

Kerala High Court

Dr. Johny Kulangara vs The Secretary To Government on 14 January, 2021  
IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

THURSDAY, THE 14TH DAY OF JANUARY 2021 / 24TH POUSHA, 1942

WP(C). No.5218 OF 2012(S)

PETITIONER/S:

DR. JOHNY KULANGARA,  
KULANGARA HOUSE, ELANJIPRA DESOM,  
CHALAKUDY, MUKUNDAPURAM TALUK,  
THRISSUR DISTRICT

BY ADV. SRI. M. C. GOPI

RESPONDENTS:

- 1 THE SECRETARY TO GOVERNMENT,  
LOCAL SELF GOVERNMENT DEPARTMENT,  
GOVERNMENT OF KERALA, SECRETARIAT,  
THIRUVANANTHAPURAM, PIN-695001.
- 2 THE SECRETARY,  
CHALAKUDY MUNICIPALITY, P.O. CHALAKUDY,  
THRISSUR DISTRICT, PIN-680307.
- 3 THE EXECUTIVE ENGINEER,  
NATIONAL HIGHWAY DIVISION,  
THRISSUR, PIN-680001.
- 4 THE EXECUTIVE ENGINEER, PWD ROAD DIVISION,  
THRISSUR, PIN-680001.
- \* 5 THE KERALA ADVERTISING INDUSTRIES ASSOCIATION,  
ERNAKULAM DISTRICT UNIT, 4TH FLOOR,  
MATHEWSONS TRADE CENTRE, KALOOR, KOCHI - 17,  
REPRESENTED BY ITS SECRETARY K. VIJAYAKUMAR.

\* IS IMPEADED AS ADDITIONAL RESPONDENT NO.5 VIDE ORDER  
DATED 27.3.2012 IN I.A.4271/12.

W.P(C)s. 5218/12,30266/12,

R1, R3 & R4 BY SR. GOVERNMENT PLEADER

MR. T.K. ARAVINDA KUMAR BABU

R2 BY ADV. SRI.SHEEJO CHACKO, SC, CHALAKUDY MUNICIPALITY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 14.01.2021, ALONG WITH WP(C) NOS. 30266/2012(S), 17922/2013(S), & 11036/2015(S), THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P(C)s. 5218/12,30266/12,  
17922/13 & 11036/15

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

THURSDAY, THE 14TH DAY OF JANUARY 2021 / 24TH POUSHA, 1942

WP(C). No.30266 OF 2012

PETITIONER/S:

KHALID MUNDAPALLY,  
AGED 64 YEARS, S/O. MUHAMMED,  
RESIDING AT MUNDAPPALLY HOUSE,  
EDAYAPPURAM, ALUVA - 683 101.

BY ADV. SRI. JOSEPH RONY JOSE

RESPONDENTS:

- 1 THE SECRETARY  
CORPORATION OF COCHIN, PARK AVENUE, COCHIN - 682 011.
- 2 COMMISSIONER OF POLICE  
REVENUE TOWER, PARK AVENUE, COCHIN - 682 011.
- 3 THE SECRETARY  
LOCAL SELF GOVERNMENT DEPARTMENT,  
GOVERNMENT SECRETARIAT,  
THIRUVANANTHAPURAM - 695 001.

4 STATE OF KERALA  
REPRESENTED BY ITS CHIEF SECRETARY,  
GOVERNMENT SECRETARIAT,  
THIRUVANANTHAPURAM - 695 001.

R1 BY ADV. SRI. RAJU SEBASTIAN VADAKKEKARA, SC  
R2 TO R4 BY SENIOR GOVERNMENT PLEADER  
MR. T.K. ARAVINDA KUMAR BABU

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 14.01.2021,  
ALONG WITH WP(C) NOS. 5218/2012(S), 17922/2013(S) & 11036/2015(S), THE COURT ON  
THE SAME DAY DELIVERED THE FOLLOWING:

W.P(C)s. 5218/12,30266/12,  
17922/13 & 11036/15

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

THURSDAY, THE 14TH DAY OF JANUARY 2021 / 24TH POUSHA, 1942

WP(C).No.17922 OF 2013

PETITIONER/S:

AMJAD ALI,  
S/O N.A. ALI, NADUVILE PARAMBIL N. PARAVUR.

BY ADV. SRI. MANSOOR B. H.

RESPONDENTS:

- 1 STATE OF KERALA, REPRESENTED BY ITS CHIEF SECRETARY,  
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695001.
- 2 PRINCIPAL SECRETARY TO GOVERNMENT,  
LOCAL SELF GOVERNMENT DEPARTMENT,  
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695001.
- 3 KERALA STATE POLLUTION CONTROL BOARD,  
PATTOM, THIRUVANANTHAPURAM,  
REPRESENTED BY ITS SECRETARY-695001.
- 4 STATE POLICE CHIEF, POLICE HEAD QUARTERS,  
THIRUVANANTHAPURAM-695001.
- 5 UNION OF INDIA, REPRESENTED BY ITS SECRETARY,  
MINISTRY OF ENVIRONMENT AND FOREST, NEW DELHI-110001.

R1, R2, & R4 BY SENIOR GOVERNMENT PLEADER  
MR. T.K. ARAVINDA KUMAR BABU

R3 BY ADV. MR. NAVEEN, SC  
R5 BY ASSISTANT SOLICITOR GENERAL MR. P. VIJAYAKUMAR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 14.01.2021,  
ALONG WITH WP(C) NOS. 5218/2012(S), 30266/2012(S), & 11036/2015(S), THE COURT  
ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P(C)s. 5218/12, 30266/12,  
17922/13 & 11036/15 5

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

THURSDAY, THE 14TH DAY OF JANUARY 2021 / 24TH POUSHA, 1942

WP(C). No.11036 OF 2015

PETITIONER/S:

M. CYRIL ROY, AGED 51 YEARS,  
S/O.MA.CYRIL, MOOTHAUNGAL HOUSE,  
M.A CYRIL ROAD, KARIPALLAM,  
COCHIN-682002.

BY ADVS. SRI. K. M. SATHYANATHA MENON  
SMT. KAVERY S. THAMPI

RESPONDENTS:

- 1 STATE OF KERALA,  
REPRESENTED BY ITS CHIEF SECRETARY, SECRETARIAT,  
THIRUVANANTHAPURAM-695001
- 2 LOCAL SELF GOVERNMENT DEPARTMENT,  
SECRETARIAT, THIRUVANANTHAPURAM-695001,  
REPRESENTED BY ITS SECRETARY

3 DEPARTMENT OF HOME,  
REPRESENTED BY ITS SECRETARY,  
THIRUVANANTHAPURAM.

4 THE DIRECTOR GENERAL OF POLICE,  
KERALA POLICE HEAD QUARTERS,  
THIRUVANANTHAPURAM-695001.

5 THE STATE SECURITY COMMISSION,  
HOME (E) DEPARTMENT, THIRUVANANTHAPURAM-695001.

W.P(C)s. 5218/12,30266/12,  
17922/13 & 11036/15

6

6 CLEAN KERALA COMPANY LIMITED,  
REPRESENTED BY ITS MANAGING DIRECTOR,  
STATE MUNICIPAL HOUSE,  
NEAR CHINMAYA VIDHYALAYA SCHOOL, VAZHUTHACAUD,  
THIRUVANANTHAPURAM 69510.

R1 TO R5 BY SENIOR GOVERNMENT PLEADER

MR. T. K. ARAVINDA KUMAR BABU

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 14.01.2021,  
ALONG WITH WP(C) NOS.5218/2012(S), 30266/2012(S) & 17922/2013(S), THE COURT ON  
THE SAME DAY DELIVERED THE FOLLOWING:

W.P(C)s. 5218/12,30266/12,  
17922/13 & 11036/15

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[ WP(C) Nos. 5218/2012, 30266/2012, 17922/2013, & 11036/2015 ]

#### JUDGMENT

Dated this the 14th day of January, 2021 S. Manikumar, CJ Instant writ petitions are filed seeking for a direction to remove the unauthorised and unwanted postures, advertisement boards, hoardings, cut outs, buntings, hangings, billboards etc., placed on public roads and streets, and to recover the expenses incurred for the same from the persons or companies responsible, as arrears of land revenue.

2. W.P.(C) No.5218/2012 is for the following reliefs:

(i) To issue a writ of mandamus or any other appropriate writ, order or direction, directing the respondents, to see that while setting up of advertisement boards and arches in the public streets and public places, the rules enacted by the Legislature in 1999 under the Municipality Act is being complied with by the persons, who erect advertisement boards and arches in the public streets and

public places;

(ii) To issue a writ of mandamus or any other appropriate writ, order or direction to the respondents, to examine and see as to whether the boards and arches are erected scientifically, without causing obstruction for view and diversion of attention of the drivers while driving the vehicle on the public road;

(iii) To issue a writ of mandamus or any other appropriate writ, order or direction, directing the respondents to see that no W.P(C)s. 5218/12,30266/12, obstruction is caused and attention is diverted to the drivers of the vehicle, who drives on the public road by the erection of the boards and arches on the road.

3. W.P.(C) No.30266/2012 is for the following reliefs:

(i) Issue a writ of mandamus, directing the Corporation of Cochin, 1st respondent, to identify the unauthorized advertisement boards, arches, flags etc., and to remove the same forthwith;

(ii) Issue a writ of mandamus directing the Commissioner of Police, Cochin, 2nd respondent, to take measures under Section 3 of the Indecent Representation of Women (Prohibition) Act, 1984, against the advertisement which violated the provisions of the said Act.

4. In W.P.(C) No.17922/2013, the petitioner has sought for the following reliefs:

(i) Issue a writ of mandamus, commanding the Kerala State Pollution Control Board, respondent No.3 therein, to ban the use of Flex Boards throughout the State and to further direct respondents 1 and 3 therein to issue directions to all the Local Self Government Institutions to remove the flex boards installed in the public places.

(ii) Issue a writ of mandamus or other appropriate writ, direction or order, commanding the State Police Chief, Thiruvananthapuram, respondent No.4 therein, to issue directions to all the police stations to remove all the flex boards and advertisement boards installed in public places and Government officers, court premises forthwith.

W.P(C)s. 5218/12,30266/12,

5. W.P.(C) No. 11036/2015 is for the following reliefs:

(i) Issue a writ of mandamus or any other appropriate writ, order or direction to the respondents 1 to 3, to adopt measures for enactment and enforcement of Act similar to Prevention of Defacement of Property, as existing in our sister States;

(ii) To direct Department of Home represented by its Secretary, Thiruvananthapuram, and the Director General of Police, Kerala, Thiruvananthapuram, respondents 3 and 4, to take appropriate

steps to see that the offenders who damage public property by both illegally and legally, keeping campaign boards and other board and flexes and leave it as such, without removing the same be booked for offences punishable under the provisions of Prevention of Damage to Public Property Act, 1984 and prosecute the offenders.

(iii) To direct the State Security Commission, Home (E) Department, Thiruvananthapuram, respondent No.5, to ensure the safeguard of public property and also to maintain the beauty of our State.

(iv) Issue a writ of mandamus or any other appropriate writ, order, or direction to the 2nd respondent to direct the local authorities such as Municipality, Panchayat, Corporations etc., to incorporate adequate measures for ensuring protection and preservation of the property vested in them under the Kerala Municipality Act, 1994 and the Kerala Panchayat Raj Act, 1994;

W.P(C)s. 5218/12,30266/12,

(v) To direct the 1st respondent to cloth the Clean Kerala Company Limited, represented by its Managing Director, Thiruvananthapuram, respondent No.6, with sufficient power and authority to remove the illegal hoardings, postures, buntings, and hanging which deface the figure of our State and also unwanted cables from the post, and to recover the expenses incurred for the same from the persons or companies responsible for the same as arrears of land revenue.

6. Since the issues raised in the writ petitions are similar, we heard them together and propose to dispose of the them by this common judgment.

7. Facts leading to the filing of the writ petitions are as under:

(A) W.P.(C) No.5218/2012 has been filed by a retired Assistant Director of Animal Husbandry, being aggrieved by the indiscriminate way of fixing up of advertisement boards, flex boards and arches, on the public roads like National Highway, State Highways and other roads, by which, obstruction is caused for the smooth running of vehicles and traffic.

(B) He states that he travels frequently through National Highway and PWD roads within Chalakudy Municipal area and other regions of Thrissur-Ernakulam. According to him, the indiscriminate and illegal way of erection of advertisement boards, flex boards etc., on the public W.P(C)s. 5218/12,30266/12, roads are causing obstruction for vision of the drivers while driving. His grievance is that though he has made repeated requests for removal of the same, the authorities concerned are not taking any action.

(C) W.P.(C) No.30266/2012 has been filed by the petitioner, who claims to be a social activist and public spirited person. He is aggrieved by the placement of advertisement boards, hoardings, arches, flags etc. on the public roads and other places. According to him, many of the advertisements are unauthorised, and they represent women in an indecent manner. Hence, he preferred several complaints before the authorities concerned, but no measures were taken in order to remove them as

per the provisions of law.

(D) W.P.(C) No.17922/2013 has been filed by the petitioner, aggrieved by the inaction of the part of the respondents in prohibiting the practice of using flex boards and cut outs for the purpose of political, religious, and cultural activities, as well as for advertisement purposes, throughout the State. According to the petitioner, the flex boards are put up unauthorisedly, without permission, in public places, telephone posts and even on trees, which would deface public space.

Petitioner has further stated that flex banners are made up of Poly Vinyl Chloride, which would cause serious environmental and health hazards like cancer and infertility. As there is no mechanism to control the usage W.P(C)s. 5218/12,30266/12, of flex boards, its numbers are increasing day by day and all the public places are now filled with flex boards. Sometimes, the flex boards are also used for displaying personal achievements.

(E) W.P.(C) No.11036/2015 has been filed by the petitioner in the interest of the public at large and the residents of Kerala State for issuance of appropriate writ/order/direction to the respondents to adopt adequate measures in all the districts, to see that the banners, flexes, postures, and cut outs, which the political parties, other private organisations, religious and charitable institutions, and all the kinds of displays in the roads and the streets be removed, to ensure cleanliness, and to adopt measures to see that the cables and lines which are drawn over the public road over electric posts sometimes posing danger to human life are laid and drawn properly, without endangering life of the citizens. He has drawn our attention to the following aspects:

Defacement and dis-figuration of the beauty of our State by planting illegal and unauthorized postures, banners, hoardings, buntings etc., and leaving the same, without removal in the public property after the purpose is over. Drawing of cables through electric posts and through the public roads in an undisciplined and tangled manner, thereby causing threat to human life and also leaving the unused and old cables in the post itself, without removing the same by those who lay the cables.

(F) He has further stated that the practice in the State of Kerala is that numerous banners, postures, plastic hangings, flex, flags, cut W.P(C)s. 5218/12,30266/12, outs, buntings, other decorative items are put up in public roads and they continue to linger until they are removed with another poster. The persons, who place the banners and postures, should be placed with on their shoulders an obligation to remove these postures and banners after the purpose for which they are put up is over. Similarly, they also have an obligation to keep the State of Kerala clean by removing the postures that they have put up and to place the public roads and streets to its prior state.

(G) Petitioner has further stated it is an admitted fact that the material used for creating the flex sheets banners, buntings, hangings etc., are plastic related items which cannot be decomposed and the campaign materials end up as non-biodegradable waste causing irreparable damage to the environment. The situation exists that each posts are overloaded with cable wires which are drawn in a tangled manner and in most places, cable wires are hanging down and are left in a manner posing danger to human life and causing much inconvenience to the public, especially to the



pedestrians. It is due to the lack of measures such as imposition of penalty and recovering the amount spent for cleaning as arrears in land revenue that most of the times, the organisations/associations/political parties or people litter the public place and even leave the postures, cut outs, buntings etc. W.P(C)s. 5218/12,30266/12, (H) To substantiate his contentions, petitioner has referred to the constitutional provisions, Sections 268 & 278 of the Indian Penal Code, 1860, provisions of the Prevention of Damage to Public Property Act, 1984, Kerala Police Act, 2011, and Section 364 of the Kerala Municipality Act, 1994, which states that projections on the road is illegal and penalty can be imposed for obstructing the usage of street, and the offenders are committing violations, without any fear of law.

(I) He has suggested that the 6 th respondent company formed under the Local Self Government Department, Government of Kerala, can be clothed with the powers to identify and remove the illegal hoardings, the abandoned and useless cables over the electric posts, and to recover the expenses incurred for the same from persons or company responsible, as arrears of land revenue.

8. On the above pleadings, the petitioners have raised the following grounds:

A) The respondents are bound to comply with the rules and regulations issued by the Government for the up-keeping and maintenance of the public property and the public roads. But, they are not taking any action on the unauthorised and illegal encroachers, who are causing nuisance to the traffic and for the use of National Highway and State Highways by the public.

B) It is a common phenomenon in our roads that almost on W.P(C)s. 5218/12,30266/12, all days many accidents are caused on the national highway, as well as on the public roads, taking away many lives of innocent people due to accidents. The erection of advertisement boards and the arches on the public road, diverts attention of the drivers which would lead to many accidents. In such a situation, the respondents, who are paid from the public exchequer, have a statutory duty to see that the public roads and public places are properly maintained and put to proper use, without any obstruction. However, they are keeping silent thus perpetrating and encouraging the menace.

C) The indiscriminate use of plastic and flex boards are causing pollution and problems in waste management.

D) Referring to Section 275 of the Kerala Municipality Act, 1994 and Rule 5 of the Kerala Municipality (Erection of Arches and Setting up of Advertisement Boards in Public Streets and Public Places) Rules, 1999, it is submitted that the Secretary, Corporation of Cochin, 1 st respondent in W.P.(C) No.30266 of 2012 is empowered to remove/ demolish the unauthorised arches and advertisements.

E) Relying on a decision of the Hon'ble Supreme Court in M.C. Mehta v. Union of India reported in [(1996) 4 SCC 351], petitioners have stated that the right to life enshrined under Article 21 of the Constitution of India includes the right to life and right to clean environment, and therefore, the respondents are duty bound to protect the environment.

F) It was further contended that Municipal Solid Waste (Management and Handling) Rules prohibit burning of W.P(C)s. 5218/12,30266/12, plastic to prevent dioxins. Kerala State Pollution Control Board is duty bound to formulate a mechanism to control and prevent the usage of plastic flex boards. However, the said authority has not taken any action in that regard.

G) As per the provisions of Kerala Municipality Act, 1994, the local bodies are bound to remove the unauthorised hoardings and advertisement boards installed in their local limits. Since the majority of flex boards are put up by the political parties and its leaders, the local bodies are maintaining lethargy in the matter. Therefore, the Principal Secretary to the Government, Local Self Government Department, Thiruvananthapuram, 2 nd respondent in W.P.(C) No. 17922/2013, ought to have issued necessary directions to all the Local Self Government Institutions, to remove all the unauthorised flex boards installed in their local limits.

H) Referring to Section 369 of the Kerala Municipality Act, 1994, dealing with prohibition of structures or fixtures, which cause obstruction in public streets, petitioner in W.P.(C) No.17992 of 2013 stated that no person shall except with the written permission of the Municipality erect or set up any wall, fence, rail, post, step, booth, or other structures or fixtures, in or upon any public street.

I) He has also contended that Section 371 of the Kerala Municipality Act, 1994, authorises the Secretary of the Municipality to remove the structures and fixtures without notice. The lethargy on the part of the respondents, in controlling and preventing the use of flex boards, would result in defacing the public places.

W.P(C)s. 5218/12,30266/12, J) The Constitution of India enshrines duty upon the citizens, as well as the State and local authority, to protect and safeguard the public property under the fundamental duties, as well as under the Directive Principles of State Policy. Hence, a duty is cast upon to see that the public property of our country is not being destroyed or damaged for private gain. That apart, it is the duty of the local authority to provide sufficient enforcement measures to see that waste of campaign materials and campaign materials, after their use, are not left unattended, posing danger to the ecosystem.

K) It is further contended that stringent measures are to be adopted for ensuring that the persons who place the banners, postures, flex, buntings, hangings, in the public property, are also placed with the obligation to remove those postures and banners, after the purpose for which they are put up, as the materials used for making the postures, if left unattended, not only tamper the beauty of our State but also create big ecological and environmental problems. Since all the campaign items are causing danger to our ecosystem, the responsibilities of the damages are to be placed on the shoulders of those who contribute to the same.

L) It is finally contended that though the statutory provisions impose that permissions are required for erecting the advertisement boards and that tax has to be paid for the same, that penalty can be imposed for illegal boards, causing obstruction to the streets, the same is either not being implemented properly by the local authorities or W.P(C)s. 5218/12,30266/12, that the available measures are not sufficient to meet the violations. Hence, it is highly necessary that stringent

measures are to be adopted to prevent the violations.

M) It is pertinent to note that in our sister States, such as Haryana, Chandigarh, Punjab, Delhi, Rajasthan, all have their own act for Prevention of Defacement of Property, by which the public authorities were given the authority by incorporating provisions for imposing fine and removal of defacement and also the power to recover any amount spent in that behalf by the Collector, as arrears of land revenue. As far as our State is concerned, it is due to the lack of stringent measures, such as imposition of penalty and recovering the amount spent for cleaning as arrears of land revenue that most of the times, the organisations or associations or political parties or people litter the public place and even leave the postures, cut out, buntings, and garbage etc., as such, without any fear of law.

9. State of Kerala, represented by the Secretary to the Government, Local Self Government Department, Thiruvananthapuram, respondent No.1 in W.P.(C) No.5218/2012, has filed a counter affidavit, wherein it is contended that it is true that advertisement boards and hoardings are erected on the sides of certain important junctions in the National Highways and State Highways. However, the power to grant permission to install arches or advertisements boards or to remove the same, on the roads maintained by National Highway Authority of India, exclusively vests with the said authority only. The roads mentioned in W.P(C)s. 5218/12,30266/12, the writ petition, passes through Chalakudy Municipality area and is maintained by NHAI. Hence, control over the said property is exclusively on NHAI. That apart, PWD roads are controlled by the PWD Department and since there was an order preserving the National Highways in the control of NHAI and PWD roads with PWD, the respondents have no authority to control the activities in the roads in question.

10. However, the 1st respondent is competent to take a decision with regard to permission for erection and removal of advertisement boards and hoardings from the roads/streets vested in the Municipality, as per Section 207 of the Kerala Municipality Act, 1994. As a matter of fact, all the local bodies in the State were directed vide circular No.75667/RC2/2013/LSGD dated 02.01.2014 issued by the Local Self Government Department, in pursuance of the directions of this court, to render necessary assistance to the Transport Department and Road Safety Commission for removal of all the illegal advertisements placed at traffic islands/medians/footpaths and other places likely to cause distraction to the drivers/road users.

11. To substantiate his contentions, the 1st respondent has relied on Rules 3 and 4 of the Kerala Municipality (Erection of Arches and setting up of Advertisement Boards in Public Streets and Places) Rules, 1999, Section 278 (1) of the Kerala Municipality Act, 1994. W.P(C)s. 5218/12,30266/12,

12. The Secretary, Corporation of Cochin 1 st respondent in W.P.(C) No.30266/2012 has filed a counter affidavit, wherein he has stated that measures are taken for removal of the unauthorised advertisement boards, hoardings, bunk shops etc., encroaching the public way, causing inconvenience to the pedestrians and traffic. That apart, it is contended that the Corporation has invited tender for removal of the unauthorised boards, hoardings and bunks permanently and the tender has been given to an agency namely M/s. Soorya Engineering for a period from 23.08.2012 to

2.08.2013. The above said agency has removed the boards and hoardings with the help and presence of Corporation officials.

Moreover, on 25.02.,2012 onwards Corporation has introduced Radio Frequency Identification Technology for finding out the unauthorised hoardings and advertisements in public places without their permission.

13. Kerala State Pollution Control Board, respondent No.5 in W.P.

(C) No.17922 of 2013, has filed a counter affidavit, wherein it is contended as follows:

A. It is a known fact that the flex boards and flex banners are widely used during election campaigns and various religious and cultural activities. The attractive printing possible in flex boards, the quickness in getting flex hoardings / banner neatly printed, catering to the needs of the aspirants, and the financial benefits in employing flex boards, as it is cheap, and its increased durability, with W.P(C)s. 5218/12,30266/12, respect to other materials used for advertising, all would contribute to the ever increasing use of flex boards. The indiscriminate use of such hoardings are not only a soar to the eyes, but also creates nuisance and at times disrupts the safety concern by their erection on dividers and roads preventing direct views to signals/road direction indicators. But the Board cannot take any action against such nuisances.

B. Flex board is mainly plastic and poly vinyl chloride (PVC) is its main constituent. Poly vinyl chlorides are plastics, which do not degrade biologically. The presence of chlorine in PVC makes its hazardous nature more intense. The burning of PVC would release toxic gases like dioxins (tetra through octa chlorinated dibenzo para dioxins) and furans (tetra through octa chlorinated dibenzofurans) into the atmosphere. Hence, the Board by letter dated 20.09.2020 had earlier welcomed the stand taken by the Election Commission in banning flex boards for election campaigns. The flex manufactures association had approached this Court and had succeeded in getting the ban lifted.

C. It was further contended that the use of flex boards has to be reduced / curtailed in a phased manner. There are a large number of people who depend upon flex board manufacturing and printing for their livelihood. Proper disposal of flex boards is only through incineration at high temperature under controlled conditions in incinerators, which is a very costly affair. The disposal of flex boards in soil would result in the leaching of plastic constituents into soil and finally degrading the physico - chemical W.P(C)s. 5218/12,30266/12, composition of natural soil. The open burning of plastics is prohibited in the Central Rules, viz., Plastic Waste (Management and Handling) Rules, 2011, which is in force in the State.

D. An option to reduce the use of flex boards is by imposing restriction through local authorities. The flex boards for advertisement purpose be restricted in number and shall be allowed to be placed

at selected locations, in the areas identified by the concerned local authority. The size and number of flex boards that can be erected at a stretch be fixed by the local authority in such a manner that it prevents obstructions to public buildings/inconvenience & danger to pedestrians, road users/violations to safety concerns etc. Moreover, the aesthetic appeal of the site should not be affected. The local authority may charge a fee for erecting such advertisements on public places and a suitable funding system may be employed so that even if the advertiser fails to remove the advertisement, on expiry of term, the local authority shall dispose of the same safely at the cost of the advertiser.

E. It is further contended that a holistic approach in dealing with the issue is necessary. The flex manufacturers and the people dependent on the flex industry have to be taken into confidence. Alternate materials which are biodegradable have to be promoted. Local Self Government Department, Industries Department, Environment Department etc., have to join hands in this endeavour. The Board have addressed the Environment Department in the State Government in that regard and have suggested that W.P(C)s. 5218/12,30266/12, the Government may initiate urgent necessary action in eliminating usage of flex boards in a phased manner. It is the Board's considered opinion that the flex board manufacturers association and concerned organisations have to be heard and action at Government level incorporating active participation of all the related departments is required to find an amicable solution to the issue.

F. That apart, the 5th respondent has stated that as per the direction of the Hon'ble Apex Court, the environmental issues and matters covered under the National Tribunal Act, 2010, Schedule 1 should be instituted and litigated before the National Green Tribunal. Hence, there is a case of forum non conveniens. The petitioner has to agitate his cause before the National Green Tribunal which is the appropriate court. In the light of the above, it is stated that the writ petition is not maintainable and hence, liable to be dismissed.

14. Heard learned counsel for the parties and perused the materials available on record.

15. Before considering the rival contentions, let us consider the statutory provisions.

16. Kerala Municipality Act, 1994 is an Act to replace the present enactments relating to Municipalities and Municipal Corporations by a comprehensive enactment in line with the Constitution (Seventy Fourth) Amendment Act. Section 207 of the said Act speaks about vesting of Public Streets and appurtenance in Municipality and it reads thus: W.P(C)s. 5218/12,30266/12, "207. Vesting of Public Streets and appurtenance in Municipality.-- (1) Notwithstanding anything contained in the Kerala Land Conservancy Act, 1957 (8 of 1958) or in any other law for the time being in force all public roads, streets, lanes and paths, the bridges, ditches, dykes and fences on or beside the same, and all adjacent land not being private property appertaining thereto in any municipal area other than National Highway or State Highway or major district road or roads classified by Government as such shall stand transferred to, and vest absolutely in the Municipality together with all pavements, stones and other materials and other things provided therein, all sewers, drains, drainage works, tunnels and culverts, whether made at the cost of the Municipal fund or otherwise in, alongside or under such roads and all works, materials and things

appertaining thereto.

(2) Notwithstanding anything contained in sub- section (1) the Government may, by notification in the Gazette, at any time, withdraw such public roads and or streets, sewer drain, drainage work tunnel or culvert adjacent to it from the control of the Municipality for the purpose of classifying, it as any public road, street National Highway, State Highway or Major District road under the control of Municipality and thereupon it shall re-vest in the Government on issuing such a notification:

Provided that before issuing such a notification, the Government shall consult the Municipality concerned and give due regard to the objections, if any." W.P(C)s. 5218/12,30266/12,

17. Section 271 of the Kerala Municipality Act, 1994 speaks about tax on advertisement and it reads thus:

"271. Tax on advertisements.-- Every person who erects, exhibits, fixes or retains upon or over any land, building, wall, hoarding or structure in a municipal area any advertisement or who displays any advertisement to public view in any manner whatsoever in any place in such area, whether public or private, shall pay on every such advertisement a tax calculated at such rates and in such manner and subject to such exemptions as the Council with the approval of the Government, by resolution determine:

Provided that the rates shall not be less than the rate specified by the Government for this purpose.

Provided further that the tax under this section in any advertisement displayed in a public service vehicle as defined in the Motor Vehicles Act, 1988 (Central Act 59 of 1988) passing through the local limits of more than one local authority shall be levied by a Municipality only if such vehicle-

(a) commences its operation from the municipal area of that Municipality; or

(b) commences its operation from a place other than a municipal area and passes through that municipal area before it passes through the local limits of any other local authority:

Provided also that no tax shall be levied under this section on any advertisement or a notice:-

(a) of a public meeting; or

(b) of an election to any legislative body or a Municipality, or a Panchayat; or W.P(C)s. 5218/12,30266/12,

(c) of a candidature in respect of such an election:

Provided also that no such tax shall be levied on any advertisement which is not a sky sign and which-

(a) is exhibited within the window of any building which is not a public place; or

(b) relates to the trade or business carried on within the land or building upon or over which such advertisement is exhibited, or to any sale or letting of such land or building or any effects therein or to any sale, entertainment or meeting to be held upon or in the same; or

(c) relates to the name of the land or building upon or over which the advertisement is exhibited, or to the name of the owner or occupier of such land or building; or

(d) relates to the business of any railway administration; or

(e) is exhibited within any railway station or upon any wall or other property of a railway administration except any portion of the surface of such wall or property fronting any street.

Explanation 1.-- The word "structure" in this section shall include any movable board on wheels used as an advertisement or an advertisement medium.

Explanation 2.-- The expression "sky-sign", in this section, means any advertisement supported on or attached to any post, pole, standard, frame work or other support wholly or in part upon or over any land, building, wall or structure which, or any part of which, sky-sign shall be visible against the sky from some point in any public place and includes all and every part of any such post, pole, standard, frame work or other support. The expression "sky-sign" shall also include any balloon, parachute or other similar device employed wholly or in part for the purposes of any advertisement upon or over W.P(C)s. 5218/12,30266/12, any land, building or structure or upon over any public place, but shall not include,-

(a) any flagstaff, pole, vane, or weather-cock, unless adapted or used wholly or in part for the purpose of any advertisement; or

(b) any sign, or any board, frame or other contrivance securely fixed to or on the top of the wall or parapet of any building, or on the cornice or blocking course of any wall, or to the ridge of a roof:

Provided that such board, frame or other contrivance be of one contiguous face and not open work, and do not extend in the height more than one metre above any part of the wall, or parapet or ridge to, against or on which it is fixed or supported; or

(c) any advertisement relating to the name of the land or building, upon or which the advertisement is exhibited, or to the name of the owner or occupier of such land or building; or

(d) any advertisement relating exclusively to the business of a railway administration and place wholly upon or over any railway, railway station, yard, platform or station approach belonging to a railway administration and so placed that it cannot fall into any street or public place; or

(e) any notice of land or buildings to be sold or let, placed upon such land or building.

Explanation 3.-- Public place shall for the purpose of this section means any place which is open to the use and enjoyment of the public whether it is actually used or enjoyed by the public or not."

W.P(C)s. 5218/12,30266/12,

18. Section 272 of the Kerala Municipality Act, 1994 speaks about prohibition of advertisement without written permission of the Secretary and the same reads thus:

"272. Prohibition of advertisement without written permission of the Secretary.-- (1) No advertisement shall, after the levy of the tax under Section 271 has been determined upon by the Council, be erected, exhibited, fixed or retained upon or over any land, building, wall, hoarding or structure within the municipal area or shall be displayed in any manner whatsoever in any place in that area without the written permission of the Secretary.

(2) The Secretary shall not grant such permission if-

(i) the advertisement contravenes any bye-law made by the Council under clause (32) of Section 567; or

(ii) the tax, if any, due in respect of the advertisement has not been paid.

(3) Subject to the provisions of sub-section(2), in the case of an advertisement liable to advertisement tax the Secretary shall grant permission for the period to which the payment of tax relates and no fee shall be charged in respect of such permission:

Provided that the provisions of this section shall not apply to any advertisement erected, exhibited, fixed or retained on the premises of a railway administration relating to the business of a railway administration."

19. Section 274 of the Act, 1994 speaks about owner or person in occupation to be deemed responsible and it reads thus:

"274. Owner or person in occupation to be deemed responsible.-- Where any advertisement is erected, W.P(C)s. 5218/12,30266/12, exhibited, fixed or retained upon or over any land, building, wall, hoarding or structure in contravention of the provisions of section 271 or section 272 or after the written permission for the erection, exhibition, fixation or retention thereof for any period shall have expired or becomes void, the owner or person in occupation of such land, building, wall,



hoarding or structure shall be deemed to be the person who has erected, exhibited, fixed or retained the advertisement in contravention unless he proves that such contravention was committed by a person not in his employment or under his control or was committed without his connivance."

20. Section 275 of the Act, 1994 speaks about removal of unauthorised advertisement and it reads thus:

"275. Removal of unauthorised advertisement,-- (I) Where any advertisement is erected, fixed or retained contrary to the provisions of sections 271 or section 272 or after the written permission for the erection, exhibition, fixation or retention thereof for any period shall have expired or becomes void, the Secretary may, by notice in writing require the owner or occupier of the land, building, wall, hoarding or structure upon or over which the same is erected, exhibited, fixed or retained to take down or remove such advertisement or may enter any building, land or property and have the advertisement removed.

(2) any person exhibiting or responsible for exhibiting any advertisement otherwise than in W.P(C)s. 5218/12,30266/12, accordance with the provisions of this Act shall be liable, in addition to the penalty prescribed in the Fourth Schedule and the Fifth Schedule to pay the Municipality the charges of the removal of the unauthorised advertisement."

21. Section 334B of the Kerala Municipality Act, 1994 speaks about restriction on plastic carry bags and covers and management of plastic wastes. Said section is extracted hereunder:

"334B. Restriction on plastic carry bags and covers and management of plastic wastes.- (1) Subject to the provisions of the Environment (Protection) Act, 1986 (Central Act 29 of 1986) and the Rules made thereunder,-

(a) the Municipality shall, by notification, fix the minimum price of various kinds of plastic carry bags and plastic covers and no institution or person shall sell such bags or covers at a price lower than the price so fixed or give them free of cost and the Municipality shall take steps to ensure that no institution or person does so;

(b) where an applicant who applies for license under Section 447 intends to sell plastic bags or plastic covers through his establishment, such information shall be recorded in the application and the Municipality may, in addition to the usual license fee, realise a fixed amount as admission fee in this behalf for the period as may be prescribed, in accordance with the approximate number or quantity of plastic bags and plastic covers intended to be sold;

(c) every consumer shall keep the waste plastic W.P(C)s. 5218/12,30266/12, bags and plastic covers segregated from other waste and shall be managed as provided for in the bye-laws that may be made by the Council;

(2) The Secretary shall lodge complaint if any person violates the provisions of clause (a) of sub-section (1), in accordance with the provisions of the said Central Act and the Rules made thereunder."

22. Section 364 of the Kerala Municipality Act, 1994 dealing with prohibition of obstruction in or over streets, states that no person shall build any wall or erect any fence or other obstruction, or projection, or make any encroachment in or over any street.

23. Section 367(3) of the Kerala Municipality Act, 1994 speaks about removal of encroachments and it reads thus:

"367. Removal of encroachments.-- (1) The Secretary may, by notice, require the owner or occupier of any premises to remove or alter any projection. Encroachment or obstruction other than a door, gate, bar or ground floor window situated against or in front of such premises and in or over any street.

(2) Where the owner or occupier of the premises proves that any such projection, encroachment or obstruction has existed for a period sufficient under the law of limitation to give any person a prescriptive title thereto or that it was erected or may with the permission or licence of any authority duly empowered in that behalf, and that the period, if any, for which the permission or licence, is valid has not expired, the W.P(C)s. 5218/12,30266/12, Municipality shall make reasonable compensation to every person who suffers damage by the removal or alteration of the same.

(3) Where the Secretary is satisfied that any road or public street including footpath, if any, thereof belonging to the Municipality or vested in it or otherwise is encroached upon by any person in any form, either temporarily or permanently so as to cause obstruction or hindrance or inconvenience to traffic and users of the street, the Secretary may summarily evict such encroachments and may seize and dispose of any belonging or article that may be found on such road or street and no person shall be entitled to claim compensation for any action taken by the Secretary in this behalf."

24. Section 369 of the Act, 1994 speaks about prohibition of structures or fixtures which cause obstruction in public streets and it reads thus:

"369. Prohibition of structures or fixtures which cause obstruction in public streets.-- No person shall except with the written permission of a Municipality erect or set up within a municipal area any wall, fence, rail, post, step, booth or other structures or fixtures in or upon any public street or upon or over any open channel, well or tank in any street so as to form an obstruction, or an encroachment upon or a projection over, or to occupy any portion of such street, channel, drain, well or tank."

W.P(C)s. 5218/12,30266/12,

25. Section 372 of the Act, 1994 states that the Secretary may without notice remove encroachment and it reads thus:

"372. Secretary may without notice remove encroachment.-- Notwithstanding anything contained in this Act, the Secretary may, without notice, cause to be removed-

(a) Any wall, fence, rail, step, booth, or other structure or fixture which is erected or set up in contravention of the provisions of section 369;

(b) Any stall, chair, bench, box, ladder, bale, or any other thing whatsoever, placed or deposited in contravention of section 370;

(c) Any article, whatsoever, hawked or exposed for sale in any public place or in any public street in contravention of section 371 and any vehicle, package, box, board, shelf or any other thing in or on which such article placed or kept for the purpose of sale."

26. Section 440 of the Kerala Municipality Act speaks about power of the Secretary to issue directions to abate nuisance and it reads thus:

"440. Power of Secretary to issue directions to abate nuisance.-- (1) Where the Secretary is satisfied that any act or omission, place or thing which causes or is likely to cause injury, danger, annoyance, disturbance or offence to the sense of sight, smell or hearing or to rest or sleep or which is or may be dangerous to life or injurious to health or property of any person or persons, he may issue such direction to such person at whose instance, he has reason to believe that such nuisance is caused or such act or omission it is likely to be caused and take all steps as may be required to abate the W.P(C)s. 5218/12,30266/12, said nuisance within such time as may be specified in the notice which shall not exceed forty eight hours. (2) Any person to whom a direction has been issued under sub-section (1) shall be bound to comply with such direction within such time as may be specified therein and any person failing to comply with the direction shall be liable to prosecution."

27. In exercise of the powers conferred by sub-section (1) of Section 566 of the Kerala Municipality Act, 1994 read with Sections 369 and 375 thereof, Government of Kerala made the Kerala Municipality (Erection of Arches and Setting Up of Advertisement boards in public streets and public places) Rules, 1999. Rules 3, 4 5, and 6 read thus:

"3. Not to erect arches and set up advertisement boards without licence.- No person shall erect any type of arches or set up advertisement boards in or upon any public street, road or public place within the municipal area except with a licence of the Municipality."

"4. Procedure for granting permission.- (1) Any person who intends to erect any each or to set up any advertisement board mentioned in rule 3 shall submit application to the Secretary together with a plan showing the details of the arch or the

advertisement board intended to be set up and shall remit the fees at the rate fixed by the Council in this regard under Rule 6 in the Office of the Municipality. (2) The Secretary shall examine in detail the application and the plan received as per sub-rule (1) and shall ensure that the following conditions are complied with, namely:-

W.P(C)s. 5218/12,30266/12,

(a) No accident, inconvenience or traffic block shall be caused by the erection of the proposed arch or by setting up of the proposed advertisement board;

(b) No injury shall be caused to public interest or to the general landscape of the said area due to the erection of the proposed arch or the setting up of the proposed advertisement board;

(c) The advertisement boards intended to be set up facing the road or on the sides of the road shall not obstruct the view so as to cause traffic block. No arches or advertisement boards shall be set up in places where there is a curve or a turning on the road, on any reason.

(d) Pillars or other part of the arches shall not be erected in the road except on its sides so as to cause traffic block. The pillars of the arches to be erected in the roads tarred/concreted shall be outside the tarred/concreted portion and in no case the pillars shall be erected by ditching or otherwise the tarred or concreted portion. The pillars of the arches shall be at the extreme side of the road. Where the roads have footpaths, the pillars of the arch or advertisement board shall be erected only outside the footpath;

(e) No damage whatsoever shall be caused to the road by the setting up of arches and advertisement boards.

(3) In case where the applicant has complied with the conditions specified in sub-rule (2), the Secretary may grant licence to set up the proposed arch or advertisement board subject to the following conditions,-

(a) The permission for the arches shall be for a short period. The licensee shall deposit the amount that may be required for demolishing the arches and other structures and for the repair of the roads, in the Municipality, in each case where permission is granted;

W.P(C)s. 5218/12,30266/12,

(b) In case any damage is caused to the roads by the erection of arches, the licensee shall, immediately on demolition of the arches the road shall be restored to its original condition by executing necessary repairs;

(c) If the licensee does not demolish the arches even after the specified time, the Secretary shall take steps to demolish the same on the responsibility of the licensee and if damage is caused to the road, the road shall be restored to its original condition by executing necessary repair works and the

expenses may be recovered from the deposit amount and if there is any balance amount, that shall be refunded to the licensee. If the deposit amount is insufficient, the balance amount shall be recovered from the licensee and the same may be recovered from the licensee by following the same procedures that are applicable for recovery of arrears of land revenue;

(d) If any accident is caused to any person on account of the erection of arches and boards in the public street, its responsibility shall vest with the licensee and the licensee shall be responsible for giving compensation and the Municipality shall not have any responsibility in this matter.

(4) (i) The Secretary shall issue licence subject to the conditions specified in sub-rule (3) and the said conditions shall be specified in the licence;

(ii) the licensee shall, before erecting the arches, furnish to the Secretary a written consent deed in a stamp paper of specified value agreeing to abide by the conditions specified in the licence.

(5) Applications not complying with the conditions mentioned in sub-rules (2) and (3) shall be rejected and when so rejected the fees remitted as per sub-rule (1) shall be refunded to the applicant."

W.P(C)s. 5218/12,30266/12, "5. Power of the Secretary to demolish unauthorised arches and advertisement boards.- (1) The arches and advertisement boards erected without licence or erected contrary to the provisions of the licence shall be removed by the Secretary and the cost incurred for it shall be recovered from those who have erected or from those who are responsible for it:

Provided that where it is not possible to ascertain as to who have erected the arches and advertisement boards, the cost incurred for removing them shall be met from the Municipal Fund.

(2) In the cases of arches or advertisement boards erected contrary to the licence, the Secretary shall, before removing it, serve notice to the licensee to reinstate the same subject to the provisions of the licence within the time stipulated."

"6. Levy of fees for erecting arches and setting up of advertisement boards.-The council may levy fees at the rate fixed by it for erecting arches and setting up of advertisement boards under these rules."

28. Kerala Panchayat Raj Act, 1994, is an Act to replace the present enactment relating to Panchayats and district councils by a comprehensive enactment. Section 209 of the said Act speaks about tax on advertisement and it reads thus:

"209. Tax on advertisement.- Every person who erects, exhibits, fixes or retains upon or over any land, building, wall boarding or structure, in a village Panchayat area any advertisement or who displays any advertisement to public W.P(C)s. 5218/12,30266/12, view in any manner whatsoever in any place in such area whether public or private shall pay to the village panchayat on every such advertisement a tax

calculated at such rates and to such manner and subject to such exemptions as the Village Panchayat may with the approval of the Government and by resolution determine :

Provided that the rates shall not be less than the rates prescribed by the Government for the purpose:

Provided further that the tax under this section on any advertisement displayed in a public service vehicle as defined in the Motor Vehicles Act, 1988 (Central Act 59 of 1988) passing through the local limits of more than one Local Self Government Institution shall be levied by a Village Panchayat only if such vehicle;

(a) commences its operation from the area of that Village Panchayat; or

(b) commences its operation from a place not within the said Village Panchayat and passes through the said Village Panchayat before passing through the local limits of any other Local Self Government Institution:

Provided further that no tax under this section, shall be levied on any advertisement or a notice -

(a) of a public meeting; or

(b) of an election to any legislative body or a Municipality or a Panchayat; or

(c) of a candidature in respect of such an election:

Provided also that no such tax shall be levied on any advertisement which is not a sky-sign and which -

(a) is exhibited inside the window of any building which is not a public place; or W.P(C)s. 5218/12,30266/12,

(b) relates to the trade or business carried on within the land or building upon or over which such advertisement is exhibited, or to any sale or letting of such land or building or to any sale, entertainment or meeting to be held upon or inside the same; or

(c) relates to the name of the land or building upon or over which the advertisement is exhibited or to the name of the owner or occupier of such land or building;

(d) relates to the business of any railway administration or airport authority;

(e) is exhibited within any railway station or airport or upon any such wall or other property facing the street excluding any portion of the surface of the wall or property belonging to the railway

administration or airport authority.

Explanation 1. - The word "structure" in this section shall include any movable board on wheels used as an advertisement or as an advertisement medium.

Explanation 2. -The expression "sky-signs", in this section, means any advertisement supported on or attached to any post, pole, pillar, frame work or other support wholly or partly upon or over any land, building, wall structure which, or any part of which, sky-sign shall be visible against, the sky from some point in any public place and includes all and every part of any such post, pole, pillar frame work or other support. The expression 'sky-sign' shall also include any balloon, parachute or other similar device employed wholly or partly for the purposes of any advertisement upon or over any land buildings or, structure or upon or over any public place but shall W.P(C)s. 5218/12,30266/12, not include-

(a) any flag-stiff, pole, vane, or weather, cock, unless adapted or used wholly or in part for the purpose of any advertisement; or

(b) any sign, or any board, frame or other contrivance securely fixed to or on the top of the wall or parapet of any building, or on the cornice or blocking course of any wall, or to the ridge of a roof:

Provided that such board, frame or other contrivance be of one contiguous face land not open work and do not extend in the height more than one metre above any part of the wall or parapet or ridge to, against or on which it is fixed or supported; or

(c) any advertisement relating to the name of the land or building upon or over which the advertisement is exhibited, or to the name of the owner or occupier of such land or building; or

(d) any advertisement relating exclusively to the business of a railway administration and placed wholly upon or over any railway station, yard, platform or station approach belonging to a railway administration and so placed that it shall not fall into any street or public place; or

(e) any notice of land or buildings to be sold or let, placed upon such land or is building.

Explanation 3.- For the purpose of this section 'Public Place' means any place which is open to the use and enjoyment of the public whether it is actually used or enjoyed by the public or not."

W.P(C)s. 5218/12,30266/12,

29. Section 209A of the Kerala Panchayat Raj Act, 1994 speaks about prohibition of advertisement without written permission of the Secretary and it reads thus:

"209A. Prohibition of advertisement without written permission of the Secretary. -

(1) No advertisement shall after taking a decision by the Village Panchayat on the levy of tax under Section 209, be erected exhibited, fixed or retained upon or over any

land, building, wall, hoarding or structure within the Village Panchayat area or shall be displayed in any manner whatsoever in any place in that Village Panchayat area without the written permission of the Secretary.

(2) The Secretary shall not grant such permission if. -

(i) the advertisement contravenes any bye-law made by the Village Panchayat under Section 256; or

(ii) the tax, if any, due in respect of the advertisement has not been paid.

(3) Subject to the provisions of sub-section (2), in the case of an advertisement liable to advertisement tax, the Secretary shall grant permission for the period to which the payment of tax relates and no fee shall be charged in respect of such permission:

Provided that the provisions of this section shall not apply to any advertisement erected, exhibited, fixed or retained on the premises of a railway administration relating to the business of the railway administration."

30. Section 209B speaks about owner or person in possession be deemed responsible and it reads thus:

W.P(C)s. 5218/12,30266/12, "209B. Owner or person in possession be deemed responsible.- Where any advertisement is erected, exhibited, fixed or retained upon or over any land, building, wall, hoarding or structure in contravention of the provisions of Section 209 or 209A or after the written permission for the erection, exhibition, fixation or retention thereof for any period has been expired or become void, the owner or occupier of such land, building, wall, hoarding or structure shall be deemed to be the person who has erected, exhibited, fixed or retained, such advertisement in contravention unless he proves that such contravention has been committed by a person not in his employment or control or has been committed without his contrivance."

31. Section 209C of the Act speaks about removal of unauthorised advertisement and it reads thus:

"209C. Removal of unauthorised advertisement.- (1) Where any advertisement is erected, exhibited, fixed or retained contrary to the provisions of Section 209 or Section 209A or after the written permission for the erection, exhibition, fixation or retention thereof for any period shall have expired or become void, the Secretary may, by notice in writing, require the owner or occupier of the land, building, wall hoarding or structure upon or over which the same is erected, exhibited, fixed or retained to take down or remove such advertisement, or may enter any building, land or property and have the advertisement removed.

(2) Any person exhibiting or responsible for exhibiting any advertisement otherwise than, in accordance with the W.P(C)s. 5218/12,30266/12, provisions of this Act shall be liable to pay, in



addition to the penalty prescribed in VI and VII Schedule, the charges for the removal of the unauthorised advertisement, to the Village Panchayat."

32. Section 220 of the Act speaks about prohibition against construction in or over public roads etc., and the same reads thus:

"220. Prohibition of constructions in or over public roads, etc.- Notwithstanding anything contained in this Act no person shall,-

(a) build any wall or erect any fence or other obstruction or projection or make any encroachment whatsoever, whether permanent or temporary, in or over any public road;

(b) Construct any building or structure other than a compound wall in any land abutting any National Highway, State Highway, District roads or any other roads notified by the Village Panchayat within a distance of three metres from the boundary of his land abutting the road:

Provided that, the said limit of three metres shall not be applicable for the construction of 1st floor or 2nd floor or both upon a building, existing on the date of coming into force of this Act:

Provided further that, any path, bridge or similar constructions used solely for entering into any building or weather shade or sun-shade forming part of the building may, subject to the rules regarding construction of building, be constructed within the said three metres limit:

Provided also that, when an existing portion of a building is to be demolished for the implementation of a Town Planning Scheme it shall not be in such a manner that it would adversely affect the remaining building or the additions to be made, and the full responsibility of the safety and stability thereof shall vest with the owner of the W.P(C)s. 5218/12,30266/12, building, and when he has to undertake such a demolition it shall be done at his own expense and responsibility, and he shall not be eligible for any damages for the said construction and for this purpose a consent certificate shall be produced along with the application].

(c) make any hole or deposit any material in or upon any public road;

(d) work a quarry to remove stone, earth, rubble or other material from any place within twenty metres of a public road or of other immovable property vesting in or belonging to a Panchayat:

Provided that nothing in this clause shall be deemed to apply to any work which in the opinion of the Village Panchayat, is done in connection with a bona fide

agricultural operation;

(e) erect any building over any sewer or drains or part thereof;

(f) plant any tree on any public road or other property vesting in or belonging to a Village Panchayat; or

(g) fell, remove, destroy, lop or strip, bark, leaves or fruits from, or otherwise damage, any tree which is growing on any such public road, other property, poramboke or land, the use of which is regulated by a Village Panchayat and the right of which has not been established by such person or vesting in or belonging to him."

33. In exercise of the powers conferred by Sections 3, 6 and 25 of the environment (Protection) Act, 1986, and in supersession of the Plastic Waste (Management and Handling) Rules, 2011, except as respects things done or omitted to be done before such supersession, the W.P(C)s. 5218/12,30266/12, Central Government have framed the Plastic Waste Management Rules, 2016. Rule 5 of the said rules speaks about plastic waste management and it reads thus:

"5. Plastic waste management.- (1) The plastic waste management by the urban local bodies in their respective jurisdiction shall be as under:-

(a) plastic waste, which can be recycled, shall be channelized to registered plastic waste recycler and recycling of plastic shall conform to the Indian Standard: IS 14534:1998 titled as Guidelines for Recycling of Plastics, as amended from time to time.

(b) local bodies shall encourage the use of plastic waste (preferably the plastic waste which cannot be further recycled) for road construction as per Indian Road Congress guidelines or energy recovery or waste to oil etc. The standards and pollution control norms specified by the prescribed authority for these technologies shall be complied with.

(c) Thermoset plastic waste shall be processed and disposed off as per the guidelines issued from time to time by the Central Pollution Control Board.

(d) The inert from recycling or processing facilities of plastic waste shall be disposed of in compliance with the Solid Waste Management Rules, 2000 or as amended from time to time."

34. Rule 6 of the above said rules speaks about responsibility of local authority and it reads thus:

W.P(C)s. 5218/12,30266/12, "6. Responsibility of local body.- (1) Every local body shall be responsible for development and setting up of infrastructure for segregation, collection, storage, transportation, processing and disposal of the plastic waste either on its own or by engaging

agencies or producers.

(2) The local body shall be responsible for setting up, operationalisation and coordination of the waste management system and for performing the associated functions, namely:-

- (a) Ensuring segregation, collection, storage, transportation, processing and disposal of plastic waste;
- (b) ensuring that no damage is caused to the environment during this process;
- (c) ensuring channelization of recyclable plastic waste fraction to recyclers;
- (d) ensuring processing and disposal on non-recyclable fraction of plastic waste in accordance with the guidelines issued by the Central Pollution Control Board;
- (e) creating awareness among all stakeholders about their responsibilities;
- (f) engaging civil societies or groups working with waste pickers; and
- (g) ensuring that open burning of plastic waste does not take place.

(3) The local body for setting up of system for plastic waste management shall seek assistance of producers and such system shall be set up within one year W.P(C)s. 5218/12,30266/12, from the date of final publication of these rules in the Official Gazette of India.

(4) The local body to frame bye-laws incorporating the provisions of these rules.

35. Rule 7 of the said rules speaks about responsibility of the Grama Panchayat and it reads thus:

"7. Responsibility of Gram Panchayat.- (1) Every grama panchayat either on its own or by engaging an agency shall set up, operationalise and co-ordinate for waste management in the rural area under their control and for performing the associated functions, namely,-

- (a) ensuring segregation, collection, storage, transportation, plastic waste and channelization of recyclable plastic waste fraction to recyclers having valid registration; ensuring that no damage is caused to the environment during this process;
- (b) creating awareness among all stakeholders about their responsibilities; and
- (c) ensuring that open burning of plastic waste does not take place."

36. The Kerala Highway Protection Act, 1999, is an Act to provide for the protection of Highways and for the regulation of highway development in the State of Kerala. Section 2(f) of the Act defines encroachment as under:

"(f) 'encroachment' means occupation of a highway or part thereof for purposes other than traffic and any act which causes damage to the highway and includes, -

- (i) unauthorised erection of a building or any other permanent or temporary structure, balcony, porches, W.P(C)s. 5218/12,30266/12, facades or projections on, over or overhanging the highway;
- (ii) occupation of highway, for stacking building materials or goods of any other description, for parking automobiles for maintenance and repair, for exhibiting articles for sale, for erecting poles, awnings, tents, pandals, arches, platforms, rostrums, hoardings, display boards statues, monuments of all kinds, steps, ramps and other similar structures or stabling domestic animals and poultry and cultivation of any kind including horticulture or for any other purpose;
- (iii) excavation or embankment of any sort made or extended on any highway;
- (iv) dumping of waste and filthy materials which may cause hygienic and environmental hazards, letting of waste and polluted water or other effluents into the highway and using the highway for bathing, washing, watering and defecating;
- (v) blocking, closing, choking or restricting water flow along the sides of the highway or across it, either free flow or guided flow through drains, channels, conduits, sewers, cross drainage works such as culverts, weirs, under tunnels, bridges, or aqueducts; and
- (vi) blocking or closing of channels, streams or any water course which passes through any property, either private or public, and forming part of a natural water course which may result in accumulation of water on a highway causing damage to road crust;"

37. Section 22 under Chapter VI of the Act, 1999 speaks about removal of structure which obstruct the view or distract the attention of persons using highway and it reads thus:

"22. Removal of structure which obstruct the view or distract the attention of persons using highway.- (1) Where a highway authority is of opinion that it is necessary W.P(C)s. 5218/12,30266/12, for the prevention of danger arising from obstruction of view or distraction of attention of persons using a highway, especially at any bend or corner of a highway, the highway authority may serve notice upon the owner or occupier of land alongside or at the bend or corner of such highway to alter or remove altogether, as the case may be, within such time and in such manner as may be specified in the notice, the structure, the height or character of any existing wall not being a wall forming part of a permanent structure, fence, hedge, tree, advertisement post, bill board or any other object thereon, so as to eliminate or minimise the apprehended danger.

(2) if any person, upon whom a notice has been served under sub-section (1) objects to comply with any requirement of such notice, he may, within fourteen days of its receipt, send to the highway authority his objection in writing stating the grounds thereof.

(3) The highway authority shall, within fourteen days of the receipt of the objection, consider the grounds advanced and shall, by order in writing, either withdraw the notice or amend or confirm it.

(4) Any person aggrieved by an order under sub-section (3) may prefer an appeal within seven days of the date of receipt of such order to the appellate authority whose decision in the matter shall be final.

(5) If any person fails to comply with the notice served on him under subsection (1) as amended or confirmed under subsection (3) or finally decided under sub-section (4) the W.P(C)s. 5218/12,30266/12, highway authority may, without prejudice to any other action which may be taken against him, take action to alter or remove the object causing obstruction or distraction of view at its own expense and such expenditure together with fifteen percent overhead charges thereon, shall be recovered from such person in the manner as may be prescribed."

38. Chapter VII of the Kerala Highway Protection Act, 1999 deals with offences, penalties and procedure. Section 30 thereof speaks about general provision for punishment of offences and it reads thus:

"30. General provision for punishment of offences- Whoever contravenes any provision of this Act or the rules made thereunder shall, if no other penalty is provided for the offence, on conviction, be punishable with fine which may extend to five hundred rupees or if having been previously convicted for the same offence, with fine which may extend to two thousand rupees."

39. The Control of National Highways (Land and Traffic) Act, 2002 is an Act to provide for control of land within the National Highways, right of way and traffic moving on the National Highways, and also for removal of unauthorised occupation thereon. This Act extends to the whole of India and it has come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of the Act. W.P(C)s. 5218/12,30266/12,

40. Section 2(d) of the Act defines Highway to mean a National Highway declared as such under Section 2 of the National Highways Act, 1956 and includes any Expressway or Express Highway vested in the Central Government, whether surfaced or surfaced, and also includes,-

(i) "all lands appurtenant to the Highway, whether demarcated or not, acquired for the purpose of the Highway or transferred for such purpose by the State Government to the Central Government;

(ii) all bridges, culverts, tunnels, causeways, carriageways and other structures constructed on or across such Highway; and

(iii) all trees, railings, fences, posts, paths, signs, signals, kilometre stone and other Highway accessories and materials on such Highways;"

41. Section 2(m) defines "unauthorised occupation" to mean, any occupation of the highway land without permission under this Act for such purpose, by a person, who-

- (i) "is trespasser on the Highway; or
- (ii) for the time being is paying or is liable to pay to other

person rent or any portion of the rent of the premises on a Highway; or

(iii) lives in or otherwise uses any premises on a Highway; or

(iv) is a rent-free tenant of any premises on a Highway; or

(v) is a licensee of any premises on a Highway for its possession; or

(vi) is liable to pay damages to the owner of any premises on a Highway for the use or possession of such premises;" W.P(C)s. 5218/12,30266/12,

42. Chapter III of the Control of National Highways (Land and Traffic) Act, 2002 deals with prevention of unauthorised occupation of highway land and their removal. Section 23 under Chapter III speaks about highway land to be deemed as the property of the Government and it reads thus:

"23. Highway land to be deemed as property of Central Government.- (1) All lands forming parts of a Highway which vest in the Central Government or which do not already vest in the Central Government but have been acquired for the purpose of Highway shall, for the purposes of this Act, and other Central Acts, be deemed to be the property of the Central Government as owner thereof.

(2) The Highway Administration shall cause to be maintained a record in the prescribed manner in which the particulars of the lands, relating to the Highway, of which the Central Government is the owner shall be entered and the entries of the particulars of such lands in any record maintained for such purpose before the commencement of this Act shall be deemed to be the entry of the particulars of such lands made in the first said record and accordingly the Central Government shall be deemed to be the owner of the lands regarding which the entries have been made in such records maintained before the commencement of this Act.

(3) Any person claiming against the ownership of the Central Government referred to in sub-section (2) shall make written complaint to the Highway Administration and prove his claim before it and

the Highway Administration, after W.P(C)s. 5218/12,30266/12, considering the evidence produced by such person, may correct such records or reject the claim."

43. Section 24 of the Act, 2002 speaks about prevention of occupation of highway land and it reads thus:

"24. Prevention of occupation of highway land.- (1) No person shall occupy any highway land or discharge any material through drain on such land without obtaining prior permission, for such purpose in writing, of the Highway Administration or any officer authorised by such Administration in this behalf.

(2) The Highway Administration or the officer authorised under sub-section (1) may, on an application made by a person in this behalf and having regard to the safety and convenience of traffic, grant permission to such person--

(i) to place a movable structure on the Highway in front of any building owned by him or to make a movable structure on support of such building and over the Highway, or

(ii) to put up a temporary lawning or tent or other similar construction or a temporary stall or scaffolding on the Highway, or

(iii) to deposit or cause to be deposited, building materials, goods, for sale or other articles on any Highway, or

(iv) to make a temporary excavation for carrying out any repairs or improvements to adjoining buildings, and such permission shall be granted subject to the conditions and on payment of the rent and other charges by issuing permit in the form as may be prescribed:

W.P(C)s. 5218/12,30266/12, Provided that no such permission shall be valid beyond a period of one month at a time from the date on which the permission has been granted unless it is renewed by the Highway Administration or such officer on an application made by such person for the renewal of the permission. (3) The permission granted under sub-section (2) shall specify therein--

(i) the time up to which the permission is granted;

(ii) the purpose of such permission;

(iii) the portion of the Highway in respect of which the permission has been granted, and shall be accompanied with a plan or sketch of such portion of Highway.

(4) The person, to whom the permit has been issued under sub-section (2), shall produce the permit for inspection whenever called upon to do so by any officer of the Highway Administration and

shall, on the expiry of the permission granted under such permit, restore the portion of the Highway specified in the permit in such condition as it was immediately before the issuing of such permit and deliver the possession of such portion to the Highway Administration.

(5) The Highway Administration or the officer issuing the permit under sub-section (2) shall maintain a complete record of all such permits issued, and shall also ensure in every case at the expiration of the period up to which the permission under a permit is granted under that sub-section that the possession of the portion of the Highway in respect of which such permission was granted has been delivered to the Highway Administration."

W.P(C)s. 5218/12,30266/12,

44. Section 25 of the Act, 2002 speaks about grant of lease or licence of highway land for temporary use and it reads thus:

"25. Grant of lease or licence of highway land for temporary use.- The Highway Administration or the officer authorised by such Administration in this behalf may, having regard to the safety and convenience of traffic and subject to such conditions as may be prescribed and on payment of prescribed rent or other charges, grant lease or licence of highway land to a person for temporary use: Provided that no such lease shall be valid for more than five years at a time from the date on which such lease has been granted unless renewed by the Highway Administration or such officer."

45. Section 26 of the Act, 2002 speaks about the removal of unauthorised occupation and it reads thus:

"26. Removal of unauthorised occupation.- (1) Where the Highway Administration or the officer authorised by such Administration in this behalf is of the opinion that it is necessary in the interest of traffic safety or convenience to cancel any permit issued under sub-section (2) of section 24, it may, after recording the reasons in writing for doing so, cancel such permit and, thereupon, the person to whom the permission was granted shall, within the period specified by an order made by the Highway Administration or such officer restore the portion of the Highway specified in the permit in such condition as it was immediately before the issuing of such permit and deliver the possession of such portion to the Highway Administration and in case such person fails to W.P(C)s. 5218/12,30266/12, deliver such possession within such period, he shall be deemed to be in unauthorised occupation of highway land for the purposes of this section and section 27. (2) When, as a result of the periodical inspection of highway land or otherwise, the Highway Administration or the officer authorised by such Administration in this behalf is satisfied that any unauthorised occupation has taken place on highway land, the Highway Administration or the officer so authorised shall serve a notice in a prescribed form on the person causing or responsible for such unauthorised occupation requiring him to remove such unauthorised occupation and to restore such highway land in its original condition as



before the unauthorised occupation within the period specified in the notice.

(3) The notice under sub-section (2) shall specify therein the highway land in respect of which such notice is issued, the period within which the unauthorised occupation on such land is required to be removed, the place and time of hearing any representation, if any, which the person to whom the notice is addressed may make within the time specified in the notice and that failure to comply with such notice shall render the person specified in the notice liable to penalty, and summary eviction from the highway land in respect of which such notice is issued, under sub-section (6).

(4) The service of the notice under sub-section (2) shall be made by delivering a copy thereof to the person to whom such notice is addressed or to his agent or other person on his behalf or by registered post addressed to the person to whom such notice is addressed and an acknowledgment purporting to be signed by such person or his agent or other person on W.P(C)s. 5218/12,30266/12, his behalf or an endorsement by a postal employee that such person or his agent or such other person on his behalf has refused to take delivery may be deemed to be prima facie proof of service.

(5) Where the service of the notice is not made in the manner provided under sub-section (4), the contents of the notice shall be advertised in a local newspaper for the knowledge of the person to whom the notice is addressed and such advertisement shall be deemed to be the service of such notice on such person.

(6) Where the service of notice under sub-section (2) has been made under sub-section (4) or sub-section (5) and the unauthorised occupation on the highway land in respect of which such notice is served has not been removed within the time specified in the notice for such purpose and no reasonable cause has been shown before the Highway Administration or the officer authorised by such Administration in this behalf for not so removing unauthorised occupation, the Highway Administration or such officer as the case may be, shall cause such unauthorised occupation to be removed at the expenses of the Central Government or the State Government, as the case may be, and impose penalty on the person to whom the notice is addressed which shall be five hundred rupees per square metre of the land so unauthorisedly occupied and where the penalty so imposed is less than the cost of such land, the penalty may be extended equal to such cost.

(7) Notwithstanding anything contained in this section, the Highway Administration or the officer authorised by such Administration in this behalf shall have power without issuing W.P(C)s. 5218/12,30266/12, any notice under this section to remove the unauthorised occupation on the highway land, if such unauthorised occupation is in the nature of--

(a) exposing any goods or article--

(i) in open air; or

(ii) through temporary stall, kiosk, booth or any other shop of temporary nature,

(b) construction or erection, whether temporary or permanent, or

(c) trespass or other unauthorised occupation which can be removed easily without use of any machine or other device, and in removing such occupation, the Highway Administration or such officer may take assistance of the police, if necessary, to remove such occupation by use of the reasonable force necessary for such removal. (8) Notwithstanding anything contained in this section, if the Highway Administration or the officer authorised by such Administration in this behalf is of the opinion that any unauthorised occupation on the highway land is of such a nature that the immediate removal of which is necessary in the interest of--

(a) the safety of traffic on the Highway; or

(b) the safety of any structure forming part of the Highway, and no notice can be served on the person responsible for such unauthorised occupation under this section without undue delay owing to his absence or for any other reason, the Highway Administration or the officer authorised by such Administration may make such construction including alteration of any construction as may be feasible at the prescribed cost necessary for the safety referred to in clause W.P(C)s. 5218/12,30266/12,

(a) or clause (b) or have such unauthorised occupation removed in the manner specified in sub-section (7). (9) The Highway Administration or an officer authorised by such Administration in this behalf shall, for the purposes of this section or section 27, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:--

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) issuing commissions for the examination of witnesses; and

(d) any other matter which may be prescribed, and any proceeding before such Administration or officer shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code (45 of 1860) and the Administration or the officer shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974)."

46. Section 27 of the Act, 2002 speaks about recovery of cost of removal of unauthorised occupation and fine imposed, and it reads thus:

"27. Recovery of cost of removal of unauthorised occupied and fine imposed.- (1) Where a Highway Administration or the officer authorised by such Administration in this behalf has removed any unauthorised occupation or made any construction including alteration of construction in respect of any unauthorised occupation or

repaired any damage under sub-section (2) of section 36, the W.P(C)s. 5218/12,30266/12, expenditure incurred in such removal or repair together with fifteen per cent. of additional charges or any fine imposed under this Act shall be recoverable in the manner hereinafter provided in this section.

(2) The Highway Administration or the officer authorised in this behalf by such Administration shall serve a copy of the bill in the prescribed form indicating therein the expenditure, additional charges or fine recoverable under sub-section (1) on the person from whom such expenditure, additional charges or fine is recoverable and the provisions of section 26 relating to the service of notice shall apply for the service of copy of the bill under this sub-section as if for the word "notice" the word "bill" has been substituted in that section. (3) A copy of the bill referred to in sub-section (2) shall be accompanied with a certificate issued by the Highway Administration or the officer authorised by such Administration in this behalf and the amount indicated in the bill shall be the conclusive proof that such amount is the expenditure actually incurred for all or any of the purposes referred to in sub-section (1) as indicated in the bill. (4) Where a Highway Administration or the officer authorised in this behalf by such Administration has removed any unauthorised occupation or made any construction including alteration of construction in respect of any unauthorised occupation or repaired any damage under sub-

section (2) of section 36, the material, if any, recovered as a result of such removal, construction, alteration or repair shall be retained in possession of the Highway Administration or such officer till the payment of the bill in respect thereof served under sub-section (2) and on payment of such bill such W.P(C)s. 5218/12,30266/12, material shall be returned to the person entitled for the material, but in case of the failure of such payment within the time specified for the payment in the bill, the material may be sold by auction by the Highway Administration or such officer and after deduction of the amount payable under the bill from the proceeds of the auction, the balance, if any, shall be returned to the person entitled therefor. (5) In case where the proceeds of the auction under sub-section (4) is less than the amount recoverable under the bill referred to in that sub-section, the difference between such proceeds and the amount so recoverable or where no such auction has been made, the amount recoverable under the bill shall, in case of failure of the payment within the time specified in the bill, be recoverable as the arrears of land revenue."

47. Chapter VII of the Control of National Highways (Land and Traffic) Act, 2002 deals with offence and penalty. Section 39 under Chapter VII reads thus:

"39. Offence and penalty.- (1) If any person, who has been evicted from any unauthorised occupation on a highway land under this Act, again occupies any highway land without permission for such occupation under this Act, he shall be punishable with imprisonment for a term which may extend to one year, or with fine which shall not be less than one thousand rupees per square metre of so occupied highway land but which shall not exceed two times the cost of such highway land, or with both.

W.P(C)s. 5218/12,30266/12, (2) Any court, convicting a person under sub-section (1), may make an order for evicting that person from such occupied highway land summarily and he shall be liable to such eviction without prejudice to any other action that may be taken against him.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the offence punishable under sub-section (1) shall be cognizable."

48. Kerala Road Safety Authority Act, 2007, is an Act to provide for the constitution of a Road Safety Authority for the implementation of road safety programmes in the State, for the establishment of a Road Safety Fund and for matters connected therewith and incidental thereto.

Section 14 thereof reads thus:

14. Power to order removal of causes of accidents.- (1) Notwithstanding anything contained in any other law for the time being in force, where the Authority is satisfied on complaint, report by any person or otherwise that-

(i) the act of any person or persons on a public road; or

(ii) the placement or positioning of any vehicle, animal, object built without the approval of any recognised administrative authority, structure or materials including arches, banners, display boards, hoardings, awnings, tents, pandals, poles, platforms, rostrums, statues, monuments and other similar structures, on a public road; or

(iii) the movement of animals or vehicles on a public road; or

(iv) the condition of any tree, structure or building situated in the vicinity of a public road; or W.P(C)s. 5218/12,30266/12,

(v) the entry or exit of any building or premise in the vicinity of a public road;

is likely to cause accidents or causes obstruction to the free flow of traffic or distract the attention or obstruct the vision of the driver of any vehicle, the Road Safety Commissioner may, after recording reasons thereof, direct the person concerned, either by a general or special order, to take such measures within two months as it considers necessary and such person shall be bound to comply with the direction within such time, as may be specified by the Authority.

(2) Notwithstanding anything contained in sub-section (1), in case of urgency, the Road Safety Commissioner may take such action as may be necessary to prevent accident or obstruction, as the case may be, and recover the cost thereof from the person responsible, in such manner as may be prescribed."

49. That apart, National Highways Authority of India Act, 1988, is an Act to provide for the constitution of an Authority for the development, maintenance and management of national highways and for matters connected therewith or incidental thereto. Sections 35 and 36 of the NHAI Act, 1988, read thus:

"35. Power of the Authority to make regulations.--(1) The Authority may, by notification in the Official Gazette, make regulations not inconsistent with this Act and the rules made thereunder to carry out the provisions of this Act. (2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:--

W.P(C)s. 5218/12,30266/12,

(a) the times and places of the meetings of the Authority and the procedure to be followed for the transaction of business at such meetings;

(b) the terms and conditions of service, method of recruitment and the remuneration of officers and other employees appointed by the Authority;

(c) the form and manner in which a contract or class of contracts may be made by the Authority and the contracts or classes of contracts which are to be sealed with the common seal of the Authority;

(d) the manner of preventing obstructions on the national highways for their normal functioning;

(e) the manner of prohibiting the parking or waiting of any vehicle or carriage on the national highway except at places specified by the Authority;

(f) the manner of prohibiting or restricting access to any part of the national highway;

(g) the manner of regulating or restricting advertisements on and around national highways; and

(h) generally for the efficient and proper maintenance and management of the national highways."

"36. Power to remove difficulties.--(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by notification in the Official Gazette, make order not inconsistent with the provisions of this Act as may appear to it to be necessary or expedient for the removal of the difficulty:

Provided that no such order shall be made after the expiration of two years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament."

W.P(C)s. 5218/12,30266/12,

50. Complaints preferred by the petitioner in W.P.(C) No. 30266/2012 before respondents 1 to 3 dated 22.08.2012 read thus:

"Ref.- S.H.R.A. 54/2012 Date 22.08.2012 BY REGD. WITH A/D To THE SECRETARY, Corporation of Cochin, Ernakulam, Kochi - 11 .

Sub:- Removal of unauthorized Advertisements and Sign Boards kept other than for the purpose of regulating traffic Sir, While I was traveling within the limits of corporation it came to my notice that Advertisements, Flex Boards, Flags installed by political parties and off others are placed in the side and in the divider of the road. These flags, flex boards etc. will distract the attention of the drivers of the vehicles. It will be a reason for increase in accidents. The above said boards etc. are placed in such a manner that not even the sign boards to regulate the vehicular traffic, cannot be seen by drivers. It also came to my notice that those boards, flex boards, flags etc. which violate the provisions of law. Hence it is requested that such boards etc. which are placed illegally may be removed forthwith. If no effective steps are taken by the corporation to remove the above mentioned structure. I will be forced to proceed against the corporation.

Thanking you, Yours faithfully W.P(C)s. 5218/12,30266/12, Khalid Mundappilly Aluva 22.08.2012"

"Ref.- S.H.R.A. 54/2012 Date 22.08.2012 BY REGD. WITH A/D To THE COMMISSIONER OF POLICE, Kochi City, Revenue Tower, Ernakulam, Kochi.

Sub:- Removal of unauthorized Advertisements and Sign Boards kept other than for the purpose of regulating traffic.

Sir, While I was traveling within the limits of corporation it came to my notice that Advertisements, Flex Boards, Flags installed by political parties and off others are placed in the side and in the divider of the road. These flags, flex boards etc. will distract the attention of the drivers of the vehicles. It will be a reason for increase in accidents. The above said boards etc. are placed in such a manner that not even the sign boards to regulate the vehicular traffic, cannot be seen by drivers. It also came to my notice that those boards, flex boards, flags etc. which violate the provisions of law. Hence it is requested that such boards etc. which are placed illegally may be removed forthwith.

Thanking you, Yours faithfully Khalid Mundappilly 22.08.2012"

W.P(C)s. 5218/12,30266/12, "Ref.- S.H.R.A. 59/2012 Date 22.08.2012 BY REGD. WITH A/D To THE SECRETARY, Local Self Administrative Department, Govt. Secretariat, Trivandrum.

Sub:- Removal of unauthorized Advertisements and Sign Boards kept other than for the purpose of regulating traffic.

Sir, While I was traveling through various parts of Kerala it came to my notice that Advertisements, Flex Boards, Flags installed by political parties and off others are placed in the side in the divider of the PWD Roads. These flags, flex boards etc. will distract the attention of the drivers of the vehicles. It will be a reason for increase in accidents. The above said boards etc. are placed in such a manner that not even the sign boards to regulate the vehicular traffic, cannot be seen by drivers. It also came to my notice that those boards, flex boards, flags etc. which violate the provisions of law. Hence it is requested that such boards etc. which are placed illegally may be removed forthwith. If no effective steps are taken by the PWD to remove the above mentioned structure. I will be forced to proceed against the PWD Authority.

Thanking you,

Yours faithfully

Aluva  
22.08.2012"

Khalid Mundappilly

51. Circular dated 02/01/2014 issued by the Principal Secretary, Local Self Government (RC) Dept., Thiruvananthapuram, reads thus: W.P(C)s. 5218/12,30266/12, "GOVERNMENT OF KERALA No.75667/RC2/2013/LSGD Local Self Government (RC) dept.

Thiruvananthapuram, Dated, 02/01/2014 CIRCULAR Sub:- LSGD Setting up of hoardings on trees for advertisements - Instructions issued to Local Self Government Institutions - circular revised Reg.

Ref:-1. Circular No.28576/RC2/2011/LSGD dated 15/07/2011.

2. Judgment dated 02/12/2013 in the WP(C) 14591/2011.

The Government have issued instructions to the Local Self Government Institutions to the effect that "while according permission for the erection of hoardings and billboards for advertisement that no damage, injury or harm shall be made/happened to the trees when trees are used for advertisement" vide circular read as 1 st paper above. The Hon'ble High Court of Kerala initiated suo motu proceedings [W.P.(C) No.14591/2011] on a petition from the students of St. Augustine's girls Higher Secondary School, Muvattupuzha against erection of Hoardings on trees using iron nails. The Hon'ble High court of Kerala vide judgment cited has directed the Government that the local authorities or any other statutory authorities should not be permitted to affix or display any hoarding/advertisement on the trees either by using nails or any other form.

In view of the direction of the Hon'ble High Court of Kerala Local Self Government Institutions are instruction that permission shall not be issued for affixing or displaying hoarding or advertisement on trees either by using nails or W.P(C)s. 5218/12,30266/12, any other form as the trees are to be protected and the trees on public places are not intended to be used as display structures. The Local Self Government Institutions shall ensure that all the hoardings and advertisement boards which are nailed into trees are removed immediately and those who contravene the condition will be liable

for penalty.

The instructions issued in the circular cited is revised to the above extent.

JAMES VARGHESE Principal Secretary"

52. Judicial notice is also taken that there are clusters of cables and wires, encircling the electric poles.

53. Nobody can dispute that plants and trees have life. Nailing of trees is done for the purpose of putting up signboards, advertisements, drawing cable wires etc. In the light of the statutory provisions, which we have extracted above, a duty is cast upon the authorities concerned, under the respective Acts, to remove the nails, and consequently, the advertisement boards, pamphlets etc., also. Conservation and preservation of trees, which have life, is required to be done, which in our opinion, is also an important aspect to be taken note of by the competent authorities, to ensure that no harm is caused to the trees.

54. In Shani Johnson v. Kochi Corporation and Another reported in 2019 (3) KLT 277, after considering the provisions under the Control of W.P(C)s. 5218/12,30266/12, National Highways (Land and Traffic) Act, 2002 and circulars, a Hon'ble Division Bench of this Court observed and ordered thus:

"11. The Control of National Highways (Land and Traffic) Act, 2002, provides for control of land within the National Highways, right of way and traffic moving on National Highways and also for removal of unauthorised occupation thereon. Clause (e) of S.2 of the said Act define 'highways' to mean a National Highway declared as such under S.2 of the National Highways Act, 1956 (48 of 1956) and includes any Expressway or Express Highway vested in the Central Government, whether surfaced or unsurfaced, and also includes (i) all lands appurtenant to the highway, whether demarcated or not, acquired for the purpose of the highway or transferred for such purpose by the State Government to the Central Government; (ii) all bridges, culverts, tunnels, causeways, carriageways and other structures constructed on or across such highway; and (iii) all trees, railings, fences, posts, paths, signs, signals, kilometre stone and other highway accessories and materials on such highways.

12. Chapter III of the Control of National Highways (Land and Traffic) Act, deals with prevention of unauthorised occupation of highway land and their removal. As per sub-

section (1) of S.23, all lands forming parts of a highway which vest in the Central Government or which do not already vest in the Central Government but have been acquired for the purpose of highway shall, for the purposes of this Act, and other Central Acts, be deemed to be the property of the Central Government as owner thereof. In view of the W.P(C)s. 5218/12,30266/12, provisions under S.23 of the said Act, all lands forming part of a National Highway - 66 shall vest with the



Central Government and therefore, the 1st respondent Corporation or any Local Self Government Institutions shall have no right or authority to permit erection of advertisement boards either on the sodium vapour lamp posts or any land appurtenant to that highway, bridges, culverts, etc., which would come under the purview of clause (e) of S.2 of the said Act.

15. It is pertinent to note at this juncture the provisions under 'Policy on Roadside Advertisements' formulated by the Indian Road Congress, vide IRC:46 - 1972. Such a policy was introduced when it was noticed that advertisement can often distract the attention of drivers of motor vehicles and in that case a public hazard or nuisance. They may also obstruct the view of the drivers of fast - moving vehicles and are then a public danger. Para.2 of IRC:46-1972 deals with advertisement control; Para.3 deals with principles on advertisement control; etc.

16. The Ministry of Road Transport and Highways vide Circular No.RW/NH-33044/35/2001/S&R(R) dated 16/05/2002 has made it clear that no advertisement hoardings are permitted on National Highways within the Right of Way (ROW) except informatory signs of public interest such as hospitals, bus stations, etc. or advertisement of temporary nature announcing local events such as Mela, Flower Show, etc. Besides, IRC:46-1972 titled 'A Policy on Roadside Advertisements' published in 1972 should also be referred for comprehensive guidelines on advertisement control on National Highways.

W.P(C)s. 5218/12,30266/12,

17. The Ministry of Road Transport and Highways in its letter No.F.No.RW/NH - 33044/18/2016/S&R(R) dated 07/09/2016 noticed that despite the Ministry's policy of not allowing roadside advertisements, hoardings on National Highways which cause distraction and is also one of the causes of accidents on National Highways, advertisement hoardings have generally been noticed along the National Highways. Therefore, it was decided that the Regional Officers/ Engineering Liasoning Officers within their jurisdiction shall inspect the National Highways by prioritising heavily traffic National Highways and other National Highways in stages and submit inspection reports to the Ministry for further necessary action, along with their monthly reports. However, reports from the Regional Officers / Engineering Liasoning Officers are not being received by the Ministry and therefore, the Ministry vide letter dated 07/09/2016 directed all the implementing agencies and Regional Officers / Engineering Liasoning Officers to do joint inspection of all National Highways within their jurisdiction and sent a consolidated report regarding advertisement hoardings to the Ministry for further necessary action. A copy of the said letter is addressed to all Engineers - in - Chief and Chief Engineers of Public Works Departments of State / Union Territories dealing with National Highways and other Centrally Sponsored Schemes.

18. 'Centre for Consumer Education' filed W.P.(C) No.27011 of 2012\*, 2019 (3) KHC 957 as public interest litigation before this Court raising questions touching upon the safety of passengers commuting through public roads in the State. One W.P(C)s. 5218/12,30266/12, of the reliefs sought for in that writ petition is a writ of mandamus commanding the respondents therein to initiate steps to remove all types of obstruction in roads and road margins and recover the costs from those responsible for erecting the same, and also to erect and establish proper destination boards and

traffic signals in the public roads leading to Sabarimala. In the said writ petition, the State Police Chief filed a counter affidavit through the Assistant Inspector General of Police, Thiruvananthapuram admitting the large number of unauthorised advertisements and hoardings in the National Highways as well as in the State Highways, blocking the line of sight of drivers and also causing distraction to the drivers. In the counter affidavit, it has also been stated that all District Police Chiefs have been alerted to take appropriate actions to see that advertisement / sign boards which are obstructing the vision of the road users shall be removed by seeking assistance of other Departments. Reports have been called for from the District Police Chiefs regarding the cases registered in connection with the erection of illegal boards or flex boards on road margins, etc.

19. After considering the averments in the counter affidavit filed on behalf of the Director General of Police, the Division Bench of this Court in its judgment dated 21/02/2013 in W.P. (C) No.27011 of 2012\* opined that the State and its law and order administration are on their toes in ensuring safety of the users of the National Highways and State Highways as also other roads, particularly, in the context of the danger caused by unauthorised erection of the hoardings and advertisement W.P(C)s. 5218/12,30266/12, boards. The Division Bench observed that the grievance of the petitioner Society stands redressed for the present and the State would act in accordance with the statements in the counter affidavit made on behalf of the State Police Chief. But looking at the totality of the circumstances, the Division Bench deemed it fit to direct the 3rd respondent Transport Commissioner, to take appropriate action through the officers deployed towards the end of law and order administration and ensure that the various enactments referred to in the counter affidavit filed on behalf of the State Police Chief and in Ext.P1 petition filed by the petitioner therein are implemented with the zeal and promptitude the situation calls for and in appropriate circumstances and situations; co - ordinate with the Local Self Government Institutions to prohibit erection of advertisement boards and hoardings completely or partially according to the need of a particular location. In the said judgment, the Division Bench has also noted the stand of the National Highway Authority of India that the Local Self Government Institutions have absolutely no authority to sanction erection of the hoardings or advertisement boards in National Highways. Paragraphs 4, 5 and also the last paragraph of the judgment of the Division Bench dated 21/02/2013 in W.P(C)No.27011 of 2012\*, 2019 (3) KHC 957 read thus:

"4. In the context of the counter affidavit filed and the statements made therein, we are of the opinion that the State and its law and order administration are on their toes in ensuring safety of the users of the National and State highways as also other roads particularly in the context of the danger caused by unauthorised erection of the hoardings and advertisement boards. We are sure that the W.P(C)s. 5218/12,30266/12, grievance of the petitioner stands redressed for the present and the State would act in accordance with the statements in the counter affidavit, made on behalf of the Police Chief.

5. However, we confess to a disquiet and foreboding in our minds, more so, by what we see on the roads on a daily basis. We are not for a moment doubting the statement made in the counter affidavit nor are we importing our personal knowledge into deciding this issue. But looking at the totality of the circumstances, we deem it fit that

we direct the 3rd respondent to take appropriate action through the officers deployed towards the end of law and order administration and ensure that various enactments referred to in the counter affidavit and Ext.P1 are implemented with the zeal, and promptitude the situation calls for and in appropriate circumstances and situations; coordinate with the Local Self Government Institutions to prohibit erection of advertisement boards and hoardings completely or partially according to the need of a particular location. We also had the benefit of hearing the learned counsel for the National Highway Authority of India, who has stated before us that the Local Self Government Institutions have absolutely no authority to sanction erection of the hoardings or advertisement boards in the national highways. We need not alert the authority of the National Highway Authority of India in the State, to bring such incidents to the notice of the 3rd respondent; who is duty bound to prohibit the same. In the circumstances, and in the context of the statements made in the counter affidavit, we close the writ petition with the aforementioned directions. The parties are left to suffer their costs."

20. In view of the provisions under S.23 of the Control of National Highway (Land and Traffic) Act, 2002, all lands forming part of a National Highway shall vest in the Central Government and as such, the 1st respondent Corporation or any other Local Self Government Institution in the State have W.P(C)s. 5218/12,30266/12, no authority to permit erection of advertisement boards either on the sodium vapour lamp posts or all lands appurtenant to the highways, bridges, culverts, etc. which would come under the purview of clause (e) of S.2 of the said Act. In view of the 'Policy on Roadside Advertisements' formulated by the Indian Road Congress, vide IRC:46-1972, and also the Circular dated 16/05/2002 issued by the Ministry of Road Transport and Highways, no advertisement hoardings can be permitted on National Highways within the Right of Way, except informatory signs of public interest such as hospitals, bus stations, etc. or advertisement of temporary nature such as Mela, Flower Show, etc. In Circular dated 16/05/2002, it has been made clear that IRC:46-1972 should be referred to for comprehensive guidelines on advertisement control on National Highways.

21. The Ministry of Road Transport and Highways reiterated its stand in its letter dated 07/09/2016, when it was noticed that despite the Ministry's policy of not allowing roadside advertisements, hoardings on National Highways which cause distraction and is one of the causes of accidents on National Highways, have generally been noticed along the National Highways. Therefore, the Regional Officers / Engineering Liaison Officers are directed to submit inspection reports to the Ministry for further necessary action, along with their monthly reports. A copy of the said letter is addressed to all Engineers - in - Chief and Chief Engineers of Public Work Departments of State / Union Territories dealing with National Highways and other Centrally Sponsored Schemes. Strict compliance of the aforesaid Circular and letter issued W.P(C)s. 5218/12,30266/12, by the Ministry of Road Transport and Highways is highly essential, since distraction of drivers of motor vehicles is one of the major causes of motor accidents.

22. In the result, no interference is warranted on Ext.P6 communication dated 18.04.2018 issued by the Project Director of the 2nd respondent National Highways Authority of India and the petitioner

is also not entitled to other consequential reliefs sought for in this Writ Petition. It is for the 2nd respondent and also the concerned officers in the Kerala Public Works Department dealing with National Highways and other Centrally Sponsored Schemes to ensure strict compliance of Circular dated 16.05.2002 and also the letter dated 07.09.2016 of the Ministry of Road Transport and Highways."

55. Going through the provisions of various Acts extracted above, we have culled out the authorities, detailed below, who are statutorily bound to take action for removal of unauthorised advertisement boards on the roads, vested in them.

Sl. No.	Acts	Authorities
1.	Kerala Panchayat Raj Act, 1994	The Secretary of the Village Panchayat or a block Panchayat or a District Panchayat as the case may be, as per Section 209C.

2. Kerala Municipalities Act, The Secretary of the concerned 1994 Municipality as per Section 275.

3. The National Highways The authority competent to remove Authority of India Act, the unauthorised advertisement 1988 boards is the Chairman appointed by W.P(C)s. 5218/12,30266/12, the Central Government by notification in the Official Gazette.

4. Kerala Highway Protection Under Section 4 of the Act, the Act, 1999 Executive Engineer (Roads) or Executive Engineer (National Highways) of the Public Works Department is the highway authority of the respective area. They are the competent authorities to remove the unauthorised advertisements.

The respective Chief Engineers of the State PWD, by notification, authorise the Executive Engineers for the upkeep and maintenance of the Highway, under their control.

5. The Kerala Municipality Secretary of the Municipality (Erection of arches and concerned is empowered under setting up of Section 5 to remove the arches and advertisement boards in advertisement boards erected, public streets and public without licence and recover the cost places) Rules, 1999 incurred for it from those who have erected or from those who are responsible for it.

6. The Control of National Highway Administration constituted Highways (Land and under Section 3 of the Act by the Traffic) Act, 2002 Central Government has the jurisdiction over the Highways, and to remove unauthorised occupation under Section 26.

7. Kerala Road Safety The Road Safety Commissioner/ Authority Act, 2007 Transport Commissioner is the ex-

officio Road Safety Commissioner for the purpose of this Act. The Kerala Road Safety

Authority constituted under Section 3 of the Act, has the power to remove causes of accidents like arches, banners, display boards, etc., and other similar structures, on a public road, under Section 14.

W.P(C)s. 5218/12,30266/12, 8 Under Section 133 of the Code of Criminal Procedure, the District Magistrate / Revenue Divisional Officer on receiving the report of a police officer or other information and on taking such evidence (if any) as he thinks fit, is authorised to remove any unlawful obstruction or nuisance caused from any public place or from any way, river or channel which is or may be lawfully used by the public.

56. In addition to the directions issued in Shani Johnson's case (cited supra), in the light of the statutory provisions, we dispose of the writ petitions with the following directions:

A) All the unauthorised arches, display boards, hoardings, placards, and banners with poles or frames, etc., fixed to and/or dug into the ground, which abuts the highways, public streets, and pedestrian pavements, shall forthwith be removed. No poles or frames or structures for arches, boards, placards, hoardings, display boards or banners shall be erected on any highway, public road, public passage or pedestrian pathway or pavement. Holes caused on pavements and roads, by reason of erection of frames, poles, structures, placards, hoardings, displaying boards, banners, etc., shall forthwith be repaired.

B) The Secretaries to the Government, LSGD, PWD, State Highways and Heads of Departments, under the respective Acts, extracted above, shall issue appropriate instructions for effective implementation of the above said directions.

C) The District Collectors and the Secretaries of the aforementioned departments shall oversee the W.P(C)s. 5218/12,30266/12, implementation of the directions issued by this Court, issue suitable orders, and take appropriate action against the erring officers.

D) The Principal Secretaries to the Government, Public Works Department, Local Self Government Institutions, Government of Kerala, are directed to issue appropriate instructions to the field officers, to remove the nailing, in other words, de-nailing, make trees nail free and thereby, remove all the unauthorised signboards, advertisements, pamphlets etc. The District Collectors shall act in accordance with the orders issued in that regard.

E) The Executive Engineer (Roads) or Executive Engineer (National Highways) of the Public Works Department, who are designated as Highway Authorities as per the provisions of the Kerala Highway Protection Act, 1999, are directed to identify those structures, hoardings, advertisement boards and displays etc., endangering road safety, and take immediate steps for removal thereof, under Section 22 of the said Act.

F) The Project Directors / National Highways Authority of India are directed to take appropriate action, to effectively implement the directions.

G) The Secretaries of Municipal Corporations and Municipalities in the State, under Section 275 of the Kerala Municipalities Act, 1994, are directed to take steps, to identify and remove unauthorised hoardings, banners, flex boards, temporary arches, posters etc. W.P(C)s. 5218/12,30266/12, H) Likewise, the Secretaries of the Panchayats are directed to take steps to identify and remove unauthorised hoardings, banners, flex boards, temporary arches, posters, and other similar structures.

I) The concerned Secretaries are directed to supervise dismantling of outdoor billboards, unauthorised hoardings etc., which causes inconvenience to the commuters.

J) The Secretaries of the concerned Panchayat under Section 209C of the Kerala Panchayat Raj Act, 1994, shall provide necessary assistance to the NHAI for removal of illegal hoardings, banners, flexes, temporary arches, posters etc. K) In the event, the Municipal Authorities/officials, who come across the cases of breaches, not attracting any of the Municipal Laws, shall forthwith report the same to the District Collectors. On such information, being received by the District Collectors, necessary action for removal of such nuisance shall be taken in a time bound manner.

L) Since, in the State of Kerala, certain notified portions of the National Highways are maintained by the National Highways Authority of India the outdoor advertising boards which cause distraction to traffic on such stretches of the Highways shall be identified by the concerned Project Director of NHAI and appropriate remedial action be taken, in accordance with law.

M) The Kerala State Road Safety Authority, constituted under the provisions of Kerala Road Safety Authority Act, 2007, to W.P(C)s. 5218/12,30266/12, coordinate action on areas related to road safety among various departments, advice the Government on road safety policy, prescribe and enforce road safety standards and procedures, formulate and implement schemes / projects and programmes relating to road safety and is directed to conduct a detailed study, with the help of various District Road Safety Councils in the State, as regards the harmful effects caused on account of the outdoor hoardings / billboards, installed at various National/ State Highways and elsewhere, and submit a report to the Chief Secretary, to facilitate the State Government to regulate the hazardous outdoor hoardings / billboards.

N) The Road Safety Commissioner/Transport Commissioner, who is the ex officio under Section 9 of the Kerala Road Safety Authority Act, 2007, is directed to look into the damaging effect of roadside advertisements in the light of 'Policy on Roadside Advertisements' published by the Indian Road Congress, 1992.

O) Cluster of wires on trees and electrical poles, be regulated by the statutory authorities and the District Collectors are directed to take appropriate action for removal as per the existing rules.

P) The Commissioner of Police or the Superintendent of Police, as the case may be, shall issue directions to the concerned police personnel, who are entrusted with the job of night patrolling, including the beat marshals, to W.P(C)s. 5218/12,30266/12, keep a constant vigil, for preventing the activity of erection/display of illegal hoardings, banners, flexes, temporary arches, posters etc.,

during night time.

Q) The Commissioner of Police/District Police Chief, shall provide necessary assistance to the Highways Authority under Sections 44 and 15(2) of the Act, 1999 for removal of the unauthorised structures, hoardings, advertisement boards and displays, endangering road safety.

R) Whenever an action is proposed to be taken by the authorities, as stated above, the concerned Assistant Commissioner / Deputy Superintendent of Police shall extend adequate police protection and police help to the local authorities, in the process.

S) Report regarding removal of the above-mentioned unauthorised structures, outdoor hoardings / billboards, be submitted by the competent authorities under the respective enactments, to the District Collectors, every month.

57. The directions issued above, shall be scrupulously implemented, within a period of three months from the date of receipt of a copy of this judgment. The office of the learned Advocate General and the respective standing counsel shall forward a copy of this judgment to the State Government, for appropriate action, in accordance with the directions issued.

W.P(C)s. 5218/12,30266/12, Registry is directed to list the writ petitions after three months, for filing consolidated compliance reports, by the respective Secretaries to the Government.

Sd/-

S.MANIKUMAR CHIEF JUSTICE Sd/-

SHAJI P.CHALY JUDGE krj W.P(C)s. 5218/12,30266/12, APPENDIX IN W.P.(C) NO.5218/2012 PETITIONER'S EXHIBITS:-

P1:- COPY OF THE PHOTOGRAPHS.

P2:- COPY OF THE REPRESENTATION FILED BY THE PETITIONER.

P3:- COPY OF THE NEWS ITEM IN MATHRUBHOOMI DAILY, DATED 2.1.2002.

RESPONDENTS' EXHIBITS:-

R1(A):- COPY OF THE CIRCULAR DATED 02.01.2014 ISSUED BY THE LOCAL SELF GOVERNMENT DEPARTMENT.

APPENDIX IN W.P.(C) NO.30266/2012 PETITIONER'S EXHIBITS:-

P1:- PHOTOGRAPHS SHOWING THOSE FLAGS, BOARD ETC.

P2:- COPY OF THE COMPLAINT PREFERRED BEFORE THE 1ST RESPONDENT DATED 22.08.2012.

P3:- COPY OF THE COMPLAINT PREFERRED BEFORE THE 2ND RESPONDENT DATED 22.08.2012.

P4:- COPY OF THE REPORT WHICH APPEARED IN THE MADHYAM DAILY DATED 31.10.2012 AND ENGLISH TRANSLATION.

RESPONDENTS' EXHIBITS:- NIL W.P(C)s. 5218/12,30266/12, APPENDIX IN W.P.(C) NO.17922/2013 PETITIONER'S EXHIBITS:-

P1:- PHOTOGRAPHS OF FLEX BOARDS PUT UP IN PUBLIC PLACES IN VARIOUS PARTS OF ERNAKULAM DISTRICT.

RESPONDENTS' EXHIBITS:-

R3(A):- LETTER NO.PCB/TAC/MASC/288/o6 DATED 20TH SEPTEMBER, 2010 ADDRESSED TO THE CHIEF ELECTION COMMISSION.

//TRUE COPY// P.A. TO C.J.