

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE BENCH AT CHENNAI
Original Application No. 223 of 2021 (SZ)

IN THE MATTER OF

S. Somasekar Seshachalam
S/o. V. Seshachalam Kaverirajapuram,
Thiruvallur District.

...Applicant

Versus

The Ministry of Environment, Forests & Climate Change,
Rep. by its Secretary, New Delhi and Ors

...Respondent(s)

REPLY TO THE JOINT COMMITTEE REPORT

1. It is humbly submitted that, the committee upon inspection in Survey numbers 332, 333, 336, 337 and 346(part) submitted that;

the proposed SIDCO SF.Nos. 369/2, 369/1H & 331 are abutting the SF. Nos. 332, 333, 336, 337 & 346 (part), which are classified as "Kottai", but during inspection it was found to be a raised/stockpiled gravel & pebbles bund sloping down with earthen channel as earmarked in the FMB sketch. However, the Revenue Department shall seek further details from Archaeological Department for the land at SF. Nos. 332, 333, 336, 337 & 346 (part), which are classified as "Kottai" .

2. It is humbly submitted that, The committee was unable to ascertain the present situation because of the negligent act of the officials by dumping the cleared earth under the guise of cleaning the officials has also covered the presence of a "**MOAT**" with the cleared earth materials. the proposed site being a terrain region there cannot be a Raised/Stockpiled gravel and pebbles in one particular point, this clearly shows that the above mentioned survey numbers classified as **Kottai** has been covered up/ dumped with the cleared gravel and pebble with earth materials during the clearance work carried out in survey number 369/2 to an extent of about 23 acres.

3. The committee upon inspection in Survey number 367 submitted that:

(ii) the Odai at SF No. 367, abutting the proposed SIDCO SF.No. 369/2, flows down towards northern direction and joins with Rajalu. Chevuru(Eri) at SF. [No.423](#). In this

regard the committee observed that there was no demarcated Odai boundary and mostly the said Odai flows through natural sloping terrain and joins with Rajalu Chevuru (Eri) at SF. No.423.

(iv) Dguvagunta Lake at SF.No.291 is abutting the proposed SIDCO Survey No.331

There had been various judgements passed from time to time by the Honourable Supreme Court of India and had been followed by the various High Courts and Tribunals across the nation to protect the Environment more particularly water bodies, whatever form may they be. It is duty bound by the officials to protect the water bodies under public trust.

It is humbly submitted that The Honourable Supreme Court in [Hinch Lal Tiwari v. Kamal Devi and others](#) - AIR 2001 SC 3215, *has observed that, demands of economic development must be made without compromising the natural resources of the earth which this generation holds in trust for future generation. The order of inter-generational equity has to be remembered and in fact in the Rio Declaration, to which India is a party, it has been affirmed that environmental protection constitutes an integral part of sustainable development and cannot be isolated from it."*

"19.Persistent developmental activities, ignoring the need to protect natural resources, have caused irreparable damage. It is also necessary that the State shall not invoke Section 12 of the Act which results in alienation of tank poramboke lands citing "public interest". Protection of water resources is as much as a public interest issue as any other requirement.

4. It is humbly submitted that, as per the report the Odai at SF No. 367, abutting the proposed SIDCO SF.No. 369/2, there has been negligence on part of the Revenue officials without earmarking the boundaries of ODAI and maintaining it, said ODAI in survey number 367 flows down and connects the Raja Chevuru(Eri) at SF. No.423 at this current situation if the project is established in the proposed site it would affect the livelihood of the villagers.

5. The Full bench of the Honourable Madras High Court in the matter of T.K.Shanmugham vs State of Tamilnadu and others held that,

30. With respect, we do not agree with the said observations, since the object of the enactments which have held the field from 1905 does not speak of any such exemption, rather the underlying principle was to preserve and protect water bodies. It is to be noted at this juncture, during summer, water bodies would appear dry, but during rainy days/monsoon, stream would be in place to drain/take the water to the water bodies and percolation takes place which in all probability results in surcharge of ground water.

40. As noticed above, The underlying fundamental principle being that such rights are public rights are in a higher pedestal than private rights. We may take a look of the matter from a different perspective. The Government has considered that water bodies, which have fallen into dis-use and have been encroached upon could be declared as not required for any public purpose and the encroachments could

be regularised. What the Government has failed to see is the cause as to why these water bodies, lakes, tanks have fallen into dis-use. If this aspect is analysed, it would come to light that in several cases the disuse was man-made and there appears to be a cartel, which systematically works with a view to grab Government property. In such scenario while taking a "conscious decision", the Government cannot ignore the fiduciary duty of care and responsibility cast upon it and simultaneously analyse as to why such dis-use has occurred. The plethora of decisions on the point elucidate the basic principle of the public trust doctrine when the water bodies vest with the Government, placing the Government in the capacity of a trustee, there is little option except to strictly adhere to the trust and faith reposed and if the Government has failed to protect these water bodies, it amounts to breach of the public trust and in such cases, the duty of the Government is more onerous to restore the land back to its original position and thereby restore the trust reposed on it. Therefore, we are not inclined to accept the proposition that merely because a water body has put to dis-use that by itself would be a good ground to regularise the encroachments.

6. The respondents has to consider the fact that, sustainable development should not affect the Environment, more specifically, The Honourable National Green Tribunal, Principal Bench, New Delhi. In the matter of M/s Sterlite Industries (India) Ltd. Vs Tamil Nadu Pollution Control Board and others held that :

The most vital necessities, namely air, water and soil having regard to the right to life under [Article 21](#) cannot be permitted to be misused or polluted so as to reduce the quality of life of others. Risk of harm to the environment or to human health is to be decided in public interest, according to a "reasonable person's" test. Life, public health and ecology have priority over unemployment and loss of revenue. It is often said that development and protection of environment are not enemies but are two sides of the same coin. If without degrading the environment or by minimising the adverse effects thereupon by applying stringent safeguards, it is possible to carry on developmental activities applying the principle of sustainable development, in that eventuality, development has to go on because one cannot lose sight of the need for development of industry, irrigation resources, power projects, etc. including the need to improve employment opportunities and the generation of revenue. A balance has to be struck.

The right to development itself cannot be treated as a mere right to economic betterment or cannot be limited as a misnomer to simple construction activities. It encompasses much more than economic well-being and includes within its definition the guarantee of fundamental human rights. It includes the whole spectrum of civil, cultural, economic, political and social process, for the improvement of people's well-being and realisation of their full potential. It is an integral part of human rights. Of course, development is the essence of any pragmatic and progressive society. But essentially, development besides being inter-generational, must be balanced to its ecology and environment. Sustainable development means that the richness of the earth's bio-diversity would be conserved for future generations by greatly slowing or if possible halting extinctions, habitat and ecosystem destruction, and also by not risking significant alterations of the global environment that might - by an increase in sea level or

changing rainfall and vegetation patterns or increasing ultraviolet radiation - alter the opportunities available for future generations. Sustainable development has been defined in many ways but the most frequently quoted definition is from the Brundtland Report which states as follows:

"Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs. It contains within it two key concepts:

The idea of limitations imposed by the state of technology and social organisation on the environment's ability to meet present and future needs." • The concept of needs, in particular the essential needs of the world's poor, to which overriding priority should be given; and •

115. The earlier school of thought was that development and ecology are opposed to each other but with the passage of time and development of law, this concept has undergone tremendous change and is no longer acceptable. Now operates the principle of sustainable development. It takes within its ambit the application of 'principle of proportionality' and the 'precautionary principle'. In other words, one must, while promoting development, not only ensure that no substantial damage is caused to the environment but also take such preventive measures which would ensure that no irretrievable damage to the environment, even in future, is caused. All these principles have to be examined and applied on the touch stone of "reasonable person's test", as afore-stated. Where the principle of proportionality introduces prudent mind's reasonableness in relation to development vis-a-vis environment, there the precautionary principle can be explained to say that it contemplates that an activity which poses danger and threat to the environment is to be prevented since prevention is better than cure.

116. While applying the concept of sustainable development, one has to keep in mind the "principle of proportionality" based on the concept of balance. It is an exercise in which courts or tribunals have to balance the priorities of development on the one hand and environmental protection on the other. So sustainable development should also mean the type or extent of development that can take place and which can be sustained by nature/ecology with or without mitigation. In these matters, the required standard now is that the risk of harm to the environment or to human health is to be decided in public interest, according to a 'reasonable person's test'. Research Foundation for [Science and Technology and Natural Resource Policy v. Union of India](#) (2007) 9 SCR 906; [Narmada Bachao Andolan v. Union of India](#) supra; Chairman Barton: The Status of the Precautionary Principle in Australia (Vol.22) (1998) (Harv. Envtl. Law Review, p. 509 at p.549-A) as in [A.P. Pollution Control Board v. Prof. M.V. Nayudu](#) supra; and [M.C. Mehta v. Union of India](#), supra.] At this stage, we may usefully refer to a very recent judgment of the Supreme Court in the case of [G. Sundarajan v. Union of India & Ors.](#) (2013) 6 SCC 620 where the Court, while referring to the principles of balance inbuilt in the concept of sustainable development, elaborated the principles as follows:

"228. I have referred to the aforesaid pronouncements only to highlight that this Court has emphasized on striking a balance between the ecology and environment on one hand and the projects of public utility on the other. The trend of authorities is that a delicate balance has to be struck between the ecological impact and development. The other principle that has been ingrained is that if a project is beneficial for the larger public, inconvenience to smaller number of people is to be accepted. It has to be respectfully accepted as a proposition of law that individual interest or, for that matter, smaller public interest must yield to the larger public interest.

Sustainable Development primarily finds its origin from the Rio Declaration, 1992 on Environment and Development. Certain principles were stated for achieving sustainable development. The element of integration of environmental and developmental aspects was spelt out in the following principles of that Declaration:

"Principle 3:

The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.

Principle 4:

In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it."

118. In fact, in [Karnataka Industrial Areas Development Board v. C. Kenchappa & Ors.](#) (2006) 6 SCC 383-84, the Apex Court held as follows:

"63. 'The World Conservation Union' and 'the Worldwide Fund for Nature' prepared jointly by UNEP described that 'sustainable development, therefore, depends upon accepting a duty to seek harmony with other people and with nature' according to *Caring for the Earth, A Strategy for Sustainable Living*. The guiding rules are:

- (i) *People must share with each other and care for the earth;*
- (ii) *Humanity must take no more from nature than man can replenish; and*
- (iii) *People must adopt lifestyles and development paths that respect and work within nature's limits."*

119. *The development should be such as can be sustained by ecology. Sustainable development would be the development which can be maintained indefinitely in proportion to environment and ecology. Thus, there should not be development at the cost of causing irretrievable or irreversible damage to the ecology or the environment. They must find a common path and objectivity in achieving the goal of sustainable development.*

Therefore as mentioned above, the respondents cannot destroy the natural resource more particularly the water body for the source of Revenue and Employment whereas Life, public health and ecology have priority over unemployment and loss of revenue.

7. It is humbly submitted that, as far as the Requirement of Prior Environmental Clearance the Committee in their report has stated as:

*It is submitted that the State Level Environment Impact Assessment Authority observed that as per EIA Notification, 2006 proposed development of industrial park by the project proponent falls under Project / Activity - 7(C). - Industrial estates/ parks/ complexes/ areas, export processing Zones (EPZS), Special Economic Zones (SEZS), Biotech Parks, Leather Complexes requires prior Environmental Clearance as follows:
Category 'A' Project to be appraised in MoEF&CC:*

- i) If at least one industry in the proposed Industrial estate falls under the Category A, entire Industrial area shall be treated as Category A, Irrespective of the area.*
- ii) Industrial estates with area greater than >500 ha. and housing at least one Category B industry.*

Category 'B' Project to be appraised in SEIAA:

- i) Industrial estates housing at least one Category B industry and area < 500 ha.*

ii) Industrial estates of area > 500 ha. and not housing any industry belonging to Category A or B. Note:

1. Industrial Estate of area below 500 ha. and not housing any industry of Category 'A' or 'B' does not require clearance.

2. If the area is less than 500 ha. but contains building and construction projects > 20,000 Sq.mtr. and or development area. more than 50 ha it will be treated as activity listed at serial no. 8(a) or 8(b) in the Schedule, as the case may be.

8. It is humbly submitted that, para No. 2 of EIA Notification, 2006 states as follows:

2. Requirements of prior Environmental Clearance (EC):- *The following projects or activities shall require prior environmental clearance from the concerned regulatory authority, which shall hereinafter referred to be as the Central Government in the Ministry of Environment and Forests for matters falling under Category 'A' in the Schedule and at State level the State Environment Impact Assessment Authority (SEIAA) for matters falling under Category 'B' in the said Schedule, before any construction work, or preparation of land by the project management except for securing the land, is started on the project or activity."*

9. The Respondents herein has proposed to establish the project to an extent of about 59.10 Hectares (145.98 acres) which under the act requires prior Environmental Clearance. The revenue officials have a cleared an extent of 23 acres in Survey Number 369/2 which is classified as "Anadheenam" which means unclaimed land and it does not indicates that the land vested with the Government and the government can exercise its powers as in the case of Poramboke lands more particularly the Honourable High Court in the batch of matters has passed a common order filed by *Sundaram and others Vs The Additional Chief Secretary and Commissioner of Land Administration, Chepauk, Madras – 600 005*, has held as follows:

3.1 *The Madras Government abolished the intermediaries under the 1948 Act, and the patta lands were converted as "Anadheenam". The conversion had been taken place without serving notice to the original owners. However, the petitioners and their predecessors are continued in possession and enjoyment of the subject property. When the land was already assessed and cultivated, it cannot be re-classified as "Anadheenam". The ownership of the land is not lost on account of the abolition proceedings.*

...

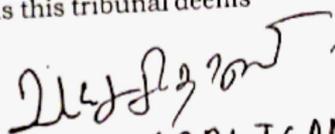
9.5. *He also raised another ground that a mere classification of subject lands as Anadheenam or Poramboke does not result in vesting with the Government. The mere entry in the Government records would not alter the nature of the land. A ryotwari land is always a ryotwari land and mere entry in the Government records bear no significance. In support of his contention, he relied upon the judgment reported in 1956 (1) Mad LJ 200 in the case of Strimathi Saraswathi Bai Vs. Chairman, Estate Abolition Tribunal., which held that the character of the property has to be seen not with reference to the survey register and the materials to support the claim of the land owner to a Ryotwari patta. As regards the classification of Anadheenam lands, the term simply means unoccupied lands. There is no vesting of such lands upon the Government. The claim of the petitioners for issuance of*

patta with regard to the lands comprised in survey No.157 or 3/1 and others cannot be dislodged on the ground that the lands were not in occupation or classified as Anadheenam lands. The ryotwari or the proprietor of the holdings had absolute right to keep the lands idle. Non cultivation of lands does not affect the rights of the petitioners to claim patta. Therefore, the classification of Anadheenam lands does not curtail the right of the petitioner to obtain patta. The lands whether classified or unclassified as Anadeenam cannot affect the right of the petitioners. Such classification does not change the nature of ryotwari land or the pre-existing rights enjoyed by the ancestors of the petitioners. As per Chapter III of the 1948 Act, the ryotwari patta could be granted if the holder of the land is a ryotwari land.

10. The Respondents stating the reason that the lands in survey number 369/2 are classified as Anaadheenam and has cleared a vegetation of about 23 acres of land using heavy machineries such as JCB/Poclains, such usage of JCB and Poclains has been regularized as per the Industries (MMC.2) Department G.O(D).No.10 dated 17.06.2015.

11. It is humbly submitted that, the total requirement of lands for establishment of the proposed project is 145.98 acres, more than 100 acres of land will have a vast environmental impact on the flora and fauna if the proposed project is established, the waterbodies classified in survey number 291 366, 367 and 368 will be destroyed stating the reason of sustainable development.

It is therefore humbly prayed that this Honourable Tribunal may be pleased to take this objections on record and pass appropriate orders as this tribunal deems fit and proper and thus render justice.


COUNSEL FOR APPLICANT.



ABSTRACT

Industries – Mines and Quarries – Minor Mineral – Sand Mining – Usage of machinery – Instructions reiterated - orders – issued.

Industries (MMC.2) Department

G.O. (D)No.110

Dated : 17.06.2015

மன்மத, ஆனி, 2

திருவள்ளூர் ஆண்டு 2046

Read :

- 1) G.O. (D) No.7, Industries (MMC.2) Department, dated 11.01.2011.
- 2) G.O (D) No.39, Industries (MMC1) Department dated 01.02.2011.
- 3) G.O. (D) No.67, Industries (MMC.2) Department dated 11.03.2011.
- 4) G.O. (D) No.22, Industries (MMC.2) Department. dated 20.02.2014.
- 5) G.O.Ms.No.180 Industries (MMC.2) Department dated 17.10.2013
- 6) From the Chief Secretary to Government D.O.Lr.No.15388/MMC2/2013-1 dated 17.10.2013 addressed to all the District Collectors.
- 7) Government Lr.No.13805/MMC.2/ 2013- 12, Industries Department, dated 02.04.2015
- 8) From the Commissioner of Geology and Mining, Letter Rc. No.8828/MM6/2012-2, dated 10.4.2015.

ORDER:

In the G.O. first to fourth read above Government have permitting the District Collectors, for restricted and judicious use of minimum number of poclains and not more than two poclains in each of the quarry site in the State other than Palar and Thamiraparani rivers and the poclains shall not be used after 7 P.M and before 6 A.M. The Competent authority has to pass an order in writing permitting the use of poclains and indicating the number to be used and the same shall not be used after 7 P.M and before 6 A.M.

2. The Special Team constituted vide G.O. fifth read above to inspect and verify the sand stockyards and illegal sand mining in the state, has inspected Kancheepuram and other districts and submitted its report. The Committee has made certain recommendations to further stream line the sand mining operations and sale of sand from the stockyards as follows:

- (i) The Committee recommended that as instructed by the Government in G.O.(D)No.7, Industries (MMC1) Department, Dated.11.01.2011 use of only permitted two poclains per each quarry as directed by the Hon'ble High Court should be ensured. These instructions should be strictly followed by the District Collectors and officials of the Public Works Department.
- (ii) The Committee has also suggested that in each district, separate stockyards have already been established for sale of sand irrespective of the fact whether there is sand quarry or not in that district. In order to further streamline the operations, stockyards should be inspected by the District Collector and Public Works Department Officials once in 15 days and the stock of sand should be verified to ensure that no illegally quarried sand is sold or stocked in the stockyards.

3. Based on the recommendations of the said committee on the usage of minimum poclains for sand quarrying, the Commissioner of Geology and Mining in the reference eighth read above requested the Government that the relevant instructions issued by the Government in the above said Government orders and the recommendations of the committee with regard to the usage of machineries in sand quarrying are to be scrupulously followed and necessary instructions be issued to the District Collectors and Public Works Department authorities in this regard.

4. After careful examination of the suggestions of the Committee and the proposal of the Commissioner of Geology and Mining, the Government have decided to accept the same and as per the powers vested in Rule 36-A (6) of Tamil Nadu Minor Mineral Concession Rules, 1959, the restricted and judicious use of minimum number of poclains and other conditions for sand quarrying and loading as stipulated in the G.O. first to fourth read above are hereby reiterated and the authorities concerned are directed to follow the instructions therein scrupulously. It is further directed that the same has to be monitored by the District Level and Taluk Level Task Forces and the District Collectors are directed to send consolidated weekly report to the Government in Industries and Public Works Department without fail.

5. Further, all the District Collectors or their nominees and Public Works Department authorities are hereby directed to inspect the sand stockyards once in 15 days and to ensure that no illegally quarried sand is sold or stocked in the stockyards and to send periodical reports to Government in Industries and Public Works Department.

(BY ORDER OF THE GOVERNOR)

KUMAR JAYANT
ADDITIONAL CHIEF SECRETARY TO GOVERNMENT (i/c.)

To
All the District Collectors,
The Principal Secretary to Government,
Public Works Department, Chennai -9.

The Chief Engineer,
Water Resources Organisation,
Public Works Department,
Chepauk, Chennai-600 005.

The Registrar, High Court of Madras, Chennai-1
The Commissioner of Geology and Mining,
Guindy, Chennai-600 032.

Copy to:
Industries (OP.I) Department, Chennai - 9
SF/SC

// FORWARDED/ BY ORDER //

M. Shubhakar
17.06.11
Section Officer