fifth

respondent. After a detailed discussion it was decided to give the land on long-term lease basis. A committee of officers had to assess the land

value of the properties, Pursuant to the Cabinet decision, the Government had issued orders on April 13, 2000 for giving the land on lease to the

Oberoi Kerala Hotels and Resorts Ltd.

9. The project as envisaged by the Government will not affect the eco-system or the flora and fauna in the Island. It is designed to protect the

environment. The Government and the Tourism Department are not unmindful of the necessity and need ""to protect the nature and its inherent

natural beauty"". The Island in question, while under the ownership, of the Anthrapper family, was used mainly as an agricultural land. It was full of

coconut plantation and paddy fields. The land was never a bird sanctuary. Before exploring the possibility of a tourist resort the matter was got

examined through the Centre for Earth Science Studies. It was after thorough consideration of the matter that the final decision was taken.

10. The Island has an area of 49.86 acres. Reliance has been placed on the provisions of Section 96(1-A) to contend that the action is legal and

valid.

11. Mr. Kamala Kannan, the Managing Director of the Kerala Tourism Department Corporation Ltd. has filed the reply on behalf of the 4th

respondent. It has been averred that the fifth respondent is a joint sector company. As a part of the joint venture, certain properties of the Tourism

Department ""were agreed to be utilized by the fifth respondent-company for developing hotels and resorts inside the State of Kerala on the basis

of agreement entered between the concerned parties"". The Pathiramanal Island is situated in Cherthala Taluk. It belongs to the State. It had been

surrendered as excess land"" in the year 1981. According to the revenue records the total extent of the land is 49.86 acres. On September 27,

1988, it was decided to handover the land to the Tourism Development Corporation. The possession of the land was physically handed over to

the Tourism Department. The purpose was to develop it ""as a tourist centre"". It was to promote this objective that the Government had accorded

its sanction for the joint venture. A copy of the order has been produced as Ext. R-4(a). The allegation that the project shall affect the environment

or the flora and fauna etc. has been controverted. It is maintained that the Government shall ensure environmental protection. Only a portion of the

land has to be utilized for the purpose of setting up an eco-friendly tourist resort. The matter had been probed ""by deploying the Centre for Earth

Science Studies"" which is ""an autonomous research body monitored by the Science and Technology Department..."". It had conducted a study of

the area. Their report ""suggests and recommends development based in (on) harmony with the environment..."". It is emphasized the ""Island is best

suited for eco tourism with particular reference to the declaration of the Central Government and the State Government regarding the Island to be a

tourism centre"". The 9th Five Year Plan had also identified the development of the Island as an ''eco-leisure centre'' under the backwater tourism

scheme. The setting up of the centre would prevent poaching and entry of trespassers. The total area to be covered by ""the artificial construction

will be very minimal. The rest will be untouched.... for the preservation of the natural beauty"". Most of the land will be left as it is. Suitable and

sufficient safeguards will be taken to ensure that the tourists do not take part in any activity, which may be detrimental or harmful to the eco-

system. It was after the receipt of the report submitted by the C.E.S.S. that the decision to start a project of tourism resort was taken. On the

premises the respondent maintains that the petition deserves to be dismissed.

12. The fifth respondent has filed a separate counter affidavit. It is broadly on the same lines as the counter-affidavits filed by the second and the

fourth respondents. Reliance has been placed on the report submitted by the C.E.S.S. It has been emphasized that the Oberoi Group of hotels is

an environmentally responsible organization and its hotels and resorts have received several environmental awards"". It has. been stated that the

hotel and resorts will consist of cottages ""on part of the periphery of the Island with the support services and guest facilities located on the nearby

land having an area of less the two hectares. The total area covered by these facilities will not exceed, generally speaking, four hectares leaving

more than 80 per cent of the Island to be maintained to show-case its natural beauty"". The allegation that there has been no ""audit or assessment

has been denied. It has also been averred that the lease shall not offend the provisions of the Kerala Land Reforms Act. Thus, the respondent

maintains that the Writ Petition has no merit and be dismissed.

13. A short reply has also been filed by the sixth respondent.

14. The petitioner has filed a reply affidavit. The averments in the counter-affidavits have been controverted. The averments in the petition have

been reiterated. It has been stated that on coming to know of the project, the public-spirited groups had raised their objections. The Minister for

Tourism had stated on the floor of the Legislative Assembly that ""the Government was dropping the project.."". A report from the Indian Express of

February 6, 2003 has been produced as Ext. P5. The other averments in the counter affidavits have been controverted. Certain additional

documents have also been produced.

15. In O.P. No. 26884 of 2000 it has been inter alia alleged that the impugned decision violates the terms of the notification dated February 19,

1991. The petitioner maintains that there are six species of rare birds on the Island. The provisions of Section 29 of the Wild Life (Protection) Act,

1972 have been violated.

16. In O.P. No. 6832 of 2002 it is alleged that the Cabinet had met on August 28, 2001. It had decided to invite global tenders. The petitioner

had already made an offer. A copy has been produced as Ext. P-2. The Cabinet had never decided to recall its original decision. The petitioner''s

representation, a copy of which is Ext. P9, is still pending. No decision has been taken. Thus the action in deciding to give the land on lease to the

fifth respondent is illegal and deserves to be quashed.

17. Mr. V. Gin, learned counsel for the petitioner in O.P. No. 7104 of 2002 was disarmingly fair and yet firm in his submissions. He contended

that the action is violative of the provisions of the Kerala Land Reforms Act. The State was not entitled to use the land for any purpose other than

those permitted under S.96. He pointed out that the land was fragile. The project as undertaken by the respondents would be destructive of the

environment. Mr. Daisy Thampy, learned Counsel for the petitioner in O.P. No. 26884 of 2000 contended that the impugned decision is violative

of the notification dated February 19, 1991 issued by the Central Government. The land falls within Coastal Regulation Zone I. There are six

species of rare birds on the Island. The action is not only violative of the Kerala Land Reforms'' Act, 1964 but it also violates the provisions of the

Wild Life (Protection) Act, 1972.

18. Mr. Ramesh Babu, learned Counsel for the petitioner in O.P. No. 6632 of 2002 submitted that the Cabinet had taken a decision on August

29, 2001 to allot the project by inviting tenders. This decision has not been recalled. The petitioner had made an offer. A copy has been produced

as Ext. P-2. Yet, it had not been considered. The representation has not been decided. The work could not have been allotted to the 5th

respondent.

19. The claim as made on behalf of the petitioners was controverted by the learned Counsel for the respondents. Mr. Dushyant Dave who

appeared for respondent Nos. 5 and 6 in O.P. No. 7104 of 2002 very adroity submitted that the project was '' calculated to promote and protect

the Island. It would not affect or destroy the ecology. It has been allotted to the reputed hotelier. It is in public interest to promote it. The

provisions of law have not been violated. Thus, the project deserves to be upheld.

20. Mr. Beeran, Additional Advocate General, submitted that the State Government was itself conscious of its duty to protect the environment.

The 4th and the 5th respondents are jointly undertaking the project. The petitioners should have no cause for concern. Mr. Chandramohan, who

appeared for respondent No. 4, adopted the arguments of Mr. Dave. Mr. Gopinath, learned Counsel for the Union of India, submitted that

adequate precautions shall be taken to ensure that the provisions of law are complied with and that the environment is not adversely affected.

21. In view of the contentions as raised by the Counsel for the parties the questions that arise for consideration are:

(i) Is the action of the Government violative of the provisions of the Kerala Land Reforms Act, 1963?

(ii) Would the project result in the destruction or development of the Island?

Regarding (i)

22. Admittedly the land was taken over by the Government as excess land from M/s. Anthrapper Estate Pvt. Ltd. in the year 1981. On September

27, 1988 it was transferred to the Department of Tourism for development as a tourist centre. In April 2000, the Government had decided to clear

a joint venture between a State Government Undertaking and respondent No. 5. Did the Government violate the provisions of the Land Reforms

Act, 1963?

23. Mr. Giri contended that after taking over the excess land, the State Government has to act in conformity with the provisions of Section 96. It

cannot use the land for any purpose outside the purview of the said provision. Mr. Dave pointed out that Clause (1 A) permits the Land Board to

reserve the land for a public purpose. Thus, the action, of the Government cannot be assailed as being violative of Section 96.

24. The Legislature had initially passed the Kerala Agrarian Relations Act, 1960. The object of the Act was ""to introduce comprehensive land

reforms in the State"". This Act was struck down as unconstitutional by their Lordships of the Supreme Court in Karimbil Kunhikoman Vs. State of

Kerala, in its application to the Ryotwari land in a part of the State of Kerala. Thereafter, the Kerala Ryotwari Tenants and Kudikidappukars

Protection Act, 1962 was enacted. Even this could not stand judicial scrutiny. Finally the Kerala Land Reforms Act, 1963 (Act 1 of 1964) was

promulgated. The object of the Act was to confer certain benefits upon the tenants. This Act has been periodically amended. Even by the year

1970, the Act had been amended three times. The first amendment was made by Act 12 of 1966. The second by Act 9 of 1967. Thereafter, the

provisions were amended by Act 35 of 1969. A number of petitions were filed to challenge the validity of this Act. The matter was considered by

a Full Bench of this Court in Narayanan Nair v. State of Kerala 1970 KLT 659 . Various provisions of the Act were held to be unconstitutional.

However, it was held that the Act was a measure of agrarian reforms. The protection of Article 31A was applicable. The decision of the Full

Bench was affirmed by their Lordships of the Supreme Court in The Malankara Rubber and Produce Co. and Others, etc., etc. Vs. The State of

Kerala and Others, etc., etc., . Thus, the Act is a valid piece of legislation. Its provisions have to be followed.

25. A perusal of the provisions of the Act shows that u/s 86, the excess land vests ""in the Government free from all encumbrances and the Taluk

Land Board"" is bound to issue an order accordingly. u/s 96 the excess land, which has vested in the Government under Sections 86 and 87, has to

be assigned to the Kudikidappukars or landless agricultural labourers etc. Thus, it cannot be utilized for a purpose other than those mentioned in

Section 96.

26. Mr. Dave pointed out that Clause (1A) permits the Land Board to reserve the land for a public purpose. So far as this aspect of the matter is

concerned, the issue has been considered by their Lordships of the Supreme Court in paragraphs 37 and 38 of The Malankara Rubber and

Produce Co. and Others, etc., etc. Vs. The State of Kerala and Others, etc., etc., . It was observed as under:

37. It was argued that although the Kerala High Court in V.N. Narayanan Nair and Others Vs. State of Kerala and Others, turned down the

contention that under the wide language of Section 96(l)the observation for public purpose could be for any purpose whatever including one

entirely unconnected with agriculture such as for example, an ''industrial undertaking'' on the ground that ''having regard to the context in which it

appears the reservation for public purposes under that sub-section can only be for public purposes relating to agriculture, such as the provisions for

threshing floors or the construction of irrigation or drainage channels or the construction of houses for agricultural labourers'', the new Sub-section

(1 A) shows that the State did not intend to be bound by the construction placed upon Section 96 by the High Court and made it clear that the

section was not to be so read down thereby keeping in its hand the matter of reservation of land for public purpose of any kind not limited to

agrarian reform.

38. The argument though forcefully put cannot be accepted. The object of both the 1964 Act and the present Act was to effect agrarian reform,

which only can give to the statute the protection of Article 31A. This was made clear by the High Court in its Judgment and in our view rightly, by

reading down the said provision as to reservation for public purposes falling within the expression ''agrarian reform''. By enacting Sub-section (1 A)

despite the said construction by the High Court it appears that the intention of the State Legislature was to overrule legislatively the view expressed

by the High Court and not to be bound by the interpretation placed by the High Court. By so doing, the new sub-section has once again been

made prone to the same constitutional challenge. We have no doubt that the sub-section is couched in too general and wide a language capable of

including public purposes which would not be those falling within the expression "agrarian reform". There was therefore considerable force in the

contention of Counsel for the petitioners. The fact, however, that the Legislature has once again used the same general language in spite of the

aforesaid interpretation given by the High Court need not lead us to strike down wholly the sub-section. In accordance with the well recognised

canon of construction adopted in a number of cases decided by this Court we read the sub-section to mean only reservation pf the land for such

public purposes as would bring about agrarian reform. Inasmuch as any acquisition under Article 31A for any public purpose other than that falling

under the expression "agrarian reform" cannot be considered as having the protection of that Article"".

27. A perusal of the above shows that the reservation of land for a public purpose can only be to bring about an agrarian reform. Otherwise, the

provision shall not have the protection of Article 31A. Thus, it is clear that even when any excess land is reserved by the Taluk Board, it can only

be for a purpose, which would promote an agrarian reform. Tourism or development of a tourist resort are not measures of agrarian reform. Thus,

the reservation would not fall within the ambit of clause (1 A) of Section 96.

28. Another fact, which deserves mention, is that under clause (1A) the Land Board can make reservation of land for a public purpose. Nothing

has been placed on record to show that the Land Board had actually done so. Taking the totality of the circumstances into consideration, it is clear

that the action does not fall within the ambit of Clause (1 A).

29. Faced with this situation, Mr. Dave contended that no tenant had approached this Court. No landless labour is shown to be waiting for any

allotment. The petitioners in these cases cannot be said to be the persons aggrieved so as to be entitled to invoke the provisions of S.96.

30. It is undoubtedly true that under the provisions of the Act the land can be utilized only for the purpose of achieving the declared objective of

the statute. Even the public purpose has to conform to the test of an agrarian reform. It is in this view of the matter that Their Lordships were

pleased to hold that the land can be utilized for the purpose of threshing ground etc. Yet the fact remains that the land was transferred in the name

of the State Government in the year 1981. It was passed on to the Tourism Department in the year 1988. Since then, nobody has approached this

Court for the purpose of claiming that the land should be assigned to him. In view of this fact, we find that it would not be fair to order, at this late

stage, that the respondents cannot utilize it for the purpose of developing a tourist resort. It is a purpose, which had been declared as far back as

September, 1988. In any event, it cannot be said that the petitioners are the persons aggrieved. They are not the claimants for assignment. They

can have no grievance on account of the non-utilization of the land for an agricultural purpose. Even otherwise, utilization of the land for providing

homes to the homeless or land to the landless would not in any way be more conductive to ecology than an eco-friendly tourist resort. In a way,

the petitioners'' plea is self-destructive. However, we are not satisfied that development shall be worse than the distribution of land.

31. Thus, even though the petitioners may be right in this contention that the land cannot be utilised for a purpose other than the one covered u/s

96, we do not find that it would be fair to interfere in the matter at this belated stage on the ground that the land is not being utilized for a purpose

which may be described as an agrarian reform. In this behalf, it deserves mention that it is the admitted position that compensation as admissible

under the Act was paid to the owners. The payment was obviously made by the Government. It is, thus, the absolute owner of the property. Still

further, the owner has made no grievance. The tenants or landless labourers have not approached this Court with any complaint. In this situation, it

cannot be said that the petitioners are the aggrieved persons.

32. There is another aspect of the matter. Admittedly, there is no transfer of ownership in favour of the 5th respondent. The property is only being

given on lease. Even the control over the property would continue to be of a joint sector undertaking. Still further, the land has been lying unused

for a long time. Probably, on account of lack of resources, the Government or the Tourism Corporation have not been able to utilize the land for

the declared purpose. Otherwise, it has been clearly decided that it shall be utilised for development of a tourist resort. This being the factual

position, we do not consider it appropriate to annul the impugned action on the ground that the land is being used for a purpose other than that

covered by Section 96.

Regarding (ii)

Would the project result in the destruction or development of the Island?

33. Mr. Giri contended that the area is rich in acquatic life. It is a natural bird sanctuary. It has a unique scenic splendor. Even migratory birds visit

it. It is rich in flora and fauna. Thus, it should be preserved in its pristine form. He further submitted that there has been no proper investigation

about the impact of the project on environment. There has been no environmental audit or impact assessment. Consequently, the lease deserves to

be annulled by this Court. The claim was controverted by the counsel for the respondents. Mr. Dave produced before us a copy of the document

issued by the State Government, viz., ''Tourism Vision-2025''.

34. A perusal of the document shows that it has been issued to ""serve as a guiding force which will provide a clear vision and direction for

optimizing the tourism potential of the State in a sustainable manner"". The declared objective of the State Government is ""to develop Kerala, the

God''s Own Country, into an upmarket high quality tourist destination through optimal utilisation of resources with focus on conserving and

preserving the heritage and environment in enhancing productivity, income, creating employment opportunities and alleviating poverty thereby

making tourism the most important sector for socio-economic development of the State"". Undoubtedly tourism has emerged as a global industry. It

is a source of revenue. Investment in this industry is, thus, good for the State. It is in public interest. It should give a boost to the economy. What is

more important is that the document notices the possible threats. It recognizes that ""unbridled and indiscriminate growth of tourism may lead to

problems of pollution, environmental and ecological hazards and cultural degradation"". Thus, it has been decided to promote eco-tourism by

evolving strategies to attract private investment and to undertake specific projects ""through participatory planning process"".

35. Another fact, which deserves mention, is that according to the documents on record the land was initially covered by coconut plantation or

paddy fields. Since it has not been utilised for any purpose from the year 1981, it appears that various persons have been visiting the spot. The

documents on record show that they leave behind carry-bags, plastic plates etc. Even illicit distillation of arrack has been noticed. Non-bio

degradable waste has been found. Thus, neglect of the land cannot be the best way to conserve it.

36. Mr. Giri contended that the area is a bird sanctuary. Ms. Thampy submitted that there was six species of rare birds. The provisions of the

Wild-life Act are being violated.

37. It is undoubtedly correct that nature is beautiful. It is the ''living, visible garment of God''. The unruffled calm of nature is necessary for human

welfare. It must be preserved. The wetland has to be protected. The bird sanctuary, if any, may be taken care of. However, the issue is- Does a

sanctuary exist at the site? u/s 18 of the Wild Life (Protection) Act, the State Government has been empowered to declare ""its intention to

constitute any area other than an area comprised within any reserved forest or the territorial waters as a sanctuary"". This can be done by the issue

of a notification. Still further, it is also apparent that such a declaration can be issued only if it is found that the ""area is of adequate ecological,

faunal, floral, geo-morphological, natural or zoological consequences for the purpose of protecting, propagating or developing wildlife or its

environment"". It is the admitted position that the State Government has not issued any notification declaring that the Island is a Sanctuary. In the

absence of a declaration that the area constitutes a sanctuary, it cannot be treated as such so as to be out of bounds for the setting up of a tourist

resort. It has not even been shown that there is a proposal to do so. In such a situation, the plea as raised by the Counsel for the petitioners cannot

be accepted.

38. Ms. Thampy contended that the Island had wildlife. It has to be preserved. The action of the State Government violates Section 29 of the Act.

Is it so?

39. The provision inter alia provides that ""no person shall destroy, exploit or remove any wildlife from a sanctuary or destroy or damage the habitat

of any wild animal... in such sanctuary except under and in accordance with a permit granted by the Chief Wildlife Warden ....."". A perusal of

this provision clearly shows that it can be invoked only when the area is a sanctuary. As already observed, no declaration as envisaged u/s 18 of

the Act has been notified. Thus, it cannot be said that the provision of Section 29 of the Act is even attracted in the present case.

40. Mr. Giri submitted that the Government has not taken into account all the relevant facts. It has not made a proper assessment. Thus, the

impugned action deserves to be annulled. Is it so?

41. Firstly, it appears from the record that the Government of India has already identified the Island for development as an "eco-leisure centre"

under the backwater tourism scheme. Secondly, even the affidavits filed on behalf of the respondents indicate that the matter has been looked into

by the C.E.S.S. An assessment has been made. Thirdly, it deserves notice that the land is not being handed over to a novice in the development of

a tourist resort. The Oberois have a reputation. They have won awards. They have put up resorts at different places in the world. Even on the Bali

Island. Lastly, the Government has" embarked upon a plan to develop tourism. To promote eco-tourism by evolving strategies to attract private

investment and to undertake specific projects ""through participatory planning process"". Surely a plan to develop should not mean destruction.

Thus, it cannot be said that no thought has been given to the matter before arriving at the decision.

42. Faced with this situation, Ms. Thampy submitted that the area falls within the Coastal Regulation Zone-I. By virtue of the notification dated

February 19, 1991 issued by the Central Government, no construction can be raised on the land. The claim was controverted by the counsel for

the respondents.

43. This notification was issued by the Government of India under S.3 of the Environmental (Protection) Act, 1986 and the Rules. It declares the

areas ""which are influenced by tidal action as Coastal Regulation Zone"". Within the zone, the activities are regulated. However, the issue is-Does

the Island fall within the Zone? Ms. Thampy contended that the Island falls within category 1 as mentioned in Annexure I to the aforesaid

notification. Is it really so? It reads as under:

Category 1 (GRZ-T):

(i) Areas that are ecologically sensitive and important such as national parks/marine parks, sanctuaries, reserves forests, wildlife habitats,

mangroves, corals/coral reefs, areas close to breeding and spawning grounds of fish and other marine life, areas of outstanding natural

beauty/historical/heritage areas, areas rich in genetic diversity, areas likely to be inundated due to rise in sea level consequent upon global warming

and such other areas as may be declared by the Central Government or the concerned authorities at the State/Union Territory level from time to

time.

(ii) Area between the Low Tide Line and the High Tide line.

Admittedly, the area is not a national or marine park. It is not a sanctuary. It has not been declared as a reserved forest or/a wildlife habitat. It is

not even alleged to be a mangrove, coral reef etc. There is no material on the record to show that the Island falls within category 1. Still further it

deserves mention that the Government of India had also issued the Environment Impact Assessment Notification, 1994. This notification was

issued under Rule 5 of the Environment (Protection) Rules, 1986. It was directed that from the date of the publication of the notification ""a new

project, listed in Schedule 1 of this notification, shall not be undertaken in any part of India unless it has been accorded environmental clearance by

the Central Government in accordance with the procedure hereinafter specified in this notification"". In the Schedule to the notification, the list of

projects requiring environment clearance from the Central Government has been given. At serial No. 18, the following entry appears:-

All tourism projects between 200 m- 500 metres of High Tide Line or at locations with an elevation of more than 1000 metres with investment of

more than Rs. 5 crores"".

Thus, it is clear that it is only in respect of tourism projects, which fall within 200 to 500 metres of High Tide Line, that the clearance from the

Central Government is required. There is nothing on record to suggest that the disputed project falls within the prescribed limit of the High Tide

Line. In any event, these are matters, which shall be considered by the appropriate authority at the relevant time. We have no doubt that all aspects

of the matter shall be examined. However, on the basis of the material on record, the projects cannot be sabotaged quashing the initial decision as

taken by the State Government.

44. Another fact, which deserves mention, is that the State of Kerala has published the Coastal Zone Management Plan. The areas, which fall

within the Coastal Zone, have been specified. At page 6, while dealing with the areas, it has been mentioned that there are 200 coastal panchayats,

19 Municipalities and 3 corporations. These are detailed in table 1. It is the admitted position that the Island falls within District Alappuzha. The list

of Panchayats in this District is at page 11 of the Plan. Muhamma Panchayat, within whose jurisdiction the area falls, it is not mentioned in the list.

Still further, at page 37, it has been stated as under:

The Kuttanad area, though lying below mean sea level, is protected from tidal effects (salt water influx) by the Thanneermukkom barrage and

Thottappally spillway in the north and the south respectively. Hence, it is excluded from the purview of the notification"".

It is the admitted position that the Island falls within the Kuttanad area. This area has been excluded from the purview of the notification. The areas

of different districts have been mentioned. At page 53, details regarding District Allappuzha have been given. The Island is not included. Thus, it is

clear that the activities in the Island are not controlled by the Coastal Zone Management Plan of Kerala. This plan has been approved by the

Central Government.

45. In view of the above, it is held that the Island does not fall within the Coastal Regulation Zone 1. It also does not fall within the Coastal

Management Plan. Resultantly, the restrictions as contemplated under the notification are not attracted.

46. Despite the above, it was contended by learned Counsel for the petitioners that the construction of a hotel would affect the ecology and the

environment.

47. We appreciate the concern of the petitioners. It is undoubtedly true that environment needs to be protected. It is also correct that any

construction activity should not result in affecting the ecology. Yet, the authority, competent to assess and decide, is the Government. Not the

Court. The Court has to merely consider and decide the matter on the basis of the evidence adduced by the parties. The material placed on record

does not show that the relevant facts have not been considered. Still further, we have no doubt that the appropriate authority including the Ministry

of Environment shall consider the relevant facts when the project actually takes off. As at present, we do not find any infirmity in the action.

48. Mr. Ramesh Babu, learned Counsel for the petitioner in O.P. No. 6832 of 2002 submitted that the Government had decided to invite tenders.

This decision has not been recalled. Thus, every party should be allowed to compete.

49. The writ petitioner is undoubtedly engaged in hotel industry. However, as was rightly pointed out by Mr. Dave, the Oberois have earned a

name for themselves. They are a class apart. On the material on record, it cannot be said that the action of the Government in undertaking a joint

project with them is arbitrary or unfair. It does not result in denial of opportunity to others.

Before parting with the case, it may be mentioned that we are wholly satisfied about the bona fides of the petitioner society. Still more, the Counsel

have been disarmingly fair in their assistance to the Court. Yet, in the circumstances of the case, we find no ground to interfere.

No other point was raised.

In view of the above, it is held that:-

(1) The petitioners have no cause to invoke the provisions of the Land Reforms Act, 1963. They are not the persons aggrieved so as to be entitled

to challenge the decision of the Government to set up a tourist resort.

(2) Nature is undoubtedly beautiful. It is the "living, visible garment of God". The unruffled calm of nature is necessary for human welfare. It must

be preserved. However, in the present case, we do not find that there is any violation of law so as to call for any interference in proceedings under

Article 226 of the Constitution.

(3) Allotment of work through tenders is one of the many methods. But it is not the only one. In the circumstances of these cases, we do not find

that the Government was bound to invite tenders. Thus, the plea of the petitioner in O.P. No. 6832 of 2002 cannot be accepted.

Accordingly, the petitions are dismissed. However, we make no order as to costs.