

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5522 OF 2013
(@ SPECIAL LEAVE PETITION(CIVIL)NO.30493 OF 2011)

STATE OF KERALA & ORS.

...APPELLANTS

VERSUS

R. SUDHA & ORS.

...RESPONDENTS

O R D E R

1. Leave granted.
2. This appeal is directed against the judgment and order passed by the High Court of Judicature of Kerala at Ernakulam in W.P.(C)No.34496 of 2009, dated 22.08.2011.
3. The High Court by its order dated 06.01.2011 has issued certain directions to the State Government. The directions reads as under :

"This is a public interest litigation filed by an Advocate alleging dumping of waste, human excreta and other rubbish in rivers and in forests in and around Munnar. Reports of dumping of toilet waste in public places and in rivers are not so infrequent in the State. An amendment is brought to the Kerala Panchayat Raj Act, 1994 by introducing Section 219 S whereby deposit of rubbish or filth or excreta in a public watercourse or water body or any water source within a Panchayat, is made a non-bailable offence punishable under the Act. It is not known whether there is corresponding provision in the Municipalities Act making same offence punishable in Municipalities. We are of the view that unless the State or the Municipal or Panchayat authorities provide space and facilities for treatment and disposal of sewage, toilet waste and other rubbish, people will continue to dump all these waste in rivers, water

bodies or public places including Forest in the night as is done presently. Toilet cleaning is a regular operation going on in the urban areas and no Authority has ever bothered to find out where it is dumped. Only few cases of offence get detected because dumping is done in the night in a clandestine manner. Therefore, problem has to be sorted out by providing space for treatment and for disposal of sewage and other waste at various centres in the State and only licensed agencies should be engaged in cleaning operations. In fact hotels, resorts and even houses could be called upon to make contributions for treatment and disposal of sewage, human excreta and other rubbish generated by them. Constitution under Article 48 A specifically casts duty on the Government to protect the environment which obviously includes the water sources and rivers and, therefore, the Environment Ministry of the State should address the problem and find out solutions and implement the same at the earliest. We direct the State Environment Ministry to take a decision in consultation with the Ministry of Local Self Government and file a detailed report within three weeks from now. Government Pleader will forward copy of this order to the Government and file the report within the time stipulated above."

Before the impugned order was passed, various orders were passed by the High Court on 01.03.2011, 10.03.2011, 23.05.2011 and 18.07.2011 respectively.

4. When the matter was posted before this Court on 21.11.2011, the learned counsel appearing on behalf of the appellants and the Advocate General of the State of Kerala, had sought for a short adjournment to make a statement before this Court as to within what time the sewage treatment plant would be set up in the State of Kerala. Thereafter, this Court by an interim order dated 17.01.2012 while entertaining this appeal had stayed further proceedings before the High Court in Writ Petition (C) No.34496 of 2009. The matter came up before this Court on 10.05.2013. On that

day, we had observed that we are not satisfied with the affidavit filed by the Secretary, Local Self Government Department, Government of Kerala, dated 07.05.2013. In that view of the matter the Chief Secretary of the State of Kerala was directed to file an appropriate affidavit on the next date of hearing.

5. Pursuant to the direction so issued by us, the Chief Secretary to the Government of Kerala has filed an affidavit. In our view, this is nothing but a reiteration of the same affidavit filed earlier. The learned counsel for the appellants would submit that the project implementation is adversely affected by wide spread protest against setting up of sewage treatment plants and are therefore not in a position to comply with the directions of the High Court. The aforesaid reasons put forth by the learned counsel, in our opinion, is not satisfactory and the reasons despite being within the capacity of the appellants, have not exercised their powers to resolve it. We once again reiterate that the affidavit filed by the Chief Secretary is wholly unsatisfactory. In our view, at this stage, it may not be necessary for us to go into the details of the affidavits filed by the Chief Secretary and it would be in the interest of justice of the parties that the interim orders passed by this Court be vacated and thereafter the matter be left to the High Court of Kerala to continue the proceedings in Writ Petition (C)No.34496 of 2009. It is for the High Court of Kerala to monitor the case and get appropriate affidavits from the authorities in implementation of all its orders and directions issued earlier.

6. In view of the above, we vacate the interim order granted by this Court and further dispose of the appeal. It is now for the High Court of Kerala to continue the proceedings in aforesaid Writ Petition.

Ordered accordingly.

.....J.
(H.L. DATTU)

.....J.
(DIPAK MISRA)

NEW DELHI;
JULY 16, 2013.



JUDGMENT