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WP(MD)Nos.31214 & 31221 of 2023  
and  
WMP(MD)Nos.26743 & 26752 of 2023

COMMON ORDER

G.R.SWAMINATHAN, J.

“The Arab And The Camel” is a well known story. It was a cold night. The master was sleeping inside the tent. The animal was tied outside. It peeped inside and requested the master to allow it to keep its neck inside. The master felt pity and granted permission. After a while, it again whispered “Master, can I keep my forelegs too inside?.” The master relented again. All of us know what happened ultimately. The moral of the story is “give an inch and they will take an ell”.

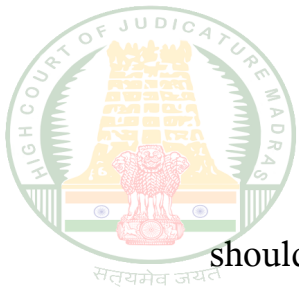
2.If I were to imagine that I am writing a story and not a judicial order, I will give this title : “***It all started with the bund***”. In Madurai, the last fifty years have seen disappearance of many water bodies. In Avaniyapuram locality, there was a very large tank. The Tamil Nadu Housing Board put up its apartments there. The Madurai Bench of the Madras High Court itself has been built on Ulaganeri Lake. Our civic



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authorities have been endowed with a sense of black humour. The Corporation Eco Park has been created after destroying a tank. The District Court is no exception. Many many government buildings have come up on Kanmois (water bodies). The Deity of Development is not yet satiated. She wants to gobble up more and more of Nature. The recent battering which the State of Tamil Nadu got from Mother Nature has not sufficiently driven the lessons home.

3. Such thoughts crossed my mind as I heard the rival contentions. The petitioner is a practicing lawyer and he has filed these writ petitions objecting to the implementation of the petition-mentioned projects. Both the projects involve formation of road on the bunds of two very large water bodies (Thenkal Kanmoi near Thirupparankundram and Vandiyur Kanmoi). Of course, the petitioner can be faulted for not coming to the court earlier. He is also not fully armed with all the details. But then, the yardstick that one applies should not be applied in the case of environmental litigation. Laches should not be allowed to be raised as an objection. On the other hand, the burden of justification should be placed on the government/administration/project proponent. The court



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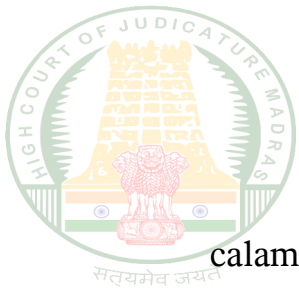
should not glibly accept the assertions of the respondents. When the environmental activist Shri.N.D.Jayal filed cases objecting to the infrastructural projects in Uttarkhand, he was shown the door by accepting the statement of the government that safety measures have been put in place. Hardly two decades have passed and we now realise that Tehri region is ecologically fragile and that in the name of development, we should not tinker with nature. The recent mining collapse should make the administrators have second thoughts on such projects.

4. There are different standards of judicial review. The kid glove approach is adopted in certain cases. Judges have hard look at certain decisions. Sometimes deep scrutiny is undertaken. Sometimes it is only at the surface level. The law officers occasionally even point to the installation of “No entry” board. Whenever the government takes shelter behind the defence of policy decision, I feel I am facing a “Do not disturb” sign hanging outside a hotel room. When it comes to environmental matters, courts ought to ignore such objections and go beyond to probe deeper.



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5. The jurisprudence on environment has been sufficiently developed by the Supreme Court of India and the High Courts. The eloquent Full Bench judgment of the Madras High Court in ***T.K. Shanmugam vs. State of Tamil Nadu (2015 SCC OnLine Mad 9800)*** holds that the authorities in power cannot destroy the water bodies. The Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 talks about tanks, tank bunds and the water spread area. A water body is an integrated living structure. When we talk about protection of tanks, we mean it in the integrated sense. I saw the manner in which the project work is going on in Vandiyur Kanmoi. It is obvious to the naked eye that the civil works are being carried on the water storage area also. The works will not stop at the bund alone. It is beyond doubt that there will be a shortening of the overall tank area. That is why an argument is being advanced that the water storage capacity will not be affected. This is clearly a clever attempt to gloss over an ugly reality. The residents of Madurai are witness to the fact that there has been a substantial encroachment on Vaigai river bed by construction of link road. Any river has memory and when it remembers, the consequences will be



calamitous. Integrity of water bodies is as important as national integrity.

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Article 51 A(g) states that it shall be the duty of every citizen of India to protect and improve the natural environment including the lakes and rivers. Judges are citizens and we have an obligation to discharge this fundamental duty while adjudicating environmental cases.

6. In the cases on hand, roads are being laid on tank bunds. The question is whether on tank bunds, roads can be laid. To me, the answer has to be in the negative. Development and environmental protection are said to be competing values and that the courts must bat for sustainable development i.e., a sort of compromise must be struck. Such balancing is not possible in this case. The authorities do not appear to have conceived of any alternatives. The first question that must be posed is what is the purpose of the project. It is not known if the authorities bothered to explore the alternatives. I can understand sacrificing something fundamental for supreme public interest such as national security. But the case on hand does not appear to fall under such a category. In fact, the submissions of the learned Additional Advocate General as well as the learned Senior Counsel appearing for the



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contractor did not suggest anything of that kind. I felt that probably to spend the available funds on some pretext, the bunds became the casualty.

7. Even while hearing the arguments, my esteemed brother Judge and I had a deep discussion. I was of the view that interim injunction has to be granted. My brother however was not on the same page. We appraised the Bar also accordingly. For the reasons mentioned above, there shall be an order of interim injunction as prayed for in WMP(MD)Nos.26743 & 26752 of 2023. Registry to list the main writ petitions after filing of counter affidavits by the respondents. Papers to be placed before My Lord the Hon'ble Chief Justice since there is a difference of view between Mr. Justice B. Pugalendhi and myself.

**22.12.2023**

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