

# VERDICTUM.IN

IN THE HIGH COURT OF KERALA AT ERNAKULAM  
PRESENT  
THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR  
&  
THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.

Friday, the 23<sup>rd</sup> day of August 2024 / 1st Bhadra, 1946  
WP(C) NO. 28509 OF 2024

## PETITIONER:

IN RE: PREVENTION AND MANAGEMENT OF NATURAL DISASTERS IN KERALA, HIGH COURT OF KERALA, PIN-682031

## RESPONDENTS:

1. STATE OF KERALA REPRESENTED BY THE CHIEF SECRETARY, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, PIN-695001
2. UNION OF INDIA, REPRESENTED BY THE SECRETARY, MINISTRY OF ENVIRONMENT FOREST AND CLIMATE CHANGE, INDIRA PARYAVARAN BHAWAN, JORBAGH ROAD, NEW DELHI, PIN-110003
3. THE SECRETARY, DEPARTMENT OF MINING AND GEOLOGY GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001
4. THE DIRECTOR DIRECTORATE OF MINING AND GEOLOGY, KESAVADASAPURAM, PATTOM PALACE P.O., THIRUVANANTHAPURAM, PIN - 695004
5. THE SECRETARY MINISTRY OF MINES SHASTRI BHAWAN, DR. RAJENDRA PRASAD ROAD, NEW DELHI, PIN - 110001
6. THE STATE POLICE CHIEF KERALA STATE POLICE HEAD QUARTERS VAZHUTHACAUD, THIRUVANANTHAPURAM, PIN - 695010
7. THE COMMISSIONER (\*CORRECTED) OFFICE OF THE KERALA STATE DISASTER MANAGEMENT AUTHORITY, OBSERVATORY HILLS, VIKHAS BHAVAN P.O, THIRUVANANTHAPURAM(\*R7 CORRECTED AS THE KERALA STATE DISASTER MANAGEMENT AUTHORITY, VIKAS BHAVAN P.O., NANTHANCOD, THIRUVANANTHAPURAM, KERALA, 695033, REPRESENTED BY ITS MEMBER SECRETARY AS PER ORDER DATED 09/08/2024 IN WP(C)), PIN - 695033.
8. THE SECRETARY NATIONAL DISASTER MANAGEMENT AUTHORITY, NDMA BHAWAN, A-1, SAFDARJUNG ENCLAVE, NEW DELHI, PIN-110029
9. JAMES VADAKKAN MANAGING TRUSTEE, CENTRE FOR CONSUMER EDUCATION KP 6/699 VADAKKAN BUILDINGS, MUNDANGAL P.O, PALA, KOTTAYAM, PIN - 686575
10. GEOLOGICAL SURVEY OF INDIA, REPRESENTED BY ITS DEPUTY DIRECTOR GENERAL, HAVING ITS LOCAL OFFICE AT 4TH FLOOR, C BLOCK, KENDRIYA BHAVAN, SEAPORT-AIRPORT ROAD, KAKKANAD, KOCHI, KERALA-682037.
11. NATIONAL CENTRE FOR EARTH SCIENCE STUDY, REPRESENTED BY THE DIRECTOR, AAKKULAM, THIRUVANANTHAPURAM, POST BOX NO.7250, KERALA-695011.
12. THE SURVEY OF INDIA, REPRESENTED BY THE SURVEYOR GENERAL OF INDIA, OFFICE OF THE SURVEYOR GENERAL OF INDIA, HATHIBARKALA ESTATE, DEHRADUN-248001
13. THE STATE ENVIRONMENTAL IMPACT ASSESSMENT AUTHORITY (SEIAA) KERALA, K.S.R.T.C BUS TERMINAL COMPLEX, 4TH FLOOR, THAMPANOR, THIRUVANANTHAPURAM-695 001
14. THE COASTAL ZONE MANAGEMENT AUTHORITY THAMPANOR, KSRTC BUILDING 4TH

## VERDICTUM.IN

- FLOOR, OVERBRIDGE, THAMPANNOOR, THIRUVANANTHAPURAM, ADDL. R10-R14 ARE IMPEADED AS PER ORDER DATED 09.08.2024 IN WP(C)KERALA 695001.
15. UNION OF INDIA, REPRESENTED BY THE SECRETARY, MINISTRY OF ROAD TRANSPORT AND HIGHWAYS, TRANSPORT BHAWAN, 1, PARLIAMENT STREET, NEW DELHI-110001.
  16. NATIONAL HIGHWAY AUTHORITY OF INDIA, G 5 & 6, SECTOR 10, DWARAKA, NEW DELHI - 110075, REPRESENTED BY ITS CHAIRMAN
  17. CENTRAL WATER COMMISSION 3RD FLOOR, (SOUTH, SEWA BHAVAN, RK PURAM, SECTOR-1, NEW DELHI-110066, REPRESENTED BY ITS SECRETARY.
  18. INDIAN NATIONAL CENTRE FOR OCEAN INFORMATION SERVICES (INCOIS), "OCEAN VALLEY", PARAGATHI NAGAR (B0), NIZAMPET, (S0), HYDERABAD - 500090, TELANGANA, INDIA, REPRESENTED BY ITS DIRECTOR,
  19. NATIONAL REMOTE SENSING CENTRE, DEPARTMENT OF SPACE, GOVERNMENT OF INDIA, HYDERABAD - 500037, TELANGANA. ADDL. R15 -R19 ARE IMPEADED AS PER ORDER DATED 16.08.2024 IN WP(C)
  20. SAYIR A, ( SOUGHT TO BE IMPEADED ) AGED 45 YEARS, C/O ABDUL RAHIM A ADATHODI MUNDAKAI, VELLARIMALA, WAYANAD.
  21. HAMZA T, ( SOUGHT TO BE IMPEADED ) AGED 55, S/O SAIDALI, THAZHETHODY MEPADI PO WAYANAD, KERALA
  22. BIBIN K AUGASTIAN ( SOUGHT TO BE IMPEADED ) AGED 29, S/O AUGUSTY KODIYANKUNNIL, THONICHAL, NALLOORNAD P.O, WAYANAD

Writ petition (civil) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to 1) To call for the records leading to Ext-P8. 2) To direct the 8th respondent to call for the records leading to the order Ext-P8, call for the records of the parties and then to conduct a site inspection and verify the village records, and after obtaining all the said records, to measure the properties and then to submit a report, with the plan and the resurvey details, to denote as to the extent of property that the 7th respondent has, 3) to see it that no further constructions are perpetrated by the 7th respondent, in the disputed property unless the controversy stands resolved, pending consideration of the above Writ Petition in the interest of justice.

This petition again coming on for orders upon perusing the petition and the affidavit filed in support of WP(C) and 16.08.2024 and upon hearing the arguments of SUO MOTU for the petitioner, SRI.PRAKASH M P, (STANDING COUNSEL) for R14, M/S. P.A.MOHAMMED SHAH, RENOY VINCENT, SHAHIR SHOWKATH ALI, CHELSON CHEMBARATHY, MUHAMED JUNAID V., ADITH KRISHNAN.U., SHERIN SHERIYAR, NANDA SURENDRAN & SAHAL SHAJAHAN, Advocates for R20 to R22, the court passed the following:

**DR. A.K.JAYASANKARAN NAMBIAR, J.**  
**&**  
**SYAM KUMAR V.M., J.**

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**W.P.(C).NO.28509 OF 2024**  
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**Dated this the 23<sup>rd</sup> day of August, 2024**

**ORDER**

**Dr. A.K. Jayasankaran Nambiar, J.**

The tragic incident that took place in Waynad in the early hours of 30<sup>th</sup> July, 2024 when a massive landslide caused widespread destruction to the lives and properties of residents there, prompted us to register this *suo motu* writ petition, *inter alia*, to persuade the State Government to introspect on its currently held notions for sustainable development in the State of Kerala and revisit its policy regarding the same.

2. The shift from an anthropocentric to an eco-centric perspective of environmental justice began to take shape in our country only in the 1990's when we developed the principles of sustainable development, precautionary principle, polluter pays and inter-generational equity. However, even then, our focus was on regulating human actions so as to prevent environmental degradation. The focus on preserving ecosystems through affirmative steps came in much later. In fact the first truly eco-centric legislation that we enacted in our country was the Biological Diversity Act, 2002. We have since embraced a new perspective of environmental justice that today looks at equitable

distribution of the risks and harmful effects of environmental degradation. Sustainable development has since been re-imagined in ways that promotes this idea of environmental justice.

3. In **Hanuman Laxman Aroskar v. Union of India - [(2019) 15 SCC 401]**, the Supreme Court referred to the United Nations Environment Programme's [UNEP] First Global Report on Environmental Rule of Law and articulated the following seven components of the framework of Environmental Rule of Law namely, (i) Fair, clear and implementable environmental laws (ii) access to information, public participation and access to justice through courts, tribunals, commissions and other bodies (iii) accountability and integrity of decision-makers and institutions (iv) clear and coordinated mandates and roles, across and within institutions (v) accessible, fair, impartial, timely and responsive dispute resolution mechanisms and (vi) recognition of the mutually re-informing relationship between rights and environmental rule of law and (vii) specific criteria for the interpretation of environmental law. The court emphasized that environmental rule of law called for a regime that had effective, accountable and transparent institutions and that, while responsive, inclusive, participatory and representative decision making were the key ingredients to the rule of law, public access to information was fundamental to the preservation of the rule of law.

4. In **Himachal Pradesh Bus-Stand Management & Development Authority v. Central Empowered Committee & Others - [(2021) 4 SCC 309]**, the Court re-iterated that the environmental rule of law calls on judges to marshal the knowledge emerging from the record, limited though it may sometimes be, to respond in a stern and decisive fashion to violations of environmental law. In the words of the court *“we cannot be stupefied into inaction by not having access to complete details about the manner in which an environmental law violation has occurred or its full implications. Instead, the framework, acknowledging the imperfect world that we inhabit, provides a roadmap to deal with environmental law violations, an absence of clear evidence of consequences notwithstanding”*.

5. The right to life guaranteed to all persons under Article 21 of our Constitution encompasses within its fold the right to a healthy environment. The latter encapsulates the principle that every individual has the entitlement to live in an environment that is clean, safe and conducive to their well-being. Together with Article 48A that requires the State to endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country and Article 51A(g) that obliges every citizen to protect and improve the natural environment clouding forests, lakes, rivers and wild life, and to have compassion for living creatures, our Constitution provides for a code of environmental and ecological ethics that every citizen in our country must adhere to in

order to ensure peaceful co-existence in the years ahead. For far too long have we, as a people, focused on our rights - fundamental and otherwise - that we seem to have forgotten the fundamental duties that we owe to fellow citizens, wild life, other living creatures and the ecosystem around us. The tragedy in Waynad was just another instance of nature reacting to our apathy and greed.

6. The warning signs had appeared a long time ago but we chose to ignore them in pursuit of a development agenda that would supposedly put our State on the high road to economic prosperity. However, the last five years have shown us the error of our ways. If it was the inundating floods in 2018, it was a terrifying landslide in 2019, a pandemic that persisted for almost two years thereafter, and now another devastating landslide. If we do not mend our ways and take affirmative remedial action now, perhaps it will be too late.


7. This Court functions as the guardian of the fundamental rights of our citizens - the sentinel on the *qui vive* - and it registered this *suo motu* writ petition to embark upon an exercise of taking stock of the State's existing policies in relation to (i) exploitation of natural resources, (ii) preservation of environment, forests and wildlife, (iii) prevention, management and mitigation of natural disasters and (iv) sustainable development goals. It was felt that an intervention by this court was required to gather information, and requisition assistance from

institutions and agencies that can assist in the identification of ecologically sensitive areas in the State, and help the State in reformulating its policies in the areas mentioned above. The exercise that we propose to embark upon will not be akin to adjudicating an adversarial litigation but more in the nature of participatory decision making.

8. Having set out the goals sought to be achieved through this suo moto registered writ petition, we might outline the stages by which we plan to achieve them. While doing so, we have also perused the Report dated 14.08.2024 filed by the *Amicus Curiae* Sri. Ranjith Thampan. We propose to proceed in three stages. In **Stage I**, we propose to gather scientific data regarding the manner in which ecologically sensitive areas in the State can be identified, and thereafter proceed to identify and notify them district wise. We will also monitor the rescue, rehabilitation and reconstruction efforts in Wynad district on a weekly basis. In **Stage II**, we propose to gather data that will point to the desirable composition of regulatory agencies and advisory boards that would enable such agencies and boards to function effectively towards achieving the objects for which they have been constituted. The data gathered will be placed before the State government for its consideration so that suitable amendments can be effected to existing Statutes/Rules/Regulations. In **Stage III**, we propose to collect data from the people residing in ecologically sensitive areas in the State, through the Local Self Government department of the State, so that the State can re-formulate

its policies with regard to infrastructural development, tourism, exploitation of natural resources, and preservation of environment, forests and wildlife, after conducting the necessary environmental impact assessment studies and holding adequate public hearings to ascertain the views of persons/residents of the locality concerned.

9. As we have presently commenced our deliberations in relation to Stage I, we take note of the concerns expressed by the learned Amicus Curiae in his report referred to above, and deem it appropriate to direct the 1<sup>st</sup> and 2<sup>nd</sup> respondents herein to file affidavits before us clarifying the following aspects:

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- a) Whether in the wake of the natural disasters that have occurred in the State of Kerala, the said respondents propose to increase the number of subject experts as mandated under Section 14(2)(b) of the Disaster Management Act, 2005 [DMA] ?
  - b) Whether the Advisory Committees as contemplated under Sections 7,17 and 28 of the DMA have been constituted at the National, State and District levels and if so, the composition of the said committees ?
  - c) Details of the Disaster Management Plans prepared at the National, State and District levels in accordance with Sections 37 and 38 of the DMA, together with details of the latest updation done to the said plans.



d) Details of the funds allocated for carrying out the activities and programmes set out in the respective Disaster Management Plans.

e) Details regarding the steps taken by the 1<sup>st</sup> respondent in pursuance of the recommendations of the committee constituted vide G.O. (RT) No.664/2018/DMD dated 30.11.2018 to include a checklist of safety measures to be adopted in landslide prone areas in the Building Rules applicable in the State.

The 1<sup>st</sup> and 2<sup>nd</sup> respondents are granted three weeks time to file their affidavits furnishing the above details. We make it clear that in view of the expediency required in this matter, we expect all the respondents to strictly adhere to the time limits specified by this Court for filing affidavits and other documents.

Sd/-  
**DR. A.K.JAYASANKARAN NAMBIAR**  
**JUDGE**

Sd/-  
**SYAM KUMAR V.M.**  
**JUDGE**

prp/23/8/24