

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON**

THURSDAY, THE 10TH DAY OF DECEMBER 2015/19TH AGRAHAYANA, 1937

WP(C).No. 18690 of 2009 (S)

PETITIONER(S):

**FORUM FOR RURAL & URBAN DEVELOPMENT AND
AND SERVICE, REG.NO.P.429/07, KANRAJ BUILDINGS,
PATHANAMTHITTA, REP. BY ITS, PRESIDENT,
SHRI. KHAN SHAJAHAN, "KANRAJ BHAVAN", PATHANAMTHITTA,
PATHANAMTHITTA P.O.**

**BY ADVS.SRI.K.RAMAKUMAR (SR.)
SRI.UNNI. K.K. (EZHUMATTOOR)**

RESPONDENT(S):

- 1. STATE OF KERALA,
REP. BY CHIEF SECRETARY, SECRETARIAT
THIRUVANANTHAPURAM.**
- 2. THE SECRETARY TO GOVERNMENT,
AGRICULTURAL DEPARTMENT, SECRETARIAT, GOVT. OF KERALA,
THIRUVANANTHAPURAM.**
- 3. THE LAND REVENUE COMMISSIONER,
THIRUVANANTHAPURAM.**
- 4. THE DISTRICT COLLECTOR,
KOLLAM.**
- 5. THE REVENUE DIVISIONAL OFFICER,
KOLLAM.**
- 6. THE PRINCIPAL AGRICULTURAL OFFICER,
KOLLAM.**
- 7. THRIKKOVILVATTOM GRAMA PANCHAYATH,
THRIKKOVILVATTOM, KOLLAM DISTRICT,
REP. BY ITS SECRETARY.**

Msv/

WP(C).No. 18690 of 2009 (S)

8. MR.ABDUL SALAM, CHAIRMAN,
QUILON MEDICAL TRUST, KALLUMTHAYAM, KILIKOLLOOR,
KOLLAM DISTRICT.
9. THE MEDICAL COUNCIL OF INDIA,
AIWAN-E, GALIB MARG, KOTLA ROAD,
NEW DELHI-110 002, REP. BY ITS SECRETARY.
10. THE UNION OF INDIA,
REP. BY THE SECRETARY,
MINISTRY OF ENVIRONMENT AND FOREST, NEW DELHI.

R1-R6 BY SENIOR GOVERNMENT PLEADER SRI.P.I.DAVIS

R7 BY ADV. SRI.B.SURESH KUMAR

R8 BY ADVS. SRI.M.K.DAMODARAN (SR.)

SRI.SATHISH NINAN

SRI.SANTHOSH MATHEW

R9 BY ADV. SRI.TITUS MANI VETOM, SC

R10 BY ADV. SRI.N.NAGARESH, ASST. SOLICITOR GENERAL

SMT.LAILA I.S. , CGC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
27-11-2015 ALONG WITH WPC. 15757/2008 & WPC. 19577/2009,
THE COURT ON 10-12-2015,THE SAME DAY DELIVERED THE FOLLOWING:

msv/

APPENDIX

PETITIONER(S)' EXHIBITS:

- EXT.P1: A TRUE COPY OF THE ORDER GRANTING ESSENTIALITY CERTIFICATE DTD.29.10.2004 ISSUED BY THE GOVERNMENT TO THE QUILON MEDICAL TRUST, FOR STARTING A DENTAL COLLEGE IN KOLLAM DISTRICT.**
- EXT.P2: TRUE COPY OF THE ORDER DTD.29.3.2006, ISSUED BY THE GOVERNMENT GRANTING RENEWAL TO THE 8TH RESPONDENT'S TRUST.**
- EXT.P3: TRUE COPY OF THE OBJECTIONS DTD.28.7.2006 SUBMITTED BY THE KERALA SHASTRA SAHITYA PARISHATH, DISTRICT COMMITTEE, KOLLAM BEFORE THE DISTRICT COLLECTOR, KOLLAM ALONG WITH ENGLISH TRANSLATION.**
- EXT.P4: TRUE COPY OF THE APPLICATION DTD.5.8.2006 SUBMITTED BY THE 8TH RESPONDENT BEFORE THE REVENUE DIVISIONAL OFFICER, KOLLAM.**
- EXT.P5: TRUE COPY OF THE REPORT DTD.27.10.2006 SUBMITTED BY THE PRINCIPAL AGRICULTURAL OFFICER TO THE REVENUE DIVISIONAL OFFICER, KOLLAM.**
- EXT.P6: A TRUE COPY OF THE ORDER DTD.19.12.2006, PASSED BY THE REVENUE DIVISIONAL OFFICER, KOLLAM ALONG WITH ENGLISH TRANSLATION.**
- EXT.P7: TRUE COPY OF CIRCULAR NO.9911/NCA/3/2002/AD DTD.28.2.2003 ISSUED BY THE GOVERNMENT.**
- EXT.P8: TRUE COPY D.O.NO.9316/NCA/3/2002/AD DTD.28.2.2003 ISSUED BY THE GOVERNMENT.**
- EXT.P9: TRUE COPY OF THE NOTIFICATION DTD.14.9.2006 ISSUED BY THE MINISTRY OF ENVIRONMENT AND FOREST, GOVERNMENT OF INDIA, NEW DELHI.**
- EXT.P10: TRUE COPY OF THE ORDER DTD.15.5.2007 ISSUED BY THE LAND REVENUE COMMISSIONER IMPOSING NEW CONDITIONS AND FORBIDDING CONSTRUCTION.**
- EXT.P11: A TRUE COPY OF THE ORDER DTD.29.3.2007 OF THE REVENUE DIVISIONAL OFFICER GRANTING PERMISSION TO THE 8TH RESPONDENT TRUST ALONG WITH ENGLISH TRANSLATION.**
- EXT.P12: A TRUE COPY OF THE 3RD APPLICATION DTD.16.10.2007 SUBMITTED BY THE CHAIRMAN OF THE TRUST TO THE REVENUE DIVISIONAL OFFICER, KOLLAM.**
- EXT.P13: TRUE COPY OF THE ORDER DTD.31.10.2007 OF THE REVENUE DIVISIONAL OFFICER PURSUANT TO EXT.P12 APPLICATION ALONG WITH ENGLISH TRANSLATION.**

Msv/

WP(C).No. 18690 of 2009 (S)

EXT.P14: TRUE COPY OF THE COMMUNICATION DTD.17.10.2007 SENT BY THE LAND REVENUE COMMISSIONER TO THE DISTRICT COLLECTOR AND REVENUE DIVISIONAL OFFICER ALONG WITH ENGLISH TRANSLATION.

EXT.P15: TRUE COPY OF THE REVISION PETITION SUBMITTED BY THE PETITIONER BEFORE GOVERNMENT AGAINST EXT.P11.

EXT.P15(a): TRUE COPY OF THE REVISION PETITION SUBMITTED BY THE PETITIONER BEFORE GOVERNMENT AGAINST EXT.P13.

EXT.P15(b): TRUE COPY OF THE REVISION PETITION SUBMITTED BY THE PETITIONER BEFORE GOVERNMENT AGAINST EXT.P10.

EXT.P16: A TRUE COPY OF REPORT DTD.23.6.2008 FROM THE DISTRICT COLLECTOR OBTAINED BY THE GOVERNMENT IN THE REVISION PETITION FILED BY THE PETITIONER ALONG WITH ENGLISH TRANSLATION.

EXT.P17: TRUE COPY OF THE ORDER DTD.2.4.2009 OF THE GOVERNMENT DISPOSING OF THE REVISION PETITIONS FILED BY THE PETITIONER.

EXT.P18: TRUE COPY OF THE DIRECTIONS DTD.22.5.2008 ISSUED BY THE LOK AYUKTA, THIRUVANANTHAPURM, ON A COMPLAINT FROM ONE SUNIL.

EXT.P19: TRUE COPY OF THE WRIT PETITION 5081.2007 FILED BY THE QUILON MEDICAL TRUST BEFORE THIS HON'BLE COURT.

EXT.P20: TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY THE 4TH RESPONDENT IN WRIT PETITION 5081/2007 ALONG WITH COPY OF G.O.(P) 13/78 DTD.13.1.1978.

EXT.P21: TRUE COPY OF THE REPORT FROM ADDITIONAL TAHSILDAR, KOLLAM TO THE REVENUE DIVISIONAL OFFICER, KOLLAM DTD.26.10.2007.

EXT.P22: LETTER FROM THE PRINCIPLE SECREARY TO GOVERNMENT DTD.14.5.2008 TO THE DISTRICT COLLECTOR, KOLLAM.

EXT.P23: TRUE COPY OF THE WRIT PETITION 28384/2007 FILED BY THE QUILON MEDICAL TRUST BEFORE THIS HON'BLE COURT.

EXT.P24: TRUE COPY OF THE LIST OF PROJECT OR ACTIVITIES REQUIRING PRIOR ENVIRONMENTAL CLEARANCE PURSUANT EXT.P9 NOTIFICATION.

RESPONDENT(S)' EXHIBITS:

EXT.R8(a): PHOTOCOPY OF THE REVISED ESSENTIALITY CERTIFICATE DTD.8.8.2008.

EXT.R8(b): PHOTOCOPY OF CERTIFICATE NO.M3-2657/2006 DTD.14.7.2006 ISSUED BY THE 7TH RESPONDENT.

Msv/

WP(C).No. 18690 of 2009 (S)

EXT.R8(c): PHOTOCOPY OF THE REPORT OF THE EXPERTS DTD.9.8.2007.

**EXT.R8(d): PHOTOCOPY OF THE ORDER DTD.19.9.2007 PASSED BY THE
7TH RESPONDENT.**

EXT.R8(e): PHOTOCOPY OF THE ACKNOWLEDGMENT AND THE MEMO DTD.20.9.2007.

**EXT.R8(f): PHOTOCOPY OF THE NOC NO.C1-3761/08 DTD.29.4.2008 ISSUED BY THE
DIRECTOR (TECHNICAL) FOR FIRE AND RESCUE SERVICES.**

**EXT.R8(g): PHOTOCOPY OF THE NOC NO.C1-3761/08 DTD.29.4.2008 ISSUED BY THE
DIRECTOR (TECHNICAL) FOR FIRE AND RESCUE SERVICES.**

EXT.R8(h): PHOTOCOPY OF THE POWER ALLOCATION ORDER DTD.2.12.2008.

**EXT.R8(i):PHOTOCOPY OF THE PERMISSION FOR INSTALLATION OF TRANSFORMER
(ORDER NO.B3-5108/2008/CEI DTD. 6.3.2009.**

**EXT.R8(j): PHOTOCOPY OF THE INSPECTION REPORT OF THE EXPERT TEAM
APPOINTED BY THE DIRECTOR OF MEDICAL EDUCATION DTD.29.3.2008.**

EXT.R8(k): PHOTOGRAPH SHOWING THE NATURE OF PROPERTY ETC.

**EXT.R8(l): PHOTOCOPY OF LETTER NO.AC.B1/21407/2007 DTD.29.5.2008 ISUED BY THE
BOARD.**

**EXT.R8(m): CONSENT NO.PCB/HO/KLM/ICE/04/08 DTD.16.2.2008 ISSUED BY THE
BOARD.**

**EXT.R8(n): PHOTOCOPY OF THE RENEWAL OF REGISTRATION FOR THE PERIOD
2009-10 GRANTED BY THE PANCHAYAT DTD.13.4.2009.**

**EXT.R8(o): PHOTOCOPY OF THE LICENCE DTD.13.4.2009 ISSUED BY THE PANCHAYAT
DTD.13.4.2009.**

**EXT.R8(p): PHOTOCOPY OF THE REGISTRATION CERTIFICATE ISSUED BY THE
ATOMIC ENERGY REGULATORY BOARD UP TO 31.12.2014.**

**EXT.R8(q): PHOTOCOPY OF THE REGISTRATION CERTIFICATE ISSUED BY THE
ATOMIC ENERGY REGULATORY BOARD UP TO 31.12.2014.**

**EXT.R8(r): PHOTOCOPY OF THE LICENCE ISSUED BY THE DRUGS CONTROLLER FOR
OPERATION OF BLOOD BANK ON 31.10.2008.**

**EXT.R8(s): PHOTOCOPY OF THE DRUG LICENCE GRANTED BY THE ASST. DRUGS
CONTROLLER DTD.29.2.2008.**

**EXT.R8(t): PHOTOCOPY OF THE CERTIFICATE OF REGISTRATION FOR THE GENETIC
COUNSELLING ETC. GIVEN BY THE DMO, KOLLAM.**

Msv/

WP(C).No. 18690 of 2009 (S)

**EXT.R8(u): PHOTOCOPY OF DETAILED REPORT NO.A.69967 OF THE RDO KOLLAM
DTD.16.3.2009.**

**EXT.R8(v): PHOTOCOPY OF LETTER NO.5173/S3/09/H&FWD DTD.21.2.2009 SENT BY
THE STATE OF KERALA TO THE UNION GOVERNMENT.**

**EXT.R8(w): PHOTOCOPY OF CRL.M.P.NO.382/2009 AND LIST OF DOCUMENTS FILED
BEFORE THE SPECIAL JUDGE'S COURT, THIRUVANANTHAPURAM.**

EXT.R8(x): PHOTOCOPY OF THE ORDER IN CRL.MP.NO.382 OF 2009 DTD.7.4.2009.

**EXT.R8(y): PHOTOCOPY OF THE LETTER OF PERMISSION GRANTED BY THE
MINISTRY OF HEALTH AND FAMILY WELFARE TO THE TRUST FOR
ESTABLISHMENT OF A NEW MEDICAL COLLEGE DTD.13.7.2009.**

EXT.R8(z): PHOTOCOPY OF GO(RT) NO.2053/2009/H& FWD DTD.18.7.2009.

**EXT.R11(a): A TRUE COPY OF THE CERTIFICATE OF REGISTRATION OF THE SOCIETY
VIDE NO.Q. 520/07 DTD.26.9.2007.**

EXT.R11(b): A TRUE COPY OF THE LIST OF PAURASAMITHY MEMBERS.

EXT.R11(c): A TRUE COPY OF THE ORDER DTD.19.9.2007.

**EXT.R8(aa): TRUE COPY OF THE REPORT SUBMITTED ON BEHALF OF THE QUILON
MEDICAL TRUST TO THE SECRETARY THRIKOVILVATTAM GRAMA
PANCHAYAT REGARDING THE CONSTRUCTION WORK COMPLETED BY
THE QUILON MEDICAL TRUST AS ON 31.8.2007.**

**EXT.R8(ab): TRUE COPY OF THE NOTIFICATION CONSTITUTING THE STATE LEVEL
ENVIRONMENT IMPACT ASSESSMENT AUTHORITY.**

EXT.R8(ac): TRUE COPY OF THE GO(MS) NO.08.11/ENV.T. DTD.19.12.2011.

**EXT.R8(ad): TRUE COPY OF THE CHART SHOWING TH ELAND PERMITTED TO BE
CONVERTED AND THE NATURE OF USAGE AFTER THE CONVERSION.**

**EXT.R8(ae): TRUE COPY OF THE REQUEST MADE BY QUILON MEDICAL TRUST TO THE
EXECUTIVE ENGINEER, DEPARTMENT OF MINOR IRRIGATION, KOLLAM.**

**EXT.R8(af): TRUE COPY OF THE REQUEST SUBMITTED BY THE QUILON MEDICAL
TRUST TO THE SECRETARY OF THE MUNICIPAL CORPORATION, KOLLAM.**

**EXT.R8(ag): TRUE COPY OF THE JUDGMENT IN WP(C) NO.5081/2007 DTD.3.4.2007 OF
THIS HONOURABLE COURT.**

//TRUE COPY//

P.S.TO JUDGE

Msv/

'CR'

**ASHOK BHUSHAN, C.J &
P.R.RAMACHANDRA MENON, J.**

**W.P.(C) Nos.15757 of 2008
and
18690 & 19577 of 2009**

Dated this the 10th day of December 2015

J U D G M E N T

Ashok Bhushan, CJ

W.P.(C) No.18690 of 2009 filed as a public interest litigation raises environmental concern alleging illegal filling of wet land to the extent of 7.42.64 hectares (74,264 sq.m) situated within 15 kilometers from the Ashtamudi Lake, which is one of the 19 sites designated as 'wet land of international importance' in the State of Kerala. The writ petition was entertained as public interest litigation on 6.7.2009. Various orders were passed by the Division Benches from time to time including appointment of Advocate Commissioner by order dated 21.12.2010 to inspect the premises and submit a report. The Advocate Commissioner, after inspection, submitted a report. Counter affidavits by the State as well as the 8th respondent, who is the contesting respondent had already been filed. Pursuant to the order of this Court dated 30.10.2015, the petitioner has also filed an additional affidavit, in which, counter affidavit has also been filed by the 8th respondent.

W.P.(C) Nos.15757 of 2008 and
18690 & 19577 of 2009

-: 2 :-

2. W.P.(C) No.15757 of 2008 has been filed by the Chairman, Quilon Medical Trust against the report dated 22.5.2008 sent by the Kerala Lok Ayukta to the State Government, Ext.P12.

3. W.P.(C) No.19577 of 2009 has been filed by the Quilon Medical Trust praying for deletion of certain observations made by the State Government in its order dated 2.4.2009 as well as for quashing the order of the State Government dated 4.6.2009 rejecting the prayer for review of the order.

4. W.P.(C) No.18690 of 2009 is treated as the leading writ petition. The pleadings and the parties shall be referred to as described in the said writ petition. Reference of pleadings and facts in W.P.(C) No.18690 of 2009 shall be noted in detail for deciding the issue raised before us. The facts of the other two writ petitions, which are noted in the leading writ petition shall also be separately referred to the extent it requires.

5. The brief facts of the case as emerged from the pleadings of the parties are as follows:-

W.P.(C) No.18690 of 2009

The petitioner, who is a registered Society formed for the protection of environmental matters of the public interest, has filed this writ petition. The 8th respondent, one Mr.Abdul Salam, Chairman, Quilon Medical Trust, Kollam District, has formed a trust on 10.8.2003 with the object of promoting higher education in minority communities and other socially backward communities and also for promoting health care in common people. The Trust obtained an Essentiality Certificate from the State Government, which was renewed on 29.3.2006 for establishing a self financing medical college in Thazhuthala Village within Thrikkovilvattom Grama Panchayat in Block No.23 of Kollam District. The 8th respondent submitted an application to the Grama Panchayat claiming that it owns 10 Hectares 18 Ares 4 sq.m land in Thazhuthala Village, in which, it proposes to construct a medical college. A prayer was made to grant permission and approve the building plan. The Grama Panchayat, vide its Certificate dated 14.7.2006 granted sanction. In the Certificate, it was noted that the land, in which, No Objection is sought for had been used for paddy cultivation. The Grama Panchayat granted sanction with

the condition that “sanction of Land Conversion order for filling earth in the wet land to construct buildings should be obtained from Revenue Authorities”. As soon as the Grama Panchayat issued the No Objection Certificate (in short 'NOC'), an organisation, namely; Kerala Sasthra Sahithya Parishath submitted objection before the District Collector, Kollam praying that the attempt to convert the rich paddy land within the Grama Panchayat may be stopped. In the objection, it is stated that the paddy field is wet land, which is also water source needs to be protected since this paddy field is the main water level of the water sources in Thazhuthala Village. The construction in the paddy field will cause destruction of biological diversity in wet land and scarcity of water among the public.

6. After obtaining NOC from the Grama Panchayat, an application dated 5.8.2006 was submitted by the 8th respondent on behalf of Quilon Medical Trust to the Revenue Divisional Officer, Kollam seeking permission for conversion of paddy land to the extent of 2 Hectares 4.60 Ares. In the application, it is stated that the Trust proposes to locate construction of the college and the attached hospital in an extent of 2 Hectares and 4.60 Ares (5

Acres 05.05 cents). In the said application, it is also prayed that another extent of 25 Ares of land being portions of Survey Nos.291/1, 7, 11 and 275/7, 10, 11 and 13 be also permitted to be converted for providing road access. On the said application, the Revenue Divisional Officer called for a report from the Principal Agricultural Officer. The Principal Agricultural Officer inspected the site in the presence of officers of the Agricultural Department, Village Officer and representatives of the 8th respondent, Quilon Medical Trust. The Agricultural Officer noted that at present there is no paddy cultivation. The area is subjected to flooding in rainy season due to poor drainage facility. A 'Thodu' (canal) is traversing the 'Ela' from south to north extending and joining to Ashtamudi Lake. The Principal Agricultural Officer, in his concluding observation stated as follows :-

“5. **Observation**

No paddy cultivation noticed in the proposed area for the last 10 years. The proposed land for filling is now unfit for paddy cultivation. The proposed area and remaining paddy area in the Ela can be made fit for paddy cultivation after making proper drainage by deepening and widening of the existing canal. The land also needs reclamation and removal of thick growth of weeds to start cultivation of paddy. The proposal of the

Quilon Medical Trust for maintaining proper drainage system, construction of pond and water tank to save water and reuse in the Ela should be got technically examined to aid paddy cultivation in the remaining area.”

7. The Revenue Divisional Officer passed an order dated 19.12.2006, in exercise of power under the Kerala Land Utilisation Order, 1967, granting permission for conversion of 2 Hectares 2 Ares and 58 sq.m paddy land in Survey No.290 (in its different sub plots) for construction of medical college and an area of 21.08 Ares in Survey No.291 (different sub division) and Survey No.275 (different sub division) for providing road access to the site in Block No.23 of Thazhuthala Village on certain conditions. In the said order, the Revenue Divisional Officer has noted the report of the Principal Agricultural Officer that remaining paddy filed can be utilised for paddy cultivation by opening the reservoirs during the summer season and can resolve the water scarcity and irrigation. In the said order, the Revenue Divisional Officer has also noted the report by the Additional Tahsildar that the application can be allowed after scientific study and taking precautionary methods to solve the water scarcity and without affecting the environment.

8. Against the order dated 19.12.2006 granting the aforesaid permission, the Kerala Sasthra Sahithya Parishath filed an appeal before the Commissioner of Land Revenue. The Commissioner, Land Revenue entertained the appeal and directed stay of further proceedings consequent to the order dated 19.12.2006. During the pendency of the aforesaid appeal before the Commissioner, Land Revenue, the 8th respondent filed an application before the Revenue Divisional Officer stating that although permission was granted by order dated 19.12.2006, after the piling test and related scientific study, it had come out that multi-storied building cannot be constructed in the above said land and hence, the 8th respondent requested for reclamation of 2 Hectares 78 Ares and 9 sq.m. of paddy land comprised in Survey Nos.290 (different sub divisions) and 289/10 in Block No.23 of Thazhuthala Village. The Revenue Divisional Officer passed an order on 29.3.2007 permitting conversion of paddy field with certain conditions. The Commissioner, Land Revenue had decided the appeal vide order dated 15.5.2007. The Commissioner in his order noted the observation of the Principal Agricultural Officer that no paddy cultivation is noticed in the area for the last 10

years. The proposed land and the remaining area in the 'Ela' can be made fit for paddy cultivation, after making proper drainage by deepening and widening the existing canal. The Land Revenue Commissioner also observed that no environmental impact assessment study has been conducted. The Commissioner noticed in the order that the Trust is planning to set up a facility which will be akin to a small township. The Commissioner directed for detailed environmental impact assessment study, which shall be done through an expert agency. It shall be useful to refer to the following observations made by the Commissioner in his order dated 15.5.2007 :-

“On examination of the records, it is seen that the Quilon Medical Trust has plans to construct a private Medical College at the site. The representative of the trust explains that it will be an eleven storied building with training facilities for 100 pupils. There will be students hostel, staff quarters, etc.. In other words the trust is planning to set up a facility which will be akin to a small township. There will be generated tremendous demand for drinking water, sanitation facilities, electricity, roads service and all other infrastructure including service sector. I do not see any planning done by the respondent in catering to large demands on infrastructure that will arise in future. It will drastically affect the lives of the people living in the surrounding

area. The submission on behalf of the respondent that such impact study will be done in due course and pollution control certificate will be obtained after construction is completed, is totally wrong and lop-sided. The site is located just outside of Kollam Corporation Limit. In order to plan development of the area in an organized, holistic manner, impact of land conversion and setting up of this mega structure has to be assessed in advance. This is actually the duty of the local body which they have totally ignored. It is understood, similar construction work is going on in the vicinity. The appellant admits that the paddy land conversion has already taken place a decade ago. But, this kind of large scale construction requires proper planning.

It is, therefore, directed that the respondent and the trust he represents, will have a detailed environmental impact assessment study done through a recognized expert agency. The recommendation of the study should include corrective measures to prevent filling up of the "thodu" and other water bodies in the area, the demand generated for infrastructure and how to alleviate the pressure on infrastructure in the area. The local body will ensure that the recommendations of the EIA study are scrupulously followed. All the other un-plan new development in the area should also be regulated in the above manner by the local body. After adhering to the above directions, the respondents may only thereafter take up the project. The appeal petition is disposed of with these orders."

9. The State Legislature had taken note of large scale conversion of paddy land and wet land in the State of Kerala, placed a bill for consideration before the Kerala Legislative Assembly. The Kerala Legislative Assembly passed the Conservation of Paddy Land & Wet Land Act on 19.9.2007. Communication to the said fact was made by the Government to Commissioner, Land Revenue, all district collectors and all revenue divisional officers by letter dated 17.11.2007, which was produced as Ext.P14. In the mean time, the 8th respondent submitted a third application for further conversion of paddy land to the extent of 7 Acres in different survey numbers situated in Block No.23 of the said Village. The Revenue Divisional Officer, vide order dated 31.10.2007 granted permission for reclamation of 3.40.89 Hectares of paddy fields with conditions as referred to in the order dated 15.5.2007 passed by the Commissioner, Land Revenue.

10. The petitioner filed three revisions before the Government of Kerala against the orders dated 29.3.2007 and 31.10.2007 of the Revenue Divisional Officer, Kollam and the order dated 15.5.2007 of the Commissioner, Land Revenue under

Clause 14 of the Kerala Land Utilisation Order, 1967. The Government of Kerala had also granted an interim order by Government Order dated 28.2.2009. In the mean time, a complaint was filed by one Sunil before the Lok Ayukta against the illegal filling of paddy land by the 8th respondent. The Lok Ayukta called for a report from the District Collector. The District Collector had submitted a report on 23.6.2008 to the Government. The Lok Ayukta submitted a report on 22.5.2008 to the Chief Minister and Ministers in charge of Revenue and Agriculture for appropriate consideration and remedial action.

11. The State Government heard the revisions filed by the petitioner and vide order dated 2.4.2009 (Ext.P17) disposed of all the three revisions by sustaining the orders passed by the Revenue Divisional Officer on 19.12.2006, 29.3.2007 and 31.10.2007 and the order dated 15.5.2007 passed by the Land Revenue Commissioner. The State Government noted that in view of the present status of the area, it is revealed that the whole 'nilam' has already been fully converted and construction works for the Medical College was also over and a hospital with sufficient inpatients is also under functioning. The conversion

-: 12 :-

process with the sanction of the Revenue Divisional Officer had started very early since the beginning of 2007 and the revision petitioner had brought the issue before the Government very late after the completion of the whole construction work and hence, the Government are in a sad position with severe constraints to take a decision of quashing the orders of the Revenue Divisional Officer. The petitioner filed the present writ petition challenging the order dated 2.4.2009 passed by the State Government as well as the orders passed by the Revenue Divisional Officer and the Land Revenue Commissioner. The following reliefs have been sought for in the writ petition :-

- “i) To call for the records leading to the issue of Ext.P6, P10, P11, P13 and P17 and quash the same by issuance of a writ of certiorari or any other appropriate writ, order or direction;
- ii) To issue a writ of mandamus or any other appropriate writ, order or direction commanding Respondents 1 to 7 not permit any further construction of any building in the land now claimed to be in the possession of the 8th respondent for any purpose, whatsoever, unless the necessary clearance from the Central Government is obtained and due compliance with the provisions of law are made by the trust;
- iii) To issue a writ of mandamus or any other appropriate writ, order or direction directing the Respondents 1 to 6

to take appropriate steps to re-convert the paddy / wet lands, which have been filled unauthorisedly and recover the costs from the 8th respondent.”

W.P.(C) No.15757 of 2008

The facts of the case are as follows:- One S.Sunil, the first respondent to the writ petition filed a complaint No.1678/07 before the Kerala Lok Ayukta alleging that the Chairman, Quilon Medical Trust, was converting paddy land as garden land in violation of the Kerala Land Utilisation Order, 1967 for establishing a medical college. In the complaint, it was alleged that the District Collector, Kollam and the Revenue Divisional Officer, Kollam have failed to take any action on the complaint filed by him. The complaint was filed on 2.7.2007. The Chairman, Quilon Medical Trust filed a written statement dated 23.10.2007 before the Lok Ayukta stating that written permission from the Revenue Divisional Officer, Kollam has been obtained for the said purpose. In the written statement, details of the proceedings before the Revenue Divisional Officer as well as filing of appeal before the Commissioner, Land Revenue by the Kerala Sasthra Sahithya Parishat were stated. The EIA Study conducted by the Agricultural and Ecosystem Management Group,

Thiruvananthapuram was also referred to in the written statement. The Revenue Divisional Officer, Kollam also filed statement of facts before the Lok Ayukta by letter dated 9.11.2007. The Lok Ayukta suo motu impleaded the Chief Secretary of the State and directed him to file an affidavit highlighting the policy of the Government regarding the filling of paddy fields. The first respondent filed an application dated 29.3.2008 before the Kerala Lok Ayukta praying for closure of the complaint. The Lok Ayukta, after taking note of the application dated 29.3.2008 filed by the first respondent, proceeded to examine the complaint and sent a report dated 22.5.2008 under Sec.12(1) of the Kerala Lok Ayukta Act. The Lok Ayukta further observed that the action of the complainant in backing out from the proceedings speaks volumes, which is on account of the influence exerted on him by the 3rd respondent therein (Chairman, Quilon Medical Trust). The Chairman, Quilon Medical Trust, being aggrieved by the report dated 22.5.2008, has filed the writ petition praying for quashing Ext.P12 report of the Kerala Lok Ayukta. Expunction of adverse remarks has also been prayed for.

W.P.(C) No.19577 of 2009

This writ petition has been filed by the petitioner, Quilon Medical Trust, on 10.7.2009. The details leading to passing of the order dated 2.4.2009 by the State Government on the three revisions filed by the Forum for Rural and Urban Development and Services had already been noticed while noticing the facts in W.P. (C) No.18690 of 2009, which is the leading writ petition. In the order dated 2.4.2009, the State Government observed that the Revenue Divisional Officer has not examined the aspect of title deeds of the property, which has been permitted to be reclaimed. The Quilon Medical Trust submitted an application dated 6.4.2009 to the Secretary to Government, Agriculture Department praying for deletion/modification of the following observation made by the State Government in its order dated 2.4.2009 :-

“On going through the above facts the main dispute existing the case is about title deed of the properties. The title deed is for two persons. Both are said to be the chairman of the Quilon Medical Trust. The connection with the Trust and the property is only part of the sentence “for the Quilon Medical Trust”. That means, the properties are not under the clear title deeds of the Quilon Medical Trust. The Revenue Divisional Officer, Kollam has not seen examined this aspect while issuing

orders for conversion. This is an important reason quite enough to quash the orders.”

The State Government, after considering the aforesaid letter dated 6.4.2009, refused to accept the prayer made by the petitioner. The Quilon Medical Trust was informed that the observations in the Government Order dated 2.4.2009 regarding the title of the properties cannot be avoided. Aggrieved by the order dated 4.6.2009 of the State Government as well as the observations made by the State Government in its order dated 2.4.2009, this writ petition has been filed seeking for the following relief :-

“to delete the observations in the penultimate para of Ext.P5 order starting from “On going through the above facts the main dispute existing in the case is about title deed of the properties”..... upto “This is an important reasons quite enough to quash the orders” and also to quash Ext.P11 order in the interest of justice.”

12. Learned counsel for the petitioner, in support of the leading writ petition contends that the orders permitting conversion of paddy land of area more than 6 Hectares for construction of medical college and hospital were passed by the Revenue Divisional Officer without conducting any environmental study. The wet land is to be protected as it has significant impact

on the environment. Paddy field has separate ecological habitat of both flora and fauna. The functions of the wet land, paddy fields are the maintenance of fertility and productivity and the recharge and discharge of ground water and purification of water. The development activities in the paddy field will definitely impart negative impacts in the prevailing area. It is submitted that the Revenue Divisional Officer ignored the recommendation of the Principal Agricultural Officer, who opined that the proposed area and the remaining paddy area in the 'Ela' can be made fit for paddy cultivation after making proper drainage by deepening and widening of the existing canal. The orders of the Revenue Divisional Officer were also against the circulars issued by the Government from time to time including the Circular dated 5.11.1999. It is submitted that the 8th respondent could not have proceeded with the project of construction of hospital and medical college without obtaining a prior environmental clearance in accordance with the notification dated 14.9.2006 issued under the Environment (Protection) Act, 1986 (Ext.P9 to the writ petition). It is submitted that the project in question is a construction project involving an area of more than 20,000 sq.m., hence, the project

was clearly covered by EIA notification dated 14.9.2006 and without obtaining EIA clearance, the 8th respondent proceeded with the project. Neither the Commissioner, Land Revenue nor the State Government has adverted to this aspect, whereas, before the State Government a specific ground was also taken that notification dated 14.9.2006 have been ignored. The action of conversion of large scale paddy land and carrying out the project by the 8th respondent were under the teeth of the notification dated 14.9.2006. The entire proceedings were liable to be quashed and the State Government have failed to do the same on the ground that construction has already been completed. This Court appointed an Advocate Commissioner to inspect the spot by order dated 21.12.2010, pursuant to which, the Advocate Commissioner inspected the spot on 29.12.2010 and a report along with a sketch map has been submitted. The Commissioner, at the time of inspection noticed that the land, which was filled up was constructed with roads, girls' hostel, sewage treatment plant and incinerator. The Advocate Commissioner also reported that reclamation activities are still going on. It is submitted that by the above mentioned reclamation of paddy land, apart from loss of

paddy cultivation, which is possible as reported by the Principal Agricultural Officer, there shall be adverse effect on the ground water as well as drinking water. The environmental study directed by the Commissioner, Land Revenue was conducted by a private body engaged by the 8th respondent, which cannot be said to be the environmental study conducted by an authorised body. When an environmental clearance is contemplated under notification dated 14.9.2006, it has to be conducted by the authority as contemplated under the said notification. Environmental study by any other organisation cannot be relied. It is submitted that the 8th respondent started preparation of land and construction of the project only after 14.9.2006, after obtaining permission from the Revenue Divisional Officer to reclaim the paddy field. Hence, notification dated 14.9.2006 obliged the 8th respondent to obtain environmental clearance as required by law. The mere fact that the 8th respondent succeeded in obtaining orders illegally and completing the project has no fetter on the rights of the State Government or Commissioner, Land Revenue to direct restoration of land to its original position.

13. Sri.Santhosh Mathew, the learned counsel appearing for the 8th respondent, refuting the submission of the learned counsel for the petitioner, at the very outset submitted that this writ petition may be dismissed as barred by laches. He submits that the petitioner has approached this Court with delay and laches and hence, the writ petition may not be entertained. It is submitted that W.P.(C) No.15542 of 2010 (**M.B.Ajith v. The State of Kerala**) was filed challenging the orders passed by the Revenue Divisional Officer, which petition was dismissed by a Division Bench of this Court on 28.6.2010 as barred by laches. He submits that following the aforesaid judgment, this writ petition may also be dismissed as barred by laches. Learned counsel for the 8th respondent further submitted that no valid explanation has been given in the writ petition for even approaching the State Government with delay. It is submitted that three revisions were filed by the petitioner before the State Government after more than about 2 years from passing of the orders by the Revenue Divisional Officer and the State Government has rightly refused to grant any relief to the writ petitioner. It is further submitted that the entire project has been carried out by the Trust, Quilon

Medical Trust, which has not been made party to the writ petition. Hence, the writ petition deserves to be dismissed on the ground of non-joinder of necessary party. It is submitted that paddy cultivation was not carried out in the land in question for last 15 to 20 years, which has been reclaimed and the Revenue Divisional Officer, after obtaining the report and being satisfied that paddy cultivation has not been done for the last 20 years, permitted conversion of land. It is submitted that the 8th respondent has undertaken before the Revenue Divisional Officer and Commissioner, Land Revenue that they will take all steps pertaining to widening of 'thodu' flowing between the property and further, will comply the recommendation as submitted by the EIA study conducted in pursuance of the order of the Commissioner, Land Revenue. It is submitted that for implementing environmental study, a committee was constituted, which consisted the members of the Panchayat, who have supervised the whole work as directed by the Commissioner, Land Revenue and since the 8th respondent had complied with all environmental aspects, no objection can be raised to the project. Learned counsel further submits that the notification dated

14.9.2006 issued under the Environment (Protection) Act, 1986 has no application in the facts of the present case. He submits that immediately after obtaining the No Objection Certificate dated 14.7.2006 from the Panchayat, construction was started by the Trust and hence, notification dated 14.9.2006, which was issued subsequent to start of construction, has no application. It is submitted that the notification dated 14.09.2006 is only prospective and can have no application in ongoing projects. It is submitted that construction of hospital and college was completed and the hospital started functioning from 30.6.2007. It is further submitted that the State Level Environment Impact Assessment Authority, Kerala having been constituted vide notification dated 3.11.2011, there was no occasion for getting any environmental clearance or environment study done by the State Level Environment Impact Assessment Authority at the relevant time. The State Level Environment Impact Assessment Authority have not been constituted at the relevant time, the submission of the petitioner that the 8th respondent was required to obtain environmental clearance is misconceived. It is submitted that apart from the reclaimed paddy land, the 8th respondent had

substantial dry land, which is apparent from even the report submitted by the Advocate Commissioner. It is submitted that the main construction of hospital building and college building are in dry land. For construction of building in dry land, no environmental assessment was required. In any view of the matter, the project of the Trust had already commenced prior to notification dated 14.9.2006, there was no necessity to obtain environmental clearance. Learned counsel for the 8th respondent submitted that hospital as well as the medial college are functioning with full strength. As per the instruction of the Grama Panchayat all environmental measures including widening of thodu, construction of pond etc. having been made by the Trust, there is no occasion to raise any issue of environmental degradation as on date. Any interference by this Court at this stage shall affect the public interest in running of the medical college and hospital, which is for the public benefit. Learned counsel for the 8th respondent further submitted that the petitioner, which is a Society of another District, Pathanamthitta, has no locus to file the writ petition. It is submitted that the

petitioner is unconcerned with the area in question and they have no authority or jurisdiction to file the writ petition.

14. We have considered the submissions of the learned counsel for the parties and perused the records.

15. From the submissions of the learned counsel for the parties and the pleadings on record, the following are the issues, which arise for consideration in the leading writ petition :-

- 1. Whether the writ petition deserves to be dismissed as barred by laches ?**
- 2. Whether the petitioner can maintain this writ petition as a public interest litigation ?**
- 3. Whether the writ petition is to be dismissed due to non-joinder of necessary party ?**
- 4. Whether there is any pleading in the writ petition alleging violation of notification dated 14.9.2006 issued under the Environment (Protection) Act, 1986 so as to examine the issue in this writ petition ?**
- 5. Whether the notification dated 14.9.2006 was not applicable in the State of Kerala till the State Environment Impact Assessment Authority has been constituted in the State of Kerala by notification dated 3.11.2011 ?**
- 6. Whether the respondent No.8/Trust on the strength of No Objection Certificate issued by**

the Panchayat dated 14.7.2006 has started the project before the issuance of EIA notification dated 14.9.2006 and the said notification is not applicable in the facts of the present case ?

- 7. Whether the 8th respondent/Quilon Medical Trust was obliged to obtain environmental clearance for construction of hospital and Medical College in the land owned by them in Block No.23 of Thazhuthala Village as per notification dated 14.9.2006 ?**
- 8. Whether, even after obtaining the order of reclamation of paddy land by orders dated 19.12.2006, 29.3.2007 and 31.10.2007, for proceeding with the project of construction of hospital and medical college, it was incumbent upon the 8th respondent/Quilon Medical Trust to obtain environmental clearance under notification dated 14.9.2006 ?**
- 9. Whether the Commissioner, Land Revenue as well as the State Government have erred in not advertng to the notification dated 14.9.2006 issued under the Environment (Protection) Act, 1986 while considering the environmental aspect of reclamation of paddy land in Block No.23 of Thazhuthala Village, where hospital and medical college are to be constructed ?**

- 10. Whether the 8th respondent/Trust having taken measures as per order of Commissioner, Land Revenue and as per Assessment Report July, 2007 [Ext.R8(c)] by Agriculture and Ecosystem Management Group, the 8th respondent/Trust shall be treated to have complied the environmental clearance as per notification dated 14.9.2006 and environmental clearance was required as per the said notification ?**
- 11. To what relief, if any, the petitioner is entitled ?**

Issue No.1

16. Learned counsel for the 8th respondent has submitted that this writ petition be dismissed as barred by laches. It is submitted that challenging three orders dated 19.12.2006, 29.3.2007 and 15.5.2007 passed by Revenue Divisional Officer and Commissioner, Land Revenue, W.P(C) No.15542 of 2010 was filed in this Court by one M.V.Ajith, which writ petition was dismissed by Division Bench of this Court on 28th June, 2010. The Division Bench after noticing the prayers made in the writ petition made the following observations while dismissing the writ petition:

“In substance, the writ petition has been filed challenging three orders Exts.P1 to P3 dated 19.12.2006, 29.3.2007 and 15.5.2007 respectively. It is evident from the above

-: 27 :-

dates that petitioner has slept over for more than three years on this issue and now approached this Court. We are of the that the writ petition is barred by laches and the same is dismissed at the admission stage. “

17. Now, we revert to the facts of this case to examine as to whether this writ petition had been belatedly filed and can be said to be barred by principle of laches. From the prayer of the writ petition as noted above, it is clear that the last order which was challenged in the writ petition was the order of the State Government dated 2.4.2009 Ext.P17, by which order, the State Government decided three revisions filed by the petitioner against orders dated 15.5.2007, 29.3.2006 and 31.10.2007. Petitioner had filed the aforesaid revisions under Clause 14 of Kerala Land Utilisation Order, 1967 (for short, 1967 order). Clause 14 of 1967 order provided as under:

“Revision.- The State Government shall have the power to call for the records of acts and proceedings of the Collector or the Board of Revenue in any case under this Order and pass such orders thereon as they think fit.”

18. The petitioner has thus invoked revisional powers of the State and after the State Government entertained and decided the revision on merits vide order dated 2.4.2009, the petitioner filed the present writ petition in this Court on 2.7.2009. The writ

petition was thus filed against the order of the State Government within a period of three months. The challenge in the writ petition is also to the order of the State Government. Whether the order passed by the State Government is correct and in accordance with law is one of the issues raised in the writ petition and the order of the State Government has been challenged by the petitioner in three months' period. In view of the above, we are not persuaded to accept the submission of the petitioner that the writ petition is barred by laches. It is to be noted that this writ petition was entertained by the Division Bench by order dated 16th July, 2009, on which date the Division Bench issued notice to the respondents.

19. W.P.(C) No.15542 of 2010 on which learned counsel for the 8th respondent placed much reliance was filed after three years from the passing of the orders dated 9.12.2006, 29.3.2007 and 15.5.2007 respectively. The present writ petition was filed within three months of deciding the revisions filed by the petitioner. The dismissal of W.P.(C) No.15542 of 2010 on 28.6.2010 does not help 8th respondent since present writ petition was filed one year before and was entertained by Division Bench on 16.7.2009.

20. There is one more reason due to which we are not persuaded to throw the writ petition on the ground of laches. As noted above, the present writ petition is Public Interest Litigation alleging illegal filling up of paddy lands by 8th respondent.

21. There is a further reason for not dismissing this writ petition as barred by laches. In the writ petition, prayer No.(ii) was to the effect that direction be issued commanding respondents 1 to 7 not to permit any further construction of any building in the land in the possession of the 8th respondent unless necessary clearance is obtained from the Central Government.

22. An I.A No.17329 of 2010 was filed by the petitioner on 13.12.2010 in which following averments were made in paragraphs (1) and (2) of the affidavit:

“The Writ Petition has been filed as a Public Interest litigation against the alleged illegal filling up of paddy lands at the instance of the 8th respondent. The averments and allegations raised in the Writ Petition have been vehemently denied from the part of the said respondent by filing a counter affidavit stating that the filling exercise has been effected in accordance with the sanction already given and that the petitioner, who is residing elsewhere has chosen to approach this Court only after two years and that the construction works have almost been completed.

2. Disputing the factual position as above, the writ petitioner has filed this interlocutory application, seeking for deputation of an Advocate Commissioner to conduct a spot inspection of the premises and to report as to how much extent of land has been filled and what activities are now undertaken by the 8th respondent to fill up the paddy lands illegally.”

23. This Court heard the matter on 21.12.2010 and allowed the prayer of the petitioner to depute an Advocate Commissioner to conduct spot inspection of the premises and to report as to how much extent of land has been filled up and what activities are now undertaken by 8th respondent to fill up the paddy land. It is useful to quote order dated 21.12.2010.

“This Writ Petition has been filed as a Public Interest Litigation against the alleged illegal filling up of paddy lands at the instance of the 8th respondent. The averments and allegations raised in the Writ Petition have been vehemently denied from the part of the said respondent by filing a counter affidavit stating that the filling exercise has been effected in accordance with the sanction already given and that the petitioner, who is residing elsewhere has chosen to approach this Court only after two years and that the construction works have been almost completed.

2. Disputing the factual position as above, the writ petitioner has filed this interlocutory application, seeking for deputation of an Advocate Commissioner to conduct a spot inspection of the premises and to report as to how much extent of land has been filled and what activities are

now undertaken by the 8th respondent to fill up the paddy lands illegally.

4. Accordingly, Smt. Mareena Joseph, a lawyer of this court is appointed as the Advocate Commissioner to inspect the premises and to report the particulars sought for in the I.A. The inspection shall be conducted after giving due notice to all the parties concerned and the report shall be filed before this Court on or before 05.01.2011."

24. In pursuance of the orders of this Court, Advocate Commissioner has inspected the spot on 29.12.2010 and 31.12.2010. Report with a map has already been filed on record. The Advocate Commissioner after inspecting the site submitted her report dated 7.11.2011. The Advocate Commissioner in her report categorised the property in four heads. It is useful to note para (6) of the report which is to the following effect:

"6. To prepare this report, for transparency, I categorise the property as follows:

- i) Dry land (indicated in brown colour in Annexure C)
- ii) Land which filled up/reclaimed (indicated in pink colour in Annexure C)
- iii) Land where reclamation activities are going on (indicated in Orange colour in Annexure B)
- iv) Land which is not filled up and continues to remain as marshy land (indicated in Green colour in Annexure C)"

25. On item numbers (iii) and (iv), the Advocate
Commissioner reports as under:

(iii) Land where reclamation activities are going on:

This portion of the land is indicated in Orange colour to annexure B plan Reclamation is going on. In the said property by dumping of loose earth. The respective property is situated in portion of Sy.No.277 and portion of Sy.No.289 and Sy.No.302 of Thazhuthala Village. According to the 8th Respondent as well as Taluk surveyor property in Sy. 277 and 302 does not belong to the 8th respondent. Property in Sy.No.277 is within the compound wall constructed a portion of the water way also flows through Sy. No.277 while property comprised in Sy. No.302 a 4 storey Girls HOSTEL Building is situated.

(iv) Land which is not filled up and continues to remain as marshy:

This Land is shown in Green colour in Annexure B plan. This land sketches over a portion of Survey Nos.294 & 295 also Sy.No.296.293. The property in Sy.No.293 seems to look like a pond with water accumulated at a dept of about 5 feet to 10 feet at different places. They still remain as marshy unreclaimed land. A fresh water pond is also constructed measuring about 20 cents of land. The property in Sy.No.293 is coloured in Blue with waves and also the pond in Annexure B pla. The unfilled land except Sy.No.293 comes to about 0.4240 Hectares."

26. Thus, even after filing of the writ petition, allegations were made that 8th respondent is still continuing with filling of paddy land, which allegations were found true by the Advocate Commissioner. Further, the Advocate Commissioner noted that part of property still continues as marshy and Sy. No.293 was found like a pond with water accumulated at a depth of about 5 feet to 10 feet at different places. The report of Advocate Commissioner needs consideration for taking adequate measures to protect the existing wetland in the property. Thus, the vehement submission of counsel for 8th respondent to dismiss the writ petition on the ground of laches is unacceptable.

Issue No.2

27. Learned counsel appearing for the 8th respondent further submitted that this writ petition is not a Public Interest Litigation. It is submitted that petitioner, which is a registered body registered in a different district i.e. Pathanamthitta district, can have no concern with the alleged filling up of paddy land in Kollam district. It is submitted that against the proposed filling on paddy land by 8th respondent, one organisation, viz., Kerala Sastra Sahitya Parishat had already filed objection before the Revenue

Divisional Officer and also filed an appeal before Commissioner, Land Revenue, which appeal was decided by the Commissioner, Land Revenue by order dated 15.5.2007. Petitioner could not have filed the revision before the State after more than 1 ½ years of passing of the said order. Petitioner in first paragraph of the writ petition has stated about the facts of it being a registered body formed mainly for protection of environment and matters related to public interest. It is useful to extract paragraph (1) of the writ petition:

“This is an application seeking protection of wet lands and rich paddy fields in Kollam District from being wantonly converted as concrete jungles in violation of the environmental laws and orders prevalent and promulgated under the Essential Commodities Act, applicable to the State of Kerala. The Petitioner is a registered body which is formed mainly for the protection of environment and matters of public interest allied to it. The forum is an all Kerala body engaging itself mainly in protecting the environment and maintenance of pollution free atmosphere in the State of Kerala in the larger interest of the health and well being and protection of the fundamental rights of citizens to have a healthy environment. It had engaged itself in various such activities in different parts of the State of Kerala.”

28. In the counter affidavit, there is no denial that petitioner is a registered body. The mere fact that a body or association is registered in a different district cannot preclude the said body to raise any issue of public importance concerning the State of Kerala.

29. As noted above, orders were passed on the application of the 8th respondent by the Revenue Divisional officer permitting conversion of more than 6 hectares of land which were paddy field and wetland. Petitioner aggrieved by said decision, which according to him, had not adverted to the environmental concern, has filed the statutory revision under Clause 14 of 1967 order. The State Government called for a report from the Collector, the Collector has submitted a report to the State Government regarding the reclamation of paddy land and wetland, on the basis of which, the State Government has decided all the three revisions on merits.

30. It is relevant to note that State Government has observed that Revenue Divisional Officer has not examined aspects of ownership of the land while issuing orders for conversion. However, the State Government was of the view that as per

present status of the area, it is revealed that the whole 'nilam' has already been fully converted and construction work for medical college is over, hospital with sufficient inpatients is also under functioning, conversion process with the sanction of Revenue Divisional Officer has started very early since the beginning of 2007, revision petitions were brought before the Government in 2009, and hence, at this distance of time, Government are in a sad position with severe constraints to take a decision of quashing the orders of the Revenue Divisional Officer. The statutory revisions filed by the petitioner thus were entertained and decided by the Government with the aforesaid observation, against which petitioner filed this writ petition. In the present case, the petitioner is raising an issue of public interest i.e. issue concerning environment and ecology.

31. It is relevant to note that the State showing serious concern with large scale conversion of paddy field has come up with the legislation, viz., the Kerala Conservation of Paddy Land and Wetland Act, 2008. It is also relevant to note that in the counter affidavit no where any material has been brought on

record to indicate that the petitioner has any personal interest or private interest in the matter.

32. Learned counsel for the 8th respondent has placed reliance on two judgments of this Court and one judgment of the Apex Court in support of his submission that the present writ petition cannot be treated as Public Interest Litigation and cannot be entertained. The first decision relied is **Fathima v. Assistant Commissioner of Police** [2005 (3) KLT 1036]. In the above case, petitioner had taken all steps for developing 40 cents of wetland with the permission of revenue authorities. The respondents 4 to 6 obstructed the development work carried by the petitioner by force and obstructed filling of fields. In the above context, Division Bench of this Court observed that the unconnected third parties have no recognisable rights to restrict a land owner from making good use of her property and the objection raised by the respondents were repelled. Following was the observation made by the Division Bench:

2. A land holder is defined as a person who is the owner or holder of any paddy field, marshy place, pond or watershed. It appears that the necessary permit had been obtained by the petitioner after complying with the norms prescribed as above, though a copy of the order of the collector is not

produced. The counsel states that levy had been paid and also the reports which were required from authorised officer were obtained before permitting such conversion. The present grievance of the petitioner is that when steps were taken for development, objections had forthcome from respondents 4 to 6 claiming that since the filling up of the land may adversely affect other agricultural operations and work opportunities, especially in respect of the rest of the padasekharam. However, petitioner submits that when lawful permission is received, after the recommendation of experts, third parties had no jurisdiction to field objections and their resistance was illegal. According to him, it is a genuine case where State should come to the help.

3. We had opportunity to hear Sri.Asok M. Cherian appearing for the private respondents. It is submitted that they are contemplating filing of application for review of the orders since the conversion of land is likely to create imbalances in the area and possibly irrigation to other agricultural fields and drainage will be blocked. However, their locus standi is objected to by the petitioner. It is asserted that the apprehension are without basis.

4. We find that as matters presently stand, since permission had been granted after following procedure prescribed, it will not be permissible for respondents 4 to 6 to hinder the authorised development by use of force. There was no cultivation for a considerable number of years and we have to notice that underlying reason for the issue of Land Utilisation Orders. It was to augment production of food crops, and when once it comes out that for decades there was no cultivation, application of restrictions should be only the exception than the rule. According to us, unconnected third parties can have no recognisable rights

to restrict a land holder from making good use of her property as otherwise it may even offend principles of perpetuity. It has not been suggested how anyone would compensate her loss.

33. The above case is clearly distinguishable. The above writ petition filed by the petitioner was a writ petition for police protection on the basis that petitioner has already obtained orders from revenue authorities for conversion of land. There was no challenge to the order of the revenue authorities in the aforesaid case and without any right, the private respondents were physically obstructing, hence, the Court issued such a direction. That case does not help the petitioner in the present case.

34. The judgment of the Apex Court in **R & M Trust v. Koramangala Residents Vigilance Group and Others** [(2005) 3 Supreme Court Cases 91] has been relied by the 8th respondent. It is submitted by learned counsel for the 8th respondent that writ jurisdiction in public interest should be sparingly invoked in favour of vigilant litigant only. In paragraphs (23) and (24), the following was stated:

23. Next question is whether such public interest litigation should at all be entertained and laches thereon.

This sacrosanct jurisdiction of public interest litigation should be invoked very sparingly and in favour of vigilant litigant and not for the persons who invoke this jurisdiction for the sake of publicity or for the purpose of serving their private ends.

24. Public interest litigation is no doubt a very useful handle for redressing the grievance of the people but unfortunately lately it has been abused by some interested persons and it has brought a very bad name. Courts should be very very slow in entertaining petitions involving public interest; in very rare cases where the public at large stand to suffer. This jurisdiction is meant for the purpose of coming to the rescue of the downtrodden and not for the purpose of serving private ends. It has now become common for unscrupulous people to serve their private ends and jeopardise the rights of innocent people so as to wreak vengeance for their personal ends. This has become very handy to the developers and in matters of public contracts. In order to serve their professional rivalry they utilise the service of the innocent people or organisation in filing public interest litigation. The courts are some times persuaded to issue certain directions without understanding the implications and giving handle in the hands of the authorities to misuse it. Therefore, the courts should not exercise this jurisdiction lightly but should exercise in very rare and few cases involving public interest of a large number of people who cannot afford litigation and are made to suffer at the hands of the authorities. The parameters have already been laid down in a decision of this Court in the case of Balco employees' Union (Regd.) v. Union of India wherein this Court has issued guidelines as to what kind of public interest litigation should be

entertained and all the previous cases were reviewed by this Court.”

35. There cannot be any dispute with the proposition as laid down in the aforesaid case. The Public Interest Litigation has to be entertained for a bona fide public cause. When in the writ petition environmental issues affecting ecology have been raised, the Court will be slow in throwing such writ petitions on the ground of lack of locus. As observed above, there is no material brought on the counter affidavit to indicate that petitioner is pursuing this writ petition to serve any private or personal interest. The issues have been raised by the petitioner in statutory forum i.e. the State Government by filing a revision and thereafter they have come up with the writ petition. It cannot be said that petitioner has no right to file this Public Interest Litigation in the facts of present case.

36. The third judgment relied by learned counsel for the 8th respondent is **Antony Jayan v. State of Kerala and Others** (2015 KHC 142). In the above case, the writ petition was filed in Public Interest Litigation challenging the approval granted by the Chief Town Planner for construction of hospital and allied structures. The petitioner was aggrieved by the damage caused to

the road on account of the illegal development and consequent continuous heavy traffic by respondents 10 to 12. The Division Bench laid down the following in paragraphs (11) and (12):

11. At the outset, the contention raised by the respondents as to the maintainability of the writ petition as a public interest litigation needs to be considered. Public interest litigation is a weapon in the armoury of law for delivering social Justice to the citizens. It is intended for the redressal of genuine public wrong or public injury. As such, there must be real and genuine public interest in matters brought before the Court as public interest litigations. Only persons acting with utmost good faith will have the locus standi to approach the Court with a public interest litigation. A person approaching the Court with a public interest litigation should have not only come to the Court with clean hands, but also with a clean heart, clean mind and clean objective. (See K. R.Srinivas v. R.M.Premchand [1994 KHC 1075 : 1994 (6) SCC 620]). It is the duty of the Court to satisfy that behind the veil of public interest, a vested interest is not lurking and that the person approaching the Court is not acting for personal gain or private motive or other oblique consideration. It is also the duty of the Court to satisfy that the process of the Court is not abused by masked phantoms who monitor the litigation from outside for a good deal or to enrich themselves. Above all, the public interest litigation must inspire confidence in Courts and they must be above suspicion. As observed by the Apex Court in Dr. B. Singh v. Union of India and Others [2004 KHC 484 : 2004 (3) SCC 363 : AIR 2004 SC 1923 : 2004 (101) FLR 575 : 2004 (3) CHN 101 : 2004 (2) LLN 114 :

2004 (16) AIC 27], a time has come to weed out the petitions, which, though titled as public interest litigations, are in essence something else. The facts of this case as narrated above have to be analysed in the light of the aforesaid principles.

12. The case of the contesting respondents in this connection is that the petitioner is not a public spirited person and he being a person residing within the vicinity of the project in the very same Panchayat, his conduct in approaching the Court seeking orders for demolition of the buildings, when the constructions are nearing completion, is highly suspicious and shows lack of bona fides. As rightly contended by the contesting respondents, no material whatsoever is placed on record to indicate that the petitioner is a public spirited person, who is involved in any activity intended for the general public. There is also no material on record to indicate that the petitioner had ever taken up similar issues before the authorities concerned or before the Court, for the benefit of the general public. There are not even formal averments in the writ petition concerning the involvement, if any, of the petitioner in the activities intended for the benefit of the general public. That apart, as noticed above, the averments in the writ petitions would only indicate that the petitioner is challenging the development activities of the contesting respondents for the reason that the said activity results in damage to a road used by him and others. “

37. The Division Bench noticed the grievance of the petitioner that he was challenging the developmental activities for the reason that said activities resulted damage to the road used

by him and another and the writ petition was filed two and a half years, after completion of entire construction. The said case was based on its own fact and for valid reasons the Division Bench did not entertain the writ petition as Public Interest Litigation.

38. In the present writ petition, the petitioner is raising a public cause of environmental degradation by illegal filling of large extent of paddy field and wetlands, which affects the ecology. The petitioner has invoked the statutory forum by filing the revision and thereafter filed the writ petition in this Court. The said judgment of the Division Bench is clearly distinguishable.

Issue No.3

39. One more submission has been pressed by learned counsel for the 8th respondent ie. the petitioner has not impleaded the Quilon Medical Trust as respondent to the writ petition and in the writ petition only Chairman of Quilon Medical Trust Mr.Abdul Salam has been impleaded. It is submitted that the writ petition is liable to be dismissed on the ground of non-joinder of necessary party.

40. From the pleadings and materials on the record, it is clear that all steps were taken by the 8th respondent on behalf of

the trust. Although it would have been appropriate that if the petitioner had impleaded the Quilon Medical Trust to the writ petition. But this writ petition being a Public Interest Litigation and the Chairman, Quilon Medical Trust being already impleaded as one of the respondents who has full opportunity to put the case on behalf of the trust, we are not persuaded to dismiss the writ petition on the aforesaid technical ground. Moreover, this writ petition has been heard along with two other writ petitions being W.P(C) No.15757 of 2008-The Chairman, Quilon Medical Trust v. S.Sunil & others and W.P(C) No.19577 of 2009 -Quilon Medical Trust v. Government of Kerala and another.

41. In the proceeding before the Lok Ayuktha, the Chairman Quilon Medical Trust was impleaded as one of the parties. The subsequent writ petition, W.P(C) No.19577 of 2009, has been filed by the Trust challenging order dated 2.4.2009 passed by the State Government which was filed on the three revisions filed by forum for Rural and Urban Development Services, the petitioner in the leading writ petition.

42. The Trust is fully represented before us in these three connected matters and no kind of prejudice can be said to

have caused to the Trust due to it being not formally impleaded in the leading writ petition. We thus, are of the view that the mere fact that Quilon Medical Trust has not been formally impleaded in the leading writ petition is not a ground sufficient to dismiss the leading writ petition.

Issue No.4

43. One of the issues raised by counsel for the 8th respondent is that there is no sufficient pleading in the writ petition regarding requirement of obtaining environmental clearance by 8th respondent under notification dated 14.9.2009 issued under Environment (Protection) Act, 1986. We have looked into the pleadings in the writ petition. It is useful to extract following part of the pleading in paragraph (3) of the writ petition:

“It may be noted that the permission so granted by the Revenue Divisional Officer was without any environmental study and with due regard to the various provisions made by the Central Government under the Environmental Protection Act and the notification issued by the Ministry of Environment and Forest that prior environmental clearance from the Ministry of Environment and Forest, Central Government is mandatory even before starting any construction work or preparation of land by the Project Management. True copy of the said notification is produced herewith and marked as Exhibit P9. Admittedly, the

-: 47 :-

Revenue Divisional Officer has not taken note of the aforesaid notification or provisions of the Central Environmental Protection Act which extends to the State of Kerala. “

44. The petitioner has made the notification dated 14.9.2006 which was issued by the Government, Ministry of Environment and Forest, in exercise of power under Section 3 Environment (Protection) Act r/w. Clause (d) of sub rule (3) of Rule 5 of Environment (Protection) Rules, 1986 as Ext.P9 to the writ petition. From the pleadings as stated above, it is clear that petitioner has clearly pleaded that permission for conversion of paddy land was granted in disregard to the above notification which requires prior environmental clearance from the Ministry of Environment and Forest, Central Government even before starting any construction work by the project management. It is relevant to note that in the revision petition which was filed by petitioner before the State Government under Clause 14 of 1967 order, one of the grounds taken as Ground No.8 was that notification dated 14.9.2006 has been ignored by the competent authorities. It is useful to quote Ground No.8 of Ext.P15 which is one of the revisions filed by petitioner against order dated 29.3.2007.

“8. It should have been found that the Paddy field/wet land in question is situated in an ecologically sensitive area ie., near to Astamudi Lake and hence there is a legal bar for the construction of huge structures beyond the area of 20000 square metres. The Environmental Protection Act and the notification dtd.14.9.2006 are ignored by the competent authorities at the time of passing the impugned order.”

45. The counter affidavit filed by 8th respondent dated 30.7.2009 clearly indicates that 8th respondent fully understood the pleading of the petitioner based on notification dated 14.9.2006, which is clear from pleading in paragraphs (36) and (37) of the counter affidavit as reproduced below:

36. The allegation that the Trust has not complied with the Ext.P9 Notification dated 14/09/2006 and not conducted any EIA and got it approved from the Central Government is not sustainable. It is submitted that the project of the Trust started even before the issuance of Ext.P9 Notification, which fact was taken not of by the Commissioner, Land Revenue while passing Ext.P10 order directing that the EIA be conducted by a recognized Experts Agent. The Trust has complied with Ext.P10 order of the Commissioner and after complying with the same, the Trust also submitted a Memo intimating the compliance of the order before the Commissioner.

37. The Trust has fully complied with all the recommendations of the EIA by utilizing its own funds.

-: 49 :-

The Land Revenue Commissioner ordered for the conduct of EIA by a recognized Experts Agency taking note of the fact that there was no State Level EIA Authority constituted in Kerala by the State Government at relevant time as per the Notification and the Notification has not thus come fully applicable in the State at the relevant time. Had the Commissioner ordered for conduct of EIA by any other agency including Governmental, the Trust would have complied with the same also. The Trust may not be faulted for complying with the order of a lawful Authority in the matter. The petitioner is either ignorant of the EIA in the case of the Project or he purposefully ignores and overlooks the same in order to harass the Trust. He has no compliance against the EIA undertaken by the Experts Agency, their recommendations or its implementation by the Trust. The Government or any other Authority had also not objected to the EIA conducted by the Agency on any ground whatsoever.”

46. Thus the 8th respondent was well aware of the case of the petitioner based on the notification dated 14.9.2006.

47. It is further relevant to notice that when the matter was heard by this Court on 27.10.2015, the submission on the basis of violation of notification dated 14.9.2006 was pressed by the petitioner, whereas learned counsel for the 8th respondent refuting the submission had submitted that petitioner has not come up with adequate pleadings, hence, the petitioner may be allowed time to

file additional affidavit so as to enable the 8th respondent to file proper reply. By our order dated 30.10.2015, we had allowed further opportunity to the petitioner to file an affidavit. Ten days' time was also allowed to the 8th respondent to file a counter affidavit to the additional affidavit. In pursuance of the order dated 30.10.2015, an additional affidavit dated 8.11.2015 has been filed by the petitioner, a counter affidavit to which has also been filed by the 8th respondent dated 16.11.2015. In the additional affidavit specific pleading has been made in paragraph (18) which is quoted as follows:

18. The Construction of the Hospital Buildings and reclamation of paddy was ultra virus of the provisions of the notification dated 14th September, 2006, issued by the Ministry of Environment and Forest, which was already produced as Ext.P9. The said notification was issued in exercise of the powers conferred by sub-section (1) and clause (v) of sub-section (2) of section 3 of the environment (protection) Act, 1986. The central government hereby directs that on and from the date of its publication the required construction of new projects or activities or of the expansion or the modernization of existing projects or activities listed in the schedule to the notification entailing capacity addition with the change in process and or technology shall be undertaken in any part in India only after the prior environmental clearance from the central government or as the case may be, by

the state level environment impact assessment authority, duly constituted by the central government under sub-section (3) of section 3 of the act, in accordance with the procedure specified hereinafter in this notification. Clause 2 of the notification dealt with the requirements of prior environmental clearance (EC):- The following products or activities shall require prior environmental clearance concerned regulatory authority, which are hereinafter referred to be as the Central Government in the Ministry of environment and forests for matters falling under the category 'A' in the schedule and at state level the state environmental impact assessments authority (SEIAA) for matters falling under category 'B' in the said schedule, before any construction work, or preparation of land by the Project Management except for securing the land, is started on the project or activity.

48. In view of the aforesaid, we are of the view that there is sufficient pleading by the petitioner alleging violation of notification dated 14.9.2006 and the issue has to be examined.

Issue No.5

49. Another submission raised by learned counsel for the 8th respondent opposing the applicability of notification dated 14.9.2006 is that; for the State of Kerala, State Level Environment Impact Assessment Authority (SEIAA) was constituted in exercise of powers under Section 3 of Environment (Protection) Act, 1986

vide notification dated 3.11.2011 (Ext.R8(ab) to the counter affidavit). It is submitted that there being no such SEIAA in the State of Kerala, the construction project of the petitioner could not have been assessed under notification 14.9.06. Hence, with regard to construction of medical college and hospital by 8th respondent, notification dated 14.9.2006 is not applicable. It is submitted that without there being authority in the State constituted, environmental clearance by the said authority was impossibility.

50. There is no dispute that in the State of Kerala, the authority i.e., SEIAA was constituted for the first time vide notification dated 03.11.2011. Whether on account of non-constitution of SEIAA in the State, the projects in the State which require environmental clearance are exempted from obtaining environmental clearance? The answer to the above is provided in the notification itself. Ext.P9 is the notification dated 14.9.2006. Paragraph (2) of the notification requires prior environmental clearance of the projects by the Central Government in the Ministry of Environment and Forests for matters falling under Category 'A' and at the State level by the State Environmental

Impact Assessment Authority for matters falling under Category 'B'. Paragraph 2(1) is quoted below:

“2. Requirements of prior Environmental Clearance (EC):- The following projects or activities require prior environmental clearance from the concerned regulatory authority which shall hereinafter referred to be as the Central Government in the Ministry of Environment and Forests for matters falling under Category 'A' in the Schedule and at State level the State Environment Impact Assessment Authority (SEIAA) for matters falling under Category 'B' in the said Schedule, before any construction work, or preparation of land by the project assessment except for securing the land, is started on the project of activity.

(i) All new projects or activities listed in the Schedule to the notification”

51. Clause 4 of the notification deals with categorisation of project or activity. Clause 4(iii) which is relevant for the purpose is as follows.

“4. Categorization of projects and activities:-

(i) xx xxx xxxx

(ii) xx xxx xxxx

(iii) all projects or activities included as Category 'B' in the schedule, including expansion and modernization of existing projects or activities as specified in sub paragraph (ii) of paragraph 2, or change in product mix as specified in

sub paragraph (iii) of paragraph 2, but excluding those which fulfill the General Conditions (GC) stipulated in the Schedule, will require prior environmental clearance from the State/Union territory Environment Impact Assessment Authority (SEIAA). The SEIAA shall base its decision on the recommendations of a State or Union territory level Expert Appraisal Committee (SEAC) as to be constituted for in this notification. In the absence of a duly constituted SEIAA or SEAC, a Category 'B' project shall be treated as a Category 'A' project."

52. The last portion of the above notification provides, "in the absence of a duly constituted SEIAA or SEIAA Category B project shall be treated as Category A project". The statutory provision takes care of non-constitution of SEIAA for a particular State. In the absence of a duly constituted SEIAA, the project has to be assessed by the Central Government and the project shall be treated as Category A project. Thus the submission of learned counsel for the 8th respondent that SEIAA being not constituted in the State of Kerala till third November, 2011, the notification dated 14.9.2006 was not applicable for the project of 8th respondent cannot be accepted.

Issue Nos.6 to 10

53. All the above issues being inter-connected, are being taken together.

54. Before we examine various relevant issues, it is relevant and necessary to look into the statutory provisions regulating the field. The State of Kerala known as “Gods own Country” has its peculiar geography which consists of large area of backwater, wetland, hills and forests. Paddy fields in the State of Kerala were the granaries of State of Kerala. There has been an alarming shift from rice and subsistence food farming to cash crops. To promote the cultivation of paddy in the State of Kerala, an order viz., Kerala Land Utilisation Order, 1967 in exercise of power under sub section (3) of Essential Commodities Act, 1955 was issued by the State of Kerala with the requirement object of ensuring agricultural operation and cultivation which may be compulsory by Land Utilisation Order of essential commodities. Under Clause 3 of the 1967 order, the State was empowered to require holder of the land to grow specified crops. Clause 3 of 1967 order is as follows:

3. Power to require holder of land to grow specified crops.- (1) Notwithstanding anything contained in any law,

order custom or practice for the time being in force, if the State of Government are satisfied that it is necessary or expedient to increase the production of food crops in any area, they may, by order published in the Gazette, direct that every holder of land in that area shall grow, over such portion of his land and within such period as may be specified in the order, such food crop or food crops as may be so specified, in addition, to any crop he may have grown over such land.

(2) Every order made under sub-clause (1) shall also be published by beat of tom tom in the village or villages in which such area is situated, and copies thereof shall be affixed on the notice boards in the concerned Taluk Offices, Collectorate, Panchayat Offices and Village Office."

55. Clause 4 further empower the Collector to issue notice to cultivate the land. Clause 4 is as follows:-

4. Notice to cultivate land.- Notwithstanding anything contained in any law, order, custom or practice for the time being in force, the Collector may, by notice in writing, call upon the holder of any occupied waste or arable land (whether appurtenant to a building or not) situated within the Collector's jurisdiction, which is not under cultivation and which, in the opinion of the Collector, is likely to be left fallow during the current cultivation season, to cultivate it with paddy or other food crops, either personally or through any other person, within such period as may be specified in the notice.

(2) The notice shall be served by delivering or tendering to the holder of the land a copy of such notice and if the holder of the land is not readily traceable or

refuses to accept the notice, service shall be effected by affixing a copy of the notice on the outer door of his house and another copy in a conspicuous part of the land which it relates.

(3) If, within ten days from the date of service of the notice or within such further period as the Collector may grant in this behalf, the holder of the land shows to the satisfaction of the Collector that the land is being cultivated or is not capable of being cultivated, the Collector shall cancel the notice.

(4) Every notice under sub-clause (1) shall be in Form A and every order of cancellation under sub-clause (3) shall be in Form B."

56. Under Clause 6 of the order, no holder of any land which has been under cultivation with any food crop shall convert or attempt to convert or utilise such land for cultivation of any of the food crop or for any other purpose, except under and in accordance with the terms of written permission given by the Collector. Clause 6(1) is quoted below:

6. Land cultivated with any food crop to be cultivated with any other food crop.- (1) No holder of any land, which has been under cultivation with any food crop for a continuous period of three years immediately before the commencement of this Order, shall convert or attempt to convert or utilise or attempt to utilise such land for the cultivation of any other food crop or for any other purpose

except under and in accordance with the terms of a written permission given by the Collector.”

57. From the report submitted by Revenue Divisional Officer, Kollam to the State Government Ext.R8(u), it is clear that petitioner owned 15.09.67 hectares of land in Thazhuthala village, out of which, 11.38.83 hectares were wetland. The 8th respondent sought permission from the Revenue Divisional officer for conversion of 7.42.64 hectares of wetland for construction of medical college, hospital and road. The statement of facts as noted by the Revenue Divisional Officer are useful to extract which is to the following effect:

“STATEMENT OF FACTS

The Medical Trust owns a total extent of 15.09.07 hectors of lands in Thazhuthala Village out of which 11.38.83 hectors are wet land. They had obtained permission from Revenue Divisional officer for conversion of 7.42.64 hectors of wet land for the construction of medical college, hospital and road for access to the college. The order for reclamation was issued on the following conditions:

1. The proposed wet land should be filled up only for the constructions of medical college, hospital road, etc.
2. Necessary arrangements should be made to start paddy cultivation in the remaining paddy area of block No.23 of Thazhuthala village.

3. A pond should be constructed in the proposed land of 2.65 Acres and construct a water tank to save water and reuse the water if scarcity is found in summer seasons. In spite of this a thodu should be constructed with 3 M width and necessary depth for the sufficient flow of water and the waste should be incinerated by proper methods. This filling of paddy land and construction works should not affect the ecological balance of nature.”

58. What are the characteristics of paddy land and wetland has been noted in the report brought by the 8th respondent along with its counter affidavit as Ext.R8(c). The report obtained by the 8th respondent from Agricultural and Ecosystem Management Group highlighting the characteristics and role of the paddy fields and wetland paddy fields are stated as follows:

“Paddy fields have significant impacts on the environment. Generally the air environment shows a pleasing and clean status. Absence of industrial activities in the vicinity of paddy fields will positively influence the micro climatic conditions. Hydrogeologically, the paddy field act as a separate entity. Presence of fine sediments reduces the permeability. Hence the percolation of surface water to the ground water table is very much controlled. More or less levelled surface, shallow water table and the semi pervious soil generally cause water logging. Presence of impervious or aquiclude beneath the surface soil adverse the situation during the rainy days. Paddy field may be converted into swamps or fallow lands due to the long time impoundment of floor water.

Paddy field has a separate ecological habitat of both flora and fauna. Hydrophilic plants and some minor aquatic

faunas are prevailing within the paddy fields. In case of marshes and swamps which are converted from the paddy fields contain rich biological resources; generally predators and micro organisms. Generally, these areas are the interesting places for migrating birds.

The functions of wetland paddy fields are the maintenance of fertility and productive and the recharge and discharge of groundwater and the purification of water. Many of these functions provide goods and services that are important to human society.

Developmental activities in the paddy fields will definitely impart negative impacts on the prevailing environment. Some of the major root causes behind the higher and cumulative impacts are discussed as follows."

59. The materials on record indicate that 'thodu' (canal) which is traversing the paddy fields filled up by 8th respondent joins Ashtamudi wetland, which is second largest in the State of Kerala. The Central Government has notified Ashtamudi wetland as Ramsar Site No.1204 under Ramsar International Convention Treaty. In paragraph (6) of the writ petition the petitioner has quoted the relevant extract of Central government notification in following words:-

"Ashtamudi Wetland. 19.08.02. Kerala. 61,400 ha. 08°57'N 076° 35'F. An extensive estuarine system the second largest in Kerala State, which is of extraordinary importance for its hydrological functions, its biodiversity

-: 61 :-

and its support for fish. The site supports a number of mangrove species as well as over 40 associated plant species, and 57 species of birds have been observed, including six that are migratory. Nearly 100 species of fish sustain a lively fishing industry, with thousands of fisherman depending directly upon the estuary for their livelihood. Population density and urban pressures pose threats to the site, including pollution from oil spills from thousands of fishing boats and from industries in the surrounding area and conversion of nature habitat for development purposes. Ramsar site No. 1204."

60. The Principal Agricultural Officer in his report dated 27.10.2006 (Ext.P5) has reported that the thodu or canal traversing the Ela from south to north is joining Ashtamudi and this is main drainage canal for all the padasekharam (paddy field) Ela in areas of Thrikkovilvattom and Mayyanad Panchayat.

61. The above facts clearly prove that the wetlands in the property and the water stream traversing play a significant role in the maintenance of ecological system and paddy field conversion leads to enormous ecological degradation in the watershed region.

62. The State Legislature has also noted large scale conversion of paddy lands. The Bill viz., Kerala Conservation of Paddy Land and Wetland Act was introduced in the State Legislature on 17.9.2007. The statement of objects and reasons of

the Bill have been published in the Kerala Gazette Extra Ordinary dated 17.9.2007. The conservation of paddy fields and wetlands have been noted with relevant details in the statement of objects which is as follows:

“Till recently, Kuttanad, Palakkad and such other paddy fields of Kerala were remained as the granaries of the State of Kerala. But the situation has changed for the last few decades. There has been an alarming shift from rice and subsistence food farming to cash crops. The area under rice cultivation has drastically declined from above eight lakhs hectares in the early 1970s to nearly two lakhs hectares in 2000s mainly due to conversion of paddy lands. Kerala is importing more than eight per cent of its rice requirements from other States. Several social, economical and cultural changes have led to conversion of paddy fields. The paddy fields throughout Kerala is facing severe threats as they are being converted to cash crop plantations. Even the marshes are filled for new constructions. Majority of landowners feel that sustained paddy cultivation is not economically viable and they aspire to shift into more remunerative crops and cropping patterns. Paddy field conversion has led to enormous ecological degradation in the watershed region, reduction in humus formation, intensification of soil erosion that affected the fertility of soil, reduction in water level in wells, ponds etc. The ecological system loses its quality irrecoverably forever and the entire society is the loser. It has led to loss of direct and indirect employment to farm workers and rural women. The rural poor will have to experience acute water shortage

than at present. They lost access to nutrient-rich, low cost food materials, which had been available in and around the paddy fields. Now majority are unaware of the true value of the loss of resources and its consequences on the livelihood conditions and gravity of the problem. It is very likely that the remaining paddy lands would be vanished in the near future, if the present policy is continued.

(2) In the wider interest of the society and mankind, paddy lands are to be preserved. Paddy is an amphibious crop that can be cultivated along with the maintenance of ecological functions of wetland and hence paddy cultivation is to be preserved and promoted at any any cost.

(3) Similarly, wetlands are some of the most diverse ecosystems on earth as they have both land and aquatic characteristics. Different plant species of a wetland provide habitat for a variety of animal communities. In addition to micro organisms and invertebrates, reptiles are common in wetland. Many amphibians live in wetland during at least part of their life cycle. A large number of fish species require wetland habitat for spawning, feeding, or protection from predation. Birds are attracted to wetland by the abundant food resources and sites for nesting, resting and feeding. Inland wetland help control floods by storing water and slowly releasing it to downstream areas after the flood peak.

(4) Kerala has a total wetland area of 127930 hectares, out of which an area of 34200 is in the 'inland wetland' and 93730 hectares is in the 'coastal wetland'. We have three fresh water lakes of Pookot in Wayanad District, Sasthamkotta in Kollam District and Vellayani in Thiruvananthapuram District. All the wetland including fresh water lakes are facing severe threat as they are

drained, cleared and reclaimed for the use of agriculture, settlement, industrial and several other purposes. This behaviour will certainly disturb the ecological balance and scarcity for drinking water, drying up of perennial water sources and saline intrusion in the sweet water wells.

(5) Therefore, it is proposed to bring a new legislation covering various aspects of the issue to conserve, regulate the reclamation and conversion of paddy fields and wetland in Kerala.

(6) The proposed enactment will facilitate conversion of paddy land and wetland; to regulate illegal and vast reclamation of paddy land and other wetland; indiscriminate clay mining from the paddy field; and to improve the overall ecological conditions of the State.

(7) The Bill seeks to achieve the above objects.”

63. From the statement of objects and reasons as noted above, it is clear that the State Legislature itself recognised that paddy field conversion leads to enormous ecological degradation in watershed region, reduction in humus formation, intensification of soil erosion that affects the fertility of soil, reduction in water level in wells, ponds etc.

64. Now come to the facts of the present case.

65. The 8th respondent made three applications for filling of paddy land. The first application was made on 5.8.2006 where the 8th respondent prayed for permission to convert 2 hectares 4.60

W.P.(C) Nos.15757 of 2008 and
18690 & 19577 of 2009

-: 65 :-

ares of paddy land and another 25 ares of land being portion of Survey Nos.291 and 275, for providing road access to the site. In the application, following prayer was made:

“In the above context it is earnestly requested that permission to convert the above 2 Hs. And 4.60 ares i.e. 05.05 cents of land and another extent of 25 ares (61.75 cents) of land being portions of survey nos.291/1, 7, 11 and 275/7, 10, 11, 13 for providing road access to the site out of the 15 acrs 44.86 cents of land within Trusts ownership and possession so as to make it fit for construction of building for the medical college and attached hospital, by virtue of the powers delegated to your honour under the provisions of Kerala Land Utilization Order, 1967 and as authorised GO RT No.157/2002/AD dt 05-02-2002.”

66. The said conversion was allowed by order dated 19.12.2006. Another application was made. The Revenue Divisional Officer in his order by noticing the report of the Principal Agricultural Officer, has stated as follows:

“The principal Agricultural Officer, vide Ref. No.3 reported that the remaining paddy fields can be utilized for cultivation, by opening the reservoirs during the summer season and can resolve the water scarcity and irrigation.”

67. The Revenue Divisional Officer has permitted the conversion of the aforesaid area with the following conditions. It is useful to extract last paragraph of the order :

“It is hereby sanctioned to reclaim an extent of 21.08 Ares in Survey No.290/4, 13.90 in 290/5, 8.09 in 290/6-1, 4.05 in 290/6-2, 3.70 in 290/6, 8.36 in 290/8, 6.07 in 290/8-1, 237 in 290/8-2, 45.40 in 290/9, 14.30 in 290/10, 24.85 in 290/11-2, 9.31 in 290/12-2, 8.10 in 290/12-3, 8.10 in 290/12-4, 13.90 in 290/16 and 11 Are in Survey No.290/17 altogether 2 Hector 2 Ares and 58 Sqr. Mtr paddy land for the construction of Medical College and 4.80 Ares in Survey No.291/1, 8.40 in 275/7, 3.00 in 275/10, 240 in 275/11, 0.68 in 274/13 and 1.80 Ares in Survey No.291/11 altogether 21.08 Ares of Paddy land for construction of approach road in Block No.23 of Thazhuthala Village.

Conditions

1. The reclamation of paddy fields in the above stated survey numbers should be used only for the purpose of construction of self financing Medical College, Hospital and approach road.
2. Take necessary steps to restart cultivation in the remaining paddy land in Block No.23 of Thazhuthala Village.
3. Construct a pond in 2.65 Acres in applied land and store rain water and provide the water to the locality

in case of water scarcity. Reconstruct a 'thodu' with minimum 3 metre width and with sufficient depth for free flow of water through the locality. Waste should be disposed scientifically and the construction in the reclaimed paddy fields should be without affecting the ecological balance and also without causing any health hazardous to the people residing in the locality."

68. The 8th respondent has made two further applications for conversion of 2 hectares 78 ares and 90 sq.meters, which was allowed on 29.3.2003. The third application for conversion was for an area of 3.40.89 hectares was allowed on 31.10.2007. Thus, the conversion of paddy land which was allowed by aforesaid three orders was about 7 hectares i.e. 70,000 sq.mtrs.

69. One of the submissions placed by learned counsel for the 8th respondent is that notification dated 14.9.2006 has no application with regard to construction of medical college and hospital. Since the project had already started by grant of No Objection Certificate (NOC) on 14.7.2006 i.e. much before the issuance of notification on 14.9.2006, it is submitted that notification dated 14.9.2006 was only prospective in operation and have no effect on on-going projects. Ext.P9, Clause (2) as extracted above, indicates that prior environmental clearance is

contemplated before any construction work, or preparation of land by the project management, except for securing the land, is started on the project or activity.

70. Learned counsel for 8th respondent refers to the above NOC which has been brought on record as Ext-R8(b). The 8th respondent had submitted an application to the Panchayat seeking no objection for approval of building plan for establishing self financing medical college. Land on which construction was proposed situates in Block No.23 comprising 10 hectares 18 ares and 4 sq.metres, as noted by the Panchayat. The Panchayat granted permission with following conditions:

- i. The sanction is only to construct building for proposed medical college and not used for any other purpose.
- ii. Sanction of land conservancy order for filling earth in the wetland to construct building should be obtained from revenue authorities.

71. As noted above, permission for land conversion was obtained from the Revenue Divisional Officer by the 8th respondent on 19.12.2006, 29.3.2007 and 31.10.2007 i.e. much subsequent to the issuance of notification dated 14.9.2006. We fail to appreciate the submission of the petitioner that project shall be treated to be

started w.e.f 14.7.2006 when no objection was issued by the Grama Panchayat. No objection certificate was conditional, subject to permission by Revenue Divisional Officer for filling up of the paddy field, which admittedly was granted much after 14.9.2006. There are other materials on the record which clearly indicate that w.e.f 14.7.2006 the project had not started.

72. It is relevant to note that application has been submitted by the petitioner on 5.8.2006 seeking conversion of 2 hectares 4.6 ares in Sy. No.290 on which, construction was to be located. In the application, 8th respondent has clearly stated that trust intends to start construction. It is useful to extract the following statement in the application:

“The Trust proposes to local construction of the college and the attached hospital in an extend of 2 Hs. And 4.60 ares ie 5 acrs 05.05 cents comprised in survey no.290/4.5.6 and 8 to 16 of Tazhuthala village. The whole extend of land mentioned above are lying idle without any cultivation for the past 30 years and more. Out of the above 6.149 acres a substantial portion of the same has reclaimed in course of time by natural process and now there are several coconut trees and other trees standing on the site, it is virtually impossible to convert the same as cultivable wet land.

-: 70 :-

The Trust has been given essentiality certificate to start working of the college during the academic year 2006 - 07 or 2007 - 08. Trust intends to start constructions with immediate effect and finish the same as early as possible enabling the Trust to apply to the Medical Council of India for permission for starting classes in 2007 - 08."

73. Clearly 8th respondent has not started the construction, it only intended. There is one more reason for not accepting the submission of 8th respondent that construction started prior to 14.9.2006 notification. It is in the application dated 5.8.2006 (Ext.P4), 8th respondent has sought permission for reclamation for 25 ares of land in Sy. Nos.291 and 275 for providing road access through the site. Advocate Commissioner after inspection has submitted a report along with the map which clearly indicates that road access is provided from Plot Nos.275 and 291. Taluk Surveyor has also submitted a map dated 17.1.2011 which has been brought on the record by Advocate Commissioner of the entire site locating the dry land owned by trust, wetland filled by trust, wetland unfilled by trust and marshy land owned by trust as well as the canal. From the bye-pass road for reaching the site, the road access was from Plot Nos.275 and 291 in which plots, 25

Ares land was reclaimed, which permission was granted only on 19.12.2006. When the road access was permitted to be filled only on 19.12.2006, there cannot be any access to the site nor construction could have started atleast before 19.12.2006.

74. The petitioner himself has filed certificate dated 16.4.2007 [Ext.R8(f)] of Grama Panchayat by which a revised certificate of permission was granted by the Panchayat. The Panchayat has noted in the said certificate that trust has submitted an application for fresh NOC for starting construction of the building for medical college and attached hospital. Following observations in the certificate are relevant:

“Based on the above a No Objection certificate has been issued from this office vide this office reference of even number dated 17/02/2007. Now it is reported by the Trust that they have acquired additionally an extent of 1 Ha 87.12 Ares of Dry land lying adjoining to the 10 Ha 18 Ares and 04 square meters for which the above No Objection Certificate has been given and that this portion is absolutely necessary **for starting the constructions of the buildings for the Medical College and attached Hospital.** “

75. Thus, from the above, we are satisfied that notification dated 14.9.2006 cannot be said to be non-applicable for the

project of 8th respondent for construction of medical college and hospital.

76. There is one more reason due to which, the applicability of notification dated 14.9.2006 cannot be denied. Even if it is assumed for argument sake that petitioner has started construction of building of medical college and hospital in dry land owned by it as shown in the map submitted by the Advocate Commissioner and Taluk Surveyor, the 8th respondent by three applications as noted above, have obtained permission for filling of paddy land to the extent of 2 acres and 55 sq.metres by order dated 19.12.2006 and similarly by order dated 29.3.2007 and 2 hectares 78 ares and 90 sq.metres and by order dated 31.10.2007 3.40.89 hectares. These three permissions for conversion of paddy land exceeded the limit of 20000 sq.metres as provided in the schedule of notification 14.9.2006. When construction project exceeded 20000 sq.metres it requires environmental clearance, permission granted for conversion of these land admittedly being after 14.9.2006, the construction on the aforesaid land require environmental clearance by virtue of notification 14.9.2006. At this juncture, it is relevant to extract the schedule of notification

W.P.(C) Nos.15757 of 2008 and
18690 & 19577 of 2009

-: 73 :-

dated 14.9.2006 insofar as construction projects are necessary.
Item 8 of schedule to the notification dated 14.9.2006 is as follows:

**8 Building/Construction projects/Area
Development projects and Townships**

8(a)	Building and Construction projects	>20000 sq.mtrs and <1,50,000 sq.mtrs of built-up area	# (built up area for covered construction;in the case of facilities open to the sky, it will be the activity area)
8(b)	Townships and Area Development projects.	Covering an area >50 ha and or built up area >1,50,000 sq.mtrs ++	++All projects under Item 8(b) shall be appraised as Category B1

[The built up area for the purpose of this notification is defined as “the built up or covered area for all floors put together including basement (s) and other service areas, which are proposed in the building/construction projects”.]

77. All the three reclamations itself being more than 20000 sq.metres, environmental clearance with regard to carrying out any construction activities on the reclaimed land was mandatory. From the above said discussion, we are of the view that the submission of learned counsel for the 8th respondent that there was no applicability for notification dated 14.9.2006 on the project of 8th respondent, cannot be accepted.

78. Environment (Protection) Act, 1986 was enacted for protection and improvement of environment and for matters

connected therewith. The notification dated 14.9.2006 was issued for imposing certain restrictions and prohibition on new projects or activities for protection of the environment. It is useful to extract the following part of the notification which is as follows:

“Now, therefore, in exercise of the powers conferred by sub-section (1) and clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986, read with clause (d) of sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986 and in supersession of the notification number S.O.60(E) dated the 27th January, 1994, except in respect of things done or omitted to be done before such supersession, the Central Government hereby directs that on and from the date of its publication the required construction of new projects or activities or the expansion or modernization of existing projects or activities listed in the Schedule to this notification entailing capacity addition with change in process and or technology shall be undertaken in any part of India only after the prior environmental clearance from the Central Government or as the case may be, by the State Level Environment Impact Assessment Authority, duly constituted by the Central Government under sub-section (3) of section 3 of the said Act, in accordance with the procedure specified hereinafter in this notification.”

79. The notification also contemplated environmental clearance for expansion or modernisation of existing projects or activities listed in the schedule. In any view of the matter, the reclamation of paddy field by three orders dated 19.12.2006, 29.3.2007 and 30.10.2007 which reclaimed land exceeded 20000 sq.metres required environmental clearance, atleast for any activities in the reclaimed land. As noted above from the report of the Revenue Divisional Officer, the extent of wetland reclaimed by 8th respondent was 7.42.64 hectares i.e. more than 70000 sq.metres. Thus, even after 8th respondent obtained the order of reclamation of paddy field by above three orders, for carrying out any construction activities on the reclaimed land, the environmental clearance under notification 14.9.2006 was mandatory.

80. From the facts as noted above, it is clear that when initially 8th respondent had submitted application for sanction by the Panchayat, which sanction was granted on 14.7.2006, 8th respondent was not entitled to carry on any activity in the land mentioned therein, except dry land. The dry land of which, construction was proposed being more than 2 hectares (20000

sq.metres), 8th respondent was obliged to obtain environmental clearance under notification dated 14.9.2006. When the petitioner obtained three orders from Revenue Divisional Officer dated 19.12.2006, 24.3.2007 and 31.10.2007 for filling of paddy land to the extent of more than 6 hectares, he became entitled to fill the land and carry on any project therein. The reclaimed land not being available on 14.7.2006 and became available only after issuance of notification dated 14.9.2006, the reclaimed land which itself was more than 20000 sq.metres can be treated as expansion of the project by petitioner, which entitlement came with the 8th respondent only after permission was granted for reclaiming the land. The notification dated 14.9.2006 para (ii) provides for "obtaining environmental clearance for expansion or modernisation of existing projects or activities listed in the schedule". Thus in any view of the matter, 8th respondent was obliged to obtain environmental clearance for carrying out any project on the reclaimed land. The 8th respondent cannot get away from the mandatory requirement of obtaining environmental clearance for carrying out his project on reclaimed land.

81. It is relevant to notice that even before the Revenue Divisional Officer environmental issues were raised. The Principal Agricultural Officer, who submitted his report dated 27.10.2006 (Ext.P5), had observed that in the proposed land for filling, no paddy cultivation is done. But the same can be made fit for paddy cultivation after making proper drainage facility by deepening and widening of the existing canal. Revenue Divisional Officer being aware of the environmental issues has imposed condition for reclamation which directs for construction of a pond, for storing rain water and providing water to the locality, in case of water scarcity and to reconstruct the 'thodu'. Before the Commissioner, Land Revenue, environmental issues were brought into notice. The Commissioner observed in his report "the unscientific filling of the land will create flood and drought during the seasons". The Revenue Divisional Officer also noticed the report of the Principal Agricultural Officer that the proposed land and the remaining area in the ela can be made fit for paddy cultivation. It is useful to note the following observation of the Commissioner:

"The observation of the Principal Agricultural Officer was that no paddy cultivation is noticed in the area for the last 10 years. The proposed land and the

-: 78 :-

remaining area in the ela can be made fit for cultivation, after making proper drainage by deepening and widening the existing canal. The land needs reclamation and removal of thick growthy weeds. The proposal of the Quilon Medical Trust for maintaining proper drainage system, construction of pond and water tank to save water and re-use in the Ela should be technically examined to aid paddy cultivation in the remaining area. “

82. The Commissioner in his ultimate conclusion recorded that no planning seems to have been done for such huge infrastructural development which is nothing, but a small township. The Commissioner further observed that it shall drastically affect the lives of the people living in the surrounding area. Operative portion of the order of Commissioner is as follows:

“On examination of the records, it is seen that the Quilon Medical Trust has plans to construct a private Medical College at the site. The representative of the trust explains that it will be an eleven storied building with training facilities for 100 pupils. There will be students hostel, staff quarters etc. In other words the trust is planning to set up a facility which will be skin to a small township. There will be generated tremendous demand for drinking water, sanitation facilities, electricity, roads service and all other infrastructure

including service sector. I do not see any planning done by the respondent in catering to large demands on infrastructure that will arise in future. It will drastically effect the lives of the people living in the surrounding area. The submission on behalf of the respondent that such impact study will be done in due course and pollution control certificate will be obtained after construction is completed, is totally wrong and lop-sided. The site is located just outside of Kollam Corporation limit. In order to plan development of the area in an organised, holistic manner, impact of land conversion and setting up of this mega structure has to be assessed in advance. This is actually the duty of the local body which they have totally ignored. It is understood, similar construction work is going on in the vicinity. The appellant admits that the paddy land conversion has already taken place a decade ago. But, this kind of large scale construction requires proper planning.

It is, therefore, directed that the respondent and the trust he represents, will have a detailed environmental impact assessment study done through a recognized expert agency. The recommendation of the study should include corrective measures to prevent filling up of "thodu" and other water bodies in the area, the demand generated for infrastructure and how to alleviate the pressure on infrastructure in the area. The local body will ensure that the recommendations of the

-: 80 :-

EIA study are scrupulously followed. All the other un-plan new development in the area should also be regulated in the above manner by the local body. After adhering to the above directions, the respondents may only thereafter take up the project. The appeal petition is dispose of with these orders.”

83. From the above, it is clear that the Commissioner, Land Revenue was aware of the environmental issues and also directed for environmental study and recommendation of such study to be followed. The Land Revenue Commissioner, who decided the matter on 15.5.2007, lost sight of the fact that statutory notification dated 14.9.2006 has already been issued, providing mandatory environmental clearance under the notification for construction projects involving more than 20,000 sq.metres. Had the Commissioner, Land Revenue, adverted to the aforesaid notification, he ought to have found that for any development in the reclaimed land, mandatory environmental clearance by the Central Government was necessary. Although EIA study was got conducted by 8th respondent, by a private organisation viz., Agricultural and Ecosystem Management Group [Ext.R8(c)] who have made some study and made certain recommendation. The 8th

respondent also claims to have taken steps in pursuance of the said report dated July, 2007 by widening the canal running between the reclaimed land and construction of two ponds. It is further submitted that a committee was constituted consisting of members of Grama Panchayat to oversee the compliance of EIA study. We are, however, of the opinion that the report by private organisation as relied on by 8th respondent cannot absolve 8th respondent from mandatory compliance of notification 14.9.2006 requiring environmental clearance from the Central Government.

84. Learned counsel for the 8th respondent has further submitted that as on the date, the medical college and hospital are functioning in pursuance of the permission granted by Government of India dated 13.7.2009 and the State Government has rightly refused to grant any relief to the petitioner in its revision petition on account of completion of the construction and raising the issue at such distance of time. The observations made by the State Government in its order dated 2.4.2009 are relevant to refer to in this contest which is to the following effect:

On going through the above facts the main dispute existing in the case is about title deed of the properties. The title deed is for two persons. Both are

said to be the Chairman of the Quilon Medical Trust. The connection with the trust and the property is only part of the sentence "for the Quilon Medical Trust". That means, the properties are not under the clear title deeds of the Quilon Medical Trust. The Revenue Divisional officer, Kollam has not seen examined this aspect while issuing Orders for conversion. This is an important reasons quite enough to quash the Orders. But while examining the present status of the area, it is revealed that the whole nilam had already been fully converted and construction works for the Medical College also over. A hospital with sufficient in patients is also under functioning. The conversion process with the sanction of the Revenue Divisional Officer has started very early since the beginning of 2007. The revision petitioner brought the issue before Government very late only on March 2009 ie. after completion of the whole construction work. At this distance of time Government are in a sad position with sever constraints to take a decision of quashing the orders of Revenue Divisional Officer. To reconvert the land back to its original position is quite impractical as the area has been totally converted to dry land and completed the constructions works for the Medical College. This has happened 2 years back also."

85. The main reason given by the State Government in not interfering with the orders passed by the Revenue Divisional Officer and the Commissioner, Land Revenue was that paddy field

has already been fully converted and construction work of the college is over and hospital with sufficient inpatient is already functioning. The revision petitions were brought before the Government after completion of the whole construction work. The Government observed that, at this distance of time, Government is in a sad position with severe constraints to take a decision of quashing the orders of Revenue Divisional Officer. The above observation of the State Government also indicate that Government refused to grant any relief on account of completion of the construction.

86. Issue Nos.6 to 10 are answered as above.

Issue No.11

87. Now we come to the last issue i.e. to what relief the petitioner is entitled, if any. From the materials on the record, it is clear that the construction of medical college, hospital is on dry land and there are other constructions on reclaimed land.

88. Before the petitioner raised the issue before the State Government, construction of the hospital and college was substantially complete as was noted by the State Government in its order extracted above. The State Government has observed

that a full fledged hospital with inpatient facilities is working on the land in question. We are of the view that in view of the above facts, petitioner is not entitled to any relief with regard to restoration of reclaimed land. The construction of hospital building, the college and other constructions needs no interference in exercise of equitable jurisdiction by this Court in this Public Interest Litigation.

89. However, we cannot lose sight of the fact that 8th respondent, for carrying out such massive construction, spread over for more than 3 hectares in dry land and more than 7 hectares in reclaimed paddy field, had proceeded without obtaining environmental clearance from the Central Government as mandatorily required by notification dated 14.9.2006. The notification dated 14.9.2006 has been issued in the public interest for protection of environment and to not permit any construction or activities without assessing the environmental issues. In the present case when the land involved was a wetland/paddy land, environmental concern was more necessary and mandatory. As noted above, after obtaining first order of reclamation on 19.12.2006, 8th respondent immediately filed the second

application stating that piling test revealed that in the reclaimed land buildings cannot be scientifically constructed. Hence, another application was made for reclamation of further land. The Commissioner, Land Revenue, himself has recorded the finding that the entire process was undertaken by the 8th respondent without proper planning and environmental study. Adverse impact in the environment was thus an accepted fact by the authorities themselves. We having noticed the relevant facts of the case, especially statement and objects of Kerala Conservation of Paddy Land and Wetland Act, 2008 are of the view that 8th respondent having violated the mandatory requirement of obtaining environmental clearance has to compensate for taking remedial action for redeeming environmental degradation.

90. As noted above, one of the conditions under which the 8th respondent was granted permission to fill up the paddy field was "take necessary steps to restart cultivation in the remaining paddy land in Block N0.23 of Thazhuthala village". The 8th respondent in the counter affidavit dated 16.11.2015 admits that he is not carrying the paddy cultivation as directed by Revenue Divisional

Officer. It is useful to note the averments made by 8th respondent in paragraph (18) which is to the following effect:

“18. it is submitted that in the affidavit, it has been alleged that the condition in Exhibit P6 directing the petitioner to take necessary steps to restart cultivation in the remaining paddy field in block No.23 in Thazhuthala village has not been carried out, which is factually incorrect. It is submitted that the Quilon Medical Trust tried to cultivate paddy but the field was not suitable for cultivation. It is submitted that while constructing canals inside the property and widening the existing canals, it was seen that the Thodu from Churangi bridge is full of terrestrial aquatic vegetations and this has to be wiped off to enable a free flow of water and it was seen that the Thachangara Aaru is deposited with mud from adjoining lands and free flow of water is hindered in several places and accordingly the Quilon Medical Trust requested the Executive Engineer, Department of Minor Irrigation, Kollam to take expeditious steps to remove the mud from the Thachangara Aaru. A copy of the said request is produced herewith and marked as **Exhibit R8(ae)**. A request was also submitted by the Quilon Medical trust to the Secretary of the Municipal Corporation, Kollam to take necessary steps for removing the obstruction to the free flow water through the Thodu. A copy of the said request is produced herewith and marked as **Exhibit R8(af)**.”

91. The 8th respondent has not started the paddy cultivation although he was obliged to do so under the condition imposed in three orders dated 19.12.2006, 29.3.2007 and 31.10,2007 obtained by him for conversion of paddy field. It is statutory obligation on 8th respondent referable to Clauses 3 and 4 of 1967 order as noted above. In above view of the matter, Collector has to take appropriate steps and carry on such work of improvement in the remaining wetland or in any part of reclaimed land by 8th respondent which may be found necessary. The collector may also obtain any environmental study report regarding measures and manner of improvement of environment and ecology, including any report from SEIAA.

92. We have already held that 8th respondent has violated the notification dated 14.9.2006 in not obtaining environmental clearance from Central Government before implementing his project atleast in paddy fields/wetlands. The violation of statutory provisions cannot be ignored. The constructions having completed, and hospital and medical college are running on the site, the acts done are irreversible, but for the statutory violation and for carrying out the improvement works in the land in question for

protection of environment and ecology, 8th respondent is directed to deposit an amount of ₹1 Crore before the District Collector, Kollam by 31st March, 2016, which shall be utilised by the District Collector for protection of environment and ecology of the land in question (Block No.23) and to carry out works of improvement as is required consequent to environmental study as directed above.

W.P(C) No.15757 of 2008

93. As noted above, this writ petition has been filed by the Chairman, Quilon Medical Trust challenging order of Kerala Lok Ayukta dated 22nd May, 2008 by which, report was sent to the State Government. It is useful to note paragraphs 5, 6, and 7 of the report of the Kerala Lok Ayukta, which is to the following effect.

“6. During the pendency of this petition another development occurred. Petitioner has been won over by the 3rd respondent, Medical Trust. He wants to back out of the proceedings. Even during the earlier dates on which this proceeding stood posted, learned Government Pleader submitted before use that the petitioner is not interested in prosecuting this petition. It appears that Government was aware of the fact that the Trust has purchased the petitioner and that this petition will not be prosecuted by him. 6. The action of the petitioner in backing out from the proceedings

speaks volumes. It is on account of the influence exerted on him by the land mafia namely 3rd respondent in this case. Nearly 90 acres of wet land has been converted into garden land by filling it up with earth. The filled up area has now been fully covered by concrete constructions.

7. When the Government are declaring from the house tops that no even an inch of paddy field will be allowed to be converted into garden land, extensive areas of 100 acres are being filled up with immunity. According to us the tall-talk resorted to by the political leaders is only a ruse to mislead the public at large. These announcements give rooms for corrupt officials to make money even in case where small land holders having an extent of 10 or 15 cents apply for building permit when that land happened to be entered in the revenue records as wet land. Such lands even if they are in the midst of fully built up area its owners will be compelled to pay through their nose to get permit for putting up building. In this state of affairs Government may consider whether the policy that is being pursued by them in the various statements coming in the media is intended to harass the public at large or whether it is for the good of the common man. We send up this report under Section 12(1) of the Kerala Lok Ayukta Act to the Chief Minister and Ministers in charge of Revenue and Agriculture for appropriate consideration and remedial actions."

94. The submission which has been pressed by the learned counsel for Quilon Medical Trust is that when the complainant S.Sunil himself has filed an application praying that in the complaint no further action be taken and the complaint be

dropped, there was no jurisdiction for Lok Ayukta to proceed with the complaint. As noted above, the Lok Ayukta has considered the aforesaid factor and has made an observation in the order that complainant was won over by the Chairman, Quilon Medical Trust, who was the third respondent to the complaint. After making the aforesaid observation, the Lok Ayukta proceeded to send report to the Government. When an authority has made an observation to the effect that a party filing complaint has been won over, the said observation has to be given due weight because it is the authority which is proceeding with the matter in full knowledge of the proceedings in the complaint before the Lok Ayukta. In the facts and circumstances of the present case where allegations were raised and the Lok Ayukta suo motu impleaded Chief Secretary of the State and asked the Chief Secretary to file a statement giving an insight to the policy of the Government regarding the filling up on paddy land, no error was committed by the Lok Ayukta in sending the report to the Government. It is for the Government to take appropriate action on the report as it deems fit. But merely on the above ground that complainant has asked not to proceed

with the complaint, we cannot hold that the report submitted by the Lok Ayukta was without jurisdiction.

95. We further notice that what was sent by the Lok Ayukta was only a report which was yet to be considered by the Government for appropriate action. It was for the Government to take such action as it may deem fit and proper. The report contains the details of the complaint and details of the proceedings which took place before the Lok Ayukta and was reported to the State Government. Thus, we do not find any ground to quash Ext.P12 report. The writ petition has to be dismissed.

W.P(C) No.19577 of 2009

96. This writ petition has been filed by Quilon Medical Trust praying for deletion of the observation in Ext.P5 order i.e. the order of the State Government dated 2.4.2009. The observation which is sought to be deleted has already been extracted above. The State Government observed that title deed is in the name of two persons, both are said to be the Chairman of Quilon Medical Trust. The State Government further observed that the connection with the trust and the property is only part of the sentence “for the Quilon Medical trust”. Petitioner has brought on record true

copies of relevant pages of thandaper register. It is pleaded that the words in the said register are “for Quilon Medical Trust, Chairman, Abdul Salam, S/o.Assanarpilla, 'Bismi', Thevallicherry Palace Ward, Kollam West village, Kollam Taluk”.

97. Quilon Medical Trust had also brought on record sale deed executed on 17.6.2006 and 4.6.2007 wherein it was mentioned that the sale deed is executed in favour of Quilon Medical Trust. The categorical case of Quilon Medical Trust is that all the properties which are referred to in the thandaper register as for Quilon Medical Trust, are the trust property. An observation made by the State Government that the properties are not under clear title deed of the Quilon Medical Trust was uncalled for. Sufficient materials have been brought on the record to substantiate the pleading in the writ petition that the properties were purchased for the Quilon Medical Trust and it is the trust whose name is recorded in the thandaper register and it is paying the land tax. Land tax receipts of the properties have also been brought on the record in the writ petition. We are of the view that the observations made in the order of the State Government that the properties are not under clear title deed of the Quilon Medical

Trust were uncalled for and deserves to be set aside. For the same reason, the order of the State Government dated 4.6.2009 also deserve to be set aside.

In the result, the writ petitions are disposed of with the following directions:

W.P.(C) No.18690 of 2009

- (a)The prayers of the petitioner for quashing Exts.P6, P10, P11, P13 and P17 are refused subject to as directed hereinafter.
- (b)Respondent Nos.1 to 7 are directed not to permit any further construction of any building in wetland in possession of 8th respondent for any purpose.
- (c)The 8th respondent is directed to deposit an amount of ₹1 Crore before the District Collector, Kollam within 31.3.2016 to take remedial steps for restoration of environmental degradation caused by filling of large scale wetland. The Collector shall ensure that in the rest of the wetland in Block No.23, paddy cultivation is undertaken as per condition laid down by Revenue Divisional Officer while granting permission for conversion of paddy land.
- (d)The Collector shall take steps for improvement of drainage system, further developmental work pertaining to thodu traversing the reclaimed land, construction of other water bodies and streams as may be necessary for maintaining the ecology, by utilising the fund to be deposited by 8th respondent under this order.

W.P.(C) Nos.15757 of 2008 and
18690 & 19577 of 2009

-: 94 :-

W.P.(C) No. 15757 of 2008 and W.P.(C) No.19577 of 2009

W.P(C) No.15757 of 2008 is dismissed.

W.P(C) No.19577 of 2009 is allowed. The observations as prayed in the writ petition are quashed. The order dated 4.6.2009 (Ext.P11) is also quashed.

The parties shall bear their own costs.

Sd/-
ASHOK BHUSHAN
CHIEF JUSTICE

Sd/-
P.R.RAMACHANDRA MENON
JUDGE

Jvt/krj/9/12/15