

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

FRIDAY ,THE 28TH DAY OF SEPTEMBER 2018 / 6TH ASWINA, 1940

WP(C) .No. 18870 of 2018

PETITIONER/S:

- 1 CHANDRABOSE,
MUDUTHUKKUDY VEEDU,
THRIKKARIYLOOR, KOTHAMANGALAM.
- 2 SMT.SHINY,
W/O.CHANDRABOSE, MUDUTHUKKUDY VEEDU,
THRIKKARIYLOOR, KOTHAMANGALAM.
- 3 KRISHNANUNNI BOSE,
MUDUTHUKKUDY VEEDU,
THRIKKARIYLOOR, KOTHAMANGALAM.
- 4 RAJESH,
"PARAKUDIYIL VEEDU",
KUTHUKUZHI, MARAMANGALAM,
KOTHAMANGALAM.
- 5 SURESH,
"PARAKUDIYIL VEEDU",
KUTHUKUZHI, MARAMANGALAM,
KOTHAMANGALAM.
- 6 REMYA SURESH,
"PARAKUDIYIL VEEDU",
KUTHUKUZHI, MARAMANGALAM,
KOTHAMANGALAM.
- 7 RAJU,
S/O.NARAYANAN, MOLETHUKUDIYIL,
MARAMANGALAM, KOTHAMANGALAM.
- 8 RAJESH RAJU,
S/O.RAJU, MOLETHUKUDIYIL,
MARAMANGALAM, KOTHAMANGALAM.
- 9 GANESH,
S/O.APPUKUTTAN, PAYYATTU VEETIL,
KOTHAMANGALAM.

10 ELDOSE,
S/O.KURUVILLA, MANJAYIL,
THANGALAM, ERAMALLOOR, KOTHAMANGALAM.

11 KUNJU MUHAMMED,
PANTHANAYATH, VENGOLA,
KOTHAMANGALAM.

12 SHIHABUDEEN,
S/O.KUNJU MUHAMMED, PANTHANAYATH,
VENGOLA, KOTHAMANGALAM.

BY ADVS.
SRI.ANIL SIVARAMAN
SMT.RAJI VINCENT

RESPONDENT/S:

- 1 THE STATE OF KERALA,
REPRESENTED BY ITS SECRETARY,
REVENUE DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM. 695001.
- 2 THE DISTRICT DISASTER MANAGEMENT COMMITTEE,
IDUKKI, REPRESENTED BY ITS CHIEF EXECUTIVE OFFICER,
CIVIL STATION, PAINAVU, IDUKKI. 685602.
- 3 THE DISTRICT COLLECTOR AND CHAIRMAN,
DISTRICT DISASTER MANAGEMENT COMMITTEE,
IDUKKI. 685602.
- 4 THE TAHSILDAR,
DEVICOLAM, IDUKKI. 685613.
- 5 THE VILLAGE OFFICE,
PALLIVASAL VILLAGE OFFICE,
PALLIVASAL P.O., IDUKKI. 685563.
- 6 THE PALLIVASAL GRAMA PANCHAYAT,
REPRESENTED BY ITS SECRETARY,
PALLIVASAL P.O., IDUKKI. 685565.

BY ADVS.
R1 TO R5 BY SMT. RAJI.T.BHASKAR, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
28.09.2018, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

This writ petition is filed by the petitioners seeking to quash Ext.P8 order passed by the District Collector and Chairman, District Disaster Management Authority, directing the petitioners to stop the functioning of the Resort situated in Survey No.35/24 of Pallivasal Village, Munnar, Idukki District. Material facts for the disposal of the writ petition are as follows:

2. Petitioners are jointly conducting a resort in the name of 'Green Mansion Resort' at Pallivasal Village near Munnar, since 2012. The resort is situated at a site which has been built upon and occupied since 1993. Though originally a residential house, later the building was developed into a three-storied one, after securing necessary permits and plans, and has been converted into a lodging house since 2011 itself. Licence to conduct such lodging house has been obtained from the Panchayat and the petitioners have been conducting their resort without giving any room for complaint from any quarters for the past more than six years. However, according to the petitioners, without affording any notice or

opportunity of hearing to the petitioners, the District Disaster Management Authority, Idukki, has unilaterally arrived at a conclusion that the petitioners' resort alone among the more than 30 buildings occupying the very same geological plate in Pallivasal, is likely to suffer damage in case of landslide occurs, and therefore, ordered to shut down.

3. The case of the petitioners is that, none of the other nearby resorts have been served with such an order, nor any anticipatory action is taken to safeguard any one of the adjoining Government buildings. Even though petitioners have sought for an explanation as to how their resort is adjudged to be in imminent danger, respondents have consistently refused to afford any reasons. Therefore, according to the petitioners, the entire action of the respondents is arbitrary and illegal, liable to be interfered with by this Court.

4. The 3rd respondent has filed a detailed counter affidavit, refuting the allegations and claims and demands raised by the petitioners. Among other contentions, it is stated that, majority of lands in high-ranges of Idukki District have been assigned to private individuals under the Kerala Land Assignment Rules, 1964, and the Kerala Land Assignment

(Regularization of Occupation of Forest Lands Prior to 01.01.1977) Special Rules, 1993. Considering the special geographical conditions in Pallivasal area, a meeting of the District Disaster Management Authority (DDMA) was conducted on 05.10.2017, to discuss and take decisions regarding the disaster mitigation steps in Pallivasal area in Devikulam Taluk. Apart from the statutory members of the DDMA, experts of the Geological Survey of India and the Member Secretary of the Kerala State Disaster Management Authority were also present in the meeting. It was decided in the meeting to ensure safety of the buildings having three or more floors in the High Hazard areas of the Pallivasal Village and the DDMA has directed the Sub Collector, Devikulam to identify and submit the details of the constructions having more than three-storied buildings in the very high/high hazard prone areas in the Pallivasal Village. Further, it was decided in the DDMA meeting held on 31.10.2017 to issue directions to the owners of such buildings to produce certificate before the DDMA from any one of the agencies recommended by the DDMA. Consequently, the Sub Collector, Devikulam submitted a list of buildings covered in hazard and very hazard area, with covering letter to the District Collector, Idukki.

5. As per Ext.R3(a), 16 buildings are located in the High Hazard areas in the Pallivasal Village. Out of which, 11 buildings are used for residential purpose and the remaining 5 are used for commercial purposes. Considering commercial activities in the above mentioned 5 buildings, the authority decided to issue notice to the proprietor of the building, in order to ensure safety of the building. Accordingly, various measures were formulated and directions were given to obtain NOC from selected agencies. In the case of "Misty Mountain Resort", the parking area alone was in the Hazard area and direction was given to the proprietor of the resort to implement the safety measures. It is further submitted that, the building belongs to the 'Misty Mountain Resort' is not included in the high hazard area. Consequently, the Assistant Executive Engineer, PWD Buildings Sub Division, Munnar reported that necessary protection walls have been constructed to the building, evident from Ext.R3(b) dated 10.05.2018.

6. As a matter of fact, the Village Officer, Pallivasal after noticing the absence of NOC from the District Collector, Idukki, issued a stop memo with respect to the construction done by Sri. Ibrahimkutty, evident from Ext.R3(c). Moreover, a single storied

commercial building by name 'Aishadra Resort' is situated in the high hazard area. Considering the decision to issue notice to buildings having more than 3 storied, no notice has been issued to the proprietor of the said resort.

7. Under the above circumstances, as per the decision taken in the DDMA meeting and based on the provisions of Sec.30(2)(xxiii) of the Disaster Management Act, 2005, notice was given to the Thandaper owners of the "Green Mansion" i.e., the petitioners' resort and "Mist Inn" Resorts in Pallivasal Village to produce the certificate before the Chairman of the DDMA from any one of the agencies mentioned in Ext.R3(d), certifying the safety of their buildings, before 31.05.2018. However, the directions contained in Ext.R3(d) were not complied with by the petitioners, which necessitated issuance of Ext.R3(e) notice. Similarly, the District Collector issued notice to the proprietor of 'Mist Inn Resort', Pallivasal, evident from Ext.R3(f).

8. According to the 3rd respondent, as alleged in the writ petition, the authorities have not applied any pick and choose method. However, the action is initiated considering the largest safety of the people, and the petitioners' resort has to follow the directions issued

by the authority. It is also pointed out that, continuous rock fall became a common phenomenon in and around the Pallivasal area. It is also pointed out that, a Division Bench of this Court in W.A.No.1965 of 2017, considered the legality of the order issued by the District Collector, Idukki as the Chairman of the DDMA, wherein, the authority directed the proprietor of the resort to close down. In the said writ appeal, after referring to the letter dated 07.10.2017 issued by the Chairman of DDMA ordered to the appellant therein to approach any one of the agencies and secure a report on the lines suggested by the Chairman and also on the sufficiency of the remedial works already undertaken by them. Thereafter, the appellant therein approached the National Institute of Technology, Karnataka. After taking note of the report submitted by the agency cited above, the Division Bench directed the DDMA to pass order. Therefore, taking into account the observation made by the Division Bench, the petitioners are not at liberty to contend that the proceedings taken by the authority is beyond its powers. The judgment in the writ appeal is produced as Ext.R3(g).

9. It is also submitted that, the owners of the resort in question have not submitted the certificate

till date and under these circumstances, as per Sec.30(2) (xxiii) of Act, 2005, the Chairman of the DDMA issued proceedings dated 31.05.2018, directing the Sub Collector, Devikulam to close down the "Green Mansion" and "Mist Inn" Resorts. It is further stated that, as per the map prepared by the National Centre for Earth Science Studies, it is clearly evident that petitioners' resort is situated in the red zone, and the map is produced as Ext.R3(h). Therefore, according to the respondents, the order in question was issued to ensure the safety of the resorts and the tourists at a time when Munnar is at the threshold of 'Neelakurinji' blooming season.

10. A detailed reply affidavit is filed by the petitioners, reiterating the stand adopted in the writ petition. It is also pointed out that, Ext.R3(a) report is submitted by the Sub Collector, Devikulam from a bare glance, without inspecting the area and without assessing the situation on the ground. Whereas, the report claims that the petitioners' resort is having 5 floors, a look at Ext.P2 series of photographs would clearly indicate that the building has only three floors. Other contentions are also raised stating that there are various other resorts situated in the Pallivasal Village,

however, those resorts are not served with any notice. It is also pointed out that, during the recent flood, 158 landslides, major or minor, have been reported; that 63 residential houses and 2 commercial establishments have been damaged thereby and 12 casualties have been reported from residential houses and 2 from commercial establishments. Therefore, according to the petitioners, this all would show that the respondents have seriously misdirected their energies in rendering orders like Ext.P8 while ignoring the true problems that exist on the ground in Idukki District. Other contentions are also raised with respect to the stand adopted by the authorities in respect of 'Mist Inn Resorts'.

11. From the discussion made above, it is clear that, petitioners are aggrieved by Ext.P8 order dated 31.05.2018 issued by the District Collector in his status as Chairman of the District Disaster Management Authority. According to the said Authority, the building is situated in high hazard zone, and in spite of issuance of notice on the basis of the report submitted by the District Collector, the petitioners have not taken any action to secure necessary safety report from the institutions referred to in the notices. The main grievance put forth by the petitioners is that,

petitioners are singled out in the process, when there are other several buildings situate in the Pallivasal Village and the petitioners are directed to secure the report from the recognized institutions specified in Ext.P8. According to learned counsel for the petitioners, in all other cases, the District Disaster Management Authority itself has secured report in order to identify the safety of the buildings. However, the petitioners are directed to secure report from the recognized agencies. This, according to the petitioners, is an arbitrary and illegal act on the part of the respondents. It is also pointed out by learned counsel for the petitioners that, even though petitioners building situate in the Pallivasal Village was affected during the recent flood occurred in the State, no manner of damages are caused to the building of the petitioners, which itself is a testimony to show that the building is not situated in a dangerous condition.

12. On the other hand, learned Government Pleader pointed out that, petitioners were directed to secure a safety report from the recognized organizations in order to ensure the safety of the public visiting the hillock, especially due to the fact that, this year, the flower 'Neelakurinji' is blooming and number of tourists

visiting the hillocks, will be double the number of visitors than the normal. It is also pointed out that the contention advance by the petitioners with respect to arbitrariness of Ext.P8 is not true or correct, since the proprietors of other buildings are also issued with similar notices and they were also directed to secure necessary reports from the recognized organizations mentioned in Ext.P8.

13. That apart, it is submitted that, as per the judgment rendered by a Division Bench of this Court, produced as Ext.R3(g), it is evident that, the appellant therein was directed to secure a report from a recognized agency and thereafter only, the directions were issued by the Division Bench in order to consider the re-opening of the Resort after verifying the report submitted by the agency. Therefore, according to the learned Government Pleader, there is no manner of illegality or arbitrariness on the part of the respondents in issuing Ext.P8 order.

14. On an evaluation of the submissions made across the Bar, the issue boils down to one aspect i.e., whether the petitioners alone are singled out in the matter of securing report from the recognized agencies specified in Ext.P8. According to the learned Government

Pleader, notices are issued to various other institutions of the similar nature, and therefore, the contention advanced by the petitioners that they are singled out, cannot be sustained under law.

15. In that view of the matter, I think it is only appropriate that, requisite directions are issued to the 3rd respondent for ensuring the same. There will be a direction to the 3rd respondent to clearly identify the notices issued to various Resorts/Hotels, and find out whether they were also directed to secure reports from the recognized agencies mentioned in Ext.P8. If notices are issued to all the Resorts/Hotels in that fashion, petitioners are also liable to undertake such an exercise. However, if the petitioners alone are directed to secure report and in respect of all others, the District Disaster Management Authority itself has secured the report from the specialized agencies, in the case of the petitioners also, report shall be secured by the District Disaster Management Authority. A finality shall be attained to the aforesaid process within two months from the date of receipt of a copy of this judgment, and the petitioners will be guided by the decision so taken. In the meanwhile, the respondents will be at liberty to inspect the building and find out whether any interim

arrangement can be made to the petitioners for operation of the Resort.

The writ petition is disposed of, accordingly.

Sd/-

SHAJI P.CHALY

JUDGE

APPENDIX

PETITIONER'S/S EXHIBITS:

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| EXHIBIT P1- | TRUE COPY OF CERTIFICATE DTD.26/12/2012. |
| EXHIBIT P2- | TRUE COPY OF PHOTOGRAPH OF THE PETITIONERS RESORT. |
| EXHIBIT P2 (A) - | TRUE COPY OF PHOTOGRAPH OF THE PETITIONERS RESORT. |
| EXHIBIT P2 (B) - | TRUE COPY OF PHOTOGRAPH OF THE PETITIONERS RESORT. |
| EXHIBIT P3- | TRUE COPY OF PHOTOGRAPH OF THE RESORT KNOWN AS MISTY MANSION. |
| EXHIBIT P3 (A) - | TRUE COPY OF PHOTOGRAPH OF RESORT KNOWN AS MISTY MANSION. |
| EXHIBIT P4- | TRUE COPY OF PHOTOGRAPH OF THE RESORT UNDER CONSTRUCTION BEING BUILT BY M/S MANSION BUILDERS. |
| EXHIBIT P4 (A) - | TRUE COPY OF PHOTOGRAPH OF THE RESORT UNDER CONSTRUCTION BEING BUILT BY M/S MANSION BUILDERS. |
| EXHIBIT P5- | TRUE COPY OF LETTER DATED 17/03/2018. |
| EXHIBIT P6- | TRUE COPY OF NOTICE DATED 14/05/2018. |
| EXHIBIT P7- | TRUE COPY OF REPLY DATED 27/05/2018. |
| EXHIBIT P8- | TRUE COPY OF STOP MEMO DATED 31/05/2018. |
| EXHIBIT P9- | TRUE COPY OF NEWS REPORT DATED 03/06/2018 PUBLISHED IN MATHRUBHIMI MALAYALAM DAILY |

RESPONDENT'S/S EXHIBITS:

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| EXHIBIT R3 (A) | TRUE COPY OF THE LIST SUBMITTED BY THE SUB COLLECTOR, DEVIKULAM ALONG WITH COVERING LETTER DATED 23.10.2017 |
| EXHIBIT R3 (B) | TRUE COPY OF THE LETTER ISSUED BY THE ASSISTANT EXECUTIVE ENGINEER PWD BUILDINGS SUB DIVISION DATED 10.5.2018 |

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| EXHIBIT R3 (C) | TRUE COPY OF THE STAY ORDER ISSUED BY THE VILLAGE OFFICER, PALLIVASAL DATED 9.6.2016 |
| EXHIBIT R3 (D) | TRUE COPY OF THE NOTICE OF THE DISTRICT COLLECTOR DATED 17.3.2018 ISSUED TO THE PROPRIETOR OF THE « GREEN MANSION RESORT . |
| EXHIBIT R3 (E) | TRUE COPY OF THE LETTER ISSUED BY THE DISTRICT COLLECTOR IDUKKI DATED 14.5.2018 |
| EXHIBIT R3 (F) | TRUE COPY OF THE LETTER ISSUED BY THE DISTRICT COLLECTOR DATED 17.3.2018 |
| EXHIBIT R3 (G) | TRUE COPY OF THE JUDGMENT IN WRIT APPEAL NO 1965/2017 DATED 1.11.2017 |
| EXHIBIT R3 (H) | A COPY OF THE LAND SLIDE HAZARD ZONE MAP WITH RESPECT TO PALLIVASAL VILLAGE, IDUKKI . |

//TRUE COPY//

P.S. TO JUDGE

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