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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 23.02.2024

Pronounced on : 07.03.2024

CORAM :

**THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN
AND
THE HON'BLE MR.JUSTICE B.PUGALENDHI**

**WP(MD) Nos.31214 & 31221 of 2023
and
WMP(MD)Nos.26742, 26743, 26745 & 26752 of 2023**

R.Manibharathi

... Petitioner in both cases

VS.

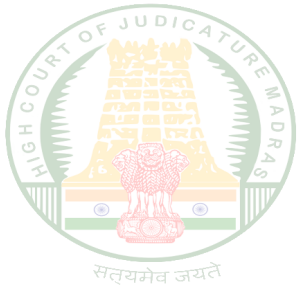
1.Union of India,
Rep.by the Principal Secretary,
Ministry of Road Transport and Highways,
Union of India,
Transport Bhawan, Parliament Street,
New Delhi – 110 001.

2.National Highways Authority of India,
Rep.by the Chairman,
National Highways Authority of India,
Ministry of Road Transport and Highways,
G5&6, Sector -10, Dwarka,
New Delhi – 110 075.



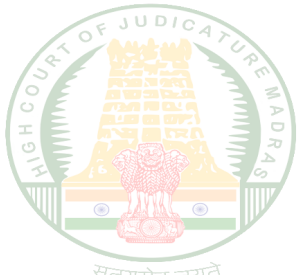
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3. Union of India,
Rep.by the Principal Secretary,
Ministry of Environment, Forest and
Climate Change,
Government of India,
Indira Paryavaran Bhavan,
Ali Ganj, Jorbagh Road,
New Delhi – 110 003.
4. State of Tamil Nadu,
Rep.by the Principal Secretary,
Environment, Climate Change
and Forests Department,
State of Tamil Nadu,
Fort St.George, Secretariat,
Chennai – 600 009.
5. State of Tamil Nadu,
Rep.by the Principal Secretary,
Highways and Minor Ports Department,
State of Tamil Nadu,
Fort St.George, Secretariat,
Chennai – 600 009.
6. State of Tamil Nadu,
Rep.by the Principal Secretary,
Water Resources Department,
State of Tamil Nadu,
Fort St.George, Secretariat,
Chennai – 600 009.
7. State of Tamil Nadu,
Rep.by the Principal Secretary,
Revenue Department,
State of Tamil Nadu,
Fort St.George, Secretariat,
Chennai – 600 009.



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- 8.State of Tamil Nadu,
Rep.by the Principal Secretary,
Public Words Department,
State of Tamil Nadu,
Fort St.George, Secretariat,
Chennai – 600 009.
- 9.The Director General,
Highways Department,
Integrated Chief Engineers Office,
76, Sardar Patel Road,
Guindy, Chennai – 600 025.
- 10.The Chief Engineer (Highways Project),
Integrated Chief Engineers Office,
76, Sardar Patel Road,
Guindy, Chennai – 600 025.
- 11.The Engineer – in – Chief,
Water Resources Department,
Chepauk, Chennai – 600 005.
- 12.The District Collector,
Madurai District.
- 13.The Superintending Engineer,
Madurai (NH) Circle,
No.5, Besant Road,
Chinna Chokkikulam,
Madurai District.
- 14.The Commissioner,
Madurai Corporation,
Aringar Anna Maligai,
Outpost, Thallakulam,
Madurai – 625 002.



15.The District Revenue Officer,
Collectorate, Madurai District.

16.The Superintending Engineer,
Public Works Department,
Water Resources Organisation,
Periyar Vaigai Basin Circle,
Madurai Region,
Madurai – 625 002.

17.IVLR Infrastructures, rep.by
The Director,
3/1, Indian Oil Petrol Bunk Campus,
Ashok Nagar, Palamedu Main Road,
Madurai.

18.Gomathipuram Thendral Nagar
Resident's Association (GTNRA),
A registered society Regn. No.22/1990,
No.433, Parijatham Street,
Gomathipuram,
Madurai – 625 020
Rep.by its President

(18th respondent impleaded vide
order dated 07.03.2024)

19.M.Thirumani

... Respondents

(19th respondent impleaded vide
order dated 07.03.2024)



Prayer in WP(MD)No.31214 of 2023 : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus to direct the sixth respondent to expeditiously restore the bund and retaining wall to its earlier position over the boundary of 'Thenkal Kanmoi' from the stretch of Vilachery Main Road, behind Mata Amritananda Mayi Math to existing Madurai – Thirumangalam Main Road and restore Thenkal Kanmoi by increasing to its original water spread area in accordance with law within the time stipulated by this Court, And

to direct the respondents 5, 9,, 10, 13 and 17 to pay adequate compensation for demolishing the bund along with retaining wall made over the boundary of 'Thenkal Kanmoi' from the stretch of Vilachery Main Road, behind Mata Amritananda Mayi Math to existing Madurai – Thirumangalam Road on the basis of 'Polluter Pays Principle' to the respondent Nos.3, 4 and 5 for the purpose of reconstructing the bund, retaining wall and maximize the original water spread area in order to restore Thenkal Kanmoi to its original portrait in accordance with law, and

To direct the respondents 3 and 4 to conduct enquiry and take appropriate action against the respondent Nos.5, 9, 10, 13 and 17 and others who are responsible for demolishing the bund, retaining wall made over 'Thenkal Kanmoi' from the stretch of Vilachery Main Road, behind Mata Amritananda Mayi Math to existing Madurai – Thirumangalam Main Road and damaging the original water spread area of Thankal Kanmoi in accordance with law within the time stipulated by this Court.



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Prayer in WP(MD)No.31221 of 2023 : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus to direct the sixth respondent to expeditiously restore the bund and retaining wall to its earlier position over the boundary of 'Vandiyur Kanmoi' from Melamadai Traffic Signal towards Madurai – Sivagangai Road near Indian Oil Petrol Pump at Gomathipuram and restore Vandiyur Kanmoi by increasing to its original water spread area in accordance with law within the time stipulated by this Court, And

to direct the respondents 5, 9, 10, 13 and 17 to pay adequate compensation for demolishing the bund along with retaining wall made over the boundary of 'Vandiyur Kanmoi' from from Melamadai Traffic Signal towards Madurai – Sivagangai Road near Indian Oil Petrol Pump at Gomathipuram on the basis of 'Polluter Pays Principle' to the respondent Nos.3, 4 and 5 for the purpose of reconstructing the bund, retaining wall and maximize the original water spread area in order to restore Vandiyur Kanmoi to its original portrait in accordance with law, and

To direct the respondents 3 and 4 to conduct enquiry and take appropriate action against the respondent Nos.5, 9, 10, 13 and 17 and others who are responsible for demolishing the bund, retaining wall made over 'Vandiyur Kanmoi' from Melamadai Traffic Signal towards Madurai – Sivagangai Road near Indian Oil Petrol Pump at Gomathipuram and damaging the original water spread area of Vandiyur Kanmoi in accordance with law within the time



stipulated by this Court.

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For Petitioner
in both cases : Mr.T.Lajapathi Roy, Senior Counsel
for Mr.R.Alagumani

For Respondents
in WP(MD)No.31214 of 2023

: Mr.K.Govindarajan,
Deputy Solicitor General of India for R1 to R3 & R14
Mr.P.S.Raman, Advocate General assisted by
Mr.K.Balasubramani, Spl. Government Pleader
for R4 to R13 and R15 & R16
Mr.Isaac Mohanlal, Senior Counsel
for M/s.Isaac Chambers for R17

For Respondents
in WP(MD)No.31221 of 2023

: Mr.K.Govindarajan,
Deputy Solicitor General of India for R1 to R3 & R14
Mr.P.S.Raman, Advocate General assisted by
Mr.K.Balasubramani, Spl. Government Pleader
for R4 to R13 and R15 & R16
Mr.C.Arul Vadivel @ Sekar, Senior Counsel
for Mr.Aayiram K.Selvakumar for R17
Mr.S.Srinivasaraghavan for R18
Mr.N.Tamil Mani for R19



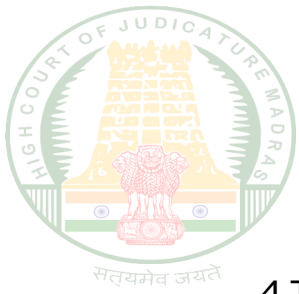
COMMON ORDER

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Laying of roads on the tank bunds of two very large water bodies in Madurai, namely, Thenkal Kanmoi and Vandiyur Kanmoi led to the filing of these writ petitions.

2.The learned Senior Counsel appearing for the petitioner submitted that the writ petitions have to be allowed because the department had failed to obtain prior environmental clearance. He further contended that there must be sufficient distance between the tank bund and the road. He relied on the provisions of Revenue Standing Orders. Our attention was drawn to a catena of decisions rendered by the Hon'ble Supreme Court and the Madras High Court.

3.The learned Advocate General as well as the learned Senior Counsel appearing for the private respondents submitted that as a result of the implementation of the petition-mentioned projects, the two water bodies will not in any way be affected. The learned Advocate General was fair enough to leave it to the Court to lay down additional safeguards for the protection of the water bodies in question.

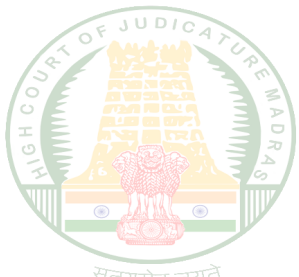


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4. There was divergence of view between us with regard to grant of interim order to restrain the respondents from continuing with the project works. The matter was referred to a third Judge who directed that till the disposal of the writ petitions, the project works must be put on hold.

5. In the meanwhile, all the three of us inspected both the spots in the presence of the writ petitioner as well as the respondent officials. It was demonstrated to our satisfaction that as a result of implementation of the projects, the water spread area will not be reduced but on the other hand, the storage capacity will register an increase. In the counter affidavits filed by the officials as well as the private respondents, the relevant details have been set out. Their veracity has not been challenged by the petitioner.

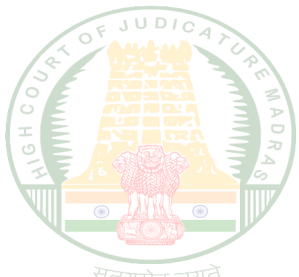
6. After we reserved orders, the Superintending Engineer, WRD, Periyar Vaigai Basin Circle, Madurai under whose jurisdiction the Thenkal Tank and Vandiyur Tank fall, filed an affidavit on 05.03.2024 undertaking that hereafter "No Objection Certificate" will not be issued to any other agency/department for carrying out any projects in respect of the petition-mentioned water bodies. This undertaking is placed on record. It binds the Government of



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Tamil Nadu. This addresses the concern expressed in the interim order passed by one of us (G.R.S, J.) that permitting the conversion of bunds would only be the starting point.

7.In the counter affidavits filed by the department, the reasons as to why the projects were conceived in the first place have been set out. We appreciate the same. As a matter of principle, conversion of bunds cannot be permitted. Section 8(d) of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 declares that damaging tank bund is an offence punishable with imprisonment for a term which may extend to three months or with fine of Rs.5,000/- or with both. Tank bund has been defined in Section 2(m) as "a small fixed earth dam". What is penalized by law cannot be permitted. The stand of the authorities that the road will function as a bund cannot be accepted. In Town Planning law, there is a concept called "set back area". There has to be a minimum distance between two constructions. There is something called "buffer zone". That is why, in the Revenue Standing Orders, even irrigation works will have to be carried out by leaving out 25 yards margin from the tank bunds. In the case of channels, without embankments, it will suffice to deduct a margin of 3 yards. The

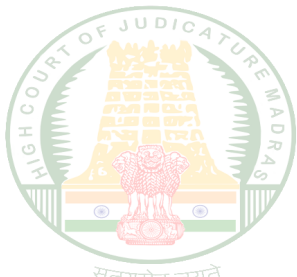


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marginal head note in RSO 15 (10) reads "Exclusion of Tank Bunds".

Though this clause is only in respect of irrigation works, we would apply the same by analogy for other civil works also such as laying of roads. But in this case, we are unable to accept the argument of the learned Senior Counsel appearing for the petitioner primarily for the reason that the project works have very substantially been already completed. Paragraph 47 of the counter affidavit filed by the official respondents in WP(MD)No.31214 of 2023 reads that nearly 40% of the contract work has been completed and contract payment had been made for 33.20% of the contract value. Paragraph 23 of the counter affidavit in WP(MD)No.31221 of 2023 reads that retaining wall on the tank side has been completed upto sill level for about 360 meters length and 22 piles have been installed. The petitioner ought to have moved this court the moment the project works commenced. He invoked our jurisdiction after the implementation of the project had substantially progressed. We are also satisfied that the project has been conceived only in larger public interest.

8.The learned Senior Counsel for the petitioner placing reliance on the notification bearing S.O 1533(e) dated 14.09.2006 r/w. the Notification



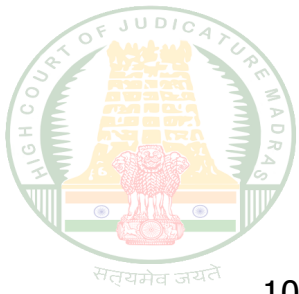
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bearing S.O 2559(e) dated 22.08.2013 issued by the Ministry of Environment and Forest faulted the projects on the ground of non-obtaining of prior environmental clearance. The clause to which our attention was drawn by the learned Senior Counsel for the petitioner reads as follows :

“Expansion of National Highways greater than 100 km involving additional right of way or land acquisition greater than 40m on existing alignments and 60m on re-alignments or by-passes”.

The above clause is inapplicable to the case on hand. The case on hand involves expansion of State Highway Roads and not National Highways. The State Highway expansion projects have been exempted from the requirement of having to obtain prior environmental clearance vide notification S.O 3067(e) dated 01.12.2009 unless the projects come up in hilly terrain and ecologically sensitive areas. Hence, the other contention advanced by the learned Senior Counsel that prior environmental clearance must be obtained is without merit.

9. Apart from the aforesaid two contentions, no other argument was advanced to assail the two projects. For the reasons already mentioned, we have to reject both the submissions. The order restraining the implementation of the projects stand lifted. The works can resume.



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10.The matter cannot end there. We have permitted the projects to proceed only because they have been conceived in public interest. But in the name of public interest, water bodies cannot be obliterated. We take judicial notice of the fact that in Madurai region, a number of water bodies some of them very large have already disappeared. They have fallen prey to the Tamil Nadu Housing Board and the Tamil Nadu Slum Clearance Board and the various government departments. If a new building has to be constructed to accommodate the needs of a department, the first target will be the water body in the vicinity. We note with pain that a number of Court Complexes are located in what were originally tanks. When the District of Thoothukudi witnessed torrential rains and floods, the court building that was located very near a water body faced the fury of nature. Nearly thousand case bundles will have to be reconstructed.

11.It is not as if people are civic conscious. Before us, a few hundred writ petitions are pending seeking removal of encroachment on water bodies. There is indiscriminate dumping of plastic waste and garbage on them. Drainage and sewage is being let out into tanks and rivers. The local bodies have to be nudged and pushed to discharge their statutory functions. This is

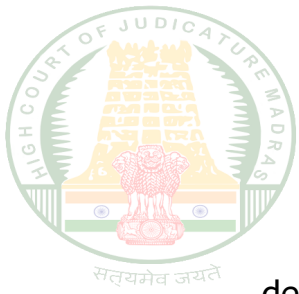


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a sorry state of affairs. Through the city of Madurai, a river by name, Kridhumaal Nadhi flowed. What was once a river has become a narrow drainage channel. Its course has been altered by urbanization and construction of buildings. Even Vaigai has not been spared. Its width has been narrowed by construction of a service road. The environmental jurisprudence evolved over the years by the Hon'ble Supreme Court of India as well as the Madras High Court impels us to issue certain directions to the Government of Tamil Nadu. We are not saying anything new. We are only reiterating what has already been laid down.

12. We issue the following directions to the respondents 4, 5, 6, 7 and 8 :

A) To open a dedicated Website containing an exhaustive list of all water bodies in the State of Tamil Nadu. It shall contain all the relevant details pertaining to each and every water body (including tanks, lakes, rivers, kanmois etc.,). Their survey number, physical location, details of village, taluk and district and extent (both original and present). Their area and dimensions will have to be precisely measured and catalogued. Such a website meant for viewing by all shall be opened within six months from the date of receipt of copy of this order. From the village level onwards, the exercise of collating



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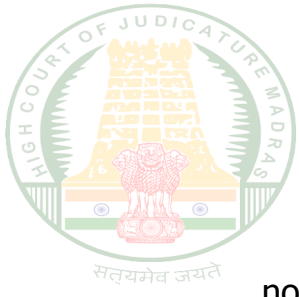
details will be undertaken and certified at the Taluk level and based on the same, they will be uploaded. If the details are found to be incorrect, any individual can bring the same to the notice of this Court and this Court will initiate appropriate proceedings against the person responsible for furnishing of incorrect data. The officials should therefore undertake not only physical inspection but also carefully verify all the official records.

B) The existing encroachments in all the water bodies shall be identified and removed after issuing notice to the encroachers. If constructions have been made, they shall be demolished. Further encroachments shall not be permitted. Nor they shall be regularised.

C) Pattas issued in respect of water bodies after 01.01.2000 shall be cancelled and the water bodies shall be restored to their original position.

D) Development projects will be conceived and implemented in a manner not to affect the integrity of the water bodies in any manner. The water bodies including tank bunds shall be maintained in tact and proper distance shall be reserved.

E) Water bodies belong to the society. Their ownership may technically rest in local bodies/departments/government. But they are a gift of nature and have to be available not only for human beings but also animals and birds. We notice that water bodies have been corporatised. The licensees to enhance their profit, indulge in unsustainable practices. It is the duty of the officials to ensure that the quality of water is not affected in any manner. Whenever tender



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notices are issued, appropriate conditions shall be incorporated so as to effectuate the direction set out in this clause.

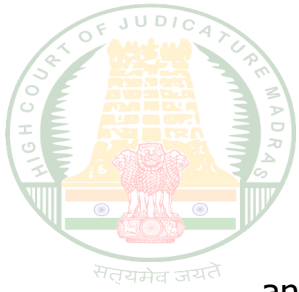
13.The writ petitions are disposed of accordingly. No costs. Connected miscellaneous petitions are closed.

(G.R.S, J.) & (B.P, J.)
07.03.2024

Index : Yes / No
Internet : Yes / No
SKM

To

- 1.The Principal Secretary,
Ministry of Road Transport and Highways,
Union of India, Transport Bhawan, Parliament Street,
New Delhi – 110 001.
- 2.The Chairman, National Highways Authority of India,
Ministry of Road Transport and Highways,
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- 3.The Principal Secretary,
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- 4.The Principal Secretary,
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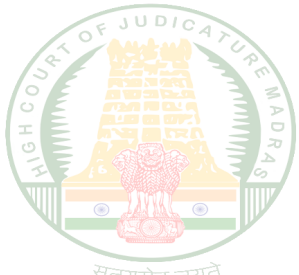
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Fort St.George, Secretariat,
Chennai – 600 009.

8.The Principal Secretary,
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Fort St.George, Secretariat,
Chennai – 600 009.

9.The Director General, Highways Department,
Integrated Chief Engineers Office,
76, Sardar Patel Road, Guindy, Chennai – 600 025.

10.The Chief Engineer (Highways Project),
Integrated Chief Engineers Office,



76, Sardar Patel Road, Guindy, Chennai – 600 025.

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