



2021/KER/31190

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE S.V.BHATTI

&

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

FRIDAY, THE 13TH DAY OF AUGUST 2021 / 22ND SRAVANA, 1943

WP(C) NO. 19580 OF 2019

PETITIONER:

M.K.SALIM,
AGED 62 YEARS, S/O. HAJI M.K. AHAMED KUNJU,
HAJI MANZIL, MAIN ROAD,
KOLLAM-691001.

BY ADV M.K.SALIM, (Party-In-Person)

RESPONDENTS:

- 1 STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695001.
- 2 THE DISTRICT COLLECTOR,
THIRUVANANTHAPURAM-695001.
- 3 THE STATE ENVIRONMENT IMPACT ASSESSMENT AUTHORITY
(SEIAA),
KSRTC BUS TERMINAL COMPLEX,
4TH FLOOR, THAMPANOR,
THIRUVANANTHAPURAM-695001,
REPRESENTED BY ITS MEMBER SECRETARY.



- 4 KERALA STATE COASTAL ZONE MANAGEMENT AUTHORITY
(KCZMA) ,
THIRUVANANTHAPURAM.
- 5 THE EXECUTIVE ENGINEER,
INLAND NAVIGATION OFFICE,
KALLADA HOUSE, ASRAMOM,
KOLLAM-691001.
- 6 THE SECRETARY,
THIRUVANANTHAPURAM MUNICIPAL CORPORATION,
CORPORATION OFFICE, MUSEUM JUNCTION,
THIRUVANANTHAPURAM-695001.
- 7 MR. NISHAD M.A. ,
DIRECTOR,
M/S. LULU INTERNATIONAL SHOPPING MALL PVT. LTD. ,
34/1000, NH-47, EDAPPALLY,
ERNAKULAM-688007.
- 8 THE UNION OF INDIA,
REPRESENTED BY ITS PRINCIPAL SECRETARY,
MINISTRY OF ENVIRONMENT AND FOREST,
PARYAVARAN BHAWAN,
NEW DELHI-110014.

BY ADVS.

SHRI.MOHAMMED RAFIQ, GP
SHRI.K.GOPALAKRISHNA KURUP, AG
SHRI.M.P.SREEKRISHNAN, SC, SEIAA AND SEAC
SRI.M.P.PRAKASH, SC, KCZMA
SRI.N.NANDAKUMARA MENON (SR.)
SRI.P.K.SURESH KUMAR (SR.)
Mr.JOSEPH RONY JOSE, CGC
SRI.P.K.MANOJKUMAR, SC, TVPM CORPORATION
SRI.K.P.SUDHEER
SRI.V.MANU, SENIOR GOVT. PLEADER
SRI.P.NARAYANAN, SENIOR GOVT. PLEADER
SMT.ANJALI NAIR



2021/KER/31190

W.P.(C) No.19580/19

-:3:-

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY
HEARD ON 2.08.2021, THE COURT ON 13.8.2021 DELIVERED
THE FOLLOWING:

**“C.R.”****JUDGMENT**Dated this the 13th day of August, 2021Bechu Kurian Thomas, J.

A massive shopping mall is under construction in the capital city of Kerala - Thiruvananthapuram. Midway through the construction, this public interest litigation was preferred, questioning the grant of environmental clearance for the construction and for various other reliefs. Petitioner questions the environmental clearance granted for the construction and alleges CRZ violations.

2. The writ petitioner portrays himself to be a person who espouses public causes and claims to have filed several public interest litigations in this Court due to his social commitment. Writ petitioner resides in the district of Kollam. He canvasses against the grant of Environmental Clearance (for short 'the EC') for the construction of a shopping mall at Thiruvananthapuram. Petitioner alleges that the EC was granted without jurisdiction or authority. He bases his contention on the authority of State Environmental Impact



Assessment Authority ('SEIAA' for brevity), to grant clearance for a building having a built-up area of 2.32 lakhs sq.m. According to the petitioner, SEIAA had no authority to grant such a clearance beyond 1.5 lakhs sq.m. Petitioner also alleges that the grant of EC after categorizing the project as a Township Area Development Project under clause 8(b) of the Environmental Impact Assessment Notification, 2006 ('EIA notification' for brevity) was incorrect.

3. Petitioner further levels an allegation that the questioned construction falls within the prohibited distance from two water bodies - the Aakulam Lake and the Parvathy Puthanar Canal. According to the petitioner, Aakulam Lake is a saline infiltrated water body from which the prescribed distance under the CRZ notification is not maintained. He also alleges violation of the distance rule under the CRZ even in respect of the Parvathy Puthanar Canal and contends that the construction is only a stone's throw away from the Canal. Petitioner has raised yet another allegation that the construction in question is on puramboke land, which is wrongly shown as private land. Petitioner further contends that on account of the illegalities that surround the issuance of Ext.P1 environmental clearance, he approached the District Collector through Ext.P5 representation on



25.2.2019 and since there was no response, he was compelled to move this Court seeking the following main reliefs:

- “(i) Issue a writ of certiorari or other appropriate writ, order or direction quashing Ext.P1.
- (ii) Call for the records relating to the grant of clearance by the 4th respondent KCZMA to the project of the 7th respondent and quash the same.
- (iii) Order appropriate damages against the 7th respondent as environmental compensation to be paid.
- (iv) Direct the 1st respondent to conduct a detailed enquiry and take appropriate action against the responsible officers of respondents 3 to 6 for facilitating the grant of illegal EC to the 7th respondent and order appropriate costs to be paid.
- (v) Issue a writ of mandamus or other appropriate order or direction to the official respondents to take action to protect the ecology of the region where the construction is going on with a fake certificate from the State Environmental Impact Assessing Authority (SEIAA), flouting all the rules prevailing in the country.
- (vi) Issue a writ of mandamus or other appropriate order or direction directing the District Collector to consider Ext.P5 and take appropriate action against the 7th respondent.”

4. Counter affidavits have been filed by respondents 2, 3, 4, 5 and 7, controverting the contentions raised in the writ petition. Since the pleadings are relevant, we refer to the stand of the respondents briefly.

5. In the counter affidavit filed on behalf of the 2nd respondent, it was pleaded that verification of the property had not revealed any encroachment into the Parvathy Puthanar Canal or into any Puramboke property. It was also pleaded that based upon the letter



issued by the Tahsildar, it was evident that the property of M/s.Lulu Mall Private Limited was not over any Puramboke property and also that on enquiry it was found that there was no violation of the provisions of the Kerala Conservation of Paddy Land and Wetland Act, 2008.

6. The 3rd respondent in its counter-affidavit pleaded that the Lulu Mall, Thiruvananthapuram, is a project coming under clause 8(b) of the EIA notification and that the issuance of environmental clearance was as per the existing rules. In the affidavit of the Member Secretary of the 3rd respondent it was asserted that Ext.P1 was issued after scrupulously following the procedure prescribed under clause 7 of the EIA notification and that the present challenge raised after several years of issuance of Ext.P1 was not maintainable, as, a remedy in the form of a statutory appeal was available to any person aggrieved against the grant of EC. It was pleaded that the area under construction does not fall within the prohibited areas of CRZ Regulations and also that the site for construction was outside CRZ III. The Authority further affirmed that the SEIAA was competent to issue EC for projects of Township and Area Development, covering an extent of more than 50 hectares or



built-up area above 1.5 lakh sq.m. It was further stated that after the Kerala Coastal Zone Management Authority approved the proposal, SEIAA considered the application for environmental clearance objectively. While granting the environmental clearance, SEIAA had taken note of the Indian Green Building Council (IGBC) rating, as well as CRZ clearance and thereafter, had imposed conditions. It was stated that SEIAA had even stipulated conditions providing a green area in the no-development zone and thus the issuance of environmental clearance was in accordance with law.

7. The 4th respondent affirmed through their counter affidavit that the 7th respondent had submitted an application on 11.03.2016 for grant of a coastal regulation zone clearance for the construction of a Hotel, a Convention Centre and a Shopping Complex project, having a total built-up area of 2,32,400 sq.m with a project cost of Rs.613.89 Crores. The proponent had submitted, along with the application, a coastal regulation zone plan status report, prepared by the Institute of Remote Sensing, Anna University, Chennai and a NOC from the Kerala State Pollution Control Board. The 4th respondent stated that the proposed construction lies in CRZ-II category and that the application filed by the 7th respondent for



construction was placed before the 75th meeting and after consideration of various factors, the construction was permitted outside the coastal regulation zone limit.

8. The 5th respondent had asserted in his counter-affidavit that in the light of the specific observations of the revenue authorities that there was no encroachment into the canal area of the Parvathy Puthanar, the allegations are untenable. It was also stated that subsequent to the issuance of notices to the 7th respondent in the writ petition, all documents were produced for verification. Thereafter Ext.P9 letter was issued to the Tahsildar, who after verification, by letter dated 04-10-2019 intimated that there were no encroachments into the Canal or puramboke property and that the construction alleged as an encroachment was into a private land covered by a land assignment patta. The 6th respondent has filed a statement that the local authority had issued a building permit on 27-04-2017, after verification of all the documents as per the Kerala Municipality Building Rules, 1999.

9. The 7th respondent, who is the proponent of the project, pleaded that the construction of the shopping mall has reached its



final stages and once completed, the project would generate employment for thousands of persons. It was further pointed out that the writ petition was instituted on misconceptions, especially on the jurisdiction and authority of the SEIAA and that constructions above 1,50,000 sq.ms. would fall under Township and Area Development Project and that there is a quantitative correlation between the two sub-clauses of clause 8 of the EIA notification. According to the 7th respondent, the environmental clearance was granted by SEIAA as per Ext.P1 in accordance with law and that for a building having a built-up area of 2,32,400 sq.m, which falls under the category 8(b) of the EIA notification, the SEIAA is vested with the authority to grant environmental clearance. It was also pointed out that the area of construction is at a distance of more than 100 metres from the high tide line (HTL) of Aakulam Lake, which was beyond the limits of CRZ restrictions, while the Parvathy Puthanar Canal known as T.S.Canal has a width of only 20 metres and the construction was beyond the distance of 20 metres. The 7th respondent further stated that by virtue of the CRZ zone notification prevalent at the time of grant of clearance, the distance of the no-development zone was either 100 metres or width of the canal, whichever was less. It was thus stated



that the construction, at a distance of more than 20 metres from the canal and commenced after getting clearance from the Coastal Zone Management Authority, as per Ext.R7(e) was not illegal or objectionable. The 7th respondent further asserted that on the landward side of the canal, they have not carried out any constructions to the extent of the canal width. Even from the Aakulam lake, according to the 7th respondent, they have not made any constructions within 100 metres of the lake. Ext.R7(f) is the sketch prepared by the Institute of Remote Sensing, Anna University. It was also pleaded that no constructions have been carried out by the 7th respondent contrary to any provision of law.

10. Reply affidavits have been filed by the writ petitioner reiterating his contentions in the writ petition and also produced Ext.P8 to Ext.P16. Referring to certain letters issued by the Assistant Engineer of the Indian Navigation, it was stated that constructions were being carried out after encroaching into the TS Canal.

11. The 7th respondent has filed an additional affidavit producing documents to bring to the notice of the Court that during the pendency of the writ petition, the petitioner had been interfering



with the administration of justice by giving repeated interviews to the media, making allegations against the Court as well as the other officials.

12. When the matter came up for consideration on 16.2.2021, this Court directed the 2nd respondent District Collector to file an affidavit with particular reference to the compliance of the general and special conditions imposed in the environmental clearance certificate. Consequent to the said direction, an additional counter affidavit has been filed by the 2nd respondent on 28.2.2021 detailing the compliance status of each of the conditions stipulated in Ext.P1. At this stage, we note that most of the conditions have been complied with either fully or partly. There are no serious violations of the conditions stipulated in Ext.P1. Further, an additional counter affidavit has also been filed by the 2nd respondent on the compliance noted by her or through her delegates as on 30.3.2021. We record our satisfaction with the report as well as the compliance of the conditions, as expressed in the status report.

13. Petitioner argued the case as a party in person. We also heard Sri.K.Gopalakrishna Kurup, learned Advocate General



assisted by Sri.V.Manu, learned Senior Government Pleader on behalf of respondents 1 and 2, Adv. M.P.Sreekrishnan on behalf of the 3rd respondent, Adv. M.P. Prakash on behalf of the 4th respondent, Senior Advocate Sri.N.Nandakumara Menon on behalf of the 6th respondent and Senior Advocate P.K.Suresh Kumar, duly instructed by Adv.K.P.Sudheer on behalf of the 7th respondent.

14. On a perusal of the pleadings, we notice that none of the respondents have questioned the locus standi of the writ petitioner. In the absence of any challenge to the locus standi of the petitioner to file this writ petition, we proceed to consider the issues that arise for our consideration. The primary question to be considered in the instant case is on the validity of SEIAA to issue Ext.P1 environmental clearance certificate. Before we consider the question of validity of Ext.P1, it is necessary to consider the maintainability of this writ petition under Article 226 of the Constitution of India against the grant of Ext.P1 environmental clearance.

15. Ext.P1 was issued on 04-10-2016. Pursuant to the grant of EC, the project proponent commenced construction of the building after obtaining a building permit from the local authority. The building



permit was issued by the 6th respondent on 27-04-2017 with permit number ZK2/BA258/16. The writ petition was filed on 15-07-2019, almost 33 months after the issuance of Ext.P1. We notice that none has preferred to challenge the grant of building permit in any mode known to law. The local authority has also not cancelled or withdrawn the building permit. As the building permit remains valid as on date, it has to be presumed that the construction of the building is without any infraction of the building rules.

16. Petitioner has preferred to challenge Ext.P1 EC in this proceeding under Article 226. We notice that an appellate remedy is specifically provided against the grant of EC as per The National Green Tribunal Act, 2010 (for short 'the Green Tribunal Act'). The statute mentioned above provides for the establishment of a National Green Tribunal for the effective and expeditious disposal of cases relating to environmental protection including enforcement of any legal right relating to the environment. Chapter III of the Green Tribunal Act deals with jurisdiction, powers and proceedings of the Tribunal. Section 16 provides for the appellate jurisdiction of the Tribunal.



17. Section 16(h) of the Green Tribunal Act is relevant for the instant case and the same is extracted as below:

S.16. Any person aggrieved by,-

(h) an order made, on or after the commencement of the National Green Tribunal Act, 2010, granting environmental clearance in the area in which any industries, operations or processes or class of industries, operations and processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986 (29 of 1986).

..... may, within a period of 30 days from the date on which the order or decision or direction or determination is communicated to him, prefer an appeal to the Tribunal.

Provided that the Tribunal may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed under the section within a period not exceeding 60 days.

18. A perusal of the above provision makes it clear that the legislature intended to create a specialist body in the form of National Green Tribunal to consider the validity of orders granting or rejecting applications for EC. The remedy of an appeal with the Tribunal under the Green Act gives power to consider the grant in its true perspective with opportunities to consider the correctness or otherwise of the decision in a holistic approach. It is seen from the pleadings in the case that the petitioner became aware of Ext.P1 at least by 25-02-2019 when an email was sent to the District Collector, complaining about the alleged illegalities and questioning the grant of



the environmental clearance certificate. The writ petition is filed only on 15-07-2019 without even invoking the appellate remedy before the National Green Tribunal. Petitioner has not pleaded the reasons for not invoking the statutory remedy under the Green Act. As on the date of filing the writ petition, his statutory remedy became barred by limitation under the proviso to section 16 of the Green Tribunal Act.

19. When a statute creates a right and the remedy is also created for those aggrieved, recourse must be made to that remedy before invoking the extraordinary and prerogative writ jurisdiction of the High Court under Article 226 of the Constitution of India. As has been reiterated by the Supreme Court, the normal rule is that the writ petition should not be entertained when statutory remedies are available under the legislation concerned, unless exceptional cases are made out. Reference can be made to **Shivanand Gaurishankar Baswanti v. Laxmi Vishnu Textile Mills and Others** [(2008) 13 SCC 323] and also **Star Paper Mills Ltd. v. State of U.P and Others** [(2006) 10 SCC 201].

20. The appellate remedy under the Green Tribunal Act is efficacious and any person aggrieved can prefer appeal against the



grant of EC. The appellate remedy was available to the petitioner and no reasons have been stated for bypassing the statutory appeal. Moreover, an appreciation of various factual matters are also involved in the nature of challenge raised against Ext.P1, which could be effectively adjudicated only in an appeal. Failure to approach the statutory authority within the stipulated time must normally renders this writ petition as not maintainable. Though this writ petition merits dismissal solely on the ground of non-recourse to statutory remedies, taking into consideration the nature of this litigation and the approach adopted by the Constitutional courts in environmental issues, we are of the view that this Court can consider the writ petition on merits. We also bear in mind that the cause put forth in the case would be rendered otiose, if the parties are relegated to the appellate remedy after the writ petition was admitted and kept pending on the files of this Court for the last two years. Thus we hold that this writ petition is maintainable on the peculiar facts of this case. While disposing this writ petition on merits by this judgment, we shall not be understood as having made a departure from the general rule, i.e, writ petitions will not be entertained when alternate statutory remedies are available.



21. Ext.P15 was the appendix attached to the application filed by the 7th respondent for grant of EC. In column No.9 of Ext.P15, it is mentioned that the application is filed under clause 8(a) of the Schedule to the EIA notification under the heading 'Building and Construction Projects'. However, in the counter affidavit filed by the 3rd respondent, it was specifically stated that the project comes under category 8(b) of the EIA notification and the project was approved as a B1 project as per the rules. Since the writ petitioner has questioned the authority of SEIAA to consider the application for EC submitted by the 7th respondent and grant of EC under item 8(b) of the Schedule to the EIA notification, It is appropriate to consider the scheme and purport of the notification.

22. The EIA notification was enacted in exercise of the powers under Sections 3(1) and 3(2)(v) of the Environment (Protection) Act, 1986 read with Rule 5(3)(d) of the Environment (Protection) Rules, 1986. Under the regime of EIA notification, all new projects or activities or expansion or modernisation of existing projects or activities listed in the Schedule can be undertaken only after a prior environmental clearance is obtained from the Central Government or the State Level Environment Impact Assessment Authority.



23. The EIA notification provides for in Clause 2 that, prior EC from the regulatory authority concerned is required for projects or activities that falls under two separate categories referred to as category A and category B. Categorization is based on the spatial extent of potential impacts and potential impacts on human health and natural and man-made resources as specified in Clause 4. As per Clause 2 of EIA notification, before any construction work or land preparation is started on a project or activity, a prior EC must be obtained. The aforesaid clearance has to be obtained from the Ministry of Environment and Forest of Central Government for projects or activities falling under category A and at the State level from the SEIAA for matters falling under category B. A reading of the notification will make it clear that the SEIAA has to consider the applications for prior EC through the procedure prescribed in Clause 6. There is a further sub-category called Category B1 and B2. Projects that fall in Category B1 are those projects which require an Environmental Impact Assessment study and consequent Report while category B2 comprises projects that do not require Environmental Impact Assessment.

24. Under the scheme of EIA notification, an application for



grant of environmental clearance has to pass through four stages. These four stages are mentioned in clause 7 of the notification and they are Stage I. Screening, Stage II. Scoping, Stage III. Public Consultation, and Stage IV. Appraisal.

25. 'Screening' is the first stage where the State Expert Appraisal Committee (SEAC) scrutinizes the application and determines whether the project requires further environmental studies for preparing environmental impact assessment (EIA). It is at this stage, categorization of the project as B1 or B2 happens. Once the first stage is completed, the projects categorized as B1 goes to Stage II called 'Scoping'. At the stage of Scoping, the SEAC determines the terms of reference (TOR). To enable it to determine the TOR, it can even appoint a sub-committee to conduct a site visit. There is an exclusion from Scoping for projects listed as Category B in respect of Construction or Township or Commercial Complexes or Housing in item 8 of the Schedule. The next stage is referred to as the 'Public Consultation' where the concerns of the locals who are affected or who have a stake in the environmental impact are ascertained. Though all category A and B projects require public consultation, there is yet again an exclusion for projects listed as item



8(a) and item 8(b) to the schedule apart from a few other projects.

The fourth stage is the 'Appraisal' where the SEAC after detailed scrutiny makes a recommendation to the SEIAA for granting or rejecting the EC sought for.

26. The schedule to the EIA notification lists the projects or activities that require prior environmental clearance. Clause 8(b) of the EIA notification is relevant and is extracted as below:

SCHEDULE

(See Paras 2 and 7)

List of Projects or Activities Requiring Prior
Environmental Clearance

Project or Activity		Category with threshold limit		Conditions if any
		A	B	
8		Building/Construction projects/Area development projects and Township		
1	2	3	4	5
8(a)	Building and construction projects		$\geq 20,000$ sq.m. and $\leq 1,50,000$ sq.m. of built-up area*	*(built-up area for covered construction; in the case of facilities open to the sky, it will be the activity area)
8(b)	Townships and area development projects		Covering an area ≥ 50 ha and or built-up area $\geq 1,50,000$ sq.m.**	** All projects under item 8(b) shall be appraised as Category B1

[The built up area for the purpose of this notification is defined as "the built up or covered area for all floors put together including basement(s) and other service areas, which are proposed in the building/construction projects".]

**Note:-****General Condition (GC):**

[Any project or activity specified in Category 'B' will be treated as Category A, if located in whole or in part within 10 km from the boundary of: (i) Protected Areas notified under the Wild Life (Protection) Act, 1972, (ii) Critically Polluted areas as notified by the Central Pollution Control Board from time to time, (iii) Notified Eco-sensitive areas, (iv) inter-State boundaries and international boundaries.*

Provided that the requirement regarding distance of 10 km of the inter-State boundaries can be reduced or completely done away with the agreement between the respective States or UT's sharing the common boundary in case the activity does not fall within 10 kilometres of the areas mentioned at item (i) (ii) and (iii) above.

27. It can be understood from the above discussion that the construction project challenged in this litigation falls in category B and would require prior environmental clearance from SEIAA. The argument of the writ petitioner that the building of the 7th respondent having a built-up area of more than 1.5 lakhs sq.m. must obtain the EC from the Ministry of Environment and Forest, is, according to us, a misconception and a misreading of the EIA notification. On a perusal of the above extracted tabular column and the above discussed provisions of EIA notification, it is obvious that a project having a built-up area of more than 1.5 lakhs sq.m. can also fall under category B. If it is a category B project, the SEIAA is the authority to grant the EC. It is a misreading of the notification to



contend that every construction project with a built-up area of more than 1.5 lakhs sq.m, automatically falls within the jurisdiction of the MoEF and SEIAA loses its jurisdiction or authority. In fact, the Supreme Court has interpreted the EIA notification to mean that Constructions above a built-up area of 1.5 lakhs sq.m. by virtue of their sheer magnitude will qualify as a Township Project by itself.

28. The decision of the Supreme Court in **In Re: Construction of Park at Noida near Okhla Bird Sanctuary v. Union of India and Others** [(2011) 1 SCC 744] considers the distinction between clauses 8(a) and 8(b) of the EIA notification. For an easier appreciation, paragraphs 65 and 66 of the above decision are extracted as below:

65. It is extremely difficult to accept the contentions that the categorisation under Items 8(a) and 8(b) has no bearing on the nature and character of the project and is based purely on the built-up area. A building and construction project is nothing but addition of structures over the land. A township project is the development of a new area for residential, commercial or industrial use. A township project is different both quantitatively and qualitatively from a mere building and construction project. Further, an area development project may be connected with the township development project and maybe its first stage when grounds are cleared, roads and pathways are laid out and provisions are made for drainage, sewage, electricity and telephone lines and the whole range of other civic infrastructure. Or an area development project may be completely independent of any



township development project as in case of creating an artificial lake, or an urban forest or setting up a zoological or botanical park or a recreational, amusement or a theme park.

66. The illustration given by Mr.Bhushan may be correct to an extent. Constructions with built-up area in excess of 1,50,000 would be huge by any standard and in that case the project by virtue of sheer magnitude would qualify as township development project. To that limited extent there may be a quantitative correlation between Items 8(a) and 8(b). But it must be realised that the converse of the illustration given by Mr.Bhushan may not be true. For example, a project which is by its nature and character an “area development project” would not become a “building and construction project” simply because it falls short of the threshold mark under Item 8(b) but comes within the area specified in Item 8(a). The essential difference between Items 8(a) and 8(b) lies not only in the different magnitudes but in the difference in the nature and character of the projects enumerated thereunder.

29. In a recent decision in **Rajeev Suri v. Delhi Development Authority and Ors.** (2021 SCC Online SC 7) known as the Central Vista Project Case, the Supreme Court held that the basis of categorisation of projects and activities under the EIA notification lies in the expanse of the built-up area of the proposed project. The court held in paragraph 340 as follows:

“The Schedule attached with the Notification incorporates a “List of Projects or Activities Requiring Prior Environmental Clearance”. Item 8 in category B is divided into two sub-categories – item 8(a) titled “Building and Construction projects” and item 8(b) titled “townships and Area



Development projects”. The distinction lies in the expanse of built-up area of the proposed project.”

30. In view of the above discussion, we are of the view that SEIAA was competent to consider the application of the 7th respondent for grant of EC for constructing the shopping mall having an extent of more than 1.5 sq.m. of built-up space. We hold that SEIAA had the jurisdiction and authority to issue Ext.P1.

31. A perusal of Ext.P1 reveals that the 3rd respondent had considered all the relevant aspects for the grant of EC. The environmental impact assessment report and the recommendation of the KCZMA were considered. Thereafter the recommendation of SEAC was also considered. It was thus after satisfying themselves of full compliance of all legal requirements, that SEIAA decided to grant EC. We notice from Ext.P1 that the SEIAA considered the proposal in the meeting held on 06-07-2016 and deputed a sub-committee to inspect the site. After the site visit on 15-06-2016, the project proponent made a presentation to the committee on 17-06-2016 where the queries made during the site visit were clarified. Yet again the SEIAA considered the proposal on 29-06-2016, 16-07-2016, 23-07-2016, and finally on 08-09-2016



when it was decided to grant EC. Several conditions were incorporated while granting the EC which included general conditions, specific conditions and additional conditions, apart from green conditions. Thus the 3rd respondent had, while granting EC to the construction for the shopping mall and other related buildings, imposed innumerable conditions having regard to environmental management and mitigation of adverse impacts.

32. It is understood from a reading of Ext.P1 that the SEIAA had decided to grant EC, after considering the entire perspective of the project vis-a-vis the environment. As noted by us earlier, the expert appraisal committee - SEAC considered the details of the project, a sub-committee visited the site, the project proponent made a presentation to clarify the doubts and then, the SEAC recommended the grant of EC. Pursuant to the said recommendation, SEIAA granted the EC incorporating the conditions stipulated by SEAC as well as further conditions as it deemed fit. The procedure prescribed for the grant of EC has been scrupulously complied with by SEIAA.

33. We also note that the principle of sustainable development



and the precautionary principle are imprinted in the conditions imposed while granting EC. The stipulation that compliance of conditions shall be monitored by SEIAA, as well as the MoEF at Bangalore, is stipulated as a measure of control over any possible violations. Further, any violation by the proponent can even be reported to the District Collector who can initiate legal action under the Environmental (Protection) Act. On an appreciation of the conditions stipulated in the EC, We are of the considered view that the EC has been granted by adopting a holistic approach balancing the interests of the environment as well as the necessity for development. It is needless to observe that monitoring of compliance of conditions by SEIAA and the District Collector, as stipulated in Ext.P1 are measures of the precautionary principle. We do not find any illegality or irregularity in the grant of Ext.P1 EC.

34. The next allegation against the construction is based on CRZ violations. Petitioner has raised a two-pronged attack regarding CRZ violation against the construction in question. The first objection is regarding the Aakulam Lake, while the second objection is based on the proximity to the Parvathy Puthanar Canal. Petitioner contends that the construction area falls within the prohibited distance under



the CRZ notification from the Aakulam Lake as well as the Parvathy Puthanar Canal.

35. The Kerala Coastal Zone Management Authority, which is arrayed as the 4th respondent, has affirmed that the project was approved by the said authority after verifying the details submitted by the 7th respondent. According to the 4th respondent, though the HTL line was demarcated and approved in 1996 as per the CRZ notification of 1991, a new Coastal Zone Management Plan was prepared as per CRZ notification of 2011. This subsequent plan was approved only on 28.02.2019 and till the approval, the plan under 1991 notification was in force. It is understood from the pleadings that the Coastal Zone Management Authority looked at it from another angle, in the sense that, even if the project fell under CRZ III category, still there could be no objection to the construction as the distance between the Aakulam Lake and the proposed construction was beyond 100 metres. Similarly as regards the Parvathy Puthanar Canal that runs near to the proposed construction, its width being less than 25 metres, the construction did not fall within the prohibited distance under the CRZ notification. It is evident that the petitioner is under a misconception that under CRZ regulations the prohibited



distance applies equally from every water body. From the Parvathy Puthanar Canal the prohibited distance is to be measured as 100 metres or width of the canal towards the landward side, whichever is less. When the Coastal Zone Management Authority asserts that while granting approval/recommendations for the project, they had ascertained the width and the distance measured and found the questioned construction to be falling beyond the prohibited distance, this Court cannot in the absence of any contrary materials, disregard the said assertions and recommendation of the statutory authority. Petitioner has not placed any material to disprove the assertion of the KCZMA. In the above circumstances, we hold that the construction in question does not fall within the prohibited distance under the CRZ notification.

36. According to the petitioner, Ext.P5, filed by him before the District Collector was not considered. Since we have already considered the main objections raised by the petitioner in Ext.P5 and found that the project does not violate either the EIA notification or the CRZ regulations, we are of the view that the said relief for a direction to the District Collector to consider Ext.P5, does not serve any purpose.



37. In view of the above consideration and discussion, we are of the view that the contentions raised in this writ petition are bereft of any substance, and the writ petition is liable to be rejected.

Accordingly, we dismiss the writ petition. In the nature of the circumstances of the case, there shall be no order as to costs.

Sd/-

**S.V.BHATTI
JUDGE**

Sd/-

**BECHU KURIAN THOMAS
JUDGE**

vps

APPENDIX

PETITIONER EXHIBITS

- EXHIBIT P1 TRUE COPY OF THE EC
NO.1047/SEIAA/ECI/899/2016 DATED
14/10/2016 ISSUED BY THE SEIAA.
- EXHIBIT P2 TRUE COPY OF THE RTI REPLY
NO.716/A1/2019/SEIAA DATED 14/03/2019
ISSUED BY SEIAA TO THE PETITIONER.
- EXHIBIT P3 TRUE COPY OF SATELLITE MAP DOWNLOADED
FROM GOOGLE.
- EXHIBIT P4 TRUE COPY OF THE REPORT
NO.PCB/HO.EEI/NGT/673/2018 DATED
17/04/2019 ISSUED BY THE STATE POLLUTION
CONTROL BOARD TO THE CENTRAL POLLUTION
CONTROL BOARD.
- EXHIBIT P5 TRUE COPY OF THE EMAIL DATED 25/02/2019
SENT TO THE COLLECTOR TVM.
- EXHIBIT P6 TRUE COPY OF THE RECEIPT DATED
25/03/2019 ISSUED BY COLLECTORATE,
THIRUVANANTHAPURAM.
- EXHIBIT P7 TRUE COPY OF THE NEWS EXCERPTS FROM THE
TIMES OF INDIA DATED 18/03/2019.
- EXHIBIT P8 TRUE COPY OF THE NOTICE ISSUED BY THE
5TH RESPONDENT TO THE 7TH RESPONDENT
WITH PHOTOGRAPH (WITH ENGLISH
TRANSLATION)
- EXHIBIT P9 TRUE COPY OF THE LETTERS ISSUED BY THE
5TH RESPONDENT TO THE TAHASILDAR (WITH
ENGLISH TRANSLATION)
- EXHIBIT P10 TRUE COPY OF THE NEWS ITEM DATED
12.12.2018 BY RESEARCH & PUBLICATIONS



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- EXHIBIT P11 TRUE COPY OF THE STATEMENT WITH COVERING LETTER SENT TO ADVOCATE GENERAL
- EXHIBIT P12 TRUE COPY OF THE LETTER SENT TO THE 4TH RESPONDENT BY 5TH RESPONDENT KCZMA BEARING NO A5-1608/2019 DATED 21.8.2019
- EXHIBIT P13 TRUE COPY OF THE NOTICE SENT BY 5TH RESPONDENT TO SEIAA, NO A5-1608/2019 DATED 17.8.2019
- EXHIBIT P14 TRUE COPY OF THE LOCATION SKETCH FROM THE VILLAGE OFFICE, THE SURVEY NO AND CRZ MAP PREPARED BY THE NCESS (WITH ENGLISH TRANSLATION)
- EXHIBIT P15 TRUE COPY OF THE APPLICATION WITH APPENDIX
- EXHIBIT P16 TRUE COPY OF THE SURVEY DETAILS OF THE LAND BELONGING TO THE 7TH RESPONDENT
- EXHIBIT P17 TRUE COPIES OF THE LETTER DATED 21/10/2019 SENT FROM CHIEF ENGINEER TO EXECUTIVE ENGINEER ALONG WITH ENGLISH TRANSLATION
- EXHIBIT P18 TRUE COPIES OF THE LETTER SENT BY 4TH RESPONDENT TO PETITIONER DATED 6/3/2019 ALONG WITH ENGLISH TRANSLATION.

RESPONDENT EXHIBITS

- EXHIBIT R7 (a) TRUE COPY OF SCHEDULE ATTACHED TO THE 2006 NOTIFICATION AS IT STOOD AT THE TIME OF ITS ISSUANCE.
- EXHIBIT R7 (b) TRUE COPY OF NOTIFICATION NO.SO 3252 (E) DATED 22/12/2014 ISSUED BY MINISTRY OF ENVIRONMENT, FOREST AND ALIMATE CHANGE
- EXHIBIT R7 (c) TRUE COPY OF NOTIFICATION NO.SO 3999 (E)



- DATED 9/12/2016 ISSUED BY MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE.
- EXHIBIT R7 (d) TRUE COPY OF OFFICE MEMORANDUM (F.NO.3-150/2017-IA-111) ISSUED BY THE GOVERNMENT OF INDIA, MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE ON 3/4/2018
- EXHIBIT R7 (e) TRUE COPY OF THE GRANT OF APPROVAL NO.2966/A3/16/KCZMA/S&TD DATED 30/4/2016 ISSUED BY THE KERALA COASTAL ZONE MANAGEMENT AUTHORITY.
- EXHIBIT R7 (f) TRUE COPY OF THE CRZ STATUS REPORT OF THE PROJECT SITE PREPARED BY THE INSTITUTE OF REMOTE SENSING, ANNA UNIVERSITY, CHENNAI.
- EXHIBIT R7 (g) TRUE COPY OF SKETCH DULY SIGNED BY THE VILLAGE OFFICER, KADAKAMPALLY ALONG WITH ITS ENGLISH TRANSLATION
- EXHIBIT R7 (h) TRUE COPY OF SKETCH ISSUED BY THE ADDITIONAL TAHSILDAR, THIRUVANANTHAPURAM SHOWING THE PLOT DIMENSIONS AND ALL SURVEY NUMBERS.
- EXHIBIT R7 (i) TRUE COPY OF SKETCH SHOWING THE BOUNDARY PILLARS OF SITE WITH GEO CO-ORDINATES (LATITUED AND LONGITUDE)
- EXHIBIT R7 (j) TRUE COPY OF OFFICE MEMORANDUM NO.J11013/5/2010-IA-II(I) DATED 24/5/2011 ISSUED BY THE MINISTRY OF ENVIRONMENT AND FORESTS, GOVERNMENT OF INDIA.
- EXHIBIT R7 (k) TRUE COPY OF OFFICE MEMORANDUM DATED 15/3/2010 ALONG WITH LIST OF CRITICALLY POLLUTED AREA AS IDENTIFIED BY CPCB.
- EXHIBIT R7 (l) TRUE COPY OF NOTIFICATION PUBLISHED IN



MALAYALA MANORAMA DAILY DATED 13/10/2016
(ENGLISH TRANSLATION OF EXT.R7(1) NOTICE
IS GIVEN IN EXHINIT R7 (M) .

EXHIBIT R7 (m) TRUE COPY OF NOTIFICATION PUBLISHED IN
'THE HINDU'DAILY DATED 13/10/2016

EXHIBIT R7 (n) TRUE COPY OF INFORMATION ISSUED UNDER
RIGHT TO INFORMATION ACT BY THE PUBLIC
INFORMATION OFFICER, OFFICE OF THE CHIEF
ENGINEER ALONG WITH ENGLISH TRANSLATION
OF MALAYALAM PORTION

EXHIBIT R7 (o) THE COPY OF RELEVANT PAGES OF THE
MINUTES OF MEETING OF 98TH SEIAA (ITEM
NO.98.21)

EXHIBIT R7 (p) TRUE COPY OF APPROVED COASTAL ZONE
MANAGEMENT PLAN (CZMP)

EXHIBIT R7 (q) TRUE COPY OF OFFICE MEMORANDUM DATED
19.6.2013 ISSUED BY GOVT. OF INDIA,
MINISTRY OF ENVIRONMENT & FORESTS

EXHIBIT R2 (a) TRUE PHOTOCOPY OF THE REPORT DATED
20/09/2019 OF THE VILLAGE OFFICER,
KADAKAMPALLY, WITH TRUE TRANSLATION.

EXHIBIT R2 (b) TRUE PHOTOCOPY OF THE REPORT DATED
28/09/2019 OF THE TALUK SURVEYOR,
THIRUVANANTHAPURAM, WITH TRUE
TRANSLATION.

EXHIBIT R2 (c) TRUE PHOTOCOPY OF THE REPORT DATED
3/10/2019 OF THE HEAD SURVEYOR, TALUK
OFFICE, THIRUVANANTHAPURAM, WITH TRUE
TRANSLATION.

EXHIBIT R2 (d) TRUE PHOTOCOPY OF THE LETTER DATED
04/10/2019 OF THE TAHSILDAR (LAND
RECORDS), THIRUVANANTHAPURAM TO THE
FIFTH RESPONDENT WITH TRUE TRANSLATION.

EXHIBIT R2 (e) TRUE PHOTOCOPY OF THE LETTER DATED



- 14/10/2019 ISSUED BY THE FIFTH RESPONDENT TO THE TAHSILDAR (LAND RECORDS), THIRUVANANTHAPURAM WITH TRUE TRANSLATION.
- EXHIBIT R2 (f) TRUE PHOTOCOPY OF THE LETTER DATED 18/10/2019 OF THE TAHSILDAR (LAND RECORDS), THIRUVANANTHAPURAM TO THE FIFTH RESPONDENT WITH TRUE TRANSLATION.
- EXHIBIT R2 (g) TRUE PHOTOCOPY OF THE REPORT DATED 05/02/2020.
- EXHIBIT R2 (h) TRUE COPY OF THE REPORT OF COMPLIANCE ON CONDITIONS STIPULATED IN ENVIRONMENTAL CLEARANCE (EC) ISSUED BY SEIAA TO MM/S.LULU INTERNATIONAL HYPER MALL AT KADAKAMPALLY VILLAGE, THIRUVANANTHAPURAM MUNICIPAL CORPORATION VIDE ORDER NO:1047/SEIAA/ECI/899/2016 DATED 4/10/2016
- EXHIBIT R2 (i) REPORT OF COMPLIANCE ON CONDITIONS STIPULATED IN ENVIRONMENTAL CLEARANCE (EC) ISSUED BY SEIAA TO M/S.LULU INTERNATIONAL HYPER MALL AT KADAKAMPALLY VILLAGE, THIRUVANANTHAPURAM MUNICIPAL CORPORATION VIDE ORDER NO:1047/SEIAA/ECI/899/2016 DATED 4/10/2016 (SECOND REPORT)
- EXHIBIT R3 (a) : A TRUE COPY OF THE REPORT, DATED 30/04/2016.
- EXHIBIT R3 (b) : A TRUE COPY OF THE TAX RECEIPTS PRODUCED BY THE 7TH RESPONDENT.
- EXHIBIT R3 (c) : A TRUE COPY OF THE THANDAPER RECORDS PRODUCED BY THE 7TH RESPONDENT BEFORE THE 3RD RESPONDENT.
- EXHIBIT R5 (a) TRUE PHOTOCOPY OF THE LETTER DATED 4/10/2019 FROM THE TAHSILDAR (LAND



- RECORDS), THIRUVANANTHAPURAM TO THE ASSISTANT ENGINEER, INLAND NAVIGATION SECTION III, CHAKKA, WITH TRUE TRANSLATION
- EXHIBIT R7 (r) TRUE COPY OF INTERVIEW PUBLISHED IN KERALASABDAM IN JANUARY, 2020 ALONG WITH A TRANSLATED VERSION OF THE RELEVANT PORTIONS
- EXHIBIT R7 (s) TRUE COPY OF VIDEOGRAPH IN THE FORM OF COMPACT DISC ALONG WITH ITS CONTENTS IN WRITING
- EXHIBIT R7 (t) TRUE COPY OF VIDEOGRAPH IN THE FORM OF COMACT DISC ALONG WITH ITS CONTENTS IN WRITING
- EXHIBIT R7 (u) TRUE COPY OF STATUS REPORT FORWARDED BY THE PROJECT PROPONENT TO THE DISTRICT COLLECTOR (WITHOUT ANNEXURES) AS ON 25.3.2021
- EXHIBIT R7 (v) TRUE COPIES OF APPROVAL LETTER AND EXTENSION LETTERS ISSUED BY MINISTRY OF ROAD TRANSPORT AND HIGHWAY, GOVT. OF INDIA ALONG WITH LETTER SEEKING EXTENSION
- EXHIBIT R7 (w) TRUE COPY OF REGISTERED GIFT DEED VIDE NO.625/2020 DATED 26.2.2020 OF SRO, THIRUVANANTHAPURAM ALONG WITH PHOTOGRAPH OF THE FOOT OVER BRIDGE
- EXHIBIT R7 (x) TRUE COPY OF LETTER DATED 18.1.2021 ISSUED BY THE SECRETARY, PUBLIC WORKS DEPARTMET ALONG WITH MINUTES OF MEETING HELD ON 30.12.2020 REGARDING ISSUES RELATED TO ANTICIPATED TRAFFIC CONGESTION NEAR LULU MALL, TRIVANDRUM
- EXHIBIT R7 (y) TRUE COPY OF ESTIMATE OF THE WORK RELATED TO THE COVERING OF DRAIN



2021/KER/31190

W.P.(C) No.19580/19

:-37:-

RECEIVED FROM NHAI ALONG WITH THE SKETCH
SHOWNG THE CROSS SECTION OF THE SERVICE
ROAD

EXHIBIT R7 (z)

TRUE COPY OF COMMUNICATION DATED
16.1.2021 BETWEEN OFFICERS OF NHAI AND
PWD