IN THE HIGH COURT OF KERALA, AT ERNAKULAM
Present:

The Honourable Mr. Justice P.K.Balasubramanyan

&

The Honourable Mr. Justice M. Ramachandran
Wednesday, the 24th October, 2001/2nd Karthika, 1923.

O.P.No...2 9 8 0 7...OF 2000-W

Biju.V.G. Vs. Thalassery Municipality and others

This Original Petition having been finally heard on 21-8-2001, the court on 24-10-2001 delivered the following:-

J U D G M E N T

BALASUBRAMANYAN, J.

1.This Original Petition is filed by the petitioner, who is the Secretary of the Kerala Sasthra Sahithya Parishad, Thalassery Unit. According to the petitione,r the Original Petition is filed in public interest and in discharge of the duties of the petitioner under Article 48A of the Constitution of India. The petitioner complains that no proper steps are taken by the State of Kerala, the Union Government and the authorities concerned to enforce strictly the notification issued by the Government of India on 19-2-1991 under Sections 3(1) and 3(2) of the Environment (Protection) Act, 1986. the petitioner is specifically complaining of the violation of that notification by respondents 2 and 3 in the Original Petition. He is also complaining of the attidtude of respondent No.1, the Municipality, in the matter of enforcing the notification and ensuring its compliance. The prayers in the Original Petition are for setting aside the orders permitting a construction by respondents 2 and 3 in alleged violation of the Coastal Zone Regulation notification and for reliefs arising out of the quashing of those orders that are consequential thereto. There is also a contention that there has been no proper constitution of the relevant bodies under the Environment (Protection) Act and a direction is sought for to ensure that proper bodies are constituted as envisaged by the Act, the Rules and the notifications.

2. The Original Petition is opposed by respondents 2 and 3, who have constructed the building, the construction of which is challenged in the Original Petition. The Union of

India has adopted a stand more or less indicating that the implementation of the regulation by the State leaves much to be desired. The Municipality has adopted some sort of lukewarm attitude towards environment protection.

3. Exhibit P1 marked in the Original Petition is the notification published on 20-2-1991 by the Ministry of Environment & Forests under Sections 3(1) and 3(2)(v) of the Environment (Protection) Act and Rule 5(3)(d) of the Environment (Protection) Rules, 1986 declaring coastal stretches as Coastal Regulation Zone (CRZ) and regulating activities in the CRZ. Under Clause-2 of the notification, construction activities are prohibited and under Clause-3 permissible activities are regulated. In other words, all activities not prohibited by Clause-2 of the notification are regulated by Clause-3 of the notification. For any permissible activity, clearance has to be given when the activity is within the Coastal Regulation Zone and if it requires water front and foreshore facility. The notification also contemplates the preparation of Coastal Zone Management Plans by the States and the Union Territories within one year from the date of that notification. It is also provided that pending the preparation and publication of the Coastal Zone Management Plan and their approval, all developments and activities within the CRZ shall not violate the provisions of the notification. Clause-4 provides that the Ministry of Environment and Forests and the Governments of States or Union Territories or such authorities, as maybe designated for the purpose, shall be responsible for monitoring and enforcement of the provisions of the notification within their respective jurisdictions. Annexure-I contains coastal area classification and development regulations. In this case, we are concerned with Category-II, shortly described as "CRZ-II". The areas included therein are areas that have been developed unto or close to the shore-line. A "developed area" is understood as that area within the Municipal limits or in other legally designated urban area which is already substantially built up and which have been provided with drainage and approach roads and other infrastructural facilities, such as water supply and sewerage mains. As regards CRZ-II, the norms for regulation of activities under Clause 6 is provided as follows:-

(i) Buildings shall be permitted only on the landward side of the existing road (or roads proposed in the approved Coastal Zone Management Plan of the area) or on the landward side of the existing authorised structures. Buildings permitted on the landward side of the existing and proposed roads/existing authorised structures shall be subject to the existing local Town and Country. Planning Regulations including the existing norms or Floor Space Index/Floor Area Ratio.

Provided that no permission for construction of buildings shall be given on the landward side of any new roads (except road proposed in the approved Coastal Zone Management Plan) which are constructed on the seaward side of an existing road".

4. Respondents 2 and 3, acting through their power of attorney, sought to put up a multi-storied building (non-residential) on the banks of Eranholi River in the property blocked in Survey No.140/2, 140/4 and 141/1A of Thalassery village. The construction was attempted admittedly within CRZ-II zone. Special permissions or exemptions were obtained from the Kerala Building Rules for the construction of the complex. The

petitioner in this Original Petition had approached this Court with O.P.No.10485/1997 praying for the issue of a direction to the Thalassery Municipality to restrain all constructions which are in violation of the CRZ notification, Exhibit P.1. By Judgment dated 18-2-1998, this Court directed that the issue raised by the petitioner be decided on the basis of the representation made by the petitioner. It was thereafter, that by the proceeding, marked as Exhibit P3 in the Original Petition, dated 3-9-1998, the Municipal Council, Thalassery found that the construction attempted by respondents 2 and 3 was within the prohibited area going by the Coastal Zone Regulation. Respondents 2 and 3 challenged the Coastal Zone Regulation notification by filing O.P.1991 of 1998. In that Original Petition, they moved C.M.P.3541 of 1998 and this Court by an interim order permitted them to proceed with the construction of a hotel, but qualified it by saying "if there is a road separating the petitioner's property and the river". Of course, being only an interim order, the construction was subject to the result of the Original Petition or the consequences arising from the final disposal of the Original Petition. When the original petition finally came up for hearing, respondents 2 and 3 did not pursue their challenge to the notification. The Division Bench in its judgment dated 18-1-2000 did not go into the merits. It noticed that a Coastal Zone Management Committee should examine the stand of respondents 2 and 3 herein taking into account the report of the Tahsildar and other relevant materials. The report of the Tahsildar relied on by respondents 2 and 3 herein was in support of their claim that there was a public road in between their property and the Eranholi River.

5. The proceedings of the Committee referred to in the judgment of this Court in O.P.No.1991 of 1998 was made available for perusal. It was only a minutes produced before us by anyone. But, a letter dated 31-3-2000 was sent by the Secretary to Government to the Secretary to the Thalassery Municipality referring to the claim of respondents 2 and 3 informing him that applying the provisions contained in CRZ-III(i) of annexure I of CRZ Notification, the Coastal Zone Management Committee agrees for the issuance of CRZ clearance for the construction. We may notice here that what is referred to in the communication, which is marked as Exhibit P.8, is the Original Petition filed by respondent No.2 herein and the counter affidavit filed by the Tahsildar in that Original Petition. It may be noted that there is no reference to the "other relevant materials" referred to in the judgment of the Division Bench in O.P.No.1991 of 1998. the objector, the present petitioner, had filed O.P.No.17443 of 1998 before this Court seeking a demolition of the constructions put up by respondents 2 and 3 and another person. Another Division Bench of this Court by Judgment dated 26-6-2000 stated that since the Committee had already taken a decision and that was accepted by the Government of Kerala, the Original Petition had become infructuous and that the petitioner can be given opportunity to challenge the order granting permission to respondents 2 and 3. The Division Bench noticed that if the petitioner felt aggrieved by the Orders, it was for him to challenge the same. Meanwhile, the Government called for a report from the Thalassery Nagara Sabha on the unauthorised constructions in violation of the Coastal Zone Regulations going on within that Panchayat. A report was sent up, a copy of which is marked as Exhibit P.10, in which it was recommended that the construction by respondents 2 and 3 was in violation of the Coastal Zone Regulation (CRZ-II) and that an interim order permitting construction was obtained by misleading the High Court and that

an appeal has to be filed against the continuance of the construction in violation. It was also reported that if the construction was effected, the construction would be against the terms of Section410 of the Municipalities Act. It was also recommended that since the construction was against the plan submitted to the Government and was against the plan submitted to the Government and approved by the Municipality, Section 393(10 of the Municipalities Act could also be invoked to cancel the building permit. Meanwhile, respondents 2 and 3 had also obtained an order from the Govenrment giving them exemptions from the Kerala Building Rules on the terms set out in Exhibit P11. The petitioner has again approached this Court with the present Original Petition praying for the issue of a writ of certiorari to quash the permissions and exemptions granted to respondents 2 and 3 and for the issue of a mandamus directing the Thalassery Municipality and the State of Kerala to take immediate steps to demolish the buildings which are constructed by the respondents 2 and 3 pursuant to the order Exhibit P8 and for other incidental reliefs. There is also a prayer for the issue of a writ mandamus directing the Union of India to replace the members of the Committee constituted under Exhibit P6 notification with others since they were also in the committee constituted under Exhibit P7 order and to ensure that those who were included in the Committee are really interested in protecting the environment and ecology of the country. The case of the petitioner, in short, is that the construction made and being made by respondents 2 and 3 on the banks of Eranholi River clearly violates the Coastal Zone Regulation and the notification issued there under and that the authority constituted as Kerala Coastal Zone Management Committee includes in it members who have absolutely no commitment to the environment and its protection and it is just and necessary to reconstitute the Committee with fit persons.

6. The Thalassery Municipality has filed a counter affidavit denying that it had acted without bonafides. Some of the allegations made by the Municipality in its counter affidavit indicate that it is more loyal than the King. According to the Municipality the construction by respondents 2 and 3 was on the landward side of a building that existed in Survey No.140/4 as far back as the year 1935. It had to concede that when a report was sent up earlier, it was seen that there was no road in existence between the site of the building and the Eranholi River and that the construction was not shown as on the landward side of an existing road. It is also stated that no evidence of existence of a road or a building was produced when a report was sent up by the Chariman on the earlier occasion. The counter affidavit winds up by saying that there was a footpath through or by the side of the river and the buildings are situated in the landward side of the footpath. then it is asserted that there is no violation of CRZ Rules as reported by the Senior Town Planner (Vigilance). It may be noted that even as per this counter affidavit, there is a clear assertion that there was only a footpath in between the site where the construction is put up and the Eranholi River.

7. In the statement filed on behalf of the Union of India, it is stated that as per the Coastal Regulation Zone notification, buildings are not permissible in Coastal Regulations Zone Areas on the seaward side of the existing road or existing authorised structures. It is also stated that the Kerala State coastal Zone Management Authority had been constituted to monitor violation of the notification. The notification dated 26-11-1998 supersedes any

notification brought out by the State Government. All development activities should be as per the provisions laid down in Coastal Regulation Zone Notification, 1991 along the coastal stretches. The violation committed under the notification are monitored by the Coastal Zone Management Authority, which has been empowered under the Environment Authority, which has been empowered under the Environment (Protection) Act to take action against violation. The authority is expected to fulfil the responsibilities entrusted to it. The Union of India had issued necessary notifications and orders for implementing Coastal Regulation Zone Notification from time to time. It was a duty of the State Government and the authority created by the State Government to take necessary action against violations. It is significant to note that there is no statement that the Coastal Zone Management Authority is fulfilling its responsibilities properly or that the State Government or the authority constituted by it are properly implementing the Environment (Protection) Act and the concerned regulation.

8. In the counter affidavit filed on behalf of respondents 4 and 5, it is asserted that the concerned authority has gone by the stand adopted by the Tahsildar in the counter affidavit in O.P.1991 of 1998 filed in this Court. A reference is made to the direction of the Division Bench in that Original Petition to consider the question in the light of the counter affidavit filed on behalf of the Tahsildar. But, the counter affidavit does not indicate that the committee examined the other relevant materials that were also referred to by the Division Bench in its judgment in O.P.No.1991 of 1998 as matters to be considered. Nor does the affidavit indicate what were the facts that induced the committee to come to the conclusion that there was no violation of the notification. We may reiterate here that in spite of being directed to do so, the Government Pleader did not produce the file relating to the alleged decision taken by the Coastal Zone Management Committee. What we have is only the following:-

"Item No.9/5 Tellichery Municipality-Construction of File No.5079/ Hotel Buildings and Lodge by Shri. A.M.B1/99/STED Raveendran - CRZ clearance reg.

Relying on the report of the Tahasildar agreed for issuance of CRZ clearance".

>From the side of the Kerala Coastal Zone Management Authority what we have is this:-

"Item No.9/3 File No.5392/B1/2000/STED

Sub:- Coastal Zone Management Authority-Confirmation of the decisions take by the Coastal Zone Management Committee.

The Coastal Zone Management Authority confirmed all the decision taken by the Coastal Zone Management Committee,
when the Committee and Authority were in co-existence".

What we mean to say here is that the file showing what were the materials considered was not made available for perusal in spite pf direction of the Coastal zone Management committee meeting on 21-3-2000, the entire reliance for the clearance was placed on the

report of the Tahsildar and relied on by respondent 2 and 3 before us and no other material in spite of the Division Bench stating that the Committee should examine the stand of the petitioner taking into account the report of the Tahsildar and other relevant material (emphasis supplied). Nothing was shown to us that the other relevant materials were considered and if considere, what were those materials.

9. Respondents 2 and 3 in their counter affidavits to the various Civil Miscellaneous Petitions adopted the stand that they have constructed the building based on the clearance issued by the Coastal Zone Management Committee as well as the Kerala coastal Zone Management Authority and that considerable investment has been made by them. There was no justification in interfering at the instance of the petitioner at this stage. The construction was not on the seaward side of any existing road. On the other hand, there was a pathway used by the public between the construction and the Eranholi River. There was also an old construction on the seaward side of the building put up by respondents 2 and 3. Hence, the construction was authorised and it did not violate the notification. On 8-8-2001, an additional counter affidavit was filed stating that the committee that granted the clearance had the necessary experts in it and the terms of reference were also specified. the allegations of the petitioner had been examined by that committee of experts and they had given the clearance. There was no violation of the Building Rules as alleged. In a further counter affidavit filed on 21-8-2001, respondents 2 and 3 asserted that there was no violation on their part and producing therewith the report of the Senior Town Planner (Vigilance) dated 10-8-1999.

10. We may dispose of one preliminary argument even at this stage. The contention of respondents 2 and 3 that since they have already constructed the building no relief can be granted to the petitioner cannot be accepted. Respondents 2 and 3, acting through their power of attorney, constructed the building pursuant to an interim order obtained in O.P.1991 of 1998. It must by noted that O.P.1991 of 1998 was filed challenging the Coastal Regulation Zone notification, since the land in which respondents 2 and 3 were proposing to construct the building for commercial purpose fell within the Coastal Regulation Zone. In fact , it is conceded on all hands that the area comes under CRZ-II. While challenging the notification, respondents 2 and 3 made an interim application seeking permission to construct. That permission can only be an interim permission and the permission stated that if there was a road between the construction of respondents 2 and 3 and the river, respondents 2 and 3 could construct. Respondents 2 and 3 thereafter did not pursue their challenge to the validity of the notification when O.P.1991 of 1998 came up for hearing. They bargained for an order from the Division Bench directing the Coastal Zone Management committee to examine the stand of respondents 2 and 3 herein (the petitioners in that Original Petition) by taking into account the report of the Tahsildar and other relevant materials. Therefore, the construction completed by respondents 2 and 3 pending the earlier Original Petition and subsequently is at the risk of respondents 2 and 3 and has to abide by the final adjudication. By putting up a construction on the basis of an interim order, respondents 2 and 3 cannot over-reach the Environment (Protection) Act or the Court. The argument that investments have been made is no answer. These aspects are now clear from the decision of the Supreme Court in M.I. Buildings Pvt Ltd. v. Radhey Shyam Sahu (AIR 1999 SC 2468) and the subsequent decision following it.

The fact, therefore, that respondents 2 and 3 have put up a construction under the cover of the interim order of this Court in the earlier Original Petition is therefore, of no avail and that cannot stand in the way of this Court examining the legal sustainability or otherwise of the permission granted by the Coastal Zone Management Committee and adopted by the Kerala Coastal Zone Management Authority.

11. In Exhibit P5 judgment, as we have noted, this Court directed the Committee to consider all the aspects including the stand of respondents 2 and 3, the report of the Tahsildar produced along with the counter is that Original Petition and other relevant materials. Both the decision of the Committee and that of the Authority quoted by us earlier, show that the Committee had acted only on the basis of the report of the Tahsildar produced along with the counter affidavit in the earlier Original Petition. The authority had only adopted the decision of the Committee without any independent application of mind. On behalf of the Committee, the learned Government Pleader could not show that any other relevant materials were considered or that a considered decision was taken by the Committee based on the materials available. Therefore, the decision of the Committee relied on by respondents 2 and 3 is clearly against the terms of the directions contained in Exhibit P5 judgment. Its infirmity is, therefore, clear on its face.

12. There is also another aspect. The Coastal Zone Management Plan does not appear to show that there was any road in between the construction put up by respondents 2 and 3 and the Eranholi River. What is contended before us is that there was a pathway. There is a dispute whether such a pathway existed at all and if it existed, whether it is public pathway which could be considered as sufficient to permit construction on the landward side of that pathway in terms of the CRZ notification. There is considerable doubt about the existence of a pathway in this case in view of the fact that when respondents 2 and 3 applied for permission to put up the present construction, in the plan that they submitted, they did not show the existence of any road or pathway between the River and the proposed construction. That, it was absolutely necessary to show the existence of any such road or pathway, if it existed, is clear from the scheme of the Kerala Building Rules, 1984 under which the permission was sought. rule 7 of the rules contemplated an application for Development permit and Rule 7(2), which provided for an application for a Development Permit, insisted that the same should be accompanied by a site plan and service plan together with details and specifications and c4ertificate of supervision as prescribed. Clause (a) of Rule 7(2) provided for the production of a site plan drawn to a scale of not less than 1:400. rule 8 of the Rules provided that an application for Building Permit shall be accompanied by documentary evidence of plot ownership, the site plan, building plan, service plan, specifications and certificate of supervision as prescribed. Clause (a) of Rule 8(3) indicated how the site plan should be drawn and what all details should be shown. It had to show (i) the boundaries of the plot and of any contiguous land belonging to the owners thereof; including the revenue survey particulars, (ii) the position of the plot in relation to neighboring street, (iii) the name, if any, of the street along which the building is proposed to be constructed. It had also to show all adjacent streets within a distance of 12 meters of the plot and the nearest existing street Under Rule 2(104), 'street' means an access to building or site. Therefore, if there was a public footpath, public pathway or a road in between the plot of respondents 2 and 3 and the

Eranholi River, it was the duty of respondents 2 and 3 to show that pathway or public road in their site plan while applying for building permit. It is admitted that in the building plan submitted by respondents 2 and 3, no such footpath, public pathway or road is shown. this throws considerable doubt on the question whether there did exist a public pathway as claimed by respondents 2 and 3. therefore, it was an important question for the committee to consider whether, as a matter of fact, there was a public road or public pathway on the seaward side of the proposed construction of respondents 2 and 3. It must be noted that the relevant plan produced by the Municipality before this Court as per the direction issued by this Court did not show that there was a public road in between the site of respondents 2 and 3 and the Eranholi River. What was attempted to be stated on behalf of the Municipality was that there was a public pathway. As we have noted, even the existence of such a pathway is doubtful in view of the site plan produced by respondents 2 and 3 themselves while seeking permission for putting up a construction in their plot. It is not seen that the Committee, which was directed to consider all relevant materials, had even applied their minds to the relevant aspects.

13. In this context, it may also be noted that in the order of the Chairman of the Thalassery Muncipal Council dated 3-8-1998 pursuant to a direction issued by this Court in O.P.10485/1997, it is clearly stated that the construction was even in violation of the exemptions granted by the government and that the exemption granted does not appear to be proper in view of the CRZ notification. In that order Exhibit P3 regarding the existence of a road in between the plot of respondents 2 and 3 and the River, it is stated thus:-

"The said road is not shown in the plan submitted by Sri. Raveendran and Divakaran. Further as and when this road and a compound wall unauthorisedly constructed by them, the Municipality issued a notice to them requiring to demolish the same. Hence I am to state that there was no such road at the time of notification coming into force and the road now seeing there is a one recently made by the respondent-applicants (respondents 2 and 3 here)".

This also indicates that the claim of respondents 2 and 3 that there was a public pathway or a road in between their plot and the Eranholi River remains only a claim which should have been seriously investigated by the Committee directed to consider the question by a Division Bench of this Court before deciding whether there was violation of CRZ notification or not. In the circumstances, we find a clear abdication of duty by the Management Committee to consider all the relevant aspects and in that view, the decision taken by the Committee on 21-3-2000 relying solely on the report of the Tahasildar and agreeing to the issue of CRZ clearance has to be set aside. Similarly, the decision of the Management Authority, merely adopting the decision of the Management Committee at its meeting on 22-12-2000, has also to be quashed or set aside.

14. There is the further contention of respondents 2 and 3 that there was already and existing building between their plot and the river and in view of the existence of that building, the construction cannot be considered to be objectionable in terms of the notification. On the other hand, on the side of the petitioner it is contended that the

building was not in between the building of respondents 2 and 3 and the Eranholi River and it is only on one side of it and that it was not a building which would enable respondents 2 and 3 to claim that their construction was on the landward side of an existing building. It is also contended that what is contemplated is the existence of buildings and the existence of a single structure or shed that is unused is not sufficient. It is also contended that even in that case, the construction must be consistent with the local architecture and the surrounding structures and it cannot be said that the present construction conforms to such a thing. Obviously this aspect has also to be considered by the Authority when it reconsiders the case of respondents 2 and 3 for clearance. As of now, the Committee has not applied its mind to this aspect as well.

15. Now it is the common case that the authority now vests, now with the Costal Zone Management Committee constituted by the State Government, but with the Kerala Coastal Zone Management Authority duly constituted. Of course, there is a challenge for the petitioner to the constitution of that Committee by submitting that the members are not persons committed to the protection of the environment and that they should be replaced. The decision of the Supreme Court in Indian Council for Enviro-Legal Action v. Union of India & ors. (JT 1996 (4) SC 263) is relied on to emphasis the point that protection of the environment was in public interest and enforcement of the Coastal Regulation Zone rules and adherence to the Coastal Management Plan are part of the duties of the State and the High court can interfere and a citizen can approach the High Court for relief's in that regard. On behalf of the State, the contention that some of the members of the Authority are not persons sufficiently committed to the cause of environment is disputed. We do not think that, for the purpose of this case, it is necessary to go into that aspect. Since we have found that there has been no proper application of mind by the Committee pursuant to Exhibit P5 judgment and no proper decision was taken and no material can be produced before us to show that there was proper application of mind by the Committee in deciding to grant clearance and the matter has to be directed to be reconsidered, we do not think that this aspect need be pursued further in this case. But, it is now clear that any fresh decision on the question of clearance should be taken by the Kerala Coastal Zone Management Authority and not by the Coastal Zone Management Committee. We have every reason to hope that they will show proper and needed concern for environmental protection and commitment to the strict enforcement of the concerned laws, Rules and notifications.

16. An argument is raised that the petitioner's approach to this Court lacks bonafides and that the petitioner has singled out respondents 2 and 3 in his complaint about violation of the CRZ notification and that there are other buildings in Thalassery which equally come under the notification. If the argument of respondents 2 and 3 that others have been spared, we can only say that the authorites concerned, namely, the Committee at the relevant time, has been guilty of clear impropriety and it is unfortunate that the State Government has not insisted on the Coastal Regulation Zone Rules and Coastal Zone Management Map being strictly implemented and the environment protection laws strictly implemented. The petitioner claims that he is representing an organisation which is committed to the protection of the environment is the State, where, according to the petitioner, there is blatant violation of the environment protection laws on all fronts. Even

assuming that there is substance in the contention of respondents 2 and 3 that the petitioner's approach to this Court is not fully bonafide, we find that when aspects like the oncs projected in this Court are brought to the notice of this Court and violation or infringement of environment protection laws are alleged, this Court has the futy to look into those complaints, of course, along with the motive of the petitioner in approaching this Court. But, in our view, when facts are brought out which are capable of suggesting that there has been a violation of the environment protection laws and the CRZ Notification, this court cannot shut its eyes to the complaint merely on the basis of a plea by the alleged violator of the Regulation that the petitioner has no bonafides in approaching this court. In paragraph 37 of the judgment of the Supreme Court in Indian Council for Enviro-Legal Action v. Union of India & ors. (JT 1996 (4) SC 263), the Supreme Court has said:-

"*There is likelihood that there will be instances of infringement of the main Notification and also the Management Plans, as and when framed, taking place in different parts of the country. In our opinion, instead of agitating these questions before this court, now that the general principles have been laid down and are well-established, it will be more appropriate that action with regard to such infringement even if they relate to the violation of fundamental rights, should first be raised before the High Court having territorial jurisdiction over the area in question. We are sure and we expect that each High Court will deal with such issues urgently".*

This Court is, therefore, expected to look into complaints of violation of the environment protection laws including the Coastal Regulation Zone Notification and the Coastal Management Plan and has to take appropriate action, if the case is established for it, to ensure that there are no violations of the laws, the Regulations, the notifications and the plans. Moreover, the body represented by the petitioner is not shown to be not one interested in environment. There is also no particular malafides on the side of the petitioner shown except based on the fact that the petitioner had picked and chosen respondents 2 and 3 alone and has not initiated action against others. We are confident that the authorites concerned, including the District Collector, Kannur would take the necessary action to get rid of all violations of the environment protection laws, the Coastal regulation Zone notification and the Management Plan within the area of his operation. The relief's cannot be denied in this case on the ground that the petitioner has approached this court without bonafides.

17. It is also seen that various exemptions have been granted by the Government exempting respondents 2 and 3 from Building Rules and even those orders of exemptions have been alleged to have violated. That is a matter to be looked into by the local authority, the Municipality. there is a duty in any builder to comply with the terms of an exemption if he has obtained an exemption. Of course, elsewhere we have expressed our apprehension about the blanket power of the Government to grant exemption which boarders on a right to annihilate the very Building Rules. But, that aspect is not relevant for the purpose of this Original Petition.

In this situation, we allow this original petition and quash the permission granted by the Coastal Zone Management Committee and adopted by the Kerala Coastal Zone Management Authority to respondents 2 and 3 to put up hotel buildings. Now that the Kerala Coastal Zone Management Authority is in existence, we direct the Kerala Coastal Zone Management Authority to reconsider the entire issue of grant of clearance to respondents 2 and 3 after hearing respondents 2 and 3 and the petitioner in this Original Petition and after considering all relevant matters and to take a fresh decision in accordance with law in the light of the directions in O.P.No.1991 of 1998 and the directions contained herein. A proper quasi-judicial decision taken by it after considering and discussing all relevant aspects may put an end to the controversy. The fresh decision should be taken by the authority within five months from today. Pending any further decision by the Authority, there will be no right in respondents 2 and 3 to carry on any construction, alteration or modification to the building in the property in question. The local authority and the District Collector, Kannur are directed to ensure that no construction activity is carried on by respondents 2 and 3 until the fresh decision and to ensure that the decision of the Authority to be taken in fully and properly implemented.

Sd/- [P.K.BALASUBRAMANYAN, JUDGE]

Sd/- M. RAMACHANDRAN, JUDGE.]