



W.A.Nos.1780 & 1805 of 2024



2024:KER:83954

1

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K. NARENDRAN

&

THE HONOURABLE MR. JUSTICE MURALEE KRISHNA S.

MONDAY, THE 11<sup>TH</sup> DAY OF NOVEMBER 2024/20TH KARTHIKA, 1946

WA NO.1780 OF 2024

AGAINST THE ORDER DATED 01.11.2024 IN WP(C)NO.38200

OF 2024 OF HIGH COURT OF KERALA

APPELLANTS/RESPONDENTS 1 TO 4:

- 1 UNION TERRITORY OF LAKSHADWEEP  
REPRESENTED BY ITS ADMINISTRATOR, OFFICE OF THE  
LAKSHADWEEP ADMINISTRATOR, KAVARATTI, PIN - 682555
- 2 THE DISTRICT COLLECTOR,  
UNION TERRITORY OF LAKSHADWEEP ADMINISTRATION,  
COLLECTORATE, KAVARATTI, LAKSHADWEEP, PIN - 682555
- 3 THE DIRECTOR,  
DEPARTMENT OF TOURISM DEVELOPMENT, UNION TERRITORY OF  
LAKSHADWEEP ADMINISTRATION, KAVARATTI, PIN - 682555
- 4 THE DEPUTY COLLECTOR/BLOCK DEVELOPMENT OFFICER,  
AGATHI ISLAND, LAKSHADWEEP, PIN - 682553

BY ADV R.V.SREEJITH, SC, U.T.ADMINISTRATION OF  
LAKSHADWEEP

RESPONDENTS/PETITIONER & 5<sup>TH</sup> RESPONDENT:



W.A.Nos.1780 & 1805 of 2024



2024:KER:83954

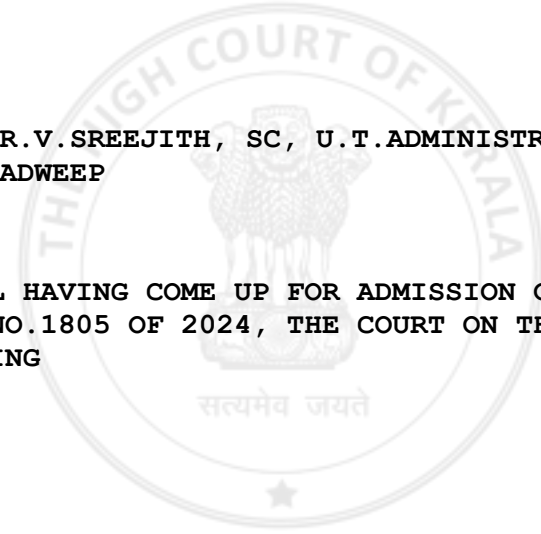
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- 1 SALMIKOYA K. ,  
AGED 84 YEARS  
S/O SHAMSUDHEEN KOYA, KEEPAT HOUSE, AGATHI,  
LAKSHADWEEP, PIN - 682553
  
- 2 LAKSHADWEEP COASTAL ZONE MANAGEMENT AUTHORITY  
LAKSHADWEEP ADMINISTRATION, KAVARATTI ISLAND,  
LAKSHADWEEP, PIN - 682555

OTHER PRESENT:

SRI. R.V.SREEJITH, SC, U.T.ADMINISTRATION OF  
LAKSHADWEEP

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 11.11.2024,  
ALONG WITH W.A.NO.1805 OF 2024, THE COURT ON THE SAME DAY DELIV-  
ERED THE FOLLOWING



HIGH COURT OF KERALA  
CERTIFIED COPY



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K. NARENDRAN

&

THE HONOURABLE MR. JUSTICE MURALEE KRISHNA S.

MONDAY, THE 11<sup>TH</sup> DAY OF NOVEMBER 2024 / 20TH KARTHIKA, 1946

WA NO. 1805 OF 2024

AGAINST THE ORDER DATED 01.11.2024 IN WP(C)NO.38174 OF  
2024 OF HIGH COURT OF KERALA

APPELLANTS/RESPONDENTS 1 TO 4:

- 1 UNION TERRITORY OF LAKSHADWEEP,  
REPRESENTED BY ITS ADMINISTRATOR, OFFICE OF THE  
LAKSHADWEEP ADMINISTRATOR, KAVARATTI, PIN - 682555
- 2 THE DISTRICT COLLECTOR,  
UNION TERRITORY OF LAKSHADWEEP ADMINISTRATION,  
COLLECTORATE, KAVARATTI, LAKSHADWEEP, PIN - 682555
- 3 THE DIRECTOR,  
DEPARTMENT OF TOURISM DEVELOPMENT, UNION TERRITORY OF  
LAKSHADWEEP ADMINISTRATION, KAVARATTI, PIN - 682555
- 4 THE DEPUTY COLLECTOR/BLOCK DEVELOPMENT OFFICER,  
AGATHI ISLAND, LAKSHADWEEP, PIN - 682553

BY ADV R.V.SREEJITH, SC, U.T.ADMINISTRATION OF  
LAKSHADWEEP

RESPONDENTS/PETITIONER & 5<sup>TH</sup> RESPONDENT:



W.A.Nos.1780 & 1805 of 2024



2024:KER:83954

4

- 1 BARKATH,  
AGED 50 YEARS  
S/O SAYED MOHAMMED CHALLAKADA, KURIYAPPADA, AGATHI,  
LAKSHADWEEP, PIN - 682553
  
- 2 LAKSHADWEEP COASTAL ZONE MANAGEMENT AUTHORITY,  
LAKSHADWEEP ADMINISTRATION, KAVARATTI ISLAND,  
LAKSHADWEEP-, PIN - 682555

OTHER PRESENT:

SRI. R.V.SREEJITH, SC, U.T.ADMINISTRATION OF  
LAKSHADWEEP

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON  
11.11.2024, ALONG WITH W.A.NO.1780 OF 2024, THE COURT ON THE  
SAME DAY DELIVERED THE FOLLOWING:

HIGH COURT OF KERALA  
CERTIFIED COPY



## **JUDGMENT**

### **Anil K. Narendran, J.**

These appeals arise out of the interim orders dated 01.11.2024 of the learned Single Judge in W.P.(C)No.38200 of 2024 and W.P.(C)No.38174 of 2024. The appellants are respondents 1 to 4 in those writ petitions. The 5<sup>th</sup> respondent in those writ petitions, namely, Lakshadweep Coastal Zone Management Authority, is arrayed as the 2<sup>nd</sup> respondent in these writ appeals.

2. W.P.(C)No.38200 of 2024 is one filed by the 1<sup>st</sup> respondent in W.A.No.1780 of 2024 seeking a writ of certiorari to quash Ext.P5 communication dated 24.06.2024 issued by the 2<sup>nd</sup> appellant District Collector to the 3<sup>rd</sup> appellant Director, Department of Tourism Development to the extent it allots 30,000 sq.m. of land (southern side of Thinnakkara) to the Department of Tourism for the purpose of development, operation, maintenance and management of Tent City at Thinnakkara Island. The petitioner has also sought for a declaration that the 1<sup>st</sup> appellant Union Territory of Lakshadweep Administration has no manner of any right, title or interest over the accreted land



allotted to the 3<sup>rd</sup> appellant under Ext.P5. The documents marked as Exts.P2, P2(a) and P2(b) are copies of rough pattas (R.P.Nos.4544 of 1999, 4669 of 1996 and 4670 of 1996) issued after the completion of survey operations, in the name of Shamsudheen Koya (1<sup>st</sup> respondent's father) and others, in respect of property comprised in Survey Nos.6/1, 6/3, 7/1 and 7/3 of Thinnakkara Island.

3. W.P.(C)No.38174 of 2024 is one filed by the 1<sup>st</sup> respondent in W.A.No.1805 of 2024 seeking a writ of certiorari to quash Ext.P6 communication dated 24.06.2024 issued by the 2<sup>nd</sup> appellant District Collector to the 3<sup>rd</sup> appellant Director, Department of Tourism Development to the extent it allots 12,640 sq.m. (eastern side of BSNL CLS) to the Department of Tourism for the purpose of development, operation, maintenance and management of Tent City at Bengaram Island. The petitioner has also sought for a declaration that the 1<sup>st</sup> appellant Union Territory of Lakshadweep Administration has no manner of any right, title or interest over the accreted land allotted to the 3<sup>rd</sup> appellant under Ext.P6. The document marked as Ext.P1(a) is a copy of rough patta (R.P.No.4551 of 1995) issued after the completion of



survey operations, jointly in the name of Challakkada Sayed Mohammed (1<sup>st</sup> respondent's father) and others, in respect of property having an extent of 4170 sq.m. comprised in Survey No.16/8 of Bengaram Island.

4. On 01.11.2024, when the writ petitions came up for admission, the learned Single Judge, after considering the arguments advanced by the learned Senior Counsel for the writ petitioner and the learned Standing Counsel for Lakshadweep Administration with reference to the provisions contained in Regulations 11(4) and 78 of the Laccadive, Minicoy and Amindivi Islands Land Revenue and Tenancy Regulations, 1965 and the law laid down by a learned Single Judge of this Court in **Kasimkoya Biyyammabiyoda v. Union of India [2020 (5) KLT 63]**, found that the matter requires a detailed hearing. Hence the appellants herein are directed to file a statement within ten days and till then they are directed to maintain *status quo* in respect of the accreted land abutting the registered holding of the petitioner in the respective writ petitions, beyond and towards the sea on the eastern side in Thinnakkara Island and Bengaram Island. By the said order, the learned Single Judge posted the writ petitions on



14.11.2024.

5. The interim orders dated 01.11.2024 of the learned Single Judge in W.P.(C)No.38200 of 2024 and W.P.(C)No.38174 of 2024 are under challenge in these writ appeals, invoking the provisions under Section 5(i) of the Kerala High Court Act, 1958.

6. On 08.11.2024, we heard arguments of the learned Additional Solicitor General of India for the appellants and the learned Senior Counsel for the 1<sup>st</sup> respondent-writ petitioner in the respective writ appeals.

7. During the course of arguments, the learned Additional Solicitor General of India for the appellants and the learned Senior Counsel for the 1<sup>st</sup> respondent-writ petitioner in the respective writ appeals addressed arguments with reference to the provisions contained in Regulations 11(4) and 78 of the Laccadive, Minicoy and Amindivi Islands Land Revenue and Tenancy Regulations, 1965 and also the law laid down by a learned Single Judge in **Kasimkoya Biyyammabiyoda [2020 (5) KLT 63]**. The learned Senior Counsel for the 1<sup>st</sup> respondent-writ petitioner has also raised the question of maintainability of the writ appeal, under Section 5(i) of the Kerala High Court Act, against an ad





interim order of the learned Single Judge. In support of that contention, the learned Senior Counsel placed reliance on the judgment of a Larger Bench of this Court in **K.S. Das v. State of Kerala [1992 (2) KLT 358]** and the judgment of a Division Bench of this Court in **Thomas P.T. and another v. Bijo Thomas and others [2021 (6) KLT 196]**.

8. Section 5 of the Kerala High Court Act deals with appeal from judgment or order of Single Judge. As per Section 5(i) of the Act, an appeal shall lie to a Bench of two Judges from a judgment or order of a Single Judge in the exercise of original jurisdiction. On the question of maintainability of a writ appeal under Section 5(i) of the Kerala High Court Act, against an interim order passed by a learned Single Judge during the pendency of the writ petition, the Larger Bench in **K.S. Das [1992 (2) KLT 358]** held that the word 'order' in Section 5(i) of the Kerala High Court Act includes, apart from other orders, orders passed by the High Court in miscellaneous petitions filed in the writ petitions provided the orders are to be in force pending the writ petition. An appeal would lie against such orders only if the orders substantially affect or touch upon the substantial rights or



liabilities of the parties or are matters of moment and cause substantial prejudice to the parties. The nature of the 'order' appealable belongs to the category of 'intermediate orders' referred to by the Apex Court in **Madhu Limaye v. State of Maharashtra [(1977) 4 SCC 551]**. The word 'order' is not confined to 'final order' which disposes of the writ petition. The 'orders' should not however, be ad-interim orders in force pending the miscellaneous petition or orders merely of a procedural nature. Paragraph 46 of the said decision reads thus;

"46. We are of the view that the order appealed against in **State of Kerala v. Thankamma [1968 KLT 390]** under Section 5(i) was a 'preliminary judgment' dealing with the vires of the relevant provisions and the decision of the Full Bench was correct on facts. The observations of the Division Bench in **P.K. Kunju v. State of Kerala [1970 KLT 644]** against orders as going to the 'root' are rather too wide. So far as the decision in **Mohammed Haji v. Ayamma [1976 KLT 326]** is concerned, it related to Section 5(iii) and has no relevance. The decision of the Full Bench in **State of Kerala v. Sudarsan Babu [1983 KLT 764]** dealt with an appeal refusing to review an order directing issue of notice to the Speaker of the Legislative Assembly and the ultimate conclusion that the order is not appealable is, in our view, correct, but with great respect, we do not agree that the word 'order' in Section 5(i) takes



its colour from the word 'judgment' in Section 5(i). We also do not agree, with great respect, with the view in **State of Kerala v. Krishnankutty [1985 KLT 201]** holding that 'order' in Section 5(i) is in the nature of a 'final order'. We also do not agree with the obiter observations in **Damodaran v. Sankaran [1985 KLT 153]** in so far as they related to Section 5(i), and we are not concerned with the conclusions therein relating to Section 5(ii).

Conclusion: (1) The word 'order' in Section 5(i) of the Kerala High Court Act, 1958 includes, apart from other orders, orders passed by the High Court in miscellaneous petitions filed in the writ petitions provided the orders are to be in force pending the writ petition. An appeal would lie against such orders only if the orders substantially affect or touch upon the substantial rights or liabilities of the parties or are matters of moment and cause substantial prejudice to the parties. The nature of the 'order' appealable belongs to the category of 'intermediate orders' referred to by the Supreme Court in **Madhu Limaye [(1977) 4 SCC 551]**. The word 'order' is not confined to 'final order' which disposes of the writ petition. The 'orders' should not however, be ad-interim orders in force pending the miscellaneous petition or orders merely of a procedural nature.

(2) But this does not mean that the Division Bench hearing the appeal against such 'orders' will have to admit the appeal or have to modify the impugned order or set it aside the same in every case. There is difference between the question whether an appeal lies to a Division Bench and as



to the scope of interference. Normally, discretionary orders are not interfered with unless the impugned orders are without jurisdiction, contrary to law, or are perverse, and they also cause serious prejudice to the parties in such a manner that it might be difficult to restore the status quo ante or grant adequate compensation. The idea is to provide an internal remedy in such cases without compelling the parties to go all the way to the Supreme Court under Article 136 of the Constitution of India or increase the burden of that court unnecessarily.

(3) It will, however, be incumbent upon the appellant to serve the counsel who has appeared before the Single Judge for the opposite party (unless of course the counsel's authority has been revoked or he is dead) and when such appeals against orders come up in appeal for admission before the Division Bench, it will be open to the Bench to treat such service as mentioned above as sufficient service on the parties (unless the court, in the circumstances of the case, thinks otherwise) and to dispose of the appeal either at the stage of admission or soon thereafter, after considering the facts of the case or subsequent events. This would generally obviate admission of the writ appeals, issue of notice and the passing of interim orders pending writ appeals."

9. In **Thomas P.T. [2021 (6) KLT 196]**, a Division Bench of this Court noticed that the view that was upheld by the Larger Bench in **K.S. Das [1992 (2) KLT 358]** was that even though an appeal could be filed against an interlocutory order



passed in a writ petition, in order to be qualified for challenge in an appeal, the order shall be either substantially affecting or touching upon the substantial rights or liabilities of the parties or which are matters of moment and cause substantial prejudice to the parties. According to the Larger Bench, the nature of the order appealable belongs to the category of intermediate orders referred to by the Apex Court in **Madhu Limaye [(1977) 4 SCC 551]**. It was, however, clarified by the Larger Bench that such orders should not, however, be ad interim orders or orders merely of a procedural nature.

10. In the instant case, on 01.11.2024, when W.P.(C)Nos.38174 of 2024 and 38200 of 2024 came up for consideration, the learned Senior Counsel for the writ petitioner and the learned Standing Counsel for Lakshadweep Administration addressed arguments with reference to the provisions contained in the Laccadive, Minicoy and Amindivi Islands Land Revenue and Tenancy Regulations and the law laid down by a learned Single Judge of this Court in **Kasimkoya Biyyammabiyoda [2020 (5) KLT 63]**. The learned Single Judge noticed the arguments advanced by both sides in



paragraphs 3 and 4 of the impugned orders. In paragraph 4 of the impugned orders, the learned Single Judge has also distinguished the decision in **Kasimkoya Biyyammabiyoda [2020 (5) KLT 63]**, which is one relied on by the learned Standing Counsel for Lakshadweep Administration, in support his contention that possession and ownership of accreted land vests with the Government alone.

11. Having considered the submissions made by the learned Senior Counsel for the 1<sup>st</sup> respondent-writ petitioner and the learned Additional Solicitor General of India for the appellants, in the light of the law laid down in the decisions referred to supra, we find that the impugned orders of the learned Single Judge cannot be treated as an ad interim order or an order merely of a procedural nature. Such an order substantially touching upon the rights of the parties, which is one passed after taking note of the rival contentions, is an order which can be challenged in a writ appeal filed under Section 5(i) of the Kerala High Court Act. Therefore, the contentions to the contra raised by the learned Senior Counsel for the 1<sup>st</sup> respondent-writ petitioner can only be rejected as untenable and we do so.



12. Though rival contentions have been raised on the maintainability of the writ petitions, in view of the statutory remedy provided under Regulations 11(4) and 78 of the Laccadive, Minicoy and Amindivi Islands Land Revenue and Tenancy Regulations, we do not propose to consider that issue in these proceedings. It is for the parties to raise such contentions before the learned Single Judge. The legal contention raised, relying on the decision in **Kasimkoya Biyyammabiyoda [2020 (5) KLT 63]**, that possession and ownership of accreted land vests with the Government alone, is also left open to be raised before the learned Single Judge, at the appropriate stage.

13. The interim relief sought for in the writ petitions is stay of operation of the communication dated 24.06.2024 of the 2<sup>nd</sup> appellant District Collector addressed to the 3<sup>rd</sup> respondent Director, Department of Tourism Development and all further proceedings pursuant thereto, to the extent it allots the accreted land in front of the property covered by Exts.P2, P2(a) and P2(b) rough pattas in W.P.(C)No.38200 of 2024 and Ext.P1(a) rough patta in W.P.(C)No.38174 of 2024 to the Department of Tourism for the purpose of development, operation, maintenance and



management of Tent City at Thinnakkara Island/Bengaram Island.

14. During the course of arguments of the learned Additional Solicitor General of India, who appeared online, made available for the perusal of this Court, through the learned Standing Counsel for Lakshadweep Administration, a few photographs of the temporary constructions being made in connection with Tent City at Thinnakkara Island and Bengaram Island, on the accreted land in front of the property covered by Exts.P2, P2(a) and P2(b) rough pattas in W.P.(C)No.38200 of 2024 and Ext.P1(a) rough patta in W.P.(C)No.38174 of 2024. Copy of those photographs were handed over to the learned Senior Counsel for the 1<sup>st</sup> respondent-writ petitioner, who pointed out Ext.P13 photographs in W.P.(C)No. 38200 of 2024 and Ext.P14 photographs in W.P.(C)No.38174 of 2024.

15. As evident from the photographs, the structures put up on the accreted land for Tent City at Thinnakkara Island and Bengaram Island are only temporary structures, mainly tents for the accommodation of tourists. The construction of the tents is nearing completion. A substantial amount has already been spent for putting up such temporary structures, for promoting tourism.





In such circumstances, we find no reason to sustain the interim order of status quo granted by the learned Single Judge in both the writ petitions and the same is modified to the effect that any constructions made for Tent City in Thinnakkara Island and Bengaram Island, on the accreted land in front of the property covered by Exts.P2, P2(a) and P2(b) rough pattas in W.P.(C)No.38200 of 2024 and Ext.P1(a) rough patta in W.P.(C)No.38174 of 2024, shall be subject to the outcome of the writ petitions.

The writ appeals are disposed of by modifying as above the interim orders dated 01.11.2024 of the learned Single Judge in W.P.(C)No.38200 of 2024 and W.P.(C)No.38174 of 2024.

Sd/-

**ANIL K. NARENDRAN, JUDGE**

Sd/-

**MURALEE KRISHNA S., JUDGE**