

# BEFORE THE NATIONAL GREEN TRIBUNAL (SZ) CHENNAI

Application No.243 of 2021

P. Prakash,  
S/o. Ponnurangam,  
No.16, MuthaiyaGounder Street,  
Kalitheerthalkuppam,  
Madagadipet (Post),  
Puducherry – 605 107.

..... Applicant

Vs.

1. The Chairman,  
National Highways Authority of India,  
C5&G, Sector-10, Dwarka,  
New Delhi – 110 075.
2. The Chief Engineer,  
Central Office, PWD,  
34, Lal Bahadur Sastri Street,  
Puducherry – 605 001.
3. The Member Secretary,  
No.15, 3<sup>rd</sup> Cross Street,  
Mariamman Nagar,  
Karamanikuppam,  
Puducherry – 605 004.
4. The Director,  
Department of Science, Technology and Environment,  
III Floor, PHB Building Anna Nagar,  
Puducherry – 605 005.

..... Respondents

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The above documents are certified to be true copies.

Dated at Puducherry on this 29<sup>th</sup> day of March, 2022

**The Government Pleader for Govt. of Puducherry  
Counsel for the Respondents**

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..... Respondents

**COUNTER AFFIDAVIT FILED ON BEHALF OF RESPONDENT NO.2**

I, N. Balasubramanian, S/o. V. Nagaraju, Hindu, aged about 56 years residing at Plot No.42, Engineers Colony, Moolakulam, Puducherry – 605 010, working as an Executive Engineer, Irrigation Division, Public Works Department, Puducherry do hereby solemnly affirm and sincerely state as follows:

2. I am the Executive Engineer in charge of Irrigation Division and I am conversant with the facts of the case and hereby swear this affidavit.

3. I submit that the entire case of the Applicant revolves around extension of National Highways by the NHAI in the stretch from Madagadipet to Thiruvandar Koil. The main contention of the Applicant is that the proposed extension covers water spread area and palm trees which are highly responsible for water retention and recharge. He has therefore prayed this Hon'ble Tribunal to direct the first respondent to modify the plan to conserve the said natural resources. I submit that this Hon'ble Tribunal was pleased to pass an order of status quo on 23.02.2022.

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Corr:

  
**EXECUTIVE ENGINEER  
IRRIGATION DIVISION-  
P.W.D., PUDUCHERRY.**

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4. I submit that as a matter of fact, the first respondent herein applied to the Executive Engineer, Irrigation Division under the second respondent herein on 27.12.2021, requesting to hand over the lands between Madagadipet and Thiruvandar Koil. Between Madagadipet and Thiruvandar Koil, there exist Thirubuvanai Tank Feeder Channel (also called French Canal), Thirubuvanai Tank inclusive of water spread area and tank bund with 684 palm trees and 2 important recharging ponds. I submit that in so far as tanks and feeder canals are concerned, the Executive Engineer, Irrigation Division under the second respondent is the Estate Officer.

5. I submit that the lands covered by this Application under the purview of Irrigation Division as requested by the first respondent are covered by the following R.S.Nos. the details of which are furnished below:

Sl.No.	Lands covered by extension	Description of land	Classification as per survey records
1	R.S.No.123/2	Thirubuvanai Tank	Presently it is the Southern bund of Thirubuvanai Tank wherein 684 Palm trees are existed. But in the settlement register this portion is mentioned as voikal.
2	R.S.No.122/2	Thirubuvanai Tank Feeder Channel	Presently it is a dry land, but in the settlement register this portion is mentioned as voikal.
3	R.S.No.98/1	Thirubuvanai tank Feeder Canal in Madagadipet Village	Voikal
4	R.S.No.99/1	Thirubuvanai tank Feeder Canal in Madagadipet Village	Voikal

6. I submit that the above lands required for proposed extension are all water bodies. Thirubuvanai Tank is highly recharging ultimately increasing water table. Thirubuvanai Tank Feeder Channel in Madagadipet Village, which starts at Madagadipet in Puducherry region and ends at Thirubuvanai Tank is the main source of water, filling tanks in Thirubuvanai, Thiruvandar Koil, Nallur and Madagadipet.

7. Above all, there are 684 palm trees on the bund of Thirubuvanai Tank, which are deep rooted and are helpful in protecting ground water level.

8. I submit that the aforesaid lands fall within the administrative jurisdiction of Irrigation Division, Public Works Department, under the second respondent. In so far as the said lands are concerned, I am the Estate Officer in charge of the same.

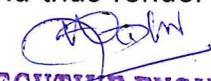
9. I submit that the first respondent herein without any sort of prior discussion/consultation with the second respondent before aligning the extension of National Highways, suo motu acted to implement the extension plan. The first respondent has requested the second respondent belatedly only on 27.12.2021 to hand over the said lands to them.

10. I submit that in the circumstances stated above, the sole responsibility of maintaining the water bodies vests with the Estate Officer, namely, the Executive Engineer, Irrigation Division, Public Works Department under the second respondent. I submit that this respondent specifically brings to the notice of this Hon'ble Tribunal, that the water bodies and the irrigation/canals are natural sources for, if those water bodies are clogged and roads are laid it would be detrimental to the General Public. However, it is made clear that the respondent would pray this Hon'ble Tribunal to suitably direct the first respondent to align the National Highways in such a way that no water bodies are affected.

11. I further submit that the said lands being water bodies are squarely covered by the judgment of the Hon'ble Supreme Court in Civil Appeal No.1132/2011 @ SLP (C) No.3109/2011 in Jagpal Singh & ors vs. State of Punjab & ors, dated 28.1.2011 which settles the law that water bodies shall on no account be encroached or disturbed.

12. In the said circumstances, the only option left to the first respondent is to make slight alterations in the alignment as not to affect the natural resources, both obliging the ruling of the Hon'ble Supreme Court and preserving the natural resources in terms of Article 51 A of the Constitution of India.

13. In view of the submissions made in the foregoing paragraphs, it is prayed that this Hon'ble Tribunal may be pleased to direct the first respondent to slightly alter the alignment as not to affect the natural resources and thus render justice in the interest of justice.

  
**EXECUTIVE ENGINEER**  
**IRRIGATION DIVISION-**  
**P.W.D., PUDUCHERRY**  
 RESPONDENT

Solemnly and sincerely  
 Affirm and state on this  
 the 29<sup>th</sup> day of March, 2022.

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 Corr:

BEFORE ME  
  
 ADVOCATE : PUDUCHERRY  
**G.K. GOVINDASAMY, B.Sc., B.L.,**  
**Advocate & Notary**  
**4, Gangai Street, Anitha Nagar,**  
**Puducherry - 605 004,**

புதுச்சேரி யூனியன் ஆட்சி பகுதியில் உள்ள கிராமங்கள் நிலப் பிட்டு பற்றிய  
(புதுச்சேரி நிலப்பிட்டு விதிகள், 1972-ல் போது விதிகள் பற்றிய)

Sub-Tauk: VILLAVUR  
Name of the Commune: MADAGADIPET  
Number and Name of the Revenue Village: MADAGADIPET  
7 - மதுகாடிபேட்டை

Resurvey Number எண்	Sub-Division Number எண்	Old Survey Number எண்	Government (G) Ryowari (R) அரசாங்கம் (அ) ரயத்துவாரி (ர)	Dry (D) Wet (W) Unassessed Waste(UAW) Poramboke(P) புரட்செய் (பு) தளச்செய் (த) தீர்வை ஏற்பட்டதற்காக (த, ஏ, த) புறம்போக்கு(புற)	Source of Irrigation பாசன வகைகளும் வழிபாடும்	If double crop, rate of Composition இரு முயற்சி பயிரானால் கணக்குத்தரவில் விகிதம்	Class and sort of Soil பாசன வகைகளும் வகைகளும்	Taram எண்	Rate per Hectare பரப்பு ஒரே ஹெக்டேரில் ரூ. ப ரூ. மீ. எண்.	Extent பரப்பு H/A/C எண்.	Assessment தீர்வை ரூ. ப எண்.	Patta No and Name of the registered holder பட்டா எண்ணும் பற்றி பெயர் பெற்ற பட்டா தாரர் எண்.	Name of the tenant if the registered holder himself is not cultivating the land பட்டா தாரர் தானே பயிரிடவில்லை அதற்காகவேறொரு பயிரிடுபவரை பெயர் எண்.	Remarks குறிப்புகள் எண்.	
97			அ	புற				0	0	00-37-50	0	0			
98	1	4 BIS	அ	புற				0	0	00-20-50	0	0			வாங்கல்
98	2		அ	புற				0	0	00-02-00	0	0			சுரக்கு
98	3	502 512 511 501	ர	பு				4	5.6	00-01-00	0	0	453 1. கிருஷ்ணன் (ஏ) யூனி பிடுபு கிராமம் கவுண்டி KRISHNAN @ PALANI DURAISAMY KAVUNDAR S/O 2. கவுண்டி (ஏ) தங்கராசு பிடுபு கிராமம் கவுண்டி VELAYUDAM @ THANGARASU S/O DURAISAMY KAVUNDAR		
98	4	52 PT	அ	புற				0	0	00-16-00	0	0			பிடுபு
98	5	52 PT	அ	புற				0	0	00-13-00	0	0			
99	1	54 4 BIS PT	அ	புற				0	0	00-21-50	0	0			வாங்கல்

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OF THE SECOND RESPONDENT

The Government Pleader for  
Government of Puducherry  
Counsel for Second Respondent