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S.Dileep vs Union of India,

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Court : Kerala

Decided On : Sep-30-2019

Judge : Honourable the Acting Chief Justice Mr.C.K.Abdul Rehim,Honourable Mrs. Justice Anu Sivaraman

Appeal No. : WP(C)/8013/2019

Appellant : S.Dileep

Respondent : Union of India,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE THE ACTING CHIEF JUSTICE MR.C.K.ABDUL REHIM & THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN MONDAY, THE 30TH DAY OF SEPTEMBER 2019 / 8TH ASWINA, 1941 PETITIONER: S.DILEEP, AGED 50 YEARS, S/O LATE SHAHUL HAMEED, SUNINA MANZIL, RUBY NAGAR, CHALI THIRUVANANTHAPURAM BY ADVS. SRI.R.SUNIL KUMAR SMT.A.SALINI LAL RESPONDENTS:

1 UNION OF INDIA, REPRESENTED BY ITS SECRETARY, MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE, INDIRA

PARYAVARAN BHAVAN, ALI GANJ, JORBAGH ROAD, NEW DELHI 110003. 2 STATE OF KERALA, REPRESENTED BY SECRETARY DEPARTMENT OF REVENUE, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM 695001 3 HARBOUR ENGINEERING DEPARTMENT, REPRESENTED BY ITS SECRETARY, GOVERNMENT SECRETARIAT, STATUE, THIRUVANANTHAPURAM 695001 4 KERALA STATE POLLUTION CONTROL BOARD, REPRESENTED BY ITS CHAIRMAN, PLAMMOOD, PATTOM PLACE P.O., THIRUVANANTHAPURAM 695001 5 KERALA COASTAL ZONE MANAGEMENT AUTHORITY, REPRESENTED BY ITS MEMBER SECRETARY, DIRECTORATE OF ENVIRONMENT AND CLIMATE CHANGE, 4TH FLOOR, KSRTC BUS TERMINAL, THAMPANOOR, THIRUVANANTHAPURAM 6 CHIRAYINKEEZHU GRAMA PANCHAYATH, REPRESENTED BY ITS SECRETARY, OFFICE OF CHIRAYINKEEZHU GRAMA PANCHAYATH,CHIRAYINKEEZHU,THIRUVANANTHAPURAM

7 ADANI VIZHINJAM PORTS (P) LTD, REPRESENTED BY ITS MANAGING DIRECTOR, VIPANCHIKA TOWERS, THYCAUD, THIRUVANANTHAPURAM R1 BY SRI. L.RAM MOHAN, CGC R2-3 BY SRI.K.V.SOHAN, STATE ATTORNEY R4 BY SRI. T.NAVEEN SC, KERALA STATE POLLUTION CONTROL BOARD, R5 BY SRI.M.P.PRAKASH, SC, KCZMA R6 BY ADV. SRI.THOUFEEK AHAMED R7 BY ADV. SRI.ROSHEN.D.ALEXANDER R7 BY ADV. SMT.TINA ALEX THOMAS THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON

30.09.2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: C.K. ABDUL REHIM, Ag. C.J. &

ANU SIVARAMAN, J.

``````````````````````````` W. P (C) No. 8013 of 2019 ```````````````````````````

Dated this the 30th day of September, 2019
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JUDGMENT

C.K. Abdul Rehim, Ag. C.J.

1. The petitioner, who is styling himself as a public spirited

citizen, is approaching this Court seeking restrainment of the construction activities going on at the 'Muthala Pozhi' fishing harbour at Chirayinkeezhu, at the instance of respondents 1 to

6. Inter alia, direction is sought for to the respondents 1 to 4 to

> initiate action against the 7th respondent under Section 5 of the Environmental Protection Act. It is complained that the 7 th respondent, which is a Private Company, is doing illegal activities at the 'Muthala Pozhi' fishing harbour violating the laws, especially the Coastal Zone Regulations. It is stated that the 7 th respondent is constructing a private port at the area under the pretext of dredging the sea for welfare of the fishermen community. Further contention is that under the guise of
>
> dredging, the 7th respondent has virtually constructed a private port and a new boat jetty in the area, by trespassing into about 15 Acres of sea shore and by reducing possession of that area as a private property. It is stated that roads were constructed without obtaining permission from the local authority, namely, Chirayankeezhu Panchayath, and the boat jetty was also constructed without obtaining any permission from the Panchyath or from the Kerala Coastal Zone Management Authority. It is stated that the Harbour Engineering Department of the State Government had submitted an application for clearance from the Kerala Coastal Zone Management Authority. But the same has not been granted. It is alleged that the activities now going on are in violation of the provisions of the Environmental Protection Act and the Coastal Zone Regulations Notification. It is alleged that, even though complaints and representations were submitted by the petitioner to various authorities no

action has been taken.

2. In the counter affidavit filed by the 7 th respondent it is specifically mentioned that, they have undertaken the

development and operation of 'Vizhinjam International Deepwater Multipurpose Seaport', for which they have entered into an agreement with the State Government in August, 2015. It is stated that, as part of the above said project [phase I] a breakwater of 3.1 km. long needs to be constructed, for which, the 7th respondent requires approximately 80 Lakhs Tones of rock (Granite Rubble) of suitable size. For procuring those materials, the 7th respondent had applied to the Harbour Engineering Department of the State Government to facilitate permission for construction and usage of a barge load out facility along with stocking yard for rocks at the 'Muthala Pozhi Fishery Harbour', which will be used for transportation of rocks from 'Muthala Pozhi' to 'Vizhinjam' for construction of International Deepwater Multipurpose Seaport. It is stated that on the basis of such request made by the 7 th respondent, the Government of Kerala, through its Harbour Engineering Department, had permitted to construct the barge load out facility and the stock yard. Ext.R7(a) is the Memorandum of Understanding executed in this regard between the 7th respondent and the authorities of the State Government at the Harbour Engineering Department.

3. It is further stated by the 7th respondent that on the basis of

the application submitted by the Harbour Engineering Department, the Kerala Coastal Zone Management Authority in its 103rd meeting held on 07.06.2019 had accorded clearance for construction of the temporary 'barge load out facility' along with a transit stockyard, by cancelling its earlier decision for recommending the application to Mo EF. Ext.R7(i) is the communication given by the Kerala Coastal Zone Management Authority to the Chief Engineer of the Harbour Engineering Department

in this regard. The 5th respondent had conceded about the above said aspects in their counter affidavit. On behalf of the State of Kerala and the 3 rd respondent, a statement is also filed reiterating the above said aspects.

4. Learned counsel for the petitioner contended that the permission

from the 5th respondent was obtained at a belated stage, after completing the construction. Therefore it is contended that the construction was done in an illegal manner and the 5 th respondent was not entitled to regularize the same. We do not think that such an issue is germane for consideration in this writ petition, which was filed on the premise that the entire construction is going on without obtaining any permission. If there occurs any illegality in the action of the 8 th respondent in granting such permission, it is a separate issue which needs to be agitated in appropriate proceedings.

5. Since the cause of action raised in this Writ Petition does not survive, in view of the permission already granted, we do not think it necessary to pursue further the above Writ Petition, which is filed as pro bono publico. Hence, the above Writ Petition is hereby dismissed. Sd/- C.K.ABDUL REHIM ACTING CHIEF JUSTICE Sd/- ANU SIVARAMAN JUDGE kmd APPENDIX PETITIONER'S EXHIBITS:

EXHIBIT P1 COPY OF PHOTOGRAPHSEXHIBIT P2 COPY OF PHOTOG

UNDER RTI ACT EXHIBIT P4 COPY OF THE REPLY RECEIVED BY PETITIONER UNDER RIGHT TO INFORMATION ACT EXHIBIT P5 COPY OF REPRESENTATION SUBMITTED BEFORE 1ST RESPONDENT DATED 18.2019 EXHIBIT P6 COPY OF REPRESENTATION SUBMITTED BEFORE 2ND RESPONDENT DATED 21.2.2019 EXHIBIT P7 COPY OF REPRESENTATION SUBMITTED BEFORE 2ND RESPONDENT DATED 18.2.2019 EXHIBIT P8 COPY OF ACKNOWLEDGEMENT OF EXHIBIT P-7 EXHIBIT P9 COPY OF REPRESENTATION SUBMITTED BEFORE 4TH RESPONDENT DATED 18.2.2019

EXHIBIT P10 COPY OF ACKNOWLEGEMENT OF EXHIBIT P-9 EXHIBIT P11 COPY OF REPRESENTATION SUBMITTED BEFORE THE 5TH

RESPONDENT DATED 18.2.2019 EXHIBIT P12 COPY OF ACKNOWLEDGEMENT OF EXHIBIT P-11 RESPONDENT'S EXHIBITS: EXHIBIT R4 A TRUE COPY OF THE CLEARNACE CERTIFICATE DATED 20-3- 2019 ISSUED BY THE BOARD. EXHIBIT R7(A) TRUE COPY OF THE LETTER BEARING NO. AVPPL/GOK/ 2017-18/283 DATED 24.11.2017 EXHIBIT R7(B) TRUE COPY OF THE LETTER NO 23/B2/2018/F&PD DATED 28.2.2018 ATTACHING THE MINUTES OF THE MEETING

HELD ON 7.2.2018

EXHIBIT R7(C) TRUE COPY OF LETTER AVPPL/GOK/2017-18/355DT.5.3.18 EXHIBIT R7(D) TRUE COPY OF MOU DATED 10.4.2018 EXHIBIT R7(E) TRUE COPY OF THE MINUTES OF THE MEETING CONSIDERING AGENDA ITEM NO 98.03.13 EXHIBIT R7(F) TRUE COPY OF NOTICE DATED 28.5.2019 EXHIBIT R7(G) TRUE COPY OF THE LETTER DATED 30.5.2019 ISSUED BY CHIEF ENGINEER,HED EXHIBIT R7(H) TRUE COPY OF THE MEETING DISCUSSING AGENDA ITEM NO 10.3.03.05 IN THE 103RD OF KCZMA EXHIBIT R7(I) TRUE COPY OF COMMUNICATION DATED 12.6.2019 ISSUING CRZ CLEARANCE TO THE CHIEF ENGINEER, HED FOR THE CONSTRUCTION OF TEMPORARY BARGED LOADOUT FACILITY ALONG WITH A TRANSIT STOCKYARD AT MUTHALAPPOZHI ISSUED BY THE MEMBER SECRETARY, KCZMA

EXHIBIT R7(j) TRUE COPY OF THE G.O(ms) NO. 20/2019/F & PD DATED 09.07.2019. EXHIBIT R7(k) TRUE COPY OF ENGLISH TRANSLATION OF EXT. R7(j) EXHIBIT R5 1 TRUE COPY OF THE LETTER DATED 13.9.2018 EXHIBIT R5 2 TRUE COPY OF THE RELEVANT POTION OF THE MINUTES OF THE KCZMA DATED 15.10.2018 EXHIBIT R5 3 TRUE COPY OF THE LETTER DATED 24.11.2018 OF THE KCZMA EXHIBIT R5 4 TRUE COPY OF THE LETTER DATED 8.3.2019 OF THE KCZMA

EXHIBIT R5 5 TRUE COPY OF THE LETTER DATED 05.4.2019EXHIBIT

CHIEF ENGINEER EXHIBIT R5 8 TRUE COPY OF THE LETTER DATED 12.6.2019 OF THE KCZMA

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