BEFORE THE NATIONAL GREEN TRIBUNAL

SOUTHER ZONE, CHENNAI

Application No.306 of 2013

(W.P.No.14262 of 2011 on the file of High Court, Kerala)

In the matter of

1.V.D. Majeendran

2. T.T. Thambi (died)

Both are residing at Mundamveli .. Applicants

Vs

1.State of Kerala

Rep. by Secretary to Government

Department of Environment

Thiruvananthapuram

2. Secretary to Government

Department of Planning

Thiruvananthapuram

3. District Collector, Ernakulam

4. Kerala State Urban Development Project

Rep. by the Project Director

Thiruvananthapuram

5. Corporation of Kochi

Rep. by the Secretary, Ernakulam

6. Senior Environmental Engineer

Kerala State Pollution Control Board

Ernakulam

7. Greater Cochin Development Authority

Rep. by the Secretary, Kochi

8. Kerala State Coastal Zone Management Authority

Rep. by the Chairman, Thiruvananthapuram

9 . Kerala State Bio-Diversity Board

Rep. by the Chairman

Thiruvananthapuram

10. Superintendent of Police, Ernakulam

11. Sub Inspector of Police, Thoppumpady

12. Revenue Divisiona Officer, Fort Kochi

13. Ministry of Environment, Forest and Climate Change, New Delhi

.. Respondents

Counsel appearing for the applicant

M/s. A. Yogeshwaram & Harish Vasudevan

Counsel appearing for the respondents

Smt. Suvitha A. S for R1 to R4 & R10 to R12

Shri Babu Karukampadath

Mr.K.R. Harin for R5

Mrs. Rema Smrithi for R6

Mr. Jimmy George for R7

Mr.T.N.C Kaushik for R8

Smt. Vidyalakshmi Vipin for R9

ORDER

Hon'ble Shri Justice Dr.P. Jyothimani, Judicial Member

Hon'ble Prof.Dr.R. Nagendran, Expert Member

23rd February, 2016

The applicants who are the residents of Mundamveli of Ernakulam District, Kerala have filed W.P.14262 of 2011 before the Hon'ble High Court of Kerala for the following relief:

i)to declare that land filling or other activities including construction of sewage treatment plant in R.S.No.132/2, 5, 7, 8-part and 144/1-part, 4-part, 5, 10, 3A2, and 3B2 of Palluruthy Village in Kochi Taluk in Ernakulam District is illegal and in violation of provisions contained in State Act 28 of 2008 and therefore the same is impermissible;

ii) to issue a writ of mandamus directing the respondents to refrain from carrying out any construction or activities in furtherance to Ext.P1 notification in the land covered by the said notification;

iii) to issue a writ of mandamus directing respondents 3, 8, 9, 10, 11 and 12 to take appropriate action against the persons responsible for destruction of mangroves and conversion of wetland in accordance with the relevant laws and to proceed against them in accordance with law:

iv) to issue a writ of mandamus directing the respondents to restore the land to the original position after removing the soil/sand which are filled in the land in question and to restore the land to the original position as it stood prior to the issuance of Ext.P1"

2. The High Court has granted an order of status quo on 22.8.2011 which continues even as on date. Subsequently, the writ petition was transferred to this Tribunal.

3. On a reference to the prayers made by the first applicant it is clear that this Tribunal can only decide about the 2nd prayer which relates to the alleged construction activities carried on in furtherance of Ext.P1. Ex.P1 is a tender notification issued by the 4th respondent dated 23.12.2010 calling for tenders for land filling works for the Sewage Treatment Plant (STP) at Mundamveli.

4. The ground raised by the applicant in respect of the land allotted for putting up the STP in the above survey numbers is that the reclamation of land for the above said purpose which has been done by the Government through a notification in accordance with the powers conferred under the Kerala Conservation of Paddy Land & Wetland Act, 2008 itself is illegal for the reason that the lands allotted are covered under the CRZ Notification, 2011 and therefore the intended activities are prohibited.

5. Even though it is the case of the applicant that the reclamation itself is illegal in view of the statutory notification issued by the Government of Kerala by virtue of its powers conferred under the State Act, we are of the considered view that we have no jurisdiction to decide about the validity or otherwise of the said Notification.

6. However, when the area which has been reclaimed is covered under CRZ, particularly prohibited area under CRZ – IV, it certainly relates to environment and this Tribunal has jurisdiction to decide on the same squarely.

7. Inspite of the pendency of the application and the continuation of the interim order granted by the Hon'ble Kerala High Court, it appears that the 5th respondent Kochi Corporation submitted an application to the 8th respondent - Kerala State Coastal Zone Management Authority (KSCZMA) on 25th September, 2011 seeking CRZ clearance for the construction of STP at Mundamveli. Very strangely, KSCZMA which has a right only to recommend its views to the MoEF & CC, chose to pass an order on 13.12.2012 accepting the proposal subject to the condition that there shall be mangrove afforestation.

8. The decision taken by the 8th respondent in this regard is as follows:

"The Authority examined the modified project proposal for mangrove afforestation programme to compensate mangrove destruction. M/s.KSUDP presented the details of the project before the Authority and the authority further decided for the establishment of STP at Mundamveli, Kochi and that the Department of Social Forestry will implement the mangrove afforestation and maintain the same and submit periodical report every 3 months on the progress till the completion of the afforestation. The Cochin Corporation will be entrusted with the responsibility of preventing destruction of the thus afforested mangrove areas."

9. On the face of it, it is clear that the 8th respondent has no authority to pass such orders. As per the CRZ Notification, 2011, based on the recommendations of the KSCZMA it is only the MoEF & CC has to make a decision. In the present case, the order of the 8th respondent dated 13.12.12 permitting compensatory mangrove afforestation is absolutely illegal and that is not permissible in law.

10. In view of the admitted position by the 5th respondent project proponent itself that the 5th respondent has to decide as to whether it is under CRZ area or not which is

revealed from the very fact that the project proponent itself made an application to KSCZMA on 25 September 2011, needless to say that it is for the KSCZMA to make appropriate decision and forward the same to MoEF & CC for passing appropriate orders in accordance with law.

11. The question that has to be decided is as to whether the impugned tender notification issued by the 4th respondent should be allowed to continue or not.

12. Mr. Harin, learned counsel appearing for the 5th respondent would submit that actually the applicant has not challenged the tender notification.

13. We do not agree with the said contention of the learned counsel at all.

14.The prayer in this application is for a mandamus to refrain the project proponent from carrying on any construction activities in furtherance of Ex.P1 Tender Notification.

15. This itself is sufficient to arrive at a conclusion as to what is squarely challenged in this application is ExP1 Notification which in fact enables the project proponent to proceed with the construction.

16. In such view of the matter, we are of the considered view that the tender notification has no leg to stand in the light of law. If really the project proponent is interested in floating the tender, the same has to be done only after obtaining clearance from the authorities. Merely quashing of the reclamation itself does not confer any power on the project proponent to proceed with the project at all. In cases where the approval granted by the CRZ authority is in conflict with the State, it is ultimately the Central law that will prevail. It is only after KSCZMA makes its recommendation and MoEF & CC passes appropriate orders as per the CRZ Notification 2011, the question of issuance of tender by the project proponent comes in.

17. In such view of the matter, the tender notification issued by the 4th respondent under Ex.P1 dated 23.12.2010 stands set aside. We make it clear that the application made by the 5th respondent dated 25.9.2011 has to be reconsidered by the 8th respondent strictly in accordance with law.

18. We set aside the order of the 8th respondent dated 13.12.2012 and direct the 8th respondent to reconsider the application dated 25.9.2011 as per the CRZ Notification, 2011 and make its recommendation to the MoEF & CC which shall pass appropriate orders in the manner known to law. The 8th respondent while considering the application dated 25.9.2011 if it do desires shall give appropriate opportunity to the parties who are likely to be affected, including the applicant and send its recommendation to MoEF & CC who shall pass orders.

19. The 5th respondent shall pay Rs.5 Lakhs to be credited to the "Environment Fund" maintained by the Chairman, Kerala State Pollution Control Board which and shall be utilised in accordance with the decision which may be taken by the Chairman, Kerala State Pollution Control Board.

In addition to that the 4th respondent shall pay an amount of Rs.50,000/- towards cost to the applicant.

Justice Dr.P. Jyothimani

Judicial Member

Prof.Dr.R. Nagendran

Expert Member