BEFORE THE NATIONAL GREEN TRIBUNAL, (SZ), CHENNAI

(Under Section 18(1) read with Sections 14 of National Green Tribunal Act, 2010)

APPLICATION NO. 223 OF 2021 (SZ)

BETWEEN

1. S.Somasekar Seshachalam
S/o V.Seshachalam
1/24, Middle Street,
Kaverirajapuram, Tiruvallur
Tamil Nadu 631 210
Phone: 9790971141
Email: sasidaransubramani@gmail.com .... Applicant

Vs.

1. The Ministry of Environment, Forest and Climate changes
Jor bagh, Lodhi Colony,
New Delhi, Delhi 110003
Phone: +91 11 24695262
E mail: secy-moef@nic.in & 7 Others .... Respondents

WRITTEN ARGUMENTS SUBMITTED ON BEHALF OF THE APPLICANT

1. The above-mentioned application has been filed seeking for the prayer of:

"(i) To DECLARE the proposed industrial park of the 4th, 7th and 8th Respondents at Survey No. 240, 241, 247/1, 247/2, 331, 369/2, 369/1(1), 369/1(H) in Kaverirajapuram Village, Tiruttani Taluk, Tiruvallur District as illegal and unsustainable to environment.

(ii) To grant Permanent Injunction and restrain the 4th, 7th and 8th Respondents from setting up an industrial park at Survey No 240, 241, 247/1, 247/2, 331, 369/2, 369/1(1), 369/1(H) in Kaverirajapuram Village, Tiruttani Taluk, Tiruvallur District.

(iii) To Direct the respondent authorities (1) to (6) to monitor the area and ensure there are no actions by any person to cause any damage to the environment.

(iv) To Direct the 4th, 7th and 8th Respondent to pay environmental compensation as may be determined by this Hon'ble Tribunal for their actions of deploying heavy machinery in clearing and altering the lands till date.

(v) To Direct the Respondents 1 to 3 and Respondents 5th and 6th to initiate criminal prosecution under section 15 of the Environment Protection Act, 1970 against Respondents 4th, 7th and 8th for their actions of deploying heavy machinery in clearing and altering the lands till date.

(vi) Pass such further or other orders as their Hon'ble Tribunal may deem fit and necessary in the interest of justice."

2. Before proceeding further, it is respectfully submitted that the Original Application and the documents annexed herein in support of the same, been filed by the Applicant be taken as the part and parcel of these submissions.

3. The Applicant has challenged the establishment of Industrial Park by Respondents 4, 7 and 8 on the following grounds:

(A) NON-TRANSFER OF LANDS AND LACK OF RIGHT TO ENTER/ PREPARE THE SAME:

(i) The proposed Industrial Park is said to be established in an area measuring an extent of 59.10.0 Hectares (145.98 acres) in Survey No. 240, 241, 247/1, 247/2, 331, 369/2, 369/1(I), 369/1(H) in Kaverirajapuram Village, Tiruttani Taluk, Tiruvallur District. The lands proposed for under the said project mainly fall within the classification of Anadeenam lands (Survey Nos. 240, 241, 247/1, 331, 369/2) and S.F.Nos. 369/1I, & 369/1H falls in Patta land.

(ii) It is submitted that the Hon'ble Courts have held that Anadeenam lands do not automatically vest upon the Government and as such, such classification does not curtail the right of those occupying the said land to claim Patta. It is submitted that the revenue records such as UDR have to be ascertained to find if there are any claims over the said Anadeenam lands for the purpose of said Patta. If there are such claims the same has to be decided and as such before following the due process the authorities cannot enter/alter the land unilaterally.

(iii) In fact, with regard to Survey No.369/2, which is under the possession of the Applicant, representations have been given for the issuance of patta and the same is pending as on date before ethe District Collector. Therefore, with third party rights still existing over the said lands, SIDCO cannot treat the same as Porambokke lands and enter upon the same thus prejudicing those who are occupying the said lands. In fact

the Counter Affidavit of SIDCO, para 11 clearly establishes the fact that, the Applicant is in occupation of the said land and doing agriculture therein. The statement of SIDCO referring the occupation of the Petitioner as an "encroachment" is legally untenable.

(iv) It is submitted that till date no record has been produced before the Hon'ble Tribunal to show that the land has been taken over by the State with accordance with Law and thereafter transferred to SIDCO. Therefore, without the authority of Law, SIDCO not to have entered the lands and cleared the vegetation therein to an extent of 23 acres. The applicant states that there are trees and also farmlands nearby and in close vicinity of the proposed project, a fact which is also bone in the Joint Committee Report. This action of the authorities is violative of Law, prejudices Third party rights and also caused loss of environment without proper approval.

(v) Mere statements of the floor of the assembly will not confer Jurisdiction on SIDCO to enter and alter these lands. It is also submitted that despite the directions of the Tribunal it is reliably understood that till date no Status Report has been submitted by the District Collector on Status of the Allocation of lands to SIDCO. SIDCO has also not submitted any proof to show that the lands have been vested with them on free of Encumbrance.

(B) PREPARATION WORK WITHOUT ENVIRONMENT CLEARANCE:

(i) It is submitted that even as per the Joint Committee Inspection Report it appears that vegetation to an extent of 23 acres has been cleared. The SIDCO has informed the committee that the same has been cleared for ascertaining the boundary of the proposed industrial park. It is submitted on the behalf of the applicant that atleast 7 to 10 heavy machinery (poclain) have been used for clearing the said area. The photograph filed by the Applicant were proof to the same. It is submitted that this excessive action on part of SIDCO on the pretext of ascertaining the boundary is unexpectable. It is submitted that this machinery, for example are used for

mining and excavation activities and their usage would definitely warrant an environmental clearance.

(ii) It is submitted that Para No.2 of the EIA Notification, 2005 states as follows:

"2. *Requirements of prior Environmental Clearances (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."*

It is very clear that in the reading of the notification that except for securing the land even preparation work on the land requires a clearance. The intension to include preparation for the purpose of Environmental clearance is that the said activity has the potential to change the Topography of the land. On the other hand, securing the land may only entail laying fencing around the property or acquiring the land under relevant acquisition laws. The Respondents by usage of the above-mentioned heavy machinery have effectively altered the current topography of the land especially the 23 acres. This action of the Respondents is illegal as the same has been done without the clearance and requires to be interfered with by The Hon'ble Tribunal.

(iii) It is submitted that in this regard the Ministry of Environment and Forest, Government of India vide Office Memorandum No. 3-11013/41/2006-IA.II(I) dated 19.8.2010 clearly shows that only fencing of the site and putting up construction of temporary shed to the guards do not require Environment Clearance. It is clear from the Joint Committee Report that SIDCO has cleared 23 acres of land using heavy machinery which is clearly preparatory work and requires Environmental Clearance, which they don't have. Infact MoEF&CC has in the above memorandum observed the following and the relevant portion is extracted hereunder:

"..... No activity relating to any project covered under this Notification including civil construction, can be undertaken at site without obtaining prior environmental clearance except fencing of the site to protect it from getting encroached and construction of temporary shed(s) for the guard(s).
All the project proponent may not that any contravention of the provisions of the EIA Notification amounts to violation of the Environment (Protection) Act, 1986 and would attract penal action under the provisions thereof. The project proponent may also note that in case of any project where TORs have been prescribed for undertaking detailed EIA study and where construction activities relating to the project have been initiated by them, the TORs so prescribed may be suspended/ withdrawn in addition to initiating penal action under the provisions of the EP Act, 1986."

Therefore, the action of SIDCO is at clear violation of the EIA notification and requires to be interfered with this Hon'ble Tribunal.

(C) RISK/DANGER TO ODAI/WATER BODY:

(i) It is submitted that a perusal of the Joint Committee Inspection report shows that the lands at SF.No. 334/1, 366,367 &368 are classified as Odai in A-register. It was clarified by the VAO, Kaverirajapuram that SF.No.368, though classified as Odai in A-Register but physically existing as Panchayat Road also, the lands at SF. No 367 which is classified as Odai is abutting the proposed SIDCO Survey No. 369/2. Dguvagunta Lake at SF.No.291 is abutting the proposed SIDCO Survey No.331.

(ii) A further perusal of the report shows that 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.

(iii) A perusal of the report shows that the exact measurement of the width of the channel or its boundaries have not yet been ascertained. The authorities are not clear on the flow

radius/width of the Odai and In light of the same a project sharing boundary to the water body will definitely have an adverse effect on the water body, its flow and its existence in the future.

(iv) With such vital parameters/ data being unascertained and where unclear as to what impact it is highly arbitrary on part of the Respondents to have entered the land and bring in heavy machinery and alter the topography which would definitely affect the environment and the water body therein. Such a large project will definitely have an adverse effect on the Environment. Under these circumstances, with several data unavailable and where a situation arises as to what impact this project could have on the environment, as directed by the Supreme Court a concept of "Precautionary Principles" ought to be employed and the proposed project ought not to be proceeded with till the ODAI is restored and proceeded with in order to protect the water body. It is submitted that the Applicant places reliance on Hinch Lal Tiwari vs Kamala Devi – 2001 (6) SCC 496 wherein it is stated as follows:

"12..... *In our view, it is difficult to sustain the impugned order of the High Court. There is concurrent finding that a pond exists and the area covered by it varies in the rainy season. In such case no part of it could have been allotted to anybody for construction of housing building or any allied purposes.*

13. It is important to notice that the material resources of the community like forests, tanks, ponds, hillock, mountain etc. are nature's bounty. They maintain delicate ecological balance. They need to be protected for a proper and healthy environment which enables people to enjoy a quality life which is the essence of the guaranteed right under Article 21 of the Constitution. The Government, including the Revenue Authorities i.e. Respondents 11 to 13, having noticed that a pond is falling in disuse, should have bestowed their attention to develop the same which would, on one hand, have prevented ecological disaster and on the other provided better environment for the benefit of the public at large.".

(v) The applicant also places reliance on the Full Bench Judgement of Hon'ble Madras High Court in T.K.Shanmugam Vs State of Tamilnadu vide WP. No. 1294 of 2009 dated

30.10.2015, where the categorically held that the Government has to restore water bodies even if they are put to disuse. It is submitted that the submission of the Revenue authorities that the water body herein is dried up and been used as a road cannot be accepted and as such steps ought to be taken to restore the water body which will include dropping of the current project as the water body runs in centre of the proposed project land and runs the risk of being polluted. Therefore in light of the presence of the water body the said project cannot be proceeded.

(D) PRESERVATION OF FORT (KOTTAI) and ARCHEOLOGICAL SITES:

It is submitted that the Applicant has raised that near the proposed project site there is a Fort (Kottai),and MOAT(Agazhi) it is submitted that the Joint Committee Inspection Report has also observed that Survey No. 332, 333, 336, 337 and 346 (part) are classified as (KOTTAI) and that they are in the periphery proposed SIDCO site. The Committee has stated that the Revenue Department should seek further details from the Archaeological Department in this regard. It is submitted that, in light of the findings of the Committee the Revenue Authorities ought to obtain the Opinion of the Archaeological Department and subject to the same the said site has to be protected under the relevant Central Act.

(E) DANGER TO AGRICULTURAL ACTIVITIES AND GROUND WATER:

(i) It is submitted that the Applicant has submitted that the Petitioner is conducting Agriculture in Survey No. 369/2. There are also other farmlands also nearby. This fact about the presence of farmlands is found mentioned in the report of the Joint Committee and also in the Counter Affidavit of SIDCO. Such a large Industrial undertaking will definitely affect the Environment therefore affecting the agriculture activities and also the ground water in the said area. Such

establishment of many industries in the said site would require them to draw ground water for the said commercial activities. Without a proper study of the Ground water index establishment of such a Industrial park to lead to depletion of ground water thereby affecting agricultural activities in the area. Therefore, it is just necessary that the Hon'ble Tribunal refrain the Respondents from establishing such an Industrial park in the said area.

4. It is submitted that in light of the fact that SIDCO has entered the premises illegally and altered the topography by engaging heavy machinery, they cannot be permitted to take advantage of this lapse as the EIA authority would not know that the areas were originally covered with vegetation and a distorted and altered fact would be submitted before them for the purpose of clearance. The action of SIDCO is illegal and contrary to the EIA notification and requires to be interfered with by this Hon'ble Tribunal.

It is therefore humbly submitted that in light of the above facts it is humble prayed that this Hon'ble Tribunal may be please to allow the Application filed by the Applicant as prayed for and thus render Justice.

COUNSEL FOR APPLICANT

same amounts to misconduct is not clear to us at all except to state that he was only In-charge District Judge.

10. Thus we find that the findings recorded by the enquiry officer are totally vitiated for want of any legally acceptable or relevant evidence to support the charges of misconduct. In the absence of any evidence, the enquiry officer could not have reached the conclusion in the manner he did, and these findings affirmed by the disciplinary authority also stand vitiated.

11. The learned counsel for the respondents sought to rely upon a number of decisions of this Court to indicate the scope of interference in matters of this nature. We have adverted to the broad principles attracted to a case of this nature which are sufficient for disposal. Hence, we do not refer to other decisions.

12. We, therefore, have no hesitation to allow this appeal, set aside the order made by the High Court and thereby allow the writ petition filed by the appellant, directing his immediate reinstatement in service with continuity of service and all consequential benefits such as payment of arrears of salary and other benefits. No costs.

(2001) 6 Supreme Court Cases 496

(BEFORE SYED SHAH MOHAMMED QUADRI AND S.N. PHUKAN, JJ.)

HINCH LAL TIWARI . . Appellant;

Versus

KAMALA DEVI AND OTHERS . . Respondents.

Civil Appeal No. 4787 of 2001†, decided on July 25, 2001

A. **Tenancy and Land Laws — U.P. Zamindari Abolition and Land Reforms Act, 1950 (1 of 1951) — Ss. 122-C, 3(14) and 117(1)(i) — Allotment of abadi sites to SC/ST, agricultural labourers etc. — Pond (talab) having fallen into disuse because of drying up, but some portion covered by water in rainy season — Held, no part of it can be allotted to anyone as abadi site for purposes of building houses — Further held, Govt., including Revenue Authorities should have taken note of drying pond and redeveloped it so as to prevent ecological disaster — High Court erred in allowing writ petition of Respondents 1-10 and confirming allotment to them of a dry area of 10 biswas forming part of pond originally covering 15 biswas — U.P. Zamindari Abolition and Land Reforms Rules, 1952, R. 115-P — Objection regarding allotment of abadi sites for preferential categories — Generally — Water bodies — Partly dried up pond — Held, no portion of it can be allotted as a housing site for any category of person**

B. **Environment Protection and Pollution Control — Water bodies — Ponds drying up and falling into disuse — Held, Govt. including Revenue Authorities are duty-bound to clean and develop them so that ecological**

† From the Judgment and Order dated 16-8-2000 of the Allahabad High Court in CMWP No. 26572 of 1999

disaster may be prevented and a better environment provided to people at large

C. **Environment Protection and Pollution Control — Community resources — Need for their protection — Forests, tanks, ponds, hillocks and mountains etc., held, are nature's bounty — They help maintain the delicate ecological balance and need to be protected for that reason**

D. **Environment Protection and Pollution Control — Generally — Healthy environment — Held, enables people to enjoy a quality life which is the essence of the right guaranteed under Art. 21**

E. **Constitution of India — Art. 21 — Generally — Nature and scope — Enjoyment of a quality life, held, is the essence of the right guaranteed under Art. 21**

Allowing the appeal, the Supreme Court

Held :

The High Court proceeded to hold that considering the report of the SDO the area of 10 biswas only could be allotted and the remaining five biswas of land which have still the character of a pond, could not be allotted. It is difficult to sustain the impugned order of the High Court. There is a concurrent finding that a pond exists and the area covered by it varies in the rainy season. In such a case no part of it could have been allotted to anybody for the purpose of house building or any allied purposes. (Para 12)

The material resources of the community like forests, tanks, ponds, hillock, mountain etc. are nature's bounty. They maintain delicate ecological balance. They need to be protected for a proper and healthy environment which enables people to enjoy a quality life which is the essence of the guaranteed right under Article 21 of the Constitution. The Government, including the Revenue Authorities i.e. Respondents 11 to 13, having noticed that a pond is falling in disuse, should have bestowed their attention on developing the same which would, on one hand, have prevented ecological disaster and on the other provided better environment for the benefit of the public at large. Such vigil is the best protection against knavish attempts to seek allotment of non-abadi sites. (Para 13)

F. **Tenancy and Land Laws — U.P. Zamindari Abolition and Land Reforms Act, 1950 (1 of 1951) — Ss. 117(1)(vi) and (i) — Certain lands to vest in Gaon Sabha or other local authority and to be allotted as abadi sites — As a result of inappropriate drafting the expression "and abadi sites" is wrongly included in cl. (vi) which enumerates water bodies that vest in Gaon Sabha or other authority under the provisions of S. 117 — Interpretation of Statutes — Internal aids — Other provisions of same statute — Applied (Para 9)**

A-M/TZ/24377/C

Advocates who appeared in this case :

Ranjit Kumar, Senior Advocate (Pramod Swarup, B.M. Sharma, H.L. Srivastava, C.M. Patel and T.N. Singh, Advocates, with him) for the Appellant;

Dinesh Dwivedi, Senior Advocate (Kamlendra Misra, R.C. Verma, Ashok Sharma and D.K. Garg, Advocates, with him) for the Respondents.

ORDER

1. Leave is granted.

2. This appeal is from the judgment and order of the High Court of Judicature at Allahabad allowing in part Civil Miscellaneous Writ Petition No. 26572 of 1999, filed by Respondents 1 to 10, on 16-8-2000.

3. The dispute relates to Plot No. 774-KA measuring 15 biswas situated in Village Ugapur, Taluka Asnao, District Sant Ravidas Nagar (U.P.) (hereinafter referred to as "the pond"). It appears that proceeding was initiated by the Lekhpal of the village to allot plots of land to an extent of 15 biswas of the pond area on 11-8-1988. The SDO allotted 250 sq yards to each of Respondents 1 to 10 who are said to belong to one family. Seventeen persons of that village objected to the said allotment under Rule 115-P of the U.P. Zamindari Abolition and Land Reforms Rules (for short "the Rules"). The Additional Collector called for a report from the Tahsildar on their objections but the matter seems to have rested there as the objectors withdrew their objections. At that stage the appellant filed an application praying the Additional Collector to cancel the allotment of land in favour of Respondents 1 to 10. On 25-2-1999 the Additional Collector cancelled the allotment in question made in their favour. They carried the matter unsuccessfully in revision before the Commissioner who by order dated 12-3-1999 dismissed the revision. Challenging the correctness of the order of the Divisional Commissioner the said respondents filed Writ Petition No. 26572 of 1999 in the High Court of Judicature at Allahabad. By the impugned order the High Court partly allowed the writ petition by confirming the allotment in respect of 10 biswas and cancelling in respect of 5 biswas, which led to filing of this appeal.

4. Mr Ranjit Kumar, the learned Senior Counsel for the appellant vehemently contends that the power of allotment of the land is available in respect of abadi site and not in respect of a pond which is a public utility and meant for public use; that no part of it could have been allotted in favour of any person, much less in favour of Respondents 1 to 10 who do not fall in the specified categories of the beneficiaries under the Rules. He invited our attention to Section 122-C(1) which specifies the classes of land which can be earmarked for the provisions of abadi sites and pointed out that pond (talab) area is not among them.

5. Mr Dwivedi, the learned Senior Counsel appearing for the official respondents argued that having regard to the provisions of the Act and the Rules, it is difficult to support the allotment of the pond land in favour of Respondents 1 to 10 and that the order of cancellation of allotment is justified and valid. Mr Garg, the learned counsel appearing for Respondents 1 to 10 submits that the Lekhpal forwarded proposals for allotment of house sites on the land which ceased to be a pond, to the Additional Collector who allotted the plots in their favour, therefore, it must be assumed that the land was treated as an abadi site in respect of which allotment of house site would be permissible.

6. The short question that arises for our consideration is whether the allotted land forms part of a pond (talab) and if so, can it be allotted under Section 122-C(1) of the Act.

7. It would be useful to refer to the provisions of the U.P. Zamindari Abolition and Land Reforms Act, 1950 (referred to in this judgment as "the Act"). Under Section 4 of the Act, all estates shall vest in the State from the specified date. Section 117 of the Act deals with vesting of certain lands in a Gaon Sabha. Clause (*vi*) of the said section which is relevant for our purpose reads thus:

> "117. *Vesting of certain lands, etc. in Gaon Sabhas and other local authorities.*—(1) At any time after the publication of the notification referred to in Section 4, the State Government may, by general or special order to be published in the manner prescribed, declare that as from a date to be specified in this behalf, all or any of the following things, namely—
>
> (*i*)-(*v*) * * *
>
> (*vi*) tanks, ponds, private ferries, water channels, pathways and abadi sites,—
>
> which had vested in the State under this Act shall vest in a Gaon Sabha or any other local authority established for the whole or part of the village in which the said things are situate, or partly in one such local authority (including a Gaon Sabha) and partly in another:
>
> Provided that it shall be lawful for the State Government to make the declaration aforesaid subject to such exceptions and conditions as may be specified in such order."

8. A perusal of the provision extracted above makes it clear that tanks, ponds, private ferries, water channels, pathways and abadi sites which had vested in the State under Section 4 of the Act shall vest in the Gaon Sabha or any other local authority established for the whole or any part of the village in which the said things are situate, or partly in one such local authority and partly in another, from the date specified in the notification issued by the Government in this behalf. Section 122-C authorises the Assistant Collector, in charge of the sub-division to earmark the classes of land noted hereunder either on his own motion or on the resolution of the Land Management Committee, for the members of the Scheduled Castes and the Scheduled Tribes and agricultural labourers and village artisans. It would be apt to refer to clause (*a*) of sub-section (1) of Section 122-C which reads as follows:

> "122-C. *Allotment of land for housing site for members of Scheduled Castes, agricultural labourers etc.*—(1) The Assistant Collector in charge of the sub-division of his own motion or on the resolution of the Land Management Committee, may earmark any of the following classes of land for the provision of abadi sites for the members of the Scheduled Castes and the Scheduled Tribes and agricultural labourers and village artisans—
>
> (*a*) lands referred to in clause (*i*) of sub-section (1) of Section 117 and vested in the Gaon Sabha under that section;"

And the said clause (*i*) runs as follows:

> "117. (1)(*i*) lands, whether cultivable or otherwise, except lands for the time being comprised in any holding or grove,
>
> * * *"

9. The term "land" is defined in Section 3, sub-section (14) to mean land held or occupied for purposes connected with agriculture, horticulture or animal husbandry which includes pisciculture and poultry farming. The definition excludes land dealt with in Sections 109, 143, 144 and Chapter 7. We may note that we are not concerned with the excepted categories. From a combined reading of the provisions aforementioned, it is plain that the subject-matter of allotment of house sites is lands referred to in clause (*i*) of sub-section (1) and not tanks, ponds, private ferries, water channels, pathways referred to in clause (*vi*) of sub-section (1) of Section 117 of the Act. It appears to us that due to inappropriate drafting the expression "and abadi sites" is wrongly placed in clause (*vi*).

10. It would not be out of place to notice here that Section 122-C enumerates the categories of persons who are entitled to allotment of land and they are (*1*) Scheduled Castes, (*2*) Scheduled Tribes, (*3*) agricultural labourers, and (*4*) village artisans. For disposal of this case it is unnecessary to go into the question whether in a case of allottable land, the said respondents answer the description of the beneficiaries specified in sub-section (3) of Section 122-C of the Act.

11. Reverting to the first part of the question, from the report of the Tahsildar dated 18-4-1990 which is termed as the first report, it is clear that in the said Survey No. 774-KA, there is a pond (talab). The same is the substance of the report of the SDO dated 20-4-1990. Two more reports were called for by the orders of the High Court. They are dated 12-9-1999 and 3-4-2000. We do not find any substantial difference between these reports and the reports prepared by the Tahsildar and the SDO. We may also mention here that in khasra khatauni for the years 1387 to 1392 Fasli (corresponding to years 1980 to 1985) and 1393 to 1398 Fasli (1986-92) the description of the said survey number is given as pond. Consistent with those entries the Additional Collector found it to be a pond (talab) and cancelled the allotment of plots in favour of the said respondents. The Commissioner rightly confirmed the order of the Additional Collector. In writ petition, the High Court, in the impugned order, noted:

> "From the report of the Sub-Divisional Officer dated 3-4-2000 it is clear that the land had the character of a pond but due to passage of time most of its part became levelled. But some of the portion had still the character of a pond and during the rainy season it is covered by water. The area which is covered by water or may be covered by water in the rainy season could not be allotted as abadi site to any person."

12. On this finding, in our view, the High Court ought to have confirmed the order of the Commissioner. However, it proceeded to hold that considering the said report the area of 10 biswas could only be allotted and the remaining five biswas of land which have still the character of a pond,

could not be allotted. In our view, it is difficult to sustain the impugned order of the High Court. There is concurrent finding that a pond exists and the area covered by it varies in the rainy season. In such a case no part of it could have been allotted to anybody for construction of house building or any allied purposes.

13. It is important to notice that the material resources of the community like forests, tanks, ponds, hillock, mountain etc. are nature's bounty. They maintain delicate ecological balance. They need to be protected for a proper and healthy environment which enables people to enjoy a quality life which is the essence of the guaranteed right under Article 21 of the Constitution. The Government, including the Revenue Authorities i.e. Respondents 11 to 13, having noticed that a pond is falling in disuse, should have bestowed their attention to develop the same which would, on one hand, have prevented ecological disaster and on the other provided better environment for the benefit of the public at large. Such vigil is the best protection against knavish attempts to seek allotment in non-abadi sites.

14. For the aforementioned reasons, we set aside the order of the High Court, restore the order of the Additional Collector dated 25-2-1999 confirmed by the Commissioner on 12-3-1999. Consequently, Respondents 1 to 10 shall vacate the land, which was allotted to them, within six months from today. They will, however, be permitted to take away the material of the houses which they have constructed on the said land. If Respondents 1 to 10 do not vacate the land within the said period the official respondents i.e. Respondents 11 to 13 shall demolish the construction and get possession of the said land in accordance with law. The State including Respondents 11 to 13 shall restore the pond, develop and maintain the same as a recreational spot which will undoubtedly be in the best interest of the villagers. Further it will also help in maintaining ecological balance and protecting the environment in regard to which this Court has repeatedly expressed its concern. Such measures must begin at the grass-root level if they were to become the nation's pride.

15. The appeal is accordingly allowed. There shall be no order as to costs.

(2001) 6 Supreme Court Cases 501

(BEFORE S. RAJENDRA BABU AND K.G. BALAKRISHNAN, JJ.)

UNION OF INDIA AND ANOTHER . . Appellants;

Versus

CHIRANJI ESTATE (P) LTD. AND ANOTHER . . Respondents.

Civil Appeal No. 6053 of 1998†, decided on August 7, 2001

Income Tax — Compulsory purchase of immoveable property under sale — Fair market value of the property under sale if exceeded the

† From the Judgment and Order dated 17-12-1997 of the Delhi High Court in CWP No. 5613 of 1993

No. J-11013/41/2006-IA.II(I)
Government of India
Ministry of Environment & Forests

Paryavaran Bhavan,
C.G.O. Complex, Lodi Road,
New Delhi-110003.

Dated 19th August, 2010

Office Memorandum

Sub: Activities which can be undertaken without prior Environmental Clearance - Clarification regarding.

Instances have come to the notice of this Ministry where the project proponents have undertaken construction activities relating to the project at site without obtaining the requisite prior environmental clearance as is mandated under the EIA Notification, 2006. It is to reiterate that the EIA Notification, 2006 mandates prior environment clearance to be obtained in respect of all the activities listed therein following the prescribed procedure. No activity relating to any project covered under this Notification including civil construction, can be undertaken at site without obtaining prior environmental clearance except fencing of the site to protect it from getting encroached and construction of temporary shed(s) for the guard(s).

All the project proponent may note that any contravention of the provisions of the EIA Notification amounts to violation of the Environment (Protection) Act, 1986 and would attract penal action under the provisions thereof. The project proponent may also note that in case of any project where TORs have been prescribed for undertaking detailed EIA study and where construction activities relating to the project have been initiated by them, the TORs so prescribed may be suspended / withdrawn in addition to initiating penal action under the provisions of the EP Act, 1986.

This issues with the approval of the Competent Authority.

(S.K. Aggarwal)
Director

To

1. All the Officers of IA Division
2. Chairpersons / Member Secretaries of all the SEIAAs/SEACs

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.10.2015

Date of Reserving the Order	***Date of Pronouncing the Order***
09.09.2015	**30.10.2015**

Coram

THE HON'BLE Mr.SANJAY KISHAN KAUL, CHIEF JUSTICE

THE HON'BLE Mr.JUSTICE M.SATHYANARAYANAN,
and
THE HON'BLE Mr.JUSTICE T.S.SIVAGNANAM

W.P.No.1294 of 2009

T.K.Shanmugam
Secretary,
C.P.I. (M) North Chennai District Committee,
52, Cooks Road,
Perambur,
Chennai – 600 011. ... Petitioner

Vs

1. The State of Tamil Nadu
   Rep., by its Secretary to Govt.,
   Department of Revenue,
   Fort St., George,
   Chennai – 600 009.

2. The State of Tamil Nadu
   Rep., by its Secretary to Govt.,
   Department of Public Works,
   Fort St., George,
   Chennai – 600 009.

3. The Collector,
Chennai District,
Chennai.

4.The Collector,
Thiruvallur District,
Thiruvallur.

5.Chennai Metropolitan Development Authority,
Rep., by its Chairman,
Egmore,
Chennai – 600 008.

6.The Managing Director,
Chennai Metropolitan Water Supply and
Sewerage Board,
Chennai – 600 002.

7.C.Balakrishnan

8.Sivakasi Vattara Vari Selutthuvor Sangam
(Sivakasi Region Tax Payer's Association),
Reg No.81 of 1994,
Rep., by its President Mr.K.Mariappan,
Old No.110, New No.448, Kamaraj Road,
Sivakasi Virudhunagar District. .. Respondents

R-7 is impeaded as per order dated 05.08.2015 in M.P.No.1 of 2015 in W.P.No.1294 of 2009

R-8 is impleaded as per order dated 02.09.2015 in M.P.No.2 of 2015 in W.P.No.1294 of 2009.

Prayer :-Petition filed under Article 226 of the Constitution of India praying to issue Writ of Mandamus, to direct the third and fourth respondents to grant patta and regularize the encroachments in Survey Numbers 1, 2 and 4 (Parts) in No.60, Menambedu Village and in Survey No.813 in No.61, Korattur Village, Ambattur Taluk in terms

of G.O.Ms.No.854, dated 30.12.2006, read with G.O.Ms.No.579, dated 03.10.2008, issued by the first respondent herein and in terms of the judgment dated 29.04.2008 in W.P.Nos.16636 of 1995 and 22274 of 2007 reported in 2008 (5) MLJ 1425 and to issue such further or other orders.

For petitioner .. Mr.N.G.R.Prasad for
M/s.S.Sivakumar & J.Prataban

For Respondents .. Mr.P.H.Arvind Pandian AAG
Assisted by V.R.Kamalanathan AGP
for RR1 to R4

Mr.K.Rajasrinivas for R5

Mr.N.Ramesh for R6

Mr.S.Shinu for R7

Mr.V.N.Santha Ram for R8

Mr.Naveen Kumar Murthi
(Amicus Curiae)

O R D E R

THE HON'BLE THE CHIEF JUSTICE,
M.SATHYANARAYANAN,J &
T.S.SIVAGNANAM,J.

The petitioner, Secretary of a political party, has filed this Writ Petition designed as a Public Interest Litigation praying for a direction upon the Collector, Chennai District and the Collector, Thiruvallur District, respondents 3 and 4 herein to grant patta and regularize the

encroachment in Survey Nos.1, 2 and 4 (Parts) in No.60, Menambedu Village and in Survey No.813 in No.61, Korattur Village, Ambattur Taluk in terms of Government Orders in G.O.Ms.No.854, dated 30.12.2006, read with G.O.Ms.No.579, dated 03.10.2008, issued by the Secretary to Government of Tamil Nadu, Department of Revenue, the first respondent in terms of the decision of the Division Bench of this Court in the case of *Sivakasi Region Tax Payers Association vs. State of Tamil Nadu reported in 2008 (5) MLJ 1425*.

2. Before we go into the point of reference laid before the Full Bench, it would be necessary to have a prelude on the factual scenario. The petitioner seeks to canvass the case of the encroachers in the lands in question and seeks for a direction to the Revenue Authorities to grant patta to them in accordance with the Government Orders dated 30.12.2006 and 03.10.2008. The petitioner is said to have submitted a representation on 17.12.2007 to the Hon'ble Chief Minister to grant patta to the encroachers in lakes/water bodies, which no longer retain the characteristic of a water body. On 18.06.2008, a representation was submitted with reference to the subject encroachment in Korattur Eri and a request was made for grant of patta by reclassifying the land in question. The petitioner would state

that Greater Chennai consists of Chennai Corporation area and about 176 sq.kms of Thiruvallur District and 376sq.kms of Kancheepuram District. It is further stated that North Chennai area extends to about 464.53 sq.kms and the density of the population is quite high. The petitioner would state that the Government issued G.O.Ms.No.854, which was a great reprieve for the weaker sections of the society and about 40,000 families submitted applications for grant of patta. Though G.O.Ms.No.854 was a one time scheme for regularizing the encroachments, subsequently, vide G.O.Ms.No.579, the scheme was extended upto 30.09.2009. The petitioner would state that the encroachers in the subject area had also submitted applications for grant of patta in terms of G.O.Ms.No.854 and when those applications were pending, eviction notices were issued to the encroachers between November 2007 and July 2008 stating that the encroachment is in a water body and this notice appears to have been issued pursuant to directions of the First Bench in W.P.No.25776 of 2006 and W.P.No.17915 of 1993, dated 04.10.2007. Those Writ Petitions were filed as Public Interest Litigations seeking for Writ of Declaration to declare the encroachments in water bodies and water courses, construction made thereon either with permission of the State by way of reclassification or issuance of patta or without permission of the

State to be declared illegal, unconstitutional and crime against mankind and consequently for direction to remove all types of encroachment, restore all water bodies or water course to their original shape, size, capacity etc., and to initiate departmental and/or criminal action against the erring officials. The Writ Petition were disposed of by issuing the following directions:-

> *7.Having considered the difficulties expressed by the learned Government Pleader in carrying out the process of removal of encroachments, we pass the following the order:*
>
> *(i) The secretaries, Public Works Department, in consultation with the respective District Collectors, are directed to decide the programme of evicting the encroachments in the water bodies falling in Categories 'A' and 'B' referred to above, by the end of November, 2007 and complete the process of removal of above, by the end of May, 2008.(emphasis supplied)*
>
> *(ii) The State Government is at liberty to consider, in appropriate cases, grant of alternative sites for re-location of the encroachers, as per their policy decision. All the authorities concerned like the legal authorities as well as the police officials, will extend their full co-operation to the Public Works Department/District Collectors for effectively implementing the policy decision of the Government of removal of encroachments from water bodies.(emphasis supplied).*
>
> *(iii) No civil court shall entertain any suit or proceeding in connection with the removal of the encroachments in the water bodies and every person, who has put up any*

construction in such water bodies and who is aggrieved by the action taken by the authorities of removal of such encroachment from the water bodies, is at liberty to move this Court under Article 226 of the Constitution of India and all such applications shall be placed before the First Bench of this Court.

(iv) The State Government is directed to identify and take stern action against the land grabbers who have sold the lands in the water bodies to innocent purchasers, which would act as a deterrent. The survey numbers of the lands in various water bodies in question are directed to be notified and the Registration Department concerned is directed not to register any transaction in respect of such lands falling under the water bodies.(emphasis supplied)

(v) In respect of the Porur tank, the respondents have already removed all the encroachments and the said water body is free of any encroachment. In case any encroachment is made on the water body in future, it will be open for the authorities to remove such encroachment even without issuing any notice to such encroachers.

(vi) It is also made clear that even after the encroachments from the water bodies are removed as per the policy decision of the State Government, the respective District Collectors shall keep a close watch over such water bodies and in case of any fresh encroachment thereon, the District Collectors are at liberty to remove the same with the help of police, wherever necessary, without any notice to such encroachers.(emphasis supplied)

The learned counsel for the petitioners state that certain tanks and eris in kakkalur, Chitlapakkam and

Thirunindravur are not covered by the list furnished by the State Government. Mr.Raja Kalifulla, learned Government Pleader, however, submits that the State Government will follow the procedure enumerated above in respect of these water bodies also and wherever possible, remove the encroachments within the time frame fixed by this Court.

The Secretary, Public Works Department shall file the Action Taken Report before this Court on or before 15th June, 2008.

3. It is submitted that Korattur Tank, which is subject matter of the present Writ Petition, is one among 19 water bodies in which encroachments were directed to be cleared and the petitioner confines this Writ Petition to Survey Nos. 5 to 7 of Menambedu Village and Survey No.813 of Korattur village. The petitioner seeks to justify the demand of the encroachers for grant of patta by stating that the water in the Korattur tank was declared as unfit for drinking purpose by the Chennai Metropolitan Water Supply and Sewerage Board (CMWSSB) and there are approximately 3400 persons who have constructed houses of which 900 of them having served with eviction notices by the officials of the Public Works Department. The petitioner would further state that pursuant to orders passed by the Government in G.O.Ms.No.417, dated 03.09.2003, 29 lakes around the Chennai City

were transferred to the control of CMWSSB for augmentation of the Chennai City Water Supply and the Korattur lake is one among the 29 lakes and therefore, it appears to be the contention of the petitioner that the Public Works Department could not have initiated action for eviction. The petitioner would further state that the encroachers have been issued Ration cards, Voter Identity Cards and their houses have electricity service connection and several of them have purchased the land in question by registered sale deeds and all of them belong to the lower income group and largely daily wage earners. The petitioner would further state that the validity of the G.O.Ms.No.854, was upheld by the Division Bench in the case of *Sivakasi Region Tax Payers Association* (supra), and in the light of the observations made by the Division Bench, the encroachers who have encroached the subject area are entitled for regularization of their encroachment in terms of the said Government Order. Thus, the petitioner contends that the benefit of the G.O.Ms.No.854, should be extended to the encroachers, their encroachments to be regularized after reclassification of the land as has been done to similarly placed persons, failing which it would be discriminatory and violative of Article 14 of the Constitution of India. The petitioner would further state that the water body having fallen to disuse, it is open to the Government to grant patta to the encroachers

and if their occupation is not regularised, they would be put to great hardship and would be rendered homeless.

4. Mr.N.G.R.Prasad, learned counsel for the petitioner submitted that in terms of G.O.NO.854, dated 30.12.2006, the encroachers of the land in question are entitled for grant of patta as admittedly the land is no longer a water body and the Government Order provides for a method by which house site patta can be granted even in respect of lands which have been classified as water way poromboke. It is further submitted that the validity of G.O.Ms.No.854, has been upheld by the Division Bench in the case of *Sivakasi Regional Tax Payer Association* case and the Division Bench took note of the decision in the case of ***L.Krishnan vs. State of Tamil Nadu*** reported in ***2005 (4) CTC 1*** and held that G.O.Ms.No.854, is not illegal. It is further submitted that the encroachers hail from the economically lower strata of society and they are daily wage earners and have been in settled occupation for several years and they should not be dislodged from the area in question, more particularly, when the area is no longer a water body, though it has been classified as such in the Revenue records. The learned counsel placed reliance on the decision of the Hon'ble Supreme Court in the case of *Susetha vs. State of Tamil Nadu Civil*

Appeal No.3418 of 2006, dated 08.08.2006, [reported in (2006) 6 SCC 543], and in the case of *Animal and Environment Legal Defence Fund vs. Union of India, W.P.(Civil) No.785 of 1996, dated 05.03.1997 [Reported in (1997) 3 SCC 549]*.

5. The Collector of Chennai, third respondent in her counter affidavit submitted that Survey No.53/2(Part) of Kolathur village is classified as "Eri (ulvai)", sarkar poramboke, vested with the Government and corresponds to T.S.No.2/1, Block No.4 and it is an objectionable water course land. It is further submitted that as the said land is a water course land, pattas cannot be granted to the encroachers as sought for by the petitioner. It is further submitted that the Government Orders referred to by the petitioner speaks about regularisation of encroachments in unobjectionable sites and therefore, the Government Orders cannot be applied to the cases canvassed by the petitioner. Further, it is submitted that this Hon'ble Court has held that no encroachment shall be allowed on water bodies and they have to be removed as immediately as possible and therefore, the question of granting patta does not arise.

6. The Intervener, the 8th respondent, an association called the Sivakasi Region Tax Payers Association, submits that the decision in the case of ***L.Krishnan*** (supra), has been approved by the Hon'ble Supreme Court in the case of ***Jagpal Singh vs. State of Punjab*** reported in ***(2011) 11 SCC 396*** and in view of the same even those Water Bodies which are not covered under the purview of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007, (Tank Act), if encroached, are liable to be removed. It is further submitted that Section 11 of the Tank Act states that the provisions of the said Act shall be in addition to and not in derogation of any other law for the time being in force and therefore, the provisions of the Tamil Nadu Land Encroachment Act, 1905, (Encroachment Act) and the provisions of the Revenue Standing Orders (RSO), could be invoked for removal of encroachments in water bodies not covered under the provisions of the Tank Act. It is further submitted that the Association filed two Writ Petition in W.P.Nos.16626 of 1995 and W.P.No22274 of 2007, questioning the validity and correctness of G.O.Ms.No.867 and G.O.Ms.No.854, which provided for regularisation of encroachment and both the Writ Petitions were dismissed by common order dated 29.04.2008, *(2008-5-MLJ-1425- Sivakasi Region Tax Payers Association vs. State of Tamil Nadu*), against which the

association has preferred appeal before the Hon'ble Supreme Court in S.L.P.No.20061-62 of 2008 and they are pending and without prejudice to their right to pursue the matter before the Hon'ble Supreme Court, seek to intervene in this proceedings to assist this Court. It is further submitted that the Government of Tamil Nadu during the period from 2008 to 2014, have passed ten Government Orders for regularisation of encroachments and the petitioners have challenged the same in particular, the encroachments in Water Body, as there is a need to protect water bodies.

7. The learned Additional Advocate General submitted that the provisions of the Tamil Nadu Land Encroachment Act was upheld by the Hon'ble Supreme Court in the case of ***Pandia Nadar vs. State of Tamil Nadu*** reported in ***(1974) 2 SCC 539*** and by virtue of the provisions of the Encroachment Act, the Government is entitled to evict the encroachments from the Government Land. The learned Additional Advocate General produced copy of the Government Letter dated 07.09.2015, written by the Secretary to Government, Revenue Department, to the District Collector, Chennai District stating that after issuance of G.O.Ms.No.854, 16363 encroachments in water course poramboke have been regularised upto 30.06.2007, and in view of the

stay granted by this Court, encroachments in water course poramboke have not been regularised and necessary instructions were issued to the Collectors vide Government Letter dated 09.07.2007, to restrain the further issue of house site pattas in water bodies and water course poromboke until further orders and the scheme was lastly extended in G.O.Ms.No.372, dated 26.08.2014, upto 31.03.2015, to regularise the encroachments in unobjectionable poramboke alone and as of now, there is no Scheme or Government Orders to regularise the encroachments in water course poramboke. Thus the factual position that emerges is that after 30.06.2007, the Government has not regularised encroachments in water course poramboke and as of now, there is no Scheme or Government Orders to regularise such encroachments.

8. The learned Amicus, who was appointed to aid and assist the Court, placed before us the various decisions on the point namely, ***L.Krishnan vs. State of Tamil Nadu*** reported in ***2005 (4) CTC 1***; ***Susetha vs. State of Tamil Nadu*** reported in ***(2006) 6 SCC 543***; ***Anti Corruption Movement, Rep., by General Secretary vs. Govt., of Tamil Nadu*** reported in ***2008-1-MLJ-417***; **Sivakasi Regional Tax Payers Association vs. State of Tamil Nadu**

reported in ***2008-5-MLJ-1425***; ***A.Rajendran vs. Tamil Nadu Pollution Control Board*** reported in ***(2009) 8 MLJ 1041***; ***S.Amutha vs. The District Collector*** reported in ***2010-1-CWC-570***; ***The Shozhanganallur Phase I and Pase II TNHB affected Residents Welfare Association, rep., by its Secretary K.Appadurai vs. The Shozhanganallur Township Panchayat Union & Ors.,*** reported in ***2010 (4) CTC 189***; ***T.S.Senthilkumar vs. Government of Tamil Nadu & Ors.,*** reported in ***2010-3-MLJ-771***; ***S.Venkatesan vs. Government of Tamil Nadu & Ors.,*** reported in ***2011 (1) CWC-913***; and the decision of the Division Bench in *W.P.(MD).No.1496 of 2014, dated 06.08.2014, R.Lakshmnan vs. Government of Tamil Nadu & Ors.*

9. We have heard the learned counsels appearing for the parties and the learned Amicus and given our anxious consideration to the submissions made.

10. The order of reference dated 05.08.2015, passed by the First Bench in W.P.No.1294 of 2009, reads as follows:-

> *The public interest litigation seeks patta rights for the persons who have encroached on land, which is undisputedly water course land. The claim of the petitioner is predicated on*

a long period occupation.

2. The submission of the learned counsel for the petitioner is that the judgment of the Division Bench of this Court in ***L.Krishnan vs. State of Tamil Nadu (2005 (4) CTC 1)*** *seeking removal of encroachment from water bodies is general in character, as also the observations of the Honourable Supreme Court in different judicial pronouncements. He submits that this aspect has been examined by the Division Bench of this Court in* ***Sivakasi Region Tax Payers Association vs. State of Tamil Nadu, rep., by its Secretary to Government & Others (CDJ 2008 MHC 2127),*** *where it has been observed that in pursuance to the judgment of the Division Bench of this Court in L.Krishnan's case (supra), the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007, came into being. This Act provides for checking encroachment and eviction of encroachment in tanks which are under the control and management of Public Works Department. It is, thus, submitted that such of the tanks which do not fall within the purview of the Act cannot be subjected to requiring protection from encroachment and this, persons like the petitioner cannot be evicted.*

3. The question thus arises for consideration is whether the provisions of the said Act in effect in any manner dilutes the wider compass of the observations made in L.Krishnan's case (supra) or any other judgments of the Hon'ble Supreme Court, requiring protection of water bodies.

4. We are of the view that this matter needs to be examined by a Larger Bench of this Court. Papers be prepared. The matter be laid before the Full Bench on 02.09.2015.

5. We appoint Mr.Naveen Kumar Murthi as Amicus to

assist us in this matter and a complete set be supplied by the Registry to him.

11. To answer the reference, it would be necessary to take note of the circumstances under which the Tank Act was enacted and the other related proceedings.

12. A Public Interest Litigation was filed by one Mr.L.Krishnan seeking for a direction against the Government and the Revenue Officials to remove encroachments made by certain private parties in a Odai Poramboke in Villupuram District. While disposing of the Writ Petition, the Division Bench pointed out that ponds, tanks and lakes have been an essential part of the people's natural resources, however in recent years, these have been illegally encroached by unscrupulous persons and this has had adverse effect on the lives of the people. Further, it was pointed out that day in and day out, many petitions are filed by way of Public Interest Litigation alleging encroachments into ponds/tanks/lakes/odai Poramboke etc., in different parts of the State, more particularly in villages. Having regard to the acute water scarcity prevailing in the State of Tamil Nadu, it was pointed out that a time has come where the State has to take some definite measures to restore the already earmarked water storage tanks, ponds and lakes

as disclosed in the revenue records to its original status as part of its rain water harvesting scheme. The Court took judicial notice of the action initiated by the State Government by implementing the water harvesting scheme as a time bound programme. It was further pointed out that it is imperative that such natural resources provided for water storage facilities are maintained by the State Government by taking all possible steps both by taking preventive measures as well as by removal of unlawful encroachments. After referring to the decision of the Hon'ble Supreme Court in the case of ***Hinch Lal Tiwari vs. Kamal Devi*** reported in ***(2001) 6 SCC 496***, it was held that the endeavour of the State should be to protect the material resources like Forests, Tanks, Ponds etc., in order to maintain ecological balance, which would pave the way to provide a healthy environment and enable the people to enjoy a quality life, which is essence of the right guaranteed under Article 21 of the Constitution. It was further held that in the State of Tamil Nadu having regard to the precarious water situation prevailing in the major part of the year, it is imperative that such noted water storage resources, such as tanks, odai, oornis, canals etc are not obliterated by encroachers. Reference was also made to Article 48A of the Constitution. The Division Bench after referring to the other decisions of the Hon'ble Supreme Court in

Kesavananda Bharathi vs. State of Kerala reported in ***(1973) 4 SCC 225***; ***Animal and Environment Legal Defence Fund vs. UOI,*** reported in (***1997) 3 SCC 549; M.C.Metha vs. UOI*** reported in ***(1997) 3 SCC 715,*** issued certain directions. The directions issued were two fold firstly, a positive direction to remove the encroachments over odai poramboke which was complained of in the said Public Interest Litigation, secondly a direction to the State Government to identify all such natural water resources in different parts of the State and wherever illegal encroachments are found, initiate appropriate steps in accordance with the relevant provisions of law for restoring such natural water storage resources which have been classified as such in the revenue records to its original position so that the suffering of the people of the State due to water shortage is ameliorated.

13. After the judgment in the case of ***L.Krishnan***, the State Government enacted the Tank Act as an Act to provide for checking the encroachments, eviction of encroachments in tanks which are under the control and management of Public Works Department, protection of such tanks and for matters incidental thereto. In the statement of objects and reasons, it is stated that under the existing scenario, it has become imperative to protect the water bodies from damages and encroachments, the tanks and its components, if not

protected, and restored to its original capacity, may cause reduction in area of cultivation, depletion of Ground Water, environmental degradation and loss of production of food grains. Though this was the object for enacting the law, the Government thought fit to restrict the applicability of law to the tanks which are under the control and management of the Public Works Department.

14. During the relevant time, the *Sivakasi Region Tax Payers Association* filed Writ Petitions challenging the Government Orders in particular in G.O.Ms.No.854, which paved way for regularising encroachments on Government lands including lands classified as water course Poromboke and the validity of the Government Order was upheld by judgment dated 29.04.2008, with certain observations.

15. Certain provisions of Tank Act namely, Sections 4 to 10 were challenged in a Writ Petition with a prayer to declare those provisions as null and void and contrary to Article 14 of the Constitution of India on the ground that those provisions confer upon the executive, unguided and uncanalised discretionary power, since they denied to the persons aggrieved an opportunity of being heard. The said Writ petition was heard by a Division Bench to which one of

us (M.Sathyanarayanan,J.) was a party. The Division Bench took note of the various decisions including the decision in the case of *Sivakasi Region Tax Payers Association* (supra), disposed of the Writ Petitions without declaring the provisions of the Act as unconstitutional, since no opportunity is given and held that there is nothing in the Act which excludes the principles of natural justice, the Act (Tank Act) does not specifically indicate that the encroachers do not have right to be heard and issued the following directions vide judgment dated 10.02.2010, reported in ***2010 3 MLJ 771***,

> *(a)The State shall scrupulously follow the provisions of the Act. It shall also ensure that all the District Collectors and other authorities, who are concerned with the observance of the provisions of the Act, strictly follow the letter, dated 10.10.2007.*
>
> *(b)The District Collectors, while creating adequate awareness, may also enlist the help of Self Help Groups to disseminate the message that protection of water resources will actually promote the welfare of the villages and therefore it is in the interest of every citizen to make sure that he is not encroaching on a tank and to clear tanks and water bodies which are filled with garbage and to avoid dumping of garbage will automatically enhance and improve the public health of the community.*
>
> *(c)As already stated, the State will ensure that alienation of tank poramboke lands, citing public interest, shall not be made under Section 12 of the Act. The meaning and weight of the*

words "public interest" shall be implicitly borne in mind.(emphasis laid)

(d)The State holds all the water bodies in public trust for the welfare of this generation and all the succeeding generations and, therefore, protecting water bodies must be given as much weightage, if not more as allowing house-sites or other buildings to come up on such tanks or tank poramboke lands, and water charged lands. (emphasis laid)

(e)The State shall also bear in mind the provisions of this Act and the objects and reasons of this Act while issuing patta to persons who claim to have resided in the same place for a number of years and if necessary modify the relevant Government Orders to make sure that the implementation of these G.Os. are not in violation of this very valuable and important Act, namely Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007. (emphasis laid)

(f)We uphold the Act, while we provide for observance of principles of natural justice within the Act itself, as under.

> *(i) When the officer of the Public Works Department publishes the notice in Form-II in the notice boards of the offices of Village Administrative Officer, Village Panchayat Office and the Water Resources Organization, notice shall also be issued to the alleged encroacher to the effect that the survey indicates that the place in his/her occupation is an encroachment and secondly, the notice in Form-III of the Rules may be issued.*
>
> *(ii) On receipt of the said notice, the encroacher may give his/her objections relating to the classification of the land in his/her occupation and the nature of the*

encroachment within a period of two weeks.

(iii) Thereafter, the authorities shall consider the objections and pass appropriate orders, in accordance with the provisions of the Act, giving time to the encroachers to remove the encroachment.

16. The Division Bench while issuing the above directions noted that persistent developmental activities, ignoring the need to protect natural resources, have caused irreparable damage and it is necessary that the State does not invoke Section 12 of the Tank Act which results in alienation of tank poramboke lands citing public interest. That protection of water resources is as much as a public interest issue as any other requirement and the Government may also bear in mind that water resources have to be protected while issuing patta to persons who claim to have resided in the same place for a number of years. Among the directions issued by the Division Bench, the direction issued in sub-para (d) and sub-para (e) are very relevant to the present issue. The State was reminded of its responsibility in holding water bodies as it is held in public trust and much weightage should be given for protecting them, if not more as allowing house sites or other buildings to come up on such tanks or tank poramboke lands and water charged lands. The State was exhorted to bear in mind the provisions of the Tank Act and the objects and reasons for

enacting the same, while considering the request for grant of patta to those who claimed to have resided in the same place for a number of years and if necessary modify the Government orders to make sure that the implementation of the Government Orders are not in violation of the very valuable and important enactment.

17. Though the judgment upholding the validity of the Tank Act was rendered on 10.02.2010, wherein directions were issued, one among which was a positive recommendation for modifying the relevant Government Orders, nothing appears to have been done by the Government except to extend the benefit of the Government Order in G.O.Ms.No.854, from time to time and the last of such extension was made upto 31.03.2015. Thus, it is clear that but for the order of stay granted in the Writ Petitions, the Government would have implemented G.O.Ms.No.854, even to encroachments in water bodies and the same has been put on hold since July 2007.

18. In the case of ***Jagpal Singh*** (supra), certain trespassers unauthorisedly occupied an extent of land in a village which was a pond and the trespassers filled the village pond and made construction thereon. Action for eviction of the unauthorised occupants was

initiated, but the Collector, Patiala, held that it would not be in public interest to dispossess the encroachers and directed the Grama Panchayat to recover the cost of the land, thus regularising the illegality. On appeal by some third parties to the Commissioner, the order of the Collector was set aside, holding that the Grama Panchayat was colluding with the encroachers. The Commissioner held that the village pond has been used for the common purpose of the villagers and cannot be encroached upon by any private parties. Against the order of the Commissioner, a Writ Petition was filed before the High Court which was dismissed by the learned Single Judge and affirmed the Division Bench. This order was put to challenge before the Hon'ble Supreme Court wherein it was pointed out that the appellants therein were trespassers who illegally encroached on the Grama Panchayat lands by using muscle power and money power in collusion with officials of the Grama Panchayat and such kind of patent illegality must not be condoned and even if houses have been built on the land in question they must be ordered to be removed and the possession of the land must be handed back to the Grama Panchayat. It was further pointed out that many State Governments have been issuing orders permitting allotment of Grama Sabha land to private persons on payment of some money and all such Government Orders are illegal

and should be ignored. Referring to the decision in ***Hinch Lal Tiwari*** (supra) which was followed in ***L.Krishnan*** (supra), it was held that land recorded as pond must not be allowed to be allotted to anybody for construction of house or any allied purpose and a similar direction was passed in the said case also. Ultimately, a direction was given to all State Governments in the country that they should prepare schemes for eviction of illegal/unauthorised occupants of the grama sabha/grama panchayat/poramboke/shamlat land and these must be restored for the common use of the villagers of village. It was further directed that the scheme should provide for speedy eviction of such illegal occupants after giving them a show cause notice and a brief hearing, long duration of such illegal occupation or huge expenditure in making construction thereon or political connection must not be treated as a justification for condoning the illegal act or for regularising their illegal possession and regularisation should only be permitted in exceptional cases namely, where lease has been granted under some Government notification to landless/labourers or members of the schedule caste/schedule tribe or where already a school, dispensary or other public utility was on the land. Copy of the order was directed to be sent to all Chief Secretaries of all State Governments/Union Territories of India, who were directed to ensure strict and prompt

compliance of the order and submit compliance report to the Hon'ble Supreme Court from time to time.

19. The above direction issued by the Hon'ble Supreme Court appears to have not been complied by the State of Tamil Nadu, as the instruction given by the Secretary to Government, Revenue Department shows that even after the decision of the Hon'ble Supreme Court, which was rendered on 28.01.2011, the Government of Tamil Nadu has been repeatedly issuing Government Orders and the last of such order having been issued in G.O.Ms.No.372, dated 26.08.2014. Thus, to say the least the Government of Tamil Nadu is in contempt of the order passed by the Hon'ble Supreme Court.

20. In the case of ***R.Lakshmnan*** (supra), a Public Interest Litigation was filed before the Madurai Bench of this Court to restore the capacity of the water bodies as on date of the 1923 survey. The Writ Petition was disposed of by directing the Government to issue appropriate direction which should be mandatory in nature to all local bodies, including Corporation, Municipalities and Panchayats not to grant any planning permission for any construction that is put up in a water body and not to grant approval for any lay out or building plan,

if the land is located either in part or in whole, in a water body and directing the Government to contemplate issuing of an order under the Tamil Nadu Town and Country Planning Act making it mandatory to enclose a certificate of the Revenue Authority along with building plan application, certifying that no part of the land is located in a water body and wrong information if provided, the person who issued the certificate to be held responsible. Further direction was issued to preserve and protect the water bodies and complete the exercise already undertaken within a period of one year and Civil Courts not to grant any interim protection order restraining the authorities from evicting a person from a water body. This decision was rendered by the Division Bench on 06.08.2014, fixing a prematory time limit of one year which has already lapsed. Nothing has been placed on record by the first and second respondents that the order of Division Bench has been complied with. Thus, this is the third default committed by the Government of Tamil Nadu.

21. We may now refer to certain provisions of the RSOs with particular reference to water bodies. Part II of the RSO deals with disposal of land. RSO 15(5) states that only land, the assignment of which is unobjectionable shall be assigned, lands acquired for communal purposes shall not be assigned, tank-bed lands should on

no account has been assigned without consulting an appropriate technical officer including the Chief Engineer and without specific orders from the Government. RSO 15(38)(ii) deals with water course poramboke and states that great care should be taken to preserve the margins of canals, channels and streams and the transfer and assignment of such water course source poramboke can be ordered only by Government in consultation with the Commissioner of Land Administration and the Chief Engineer (PWD), vide G.O.Ms.No.1267, Revenue, dated 29.12.1997. General Instructions given for Land Administration states that encroachments in poramboke lands like water sources/courses, gracing grounds, temple lands, kalam, etc., are considered as highly objectionable and these encroachments have to be evicted. The Revenue, Public Works and Highways Department authorities and local bodies like Municipalities and Corporation have been empowered to evict unauthorised encroachments after giving due notice under the Tamil Nadu Land Encroachment Act, 1905, for which a District level Committee under the Chairman of the District Collector has been constituted. Insofar as the directions contained in the RSO which are inconsistent with any other subsequent enactment or decision of this Court or the Hon'ble Supreme Court are deemed to have been superseded.

22. The common thread which runs through the manual of Revenue Administration is to preserve water courses as such. Though certain Government Orders were issued during 1970s, permitting assignment of Tank-beds with due permission, if those Government Orders seek to regularise illegal encroachment in tank-beds, water channels or area abutting and on margins of water channels to that extent the Manual of Revenue administration and the Government Orders are deemed to have been superseded, more particularly in the light of the directions issued by the Hon'ble Supreme Court in the case of ***Jagpal Singh*** (supra). However, the manual of Revenue Administration does not specifically state about assigning tank beds for a different user or concession to house site etc after reclassification.

23. The legal position being thus, we are required to decide as to whether the provisions of the Tank Act does in any manner dilute the observations made in ***L.Krishnan***'s case, which view was quoted with approval in ***Jagpal Singh's*** case. After having perused the decisions referred supra, the only answer to this question should be in the negative. We support our conclusion with the discussion in the following paragraphs.

24. The Division Bench in ***L.Krishnan's*** case referred to the decision of the Hon'ble Supreme Court in the case of ***Hinch Lal Tiwari,*** wherein the importance of tanks/ponds etc was highlighted in the following terms:-

> *13. It is important to notice that the material resources of the community like forests, tanks, ponds, hillock, mountain etc. are nature' s bounty. They maintain delicate ecological balance. They need to be protected for a proper and healthy environment which enables people to enjoy a quality life which is the essence of the guaranteed right under Article 21 of the Constitution. The Government, including the Revenue Authorities i.e. Respondents 11 to 13 having noticed that a pond is falling in disuse, should have bestowed their attention to develop the same which would, on one hand, have prevented ecological disaster and on the other provided better environment for the benefit of the public at large. Such vigil is the best protection against knavish attempts to seek allotment in non-abadi sites." (emphasis supplied)*

25. After referring to the above observations, it was pointed out that having regard to the precarious water situation prevailing in major part of the year in the State of Tamil Nadu, it is imperative that water storage resources such as tanks, ponds, odai, canals, etc., are not obliterated by the encroachers. The observations made by the Hon'ble Supreme Court in the case of ***M.C.Metha,*** (supra), observing that the "precautionary principle" makes it mandatory for the State

Government to anticipate, prevent and attack the cause of environment degradation. Ultimately, the Division Bench directed the State Government to identify all such water resources in different parts of the State and wherever illegal encroachments are found, initiate appropriate steps in accordance with the relevant provisions of law for restoring such natural water storage resource which has been classified, as such in the revenue records to its original position.

26.Thus, the Division Bench in ***L.Krishnan,*** did not limit its direction to water bodies under the control of the Public Works Department. In fact, it has issued directions for all natural water resources in the different parts of the State of Tamil Nadu and wherever illegal encroachments are found to take steps for removal of the encroachments in accordance with the relevant provisions of law. The State Government thought fit to enact the Tank Act and though the object of the enactment was couched on a border principle, the Act was restricted to the encroachments in tanks which are under the control and management of the Public Works Department. The question would be as to whether this would in any manner alter the position or could have an effect of diluting the directions/observations of the Division Bench in ***L.Krishnan***'s case. The answer to this question shall be an emphatic "NO".

27. Section 11 of the Tank Act, specifically states that the operation of other laws not to be affected, as the provisions of the Tank Act shall be in addition to and not in derogation of any other law for time being in force. Thus, the encroachments in respect of water bodies which are not covered under the provisions of the Tank Act have to be necessarily removed by resorting to the procedure under the Land Encroachment Act. We are not inclined to ignore the directions issued by the Division Bench in ***L.Krishnan***'s case, as general observations, as observed in *Sivakasi Region Tax Payers Association's* case. We may hasten to add that in ***L.Krishnan***'s, the Division Bench issued positive direction to the State Government and this cannot be brushed aside as general observations and more so in the light of the observations in the case of ***Jagpal Singh***, wherein pointed directions were issued by the Hon'ble Supreme Court to all the Chief Secretaries. In *Sivakasi Region Tax Payers Association's* case though the Division Bench upheld the G.O.Ms.No.854, it held that the said G.O., must read along with the provisions of the Land Encroachment Act, Tank Act and Standing Orders of Board of Revenue. If that be the interpretation, the question would be whether the State Government would be empowered to issue Government Orders for regularising encroachments in water bodies on the ground that the

water body has lost its character and it is no longer a water body on account of disuse. We may answer this query by referring to the observations of the Hon'ble Supreme Court in the case of ***Jagpal Singh*** :-

> *19. In this connection we wish to say that our ancestors were not fools. They knew that in certain years there may be droughts or water shortages for some other reason, and water was also required for cattle to drink and bathe in etc. Hence they built a pond attached to every village, a tank attached to every temple, etc. These were their traditional rain water harvesting methods, which served them for thousands of years.*
>
> *20. Over the last few decades, however, most of these ponds in our country have been filled with earth and built upon by greedy people, thus destroying their original character. This has contributed to the water shortages in the country. Also, many ponds are auctioned off at throw away prices to businessmen for fisheries in collusion with authorities/Gram Panchayat officials, and even this money collected from these so called auctions are not used for the common benefit of the villagers but misappropriated by certain individuals. The time has come when these malpractices must stop.*

28. The Hon'ble Supreme Court further observed that when a pond is falling to disuse, the Government including the Revenue Authorities should bestow their attention to develop the same. Their

Lordships further held that the Government Orders issued by the various State Governments permitting allotment of Grama Sabha lands to private persons and commercial enterprises to be illegal and to be ignored. Commenting upon the Government letter dated 26.09.2007, issued by the Government of Punjab, regularising the possession of unauthorised occupant, as not valid opined that such letters (Government Letters) are wholly illegal and without jurisdiction and such illegality cannot be regularised.

29. Reverting back to the *Sivakasi Region Tax Payers Association's case,* in paragraph 28, it was observed that it should not be misunderstood, as if the Division Bench was suggesting that all encroachments should be regularised or encouraged, but the State Government to take a conscious decision, if the land on which there are encroachments for a long period and such land is not required for any public purpose or for the State and a person remaining in adverse possession for more than 30 years acquires such right over the property. The other observations contained in para 30 of the judgment are that the Government Order (G.O.No.854) makes it amply clear, where the environment is not affected in the sense, the area is not in use as lake or water source either natural or artificial and

not required for any public use and for the use of the State then only the property can be settled.

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. Thus, on account of the default of the Revenue officials or on account of collusion of official machinery with encroachers can hardly be a premium to justify encroachments. The theory of adverse possession, would not stand attracted in such cases. The encroachers are infact trespassers into Government property. In terms of the Standing Orders of the Board of Revenue, the Village Administrative Officer has a duty to report any encroachment in any Government land in his village. The present scenario of rampant encroachment is on account of the failure of the Revenue Administration to protect Government lands. As observed ***T.N.Senthilkumar***, (supra), the State holds all the water bodies in public trust for the welfare of this generation and all succeeding

generation. Thus it would be preposterous to suggest that a trespasser with or without the connivance of the officials enters into occupation of Government land, gradually defaces its identity then puts forth a plea that it is a no longer a water body or a water channel and seeks for regularisation of his trespass be rewarded with a patta. If such acts of trespassers/encroachers are to be treated as pardonable and be rewarded for their illegal act in the form of regularisation/accommodation to say the least, it would be an absolute degradation and collapse of the public trust vested with the State to protect the lands and water bodies. If the Government is interested in allocating the poor and downtrodden, it should bring out a scheme for rehabilitating them and not to condone their act of trespass, reclassify the law and then grant patta to those encroachers.

31. We may at this stage examine the origin, scope and object of the Public Trust Doctrine. Most scholars identify the Justinian code of sixth century Rome as the genesis of the Public Trust Doctrine - the doctrine of "res communes" which claims that some things are 'common to mankind - the air, running water, the sea, and consequently the shores of the sea [and] the right of fishing in a port, or in rivers, is common to all men[1]. It has been further observed that

1*see Joseph L. Sax, 'Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention', 68 Michigan L. Rev. 471 (1970)*

the title to these essential resources was vested in the State, as the sovereign, in trust for the people. *Res communes* were excluded from private control and the trustee was charged with the duty of preserving the resources in a manner that made them available for certain public purposes. It has been further explained that the legal or moral concept of common ownership later emerged as more of a reservation of 'a series of particular rights to the public' to engage in certain activities, thus limiting 'the prerogatives of private ownership'. There is therefore now a nearly universal notion that resources such as watercourses should be protected from complete private acquisition in order to preserve the lifelines of communal existence. The common property resources are those resources not controlled by a single entity and access to which is limited to an identifiable community of individuals or states. No one user has the right to abuse or dispose of the property. Any dealing with the property has to take into account the entitlements of others. Besides, users of common property share rights to the resource and are subject to rules and restrictions governing the use of those resources[2] & [3]. In England, this concept appears in the common law, particularly through the writings of

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2 *John Gowdy, Coevolutionary Economics - The Economy, Society and the Environment (Boston: Kluwer, 1994)*

3. *Daniel W. Bromley & Michael M. Cernea, The Management of Common Property Natural Resources –Some Conceptual and Operational Fallacies (Washington, DC: The World Bank, Discussion Paper No. 57, 1989)*.

Bracton and Flecta, England's Magna Carta, and commentary by Blackstone. Paragraph 5 of the Magna Carta made explicit reference to the guardianship of land extending the guardianship to houses, parks, fish ponds, tanks, mills and other things pertaining to land. As early as 1865, the English House of Lords defined the concept of public trust in the case of Gann v Free Fishers of Whitstable, House of Lords, 3 March 1865, 11 E.R. 1305 (1865) 11 H.L. Cas. 192, holding that the bed of all navigable rivers where the tide flows, and all estuaries or arms of the sea, is by law vested in the crown. But this ownership of the crown is for the benefit of the subject, and cannot be used in any manner so as to derogate from, or interfere with the right of navigation, which belongs by law to the subject of realm. This imposed a high fiduciary duty of care and responsibility upon the sovereign[4]. Further elaborating the concept of public trust, the English Common Law distinguished between property that was transferable to private individuals and property that was held in trust for the public traditionally waterways. The property held in trust for the public is the dominant estate and encapsulates the public's trust rights, ranging from fishing, fowling and navigation to other broader rights like recreation.[5]

4. *Godber Tumushabe etal., Sustainably Utilising our Natural Heritage: Legal Implications of the Proposed Degazettement of Butamira Forest Reserve (Kampala, ACODE, Policy Research Series, No. 4, 2001)*

5 *Gerald Torres, 'Who Owns the Sky', 19 Pace Envt'l. L.Rev.515, 530 (2002)*

32. Whatever approach is taken, the fundamental emphasis is on communal rather than private rights. In cases where communal rights protector negates the rights of some, it implies a denial of the application of the Public Trust Doctrine. Natural resources have traditionally been found either under the sovereignty of a particular state or in the so-called global commons. Where the resources are held by a state, the essence of the Public Trust Doctrine is that the state or governmental authority, as trustee, has a fiduciary duty of stewardship of the public's 'environmental capital'. Thus it is the duty of the State to protect, conserve and augment traditional water retaining structures.

33. The Supreme Court of the United States of America in ***Illinois Central Railroad Co. v. People of the State of Illinois [146 US 387 = 36 LEd 1018 (1892)],*** pointed out that the State holds title to the bed of navigable waters upon a public trust, and no alienation or disposition of such property by the State which does not recognise and is not in execution of this trust, is permissible.

34. In Michigan Law Review, Vol.68, No.3 (Jan.1970), Pages 471-566, Prof. Sax said that three types of restrictions on governmental authority are often thought to be imposed by the public

trust doctrine, namely:

> *"1. the property subject to the trust must not only be used for a public purpose, but it must be held available for use by the general public;*
> *2. the property may not be sold, even for fair cash equivalent;*
> *3. the property must be maintained for particular types of use (i) either traditional uses, or (ii) some uses particular to that form of resources."*

35. The Hon'ble Supreme Court in ***Indian Council for Enviro-Legal Action v. Union of India [(1996) 5 SCC 281]***, held that there should not be development at the cost of environment and vice versa, but there should be development while taking due care and ensuring the protection of environment.

36. Thus, the public trust doctrine requires that natural resources such as lakes, ponds etc., are held by the State as a "trustee" of the public and can be disposed of only in a manner that is consistent with the nature of such a trust.

37. Bearing the above legal principle in mind, we have to consider as to whether by virtue of the various Government Orders issued from time to time infringes or violates the public trust doctrine with particular reference to water bodies.

38. In 2006, the Government issued G.O.Ms.No.854, with a view

to alleviate the grievances of people, who are residing in Government lands for more than two decades. The Government thought fit to regularise those encroachments provided that the land is not required by the Government for their use and while doing so, took note of the directions issued by this Court in W.P.No.20186 of 2005, dated 27.06.2005, to protect the water body porombokes. Ultimately, the Government thought fit to grant patta to persons who have encroached into Government land and are residing there for over ten years provided the Government does not require the land in question. The process by which pattas were to be issued, was also stipulated in the said Government order. In terms of para 4(vii), the said Government Order was issued as a one time special scheme for six months from February, 2007. However, the Government extended the scheme upto 31.12.2007. The Hon'ble Chief Minister made a statement that three lakhs house site pattas have to be issued to the poor till 31.03.2008. Based on such statement, the Government issued another order in G.O.Ms.No.498, dated 05.09.2007, issuing certain clarifications and instructions for grant of house site patta and extended the benefit of the earlier one time scheme upto 31.03.2008. By G.O.Ms.No.34, dated 23.01.2008, the Government reduced the period of encroachment to five years as against the earlier

requirement of ten years and once again stated that it is a one time special scheme and extended the benefit of the scheme upto 30.09.2010. Subsequently, by another order in G.O.Ms.No.43, dated 29.01.2010, the Government directed regularisation of encroachments over three years as against the requirement of five years. This Government Order was put to challenge by the Sivakasi Region Tax Payer's Association in W.P.No.18486 of 2010, and the First Bench of this Court by order dated 13.08.2010, directed the said Government Order in G.O.Ms.No.43, shall not be implemented. Thereafter, the Government vide G.O.Ms.No.372, dated 26.08.2015, extended the benefit of the free house site patta scheme from 01.10.2013 to 31.03.2015. From the orders passed by the Government from time to time, it appears that the Government has indirectly promoted and encouraged encroachments and but for the interim order granted by this Court in W.P.No.18486 of 2010, all that a person who was desirous of obtaining a free house site patta has to encroach into the Government property and show that he has been in occupation of the said land for a period of three years. The Government Order does not make any specific distinction with regard to lands, which have been classified as water bodies. In the preceding paragraphs, we have dealt with the public trust doctrine and what is the role of the Government in

promoting such doctrine with particular reference to water bodies. To state the least, the Government Orders with particular reference to regularisation of encroachment in water bodies is a clear breach of the public trust reposed on the Government which is enjoined upon a duty to protect the same.

39. Going back to the decision of the Division Bench in the case of *Sivakasi Region Tax Payers Association* (supra), the Division Bench in paragraph 27 of the judgment observed that if any particular pond or water channel, artificial or natural had fallen into dis-use for a very long period and if persons have encroached upon such lands, whether a direction can be issued for eviction and as to whether such of those persons who have encroached upon such lands have acquired any right under the law relating to limitation or any policy of the State where the Government in its wisdom decides to confer certain right on such persons. In paragraph 31 of the judgment, the Division Bench held that G.O.Ms.No.854, is legal. However, we may note the observations in paragraph 28 of the judgment, the Division Bench observed that it should not be misunderstood for a moment that they are suggesting that all encroachments should be regularised or encroached, but if the State Government takes a conscious decision to regularise certain

encroachments, which have continued for a pretty long period after the appropriate authority comes to a conclusion that such land is not required for any public purpose or for the State, the same would be within the jurisdiction of the Government to take a policy decision in the matter. We have our reservations in accepting the reasoning given by the Division Bench in paragraph 28.

40. As noticed above, the Division Bench while adding a word of caution that they are not advocating a general principle to regularise all encroachments or encourage them observed that if the State Government takes a "conscious decision" to regularise certain encroachments and if the land is not required for any public purpose, the State Government would be well within the jurisdiction to do so. Thus, the question would be as to what is a "conscious decision" and what would be the manner in which the appropriate authority will come to a conclusion that the land is not required for public purpose. In our view a "conscious decision" in such cases with particular reference to encroachment in water bodies should be in consonance with the public trust reposed on the Government in respect of such lands (water bodies). The State being a trustee of these natural resources such as tanks, lakes etc., has to necessarily act consistent with the nature of

such trust. The vesting of these lands and water bodies with the Government is to benefit the public and any attempt made by the Government to act in a manner derogatory to the object for which the land was vested, has to held to be illegal. 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.

41. The next aspect would be as to how and in what manner the appropriate authority would come to a conclusion that such land is not required for any public purpose or for the State. It may be a policy decision in this regard, but such policy decision has to satisfy the touch-stone of fairness and reasonableness and satisfy Article 14 of the Constitution of India. Reading of the Government Orders show that the decision taken with regard to a particular land is not required for the Government for any public purpose is largely based on report submitted by the officials of the Revenue Department and invariably the justification is that people have been residing for a long period of time and there has not been any flow of water into tank/lake for several years or the water is unfit for human consumption. In our view, this can hardly be a justification, since the Revenue Authorities

have turned a blind eye to encroachments on lands which have, canals/channels through which the water flows into such water bodies. Once again the Government having failed to protect those feeder channels and canals cannot sight that as an excuse to say that there is no flow of water into the tank/lake and therefore, they would be justified in recommending regularisation of the encroachments.

42. Initially the Government thought fit to bring about a scheme for regularisation of encroachment in 2006 as a one time measure as a special scheme for such of those persons, who have been in occupation of the Government lands for over 20 years. Though such was the proposal, when the Government issued the order in G.O.Ms.No.854, the Government fixed the minimum period to be in occupation (encroachment) as 10 years. The basis of fixing 10 year period has not been disclosed nor does the Government Order explicitly state about the same, when the proposal was to recognise people in illegal occupation for over 20 years. The procedure to be adopted to ascertain the period of illegal occupation has not been clearly set out. This will and has led to arbitrariness, favourtism and nepotism. Though this was a one time scheme, the Government periodically extended the validity of the scheme and the last of such extension is upto 31.03.2015. Thus, to term the scheme as a one

time scheme is a farce and appears to be an eyewash.

43. The second and more disturbing aspect is that the minimum period of illegal occupation was abruptly and arbitrarily reduced to five years and further reduced to three years and there is absolutely no justification for reducing the period of illegal occupation to get the benefit of regularisation. However, the Government Order reducing the period to 3 years has been stayed by this Court, but for which, we may assume that the period would have been further reduced.

44. The Government Orders starting from 30.12.2006 in G.O.(Ms)No.854, Revenue Department and subsequent Government Orders in G.O.Ms.No.498, 711, 34, 43 and 372 dated 05.09.2007, 30.11.2007, 23.01.2008, 29.01.2010 and 26.08.2014 respectively, with particular reference to encroachments in water bodies are in clear violation of the public trust doctrine. Moreover, Article 51-A of the Constitution of India enjoins that it shall be the duty of every citizen of India, *inter alia*, to protect and improve the national environment including forests, lakes, rivers, wildlife and to have compassion for living creatures. This Article is not only fundamental in the governance of the country but a duty on the State to apply these principles in making laws and further to be kept in mind in understanding the scope

and purport of the fundamental rights guaranteed by the Constitution including Articles 14, 19 and 21 of the Constitution and also the various laws enacted by Parliament and the State Legislatures. But unfortunately, the State, by passing the above said Government Orders, actively encourages encroachers of water bodies, to indulge in illegal and unlawful activities and also bent upon regularizing their possession which has to be deprecated.

45. In the light of the above, we answer the reference on the following terms:-

The provisions of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007, does not in any manner dilute the observations/directions issued in ***L.Krishnan vs. State of TamilNadu*** reported ***2005 (4) CTC 1***, as quoted with the approval by the Hon'ble Supreme Court in ***Jagpal Singh vs. State of Punjab,*** reported in ***(2011) 11 SCC 396***, and the observations contained in paragraph 20(d)(e) of the judgment of the Division Bench in ***T.S.Senthil Kumar, vs. Government of Tamil Nadu,*** reported in ***2010-3-MLJ-771*** and that the tanks which do not fall within the purview of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007, also require protection from encroachment and any encroachment made in such tanks or water bodies have to be removed by following the

provisions of the Tamil Nadu Land Encroachment Act, 1905.

46. We place on record the valuable assistance rendered by the learned counsel appearing for the parties and learned Amicus Curiae in assimilating facts and legal position.

The Writ Petition is directed to be posted before the Division Bench for disposal. No costs.

(S.K.K.,CJ.) (M.S.N.J.,) (T.S.S., J.)
30.10.2015

pbn
Index :Yes/No

To

1. The State of Tamil Nadu
Rep., by its Secretary to Govt.,
Department of Revenue,
Fort St., George,
Chennai – 600 009.

2.The State of Tamil Nadu
Rep., by its Secretary to Govt.,
Department of Public Works,
Fort St., George,
Chennai – 600 009.

3. The Collector,
Chennai District,
Chennai.

4.The Collector,
Thiruvallur District,
Thiruvallur.

5.Chennai Metropolitan Development Authority,
Rep., by its Chairman,
Egmore,
Chennai – 600 008.

6.The Managing Director,
Chennai Metropolitan Water Supply and
Sewerage Board,
Chennai – 600 002.

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THE HON'BLE THE CHIEF JUSTICE,

M.SATHYANARAYANAN,J.
and
T.S.SIVAGNANAM, J.

pbn

Pre-Delivery Order in
W.P.No.1294 of 2009

30.10.2015