2020 INSC 30

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal Nos.184-186 of 2020
(*arising out of Special Leave Petition (C) Nos.34143-45 of 2013)*

Kapico Kerala Resorts Pvt. Ltd. **...Appellant(s)**

Versus

State of Kerala & Ors. **...Respondent(s)**

WITH
Civil Appeal Nos.187 of 2020
(arising out of Special Leave Petition (C) No.21927 of 2014)

J U D G M E N T

V. Ramasubramanian, J.

1. Leave granted.
2. Challenging a common order passed by the Kerala High Court, first in a batch of writ petitions and then in a batch of review petitions, prohibiting them from carrying on the activity of development of a resort, in a backwater island namely Nediyathuruthu island in Vembanad lake, Alappuzha District

of the State of Kerala, on the basis of Kerala Coastal Zone Management Plan (hereinafter 'KCZMP') and the Coastal Regulation Zone Notifications, the project proponent has come up with the above appeals.

3. The High Court was concerned, in the batch of cases, about the development of resorts in two backwater islands, by name Vettila Thuruthu and Nediyathuruthu, located in Vembanad lake, Panavally Panchayat, in Alappuzha district of the State of Kerala.

4. By a common order passed on 25.07.2013, the High Court disposed of seven writ petitions, five of which related to Nediyathuruthu island and the other two related to the Vettila Thuruthu island. Out of the 5 writ petitions which related to Nediyathuruthu island, 3 were by (i) a group of traditional fishermen (ii) a public welfare Society and (iii) a trade union of fishermen and workers, all opposing the construction of the resort in the island. The other 2 writ petitions were by the proponent of the project, by name Kapico Kerala Resorts Private limited, referred to in the impugned judgment as 'the company', seeking police protection for the completion of construction and also challenging the inclusion of the island in the Coastal Zone Management Plan prepared in pursuance

of the CRZ Notification of 1991. Similarly, out of the 2 writ petitions which related to Vettila Thuruthu island, one was by the Society opposing the development and the other was by the proponent of the project, by name Vaamika Island (Green Lagoon Resort), referred to as 'the island owners' in the impugned judgment.

5. The effect of the order of the High Court dated 25.07.2013 was (i) to reject the writ petitions filed by the project proponents in respect of both the islands and (ii) to allow the writ petitions filed either by the local fishermen or by the trade union or by the Society, with the following directions:
   i. That the action initiated by the authorities under the Land Conservancy Act, against the project proponent in respect of Nediyathuruthu island (which is the appellant in these appeals and which is known as 'Kapico') for the removal of encroachments in Nediyathuruthu island should be proceeded further in accordance with law.
   ii. That the Government of India/Authority should ensure that the encroachments made in the Nediyathuruthu island are removed within three months.
   iii. That the project proponent in respect of Nediyathuruthu island namely, Kapico and the project proponent in respect of Vettila Thuruthu island

namely, Vaamika, shall not carry out any further constructions.

iv. That the Government of India/Authority should take action for the removal of unauthorised structures put up by the island owners, namely Vaamika.

v. That the authorities should take action in regard to the unnumbered buildings found in the Vettila Thuruthu island.

6. As against the common order passed by the High court on 25.07.2013 in those 7 writ petitions (5 relating to Nediyathuruthu and 2 relating to Vettila Thuruthu), two appeals by special leave were first filed by Vaamika Island (Green Lagoon Resort), in respect of the project in Vettila Thuruthu island. These two special leave petitions in SLP (C) No. 24390-24391/2013 first came up for hearing on 01.08.2013 and after hearing the petitioner, this court reserved judgment. Thereafter, by a reasoned judgment delivered on 08.08.2013, reported as ***Vaamika Island v. Union of India***[1], this Court dismissed the special leave petitions, thereby giving its imprimatur to the impugned judgment of the High Court. Therefore, the dispute with regard to the construction of the resort in Vettila Thuruthu

1 ***(2013) 8 SCC 760***

attained finality and the project got buried deep under the sea bed without any necessity for any further clearance from anyone.

7. However, in so far as Nediyathuruthu island is concerned, the appellant in these appeals filed, in the first instance, three special leave petitions, SLP (C) Nos. 34143-34145 of 2013, on 07.08.2013 (after judgment was reserved in the special leave petitions in relation to Vettila Thuruthu island). Apart from filing three special leave petitions, the appellants herein also moved the High Court of Kerala by way of 6 petitions of review (5 by the company and 1 by its Director) in Review Petition Nos. 776 to 780 and 843 of 2013. These petitions for review were filed in October 2013. But by the time the petitions for review came up for hearing, the common judgment of the High Court had already been confirmed by this Court in *Vaamika Island* (supra) on 08.08.2013. Therefore, applying the doctrine of merger, the High Court dismissed the review petitions by its order dated 10.12.2013. Challenging the dismissal of only one of those 6 review petitions, namely RP No. 776 of 2013, (which arose out of WP (C) No. 19564 of 2011) the appellants came up in April 2014, with a separate special leave petition in SLP

(C) No. 21927 of 2014. The same got tagged along with the first 3 special leave petitions arising out of the original order dated 25.07.2013.

8. Thus we have on hand, four appeals, filed by the proponents of the project for the construction of a resort in Nediyathuruthu island. These appeals arise respectively out of (i) the dismissal of a writ petition filed by the project proponent challenging the inclusion of Nediyathuruthu island within CRZ and seeking a declaration that the CRZ Notification of 1991 is not applicable to the island, (ii) the dismissal of the writ petition filed by the project proponent seeking police protection for completing the construction of the resort, (iii) the order passed in the writ petition filed by a Society, directing the proceedings for the removal of encroachments to be continued and (iv) the dismissal of a petition for review of an order passed in a writ petition filed by the local fishermen claiming rights over the stake nets in the island, directing the demolition of the constructions put up by the project proponent and also directing the proceedings for removal of encroachments to be continued.

<u>Pleadings in the Substantial Writ Petition</u>

9. As stated earlier, the appellants herein were the petitioners in 2 writ petitions before the High court. But the writ petition in which substantial reliefs were claimed by the appellants before the High court, was the one in WP (C) No. 4808/2012. Briefly stated, the claim of the appellants in WP (C) No. 4808 of 2012 was (i) that CRZ Notification of 1991 does not apply to islands like Nediyathuruthu and that islands which dot the backwaters of Kerala were brought within the purview of the Regulations, for the first time only by the CRZ Notification of 2011; (ii) that since the appellants obtained NOC on 02.08.1996 and Building Permit on 10.10.2007 from the Gram Panchayat, CRZ Notification of 2011 cannot be applied to their case; (iii) that CRZ Notification of 1991 categorises small islands under CRZ IV and there is no prohibition for construction of buildings, as standards are yet to be evolved; (iv) that the distance from HTL in respect of small islands is required to be decided based on case to case study; (v) that the land of the appellant falls under Category IV and hence, in the absence of any special demarcation of small islands, none of the restrictions can apply; (vi) that CZMP for Kerala under the 1991 Notification was prepared in a haphazard and hasty

manner; (vii) that KCZMA was constituted by a notification dated 26.11.1998, with a mandate to formulate area-specific management plans, but no such plans were formulated; (viii) that in the absence of any area-specific criteria for determination of CRZ, the 1991 Notification is not applicable to backwater islands; (ix) that Annexure I of 1991 Notification classifies small islands as falling under Category IV, and CRZ II and CRZ III relate only to areas distinct from islands; (x) that since the average width of the backwater island where the appellants had completed construction, is only 20-60 meters, the extension of the restriction relating to Category III will be violative of the right conferred under Article 300A; and (xi) that even if the 1991 Notification applies to small islands, Annexure I of the Notification specifically requires HTL to be ascertained depending upon the size of the islands based upon Integrated Management Study, but the same has not been carried out.

10. It appears that in the earliest counter-affidavit filed on behalf of the Kerala Coastal Zone Management Authority to the writ petition (WP No. 19564 of 2011) filed by the local traditional fishermen, they took a stand (i) that Vembanad lake falls

under CRZ IV; (ii) that Nediyathuruthu island falls under CRZ III; (iii) that Nediyathuruthu island has CRZ landward of HTL upto 100 meters; (iv) that the construction of a resort required clearance under CRZ Notifications of 1991 and 2011; (v) that Vembanad kayal (lake) is declared as critically vulnerable coastal area, (vi) that though Panavally gram panchayat does not have sea front, it has water bodies with tidal influence and (vii) that the Panchayat was not competent to issue Building Permit when CRZ Notification was applicable.

11. However, in the counter-affidavit filed in WP (C) No. 4808 of 2012, the Kerala Coastal Zone Management Authority took a stand that the island falls under CRZ I. The distinction between CRZ I and CRZ III under the 1991 Notification was (i) that areas which are ecologically sensitive and important, such as national parks/marine parks, sanctuaries, reserve forests, wildlife habitats, mangroves, corals/coral reefs, areas close to breeding and spawning grounds of fish and other marine life, areas of outstanding natural beauty/historically/heritage areas, areas rich in genetic diversity, areas likely to be inundated due to rise in sea level consequent upon global warming and such other areas as

may be declared by the Central Government or concerned authorities and the areas between LTL and HTL fall under CRZ I, while (ii) areas that are relatively undisturbed and those which do not belong to either Category I or II, but which include coastal zones in rural areas and also areas within municipal limits or other legally designated urban areas which are not substantially built up, fall under CRZ III.

12. In so far as the restrictions/regulation of activities in CRZ I/CRZ III are concerned, the impact on the appellants was just the same, in the light of the specific stand taken by the Coastal Zone Management Authority. While no new construction except those indicated in the Notification are permitted in CRZ I, areas up to 200 meters from the HTL was to be earmarked as 'no development zone' in CRZ III. Since the counter-affidavit of the Coastal Zone Management Authority proceeded specifically on the basis that Nediyathuruthu island has CRZ landward of HTL upto 100 meters, the contradiction in the stand taken by the Coastal Zone Management Authority would not inure to the benefit of the appellant.

Findings of the High court on merits

13. In the common order covering both the islands, essence, the High Court held (i) that both Nediyathuruthu and Vettila Thuruthu islands are backwater islands of Kerala and hence, covered by CRZ Notification of 1991; (ii) that though the requirement for the conduct of a salinity test, for classifying an area as CRZ, was introduced only in the year 2002 by way of an amendment, the authority had asserted to have carried out salinity test on the basis of 5 ppt (parts per thousand); (iii) that the permit issued to the appellant made it mandatory for them to be compliant with the CRZ Notification of 1991 and hence, they cannot attack the CZMP on the ground that salinity test was not done during the driest period as prescribed in the 2002 amendment; (iv) that the words ‘small islands’ included in CRZ IV in the Notification of 1991, are intended to cover small marine islands in the vicinity of Andaman & Nicobar and Lakshadweep, but are not intended to cover backwater islands which are influenced by the tidal effect contemplated in the Notification; (v) that backwater islands which have mangroves and areas close to breeding and spawning of fish and other marine life will fall under CRZ I; (vi) that CRZ Notification of 1991 clearly takes within its

sweep, the coastal stretches of the backwater islands, along with the coastal stretches of the sea; (vii) that in view of the development of environmental jurisprudence and the law governing the field, the restriction and regulation of the right to property through procedure established by law, cannot be taken to be a negation of the right guaranteed under Article 300A; (viii) that the specific stand of the authority is that Nediyathuruthu is a low lying area likely to be inundated due to rise in sea level; (ix) that filtration ponds, by their very nature, lie adjacent to backwaters and Nediyathuruthu is an island with filtration ponds; (x) that having regard to the low width, that is a little over 50 meters which cannot be developed, the entire area has been marked as filtration pond; (xi) that in a writ petition under Article 226, the High Court cannot interfere with such a classification; (xii) that under the 1991 Notification, coastal stretches of seas, estuaries, creeks, rivers and backwaters influenced by tidal action in the landward side upto 500 meters will fall within coastal regulation zone; (xiii) that the distance from the HTL was to apply on both sides of the rivers, creeks, backwaters; (xiv) that though the distance could be modified, on a case to case basis

for reasons to be recorded, the distance cannot be modified to less than 100 meters or the width of the water body; (xv) that by an amendment in 1994, the distance of 100 meters was reduced to 50 meters, but this Court struck down the same; (xvi) that therefore, the plan prepared by KCZMA in 1995 had to be modified to be in tune with the judgment; (xvii) that even according to the company, the width of the island, where the construction exists, is between 20 to 60 meters; (xviii) that in ***S. Jagannath v. UoI***[2], this Court held the filtration ponds to be an ecologically polluting feature, but the same cannot go to the rescue of the appellants, when the island is a backwater island falling under CRZ I; (xix) that there was no requirement for an island specific study, in view of the fact that the island in question is not a marine island but only a backwater island and (xx) that the failure to obtain a cadastral map cannot be fatal.

14. For coming to the aforesaid conclusions, the High Court solicited the assistance of one Dr. K. V. Thomas, a scientist and who was the head of the Marine Sciences Division in the Centre for Earth Science Studies, Akkulam, Thiruvananthapuram. It appears from the impugned order

2 ***(1997) 2 SCC 87***

that the High Court put to Dr. K.V. Thomas, specific questions as to (i) whether HTL can be found only on the sea coast and not in the other parts; (ii) the test carried out for fixing the HTL; and (iii) how Nediyathuruthu was identified as containing a filtration pond. It appears from the impugned order that the learned counsel appearing for the appellants, was also permitted to put questions to Dr. K. V. Thomas. Thereafter, the appellants filed an affidavit of objections, to the statements made by Dr. Thomas. This affidavit of objections merely highlighted the discrepancies and errors in the statement of Dr. Thomas. There was no objection to the very procedure adopted by the High Court in soliciting the opinion of Dr. Thomas. Nor was any objection made to his statements as being biased.

Findings of the High Court on encroachments

15. Apart from soliciting an expert opinion on the technical issues raised in the writ petitions, the High Court also got a survey carried out by the Deputy Surveyor of Alappuzha in the presence of the District Collector, so as to find out (i) the extent of the property in the possession of the appellants and

(ii) the exact extent of the island. This was done by the High Court in the light of a specific allegation made by the local fishermen and the Society that the appellants were also guilty of encroachments. Pursuant to the order passed by the High Court to that effect on 22.11.2012, a survey and measurement was done and a report submitted. As per the report, there was an encroachment, which led to a notice being issued under Section 11 of the Kerala Land Conservancy Act, 1957. After the report was filed, the appellants filed an interlocutory application in IA No. 16744 of 2012 seeking clarification. The High Court then left it open to the appellants to impugn the correctness of the report of the survey, before a competent forum. In other words, without sealing the fate of the appellants on the issue of encroachments, solely on the basis of the report of the survey conducted under the supervision of the court, the High Court gave a lease of life to the appellants to agitate the same in a separate proceeding. Keeping these findings of the High Court in mind, let us now see the grounds of attack to the impugned order.

Rival Contentions

16. Assailing the impugned order of the High Court, it is contended by Dr. A. M. Singhvi, learned Senior counsel (i) that without conducting a salinity test under the CRZ Notification of 1991 at any point of time, a finding was arrived at as though the salinity of the land was 5 ppt and that therefore, the land constituted backwaters directly influenced by the tidal effect of the sea; (ii) that the finding about the existence of filtration ponds on the appellant's land, which is an inherent feature of CRZ I, is flawed in as much as most of the maps depict the area as having coconut plantations, which cannot co-exist along with a filtration pond; (iii) that no State other than the State of Kerala included filtration ponds as a feature of CRZ, though a scientific Sub-Committee of the KCZMA itself found no scientific basis for defining and characterising filtration ponds; (iv) that there were fatal errors in the CZMP, which were not rectified even after the Ministry of Environment and Forests pointed out several discrepancies and even after a Committee of Experts chaired by Dr. M. S. Swaminathan found the plan to be replete with errors; (v) that the High Court could not have proceeded on the *ipse dixit* of a so-called expert by name Dr. K. V. Thomas who was called *suo moto* and whose

statements were taken on record as the gospel truth; (vi) that the Guidelines of the MOEF requiring demarcation of HTL and LTL after physical verification were not followed and micro-level cadastral maps were not drawn by the State of Kerala; (vii) that since the appellant's land is a 5 hectare island falling within the definition of 'small islands' in CRZ IV, an island specific study was mandatory, before deciding the classification, but the same was not done.; (viii) that the categorisation of the island as critically vulnerable coastal area (CVCA), is flawed, as no notification by MOEF as required by CRZ 2011, was ever issued and the mandatory sequence for identifying and notifying CVCA was not followed and (ix) that as many as twelve permissions/ approvals obtained by the appellant from various authorities and the completion of 75% of the construction of the resort, were not given due weightage by the High court.

17. Mr. Sanjay Parikh, learned senior counsel appearing for the private parties and Mr. Pallav Shishodia, learned senior counsel appearing for the State of Kerala and KCZMA raised a preliminary objection to a detailed deliberation on the merits of the case. This was on the ground that the common order

impugned in these appeals has already attained finality with the dismissal of the special leave petitions through a reasoned judgment of this Court in relation to Vettila Thuruthu island. It is also contended by them that the appellants cannot now blow hot and cold, after having agreed to take refuge under a notification dated 14.03.2017 issued by the MOEF (which is in the nature of a scheme for regularization) and after having moved an application under the said notification. They contended that in any case, the order of the High Court was justified on merits and that there is no reason for this Court to take a different view from the one taken in *Vaamika island* (supra).

18. However, Dr. A. M. Singhvi, learned senior Counsel for the appellants, contended that the decision of this Court in *Vaamika Island* was confined only to the facts relating to Vettila Thuruthu island and that since Vettila Thuruthu island and Nediyathuruthu island (to which the present appeals relate) had different features, the correctness of the order of the High Court in relation to Nediyathuruthu island required to be gone into independently. The distinguishable features, according to him are: (i) that Vettila Thuruthu was

obviously covered by CRZ 2011 Notification, as the Building Permit for the appellant therein (Vaamika) was granted on 30.04.2012; (ii) that though the contentions relating to salinity, filtration ponds, the opinion of Dr. K. V. Thomas, the lack of cadastral maps and the identification of the area as CVCA are dealt with in the judgment of this Court in *Vaamika Island*, in passing, in two paragraphs, the substantive factual issues are not covered; (iii) that the finding of existence of mangroves in Vettila Thuruthu island and the absence of such a finding in relation to Nediyathuruthu, is a significant distinction; (iv) that the distance through backwaters from Vettila Thuruthu to the appellants' land is about 4.3 kilometers and Vettila Thuruthu island, as seen from Map 32A, is closer to the Arabian Sea than Nediyathuruthu; (v) that the Building Permit issued to the appellant was on 10.10.2007, long before the issue of CRZ 2011; (vi) that the draft KCZMP 2018 and relevant map of KCZMP 2009 make it clear that Vettila Thuruthu is directly influenced by tidal effects and has been shown as inter-tidal zone, which is absent in Nediyathuruthu; and (vii) that the issue relating to

island specific studies/ small island was not dealt with in *Vaamika Island* and it is a significant distinguishing feature.

Preliminary Issue - whether the judgment in Vaamika Island is distinguishable

19. In the light of the rival contentions, it is necessary for us to first deal with the preliminary issue, keeping in mind the fact that the judgment in *Vaamika island* is not under review before us. The correctness of the view expressed therein, has not been doubted and a reference made to us. Therefore, it cannot be our endeavor to undertake a research with magnifying glasses to find out miniscule differences between the 2 sets of cases. Our endeavour can only be to find out, if the major issues raised in both cases were substantially the same. If the answer is yes, the appeals are liable to be thrown out. If no, the arguments on merits have to be considered independent of the decision in *Vaamika*. Therefore, let us now see what were the issues considered by the High court as having arisen in these cases and how the High court answered them.

The issues dealt with by the High court

20. The High Court, in the impugned judgment, compartmentalised the issues arising for consideration into 2 parts, the first dealing with issues in common for Vettila Thuruthu and Nediyathuruthu and the next dealing with issues peculiar to each of them. The High Court took up for consideration, from paragraph 31 onwards of its judgment, common issues arising in respect of both the islands. After dealing with and answering the common issues, from paragraph 31 upto paragraph 85, the High Court independently dealt with (i) the issue of encroachments allegedly made by the appellant in paragraph 86 and (ii) the issue relating to some specific reliefs sought by the local fishermen and a trade union in two separate writ petitions against the appellant in paragraphs 87 to 89. Thereafter, the High Court dealt with other issues.

21. In brief, the common issues formulated by the High Court in respect of both the islands are :

(a) Whether the islands in the backwaters of Kerala are covered under the CRZ Notification of 1991 and whether the failure to conduct salinity test as required by the amendment made in 2002, vitiated the stand of the KCZMA?

(b) Whether the islands would fall under CRZ IV and what are its effect on the property rights and the doctrine of legitimate expectation?
(c) Whether the identification of the island as a filtration pond, on the basis of maps drawn to the scale of 1:12,500 using satellite images without any field check, is correct?
(d) Whether filtration ponds are an anathema in the light of the decision of this Court in ***S. Jagannath v. Union of India*** (supra)?
(e) Whether there is any reliable material to classify the areas as filtration ponds?
(f) Whether there must be island specific study?
(g) Whether cadastral map is a must and its absence fatal?

The findings on all these issues went against the appellants as well as the proponent of the project in Vettila Thuruthu island. We have recorded the gist of those findings of the High court, in paragraph-13 above.

22. As we have indicated elsewhere, the decision of this Court in *Vaamika Island* is sought to be distinguished on the basis of seven identifiable features, some of which, according to the appellants, are covered in the decision in *Vaamika Island*, only in passing reference. According to Dr. Singhvi, learned senior counsel, the issues relating to salinity, filtration ponds, the

opinion of Dr. K. V. Thomas, the lack of cadastral maps and the identification of the lake as CVCA, are all mentioned in paragraphs 23 and 24 of the decision of this Court in *Vaamika Island*, only in passing. It is his contention that these two paragraphs of the decision of this Court in *Vaamika Island*, seek to decide these issues summarily without any reasoning and that therefore, this Court is entitled to decide those issues independently in relation to Nediyathuruthu island. Let us now see if this contention is valid.

23. As pointed out by this Court in **Kunhayammed v. State of Kerala**[3], there is a distinction between the dismissal of a special leave petition by a non-speaking order where no reasons are recorded and the dismissal of a special leave petition by a speaking or reasoned order. In both cases, the doctrine of merger would not apply. But in cases falling under the latter category, the reasons stated by the Court would attract the applicability of Article 141 of the Constitution, if a point of law has been declared therein. If what is stated in the order of the Supreme Court (before the grant of leave) happen to be findings recorded by the Supreme Court, not amounting to a declaration of law, the findings so recorded would bind

3 ***(2000) 6 SCC 359***

only the parties thereto. Though the views expressed in *Kunhayammed* were thought of to be in conflict with the views expressed in certain other decisions **[Abbai Maligai Partnership Firm v. K. Santhakumaran[4]]**, and the issue was referred to a larger bench for an authoritative pronouncement, this Court has now clarified in **Khoday Distilleries Ltd. v. Sri Mahadeshwara Sahakara[5]**, that *Kunhayammed* lays down the correct law.

24. It is no doubt true that the decision in *Vaamika Island* was rendered at the stage of special leave petitions. Obviously this Court refused leave, but went on to affirm the findings of the High Court, recording detailed reasons therefor. The opinion expressed in paragraphs 27 and 28 of *Vaamika Island,* does not give any room for escape even for the appellants before us. Paragraphs 27 and 28 of the decision in *Vaamika Island* read as follows:

> *"27. We are of the considered view that the above direction was issued by the High Court taking into consideration the larger public interest and to save Vembanad Lake which is an ecologically sensitive area, so proclaimed nationally and internationally. Vembanad Lake is presently undergoing severe environmental degradation due to increased human intervention and, as already indicated, recognising the*

4 ***(1998) 7 SCC 386***
5 ***(2019) 4 SCC 376***

socio-economic importance of this waterbody, it has recently been scheduled under "vulnerable wetlands to be protected" and declared as CVCA. We are of the view that the directions given by the High Court are perfectly in order in the abovementioned perspective.

28. Further, the directions given by the High Court in directing demolition of illegal construction effected during the currency of the 1991 and 2011 CRZ Notifications are perfectly in tune with the decision of this Court in Piedade Filomena Gonsalves v. State of Goa [(2004) 3 SCC 445] , wherein this Court has held that such notifications have been issued in the interest of protecting environment and ecology in the coastal area and the construction raised in violation of such regulations cannot be lightly condoned."

25. The appellants cannot also escape the findings recorded by this Court in other paragraphs, on the common issues. Even according to the appellants, some of those common issues, such as salinity, filtration ponds, cadastral maps, CVCA, etc. are dealt with by this Court in paragraphs 23 and 24 of the reported decision. The contention that these common issues are dealt with in passing, in the judgment of this Court and that therefore, they are entitled to be re-agitated, cannot be accepted.

26. If detailed reasons given by the High Court or a subordinate Court, find acceptance by this Court, in specific terms, the question of scrutinising them for finding out whether they

were in the passing or in detailed focus, does not arise. Such an exercise would tantamount to reviewing the decision.

27. Each and every particular issue dealt with by the High Court as common to both the islands, was considered by this Court in *Vaamika Island* and a finding recorded. In particular –

   i. Map Number 32A of CZMP as well as the techniques employed to ascertain whether the constructions were made in violation of CRZ 1991 as well as 2011, were found by this Court in paragraph 25, not to be suffering from any illegality.

   ii. KCZMP was held by this Court in paragraph 23 of *Vaamika* to have been prepared based on the guidelines of MOEF, taking care of the maps prepared by the Survey of India (Government of India) and cadastral maps prepared by the Survey department of the Government of Kerala.

   iii. It was also pointed out in paragraph 23 that the area between LTL and HTL is also CRZ I and filtration ponds are shallow water bodies and hence they fall under CRZ I as per notification.

   iv. In paragraph 24, this Court specifically concurred with the view of the High Court that islands could be coastal stretches of rivers or backwaters or backwater islands and

that they are clearly covered by CRZ I and not under CRZ III or CRZ IV.

v. In paragraph 24 this Court also endorsed the view of the High Court that even before the salinity test was incorporated in the year 2002, reliance was placed on that test, on the basis of 5 ppt which was made as per standard measurements in parts per thousand.

28. The first distinction sought to be made by the appellants between their case and the case relating to Vettila Thuruthu is that the Building Permit issued to Vaamika was post 2011 Notification. But this distinction will not go to the rescue of the appellants, in view of the fact that the categorisation under CRZ I under the 1991 Notification was upheld by this Court and this is why this Court found the constructions made even in Vettila Thuruthu as violative of both the notifications, namely 1991 and 2011 Notifications (paragraph 24 of *Vaamika Island)*.

29. In any case, the appellants *herein* obtained the NOC on 02.08.1996 and the Building Permit on 10.10.2007. In paragraph 26 of its decision in *Vaamika Island*, this Court recorded the fact that the Director of Panchayats vide letters dated 07.03.1995 and 17.07.1996 had directed all panchayats

to strictly follow the provisions of CRZ Notification and that it was found to have been violated while granting permission. This finding hits at the very root of the contention that the appellants' permit will not be affected, as it was pre-2011 Notification. In the teeth of the letters of the Director of Panchayats dated 07.03.1995 and 17.07.1996, addressed to all the panchayats, advising them to follow the provisions of CRZ Notification, the NOC and Building Permit obtained, respectively on 02.08.1996 and 10.10.2007, by the appellants were clearly illegal.

30. Both Vettila Thuruthu and Nediyathuruthu islands are admittedly backwater islands nestled in Vembanad lake. In paragraph 27 of the judgment in *Vaamika Island*, this Court has indicated that Vembanad lake is an ecologically sensitive area and that considering the socio-economic importance of this water body, it had been scheduled under "vulnerable wetlands to be protected" and declared as CVCA. We do not know how this finding can be held to be applicable only to Vettlia Thuruthu island.

31. According to the appellants, CRZ 2011 prescribes a procedure for identifying, planning and implementing CVCA. To begin with, guidelines may have to be framed by MOEF in

consultation with the stakeholders. According to the appellants, the process of consultation with the local fishers and other communities and the process of identification and planning of CVCA, the process of preparation of Integrated Management Plan etc. were not even undertaken and hence, Vembanad lake though listed in paragraph 8(V)(4)(b) of CRZ 2011 Notification as CVCA, cannot be taken to be a notified CVCA.

32. But the above contentions are already dealt with by the High Court in paragraph 120-122 of its judgment. In paragraph 121 of its judgment, the High Court recorded a specific finding that when the whole of Vembanad lake is included as a CVCA, subject to a process, the Court has to take a view which serves the object of the area being treated as ecologically sensitive and hence a CVCA. It is with particular reference to this finding that this Court held in paragraph 27 of *Vaamika Island* that the whole of Vembanad lake is to be seen as CVCA.

33. Once we find that the main issues arising in common for both the islands and dealt with in common by the High Court, had received a seal of approval from this Court by a reasoned order, there is no scope for revisiting the same on the basis of

certain minor ancillary issues not specifically dealt with, in the judgment. Therefore, we hold that the distinctions sought to be made out by the appellants are not substantial and hence, we are not inclined to revisit the issues already clinched by this Court.

Alternative Submissions

34. Dr. A. M. Singhvi, learned senior counsel for the appellants, made two alternative submissions without prejudice. The first is that by a notification dated 14.03.2017, a window of opportunity akin to regularisation has been provided to those who made developments without complying with statutory requirements. According to him, the appellants availed this opportunity and the Terms of Reference were granted on 05.04.2018. KCZMA also considered the application of the Petitioner in its meeting held on 07.07.2018 and took a decision to inform the MOEF of the complete details of the case. Therefore, it was contended by the learned senior counsel that the appellants should be allowed at least the benefit of the said notification.

35. We have perused the Notification dated 14.03.2017. The primary object of the said Notification appears to be to

address the issue as to how to deal with the projects and activities carried out without obtaining prior environmental clearance. The Notification seeks to declare the projects and activities requiring prior environmental clearance under EIA Notification, 2006, but carried out without obtaining such clearance, as cases of violation of the EIA Notification, 2006 and it seeks to provide an opportunity to those violators to avail the benefit of a one-time clearance. The Notification dated 14.03.2017 does not deal with cases of violation of CRZ Notifications. Therefore, we cannot say anything on the application of the appellants under the said Notification. In any case, the issue does not arise out of the *lis* before us.

36. The second alternative prayer made by the appellants without prejudice, is on the basis of the CRZ Notification 2019 issued on 18.01.2019. According to the learned senior counsel for the appellants, the 2019 notification permits construction and operation, so long as it is 20 meters from the HTL. According to the appellants, even if all the constructions put up by them are now demolished, the appellants will be entitled to build once again, approximately 60 per cent of the area covered by the existing superstructures.

37. But the above argument does not carry any weight. Paragraph 10.2 of the CRZ 2019 Notification states that all inland islands in the coastal backwaters and islands along the mainland coast shall be covered by the Notification. It further states that in view of the unique coastal systems of backwater islands and islands along the mainland coast, along with space limitations in such coastal stretches, CRZ of 20 meters from the HTL on the landward side shall uniformly apply. However, paragraph 10.2(ii) states that activities shall be regulated as under: (a) existing dwelling units of local communities may be repaired or reconstructed within 20 meters from the HTL of these islands, but no new construction shall be permitted in this zone; (b) foreshore facilities such as fishing jetty, fish drying yards, net mending yard, fishing processing by traditional methods, boat building yards, ice plant, boat repairs and the like maybe taken up in CRZ limits subject to environmental safeguards.

38. Therefore, it is not as though the reduction of the distance parameter to 20 meters from the HTL is intended to confer a benefit upon persons like the appellants. Moreover, even the CRZ 2019 Notification places Vembanad lake in the category

of CVCA in paragraph 3.1 but with a different reach. There is a world of difference between the 2011 and 2019 Notifications, in so far as CVCAs are concerned. This can be summarized as follows:

(i) In paragraph 8(V)(4) of the CRZ 2011 Notification, areas to be declared as CVCAs were identified but paragraph 8(V)(4)(b) mandated that those identified areas can be declared as CVCAs through a process of consultation. Paragraph 8(V)(4)(c) required guidelines to be developed and notified by MOEF in consultation with the stakeholders, for identifying, planning, notifying and implementing CVCAs. Integrated Management Plans were also required to be prepared for CVCAs under paragraph 8(V)(4)(d) of the 2011 Notification.

(ii) But under paragraph 3.0 of the CRZ 2019 Notification, certain coastal areas are accorded special consideration for the purpose of protecting the critical coastal environment and the difficulties faced by local communities. Paragraph 3.1 identifies the critically vulnerable coastal areas. They include the Vembanad lake. While the words contained in paragraph 8(V)(4)(b) of the 2011 Notification are: "***...shall be declared as CVCA through a process of consultation with the***

fisher and other communities inhabiting the area…”, the words contained in paragraph 3.1 of the 2019 Notification are “***…shall be treated as CVCA and managed with the involvement of coastal communities including fisher folk***”.

39. Therefore, for the appellants, the situation has gone from bad to worse. Under the 2011 Notification the areas identified in the Notification had to be declared as CVCAs only through a process of consultation with local fisher, etc. Guidelines are to be put in place for identifying, notifying and implementing CVCA but 2019 Notification straightaway treats the named areas as CVCAs and vests their management with the Authority with the involvement of coastal communities. Therefore, the alternatives claimed by the appellants also do not appear to be viable for them.

40. Hence, in the light of our finding (i) that the substantial issues that arose in common for both the islands have already been answered in *Vaamika Island* (supra), and (ii) that the distinguishing features sought to be projected, are not so material as to take a different view than the one taken therein,

the appeals are liable to be dismissed. Accordingly, all the appeals are dismissed. There shall be no order as to costs.

..................................J
(Rohinton Fali Nariman)

..................................J
(Aniruddha Bose)

..................................J
(V. Ramasubramanian)

New Delhi
January 10, 2020.