

**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.**

Thursday, the 8th day of August 2024 / 17th Sravana, 1946

WA NO. 664 OF 2024

(ARISING FROM JUDGMENT DATED 19.03.2024 IN WP(C) 21737/2023 OF THIS COURT)

APPELLANT:

**THE SECRETARY, MOOPPAINAD GRAMA PANCHAYAT VADUVANCHAL P.O. WAYANAD
DISTRICT, PIN - 673581.**

BY.ADV.SRI.MATHEW KURIAKOSE

RESPONDENT(S):

- 1. SHRI. O.D.THOMAS, AGED 55 YEARS, S/O. DEVASSIA, OLIKKAL HOUSE, VIKAS NAGAR, KALPETTA (PO), WAYANAD DISTRICT, PIN-673121.**
- 2. THE DISTRICT DISASTER MANAGEMENT AUTHORITY, WAYANAD REPRESENTED BY ITS CHAIRMAN, OFFICE OF THE CHAIRMAN & DISTRICT COLLECTOR, WAYANAD, PIN - 673121.**
- 3. KERALA STATE DISASTER MANAGEMENT AUTHORITY(KSDMA), (SOUGHT TO BE IMPLEADED) OBSERVATORY HILLS, VIKAS BHAVAN P.O, PIN - 695033.**

BY.ADV.SRI.PHILIP J VETTICKATTU for R1, GOVERNMENT PLEADER for R2 & R3

Prayer for interim relief in the Writ Appeal stating that in the circumstances stated in the appeal memorandum, the High Court be pleased to pass an order of stay of the operation and implementation of the judgment dated 19.03.2024 in W.P. (C) No. 21737/2023, pending disposal of the above writ appeal.

This Writ Appeal coming on for orders on 08.08.2024, upon perusing the appeal memorandum and this court's order dated 22.07.2024, the court passed the following:

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

W.A.NO.1915 OF 2023, W.P.(C).NO.13811 OF 2023
&
W.A.NOS.603 & 664 OF 2024

Dated this the 8th day of August, 2024

ORDER

Dr. A.K. Jayasankaran Nambiar, J.

The above Writ Appeals and connected cases concerning quarrying and construction activities in Wayanad District were heard by us and reserved for judgment on 29.07.2024. As we had interacted with Sri.Sekhar Kuriakose, the Head of the State Disaster Management Authority during the hearing so as to get some clarity with regard to the scientific aspects of the matter, we had posted these cases as “to be spoken to” today for getting a report from Sri.Sekhar Kuriakose. While so, on 30.07.2024, multiple landslides occurred in Wayanad District leading to one of the deadliest natural disasters in the history of the State. The deaths and destruction that it unleashed in our State has forced us to re-consider the tentative decisions that we had arrived at in these matters. We are also informed by the Registry that requests have since been received for registering a *suo motu* Writ Petition to consider the steps that can be put in place to prevent and manage natural disasters that may arise in the State in future. We

are told that such a Writ Petition is being registered based on the directions of the Hon'ble the Acting Chief Justice.

2. We believe it is now time for the State Government to reconsider its policies with regard to regulation of all such developmental activities in our State as may contribute to environmental degradation and loss of bio-diversity. The State Government has to remind itself of its role as a guardian of the natural resources within the State and introduce measures to check the indiscriminate developmental activities being permitted within the State. Towards this end, the State Government has to keep in mind the doctrine of Public Trust, which was developed as a legal theory by the ancient Roman Empire, and was founded on the idea that certain common properties such as rivers, seashore, forests and the air were held by the Government in trusteeship for the free and unimpeded use of the general public. These resources were deemed to be of such great importance to the people as a whole that it was seen as wholly unjustified to make them the subject of private ownership. The said resources being a gift of nature, it was felt that they should be made freely available to everyone irrespective of the status in life. The doctrine therefore enjoins upon the Government to protect the resources for enjoyment of the general public rather

than to permit their use for private ownership or commercial purposes.

3. The public trust doctrine has been used, over the years, to forge a number of allied principles through which courts have, to a significant extent, checked environmental degradation, as also large scale depletion of precious natural resources, while at the same time ensuring that developmental activities are not completely curtailed or prohibited. Some of these principles are;

(i) The principle of sustainable development, which advocates the striking of a balance between the need for protection of environment and the competing need to engage in developmental activities;

(ii) The precautionary principle, that requires the State to take environmental measures to anticipate, prevent and attack the causes of environment degradation, and further clarifies that lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation. The principle also lays the onus of proof on the actor to establish that its actions are environmentally benign;

(iii) The polluter pays principle, that penalizes a person who has caused pollution and;

(iv) The principle of inter-generational equity, that holds that the present generation has no right to deplete all the existing resources and leave nothing to the next and future generations.

4. We feel the State Government should first evolve a comprehensive policy on the developmental activities that could be permitted in the different areas of our State. It should thereafter examine, on a case to case basis, whether there is a need to grant

any licence/permit for any developmental activity in a particular area concerned or to renew such licence/permit, taking into account the inherent nature of the land, the availability of natural resources, the report of the Bio-Diversity Boards, and the impact that any such activity would have on the ecological balance of the region and other environmental factors. It is towards obtaining diverse reports from a scientific community that encompasses not only persons in Government service that we feel that these matters should be considered along with the *suo motu* Writ Petition that is being separately registered.

Post tomorrow.



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

Sd/-
SYAM KUMAR V.M.
JUDGE