പതിമൂന്നാം കേരള നിയമസഭ
പതിനാറാം സമ്മേളനം

നക്ഷത്രചിഹ്നമിടാത്ത ചോദ്യം നം. 1899

16.02.2016-ൽ മറുപടിയ്ക്ക്

പാറയ്ക്കൽ ഫ്ലാറ്റ് നിർമ്മാണം

	ചോദ്യം ശ്രീ.കോലിയക്കോട് എൻ. കൃഷ്ണൻ നായർ		മറുപടി ശ്രീ.രമേശ് ചെന്നിത്തല (ആഭ്യന്തരവും വിജിലൻസും വകുപ്പ് മന്ത്രി)
(എ)	പാറയിൽ സർക്കാർ ഭൂമി കയ്യേറി ഫ്ലാറ്റ് നിർമ്മിച്ച സംഭവത്തിൽ എഫ്.ഐ.ആർ ഫയൽ ചെയ്യുന്നത് സംബന്ധിച്ച വിജിലൻസിന്റെ നിയമോപദേഷ്ടാവിന്റെ നിയമോപദേശം എന്തായിരുന്നു; ആയതിന്റെ പകർപ്പ് ലഭ്യമാക്കുമോ;	(എ)	പാറയിൽ സർക്കാർ ഭൂമി കൈയ്യേറി ഫ്ലാറ്റ് നിർമ്മിച്ചു എന്ന ആരോപണത്തിന്മേൽ ലോക് ആയുക്ത മുഖേന നടത്തിയ അന്വേഷണ റിപ്പോർട്ട് ലോക് ആയുക്തയുടെ പരിഗണനയിൽ ഇരിക്കുന്നതിനാൽ വിജിലൻസ് കേസ് രജിസ്റ്റർ ചെയ്ത് അന്വേഷിക്കുന്നത് യുക്തമല്ലെന്നും ആയത് പരാതിക്കാരനായ ശ്രീ.ജോയ് കൈതാരത്തെ അറിയിക്കാമെന്നും, ലോക് ആയുക്തയുടെ ഉത്തരവ് പ്രകാരം തുടർനടപടികൾ സ്വീകരിക്കാമെന്നുമായിരുന്നു വിജിലൻസ് നിയമോപദേഷ്ടാവിന്റെ നിയമോപദേശം. ആയതു പ്രകാരം, വിജിലൻസ് ഒരു കേസ് രജിസ്റ്റർ ചെയ്ത് അന്വേഷണം നടത്തുന്നത് ഉചിതമല്ലയെന്ന് പരാതിക്കാരനായ ശ്രീ.ജോയ് കൈതാരത്തിനെ അറിയിച്ചിട്ടുണ്ട്. പ്രസ്തുത നിയമോപദേശത്തിന്റെ പകർപ്പ് ഉള്ളടക്കം ചെയ്തിട്ടുണ്ട്.
(ബി)	പ്രസ്തുത നിയമോപദേശ പ്രകാരം നടപടി സ്വീകരിച്ചിട്ടുണ്ടോ ; ഇല്ലെങ്കിൽ കാരണം വിശദമാക്കുമോ;	(ബി)	
(സി)	ഭൂമികയ്യേറ്റക്കേസ്സിൽ എഫ്.ഐ.ആർ രജിസ്റ്റർ ചെയ്യാൻ അടിയന്തര നടപടി സ്വീകരിക്കുമോ; ഇല്ലെങ്കിൽ കാരണം വ്യക്തമാക്കുമോ?	(സി)	

സെക്ഷൻ ഓഫീസർ

Enclosure of E20-5063/16 9

OPINION NO. [illegible] - 1455 2015

The report of ADGP-I is based on an enquiry conducted by him in pursuance to a direction given by the Hon'ble Lok Ayukta in Complaint No. 964/2014. The findings and recommendations in the report are intended to aid the Lok Ayukta to find out the truth or otherwise of the allegations leveled in the complaint. Even as in Para 8.2 of the report, the ADGP has come to a conclusion that there is enough materials to register a Vigilance case u/s 13(1)(d) of the PC Act, he has recommended to register a case against the two Officers under suspension and the two beneficiaries. However, the recommendation for the same was left to the decision of the Lok Ayukta.

The Complainant has placed reliance on the contents of the report which was pending for consideration and orders of the Lok-Ayukta. So much so, the report of the ADGP has not attained finality to be acted upon. It is neither a report of a quasi judicial authority nor a statutory authority empowered or authorized under a statute.

At the same time, the report merely bears the characteristics of verification of informations which he has been directed to be furnished by the Lok Ayukta by virtue of its powers conferred in Sec. 11(1) of the Kerala Lok Ayukta Act. Therefore, the complainant has no locus standi to make use of the report as conclusive evidence to substantiate his allegation. It is optly clear that the report and its findings are exclusively meant for the information of the Lok Ayukta and also that it is a document concerned in the judicial proceedings. Therefore, unless and until the Lok Ayukta issue appropriate orders for such action, we are not justified in registering a Vigilance case on the basis of the contents of the report furnished by him to the Lok Ayukta.

That apart, where Lok Ayukta itself is empowered to investigate the allegations leveled in the complaint, it will not be legal and proper to initiate criminal proceedings against the persons arrayed as accused in the complaint. Hence it is not legal to act upon the complaint and the Complainant can be informed accordingly.

[signature] 12/1/15

17.01.'15

Additional Director of Prosecution
(Vigilance)
Kerala State

OPINION IN TC 1455 2015

The Complainant in his complaint dtd. 12.01.2015, has requested to register a case against those persons who are arrayed as accused in the complaint. The allegations in the complaint are based on the conclusion arrived at by the ADGP who is authorized to conduct enquiry by Lok Ayukta as per Sec. 9(3) of the Kerala Lok Ayukta Act 1999. The complaint relies on a report which was intended to be considered by the Lok Ayukta in a complaint filed by the same person before the Lok Ayukta. The said report since forms part of the proceedings of Lok Ayukta for its sole consideration and that there was no complaint on the subject matter under consideration of the Director, VACB before taking cognizance of the matter by Lok Ayukta as per complaint No.964/2014, fresh action on the present complaint by VACB is uncalled for. Because the action referred in the section 9(7) of the Act is action defined in the Act, which is often complained against the public servants before the Lok Ayukta. The said section makes it clear that where an action of a public servant becomes subject matter of investigation by Lok Ayukta, mere pendency of the investigation does not create a bar to take further action in respect of the action under challenge. To put it differently where the action for grant of license by a public servant is under investigation by Lok Ayukta, further action by way of cancellation of license by the competent authority in accordance with the Rules governing such action is permissible under the section. It does not mean that the action alleged against a public servant which is under investigation by Lok Ayukta can be used to institute criminal proceedings through a different forum during pendency of the investigation. Where the action challenged before Lok Ayukta is required for further action, the authority competent to take action is permitted to take further action if necessary in the matter. Therefore, the mandate of the above section pertains to further action to cancel or modify or rectify the mal-administrative action and not intended to take further action envisaged under any other law for the time being in force.

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complaint is permissible under the above section is not the correct la

It requires to be stated that the Complainant has come forward with a new complaint alleging involvement of Chief Minister also in the transaction. Since VACB has not initiated any proceedings prior to taking cognizance by the Lok Ayukta, it is not legal and proper to register an FIR in respect of the allegations which are under investigation by the Lok Ayukta. Hence the Complainant can be informed that since this Bureau has not initiated any proceedings in respect of the allegations under investigation by Lok Ayukta before taking cognizance of the complaint by Lok Ayukta, further action envisaged under section 9(7) of Kerala Lok Ayukta Act will not survive. Therefore, action on the complaint by the VACB will be subjected to orders of Lok Ayukta in the subject as Section 9(7) of the Act does not empower to take any action or further action in the allegation which are under investigation by Lok Ayukta.

10.02.'15

10/2/15

Additional Director of Prosecution
(Vigilance)
Kerala State

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