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Association for Environment Protection v State of Kerala, 2013

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4941 OF 2013
(Arising out of SLP(C) No. 18837 of 2006)

Association for Environment Protection

....Appellant

versus

State of Kerala and others

....Respondents

J U D G M E N T

G.S. SINGHVI, J.

1. Leave granted.
2. Since time immemorial, people across the world have always made efforts to preserve and protect the natural resources like air, water, plants, flora and fauna. Ancient scriptures of different countries are full of stories of man's zeal to protect the environment and ecology. Our sages and saints always preached and also taught the people to worship earth, sky, rivers, sea, plants, trees and every form of life. Majority of people still consider it as their sacred duty to protect the plants, trees, rivers, wells, etc., because it is believed that they belong to all living creatures.

3. The ancient Roman Empire developed a legal theory known as the “Doctrine of the Public Trust”. It was founded on the premise that certain common properties such as air, sea, water and forests are of immense importance to the people in general and they must be held by the Government as a trustee for the free and unimpeded use by the general public and it would be wholly unjustified to make them a subject of private ownership. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial exploitation to satisfy the greed of few.

4. Although, the Constitution of India, which was enforced on 26.1.1950 did not contain any express provision for protection of environment and ecology, the people continued to treat it as their social duty to respect the nature, natural resources and protect environment and ecology. After 26 years, Article 48-A was inserted in Part IV of the Constitution and the State was burdened with the responsibility of making an endeavour to protect and improve the environment and to safeguard the forest and wildlife of the country. By the same amendment, Fundamental Duties of the citizens were enumerated in the form of Article 51-A (Part-IV A). These include the duty to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures [Article 51-A(g)].

5. The Courts in different jurisdictions have, time and again, invoked the public trust doctrine for giving judicial protection to environment, ecology and natural resources. This Court also recognized the importance of the public trust doctrine and applied the same in several cases for protecting natural resources which have been treated as public properties and are held by the Government as trustee of the people. The judgment in *M.C. Mehta v. Kamal Nath* (1997) 1 SCC 388 is an important milestone in the development of new jurisprudence by the Courts in this country for protection of environment. In that judgment, the Court considered the question whether a private company running tourists resort in Kullu-Manali valley could block the flow of Beas river and create a new channel to divert the river to at least one kilometer down stream. After advertng to the theoretical and philosophical basis of the public trust doctrine and judgments in *Illinois Central Railroad Co. v. People of the State of Illinois*, 146 US 387; *Gould v. Greylock Reservation Commission* 350 Mass 410 (1966); *Sacco v. Development of Public Works*, 532 Mass 670; *Robbins v. Deptt. of Public Works* 244 NE 2d 577 and *National Audubon Society v. Superior Court of Alpine County* 33 Cal 3d 419, this Court observed:

“Our legal system — based on English common law — includes the public trust doctrine as part of its jurisprudence. The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the sea-shore, running waters, airs, forests and ecologically fragile lands. The State as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership.

We are fully aware that the issues presented in this case illustrate the classic struggle between those members of the public who would preserve our rivers, forests, parks and open lands in their pristine purity and those charged with administrative responsibilities who, under the pressures of the changing needs of an increasingly complex society, find it necessary to encroach to some extent upon open lands heretofore considered inviolate to change. The resolution of this conflict in any given case is for the legislature and not the courts. If there is a law made by Parliament or the State Legislatures the courts can serve as an instrument of determining legislative intent in the exercise of its powers of judicial review under the Constitution. But in the absence of any legislation, the executive acting under the doctrine of public trust cannot abdicate the natural resources and convert them into private ownership, or for commercial use. The aesthetic use and the pristine glory of the natural resources, the environment and the ecosystems of our country cannot be permitted to be eroded for private, commercial or any other use unless the courts find it necessary, in good faith, for the public good and in public interest to encroach upon the said resources.”

6. In *M.I. Builders Pvt. Ltd. v. Radhey Shyam Sahu* (1999) 6 SCC 464, the Court applied public trust doctrine for upholding the order of Allahabad High Court which had quashed the decision of Lucknow Nagar Mahapalika permitting appellant – M.I. Builders Pvt. Ltd. to construct an underground shopping complex in Jhandewala Park, Aminabad Market, Lucknow, and directed demolition of the construction made on the park land. The High Court had noted that Lucknow Nagar Mahapalika had entered into an agreement with the appellant for construction of shopping complex and given it full freedom to lease out the shops and also to sign agreement on its behalf and held that this was impermissible. On appeal by the builders, this Court held that the terms of agreement were unreasonable, unfair

and atrocious. The Court then invoked the public trust doctrine and held that being a trustee of the park on behalf of the public, the Nagar Mahapalika could not have transferred the same to the private builder and thereby deprived the residents of the area of the quality of life to which they were entitled under the Constitution and Municipal Laws.

7. In *Intellectuals Forum, Tirupathi v. State of A.P.* (2006) 3 SCC 549, this Court again invoked the public trust doctrine in a matter involving the challenge to the systematic destruction of percolation, irrigation and drinking water tanks in Tirupati town, referred to some judicial precedents including *M.C. Mehta v. Kamal Nath* (supra), *M.I. Builders Pvt. Ltd.* (supra), *National Audubon Society* (supra), and observed:

“This is an articulation of the doctrine from the angle of the affirmative duties of the State with regard to public trust. Formulated from a negatory angle, the doctrine does not exactly *prohibit* the alienation of the property held as a public trust. However, when the State holds a resource that is freely available for the use of the public, it provides for a high degree of judicial scrutiny on any action of the Government, no matter how consistent with the existing legislations, that attempts to restrict such free use. To properly scrutinise such actions of the Government, the courts must make a distinction between the Government’s general obligation to act for the public benefit, and the special, more demanding obligation which it may have as a trustee of certain public resources.....”

8. In *Fomento Resorts and Hotels Ltd. v. Minguel Martins* (2009) 3 SCC 571, this Court was called upon to consider whether the appellant was entitled to block passage to the beach by erecting fence in the garb of protecting its property. After

noticing the judgments to which reference has been made hereinabove, the Court held:

“The public trust doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes. This doctrine puts an implicit embargo on the right of the State to transfer public properties to private party if such transfer affects public interest, mandates affirmative State action for effective management of natural resources and empowers the citizens to question ineffective management thereof.

The heart of the public trust doctrine is that it imposes limits and obligations upon government agencies and their administrators on behalf of all the people and especially future generations. For example, renewable and non-renewable resources, associated uses, ecological values or objects in which the public has a special interest (i.e. public lands, waters, etc.) are held subject to the duty of the State not to impair such resources, uses or values, even if private interests are involved. The same obligations apply to managers of forests, monuments, parks, the public domain and other public assets. Professor Joseph L. Sax in his classic article, “The Public Trust Doctrine in Natural Resources Law: Effective Judicial Intervention” (1970), indicates that the public trust doctrine, of all concepts known to law, constitutes the best practical and philosophical premise and legal tool for protecting public rights and for protecting and managing resources, ecological values or objects held in trust.

The public trust doctrine is a tool for exerting long-established public rights over short-term public rights and private gain. Today every person exercising his or her right to use the air, water, or land and associated natural ecosystems has the obligation to secure for the rest of us the right to live or otherwise use that same resource or property for the long-term and enjoyment by future generations. To say it another way, a landowner or lessee and a water right holder has an obligation to use such resources in a manner as not to impair or diminish the people's rights and the people's long-term interest in that property or resource, including down slope lands, waters and resources.

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We reiterate that natural resources including forests, water bodies, rivers, seashores, etc. are held by the State as a trustee on behalf of the people and especially the future generations. These constitute common properties and people are entitled to uninterrupted use thereof. The State cannot transfer public trust properties to a private party, if such a transfer interferes with the right of the public and the court can invoke the public trust doctrine and take affirmative action for protecting the right of people to have access to light, air and water and also for protecting rivers, sea, tanks, trees, forests and associated natural ecosystems.”

9. We have prefaced disposal of this appeal by discussing the public trust doctrine and its applicability in different situations because the Division Bench of the Kerala High Court, which dealt with the writ petition filed by the appellant for restraining the respondents from constructing a building (hotel/restaurant) on the banks of river Periyar within the area of Aluva Municipality skirted the real issue and casually dismissed the writ petition only on the ground that while the appellant had questioned the construction of a hotel, the respondents were actually constructing a restaurant as part of the project for renovation and beautification of Manalpuram Park.

10. The people of the State of Kerala, which is also known world over as the ‘God’s Own Country’ are very much conscious of the imperative of protecting environment and ecology in general and the water bodies, i.e., the rivers and the lakes in particular, which are integral part of their culture, heritage and an important source of livelihood. This appeal is illustrative of the continuing endeavour of the people of the State to ensure that their rivers are protected from

all kinds of man made pollutions and/or other devastations.

11. The appellant is a registered body engaged in the protection of environment in the State of Kerala. It has undertaken scientific studies of environment and ecology, planted trees in public places and published magazines on the subjects of environment and ecology. In 2005, Aluva Municipality reclaimed a part of Periyar river within its jurisdiction and the District Tourism Promotion Council, Ernakulam decided to construct a restaurant on the reclaimed land by citing convenience of the public coming on Sivarathri festival as the cause. The proposal submitted by the District Tourism Promotion Council was forwarded to the State Government by the Director, Department of Tourism by including the same in the project for renovation and beautification of Manalpuram Park. Vide order dated 20.5.2005, the State Government accorded administrative sanction for implementation of the project at an estimated cost of Rs.55,72,432/-.

12. When the District Promotion Council started construction of the building on the reclaimed land, the appellant filed Writ Petition (C) No.436/2006 and prayed that the respondents be restrained from continuing with the construction of building on the banks of river Periyar and to remove the construction already made. These prayers were founded on the following assertions:

- a) Periyar river is a holy river called “Dakshin Ganga”, on the banks of which famous Sivarathri festival is conducted.

- b) The river provides water to lakhs of people residing within the jurisdiction of 44 local bodies on its either side.
- c) In 1989, a study was conducted by an expert body and Periyar Action Plan was submitted to the Government for protecting the river but the latter has not taken any action.
- d) In December, 2005, Aluva Municipality reclaimed the land which formed part of the river and in the guise of promotion of tourism, efforts are being made to construct a hotel.
- e) The construction of hotel will adversely affect the flow of water as well as the river bed.
- f) The construction of the building will adversely affect Marthanda Varma Bridge.
- g) The respondents have undertaken construction without conducting any environmental impact assessment and in violation of the provisions of Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001.
- h) The construction of hotel building is *ultra vires* the provisions of notification dated 13.1.1978 issued by the State Government, which mandates assessment of environmental impact as a condition precedent for execution of any project costing more than Rs.10,00,000/-.

13. In the written statement filed on behalf of the respondents, the following averments were made:

- (i) District Tourism Promotion Council has undertaken construction of a restaurant and not a hotel as part of the project involving redevelopment and beautification of Manalpuram Park.
- (ii) The State Government has accorded sanction vide G.O. dated 20.5.2005 for construction of a restaurant.
- (iii) The restaurant is meant to serve large number of people who come during Sivarathri celebrations.
- (iv) The construction of restaurant will neither obstruct free flow of water in the river nor cause damage to the ecology of the area.
- (v) There will be no diversion of water and the strength of the pillars of Marthanda Varma Bridge will not be affected.

14. The Division Bench of the High Court took cognizance of the sanction accorded by the State Government vide order dated 20.5.2005 for renovation and beautification of Manalpuram Park and dismissed the writ petition by simply observing that only a restaurant is being constructed and not a hotel, as claimed by the appellant. The cryptic reasons recorded by the High Court for dismissing the writ petition are extracted below:

“From the facts as gathered above, it transpires that no hotel at all is being constructed in the river belt. The petitioner does not appear to have ascertained the correct facts before filing the present petition. Main allegation by the petitioner that a hotel is being constructed on the banks of Periyar river is found to be incorrect. There is no merit in this writ petition. It is hereby dismissed.”

15. Shri Deepak Prakash, learned senior counsel for the appellant invited the Court's attention to order dated 13.1.1978 issued by the State Government and argued that the sanction accorded by the State Government on 20.5.2005 for renovation and beautification of Manalpuram Park did not have the effect of modifying G.O. dated 13.1.1978 which mandates that all development schemes costing Rs.10 lakhs or more should be referred to the Environmental Planning and Coordination Committee for review and assessment. Learned counsel submitted that unless the project was reserved for consideration by the Committee constituted by the State Government, the respondents could not have undertaken construction of the restaurant.

16. Learned counsel for the respondents could not draw our attention to any document to show that the construction of restaurant building was undertaken after obtaining clearance from the Environmental Planning and Coordination Committee as per the requirement of G.O. dated 13.1.1978. She, however, submitted that the construction of restaurant which is an integral part of the project relating to renovation and beautification of Manalpuram Park is not going to adversely impact the flow of Periyar river or otherwise affect the environment and ecology of the area.

17. We have considered the respective arguments and scrutinized the record. On 13.1.1978, the Government of Kerala accepted the recommendations made by the State Committee on Environmental Planning and Coordination and issued an order, which was published in Official Gazette dated 7.2.1978 for review and assessment of environmental implications of various projects. The relevant portions of that order are reproduced below:

“In the light of the recommendation of the State Committee on Environmental Planning and Co-operation in their second meeting held on 23.7.1977, Government are pleased to order as follows:

1. All development schemes costing Rs.10 lakhs and above will be referred to the Committee on Environmental Planning and Co-ordination for review and assessment of environmental implications in order to integrate environmental concerns and the clearance of the committee will be obtained before the scheme is sanctioned and taken up for execution.

2. In the case of projects costing Rs.25 lakhs and above the Department concerned will while referring the projects for review and clearance by the committee furnish detailed and comprehensive environmental impact statement for the project prepared with the help of experts.

3. In the case of schemes costing less than Rs.10 lakhs, the Environmental implication will be assessed by the concerned department in the light of guidelines formulated by the committee and the concerned department will be responsible to ensure that suitable remedial measures for protecting the environment are incorporated in the scheme itself before the schemes are sanctioned and taken up for implementation. If the department concerned feels certain that with the safeguards provided in the scheme, the ecological stability and purity of environment will be maintained they can go ahead with the scheme without reference to the committee. Doubtful cases will however be referred to the committee for clearance.

By order of the Government.

SD/-

P.K.Rajasekharan Nair
Under Secretary."

18. By G.O. dated 20.5.2005, the State Government accorded administrative sanction for renovation and beautification of Manalpuram Park and construction of a restaurant at Aluva at an estimated cost of Rs.55,72,432/-. That order reads as under:

"GOVERNMENT OF KERALA

Abstract

Department of Tourism -Working Group on Plan Schemes -
Renovation of Manalppuram Park and construction of
Restaurant at Aluva - Administrative Sanction accorded –
Orders issued.

TOURISM (A) DEPARTMENT

G.O.(Rt) No.3974/05/GAD. Dated, Thiruvananthapuram
20.05.2005

Read:

Letter No.C2-22446/04, dated 11.04.2005 from the
Director, Department of Tourism, Thiruvananthapuram.

ORDER

The Aluva Manalppuram is a significant pilgrim centre as well as tourism spot. The Aluva Manalppuram is famous for Shivarathri celebrations. The pilgrims visiting Kalady, the birthplace of Shri Shankaracharya include this spot also in the schedule of visit. The Director, Department of Tourism as per the letter read above has forwarded a proposal submitted by the District Collector and Chairman, DTPC, Ernakulam for the renovation of the Manalppuram Park and construction of Restaurant at Aluva and has requested for Administrative

Sanction for the project at an estimated cost of Rs.55,72,432/- as detailed below.

1. Beautification of Manalppuram Park	Rs.24,10,421/-
2. Construction of Restaurant	<u>Rs.31,62,011/-</u>
<u>TOTAL</u>	<u>Rs.55,72,432/-</u>

The Working Group that met on 29.04.2005 considered the proposal of the Director, Department of Tourism and approved it. Sanction is therefore accorded for the Project for the renovation of Manalppuram Park and construction of Restaurant at Aluva at an estimated cost of Rs.55,72,432 /- (Rupees Fifty Five Lakhs Seventy Two Thousand Four Hundred and Thirty two only) .

The expenditure on this account will be met from the head of account “3452-80-800-90(29)-Upgradation and creation of infrastructure facilities at Tourist Centres (Plan)”. The work will be executed through DTPC, Ernakulam and will be completed within a period of six months.

By Order of the Governor

D. Saraswathy Amma,
Deputy Secretary.”

JUDGMENT

19. There is nothing in the language of G.O. dated 20.5.2005 from which it can be inferred that while approving the proposal forwarded by the Director, Department of Tourism for renovation and beautification of Manalpuram Park at an estimated cost of Rs.55,72,432/-, the State Government had amended G.O. dated 13.1.1978 or otherwise relaxed the conditions embodied therein. The record also does not show that the Department of Tourism had furnished a detailed comprehensive environmental impact statement for the project so as to

enable the Committee to make appropriate review and assessment. Therefore, it must be held that the execution of the project including construction of restaurant is *ex facie* contrary to the mandate of G.O. dated 13.1.1978, which was issued by the State in discharge of its Constitutional obligation under Article 48-A. Unfortunately, the Division Bench of the High Court ignored this crucial issue and casually dismissed the writ petition without examining the serious implications of the construction of a restaurant on the land reclaimed by Aluva Municipality from the river.

20. G.O. dated 13.1.1978 is illustrative of the State Government's commitment to protect and improve the environment as envisaged under Article 48A. The object of this G.O. is to ensure that no project costing more than Rs.10 lakhs should be executed and implemented without a comprehensive evaluation by an expert body which can assess possible impact of the project on the environment and ecology of the area including water bodies, i.e., rivers, lakes etc. If the project had been referred to the Environmental Planning and Co-ordination Committee for review and assessment of environmental implications then it would have certainly examined the issue relating to desirability and feasibility of constructing a restaurant, the possible impact of such construction on the river bed and the nearby bridge as also its impact on the people of the area. By omitting to refer the project to the Committee, the District Tourism Promotion Council and the Department of Tourism conveniently avoided scrutiny of the project in the light of

the parameters required to be kept in view for protection of environment of the area and the river. The subterfuge employed by the District Promotion Council and the Department of Tourism has certainly resulted in violation of the fundamental right to life guaranteed to the people of the area under Article 21 of the Constitution and we do not find any justification to condone violation of the mandate of order dated 13.1.1978.

21. In the result, the appeal is allowed and the impugned order is set aside. As a sequel to this, the writ petition filed by the appellant is allowed and the respondents are directed to demolish the structure raised for establishing a restaurant as part of renovation and beautification of Manalpuram Park at Aluva. The needful be done within a period of three months from today.

.....J.
[G.S. SINGHVI]

New Delhi,
July 2, 2013.

.....J.
[SHARAD ARVIND BOBDE]