

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI
Original Application No. 132 of 2022(SZ)**

BETWEEN

Thangavelraj S
s/o Shanmugam
141, Venus Nagar, 2nd Cross
Rayanoor,
Thanthoni(m) Karur
Tamil Nadu 639005

...APPLICANT

AND

1. Union of India
Ministry of Environment, Forest & Climate Change
Rep. by its Secretary to Government
Paryavaran Bhavan
Jor Bagh Road, New Delhi- 110 003
Phone: 011-2469 5262 Email: secy-moef@nic.in
2. State of Tamil Nadu
Rep. by its Principal Secretary to Government
Department of Environment and Forests
Secretariat, Fort St. George
Chennai- 600 009
3. Department of Municipal Administration, Urban and Water Supply
Rep. by its Additional Chief Secretary to Government
Secretariat, Fort St. George
Chennai- 600 009
4. Tamil Nadu Pollution Control Board
Rep. by its Member Secretary
100, Anna Salai
Guindy, Chennai- 600 032
5. District Environmental Engineer, Karur
No. 26, Ramakrishnapuram West
Karur- 639 001
6. The District Collector, Karur
Thanthonimalai
Karur
7. Karur Municipality
Rep. by its Commissioner
Municipal Office
Azad Road
Karur- 639 001

...RESPONDENTS

MEMO OF SUBMISSIONS ON MAINTAINABILITY FILED ON BEHALF OF
APPLICANT

The Applicant above named submits as follows:-

1. The above-mentioned matter came up for admission on 21.11.2022 before this Hon'ble Tribunal. Thereafter, vide an order dated 23.11.2022, this Hon'ble Tribunal had directed the Respondents to file their respective reports by 05.01.2023 and also directed the Applicant to explain as to how the present Application is maintainable in light of the issues already raised in proceedings before the High Court and the National Green Tribunal in the past.
2. It is submitted that at the very outset, the present Application is maintainable in law and in facts as the cause of action for the present Original Application arose pursuant to the administrative sanction granted by the 3rd Respondent for the construction of the proposed new bus stand at Thirumanilayur, Karur District vide Government Order G.O. Ms. No. 20 dated 25.01.2022. Further, on 08.07.2022, the 7th Respondent proceeded to call for tenders for construction of the said bus stand at Karur at a cost of Rs. 40,00,00,000/- (Rupees Forty Crores Only). It is submitted that the bids were called for on 13.07.2022, bids were received on 03.08.2022 and the technical bids were opened on 03.08.2022.
3. It is submitted that as on date, the canals have been filled and the surface has been levelled thereby completely blocking the free flow of water in the sub-canal. Such an act has seriously caused hardship to the Applicant as the irrigation source to the lands of the Applicant have been disconnected and the Applicant is deprived of water for irrigation in his lands. It is submitted that since the works commenced on the site by causing severe damage to the water irrigation channels present in the lands surrounding the proposed area including the land belonging to the Applicant, the Applicant preferred the present Original Application before this Hon'ble Tribunal seeking for reliefs against the Respondents to restore the lands to their original status. The proceedings before the High Court and the National Green Tribunal, details

of which have been disclosed in the Original Application, do not in any manner affect the maintainability of the present Original Application for the reasons stated in the following paragraphs.

4. Firstly, it is submitted that in the year 2014, the President of the Karur Mavatta Nilathadi Neer Padhugapu Matrum Sayakazhival Pathikappatta Viviasayigal Sangam, Karur filed an Application before this Hon'ble Tribunal seeking for necessary directions to the Respondents to remove the obstructions raised on the above-said lands and to restore the canals to their original position. This Hon'ble Tribunal, vide its order dated 30.07.2014, proceeded to dismiss the Application on the grounds that the Applicant therein was not an agriculturist nor was he an affected party due to the decision of the Respondents to construct a new bus stand and thus he was not aggrieved in any manner whatsoever. The relevant portion of the order is extracted hereunder:-

“38. It is not the case of the applicant that he is an agriculturist having any holding in that region, nor is he an affected party. It is pertinent to point out that though the applicant averred that hundreds of agriculturists were affected by the said proposal for construction of a new bus stand, no complaint was made by any agriculturists. If aggrieved as contended by the applicant they would have approached the forum calling for interference. The Tribunal is unable to see any reasons or circumstances to doubt, disbelieve or reject the statements made by both the District Collector and the District Environmental Engineer concerned.”

5. From the above order, it can be seen that that the Original Application filed before this Hon'ble Tribunal was dismissed on the grounds that the applicant therein neither had any locus standi to maintain the application nor was a personally aggrieved party due to the construction of the proposed bus stand.
6. In addition to the above, it can also be seen that this Hon'ble Tribunal has dismissed the said original application in 2014 on the affidavit filed by the

District Collector stating that no cultivation neither agricultural nor irrigation was carried out in the location of the land. This stand of the Respondents taken in 2014 has undergone a considerable change, as the Respondents themselves have admitted in various proceedings before the Hon'ble High Court that there are five common water channels bisecting the site into four parts, which is marked as "common water, drainage channel" in the village map and that there is a common water pipeline running under the site property for irrigations purposes. It is submitted that the above-said stand has been taken by the Applicant herein in the Memorandum of Original Application filed before this Hon'ble Tribunal and therefore the Applicant craves to leave of this Hon'ble Tribunal to treat the contents of the Original Application as part and parcel of this Memo as well.

7. Further, it is also evident from the RTI response dated 07.12.2020, that the stand of the Respondents has categorially differed from the stand that was taken in 2014 before this Hon'ble Tribunal. The RTI response in no uncertain terms states that the subject lands are agricultural lands with minor irrigation canals, situated in a vulnerable zone prone to floods, thereby clearly establishing that the lands proposed for the construction of the Karur Bus are not fit for construction of the bus stand. Between 2014 and 2022, when the stand of the Respondents have categorially undergone a shift in various pleadings before different proceedings in the High Court and further when the earlier original application was dismissed on the grounds of locus standi, it is not permissible for the Respondents to contend that the present Original Application is not maintainable in light of orders passed by this Hon'ble Tribunal on 30.07.2014 in O.A. No. 153 of 2014(SZ).
8. Secondly, it is submitted that the writ petition filed by one Mrs. A. Sambooranathammal in W.P.(MD) No. 3854 of 2021 before the Madurai Bench of the Madras High Court does not in any manner affect the maintainability of this Original Application. It is submitted that the above said writ petition was filed by A. Sambooranathammal, the erstwhile owner of the land currently belonging to the Applicant, seeking a writ of mandamus to construct or dig, restore and maintain the filed bothies in the lands

comprised in S.F. Nos. 95,97,98,113 to 123, 146 to 152, 243 and 246 to 2548 at Thirumanilayur village. It is submitted that the above writ petition was filed by invoking the constitutional jurisdiction under Article 226 of the Constitution of India in relation to the Tamil Nadu Irrigation Works (Construction of Field Bothies) Act, 1959. The said remedy is distinct from the reliefs sought for in the present Original Application, wherein the jurisdiction of this Hon'ble Tribunal under Sections 14 and 15 of the National Green Tribunal Act, 2010 is invoked.

9. It is submitted that the above writ petition was filed by the said A. Sambooranathammal when she was the owner of the subject land at the relevant point in time. Thereafter, the Applicant purchased the subject land and was personally aggrieved by the commencement of construction of the proposed bus stand and hence approached this Hon'ble Tribunal by invoking its jurisdiction under the National Green Tribunal Act, 2010. The pendency of writ petition filed by the erstwhile owner in no way bars the Applicant from maintaining the present Original Application, especially when the pending writ petition could be taken up and disposed of as infructuous by the High Court in light of change in ownership in the subject land. The question of res judicata will not arise whatsoever, as alleged by the Respondents in the present case.
10. In any event, it is submitted that the Applicant is informed that necessary steps have been taken to withdraw the writ petition filed by the said Sambooranathammal before the High Court. In this regard, the Applicant has been informed that the said Sambooranathammal has instructed her counsel to withdraw the Writ Petition pending before the High Court, and in turn the counsel has addressed a letter to the Registrar Judicial seeking to withdraw the said writ petition.
11. It is submitted that the ownership of the land in S.No. 109 is with the Applicant since August 2022 and the Applicant herein has undergone severe hardship due to the damage caused to the lands and the irrigation channels running through the lands. As a party who is personally aggrieved, the

Applicant has rightly invoked the jurisdiction of this Hon'ble Tribunal by filing the present Original Application. Therefore, the present Original Application is very much maintainable.

12. It is submitted that in a plethora of decisions, the courts have held that it is the pious duty of the State and Local Authorities that the tanks and ponds and all other waterbodies of the villages/town are properly maintained and necessary steps be taken so that there is no water shortage and ecology is preserved. Based on the said decisions, it is submitted that this Hon'ble Tribunal has entertained Original Applications and have passed necessary orders for the preservation of the waterbodies and protection of the ecological balance. (*Purushottam Agrwal v. State of Madhya Pradesh, MANU/GT/0171/2022 3-member bench of the NGT, Central Zone; R. Radhakrishnan v. Public Works Officer, 26.04.2022, O.A. No. 265 of 2016(SZ)*)

In light of the above, it is humbly prayed that this Hon'ble Tribunal may be pleased to take on record this Memo, grant the reliefs as prayed for in the Original Application and pass necessary orders in the interests of justice.

Dated at Chennai on this the 17th day of January 2023



COUNSEL FOR APPLICANT