

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

WEDNESDAY, THE 23RD DAY OF SEPTEMBER 2015/1ST ASWINA, 1937

WP(C).No. 26246 of 2015 (E)

PETITIONER:

**M/S.KARIMPANAL ARCADE OWNER'S
WELFARE ASSOCIATION,
EAST FORT, THIRUVANANTHAPURAM,
REPRESENTED BY ITS SECRETARY, M.K.KUMARAN.**

**BY ADVS.SRI.JOHN JOSEPH VETTIKAD
SRI.C.JOSEPH JOHNY**

RESPONDENT(S):

- 1. STATE OF KERALA, REPRESENTED BY ITS
CHIEF SECRETARY TO GOVERNMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM, PIN-695001.**
- 2. THE DISTRICT COLLECTOR,
COLLECTORATE, VANCHIYOOR,
THIRUVANANTHAPURAM-695035.**
- 3. THE ADDITIONAL DISTRICT MAGISTRATE,
COLLECTORATE, VANCHIYOOR,
THIRUVANANTHAPURAM-695035.**

BY SENIOR GOVERNMENT PLEADER SRI.C.S.MANILAL

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 16-09-2015 ALONG WITH WPC. 26377/2015 & 28130/2015,
THE COURT ON 23-09-2015 DELIVERED THE FOLLOWING:**

mbr/

APPENDIX

PETITIONERS' EXHIBITS:

- EXT.P1 : THE TRUE COPY OF THE BASIC TAX RECEIPT ISSUED IN THE NAME
OF THE OWNERS OF THE PROPERTY FOR THE YEAR 2015.
- EXT.P2 : FOUR PHOTOGRAPHS SHOWING THE ERECTION OF THE WIRED
FENCING WITHIN THE COMPOUND OF THE PETITIONER'S PROPERTY
ALONG WITH DATE AND TIME OF THE PHOTOGRAPH.
- EXT.P3 : THE TRUE COPY OF THANDAPER ACCOUNT IN RESPECT OF THE
PROPERTIES IN THE POSSESSION OF THE PETITIONER.

RESPONDENTS' EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

mbr/

“C.R.”

A.MUHAMED MUSTAQUE, J.

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**W.P.(C).Nos.26246/2015, 26377/2015 & 28130/2015**  
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Dated this the 23rd Day of September, 2015

J U D G M E N T

These writ petitions are filed questioning the proceedings initiated under the provisions of the Disaster Management Act 2005 (hereinafter referred to as the “DM Act”). Since common questions of law are involved in all these cases, these writ petitions are disposed of by a common judgment.

FACTS:

2. **W.P.(C).No. 26377/2015:**

2.i. The petitioner claims ownership of a land in Survey No.560/364 of Vanchiyoor Village in Thiruvananthapuram Taluk, Thiruvananthapuram District. He has been served with a notice under Section 34(k) of the DM Act. Ext.P8 is the said notice. The notice directs him to show cause against proposed demolition and removal of the structures and buildings belonging to him. It is stated in the notice that the petitioner had constructed a building above the underground arched

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conduit portion of the Thekkenekara Canal situated in Survey No.560/364. The notice was issued by the District Collector in the capacity as the Chairman of the District Disaster Management Authority, Thiruvananthapuram. On receipt of notice, the petitioner raised objections before the Revenue Minister as per Ext.P11. In the objection, the petitioner has stated that the land referred above belonged to the Maharaja of Travancore and it is a private property and thereafter, by transfer of land, it now belongs to the petitioner. The petitioner also pointed out that there is no obstruction in the flow of water through the canal. It appears that the petitioner's objection was referred to the District Collector and the District Collector directed the Tahsildar to report about the factual aspects raised in the objection. In Ext.P11 the petitioner has also highlighted allegations that certain Ministers are inimical to him and the notice was issued based on the enmity towards him. Ext.P12 is the Tahsildar's report. In the report of the Tahsildar, it is stated that it is necessary to demolish the structures over the canal so as to prevent any impending disaster. The Tahsildar in his report answered the objections raised by the petitioner. The petitioner, thereafter, approached this Court in W.P.(C).Nb.20945/2015. This Court, by Ext.P13 judgment disposed of the writ petition ordering a joint inspection and also directing the Authorities to furnish the documents relied upon by them. Thereafter, the petitioner raised a detailed objection by Ext.P18.

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Based on the objection and after hearing the petitioner, a decision was taken as per Ext.P32. By this decision, the petitioner's objections were overruled by the Authority. The Authority also found that the land belongs to the Government and therefore, the petitioner is not entitled for compensation.

2.ii. The decision has been taken by the competent Authority being the Chief Executive Officer, District Disaster Management Authority. The Authority after adverting to the relevant records found that the Thekkenekara Canal which was constructed in the year 1940, is in an extremely precarious condition, and the underground conduit is likely to collapse and therefore, immediate action is necessary under the DM Act.

2.iii. The petitioner questions Ext.P32 on the following grounds:

- a. *Mala fides.*
- b. Violation of the principles of natural justice.
- c. Challenging the authority to acquire private land belonging to him.
- d. Absence of any disaster to confer jurisdiction and;
- e. Also for the reason that no District Plan drawn by the competent Authority which is required under Section 31 of the DM Act.

2.iv. The learned Senior Government Pleader, Shri C.S.Manilal would contend that the land in question is a Government land and it is recorded in the revenue records as *kandukrishi thanathu*. It is submitted that, a person in possession of *kandukrishi* land will have to obtain an assignment under the Kandukrishi Land Assignment Rules, 1958. Therefore, it is contended that since the petitioner has no case that he has obtained any assignment, he cannot claim any private interest in the above land. The learned Senior Government Pleader points out that Thekkenekara Canal was in existence as early as in early 20th Century. It was renovated during the year 1935-36. It is submitted that it is necessary to undertake further renovation of this canal to avoid flooding in Thiruvananthapuram City. The learned Senior Government Pleader also submits that the Authority has followed the principles of natural justice in the matter.

2.v. The learned Senior Government Pleader Shri C.S.Manilal would further argue that a pro-active and holistic approach is required while dealing with the Disaster Management. It is submitted that the plan prepared under Section 31 of the DM Act is not under challenge before this

Court. Therefore, it is submitted that the Authority has every right to proceed under the DM Act to avert any possible disaster or catastrophe. It is also submitted that it is impossible for the petitioner to claim subjacent space under the building. The learned Senior Government Pleader also submits that the contention raised by the petitioner that the reports are tainted with *mala fides* is without any basis. It is argued that almost all persons who have encroached upon Thekkenekara Canal have been evicted except the petitioner herein. It is also argued that the DM Act is a comprehensive legislation, giving an authority to take over any premises for the purpose of disaster management. The learned Senior Government Pleader also submits that public interest, therefore, will prevail over private interest of the individuals.

3. W.P.(C).No. 26246/2015

3.i This writ petition is filed by a registered association of the owners of apartments in a building, namely, Karimpanal Arcade. They are aggrieved by the action of the Authority under the DM Act to dispossess or evict them from the property comprised in Survey No.646, 647, 648, 649 and 650/2 of Vanchiyoor Village, Thiruvananthapuram Taluk. According to the petitioner, no notice has been served on them before initiating any action under the DM Act. It is seen from the pleadings that they are using the space over the Thekkenekara Canal for car parking.

3.ii. In the counter statement filed by the third respondent, it is stated that the space of the canal belongs to the Government and the Government, for protection of the canal from encroachment had fenced the space over the canal. It is submitted that the work is over. It is further stated in the counter statement that there is no need of issuing any notice to the petitioner to fence the Government land.

4. W.P.(C). 28130/2015:

This writ petition is filed by the sister of the writ petitioner in WPC 23677/2015. For the purpose of determination of the issue, she has adopted the very same contentions of the writ petitioner in W.P.(C). No.23677/2015. Therefore, filing a counter affidavit by the State has been waived by the petitioner.

5. The common issue in all these writ petitions is with respect to the right of the District Authority to dispossess or evict the occupation of the petitioners from the premises by invoking powers under the DM Act. Therefore, apart from the specific points urged in W.P.(C).No.23677/2015 and in W.P.(C).No.28130/2015, the above issue is being considered as a common issue in all the writ petitions.

6. However, before proceeding further in the matter, it is necessary to advert to the various legal provisions of the DM Act.:

6.i. Analysis of the Disaster Management Act:

India is vulnerable to natural disasters. Floods, droughts, cyclones, earthquakes and landslides are recurrent phenomena. The Disaster Management Act was enacted in the year 2005 with the intention to provide for the effective management of disasters. It appears that different agencies were involved in Disaster Management which resulted in delay in carrying out mitigation measures, which required immediate and prompt response. Therefore, the Parliament in its wisdom have brought one platform to streamline the activities relating to disasters by enacting the DM Act. It provides an institutional answer to the issue. It provides multilevel approach to cope-up with the Disaster Management. It also provides institutional mechanism from National level to District level to carry out its objectives.

6.ii. In a Federal setup, the Parliament cannot ignore the State responsibility for undertaking measures in the event of disaster. Therefore, the State level response and the District level response are envisaged for effective management. The State Disaster Management Authority is constituted with the Chief Minister as the Chairperson. The State Authority lays down the State Disaster Management policy (see Section 18 of the DM Act). It has to approve the Disaster Management plans prepared by the various departments of the State Government. Thus, the objective of the

State Authority is to ensure co-ordination of different departments to implement programmes relating to Disaster Management.

6.iii. At the District level, the District Magistrate is the focal point for co-ordinating all activities relating to Disaster Management. The District Authority has to take all measures in the District in accordance with the guidelines laid down by the National Authority and the State Authority. The District Authority is also required to prepare a plan for Disaster Management of the District. This plan is to be prepared after consultation with the local authorities.

7. In these writ petitions, this Court is called upon to answer on the power exercised by the District Authority. Therefore, for determining the issue, the discussions and decisions are confined to the exercise of power by the District Authority.

8. "Disaster" is defined as follows under Section 2(a) of the DM Act:

(d) "Disaster" means a catastrophe, mishap, calamity or grave occurrence in any area, arising from natural or man made causes, or by accident or negligence which results in substantial loss of life or human suffering or damage to, and destruction of, property, or damage to, or degradation of, environment, and is of such a nature or magnitude as to be beyond the coping capacity of the community of the affected area;"

9. Section 2(e) of the DM Act defines Disaster Management as follows:

“2(e) 'Disaster management' means a continuous and integrated process of planning, organising, coordinating and implementing measures which are necessary or expedient for:-

- (i) prevention of danger or threat of any disaster;
- (ii) mitigation or reduction of risk of any disaster or its severe consequences;
- (iii) capacity-building;
- (iv) preparedness to deal with any disaster;
- (v) prompt response to any threatening disaster situation or disaster;
- (vi) assessing the severity or magnitude of effects of any disaster;
- (vii) evacuation, rescue and relief;
- (viii) rehabilitation and reconstruction.”

10. “Disaster Management”, going by the definition, can be broadly classified into three categories, namely, response in disaster situations, prevention of any disaster and capacity-building. The above measures are achieved by three different approaches, which can be classified as emergency measures, longterm measures and hybrid measures.

10.i. *Emergency measures:*

The District Authority is empowered to take any measures for mitigation of disaster. By emergency measures, it can direct any officer or department to carry out its order (see Section 33 of the DM Act). It has power to control and restrict vehicle traffic in vulnerable area. It has power to control movement of persons. It can conduct search and rescue operations. It can establish emergency communication system. These measures are, in fact, relief and rescue measures in the event of disaster. These powers of the District Authority are enumerated under Section 34 of the DM Act.

10.i.a. In a grave situation, it may be necessary to use the resources other than available with the Authority for the purpose of rescue operations. In such situations the Authorities are armed with necessary power to act upon. Section 65 of the DM Act enables the Authority to make a requisition with any other Authority or person to part with the resources. Section 65 reads as follows:

“65. Power of requisition of resources, provisions, vehicles, etc., for rescue operations, etc.-

(1) If it appears to the National Executive Committee, State Executive Committee or District Authority or any officer as may be authorised by it in this behalf that-

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- (a) Any resources with any Authority or person are needed for the purpose of prompt response;
- (b) Any premises are needed or likely to be needed for the purpose of rescue operations; or
- (c) Any vehicle is needed or is likely to be needed for the purposes of transport of resources from disaster affected areas or transport of resources to the affected area or transport in connection with rescue, rehabilitation or reconstruction,

such Authority may, by order in writing, requisition such resources or premises or such vehicle, as the case may be, and may make such further orders as may appear to it to be necessary or expedient in connection with the requisitioning.

(2) Whenever any resource, premises or vehicle is requisitioned under sub-section (1), the period of such requisition shall not extend beyond the period for which such resource, premises or vehicle is required for any of the purposes mentioned in that sub-section.

(3) In this section,-

- (a) "Resources" includes men and material resources;
- (b) "Services" includes facilities;
- (c) "Premises" means any land, building or part of a building and includes a hut, shed or other structure or any part thereof;
- (d) "Vehicle" means any vehicle used or capable of being used for the purpose of transport, whether propelled by mechanical power or otherwise."

10.i.b. Section 65 (2) sufficiently indicates that emergency power can be exercised only as a short term measure for the period during which resources or premises or vehicles may be required. Section 66 provides for payment of compensation for use of such resources. As seen from Section 65, these are all measures taken during emergency situation to reduce or mitigate hazards or for safety. There is no provision in the DM Act, enabling the Authority to dispossess or evict or acquire the property of a third person permanently by using the power of eminent domain. It is appropriate to refer the definition of “capacitybuilding” under Section 2 (b) of the DM Act which reads as follows:

“2(b) "Capacity-building" includes-

- (i) Identification of existing resources and resources to be acquired or created;
- (ii) Acquiring or creating resources identified under sub-clause (i);
- (iii) Organization and training of personnel and coordination of such training for effective management of disasters;”

The DM Act in circumstances of public need in conflict with the private interest did not envision the Authority to act upon, other than through the mechanism of ordinary law except in emergency situation as a temporary measure. Thus, in order to acquire or dispossess or evict the property or

land of a private person permanently, the Authority needs to rely upon allied or related laws like Land Acquisition Act.

10.ii. Longterm measures:

The longterm measures are the actions of the Authority in relation to prevention of disaster as well as capacity building. These measures equip the Authority to meet any contingencies that arise out of a disaster. The preparation of a District plan is, in fact, with an objective to achieve long term measures to meet any eventuality of disaster. It is to be noted that disaster mitigation is also built into such mechanism. It is therefore, apposite to refer Section 31 of the DM Act, which reads as follows:

“31. District Plan.-

- (1) There shall be a plan for disaster management for every district of the State.
- (2) The District Plan shall be prepared by the District Authority, after consultation with the local authorities and having regard to the National Plan and the State Plan, to be approved by the State Authority.
- (3) The District Plan shall include-
 - (a) The areas in the district vulnerable to different forms of disasters;
 - (b) The measures to be taken, for prevention and mitigation of disaster, by the Departments of the Government at the district level and local authorities in the district;

(c) The capacity-building and preparedness measures required to be taken by the Departments of the Government at the district level and the local authorities in the district to respond to any threatening disaster situation or disaster;

(d) The response plans and procedures, in the event of a disaster, providing for-

(i) Allocation of responsibilities to the Departments of the Government at the district level and the local authorities in the district;

(ii) Prompt response to disaster and relief thereof;

(iii) Procurement of essential resources;

(iv) Establishment of communication links; and

(v) The dissemination of information to the public;

(e) Such other matters as may be required by the State Authority.

(4) The District Plan shall be reviewed and updated annually.

(5) The copies of the District Plan referred to in sub-sections (2) and (4) shall be made available to the Departments of the Government in the district.

(6) The District Authority shall send a copy of the District Plan to the State Authority which shall forward it to the State Government.

(7) The District Authority shall, review from time to time, the implementation of the Plan and issue such instructions to different departments of the Government in the district as it may deem necessary for the implementation thereof.”

The District Plans as above are thus, measures to be taken as preventive measures as well as capacity-building.

10.iii. Hybrid measures:

The statutory provisions in the DM Act do not indicate about these measures specifically. This Court cannot ignore the objective and intention of the Legislature for enacting the DM Act. These measures are combination of emergency measure and long term measure. In this process, urgent action to respond to disaster can be converted as long term measures. There may be a situation where a building owned by a private person needs to be demolished immediately for rescue operation. The Authority cannot be asked to wait till the normal procedure of Land Acquisition Act is exhausted for the demolition of the building considering the potential hazard that may likely to emanate from the disaster. Therefore, by exercising the power under Section 65 of the DM Act, a premises can be demolished and compensation be paid to the persons concerned under Section 66 of the DM Act and thereafter, it can acquire the land under the Land Acquisition Act in the event the Authority finds that it is impossible to restitute the loss caused to the private person or if the premises need to be retained for the disaster management for the future.

This is certainly on the anvil of the Authority depending upon the context in which the power is exercised.

11. Scope of exercise of power by the District Authority:

11.i. In a situation arising out of emergency measures, the task entrusted with the District Authority is mitigation of disaster. It has to respond to disaster effectively to prevent further causality. Section 34 of the DM Act provides power to be exercised by the District Authority, which reads as follows:

“34. Powers and functions of District Authority in the event of any threatening disaster situation or disaster.-

For the purpose of assisting, protecting or providing relief to the community, in response to any threatening disaster situation or disaster, the District Authority may-

- (a) Give directions for the release and use of resources available with any Department of the Government and the Local Authority in the district;
- (b) Control and restrict vehicular traffic to, from and within, the vulnerable or affected area;
- (c) Control and restrict the entry of any person into, his movement within and departure from, a vulnerable or affected area;
- (d) Remove debris, conduct search and carry out rescue operations;
- (e) Provide shelter, food, drinking water and essential provisions, healthcare and services;

- (f) Establish emergency communication systems in the affected area;
- (g) Make arrangements for the disposal of the unclaimed dead bodies;
- (h) Recommend to any Department of the Government of the State or any Authority or body under that Government at the district level to take such measures as are necessary in its opinion;
- (i) Require experts and consultants in the relevant fields to advise and assist as it may deem necessary;
- (j) Procure exclusive or preferential use of amenities from any Authority or person;
- (k) Construct temporary bridges or other necessary structures and demolish structures which may be hazardous to public or aggravate the effects of the disaster;
- (l) Ensure that the non-governmental organisations carry out their activities in an equitable and non-discriminatory manner;
- (m) Take such other steps as may be required or warranted to be taken in such a situation.”

11.ii. These powers under Section 34 of the DM Act read with the powers under Section 65 of the DM Act clearly indicate that the Authority has unbridled power to respond in a situation of rescue operation or in the event of actual disaster or when threat of disaster is imminent. However, on longterm measures, for prevention and capacity-building, the Authority has no such power as envisaged under Section 34 read with Section 65. It

has to workout the plan prepared under Section 31 with the aid of other statutory provisions, if necessary. The eminent domain power of the State has not been relegated to the Authority as an inbuilt mechanism to implement the plan. The eminent power must explicit by statutory provision as otherwise it would offend the persons' right protected under Article 300A of the Constitution of India.

12. The common issue:

The petitioner in W.P.(C).No.26377/2015 claims interest over the premises either by ownership or by possessory right or by occupancy right. It is undisputed that the building belonging to the petitioner in W.P.(C).No.26377/2015 will have to be demolished. The canal is flowing subjacent to the building. In respect of the writ petitioner in W.P.(C).No.26246/2015 there is no construction above the canal by them. It is apparent that they are using the space over the canal for their car parking and other allied activities. It is also claimed by the writ petitioner in W.P.(C).No.28130/2015 that a portion of the building also will have to be demolished if the action of the Authority is sustained.

13. The emergency measures as adverted in the afore-noted paragraphs will give necessary power to take immediate action to mitigate or reduce disaster. This power as seen from Section 65 of the DM Act can only be exercised for such period during which resources may be required

for disaster management. That means, in the event an accident to impending disaster requires a building to be demolished, the Authority in such exigencies can exercise power under Section 65 of the DM Act and thereafter, to resort to the Land Acquisition Act or such other law, to divest the ownership, possessory right or occupancy right of the persons concerned. The compensation under Section 66 of the DM Act can be paid to the private persons, who have been affected by the action of the Authority under Section 65 of the DM Act. The DM Act does not provide for acquisition of the premises or land by using power of eminent domain. It only enables the Authority, for the limited purpose of disaster management, to intermeddle with the private interest for securing resources, premises, vehicles, which may be required for the management.

14. As has been noted above, the approach of the Disaster Management Authority is three folded, emergency measures, long term measures and hybrid measures. Emergency measures and hybrid measures would arise only when disaster is in immediate vicinity or during the period of disaster. The situation referred in Section 65 of the DM Act is *sine qua non* for exercise of power for emergency or hybrid measures. In the absence of such a situation, any exercise of power intermeddling with premises or land in which persons have ownership or possessory right or occupancy right will be illegal and arbitrary. In the absence of emergency

measures, the Authority can alone resort to long term measures either to prevent or to build up capacity. If disaster is not in the immediate vicinity, the Authority cannot resort to provisions under Section 65 of the DM Act to dispossess or evict a person from the premises. While taking long term measures, if the premises belong to private persons, the remedy of the Authority is to resort to the provisions under the Land Acquisition Act. If the premises are in a Government land, the Authority is free to invoke the provisions under the Land Conservancy Act to evict such persons. There is no provision in DM Act conferring the power to the Authority to decide upon the proprietary interest of the person in the premises, land or property. The Authority is only empowered to act upon measures envisaged under the DM Act and not with respect to the right or interest of the persons in the real property.

15. As noted above, the hybrid approach invoking the power under Section 65 and thereafter, taking long term measures by paying compensation on acquisition of the land to the private persons would arise only when the loss caused to the private persons cannot be restored or restituted, as it may impede effective future management or also in a situation where it is impossible to restore or retribute the loss.

16. Therefore, the common issue has to be addressed in the light of the discussions as above. The present measures being undertaken by

the Authority are based on the plan formulated in terms of Section 31 of the DM Act. This plan was prepared in the year 2014. The plan is produced as Ext.R5(j) in the counter affidavit filed by the fifth respondent in WP.(C). No.26377/2015. The plan deals with the crisis management in relation to flooding. Table 28 of Ext.R5(j) envisages identification of the bottlenecks/encroachment/silt accumulation/waste accumulation in major drains of flood affected/to be affected areas and to take immediate steps to remove the same under the provisions of the DM Act. It is specifically stated in the counter affidavit that the action now being initiated is to remove the bottlenecks of the construction made by the petitioner over the canal, by cutting through/opening up new drains in *puramboke*/private lands, as such action would mitigate flooding situation. As seen from the counter affidavit filed before this Court, measures are now being taken as long term measures. It is apparent that the Authority felt that it need not require to invoke Land Acquisition Act or Land Conservancy Act since it felt that the land in question is a Government land. There is no case for the State or the Authority in the counter affidavit that measures are being taken in terms of Section 65 of the DM Act on account of rescue operations. As discussed in the aforesaid paragraph, the determination of proprietary interest in the land is beyond the power of the Authority constituted under the DM Act. The interference with the premises of a third party would arise

only during exigency of emergent situation. In the absence of any emergent situation, the Authority has to either rely upon the Land Acquisition Act if the property is a private land or if the land is a Government land and the person is in illegal occupation, it has to be dealt under the Land Conservancy Act. There is no provision in the DM Act enabling the Authority to act on their own without the aid of the Land Acquisition Act or any other Act to deprive a person in respect of ownership, possessory right or occupancy right in the premises permanently.

17. In view of the discussions as above, this Court is of the view that the Authority cannot proceed to intermeddle with the petitioners' building, land etc. without resorting to the provisions either under the Land Acquisition Act or the Land Conservancy Act as the case may be. Common issue is answered accordingly.

18. The other issues raised are based on the challenge made in W.P.(C).No.26377/2015.

18.i. *Mala fides*

The petitioner's allegation of *mala fides* is based on the complaint raised by him against the present Finance Minister and the Excise Minister of the State. It is to be noted that the Ministers are not made parties in this writ petition. It is also to be noted that actions are now been initiated based

on the District Plan prepared under Section 31 of the DM Act. The plan was prepared after much consultation with the Local Authority. The preparations were commenced in the year 2014 itself. Therefore, challenge based on *mala fides* is totally unfounded and has to be negated without much deliberation.

18.ii *Violation of natural justice:*

The petitioner has a case that he was not given proper hearing. This Court is of the view that there is no scope in hearing the matter except for establishing proprietary interest of the petitioner. This Court has already held that it is beyond the power of the Authority constituted under the DM Act to decide upon the proprietary interest of a person in the property. The plan has been prepared in accordance with law. Thus, there being no challenge regarding the plan, the petitioner cannot complain violation of natural justice for invoking provisions under the DM Act.

18.iii *The authority to acquire private land:*

In view of the discussions regarding common issue, this Court is of the view that it is for the Authority to decide whether to invoke Land Acquisition Act or Land Conservancy Act depending upon their satisfaction as to the satisfaction of the right of the petitioners in respect of the premises. The Authority is free to choose any of the legal procedures to work out the plan.

18.iv. *Absence of any disaster to confer jurisdiction:*

The petitioner cannot challenge jurisdiction alleging absence of disaster. The petitioner has not chosen to challenge the plan prepared under Section 31 of the DM Act. Therefore, satisfaction of possibility of 'disaster' cannot be questioned. The plan has been drawn to formulate preventive measures as well as measures for capacity-building and the Authority is satisfied with the factum of disaster while preparing the plan. Therefore, the challenge on this ground is unsustainable.

18.v *Non preparation of a plan under Section 31 of the DM Act:*

This challenge is apparently made for the reason that in the plan there is nothing to indicate that the plan covers Thekkenekara Canal. In fact, this argument is misconceived. The plan refers to removing bottlenecks for the free flow of the flood water. There is no necessity to have a specific identification of the Thekkenekara Canal for disaster management. It is sufficient, the same is being identified for removal of bottlenecks for the flow of flood water. Therefore, the challenge based on this ground also has to be repelled.

19. In view of the discussion of common issue, this Court is of the view that *status quo* has to be maintained. The petitioners' building or other structures can be interfered only in accordance with the due procedure established under law. If the Authority has a case that the land

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in question is a Government land and the petitioners are in illegal occupation, they are free to resort to the provisions under the Land Conservancy Act. If the Authority has a case that it is a private land, they can resort to the provisions under the Land Acquisition Act. Thus, the Authority is restrained from proceeding further in interfering with the building structure or premises of the petitioners, otherwise than by invoking the provisions of the Land Acquisition Act or the Land Conservancy Act as the case may be.

The writ petitions are disposed of as above. No costs.

**Sd/-
A.MUHAMED MUSTAQUE, JUDGE**

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