

SYNOPSIS

The Petitioner herein is the builder of apartments constructed in project "H2O" in Maradu Grama Panchayat, Ernakulam, Cochin. The present Review Petition under Article 137 of the Constitution read with Order XLVII of the Supreme Court Rules, 2015 is filed seeking review of the order dated 08.05.2019 passed by this Hon'ble Court in Civil Appeal No. 4790-4791 of 2019 and other connected matters whereby this Hon'ble Court, on the basis of the report submitted by a three member committee appointed by this Hon'ble Court concluded that the area of the building fell within CRZ-III and therefore directed removal of all the structures within a period of one month.

This Hon'ble Court on the very same day of passing the impugned order, passed a judgment in the case of Lal Bahadur Gautham Vs. State of U.P passed in Civil Appeal 4794/2019 held in para 10 - 12 as follows:

"10. Before parting with the order, we are constrained to observe regarding the manner of assistance rendered to us on behalf of the Respondent management of private college. Notwithstanding the easy access to information technology for research today, as compared to the plethora of legal digests which had to be studied earlier, reliance was placed upon a judgment based on an expressly repealed act by the present Act, akin to relying on an overruled judgement. This has only resulted in a waste of judicial time of the Court, coupled with an onerous duty on the Judges to do the necessary research. We would not only be completely wrong in opinion that though it may be negligence also, but the consequences could have been fatal by leading to an erroneous judgement.

11. Simply, failure in that duty is a wrong against the justice delivery system in the country. Considering that over the years, responsibility and care on this score has shown a decline, and so despite the fact that justice is so important for the Society, it is time that we took note of the problem, and considered such steps to remedy the problem. *We reiterate the duty of the parties and their Counsel, at all levels, to double check and verify before*

making any presentation to the Court. The message must be sent out that everyone has to be responsible and careful in what they present to the Court. Time has come for these issues to be considered so that the citizen's faith in the justice system is not lost. *It is also for the Courts at all levels to consider whether a particular presentation by a party or conduct by a party has occasioned unnecessary waste of court time, and if that be so, pass appropriate orders in that regard. After all court time is to be utilized for justice delivery and in the adversarial system, is not a licence for waste.*

12. As a responsible officer of the Court and an important adjunct of the administration of justice, the lawyer undoubtedly owes a duty to the Court as well as to the opposite side. He has to be fair to ensure that justice is done. He demeans himself if he acts merely as a mouthpiece of his client as observed in *State of Punjab & Ors. vs. Brijeshwar Singh Chahal & Ors.*, (2016) 6 SCC 1: "34....relationship between the lawyer and his client is one of trust and confidence. As a responsible officer of the court and an important adjunct of the administration of justice, the lawyer also owes a duty to the court as well as to the opposite side. He has to be fair to ensure that justice is done. He demeans himself if he acts merely as mouthpiece of his client...."

This Hon'ble Court highlighted the need for parties before the Court to be fair and transparent in their submission to prevent any miscarriage of justice. In the present case, consequent to the failure of the Kerala Coastal Zone Management Authority "**KCZMA**" (Petitioner in the SLP) to disclose a very important crucial fact *i.e the CZMP prepared pursuant to 2011 notification was approved by MoEF on 28.02.2019 by which Maradu Area, Ernakulam was categorised under CRZ-II*, the Judgment under review happened to be passed by this Hon'ble Court resulting in a direction to demolish nearly 400 flats and thereby displace around 400 families in Maradu area.

The Petitioner is seeking review of the impugned order dated 08.05.2019 in view of the discovery of some new and important facts which were not within

the knowledge of the Petitioner when the order was passed and on account of some error apparent on the face of record in the order dated 08.05.2019 and for the following sufficient reasons:

A. The finding of this Hon'ble Court by placing reliance on the three-member committee report that at the relevant time when the construction has been raised by the respondents in the matters, the area was within CRZ-III is an error apparent on the face of record:

- i. The inaccuracy in preparation of Coastal Zone Management Plan (CZMP) prepared in 1995 pursuant to the 1991 notification and approved in 1996 has been dealt with by the Division Bench of the Hon'ble High Court of Kerala in Citizens Interest Agency v. Lakeshore Hospital and Research Centre Pvt. Ltd reported in 2003 (3) KLT 424, **wherein the State Government conceded that the plan was incorrectly prepared.**
- ii. The Maradu Panchayat in Ernakulam, Kerala which was formed in the year 1953 was part of the Greater Cochin Development Authority and hence is part of a legally **designated urban area**. Considering the urban nature and rapid growth in the area, the Structure Plan of Kochi was extended to the Maradu Grama Panchayat. The Kerala Municipality Building Rules were also made applicable to the Maradu Grama Panchayat. The Government of Kerala notified the Revised Structure Plan for Central City of Kochi and the same is made applicable to Maradu area also.
- iii. Canals are included in Entry 17 of List II of the Seventh Schedule of the Constitution of India – Water, that is to say water supplies, irrigation and canals, drainage and embankments, water storage and

water power subject to the provisions of Entry 56 of List I. Hence, the Central Government does not have the power to legislate regarding Canals and hence CRZ notification 1991 has expressly excluded Canals from its purview.

- iv. *It is also pertinent to mention that the Hon'ble High Court in Lakeshore case held that canals are outside the purview of the 1991 notification.* Those areas which were not adjacent to the canal were wrongly included in CRZ despite its developed status.
- v. It is pertinent to mention that the validity of map prepared by CZMP was challenged and quashing of the same was also sought in a Writ Petition. The Hon'ble High Court of Kerala disposed off the Petition by recording the submission of the Govt. Counsel that the Govt. is preparing a Cadastral plan and a fresh plan & map shall be issued. *It is an admitted fact that no such fresh plan was issued and therefore there was no valid CZMP for the Maradu Area till 28.02.2019 when the fresh CZMP was approved.*
- vi. It is an admitted fact that the Maradu Grama Panchayat passed resolutions dated 09.03.2006, 12.09.2006 and 05.06.2007 emphasizing that the Panchayat was deeply concerned about the misclassification and addressed various representations to the Kerala Coastal Zone Management Authority (KCZMA) herein requesting to rectify the said error. The Hon'ble High Court of Kerala passed directions to KCZMA to consider and decide such representations, which was never complied with.
- vii. Maradu Grama Panchayat was upgraded to Municipality in 2010.
- viii. The Central Government issued the Coastal Regulation Zone Notification dated 06.01.2011 in supersession of the Notification dated

19.02.1991. In order to deal with the reclassification of the CRZ areas of Coastal Zone Management Plan approved in 1996 under the CRZ Notification, 1991 and in view of the supersession by the 2011 notification, an office memorandum dated 01.07.2011 was issued by the MoEF that the proposals for reclassification shall be addressed while preparing the CZMPs under the new CRZ Notification of 2011. After considering all such aspects a draft CZMP was prepared following the 2011 notification rectifying the mistake and classifying *Maradu area in CRZ-II* and the same was approved by MoEF on 28.02.2019. *Therefore, the building constructed by the Petitioner is fully in compliance of CRZ norms as on today.*

- ix. The images taken from Google map and google earth which are annexed to the application along with this Review Petition clearly demonstrate that the project site is not close to the sea as this Hon'ble Court considers it to be. Maradu area is a fully developed urban area.
- x. The norms laid down in the CRZ Notification refers to developed areas and when it is found that a particular area in question is a developed area consisting of roads, buildings, drainage and other infrastructural facilities then it is not open to allege that the construction violates CRZ Notification.

B. The finding of this Hon'ble Court that the Committee after due inquiry has held that the area fell within CRZ-III and therefore it was wholly impermissible and unauthorized construction within the prohibited area is an error apparent on the face of record:

- i.* The copy of the report was filed by the Counsel appearing on behalf of the Respondent Kerala State Government in the lead matter i.e SLP (C) NO. 4227-28/2016 alone. *A copy of the report was not*

served on the Petitioner nor his Counsel in Supreme Court.

Therefore, the Petitioner was not provided an opportunity to peruse the report nor its contents. The Petitioner was denied of an opportunity to file a response to the report nor to challenge the same, in view of the apparent illegality in the conclusions and procedure adopted.

- ii. The Apartment owners were not heard by the Committee despite the direction of this Hon'ble Court to hear all *affected parties*. All the 91 units in the Petitioner's building have been sold. Thereafter tax is being paid by them every year. The committee did not issue notice to the owners of the apartments who are residing there. They are the affected parties, if an adverse order is passed in the matter.
- iii. The contentions of the Petitioner though recorded in the report, were not considered at all and no finding is recorded in the report as to why the aspects pointed by the Petitioner was not considered favorably by the Committee.
- iv. This Hon'ble Court constituted a Three-Member Committee consisting of the *Secretary to the Local Self Government Department*, the Chief Municipal officer of the concerned Municipality and the Collector of the District, to hear the objections and to give a finding in terms of Notification dated 19th February 1991. The Principal Secretary, Local Self Government Department, Govt. of Kerala, without the leave of this Hon'ble Court, did not participate in the adjudication and instead deputed one Gopalakrishna Bhat, Secretary, Personal and Administrative Department, Govt. of Kerala for the same.

- v. The Three–Member Committee functioned on various dates without having proper quorum. Moreover, on 28.01.2019, the hearing was conducted in the absence of the District Collector.
- vi. The report of the Three-Member Committee suffers from non-application of mind and its findings are a mere reproduction of the report of the Technical Team constituted by the Local Self-Government Department. It is further submitted that the affected parties were not made aware of the fact that a Technical Team was constituted, and that they briefed the three-member committee in the absence of the affected parties on 16.01.2019. As such the Petitioner herein was unable to respond to the factual/legal infirmities in the report of the Technical Team. This briefing/deliberations between the three-member committee and the technical team was subsequently reproduced verbatim as a Report which was filed before this Hon'ble Court.
- vii. The Committee has not conducted any site inspection to determine the status of the building and applicability of CRZ norms. Such inspection would have clarified that the Petitioner's building is on the side of Thevara Canal and in view of the Judgement in Lakeshore case by the Division Bench of Hon'ble High Court of Kerala, the CRZ notification of 1991 does not apply to Canals. Therefore, the Construction is not in a prohibited area.
- viii. The Committee ignored the fact that Maradu Grama Panchayat was a fully developed urban area and it was wrongly categorized in CRZ-III in the CZMP approved in 1996 and that this error was rectified by including Maradu Area as CRZ II in CZMP prepared based on 2011 Notification which was approved on 28.2.2019. No authority had

determined the prohibited area after the faulty CZMP approved in 1996 till the new CZMP approved on 28.02.2019.

- ix. The Committee has recorded that the CZMP of Kerala currently applicable is the one that was approved in 1996. According to that Maradu falls in Category III. It has also been stated by the Committee that the Panchayat has been upgraded to Municipality in the year 2010, the same has been shown as CRZ-II category in the draft CZMP prepared as per CRZ Notification 2011 and submitted to MoEF. *It was further recorded that until the Government of Kerala/KCZMA receives a communication from the Government of India on the approval of the CZMP draft submitted, the CZMP 1996 stands valid.*
- x. It is pertinent to note that the MoEF approved the CZMP draft on **28.02.2019**. It was communicated to KCZMA by **01.03.2019**. Despite the same, the said fact was not brought to the notice of the Committee by KCZMA and thereby the Committee was misled by KCZMA, in this regard. Therefore, it was recorded by the committee that the CZMP pursuant to 2011 notification is still at the draft stage.
- xi. At the time of the hearing also the KCZMA who was the Appellant before this Hon'ble Court despite the knowledge that the CZMP has been approved by the Central Government on 28.02.2019 failed to bring this crucial fact to the notice of this Hon'ble Court.
- xii. It is factually incorrect that the Maradu area is situated in the shores of backwaters in Ernakulam District. The Petitioner's building is in the mainland and it is adjacent to Thevara canal and hence not coming within the purview of CRZ notification 1991.

- xiii. In the Map No. 33, 33A and 34 produced along with the report submitted by the Committee, the Maradu Area is not visible nor clearly demarcated.

C. The finding of this Hon'ble Court that the permission granted by the Panchayat was illegal and void is an error apparent on the face of record:

- i. Building Permit was obtained by Petitioner from Maradu Grama Panchayat on 18-8-2006 for construction of H2O project in Maradu.
- ii. The project was proposed on the side of the Thevara Canal. In view of the finding by the Hon'ble High Court in Lakeshore case which held that the CRZ notification 1991 does not apply to Canals, building permit was granted by the Panchayat to the Petitioner.
- iii. The CZMP approved in 1996 was admittedly faulty and no fresh CZMP was prepared by the Government as submitted before the High Court in Lakeshore Case.
- iv. The Maradu Panchayat passed resolutions to take up the issue of wrong classification with KCZMA.
- v. The 2011 CRZ notification and the Office Memorandum issued thereafter clearly directed the State Government to consider the errors in classification while preparing the new CZMP. The same was done and thereafter Maradu was rightly classified in CRZ-II.
- vi. The building permit is held to be faulty on the ground that concurrence of KCZMA was not taken as mandated by Rule 23 (4) of Kerala Municipality Building Rules, 1999. *The 1991 notification nor any Rules provided for the builder or project proponent to approach KCZMA and seek such concurrence.* The onus was on the Panchayat or the local body to do the same. *The Panchayat had taken a clear*

stand before the Hon'ble High Court by filing a Counter Affidavit that the building permit was issued strictly in accordance with law. This was in view of the faulty CZMP 1996 and various proceedings before the Hon'ble High Court of Kerala.

- vii. The Petitioner cannot now be made to suffer for any alleged fault on the part of the Government and their inaction especially when much water has flown after the same. Pursuant to the interim orders passed by the Hon'ble High Court, the construction of the Building is complete, building is numbered, occupancy certificate issued, all the 91 units sold and families are residing in the same.

D. It is respectfully submitted that this Hon'ble Court erred in passing an order directing demolition of the structure which was much beyond the scope of the dispute raised before the Hon'ble Court.

- i. The Principal Secretary to the Government on the basis of an alleged vigilance enquiry report issued a letter to the Secretary of Maradu Grama Panchayat to revoke all building permits issued, by invoking Rule 16 of Kerala Municipality Building Rule 1999 and report to the Government.
- ii. Based on that, a show-cause notice was issued to the Petitioner. The said show-cause notice was not based on the subjective satisfaction of the Secretary as mandated by Rule 16 of Kerala Municipality Building Rule 1999.
- iii. Petitioner and others challenged the same before the High Court by filing a Writ Petitions.
- iv. Maradu Panchayat filed a counter affidavit admitting that *Maradu area is developed and substantially built up. It was submitted that the area ought to be included in CRZ II.* It was further submitted that the

building permit was correctly issued and the show-cause notice was issued only following the direction issued by the Govt.

- v. *Interestingly no counter affidavit was filed by State Government or KCZMA in the Writ Petition.*
- vi. The show-cause notice was quashed by the Learned Single Judge of the Hon'ble High Court of Kerala on 13.09.2012. It was found by the Hon'ble High Court that the *Show-cause notice were issued in obedience to the directions of the Govt and it has to be held that this is a clear case of the authority, acting under dictation.*
- vii. The same was affirmed by the Division Bench on 02.06.2015 in Writ Appeal filed by Maradu Municipality.
- viii. Review Petition was filed by KCZMA on a very limited ground i.e to review paragraph 20 of the judgement wherein the KCZMA contended that as a result of the misconduct of the local authority, illegal construction was permitted. The said Review Petition was also dismissed.
- ix. Since there was no finding by any competent authority regarding CRZ violations, the pleadings in the Writ Petition were mainly focused on the legality of the show cause notice issued by the Maradu Panchayat based on a direction issued by the State Government. The High Court also, accepting the said contention, quashed the show cause notice on the ground that the issuance of the show cause notice suffered from the vice of dictation and that there was no independent application of mind by the Secretary of the Panchayat which was a mandatory pre requisite under Rule 16 of the KMBR. Infact the Maradu Panchayat in its counter affidavit categorically submitted that the issuance of permit

by them was strictly in accordance with law. No pleadings to the contrary was made by the KCZMA or the State Government before the High Court. That being the factual position it is respectfully submitted that this Hon'ble Court went beyond the scope of the litigation and issued directions for demolition the buildings. This Hon'ble Court, if it was found that the High Court exceeded its jurisdiction in interfering with the show cause notice, ought to have directed the parties to submit their reply to the show cause notice and direct completion of the proceedings by the concerned Authority which issued the show cause notice in accordance with law. Therefore, there has been violation of principles of natural justice and due process has not been followed before ordering demolition of the building.

- x. This Hon'ble Court has not set aside the finding of the Hon'ble High Court which held that the State Government does not have power to issue direction to local self-bodies to invoke power under Rule 16 which was the basis on which the show cause notice was set aside. If this Hon'ble Court was of the opinion that the Judgment of the High Court was erroneous, the Petitioner ought to have been directed to respond to the show cause notice and a direction ought to have been issued to the KCZMA to take a decision in accordance with law after affording a reasonable opportunity of being heard.

E. This Hon'ble Court erred in punishing the builder and the flat owners for the error on the part of the official Respondent/Authorities

- i. An application for building permit was submitted by the Review Petitioner disclosing all relevant facts. There was no suppression of any materials facts by the Review Petitioner. It is the Maradu

Panchayat which was a party to the Lakeshore Judgment which took a stand that there was no requirement to forward the Petitioner's application for clearance from the KCZMA in view of the declaration by the Division Bench Judgement of the Kerala High Court that Canals would not be covered by CRZ notification and that fresh CZMP would be prepared for Maradu Area and the plan which was prepared based on 1991 notification was not in accordance with the procedure prescribed by law.

- ii. Neither the Review Petitioner nor the persons who purchased the flats can be penalised for the failure on the part of the then Maradu Panchayat in forwarding the Petitioner's application for building permit for CRZ clearance on a bona fide interpretation of the DB Judgment in Lakeshore case.
- iii. Lackadaisical attitude of KCZMA
 - No action taken on the alleged violation by the builders.
 - No counter affidavit/documents filed before the Hon'ble High Court.
 - Order of the Learned Single Judge permitting Construction and later directing the Municipality to number the building was never challenged. No action taken to get the stay vacated.
 - No Appeal filed against the order of Learned Single Judge.
 - Review Petition was filed after the order in W.A on a very limited ground i.e to review paragraph 20 of the judgement wherein the KCZMA contended that as a result of the misconduct of the local authority, illegal construction was permitted. The said Review Petition was also dismissed.

- iv. Such inaction on the part of the authorities especially KCZMA has been deprecated by this Hon'ble Court in the case of KCZMA VS. DLF (2018) 2 SCC 203. It has been further held that the alleged violators who have put up large investments cannot be made to suffer for inaction of the authorities when they do a flip flop putting the investments at stake. It was emphasized that there should be clarity from the beginning on what is permissible and what is not. Therefore, the builder and the apartments owners cannot be made to suffer for the inaction of the authorities.
 - v. The Hon'ble Division Bench of the High Court has taken note that no fresh proceedings were initiated including the issuance of a Stop Memo by the Panchayat though liberty was granted.
 - vi. The 2011 notification obligated the CZMA to submit the draft CZMP on or before 30th September 2013 and the MoEF was required to approve the CZMP within four months of receipt of the draft CZMP. The CZMP approved by the MoEF under 1991 notification was stated to be valid till 31st January 2014. The draft CZMP though prepared in 2014, it was approved by MoEF only on 28.02.2019. In this context it is pertinent to note that the MoEF has already issued new CRZ notification G.S.R. 37(E) dated 18.01.2019 wherein the CRZ area has been further reduced to 20 mtrs from HTL. Therefore, the approval of CZMP is being done after issuance of new notification which in turn mandates preparation of new CZMP.
- F. The reliance placed by this Hon'ble Court in the case of Vaamika Island is misplaced. In that case it is clearly recorded that construction was contrary to 1991 as well as 2011 notifications. Construction adjacent to the Vembanad Lake which was scheduled as "vulnerable wetlands to be

protected” cannot be equated to the construction adjacent to Thevara Canal.

G. That this Hon'ble Court erred in not appreciating that the reason for Kerala Floods cannot be attributed to the construction of the Subject Building. It is submitted that in view of the Report submitted by the Amicus Curie in W.P. No. 2651 of 2019 that the main reason for the flood was identified as the extremely high rain fall received by the State between 14th to 16th August. 2018. The other causes which contributed for the worsening of the flood include interalia the following:

- a. None of the 79 dams in Kerala were used/operated for the purpose of flood control/moderation, despite the obligations cast under the National Water Policy and other directives.
- b. Dams in Kerala did not maintain effective Flood Control Zone and the Flood Cushion maintained was not as mandated by the BIS Report.
- c. Most of the major reservoirs were almost full before the extreme rainfall that occurred on 14th–16th of August 2018 and they did not have the capacity to accommodate the additional flow generated by extreme rainfall.
- d. Sudden release of water simultaneously from different reservoirs during extreme rainfall aggravated the damage.

Moulding of Relief

A. Since the Coastal Zone Management Plan (CZMP) approved in 1996 prepared on the basis of the notification dated 19.02.1991 is now invalid and inoperative in view of the supersession by the Coastal Regulation Zone Notification dated 06.01.2011 approved by the MoEF &CC on 28.02.2019, this Hon'ble Court ought to have directed the official Respondents herein to revisit the Petitioners project and check whether

the same is in compliance with the CZMP approved by MoEF on 28.02.2019 and regularise the same in accordance with law.

- B. Because a direction to pull down constructions made investing large amounts of money and efforts and when there are 91 families living in the same, should not be adopted when the defects are capable of being cured.
- C. The MoEF in 2018 had permitted regularization of constructions carried out without clearance. Since there was no adverse finding against the Petitioner, no application was filed seeking regularization. Therefore, the Petitioner could not avail the opportunity to seek regularization of their building. This Hon'ble Court should have extended that benefit to the Petitioner since the only objection raised is that prior CRZ Clearance was not obtained by the Petitioner and the said reason is admittedly not attributable to the Petitioner.
- D. Actus Curiae Neminem Gravabit i.e an Act of the Court shall not prejudice anyone. An opportunity be afforded to the Petitioner and direct the MoEF to consider the application for post facto clearance.

Therefore, the present Review Petition is filed.

LIST OF DATES AND EVENTS

1953	The Maradu Panchayat in Ernakulam, Kerala was formed.
24.01.1976	Greater Cochin Development Authority (" GDCDA ") came into existence under the Madras Town Planning Act of 1920 and Travancore Town Planning 4 of 1108 as per G.O (Ms) No. 19176/LA&SWD. The jurisdiction of GCD A covers an area of 732 sq. kms. consisting of the Kochi Corporation, 9

	Municipalities and 21 Panchayats. The Maradu Grama Panchayat was a part of GCDA.
19.02.1991	<p>The Coastal Regulation Zone (CRZ) Notification was issued by the Central Government exercising its powers under sub section (1) and clause (v) of Section (2) of Section 3 of the Environment (Protection) Act, 1986 issued notification S.O.114 (E). The areas have been categorised under the heads of CRZ I, II and III.</p> <p>a. The said notification mandates preparing of Coastal Zone Management Plan (CZMP) identifying and classifying the CRZ areas within the respective states and obtaining approval of the Central Government. Annexure-I of the Notification dealt with Coastal Area Classification and Development Regulations.</p> <p>b. The categories/classification as per the 1991 notification are given hereunder:-</p> <p>I. <u>CATEGORY II – CRZ-II:</u></p> <p>“The areas that have already been developed up to or close to the shoreline. For this purpose, developed area is referred to as that area within municipal limits <i>or in other legally designated urban areas which is already substantially built up and which has been provided with drainage and approach roads and other infrastructural facilities, such as water supply and sewage mains.”</i></p>

	<p>In CRZ-II, buildings are permitted on the landward side of the existing and proposed road or on the landward side of existing authorized structures and shall be subject to the existing local Town and Country Planning Regulations including the existing norms of Floor Space Index/Floor Area Ratio.</p> <p>II. <u>CATEGORY III:CRZ-III</u></p> <p>“Areas that are relatively undisturbed and those which do not belong to either category I or II. These will include coastal zone in the rural areas (developed and undeveloped) and also areas within Municipal limits or in other legally designated urban areas which are not substantially built up.”</p> <p>In CRZ-III, the area up to 200 metres from the High Tide Limit is to be earmarked as No Development Zone and no construction shall be permitted within this zone except for repairs of existing authorized structures not exceeding existing FSI, existing plinth area and existing density and for permissible activities under the Notification including facilities essential for such activities.</p>
27.09.1996	The Coastal Zone Management Plan (“ CZMP ”) prepared by the Kerala State Government was approved. The Maradu Area was incorrectly included in the CZMP as a CRZ III Area instead of CRZ II despite being a developed urban area.
20.07.1998	The provisions of the Kerala Municipality Building Rules,

	<p>1994 were made applicable to the Maradu Grama Panchayat, which comes under the jurisdiction of the GCDA. This was done as per G.O (Ms) No. 149/98/LAD.</p>
04.01.1999	<p>The Ministry of Environment and Forests ("MoEF") had directed the State Government to prepare local level CRZ Maps in cadastral scale (1:3960 or nearest scale) to ascertain the Coastal Regulation Zone.</p>
19.02.2003	<p>The Hon'ble High Court of Kerala in its judgement in Citizens Interest Agency v. Lakeshore Hospital and Research Centre Pvt. Ltd. dated 19.02.2003 reported in 2003 (3) KLT 424 records the submission of the State Government conceding to the incorrectness of the CZMP prepared in 1996.</p> <p>The State itself submitted before the Division Bench of the Hon'ble High Court that 'Coastal Zone Management Plan of the State is prepared in 1:12,500 scale on a base map enlarged from Survey of India, top sheets of 1:50,000 scale with the use of aerial photograph and satellite imageries <u>and it will be difficult to arrive at exact conclusions on the CRZ status of the disputed area.</u>'</p> <p>It was further stated that the original plan was prepared on the basis of the plan given by the Survey of India and the Satellite imageries. These plans were prepared in 1:12,500 and 1:50,000 scale. It was also pointed out that depicting an area of 12 1/2 thousand sq. kms. in one inch is a difficult job. Similarly, in the case of the scale prepared in the ratio</p>

	<p>1:50,000, it is still more difficult. In view of the said situation, the Government was preparing cadastral plans.</p> <p>The Hon'ble High Court had also recorded that the canals are outside the purview of the 1991 notification.</p>
	<p>It is submitted that no local level CRZ Maps in cadastral scale (1:3960 or the nearest scale) has been prepared by the CZMA thus far to ascertain the Coastal Regulation Zone pursuant to the judgment of the Division Bench of the Hon'ble Kerala High Court in Citizens Interest Agency v. Lakeshore Hospital and Research Center Pvt. Ltd.</p>
09.03.2006	<p>Resolution was passed by the Maradu Grama Panchayat to take up the matter with the Kerala Coastal Zone Management Authority ("KCZMA") for inclusion of Maradu Area in CRZ-II.</p>
18.08.2006	<p>Maradu Municipality issued building permit to the Petitioner for construction of a residential multi-storeyed building. Since the project was proposed on the side of the Thevara Canal which was not covered by CRZ notification 1991, building permit was granted.</p>
	<p>It is pertinent to mention that Petitioner announced the residential project "H2O" after obtaining the building permit. Even before commencement of the project, majority units were sold.</p>
12.09.2006	<p>The Maradu Grama Panchayat authorized the Secretary and</p>

	<p>the President to take up the issue of re-classification of Maradu Grama Panchayat in CRZ-II with the KCZMA as Maradu Grama Panchayat is a legally designated urban area, since it is part of the Greater Cochin Development Authority and also since Maradu Grama Panchayat area is substantially built up close to the shore lines and all infrastructural provisions such as roads, water supply, drainage, etc. are provided in the entire Panchayat area and that commercial and other buildings are already existing on the shore lines.</p>
18.05.2007	<p>The Principal Secretary to the Government on the basis of an alleged vigilance enquiry report issued a letter to the Secretary of Maradu Grama Panchayat to revoke all building permits issued as per Rule 16 of Kerala Municipality Building Rule 1999 and report to the Government.</p>
04.06.2007	<p>Show cause notice was issued by Maradu Grama Panchayat to the Petitioner herein to show-cause within 30 days as to why the building permit issued should not be revoked. The said show cause notice was not based on the subjective satisfaction of the Secretary as mandated by Rule 16 of Kerala Municipality Building Rule 1999.</p>
05.06.2007	<p>Resolution was passed by the Maradu Grama Panchayath to request the State Government to classify the Maradu Area within CRZ-II Area as Maradu is a legally designated Urban Area.</p>
26.07.2007	<p>Various Writ Petitions were filed by parties affected by the</p>

	<p>act of the Maradu Panchayat in issuing show cause notices.</p> <p>Petitioner filed W.P (C) No. 23046/2007 before the Hon'ble High Court of Kerala challenging the Letter issued by the Principal Secretary to the Government on the following grounds.</p> <p>a. The Show-cause notices issued by the Panchayat are arbitrary and illegal.</p> <p>b. It was specifically contended in the Writ Petition that Maradu Grama Panchayat being a developed area which is part of the Greater Cochin Development Authority is included as CRZ-II and therefore, the assumption that the area is included as CRZ-III was factually incorrect.</p>
	<p>The Impugned notices were stayed. The Learned Single Judge of the Hon'ble High Court granted liberty to the Panchayat to initiate fresh proceedings including the issuance of a Stop Memo.</p>
2007	<p>Since the Maradu area was wrongly classified as CRZ-III, W.P (C) No. 19287/07 was filed by Agnus Holdings Private Limited, before the Hon'ble High Court of Kerala, seeking the following reliefs:-</p> <p>i. to declare the classification of Maradu Grama Panchayat as CRZ –III as contemplated under Clause 3 (3) (i) of the CRZ Notification, S.O 1146 dated 19-2-1991, is arbitrary and violative of Article 14 of</p>

	<p>Constitution of India;</p> <p>ii. To issue a writ, direction or order in the nature of Mandamus or such other appropriate writ, direction or order directing the respondents 1 and 2 to modify the Coastal Zone Management Plan of Kerala is so far as the Maradu Grama Panchayat and categorize the same as CRZ-II or CRZ-IV as contemplated under clause 3 (3) of the CRZ Notification, S.O 114E dated 19-02-1991, within a time limit and the 3rd respondent be directed to pass appropriate orders approving the same;</p>
13.08.2007	<p>The Hon'ble High Court after hearing both sides, disposed off the Writ Petition on 13-8-2007, directing Kerala Coastal Zone Management Authority to consider and pass orders on the representation made by Maradu Grama Panchayat, within three months from the date of receipt of a copy of the Judgment.</p>
01.11.2007	<p>The Maradu Grama Panchayat filed Counter Affidavit in W.P (C) No. 23046/2007. The following averments were made in the Counter Affidavit:</p> <p>a. Maradu Grama Panchayat is an area situated between Cochin Corporation and Thripunithura Municipality and that 3 National Highways and other State Highways pass through the Panchayat.</p> <p>b. The best of Health Care Centre's/Hospitals/Educational Institutes, international vegetable commodity market, 5</p>

star and other category hotels, and housing projects are situated within the Panchayat.

- c. Maradu Grama Panchayat area is substantially built up close to the shore lines and all infrastructural provisions such as roads, water supply, drainage, etc. are provided in the entire Panchayat area and that commercial and other buildings already exist on the shore lines.
- d. It was also admitted that the Structure Plan for Cochin City was extended to Maradu Grama Panchayat and the Kerala Municipality Buildings Rules were also made applicable to the Panchayat.
- e. The specific case of the Maradu Grama Panchayat was that it was a developed area, falling within CRZ-II category and the Panchayat had already submitted a representation to the Coastal Zone Management Authority to rectify the anomaly in the categorization on the Panchayat under the CRZ scheme. It was further pointed out that W.P (C) No. 19287/2007, which was filed by Agnus Holdings Private limited for a declaration that classification of Maradu Grama Panchayat as CRZ-III was arbitrary, was disposed of on 13-8-2007 with a direction to the Kerala Coastal Zone Management Authority to consider and pass orders on the representation made by the Maradu Panchayat within three months from the date of receipt of a copy of the Judgment.

	<p>The KCZMA was impleaded as the 4th Respondent in the connected Writ Petition. <i>No counter affidavit was filed by the Kerala Coastal Zone Management Authority repudiating the stand taken by the Maradu Grama Panchayat stating that classification of Maradu Grama Panchayat was in CRZ-II as per the 1991 Notification and not in CRZ-III. The KCZMA did not produce any document to show that revised Coastal Management Plan as directed in the Lakeshore Judgment was prepared, 'No development' Zone was demarcated and the constructions in question were included in the No Development Zone.</i></p>
2010	Maradu Grama Panchayat was upgraded to Municipality.
06.01.2011	<p>The Central Government issued a new notification, namely S.O. 19 (E). The said notification gave a special status to the backwater islands in Kerala. The said notification was issued in supersession of the notification dated 19.02.1991 except as respect things done or omitted to be done before such supersession.</p> <p>The said notification contained separate guidelines for the preparation of the CZMP. Clause 5 (v) and (vi) mandates the preparation of maps. The relevant clauses are extracted below for easy reference</p> <p><i>(v) Mapping of the hazard line shall be carried out in 1:25,000 scale for macro level planning and 1:10,000 scale or cadastral scale for micro level mapping and</i></p>

the hazard line shall be taken into consideration while preparing the land use plan of the coastal areas;

(vi)The coastal States and Union Territory will prepare within a period of twenty four months from the date of issue of this notification, draft CZMPs in 1:25,000 scale map identifying and classifying the CRZ areas within the respective territories in accordance with the guidelines given in Annexure-I of the notification, which involve public consultation

As per the notification, there are two CZM maps to be prepared, one is of 1:25000 scale and the other one is of 1:3960 scale. The relevant clause in the notification is extracted below for easy reference.

"C. Local level CZM Maps

Local level CZM Maps are for the use of local bodies and other agencies to facilitate implementation of the Coastal Zone Management Plans

13. Cadastral (village) maps in 1:3960 or the nearest scale, shall be used as the base maps.

14. These maps are available with revenue authorities and are prepared as per standard norms.

15. HTL (as defined in the CRZ notification) and LTL will be demarcated in the cadastral map based on detailed physical verification using coastal geomorphological signatures or features in accordance with the CZM Maps approved by the

	<p><i>Central Government.</i></p> <p><i>16. 500 metre and 200 metre lines shall be demarcated with respect to the HTL thus marked.</i></p> <p><i>17. HTL (as defined in the CRZ notification, 1991) and LTL will also be demarcated along the banks of tidal influenced inland water bodies with the help of geomorphological signatures or features.</i></p> <p><i>18. Classifications shall be transferred into local level CZM maps from the CZM Plans.”</i></p> <p>The said notification provided for the following guidelines for preparation of CZMP:</p> <p>“IV. Public Views on the CZMP.</p> <p>a) The draft CZMPs prepared shall be given <u>wide publicity</u> and suggestions and objections received <u>in accordance with the Environment (Protection) Act, 1986</u>. Public hearing on the draft CZMPs shall be held at district level by the concerned CZMAs.</p> <p>b) Based on the suggestions and objections received, the CZMPs shall be revised and approval of MoEF shall be obtained.</p> <p>c) The approved CZMP shall be put up on the website of MoEF, concerned website of the State or Union Territory CZMA and hard copy made available in the Panchayat office, District Collector office and the like.”</p>
01.07.2011	In order to deal with the reclassification of the CRZ areas of

	<p>Coastal Zone Management Plan approved in 1996 under the CRZ Notification, 1991 and in view of the supersession by the 2011 notification, an office memorandum was issued by MoEF that the proposals for reclassification shall be addressed while preparing the CZMPs under the new CRZ Notification of 2011. <i>At this juncture it is pertinent to mention that the irregularity in classifying Maradu Area in the 1996 CZMP was rectified in the CZMP prepared and approved pursuant to new CRZ Notification of 2011.</i></p>
29.05.2012	<p>It is submitted that after the completion of the building construction, an application was filed for numbering the building and the Hon'ble High Court directed the Respondent No. 2 herein i.e. Maradu Grama Panchayat to number the building in accordance with law. It was ordered that the numbering shall be provisional and subject to the result of the Writ Petition. On 29-5-2012 the apartments were numbered by the Maradu Panchayat.</p>
	<p>The Petitioner executed various sale deeds in favour of the respective flat owners. It is pertinent to mention that all the 91 flats were sold out and at present there are 91 families living in the building.</p>
10.09.2012	<p>The Single Judge of the Hon'ble High Court of Kerala in a connected matter i.e W.P (C) No. 25948 of 2007 raising similar issue, specifically took note of the counter affidavit filed by the Maradu Grama Panchayat in its judgement that</p>

	<p>Maradu is a fully developed area situated close to the rapidly developing corporation of Cochin and comes within the meaning of 'developed area' as described in the Coastal Area Classification and development Regulation. It was also held that the State Government does not have power to issue direction to local self bodies to invoke power under Rule 16. The learned Single Judge set aside the direction issued by the State Government compelling the Secretary of the Panchayat to cancel the Building Permits. Consequently, the show-cause notices issued by the Secretary of the Panchayat solely based on the direction issued by the State Government were also set aside.</p>
13.09.2012	<p>W.P (C) No. 23046/2007 filed by the Petitioner herein was disposed by the learned Single Judge by setting aside the orders/letters by the Respondent.</p>
14.12.2012	<p>Being aggrieved by the order dated 13.09.2012 in W.P (C) No. 22590/2007, Respondent No. 2 herein i.e Maradu Municipality filed Writ Appeal No. 150/13 contending that the impugned orders which were set aside were merely show cause notices issued under Rule 16 of the Kerala Municipality building Rules, 1999 ("KMBR").</p>
02.06.2015	<p>The Division Bench of the Hon'ble High Court of Kerala vide its order dated 02.06.2015 dismissed the Writ Appeal no. 150/13 filed by Respondent No. 2 herein. The following reasons were recorded:</p>

- a. The reason stated in the show-cause notice does not come within one of the four grounds mentioned in Rule 16 of the KMBR and the whole proceedings are fundamentally erroneous and for that reason, the impugned order could not have been sustained.
- b. Regarding the liberty/permission sought for initiating fresh proceedings, the Division Bench specifically observed that during the pendency of the Writ Petition, despite liberty being granted by the Court, no Stop Memo was issued by the Panchayat or the KCZMA and the construction of the building was allowed to be completed and the building has been numbered and innocent purchasers have occupied the building.
- c. The Secretary of the Municipality, i.e. the 2nd appellant therein, himself has categorically, on the eve of the filing of the Writ Appeal, as evidenced by Annexure A, stated that he has found that alleged violations of KMBR do not exist and in such circumstances, the Division Bench saw no reason to remit the matter back to the Secretary since it would be nothing but an exercise in futility.
- d. The Division Bench took note of the submission made by KCZMA relying on Rule 23 (4) of the KMBR and also provisions of the letter dated 17-6-2006 issued by the KCZMA. The Division Bench took note of the fact that as far as 1996 Coastal Zone Management Plan is concerned, in Citizens Interest Agency v. Lakeshore

	<p>Hospital and Research Center Pvt. Ltd. reported in 2003 (3) KLT 424, <i>the incorrectness of the Plan was conceded by the State itself which was recorded in paragraph 32 of the Judgment.</i></p> <p>e. Therefore, the Bench observed that Rule 23 (4) could not be pressed into service in the absence of a proper Coastal Zone Management Plan.</p> <p>f. As far as Circular dated 17-6-2006 is concerned, the Division Bench observed that as per the Circular, the local authority may forward applications to the Coastal Zone Management Authority “for the activities for which clearance from Coastal Zone Management Authority is required after proper verification of the records”. The Bench observed that the obligation is on the local authority to forward the same to the Coastal Zone Management Authority while processing the applications for Building Permit and if the local authority has failed in complying with the requirements of the circular, the permit holders cannot be taken to task.</p>
10.09.2015	<p>The Respondent No. 1 herein i.e Kerala Coastal Zone Management Authority who had not filed any Counter Affidavit in W.P or W.A nor filed an Appeal against the order of Single Judge, filed Review Petition No. 913/2015 to review paragraph 20 of the judgement wherein the KCZMA contended that as a result of the misconduct of the local</p>

	authority, illegal construction was permitted.
19.09.2015	An occupancy certificate was issued by the Maradu Municipality to the Petitioner.
11.11.2015	The Division Bench of the Hon'ble High Court of Kerala dismissed Review Petition No. 913/2015 filed by Respondent No. 1 here holding that the permit holders cannot be punished for the failure of the local authority in complying with a circular.
14.12.2015	Aggrieved by the orders of the Division Bench in the Writ Appeal and Review Petitions, Respondent No. 1 herein filed a Special Leave Petition before this Hon'ble Court. The Special Leave Petition was numbered as SLP (C) No. 4231-34/2016. The Respondent No. 1 had also filed SLP (C) No. 4227-28/2016 and 4238-4241/2016 against the same impugned order passed by the Hon'ble High Court in various other Petitions.
	Notice was issued by this Hon'ble Court. Respondents therein entered appearance.
27.11.2018	This Hon'ble Court after hearing the parties passed an order recording that there is no categorical finding by the Single Judge or the Division Bench of the Hon'ble High Court whether the Maradu Area falls within CRZ I, II or III. Therefore, a three-member committee consisting of Secretary to the Local Self Government Department, the

	<p>Chief Municipal Officer of the concerned municipality and the Collector of a district was constituted to hear objections and to give findings in terms of Notification dated 19.01.1991.</p>
	<p>Despite the specific directions issued by this Hon'ble Court directing the Committee to hear all affected parties, no notice was issued to the flat owners who are the most affected by the outcome of any adverse orders passed. The apartments had been sold, Ownership Certificates issued in their favour and they are paying the building tax for the same. Therefore, it was imperative that the Apartment owners were heard by the Committee before submitting its report before this Hon'ble Court.</p> <p>The Committee appointed by this Hon'ble Court constituted a technical team to assist the committee consisting of the following members</p> <ol style="list-style-type: none">a. Smt. Girija, Chief Town Plannerb. Dr. K.K. Ramachandran, Group Head, Atmospheric & Geo-Informatic Division, CESSc. Dr. Hari Narayanan, Scientist, KSCSTEd. Shri. Balraj, Joint Director, (Urban Affairs) <p>It is pertinent to mention that Dr. Hari Narayanan, the expert assisting the Court appointed Committee is also an active member of Respondent No. 1/KCZMA. The 98th Minutes of the meeting dated 15.10.2018 and the 101st Minutes of the meeting dated 21.03.2019 shows that Dr. Hari Narayanan had attended the meetings. In view of the apparent conflict of interest, such a person should not have been permitted to</p>

	assist the Committee.
05.02.2019	<p>The Petitioner Company appeared before the Committee and also submitted a written synopsis along with statement of facts highlighting the following points:</p> <ol style="list-style-type: none"> a. Maradu Panchayat was “developed area” and falls within “legally designated urban area” b. Kerala Municipality Building Rules, 1984 was made applicable to the Panchayat. c. Inaccuracy in preparation and categorization in Coastal Zone Management Plan, 1996 prepared pursuant to 1991 notification. The observations in Lakeshore Hospital case was also highlighted. d. Various resolutions passed by Maradu Panchayat on wrong classification of Maradu area in CRZ-III in 1996 CZMP. e. Maradu area being upgraded to a Municipality.
26.02.2019	This Hon’ble Court on an application filed on behalf of the Committee extended time for submission of report by a period of one month.
28.02.2019	The MoEF vide its order dated 28.02.2019 approved the Coastal Zone Management Map of Ernakulam district and <i>placed the Maradu Municipality in the CRZ-II Area</i> by rectifying the errors in <i>1996 CZMP</i> .
01.03.2019	Admittedly the Respondent No. 1 received communication from MoEF regarding the approval of CZMP of Ernakulam

	District wherein Maradu Area was categorized in CRZ-II on 01.03.2019.
12.03.2019	<p>The Committee appointed by this Hon'ble Court submitted a report dated nil before this Hon'ble Court. It was concluded in the report as under:</p> <p><i>"The Coastal Zone Management Plan (CZMP) of Kerala currently applicable is the one that was approved in 1996. As per the said CZMP Maradu has been marked as Panchayat area and hence falls in the Coastal Regulation Zone (CRZ) category of CRZ III. Maradu Panchayat has been upgraded to Municipality in the year 2010 and hence in the draft CZMP prepared as per CRZ Notification 2011 it is shown as CRZ II category. The new draft CZMP is submitted to MoEF & CC of Government of India for approval. Until Government of India approve the draft notification CZMP 1996 stands valid."</i></p> <p>The Committee report dated nil has not considered any of the submissions made by the Petitioner. The inaccuracy in the 1996 CZMP was not considered by the Committee. It concluded that it is CZMP 1996 which applies, without appreciating the fact that MoEF had on 28.02.2019 approved the <i>new draft CZMP prepared for Ernakulam District which categorised Maradu area in CRZ II category.</i></p>
12.03.2019	The copy of the report was filed by the Counsel appearing on behalf of the Respondent Kerala State Government in the lead matter i.e SLP (C) NO. 4227-28/2016 alone. A copy of the report was not served on the Petitioner nor his Counsel

	<p>in Supreme Court.</p> <p>Therefore, the Petitioner was not provided an opportunity to peruse the report nor its contents. The Petitioner was derived of an opportunity to file a response to the report nor to challenge the same, in view of the apparent illegality in the conclusions and procedure adopted.</p>
08.05.2019	<p>This Hon'ble Court vide the impugned Judgement held that the permission granted by the Panchayat was illegal and void and therefore directed removal of all structures within a month. This Hon'ble Court placed complete reliance on the Report submitted by the committee constituted as per interim order dated 27.11.2018.</p>
06.06.2019	<p>Hence the present Review Petition is filed under Article 137 of the Constitution read with Order XLVII of the Supreme Court Rules, 2013 seeking review of the order dated 08.05.2019.</p>

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
REVIEW PETITION (CIVIL) No.____ OF 2019
IN
CIVIL APPEAL Nos. 4790-91 OF 2019

IN THE MATTER OF:-

POSITION OF PARTIES IN REVIEW PETITION

Position of the Parties			
	BEFORE THE HON'BLE HIGH COURT	BEFORE THIS HON'BLE COURT – IN SLP	BEFORE THIS HON'BLE COURT – in Review Petition
M/s. Holy Faith Builders & Developers Pvt. Ltd., 34/2353, Mamangalam, Kochi – 682 025, represented by its Managing Director.	Respondent No. 3	Respondent No. 4	Petitioner
Versus			
1. The Kerala State Coastal Zone Management Authority, Represented by its member secretary, Sastra Bhavan, Pattom, Thiruvananthapuram Pin – 695001, Kerala	Respondent No. 2	Petitioner	Respondent No. 1
2. Maradu Municipality, Maradu P.O., Represented by its Secretary Kochi –, 682304, Kerala	Appellant No. 1	Respondent No. 1	Respondent No. 2
3. The Secretary, Maradu Municipality, Maradu P.O., Kochi – 682304, Kerala	Appellant No. 2	Respondent No. 2	Respondent No. 3
4. Government of Kerala, Through The Principal Secretary to Government, Local Self Government (RB) Department, Secretariat, Thiruvananthapuram Pin – 695001.	Respondent No. 1	Respondent No. 3	Respondent No. 4

POSITION OF PARTIES IN CIVIL APPEAL Nos. 4790 OF 2019

	Position of the Parties	
	BEFORE THE HON'BLE HIGH COURT	BEFORE THIS HON'BLE COURT – IN SLP
The Kerala State Coastal Zone Management Authority, Represented by its member secretary, Sastra Bhavan, Pattom, Thiruvananthapuram Pin – 695001, Kerala	Not Party	Petitioner

Versus

1. Maradu Municipality, Maradu P.O., Represented by its Secretary Kochi –, 682304, Kerala	Appellant No. 1	Respondent No. 1
2. The Secretary, Maradu Municipality, Maradu P.O., Kochi – 682304, Kerala	Appellant No. 2	Respondent No. 2
3. Government of Kerala, Through The Principal Secretary to Government, Local Self Government (RB) Department, Secretariat, Thiruvananthapuram Pin – 695001.	Respondent No. 1	Respondent No. 3
4. M/s. Holy Faith Builders & Developers Pvt. Ltd., 34/2353, Mamangalam, Kochi – 682 025, represented by its Managing Director.	Respondent No. 2	Respondent No. 4

AND

POSITION OF PARTIES IN CIVIL APPEAL Nos. 4791 OF 2019

	Position of the Parties	
	BEFORE THE HON'BLE HIGH COURT	BEFORE THIS HON'BLE COURT – IN SLP
The Kerala State Coastal Zone Management Authority, Represented by its member secretary, Sastra Bhavan, Pattom, Thiruvananthapuram Pin – 695001, Kerala	Petitioner	Petitioner

Versus

- | | | |
|--|------------------|------------------|
| 1. Maradu Municipality, Maradu P.O., Represented by its Secretary Kochi –, 682304, Kerala | Respondent No. 1 | Respondent No. 1 |
| 2. The Secretary, Maradu Municipality, Maradu P.O., Kochi – 682304, Kerala | Respondent No. 2 | Respondent No. 2 |
| 3. Government of Kerala, Through The Principal Secretary to Government, Local Self Government (RB) Department, Secretariat, Thiruvananthapuram Pin – 695001. | Respondent No. 3 | Respondent No. 3 |
| 4. M/s. Holy Faith Builders & Developers Pvt. Ltd., 34/2353, Mamangalam, Kochi – 682 025, represented by its Managing Director. | Respondent No. 4 | Respondent No. 4 |

All Respondents are contesting respondents

A REVIEW PETITION UNDER ARTICLE 137 OF CONSTITUTION OF INDIA READ WITH UNDER ORDER XLVI OF THE SUPREME COURT RULES, 2013, AGAINST THE FINAL ORDER AND JUDGMENT DATED 08.05.2019 PASSED BY THE HON'BLE SUPREME COURT OF INDIA IN CIVIL APPEAL Nos. 4790-91 OF 2019

TO
THE HON'BLE CHIEF JUSTICE OF INDIA AND HIS OTHER COMPANION JUSTICES OF THE HON'BLE SUPREME COURT OF INDIA

THE HUMBLE PETITION
OF THE PETITIONERS ABOVENAMED

MOST RESPECTFULLY SHOWETH:

1. The present Review Petition under Article 137 of the Constitution read with Order XLVII of the Supreme Court Rules, 2015 is filed seeking review of the order dated 08.05.2019 passed by this Hon'ble Court in Civil Appeal No. 4790-4791 of 2019 and other connected matters

whereby this Hon'ble Court, on the basis of the report submitted by a three member committee appointed by this Hon'ble Court concluded that the area of the building fell within CRZ-III and therefore directed removal of all the structures within a period of one month.

2. This Hon'ble Court on the very same day of passing the impugned order, passed a judgment in the case of Lal Bahadur Gautham Vs. State of U.P passed in Civil Appeal 4794/2019 held in para 10 – 12 as follows:

“10. Before parting with the order, we are constrained to observe regarding the manner of assistance rendered to us on behalf of the Respondent management of private college. Notwithstanding the easy access to information technology for research today, as compared to the plethora of legal digests which had to be studied earlier, reliance was placed upon a judgment based on an expressly repealed act by the present Act, akin to relying on an overruled judgement. This has only resulted in a waste of judicial time of the Court, coupled with an onerous duty on the Judges to do the necessary research. We would not only be completely wrong in opinion that though it may be negligence also, but the consequences could have been fatal by leading to an erroneous judgement.

11. Simply, failure in that duty is a wrong against the justice delivery system in the country. Considering that over the years, responsibility and care on this score has shown a decline, and so despite the fact that justice is so important for the Society, it is time that we took note of the problem, and considered such steps to remedy the problem. We reiterate the duty of the parties and their Counsel, at all levels, to double check and verify before making any presentation to the Court. The message must be sent out that everyone has to be responsible and careful in what they present to the Court. Time has come for these issues to be considered so that the citizen's faith in the justice system is not lost. It is also for the Courts at all levels to consider whether a particular presentation by a party

or conduct by a party has occasioned unnecessary waste of court time, and if that be so, pass appropriate orders in that regard. After all court time is to be utilized for justice delivery and in the adversarial system, is not a licence for waste.

12. As a responsible officer of the Court and an important adjunct of the administration of justice, the lawyer undoubtedly owes a duty to the Court as well as to the opposite side. He has to be fair to ensure that justice is done. He demeans himself if he acts merely as a mouthpiece of his client as observed in *State of Punjab & Ors. vs. Brijeshwar Singh Chahal & Ors.*, (2016) 6 SCC 1: "34....relationship between the lawyer and his client is one of trust and confidence. As a responsible officer of the court and an important adjunct of the administration of justice, the lawyer also owes a duty to the court as well as to the opposite side. He has to be fair to ensure that justice is done. He demeans himself if he acts merely as mouthpiece of his client....."

This Hon'ble Court highlighted the need for parties before this Court to be fair and transparent in their submission to prevent any miscarriage of justice. In the present case Consequent to the failure of the KCZMA (Petitioner in the SLP) to disclose a very important crucial fact i.e the CZMP prepared pursuant to 2011 notification was approved by MoEF on 28.02.2019 by which Maradu Area was categorised under CRZ-II, the Judgment under review happened to be passed by this Hon'ble Court resulting in a direction to demolish nearly 400 flats and thereby displace around 400 families in Maradu area.

3. The facts leading to filing of the instant Review Petition are as under: -
 - A. The Maradu Panchayat in Ernakulam, Kerala was formed in 1953.
 - B. Greater Cochin Development Authority ("**GDCDA**") came into existence under the Madras Town Planning Act of 1920 and Travancore Town Planning 4 of 1108 as per G.O (Ms) No.

19176/LA&SWD dated 24.01.1976. The jurisdiction of GCDA covers an area of 732 sq.kms. consisting of the Kochi Corporation, 9 Municipalities and 21 Panchayats. The Maradu Grama Panchayat was a part of GCDA.

C. On 19.02.1991 the Coastal Regulation Zone (CRZ) Notification was issued by the Central Government exercising its powers under sub section (1) and clause (v) of Section (2) of Section 3 of the Environment (Protection) Act, 1986 issued notification S.O.114(E). The areas have been categorised under the heads of CRZ I, II and III.

- a. The said notification mandates preparing of Coastal Zone Management Plan (CZMP) identifying and classifying the CRZ areas within the respective states and obtaining approval of the Central Government. Annexure-I of the Notification dealt with Coastal Area Classification and Development Regulations.
- b. The categories/classification as per the 1991 notification are given hereunder:-

I. CATEGORY II – CRZ-II:

“The areas that have already been developed up to or close to the shoreline. For this purpose, developed area is referred to as that area within municipal limits *or in other legally designated urban areas which is already substantially built up and which has been provided with drainage and approach roads and other infrastructural facilities, such as water supply and sewage mains.*”

In CRZ-II, buildings are permitted on the landward side of the existing and proposed road or on the landward side of existing authorized structures and shall be subject to the existing local Town and Country Planning Regulations including the existing norms of Floor Space Index/Floor Area Ratio.

II. CATEGORY III:CRZ-III

“Areas that are relatively undisturbed and those which do not belong to either category I or II. These will include coastal zone in the rural areas (developed and undeveloped) and also areas within Municipal limits or in other legally designated urban areas which are not substantially built up.”

In CRZ-III, the area up to 200 metres from the High Tide Limit is to be earmarked as No Development Zone and no construction shall be permitted within this zone except for repairs of existing authorized structures not exceeding existing FSI, existing plinth area and existing density and for permissible activities under the Notification including facilities essential for such activities.

A true Copy of notification S.O.114 (E) dated 19.02.1991 issued by Ministry Of Environment And Forests is annexed herewith and marked as **Annexure-P1 [Pages 60 to 74]**.

- D.** On 27.09.1996 the Coastal Zone Management Plan (“**CZMP**”) prepared by the Kerala State Government was approved. The Maradu Area was incorrectly included in the CZMP as a CRZ III Area instead of CRZ II.
- E.** On 20.07.1998, the provisions of the Kerala Municipality Building Rules, 1994 were made applicable to the Maradu Grama Panchayat, which comes under the jurisdiction of the GCDA. This was done as per G.O (Ms) No. 149/98/LAD. A copy of G.O (Ms) No. 149/98/LAD dated 20.07.1998 is annexed herewith and marked as **Annexure-P2 [Pages 75 to 76]**.
- F.** On 04.01.1999 The Ministry of Environment and Forests (“**MoEF**”) had directed the State Government to prepare local level CRZ Maps

in cadastral scale (1:3960 or nearest scale) to ascertain the Coastal Regulation Zone.

- G.** On 19.02.2003 the Hon'ble High Court of Kerala in its judgement in Citizens Interest Agency v. Lakeshore Hospital and Research Centre Pvt. Ltd. dated 19.02.2003 reported in 2003 (3) KLT 424 records the submission of the State Government conceding to the incorrectness of the CZMP prepared in 1996. The State itself submitted before the Division Bench of the Hon'ble High Court that 'Coastal Zone Management Plan of the State is prepared in 1:12,500 scale on a base map enlarged from Survey of India, top sheets of 1:50,000 scale with the use of aerial photograph and satellite imageries and it will be difficult to arrive at exact conclusions on the CRZ status of the disputed area.' It was further stated that the original plan was prepared on the basis of the plan given by the Survey of India and the Satellite imageries. These plans were prepared in 1:12,500 and 1:50,000 scale. It was also pointed out that depicting an area of 12 1/2 thousand sq. kms. in one inch is a difficult job. Similarly, in the case of the scale prepared in the ratio 1:50,000, it is still more difficult. In view of the said situation, the Government was preparing cadastral plans. The Hon'ble High Court had also recorded that the canals are outside the purview of the 1991 notification.

A true copy of the judgement passed by the Hon'ble High Court of Kerala in Citizens Interest Agency v. Lakeshore Hospital and Research Centre Pvt. Ltd. Dated 19.02.2003 reported in 2003 (3) KLT 424 is annexed herewith and marked as **Annexure-P3** [Pages 77 to 85].

- H. It is submitted that no local level CRZ Maps in cadastral scale (1:3960 or the nearest scale) has been prepared by the CZMA thus far to ascertain the Coastal Regulation Zone pursuant to the judgment of the Division Bench of the Hon'ble Kerala High Court in Citizens Interest Agency v. Lakeshore Hospital and Research Center Pvt. Ltd.
- I. On 09.03.2006 a Resolution was passed by the Maradu Grama Panchayat to take up the matter with the Kerala Coastal Zone Management Authority ("KCZMA") area for inclusion of Maradu Area in CRZ-II.
- A copy of the Resolution dated 09.03.2006 passed by the Maradu Grama Panchayat is annexed herewith and marked as **Annexure-P4 [Pages 86]**.
- J. On 18.08.2006 Maradu Municipality issued building permit to the Petitioner for construction of a residential multi-storeyed building. Since the project was proposed in the side of the Thevara Canal which was not covered by CRZ notification 1991, building permit was granted. A copy of the Building Permit dated 18-8-2006 issued by Maradu Grama Panchayat to the Petitioner is annexed herewith and marked as **Annexure-P5 [Pages 87 to 89]**.
- K. It is pertinent to mention that Petitioner announced the residential project "H2O" after obtaining the building permit. Even before commencement of the project, majority units were sold.
- L. On 12.09.2006 the Maradu Grama Panchayat authorized the Secretary and the President to take up the issue of re-classification of Maradu Grama Panchayat in CRZ-II with the KCZMA as Maradu Grama Panchayat is a legally designated urban area, since it is part

of the Greater Cochin Development Authority and also since Maradu Grama Panchayat area is substantially built up close to the shore lines and all infrastructural provisions such as roads, water supply, drainage, etc. are provided in the entire Panchayat area and that commercial and other buildings are already existing on the shore lines.

A copy of the Resolution dated 12.09.2006 passed by the Maradu Grama Panchayat is annexed herewith and marked as **Annexure-P6 [Pages 90]**.

M. On 18.05.2007 The Principal Secretary to the Government on the basis of an alleged vigilance enquiry report issued a letter to the Secretary of Maradu Grama Panchayat to revoke all building permits issued as per Rule 16 of Kerala Municipality Building Rule 1999 and report to the Government. A true copy of the letter dated 18-5-2007 issued by the Principal Secretary to the Government to Maradu Grama Panchayat is annexed herewith and marked as **Annexure-P7 [Pages 91]**.

N. On 04.06.2007 Show cause notice was issued by Maradu Grama Panchayat to the Petitioner herein to show-cause within 30 days as to why the building permit issued should not be revoked. The said show cause notice was not based on the subjective satisfaction of the Secretary as mandated by Rule 16 of Kerala Municipality Building Rule 1999. A copy of the show cause notice dated 4-6-2007 issued by Maradu Grama Panchayat to the Petitioner is annexed herewith and marked as **Annexure-P8 [Pages 92 to 93]**.

O. On 05.06.2007 - Resolution was passed by the Maradu Grama Panchayath to request the State Government to classify the Maradu Area within CRZ-II Area as Maradu is a legally designated Urban Area.

A copy of the resolution dated 05.06.2007 passed by the Maradu Grama Panchayat is annexed herewith and marked as **Annexure-P9 [Pages 94]**.

P. Various writ Petitions were filed by parties affected by the act of the Maradu Panchayat in issuing show cause notices. Petitioner filed W.P (C) No. 23046/2007 on 26.07.2007 before the Hon'ble High Court of Kerala challenging the Letter issued by the Principal Secretary to the Government on the following grounds.

a. The Show-cause notices issued by the Panchayat are arbitrary and illegal.

b. It was specifically contended in the Writ Petition that Maradu Grama Panchayat being a developed area which is part of the Greater Cochin Development Authority is included as CRZ-II and therefore, the assumption that the area is included as CRZ-III was factually incorrect.

A true typed copy of W.P (C) No. 23046/2007 filed by the Petitioner before the Hon'ble High Court of Kerala on 26.07.2007 is annexed herewith and marked as **Annexure-P10 [Pages 95 to 107]**.

Q. The Impugned notices were stayed and the Learned Single Judge of the Hon'ble High Court granted liberty to the Panchayat to initiate fresh proceedings including the issuance of a Stop Memo.

R. Since the Maradu area was wrongly classified as CRZ-III, W.P (C) No. 19287/07 was filed by Agnus Holdings Private Limited, before the Hon'ble High Court of Kerala, seeking the following reliefs:-

- i. to declare the classification of Maradu Grama Panchayat as CRZ –III as contemplated under Clause 3 (3) (i) of the CRZ Notification, S.O 1146 dated 19-2-1991, is arbitrary and violative of Article 14 of Constitution of India;
 - ii. To issue a writ, direction or order in the nature of Mandamus or such other appropriate writ, direction or order directing the respondents 1 and 2 to modify the Coastal Zone Management Plan of Kerala in so far as the Maradu Grama Panchayat and categorize the same as CRZ-II or CRZ–IV as contemplated under clause 3 (3) of the CRZ Notification, S.O 114E dated 19-02-1991, within a time limit and the 3rd respondent be directed to pass appropriate orders approving the same;
- S. The Hon'ble High Court after hearing both sides, disposed off the Writ Petition on 13-8-2007, directing Kerala Coastal Zone Management Authority to consider and pass orders on the representation made by Respondent No. 2 herein i.e Maradu Grama Panchayat, within three months from the date of receipt of a copy of the Judgment.
- A copy of the Judgment dated 13-8-2007 in W.P(C) No. 19287/2007 is annexed herewith and marked as **Annexure-P11 [Pages 108 to 110]**.
- T. The Maradu Grama Panchayat filed Counter Affidavit in W.P (C) No. 23046/2007 on 01.11.2007. The following averments were made in the Counter Affidavit:
- a. Maradu Grama Panchayat is an area situated between Cochin Corporation and Thripunithura Municipality and that 3 National Highways and other State Highways pass through the Panchayat.
 - b. The best of Health Care Centre's/Hospitals/Educational Institutes, international vegetable commodity market, 5 star

and other category hotels, and housing projects are situated within the Panchayat.

- c. Maradu Grama Panchayat area is substantially built up close to the shore lines and all infrastructural provisions such as roads, water supply, drainage, etc. are provided in the entire Panchayat area and that commercial and other buildings already exist on the shore lines.
- d. It was also admitted that the Structure Plan for Cochin City was extended to Maradu Grama Panchayat and the Kerala Municipality Buildings Rules were also made applicable to the Panchayat.
- e. The specific case of the Maradu Grama Panchayat was that it was a developed area, falling within CRZ-II category and the Panchayat had already submitted a representation to the Coastal Zone Management Authority to rectify the anomaly in the categorization on the Panchayat under the CRZ scheme. It was further pointed out that W.P(C) No. 19287/2007, which was filed by Agnus Holdings Private limited for a declaration that classification of Maradu Grama Panchayat as CRZ-III was arbitrary, was disposed of on 13-8-2007 with a direction to the Kerala Coastal Zone Management Authority to consider and pass orders on the representation made by the Maradu Panchayat within three months from the date of receipt of a copy of the Judgment.

A copy of the counter affidavit filed by the Respondent No. 2 herein i.e. Maradu Panchayat in W.P(C) No. 23046/2007 is annexed herewith and marked as **Annexure-P12 [Pages 111 to 114]**.

- U. The KCZMA was impleaded as the 4th Respondent in the connected Writ Petition. *No counter affidavit was filed by the Kerala Coastal Zone Management Authority repudiating the stand taken by the Maradu Grama Panchayat stating that classification of Maradu Grama Panchayat was in CRZ-II as per the 1991 Notification and*

not in CRZ-III. The KCZMA did not produce any document to show that revised Coastal Management Plan as directed in the Lakeshore Judgment was prepared, 'No development' Zone was demarcated and the constructions in question were included in the No Development Zone.

V. Maradu Grama Panchayat was upgraded to Municipality in 2010.

W. On 06.01.2011, the Central Government issued a new notification, namely S.O. 19 (E). The said notification gave a special status to the backwater islands in Kerala. The said notification was issued in supersession of the notification dated 19.02.1991 except as respect things done or omitted to be done before such supersession.

The said notification contained separate guidelines for the preparation of the CZMP. Clause 5 (v) and (vi) mandates the preparation of maps. The relevant clauses are extracted below for easy reference

(v) Mapping of the hazard line shall be carried out in 1:25,000 scale for macro level planning and 1:10,000 scale or cadastral scale for micro level mapping and the hazard line shall be taken into consideration while preparing the land use plan of the coastal areas;

(vi) The coastal States and Union Territory will prepare within a period of twenty four months from the date of issue of this notification, draft CZMPs in 1:25,000 scale map identifying and classifying the CRZ areas within the respective territories in accordance with the guidelines given in Annexure-I of the notification, which involve public consultation

As per the notification, there are two CZM maps to be prepared, one is of 1:25000 scale and the other one is of 1:3960 scale. The relevant clause in the notification is extracted below for easy reference.

"C. Local level CZM Maps

Local level CZM Maps are for the use of local bodies and other agencies to facilitate implementation of the Coastal Zone Management Plans

13. *Cadastral (village) maps in 1:3960 or the nearest scale, shall be used as the base maps.*

14. *These maps are available with revenue authorities and are prepared as per standard norms.*

15. *HTL (as defined in the CRZ notification) and LTL will be demarcated in the cadastral map based on detailed physical verification using coastal geomorphological signatures or features in accordance with the CZM Maps approved by the Central Government.*

16. *500 metre and 200 metre lines shall be demarcated with respect to the HTL thus marked.*

17. *HTL (as defined in the CRZ notification, 1991) and LTL will also be demarcated along the banks of tidal influenced inland water bodies with the help of geomorphological signatures or features.*

18. *Classifications shall be transferred into local level CZM maps from the CZM Plans."*

The said notification provided for the following guidelines for preparation of CZMP:

"IV. Public Views on the CZMP.

a) The draft CZMPs prepared shall be given **wide publicity** and suggestions and objections received **in accordance with the Environment (Protection) Act, 1986**. Public hearing on the draft CZMPs shall be held **at district level by the concerned CZMAs.**

b) Based on the suggestions and objections received, the CZMPs shall be revised and approval of MoEF shall be obtained.

c) The approved CZMP shall be put up on the website of MoEF, concerned website of the State or Union Territory CZMA and hard copy made available in the Panchayat office, District Collector office and the like."

A true copy of the Coastal Regulation Zone Notification S.O. 19 (E) dated 06.01.2011 issued Central Government is annexed herewith and marked as **Annexure-P13 [Pages 115 to 141]**.

- X.** In order to deal with the reclassification of the CRZ areas of Coastal Zone Management Plan approved in 1996 under the CRZ Notification, 1991 and in view of the supersession by the 2011 notification, an office memorandum dated 01.07.2011 was issued by Central Government that the proposals for reclassification shall be addressed while preparing the CZMPs under the new CRZ Notification of 2011. *At this juncture it is pertinent to mention that the irregularity in classifying Maradu Area in the 1996 CZMP was rectified in the CZMP prepared and approved pursuant to new CRZ Notification of 2011.*

A true copy of the Office Memorandum dated 01.07.2011 issued by Central Government is annexed herewith and marked as **Annexure-P14 [Pages 142]**.

- Y.** It is submitted that after the completion of the building construction, an application was filed for numbering the building and the Hon'ble High Court directed the Respondent No. 2 herein i.e. Maradu Grama Panchayat to number the building in accordance with law. It was ordered that the numbering shall be provisional and subject to the result of the Writ Petition. On 29-5-2012 the apartments were numbered by the Maradu Panchayat.

A copy of order No. R1-6013/12 dated 29-5-2012 of the Maradu Panchayat is annexed herewith and marked as **Annexure-P15 [Pages 143 to 146]**.

Z. The Petitioner executed various sale deeds in favour of the respective flat owners. It is pertinent to mention that all the 91 flats were sold out and at present there are 91 families living in the building.

AA. On 10.09.2012 The Single Judge of the Hon'ble High Court of Kerala in a connected matter i.e W.P (C) No. 25948 of 2007 raising similar issue, specifically took note of the counter affidavit filed by the Maradu Grama Panchayat in its judgement that Maradu is a fully developed area situated close to the rapidly developing corporation of Cochin and comes within the meaning of 'developed area' as described in the Coastal Area Classification and development Regulation. It was also held that the State Government does not have power to issue direction to local self bodies to invoke power under Rule 16. The learned Single Judge set aside the direction issued by the State Government compelling the Secretary of the Panchayat to cancel the Building Permits. Consequently, the show-cause notices issued by the Secretary of the Panchayat solely based on the direction issued by the State Government were also set aside.

A copy of the judgment dated 10.9.2012 in W.P(C) No. 25948 of 2007 passed by the Hon'ble High Court of Kerala is annexed herewith and marked as **Annexure-P16 [Pages 147 to 158]**.

BB. W.P (C) No. 23046/2007 filed by the Petitioner herein was disposed by the learned Single Judge on 13.09.2012 by setting aside the orders/letters by the Respondent.

A copy of the judgment dated 13-9-2012 passed by the Hon'ble High Court of Kerala in W.P (C) No. 23046/2007 is annexed herewith and marked as **Annexure-P17 [Pages 159 to 162]**.

CC. Being aggrieved by the order dated 13.09.2012 in W.P (C) No. 22590/2007, Respondent No. 2 herein i.e Maradu Municipality filed Writ Appeal No. 150/13 contending that the impugned orders which were set aside were merely show cause notices issued under Rule 16 of the Kerala Municipality building Rules, 1999 ("KMBR").

A copy of the Writ Appeal No. 150/2013 filed by Respondent No. 2 herein before the Hon'ble High Court of Kerala is annexed herewith and marked as **Annexure-P18 [Pages 163 to 176]**.

DD. The Division Bench of the Hon'ble High Court of Kerala vide its order dated 02.06.2015 dismissed the Writ Appeal no. 150/13 filed by Respondent No. 2 herein. The following reasons were recorded:

- a. The reason stated in the show-cause notice does not come within one of the four grounds mentioned in Rule 16 of the KMBR and the whole proceedings are fundamentally erroneous and for that reason, the impugned order could not have been sustained.
- b. Regarding the liberty/permission sought for initiating fresh proceedings, the Division Bench specifically observed that during the pendency of the Writ Petition, despite liberty being granted by the Court, no Stop Memo was issued by the Panchayat or the KCZMA and the construction of the building was allowed to be completed and the building has been numbered and innocent purchasers have occupied the building.
- c. The Secretary of the Municipality, i.e. the 2nd appellant therein, himself has categorically, on the eve of the filing of the Writ Appeal, as evidenced by Annexure A, stated that he has found that alleged violations of KMBR do not exist and in

such circumstances, the Division Bench saw no reason to remit the matter back to the Secretary since it would be nothing but an exercise in futility.

d. The Division Bench took note of the submission made by KCZMA relying on Rule 23 (4) of the KMBR and also provisions of the letter dated 17-6-2006 issued by the KCZMA. The Division Bench took note of the fact that as far as 1996 Coastal Zone Management Plan is concerned, in *Citizens Interest Agency v. Lakeshore Hospital and Research Center Pvt. Ltd.* reported in 2003 (3) KLT 424, *the incorrectness of the Plan was conceded by the State itself which was recorded in paragraph 32 of the Judgment.*

e. Therefore, the Bench observed that Rule 23 (4) could not be pressed into service in the absence of a proper Coastal Zone Management Plan.

f. As far as Circular dated 17-6-2006 is concerned, the Division Bench observed that as per the Circular, the local authority may forward applications to the Coastal Zone Management Authority **“for the activities for which clearance from Coastal Zone Management Authority is required after proper verification of the records”**. The Bench observed that the obligation is on the local authority to forward the same to the Coastal Zone Management Authority while processing the applications for Building Permit and if the local authority has failed in complying with the requirements of the circular, the permit holders cannot be taken to task.

A true copy of the common judgment dated 02.06.2015 in Writ Appeal No. 150/2013 and connected cases passed by the Hon'ble High Court of Kerala is annexed herewith and marked as **Annexure-P19 [Pages 177 to 191]**.

EE. The Respondent No. 1 herein i.e Kerala Coastal Zone Management Authority who had not filed any Counter Affidavit in W.P or W.A nor filed an Appeal against the order of Single Judge, filed Review

Petition No. 913/2015 to review paragraph 20 of the judgment wherein the KCZMA contended that as a result of the misconduct of the local authority, illegal construction was permitted.

A true copy of Review Petition No. 913/2015 dated 10.09.2015 filed by Respondent No. 1 herein before the High Court of Kerala at Ernakulam is annexed herewith and marked as **Annexure-P20 [Pages 192 to 199]**.

FF. 19.09.2015 - An occupancy certificate was issued by the Maradu Municipality to the builder.

GG. 11.11.2015 - The Division Bench of the Hon'ble High Court of Kerala dismissed Review Petition No. 913/2015 filed by Respondent No. 1 here holding that the permit holders cannot be punished for the failure of the local authority in complying with a circular.

A copy of the Judgment dated 11.11.2015 in R.P No.913/2015 in W.A No. 150/2015 passed by the Hon'ble High Court of Kerala is annexed herewith and marked as **Annexure-P21 [Pages 200 to 203]**.

HH. Aggrieved by the orders of the Division Bench in the Writ Appeal and Review Petitions, Respondent No. 1 herein filed a Special Leave Petition before this Hon'ble Court. The Special Leave Petition was numbered as SLP (C) No. 4231-34/2016. The Respondent No. 1 had also filed SLP (C) No. 4227-28/2016 and 4238-4241/2016 the same impugned order passed by the Hon'ble High Court in various other Petitions.

A true copy of Synopsis, List of Dates and Special Leave Petition (C) No. 4231-34/2016 filed by Responent No. 1 herein is annexed herewith and marked as **Annexure-P22 [Pages 204 to 238]**.

II. Notice was issued by this Hon'ble Court. Respondents therein entered appearance.

JJ. This Hon'ble Court after hearing the parties passed an order on 27.11.2018 recording that there is no categorical finding by the Single Judge or the Division Bench of the Hon'ble High Court whether the Maradu Area falls within CRZ I, II or III. Therefore, a three-member committee consisting of Secretary to the Local Self Government Department, the Chief Municipal Officer of the concerned municipality and the Collector of a district was constituted to hear objections and to give findings in terms of Notification dated 19.01.1991.

A True Copy of the order dated 27.11.2018 by this Hon'ble Court in SLP (C) No. 4227-28/2016 and connected matters is annexed herewith and marked as **Annexure-P23 [Pages 239 to 241]**.

KK. Despite the specific directions issued by this Hon'ble Court directing the Committee to hear all *affected parties, no notice was issued to the flat owners who are most affected by the outcome of any adverse orders passed*. The apartments had been sold, Ownership Certificates issued in their favour and they are paying the building tax for the same. Therefore, it was imperative that the Apartment owners were heard by the Committee before submitting its report before this Hon'ble Court.

LL. This Hon'ble Court constituted a Three-Member Committee consisting of the Secretary to the Local Self Government Department, the Chief Municipal officer of the concerned Municipality and the Collector of the District, to hear the objections and to give a finding in terms of Notification dated 19th February

1991. The Principal Secretary, Local Self Government Department, Govt. of Kerala, without the leave of this Hon'ble Court, did not participate in the adjudication and instead deputed one Gopalakrishna Bhat, Secretary, Personal and Administrative Department, Govt. of Kerala for the same.

MM. The Three-Member Committee functioned on various dates without having proper quorum. Moreover, on 28.01.2019, the hearing was conducted in the absence of the District Collector.

NN. The Committee appointed by this Hon'ble Court constituted a technical team to assist the committee consisting of the following members

- a. Smt. Girija, Chief Town Planner
- b. Dr. K.K. Ramachandran, Group Head, Atmospheric & Geo-Informatic Division, CESS
- c. Dr. Hari Narayanan, Scientist, KSCSTE
- d. Shri. Balraj, Joint Director, (Urban Affairs)

OO. It is pertinent to mention that Dr. Hari Narayanan, the expert assisting the Court appointed Committee is also an active member of Respondent No. 1/KCZMA. The 98th Minutes of the meeting dated 15.10.2018 and the 101st Minutes of the meeting dated 21.03.2019 shows that Dr. Hari Narayanan had attended the meetings. In view of the apparent conflict of interest, such a person should not have been permitted to assist the Committee.

PP. The report of the Three-Member Committee suffers from non-application of mind and its findings are a mere reproduction of the report of the Technical Team constituted by the Local Self-Government Department. It is further submitted that the affected parties were not made aware of the fact that a Technical Team

was constituted, and that they briefed the three-member committee in the absence of the affected parties on 16.01.2019. As such the Petitioner herein was unable to respond to the factual/legal infirmities in the report of the Technical Team. This briefing/deliberations between the three-member committee and the technical team was subsequently reproduced verbatim as a Report which was filed before this Hon'ble Court.

QQ. On 05.02.2019, the Petitioner Company appeared before the Committee and also submitted a written synopsis along with statement of facts highlighting the following points:

- a. Maradu Panchayat was "developed area" and falls within "legally designated urban area"
- b. Kerala Municipality Building Rules, 1984 was made applicable to the Panchayat.
- c. Inaccuracy in preparation and categorization in Coastal Zone Management Plan, 1996 prepared pursuant to 1991 notification. The observations of the Hon'ble High Court in Lakeshore Hospital case was also highlighted.
- d. Various resolutions passed by Maradu Panchayat on wrong classification of Maradu area in CRZ-III in 1996 CZMP.
- e. Maradu area being upgraded to a Municipality.

A copy of the Synopsis and Statement of facts dated 02.02.2019 submitted by the Petitioner before the Court appointed Committee is annexed herewith and marked as **Annexure-P24 [Pages 242 to 252]**.

RR. On 26.02.2019 this Hon'ble Court on an application filed on behalf of the Committee extended time for submission of report by a period of one month.

SS. The MoEF vide its order dated 28.02.2019 approved the Coastal Zone Management Map of Ernakulam district which rectified the

1996 CZMP and placed the Maradu Municipality in the CRZ-II Area.

A true copy of the notification dated 28.02.2019 issued by MoEF is annexed herewith and marked as **Annexure-P25 [Pages 253 to 254]**.

- TT.** Admittedly the Respondent No. 1 received communication from MoEF on 01.03.2019 regarding the approval of CZMP of Ernakulam District wherein Maradu Area was categorized in CRZ-II.
- UU.** 2019 - The Committee appointed by this Hon'ble Court submitted a report *dated nil* before this Hon'ble Court. It was concluded in the report as under:

"The Coastal Zone Management Plan (CZMP) of Kerala currently applicable is the one that was approved in 1996. As per the said CZMP Maradu has been marked as Panchayat area and hence falls in the Coastal Regulation Zone (CRZ) category of CRZ III. Maradu Panchayat has been upgraded to Municipality in the year 2010 and hence in the draft CZMP prepared as per CRZ Notification 2011 it is shown as CRZ II category. The new draft CZMP is submitted to MoEF & CC of Government of India for approval. Until Government of India approve the draft notification CZMP 1996 stands valid."

- VV.** The Committee report *dated nil* has not considered any of the submissions made by the Petitioner. The inaccuracy in the 1996 CZMP was not considered by the Committee. It concluded that it is CZMP 1996 which applies, without appreciating the fact that MoEF had on 28.02.2019 approved the *new draft CZMP prepared for Ernakulam District which categorised Maradu area in CRZ II category.*

A copy of the report dated nil filed by the Committee appointed by this Hon'ble Court is annexed herewith and marked as **Annexure-P26 [Pages 255 to 282]**.

WW. On 12.03.2019 the copy of the report was filed by the Counsel appearing on behalf of the Respondent Kerala State Government in the lead matter i.e SLP (C) NO. 4227-28/2016 alone. A copy of the report was not served on the Petitioner nor his Counsel in Supreme Court. *Therefore, the Petitioner was not provided an opportunity to peruse the report nor its contents. The Petitioner was deprived of an opportunity to file a response to the report nor to challenge the same, in view of the apparent illegality in the conclusions and procedure adopted.*

XX. This Hon'ble Court vide the impugned Judgement held that the permission granted by the Panchayat was illegal and void and therefore directed removal of all structures within a month. This Hon'ble Court placed reliance on the Report submitted by the committee constituted as per interim order dated 27.11.2018.

4. Thus, it is most respectfully and humbly prayed that this Hon'ble Court may be pleased to review its judgment and order dated 08.05.2019 passed by this Hon'ble Court in Civil Appeal No. 4790-4791 of 2019 and other connected matters on the following grounds amongst other grounds, which are in the alternative and without prejudice to each other:-

5. GROUNDS

- A.** BECAUSE the Petitioner is seeking review of the impugned order dated 08.05.2019 in view of the discovery of some new and important facts which were not within the knowledge of the

Petitioner when the order was passed and on account of some error apparent on the face of record in the order dated 08.05.2019 and for other sufficient reasons.

- B.** BECAUSE the finding of this Hon'ble Court by placing reliance on the three member committee report that at the relevant time when the construction has been raised by the respondents in the matters, the area was within CRZ-III is an error apparent on the face on record.
- C.** BECAUSE the inaccuracy in preparation of Coastal Zone Management Plan (CZMP) prepared in 1995 pursuant to the 1991 notification and approved in 1996 has been dealt with by the Division Bench of the Hon'ble High Court of Kerala in Citizens Interest Agency v. Lakeshore Hospital and Research Centre Pvt. Ltd reported in 2003 (3) KLT 424, *wherein the State Government conceded that the plan was incorrectly prepared.*
- D.** BECAUSE the Maradu Panchayat in Ernakulam, Kerala which was formed in the year 1953 was part of the Greater Cochin Development Authority and hence is part of a legally **designated urban area**. Considering the urban nature and rapid growth in the area, the Structure Plan of Kochi was extended to the Maradu Grama Panchayat. The Kerala Municipality Building Rules were also made applicable to the Maradu Grama Panchayat. The Government of Kerala notified the Revised Structure Plan for Central City of Kochi and the same is made applicable to Maradu area also.
- E.** BECAUSE canals are included in Entry 17 of List II of the Seventh Schedule of the Constitution of India – Water, that is to say water supplies, irrigation and canals, drainage and embankments, water storage and water power subject to the provisions of Entry 56 of List

- I. Hence, the Central Government does not have the power to legislate regarding Canals and hence CRZ notification 1991 has expressly excluded Canals from its purview.
- F.** BECAUSE the Hon'ble High Court in Lakeshore case held that canals are outside the purview of the 1991 notification. Those areas which were not adjacent to the canal were *wrongly* included in despite its developed status.
- G.** BECAUSE the validity of map prepared by CZMP was challenged and quashing of the same was also sought. The Hon'ble High Court disposed off the Petition by recording the submission of the Govt. Counsel that the Govt. is preparing a Cadastral plan and a fresh plan and map shall be issued. *It is an admitted fact that no such fresh plan was issued and therefore there was no valid CZMP for the Maradu Area till 28.02.2019 when the fresh CZMP was approved.*
- H.** BECAUSE it is an admitted fact that the Maradu Grama Panchayat passed resolutions dated 09.03.2006, 12.09.2006 and 05.06.2007 emphasizing that the Panchayat was deeply concerned about the misclassification and addressed various representations to the Kerala Coastal Zone Management Authority (KCZMA) herein requesting to rectify the said error. The Hon'ble High Court of Kerala passed directions to KCZMA to consider and decide on such representations, which never happened.
- I.** BECAUSE the Central Government issued the Coastal Regulation Zone Notification dated 06.01.2011 in supersession of the Notification dated 19.02.1991. In order to deal with the reclassification of the CRZ areas of Coastal Zone Management Plan approved in 1996 under the CRZ Notification, 1991 and in view of

the supersession by the 2011 notification, an office memorandum dated 01.07.2011 was issued by MoEF that the proposals for reclassification shall be addressed while preparing the CZMPs under the new CRZ Notification of 2011. After considering all such aspects a draft CZMP was prepared following the 2011 notification classifying *Maradu area in CRZ-II* and the same was approved by MoEF on 28.02.2019. Therefore, the building constructed by the Petitioner is fully in compliance of CRZ norms as on today.

- J.** BECAUSE the images taken from Google map and google earth which are annexed to the application along with this Review Petition clearly demonstrate that the project site is not close to the sea as this Hon'ble Court considers it to be. Maradu area is a fully developed urban area.
- K.** BECAUSE the norms laid down in the CRZ Notification refers to developed areas and when it is found that a particular area in question is a developed area consisting of roads, buildings, drainage and other infrastructural facilities then it is not open to allege that the construction violates CRZ Notification.
- L.** BECAUSE the finding of this Hon'ble Court that the Committee after due inquiry has held that the area fell within CRZ-III and therefore it was wholly impermissible and unauthorized construction within the prohibited area is an error apparent on the face of record.
- M.** BECAUSE the copy of the report was filed by the Counsel appearing on behalf of the Respondent Kerala State Government in the lead matter i.e SLP (C) NO. 4227-28/2016 alone. A copy of the report was not served on the Petitioner nor his Counsel in Supreme Court.

Therefore, the Petitioner was not provided an opportunity to peruse the report nor its contents. The Petitioner was denied of an opportunity to file a response to the report nor to challenge the same, in view of the apparent illegality in the conclusions and procedure adopted.

- N.** BECAUSE the Apartment owners were not heard by the Committee despite the direction of this Hon'ble Court to hear all *affected parties*. All the 91 units in the Petitioners building have been sold. Thereafter tax is being paid by them every year. The committee did not issue notice to the owners of the apartments who are residing there who would be the actually affected parties if an adverse order is passed in the matter.
- O.** BECAUSE the contentions of the Petitioner though recorded in the report, were not considered at all and no finding is recorded in the report stating as to why the aspects pointed by the Petitioner was not considered favorably by the Committee.
- P.** BECAUSE this Hon'ble Court constituted a Three-Member Committee consisting of the Secretary to the Local Self Government Department, the Chief Municipal officer of the concerned Municipality and the Collector of the District, to hear the objections and to give a finding in terms of Notification dated 19th February 1991. The Principal Secretary, Local Self Government Department, Govt. of Kerala, without the leave of this Hon'ble Court, did not participate in the adjudication and instead deputed one Gopalakrishna Bhat, Secretary, Personal and Administrative Department, Govt. of Kerala for the same.

- Q.** BECAUSE the Three–Member Committee functioned on various dates without having proper quorum. Moreover, on 28.01.2019, the hearing was conducted in the absence of the District Collector.
- R.** BECAUSE the report of the Three-Member Committee suffers from non-application of mind and its findings are a mere reproduction of the report of the Technical Team constituted by the Local Self-Government Department. It is further submitted that the affected parties were not made aware of the fact that a Technical Team was constituted, and that they briefed the three-member committee in the absence of the affected parties on 16.01.2019. As such the Petitioner herein was unable to respond to the factual/legal infirmities in the report of the Technical Team. This briefing/deliberations between the three-member committee and the technical team was subsequently reproduced verbatim as a Report which was filed before this Hon’ble Court.
- S.** BECAUSE the Committee has not conducted any site inspection to determine the status of the building and applicability of CRZ norms. Such inspection would have clarified that the Petitioners building is on the side of Thevara Canal and in view of the Judgment in Lakeshore case by the Division Bench of Hon’ble High Court of Kerala, the CRZ notification of 1991 does not apply to Canals. *Therefore, the Construction is not in a prohibited area.*
- T.** BECAUSE The committee ignored the fact that Maradu Grama Panchayat was a fully developed urban area and it was wrongly categorized in CRZ-III in the CZMP approved in 1996 and that this error was rectified by including Maradu Area as CRZ II in CZMP prepared based on 2011 Notification which was approved on

28.2.2019. No authority had determined the prohibited area after the faulty CZMP approved in 1996 till the new CZMP approved on 28.02.2019.

- U.** BECAUSE the Committee has recorded that the CZMP of Kerala currently applicable is the one that was approved in 1996. As per that Maradu falls in Category III. It has also been stated by the Committee that the Panchayat has been upgraded to Municipality in the year 2010, the same has been shown as CRZ-II category in the draft CZMP prepared as per CRZ Notification 2011 and submitted to MoEF. *It was further recorded that until the Government of Kerala/KCZMA receives a communication from the Government of India on the approval of the CZMP draft submitted, the CZMP 1996 stands valid.* It is pertinent to note that the MoEF approved the CZMP draft on 28.02.2019. It was communicated to KCZMA by 01.03.2019. Despite the same, the said fact was not brought to the notice of the Committee by KCZMA and thereby the Committee was misled by KCZMA, in this regard. Therefore, it was recorded by the committee that the CZMP pursuant to 2011 notification is at draft stage.
- V.** BECAUSE at the time of the hearing also the KCZMA who was the Appellant before this Hon'ble Court despite the knowledge that the CZMP has been approved by the Central Government on 28.02.2019 failed to bring this crucial fact to the notice of this Hon'ble Court.
- W.** BECAUSE it is factually incorrect that the Maradu area is situated in the shores of backwaters in Ernakulam District. The Petitioner's building is in the mainland and it is adjacent to Thevara canal and hence not coming within the purview of CRZ notification 1991.

- X.** BECAUSE in the Map No. 33, 33A and 34 produced along with the report submitted by the Committee the Maradu Area is not visible nor clearly demarcated.
- Y.** BECAUSE the finding of this Hon'ble Court that the permission granted by the Panchayat was illegal and void is an error apparent on the face of record.
- Z.** BECAUSE the Building Permit was obtained by Petitioner from Maradu Grama Panchayat on 18-8-2006 for construction of H2O project in Maradu.
- AA.** BECAUSE the project was proposed on the side of the Thevara Canal. In view of the finding by the Hon'ble High Court in Lakeshore case which held that the CRZ notification 1991 does not apply to Canals, building permit was granted by the Panchayat to the Petitioner.
- BB.** BECAUSE the CZMP approved in 1996 was admittedly faulty and no fresh CZMP was prepared by the Government as submitted before the High Court in Lakeshore Case and the Maradu Panchayat passed resolutions to take up the issue of wrong classification with KCZMA.
- CC.** BECAUSE the 2011 CRZ notification and the Office Memorandum issued thereafter clearly directed the State Government to consider the errors in classification while preparing the new CZMP. The same was done and thereafter Maradu was rightly classified in CRZ-II.
- DD.** BECAUSE the building permit is held to be faulty on the ground that concurrence of KCZMA was not taken as mandated by Rule 23 (4) of Kerala Municipality Building Rules, 1999. *The 1991 notification nor any Rules provided for the builder or project proponent to approach KCZMA and seek such concurrence.* The onus was on the Panchayat

or the local body to do the same. The Panchayat had taken a clear stand that the building permit was issued strictly in accordance with law. This was in view of the faulty CZMP 1996 and various proceedings before the Hon'ble High Court of Kerala.

EE. BECAUSE the Petitioner cannot now be made to suffer for any alleged fault on the part of the Government and their inaction especially when much water has flown after the same. Pursuant to the interim orders passed by the Hon'ble High Court, the construction of the Building is complete, building is numbered, occupancy certificate issued, all the 91 units sold and families are residing in the same.

FF. BECAUSE it is respectfully submitted that this Hon'ble Court erred in passing an order directing demolition of the structure which is much beyond the scope of the dispute raised before the Hon'ble Court.

GG. BECAUSE the Principal Secretary to the Government on the basis of an alleged vigilance enquiry report issued a letter to the Secretary of Maradu Grama Panchayat to revoke all building permits issued by invoking Rule 16 of Kerala Municipality Building Rule 1999 and report to the Government.

HH. BECAUSE based on this a show-cause notice was issued to the Petitioner. The said show-cause notice was not based on the subjective satisfaction of the Secretary as mandated by Rule 16 of Kerala Municipality Building Rule 1999. Petitioner challenged the same before the High Court by filing a Writ Petition. *Maradu Panchayat filed a counter affidavit admitting that area is developed and substantially built up. It was submitted that the area ought to be included in CRZ II. It was further submitted that the building*

permit was correctly issued and the show-cause notice was issued only following the direction issued by the Govt. Interestingly no counter affidavit was filed by State Government or KCZMA in the Writ Petition.

- II.** BECAUSE the show-cause notice was quashed by the Learned Single Judge of the Hon'ble High Court of Kerala on 13.09.2012. It was found by the Hon'ble High Court that the Show-cause notice were issued in obedience to the directions of the Government and it has to be held that this is a clear case of the authority, acting under dictation. The same was affirmed by the Division Bench in Writ Appeal filed by Maradu Municipality on 02.06.2015.
- JJ.** BECAUSE the Review Petition was filed by KCZMA only on a very limited ground i.e to review paragraph 20 of the judgment wherein the KCZMA contended that as a result of the misconduct of the local authority, illegal construction was permitted. The said Review Petition was also dismissed.
- KK.** BECAUSE there was no finding by any competent authority regarding CRZ violations the pleadings in the Writ Petition were mainly focused on the legality of the show cause notice issued by the Maradu Panchayat based on a direction issued by the State Government. The High Court also, accepting the said contention, quashed the show cause notice on the ground that the issuance of the show cause notice suffered from the vice of dictation and that there was no independent application of mind by the Secretary of the Panchayat which was a mandatory pre requisite under Rule 16 of the KMBR. *Infact the Maradu Panchayat in its counter affidavit categorically submitted that the issuance of permit by them was*

strictly in accordance with law and there was no pleadings to the contrary made by the KCZMA or the State Government before the High Court. That being the factual position it is respectfully submitted that this Hon'ble Court went beyond the scope of the litigation and issued directions for demolition the buildings. This Hon'ble Court, if it was found that the High Court exceeded its jurisdiction in interfering with the show cause notice, ought to have directed the parties to submit their reply to the show cause notice and directed completion of the proceedings by the concerned Authority which issued the show cause notice in accordance with law. Therefore, there has been violation of principles of natural justice and due process has not been followed before ordering demolition of the building.

LL. BECAUSE this Hon'ble Court has not set aside the finding of the Hon'ble High Court which held that the State Government does not have power to issue direction to local self-bodies to invoke power under Rule 16 which was the basis on which the show cause notice was set aside. If this Hon'ble Court was of the opinion that the Judgment of the High Court was erroneous the Petitioner ought to have been directed to respond to the show cause notice and a direction ought to have been issued to the KCZMA to take a decision in accordance with law after affording a reasonable opportunity of being heard.

MM. BECAUSE this Hon'ble Court erred in punishing the builder and the flat owners for the error on the part of the official Respondent/Authorities.

NN. BECAUSE an application for building permit was submitted by the Review Petitioner disclosing all relevant facts. There was no suppression of any materials facts by the Review Petitioner. It is the Maradu Panchayat which was a party to the Lakeshore Judgment which took a stand that there was no requirement to forward the Petitioner's application for clearance from the KCZMA in view of the declaration by the Division Bench Judgment of the Kerala High Court that Canals would not be covered by CRZ notification and that fresh CZMP would be prepared for Maradu Area and the plan which was prepared based on 1991 notification was not in accordance with the procedure prescribed by law. Neither the Review Petitioner nor the persons who purchased the flats can be penalised for the failure on the part of the then Maradu Panchayat in forwarding the Petitioner's application for building permit for CRZ clearance on a bona fide interpretation of the Division Bench Judgment in Lakeshore case.

OO. BECAUSE the Lackadaisical attitude of KCZMA is evident from the following:

- No action taken on the alleged violation by the builders.
- No counter affidavit/documents filed before the Learned Single Judge or Division Bench.
- Order of the Learned Single Judge permitting Construction and later directing the Municipality to number the building was never challenged. No action taken to get the stay vacated.
- No Appeal filed against the order of Learned Single Judge.
- Review Petition was filed after the order in W.A on a very limited ground i.e to review paragraph 20 of the judgment wherein the KCZMA contended that as a result of the misconduct of the local authority, illegal construction was permitted. The said Review Petition was also dismissed.

- PP.** Such inaction on the part of the authorities especially KCZMA has been deprecated by this Hon'ble Court in the case of KCZMA VS. DLF (2018) 2 SCC 203. It has been further held that the alleged violators who have put up large investments cannot be made to suffer for inaction of the authorities when they do a flip flop putting the investments at stake. It was emphasized that there should be clarity from the beginning on what is permissible and what is not. Therefore, the builder and the apartments owners cannot be made to suffer for the inaction of the authorities.
- QQ.** BECAUSE the 2011 notification obligated the CZMA to submit the draft CZMP on or before 30th September 2013 and the MoEF was required to approve the CZMP within four months of receipt of the draft CZMP. The CZMP approved by the MoEF under 1991 notification was stated to be valid till 31st January 2014. The draft CZMP though prepared in 2014, it was approved by MoEF only on 28.02.2019. In this context it is pertinent to note that the MoEF has already issued new CRZ notification G.S.R. 37(E) dated 18.01.2019 wherein the CRZ area has been further reduced to 20 mtrs from HTL. Therefore, the approval of CZMP is being done after issuance of new notification which in turn mandates preparation of new CZMP.
- RR.** BECAUSE the reliance placed by this Hon'ble Court in the case of Vaamika Island is misplaced. In that case it is clearly recorded that construction was contrary to 1991 as well as 2011 notifications. Construction adjacent to the Vembanad Lake which was scheduled as "vulnerable wetlands to be protected" cannot be equated to the construction adjacent to Thevara Canal.

SS. BECAUSE this Hon'ble Court erred in not appreciating that the reason for Kerala Floods cannot be attributed to the construction of the Subject Building. It is submitted that in view of the Report submitted by the Amicus Curie in W.P. No. 2651 of 2019 that the main reason for the flood was identified as the extremely high rain fall received by the State between 14th to 16th August, 2018. The other causes which contributed for the worsening of the flood include interalia the following:

- a. None of the 79 dams in Kerala were used/operated for the purpose of flood control/moderation, despite the obligations cast under the National Water Policy and other directives.
- b. Dams in Kerala did not maintain effective Flood Control Zone and the Flood Cushion maintained was not as mandated by the BIS Report.
- c. Most of the major reservoirs were almost full before the extreme rainfall that occurred on 14th–16th of August 2018 and they did not have the capacity to accommodate the additional flow generated by extreme rainfall.
- d. Sudden release of water simultaneously from different reservoirs during extreme rainfall aggravated the damage.

TT. BECAUSE the Coastal Zone Management Plan (CZMP) approved in 1996 prepared on the basis of the notification dated 19.02.1991 is now invalid and inoperative in view of the supersession by the Coastal Regulation Zone Notification dated 06.01.2011 approved by the MoEF &CC on 28.02.2019, this Hon'ble Court ought to have directed the official Respondents herein to revisit the Petitioners project and check whether the same is in compliance with the CZMP approved by MoEF on 28.02.2019 and regularise the same in accordance with law.

UU. BECAUSE a direction to pull down constructions made investing large amounts of money and efforts and when there are 91 families living on the same, should not be adopted when the defects are capable of being cured.

VV. BECAUSE the MoEF in 2018 had permitted regularization of constructions carried out without clearance. Since there was no adverse finding against the Petitioner, no application was filed seeking regularization. Therefore, the Petitioner could not avail the opportunity to seek regularization of their building. This Hon'ble Court should have extended that benefit to the Petitioner since the only objection raised is that prior CRZ Clearance was not obtained by the Petitioner.

WW. BECAUSE Actus Curiae Neminem Gravabit i.e an Act of the Court shall not prejudice anyone. An opportunity be afforded to the Petitioner and direct the MoEF to consider the application for post facto clearance.

XX. Any other ground that may be raised with the permission of this Hon'ble Court at the time of hearing.

6. That the Review Petitioners have not filed any other review petition in this Hon'ble Court seeking review of the judgment and order dated 08.05.2019 passed by this Hon'ble Court in Civil Appeal No. 4790-4791 of 2019 and other connected matters.

7. MAIN PRAYER:

Wherefore in light of the above, the Petitioner herein Most Humbly submits that this Hon'ble Court may be pleased to:

- a) Review the judgment and order dated 08.05.2019 passed by this Hon'ble Court in Civil Appeal No. 4790-4791 of 2019 and other connected matters
- b) issue any other directions or Orders as this Hon'ble Court may deem fit and proper in view of the facts and circumstances in the present

AND FOR THIS ACT OF KINDNESS THE PETITIONER AS IN DUTY BOUND SHALL EVER PRAY

DRAWN BY:

FILED BY:

SANTHOSH MATHEW and
A. KARTHIK, Advocates

(A. KARTHIK)
ADVOCATE FOR THE PETITIONER

DRAWN ON: 29.05.2019
FILED ON: 06.06.2019