

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN  
&  
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

MONDAY, THE 20TH DAY OF JULY 2015/29TH ASHADHA, 1937

WP(C).No. 23231 of 2013 (S)  
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PETITIONER(S):  
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1. SHARAFUDEEN, AGED 68 YEARS,  
S/O.MOHAMMAD NOOHU, AISHA BHAVAN, SRI EIGHT,  
EDAVA, VARKALA, THIRUVANANTHAPURAM.
2. JAHANGIR, AGED 45 YEARS,  
S/O.SHAMSUDEEN, CHAMAKUZHIVILA HOUSE, PARAYIL,  
EDAVA, VARKALA, THIRUVANANTHAPURAM.
3. SHANITHA, AGED 34 YEARS,  
D/O.ELIYAS, PARAYIL PUTHEN VEEDU, PARAYIL,  
EDAVA, VARKALA, THIRUVANANTHAPURAM.

BY ADV. SRI.SAJU J.VALLYARA

RESPONDENT(S):  
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1. EDAVA GRAMA PANCHAYAT,  
REPRESENTED BY ITS SECRETARY, VARKALA,  
THIRUVANANTHAPURAM. PIN-695 001.
2. THE DIRECTOR OF PANCHAYATS,  
PANCHAYAT DIRECTORATE, THIRUVANANTHAPURAM- 695 001.
3. THE SECRETARY TO GOVERNMENT OF KERALA,  
LOCAL SELF GOVERNING DEPARTMENT, SECRETARIAT,  
THIRUVANANTHAPURAM- 695 001.
4. THE DIRECTOR,  
VIGILANCE AND ANTI-CORRUPTION BUREAU,  
THIRUVANANTHAPURAM- 695 001.

\*ADDL.R5 TO R24 IMPEADED

\*ADDL.R5: PROPRIETOR, SEA SPLENDER BEACH RESORT,  
UDAYAM BEACH, EDAVA, VARKALA,  
THIRUVANANTHAPURAM-695 001.

\*ADDL.R6: PROPRIETOR, FIRST PLACE RESORT,  
UDAYAM BEACH, EDAVA, VARKALA,  
THIRUVANANTHAPURAM-695 001.

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- \*ADDL.R7: PROPRIETOR, OLD KATTIL BEACH RESORT,  
UDAYAM BEACH, EDAVA, VARKALA,  
THIRUVANANTHAPURAM-695 001.**
- \*ADDL.R8: PROPRIETOR, MAINAKAM BEACH,  
RESORT, UDAYAM BEACH, EDAVA, VARKALA,  
THIRUVANANTHAPURAM-695 001.**
- \*ADDL.R9: PROPRIETOR, NEW KATTIL BEACH RESORT,  
UDAYAM BEACH, EDAVA, VARKALA,  
THIRUVANANTHAPURAM-695 001.**
- \*ADDL.R10: PROPRIETOR, OASIS BEACH RESORT,  
UDAYAM BEACH, EDAVA, VARKALA,  
THIRUVANANTHAPURAM-695 001**
- \*ADDL.R11: PROPRIETOR, DREAM WAVE BEACH RESORT,  
UDAYAM BEACH, EDAVA, VARKALA,  
THIRUVANANTHAPURAM-695 001.**
- \*ADDL.R12: PROPRIETOR, HALEEMA BEACH RESORT,  
UDAYAM BEACH, EDAVA, VARKALA,  
THIRUVANANTHAPURAM-695 001.**
- \*ADDL.R13: PROPRIETOR, MOOSA BEACH RESORT (CAFE),  
UDAYAM BEACH, EDAVA, VARKALA,  
THIRUVANANTHAPURAM-695 001**
- \*ADDL.R14: PROPRIETOR, PULIMOODU BEACH RESORT,  
UDAYAM BEACH, EDAVA, VARKALA,  
THIRUVANANTHAPURAM-695 001.**
- \*ADDL.R15: PROPRIETOR, PINGANA BEACH RESORT,  
UDAYAM BEACH, EDAVA VARKALA,  
THIRUVANANTHAPURAM-695 001.**
- \*ADDL.R16: PROPRIETOR, CRYSTAL PALACE BEACH RESORT,  
UDAYAM BEACH, EDAVA, VARKALA,  
THIRUVANANTHAPURAM-695 001.**
- \*ADDL.R17: PROPRIETOR, SONA BEACH RESORT,  
UDAYAM BEACH, EDAVA, VARKALA,  
THIRUVANANTHAPURAM-695 001.**
- \*ADDL.R18: PROPRIETOR, ODAYAM BEACH RESORT,  
UDAYAM BEACH, EDAVA, VARKALA,  
THIRUVANANTHAPURAM-695 001.**
- \*ADDL.R19: PROPRIETOR, ASTHAMAYA BEACH RESORT,  
UDAYAM BEACH, EDAVA, VARKALA,  
THIRUVANANTHAPURAM-695 001.**
- \*ADDL.R20: PROPRIETOR, BLUEWATER BEACH RESORT,  
UDAYAM BEACH, EDAVA, VARKALA,  
THIRUVANANTHAPURAM-695 001**

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**\*ADDL.R21: PROPRIETOR, SEA FOOD RESTAURANT,  
UDAYAM BEACH, EDAVA, VARKALA,  
THIRUVANANTHAPURAM-695 001.**

**\*ADDL.R22: PROPRIETOR, PAYALA BEACH RESORT,  
UDAYAM BEACH, EDAVA, VARKALA,  
THIRUVANANTHAPURAM-695 001.**

**\*ADDL.R23: PROPRIETOR, ROYAL PALM BEACH RESORT,  
UDAYAM BEACH, EDAVA, VARKALA,  
THIRUVANANTHAPURAM-695 001.**

**\*ADDL.R24: PROPRIETOR, THANIMA BEACH RESORT,  
UDAYAM BEACH, EDAVA, VARKALA,  
THIRUVANANTHAPURAM-695 001.**

**\*ARE IMPEADED AS ADDITIONAL RESPONDENTS 5 TO 24 VIDE ORDER  
DATED 1/11/2013 IN IA.NO.14129/2013.**

**R2 TO R4 BY SR GOVERNMENT PLEADER SRI.P.I.DAVIS  
ADDL.R5,R9,R 10,R12,R14,R16,R17,R20,R24 BY ADV. SRI.T.H.ABDUL AZEEZ  
SRI.M.CHANDRAN**

**R6 BY ADV. SRI.K.P.SUJESH KUMAR  
R11,R15 & R23 BY ADV. SRI.V.M.KURIAN  
ADDL R18 BY ADV. SRI.AYYAPPAN SANKAR**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD  
ON 20-07-2015, THE COURT ON THE SAME DAY DELIVERED  
THE FOLLOWING:**

**sts**

**APPENDIX**

**PETITIONER(S)' EXHIBITS**  
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- P1- TRUE PHOTOCOPY OF SURPRISE CHECK REPORT DATED 27.2.2010.
- P2- TRUE PHOTOCOPY OF THE REPRESENTATION MADE BY PETITIONER  
BEFORE THE 4TH RESPONDENT'S OFFICE DATED 6.9.2013.
- P2(A)- TRUE PHOTOCOPY OF THE TRUE ENGLISH TRANSLATION OF EXHIBIT P2.  
DATED 6/9/2013

**RESPONDENT(S)' EXHIBITS**  
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- R5 COPY OF THE INJUNCTION ORDER IN I.A.105/2014 IN A.S.1/2014  
HONOURABLE SUB COURT, ATTINGAL.
- R5(A) COPY OF THE INJUNCTION ORDER IN I.A.2207/2013 IN AS 64/2013  
HONOURABLE SUB COURT, ATTINGAL
- R5(B) COPY OF THE INJUNCTION ORDER IN I.A.1618/2011 IN O.S.364/2011 HON'BLE  
MUNSIFF'S COURT, VARKALA
- R5(C) COPY OF THE IMPEADING PETITION NUMBERED 7879/2011 IN WP(C).  
NO.3877/2011
- R5(D) COPY OF THE APPEAL NUMBERED AS W.A.1770/2013

/TRUE COPY/

P.A.TO JUDGE

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**ASHOK BHUSHAN, CJ  
& A.M.SHAFFIQUE, J.**

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W.P.C.No.23231 of 2013

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Dated this the 20<sup>th</sup> day of July 2015

**J U D G M E N T**

**Shaffique, J**

Petitioner has approached this Court by filing a public interest litigation seeking the following relief:

*“Issue a direction to the 4<sup>th</sup> respondent to take immediate action against the illegal constructions, based on Exhibit-P1, and to stop all further activities of the unauthorized constructions, based on Exhibit-P1.”*

2. It is inter alia alleged that the 1<sup>st</sup> respondent Panchayat had given permission to construct buildings in violation of the Coastal Regulation Zone notification. An enquiry was conducted by the Vigilance and Anti-Corruption Bureau and certain infirmities have been found out regarding the manner in which permission has been granted by the Grama Panchayat. Ext.P1 is the surprise check report of the Inspector of Police, Vigilance and Anti-Corruption Bureau. Recommendations made by the said officer reads as under:

*“1. Since the first allegation regarding dismantling of petitioner's building was not substantiated in evidence during the surprise check, no action is recommended in that regard.*

*2. The Government may be addressed to give directions to the Edava Grama Panchayat authorities to take immediate steps to locate the new constructions and extensions within 200m from HTL and to take stringent action to demolish such buildings as per rules.*

*3. Departmental enquiry may be conducted and disciplinary action may be initiated against the officers who committed dereliction of duty and failed to take prompt action against the violation of CRZ norms.”*

It is, on this basis, that the petitioner has sought for the relief, as aforesaid.

3. Having heard the learned counsel for the petitioner and the contesting respondents who have appeared in this case, we do not think that the direction, as sought for, can be granted in this public interest litigation, especially on account of the fact that several factual situations that have arisen in the matter will have to be considered by the competent authorities after notice to the persons who have made the alleged unauthorised

constructions. Ext.P1 is only a preliminary report and it is for the Government to consider the same and issue appropriate directions.

4. Learned counsel appearing for the Panchayat would however submit that certain injunction orders have been passed restraining action which was proposed to be taken against certain occupants. Whatever that might be, it is for the 3<sup>rd</sup> respondent to consider Ext.P1 and take appropriate action in the matter, after hearing the affected parties.

In the result, we dispose of the writ petition directing the 3<sup>rd</sup> respondent to consider Ext.P1 and take necessary steps in accordance with law. It shall be done within a period of three months from the date of receipt of a copy of this judgment.

(sd/-)

**(ASHOK BHUSHAN, CHIEF JUSTICE)**

(sd/-)

**(A.M.SHAFFIQUE, JUDGE)**

jsr