IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

Tuesday, the 16th day of December 2025 / 25th Agrahayana, 1947

WP(C) NO. 46555 OF 2025(T)

PETITIONER:

KERALA INFRASTRUCTURE INVESTMENT FUND BOARD, REPRESENTED BY ITS CHIEF EXECUTIVE OFFICER, SECOND FLOOR, FELICITY SQUARE, MG ROAD, STATUE, THIRUVANANTHAPURAM, PIN - 695001

RESPONDENTS:

1. THE DIRECTOR, DIRECTORATE OF ENFORCEMENT, KOCHI ZONAL OFFICE, KANOOS CASTLE, A.K. SESHADRI ROAD, KOCHI, PIN - 682011
2. THE ASSISTANT DIRECTOR, DIRECTORATE OF ENFORCEMENT, KOCHI ZONAL OFFICE, KANOOS CASTLE, A.K. SESHADRI ROAD, KOCHI, PIN - 682011
3. THE SPECIAL DIRECTOR OF ENFORCEMENT DIRECTORATE (ADJUDICATION), DIRECTORATE OF ENFORCEMENT, PRAVARTAN BHAWAN, DR. APJ ABDUL KALAM ROAD, NEW DELHI, PIN - 110011

Writ petition (civil) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to:

(i) Stay all further proceedings pursuant to Exhibit P2 show cause notice issued by the third respondent, pending disposal of the writ petition.

This petition coming on for admission upon perusing the petition and the affidavit filed in support of WP(C) and upon the arguments of Senior Advocate. SRI. K.GOPALAKRISHNA KURUP , Advocate General, SRI. V. MANU, SPL. GOVERNMENT PLEADER TO A.G., SHRI.C.E.UNNIKRISHNAN SPL. GOVERNMENT PLEADER TO A.G, SRI.S.KANNAN, SENIOR GOVERNMENT PLEADER, SRI.BIJOY CHANDRAN, SENIOR G.P, for the Petitioner, SRI. ARL SUNDARESAN (SR.), ASSISTANT SOLICITOR GENERAL OF INDIA, and SRI. JAISHANKAR V. NAIR , Standing for the Respondents (By Order), the court passed the following:

V.G.ARUN, J

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W.P.(C).No.46555 of 2025

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Dated this the 16th day of December, 2025

O R D E R

The Kerala Infrastructure Investment Fund Board (KIIFB), a body corporate constituted by the State of Kerala under Section 4 of the Kerala Infrastructure Investment Fund Act, 1999 (the KIIF Act for short) has filed this writ petition, challenging Ext.P1 complaint submitted under Section 16(3)of the Foreign Exchange Management Act, 1999 (the FEMA for short) and Ext.P2 show cause notice under Section 13 of the FEMA. The essential facts are as under;

The KIIFB is created with the object of providing investments for infrastructure projects of the State in sectors like transport, water sanitation, energy, social and commercial infrastructure, information technology, telecommunication etc. As per Section 8 of the KIIF Act, the KIIFB is authorised to borrow any sum required for its purposes with the previous sanction of the Government, by issuing any financial instruments, including General Obligation Bonds, Revenue Obligation Bonds, Land Bonds or by way of arrangements with banks, multilateral funding agencies or institutions approved by the Government. Accordingly, the KIIFB decided to raise funds by issuing Rupee Denominated Bonds (Masala Bonds) and appointed the Axis Bank as its advisor. The Reserve Bank of India granted permission for issuing the bonds, subject to the the bonds being issued under the extant RDB framework for issuance of Rupee Denominated Bonds overseas. Thereafter, the Masala Bonds were issued by the KIIFB from 26.03.2019 to 27.03.2019. Sometime later, the Enforcement Directorate issued summons to the officials of the KIIFB and a former Finance Minister of the State in connection with an enquiry on whether the issuance of Masala Bonds, assimilation of funds and its usage was in violation of the RBI circulars/directives. The repeated issuance of summons was challenged before this Court and got concluded with Ext.P11 judgment, recording the submission of the Enforcement Directorate that the impugned summons had been withdrawn and permitting the petitioners to challenge the action, if any taken in future. Apparently, the ED continued its enquiry and on culmination, filed Ext.P1 complaint.

2. Heard, Senior Advocate K.Gopalakrishna Kurup, the learned Advocate General appearing for the petitioner and Senior Advocate ARL Sundaresan, the learned Assistant Solicitor General of India appearing for the Enforcement Directorate and its officials.

3. Learned Senior Counsel for the petitioner contended that the allegations in Ext.P1 complaint, even if taken in its face value and accepted in their entirety, do not *prima facie* warrant any adjudication proceedings. The complaint is vitiated by mala fides and if adjudication proceedings are permitted, it will degenerate into a weapon of harassment and persecution. The adjudication proceedings under Section 13 of the FEMA can be initiated only for contravention of any of its provisions or of any rule, regulation, notification, direction or order issued in exercise of the powers under the Act or for contravention of any condition subject to which the authorisation is issued by the Reserve Bank. In Ext.P1 complaint, the allegation is regarding

utilisation of funds raised through Masala Bonds for acquisition of lands for various projects contrary to the stipulation in paragraph 2(vi) of RBI Circular No.17 dated 29.09.2015 and FED Master Direction No.5/2015-16 dated 01.01.2016 issued by the RBI.

4. It is contended by the learned Senior Counsel that the acquisition of property is an exercise by the Government of its right of eminent domain on payment of compensation to the deprived land owner. Moreover, no transfer of land is made in favour of KIIFB and in such circumstances, compulsory land acquisition undertaken as an integral part of infrastructure projects cannot be equated with purchase of land. Being an activity squarely within the infrastructure sector, land acquisition cannot be termed as real estate activity also.

5. It is then contended that Ext.P3 Master Direction dated 01.01.2016 relied on in the complaint is superseded by Ext.P4 External Commercial Borrowings Framework brought into force with effect from 16.01.2019. In the affidavit filed during the earlier round of litigation, the Enforcement Directorate as well as the Reserve Bank has admitted that the Masala Bond

transactions of KIIFB is governed by Ext. P4. Even though Clause 1.16 of Ext.P4 circular prohibits real estate activity, those activities falling under the definition of infrastructure sector are excluded. As per Ext.P13 notification of the Ministry of Finance, definition of infrastructure takes in myriad activities like roads and bridges, ports, urban public transport, electricity generation, transmission and distribution, solid waste management, water supply pipelines, water treatment plans, sewage collection, education institutions, hospitals etc. Insofar as the funds generated by KIIFB through Masala Bonds are being used only for infrastructure activity, it cannot be termed as real estate activity.

6. The learned Senior counsel pointed out that, at present the KIIFB has approved projects worth Rs.90927 crores, out of which works worth Rs.21881 crores are completed and projects worth Rs.42765 crores are at various stages. Initiation of adjudication proceedings on the allegation of misuse of funds will jeopardise the functioning of the KIIFB and will lead to financial crisis of unprecedented magnitude in the State.

7. Learned ASGI contended that the writ petition is

premature and ought to be dismissed *in limine.* Relying on the decision of the Apex Court in **Special Director and Another v. Mohd.Ghulam Ghouse and Another** [(2004) 3 SCC 440], it is argued that the writ petition challenging a show cause notice should not be entertained, unless the court is satisfied of the nullity of the show cause notice for want of jurisdiction of the authority to even investigate the facts. According to the learned ASGI, it is for the adjudicating authority to decide on the merits or demerits of the allegations and hence the petitioner's remedy is to appear before the adjudicating authority in response to the show cause notice and convince the authority that there is no contravention as alleged in the complaint.

8. Relying on the decision of the Apex Court in **Raj Kumar Shivhare v. Assistant Director, Directorate of Enforcement and Another** [(2010) 4 SCC 772], it is argued that when a statutory forum is created for redressal of grievances, writ petition ignoring the statutory scheme should not be entertained, especially in fiscal statutes like the FEMA. To buttress the argument, reference is made to the decisions of the High Court of Madras in **Sameer B.S.Rao and Ors. v. The**

Adjudicating Authority, Special Director (Sr), Directorate of Enforcement, Southern Regional Office, Chennai and Ors [MANU/TN/2480/2025] and in **S.Jagathrakshakan and others v. The Special Director, Adjudicating Authority, Directorate of Enforcement, Southern Region and Ors**. [MANU/TN/6831/2023] .

9. There cannot be any quarrel to the proposition mooted by the learned ASGI that, writ petitions challenging show cause notices should not be entertained routinely. It is also the settled legal position that the High Court should not entertain writ petitions at the nascent stage, when statutory forums are available for redressal of grievance. In this context it is essential to note that in the precedents cited by the learned ASGI, the complaints under Section 13 of the FEMA were filed against individuals and private entities, whereas in the case at hand the allegations are levelled against a body constituted with the avowed purpose of providing support for the infrastructure development of the State. Pertinent also to note that the challenge is not against the show cause notice, but premised on the argument that the allegations, even if accepted in their

entirety, do not even *prima facie* constitute reasons for initiating adjudication proceedings.

10. Going by the *prima facie* findings in Ext.P1 complaint, the allegation is of having purchased land in contravention of the prohibition contained in Ext.P3 Master Direction No.5/2015-16 dated January 1, 2016 and Ext.P12 Circular No.17 dated 29.09.2015. It is also alleged that the purchase is in violation of the RBI direction issued in the letter dated 01.06.2018 as well as the assurance in the Form ECB submitted to RBI for issuance of Masala Bonds that the ECB Proceeds will not be used for investment in real estate activities, purchase of land, investing in capital markets or lending to other entities for any of these purposes.

11. As far as Ext.P3 is concerned, it is to be noted that the Masala Bonds were issued from 26.03.2019 to 27.03.2019, after the introduction of Ext.P4 ECB Framework on 16.01.2019, introduced for rationalising the existing framework (Ext P3) for External Commercial Borrowing and Rupee Denominated Bonds and to improve the ease of doing business. In Ext.P4 it is stated that the amended policy will come into force with immediate

effect and Ext.P3 Master Direction is being revised to reflect the changes. Clause 2.1(viii) of Ext.P4, listing out the end-uses (negative list) is extracted below for convenience;

viii	End-uses (Negative List)	The negative list, for which the ECB proceeds cannot be utilised, would include the following: a) Real estate activities. b) Investment in capital market. c) Equity investment. d) Working capital purposes except from foreign equity holder. e) General corporate purposes except from foreign equity holder. f) Repayment of Rupee loans except from foreign equity holder. g) On-lending to entities for the above activities.

12. Although real estate activities are included in the negative list, purchase of land is not separately mentioned. Following is the meaning of real estate activities as contained in Clause 1.16 of Ext.P4;

> "**1.16. Real estate activities:** Any real estate activity involving own or leased property for buying selling and renting of commercial and residential properties or land and also includes activities either on a fee or contract basis assigning real estate agents for intermediating in buying, selling letting or managing, real estate. However, this would

not include construction/development of industrial parks/integrated township/SEZ, purchase/long term leasing of industrial land as part of new project/modernisation of expansion of existing units or any activity under 'infrastructure sector' definition."

13. A close scrutiny of the above provision makes it clear that activities relating to 'infrastructure sector' are excluded from the purview of 'real estate activity'. As per Ext.P13 notification of the Ministry of Finance, the following activities are included in the infrastructure sector;

Sl.No.	Category	Infrastructure sub-sectors
1	Transport	• Roads and bridges • Ports • Inland Waterways • Airport • Railway Track, tunnels, viaducts, bridges[2] • Urban Public Transport (except rolling stock in case of urban road transport)
2	Energy	• Electricity Generation • Electricity Transmission • Electricity Distribution • Oil pipelines • Oil/Gas/Liquefied Natural Gas (LNG) storage facility • Gas pipelines
3	Water and Sanitation	• Solid Waste Management • Water supply pipelines • Water treatment plants • Sewage collection, treatment and disposal system Irrigation (dams, channels, embankments, etc.) • Storm Water Drainage System • Slurry Pipelines
4	Communication	• Telecommunication (fixed network) • Telecommunication towers • Telecommunication & Telecom Services

5	Social and Commercial Infrastructure	• Education Institutions (capital stock) • Hospitals (capital stock) • Three-star or higher category classified hotels located outside cities with popula more than 1 million • Common infrastructure for Industrial Parks and other parks with industrial a such as food parks, textile parks, Special Economic Zones, tourism facilitie agriculture markets • Post-harvest storage infrastructure for agriculture and horticultural p including cold storage. • Terminal markets • Soil-testing laboratories • Cold Chain • Hotels with project cost of more than Rs.200 crores each in any place in India and of any star rating. • Convention Centers with project cost of more than Rs.300 crores each.

14. There is no allegation in the complaint that the petitioner had utilised the funds for infrastructure activities other than those listed in Ext.P13. As such there is *prima facie* merit in the contention that going by Ext.P4 ECB framework, the infrastructure activities undertaken by the petitioner cannot be termed as real estate activity and the adjudicating authority has no power to initiate proceedings against the petitioner.

15. The alleged violation of Ext.P12 is also doubtful as the circular pertains to the ECB policy for issuance of Rupee Denominated Bonds overseas, which lost its relevance with the introduction of Ext.P4 revised policy. Even otherwise, purchase

of land, which is included in the negative list in Ext.P12, cannot be equated with compulsory acquisition of land by the State for public purposes. As rightly contended, exercise of the power of eminent domain by the Government is different from purchase of land for personal purpose. Here, the submission of the petitioner that the lands acquired were not transferred to the KIIFB, but utilised for infrastructure development also assumes relevance.

16. The above discussion leads to the conclusion that the question involved requires detailed consideration.

17. Admit. Adv. Jaishankar V Nair takes notice for the respondents. Respondents to file counter affidavits, if any.

18. There shall be an interim stay of further proceedings pursuant to Ext.P2 show cause notice for three months.

Post on 20.01.2026.

sd/-

V.G.ARUN, JUDGE

sj

APPENDIX OF WP(C) 46555/2025

Exhibit P1	**A TRUE PHOTOCOPY OF THE COMPLAINT (FILE NO. T-3/01/KCZO/2021) FILED BY THE SECOND RESPONDENT AUTHORISED OFFICER BEFORE THE THIRD RESPONDENT**
Exhibit P2	**A TRUE PHOTOCOPY OF THE SHOW CAUSE NOTICE (FILE NO. T-4/14-HQ/SOE/2025) DATED 12.11.2025 (RECEIVED AT THE OFFICE OF THE PETITIONER ON 28.11.2025), ISSUED BY THE THIRD RESPONDENT, INTER ALIA, TO THE PETITIONER**
Exhibit P3	**A TRUE PHOTOCOPY OF THE MASTER DIRECTION NO. 5/2015-16 DATED 01.01.2016 ISSUED BY THE RESERVE BANK OF INDIA**
Exhibit P4	**A TRUE COPY OF THE A.P. (DIR SERIES) CIRCULAR NO. 17 (RBI/2018-19/109) DATED 16.01.2019 ISSUED BY THE RESERVE BANK OF INDIA**
Exhibit P11	**A TRUE PHOTOCOPY OF THE COMMON JUDGMENT DATED 14.12.2023 IN W.P.(C) NO. 26228 OF 2022 AND 25774 OF 2022**
Exhibit P12	**A TRUE PHOTOCOPY OF THE RBI/2015-16/193 A.P. (DIR SERIES) CIRCULAR NO. 17 DATED 29.09.2015**
Exhibit P13	**A TRUE PHOTOCOPY OF THE NOTIFICATION F. NO. 13/6/2009-INF DATED 13.10.2014 ISSUED BY THE MINISTRY OF FINANCE, GOVERNMENT OF INDIA**