

**BEFORE THE HONOURABLE NATIONAL GREEN TRIBUNAL**

[Southern Zone]

Original Application No. 50 of 2017 (SZ)

(W.P.No. 43839 of 2016 transferred to the National Green Tribunal from the file of  
the Hon'ble High Court of Judicature at Madras)

Arappor Iyakkam

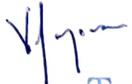
Represented by its Managing Trustee Jayaram Venkatesan  
140A, Rukmini Lakshmipathy Salai,  
Egmore,  
Chennai – 600 008

...Petitioner in Person

Vs.

1. Government of TamilNadu  
Represented by its Secretary to Government  
Public Works Department  
Secretariat, Chennai - 600 009
2. Principal Secretary  
Municipal Administration and Water Supply Department  
Government of Tamil Nadu – Secretariat  
Chennai - 600 009
3. Managing Director,  
Chennai Metropolitan Water Supply and Sewerage Board  
No 1 Pumping Station Road,  
Chindatripet, Chennai – 600002
4. The Commissioner,  
Corporation of Chennai,  
Ripon Buildings, Chennai 600003

For ARAPPOR IYAKKAM

  
Trustee

## 5. Managing Director

Chennai Metro Rail Limited  
Admin Building, CMRL Depot,  
Poonamallee High Road, Koyambedu,  
Chennai – 600107

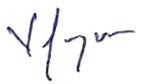
...Respondents

**ADDITIONAL AFFIDAVIT OF THE PETITIONER**

I, Jayaram Venkatesan, S/o. B.Venkatesan, aged 40 years, functioning as Managing Trustee of Arappor Iyakkam, having office at No 7, Satya Plaza, 2<sup>nd</sup> Floor, Dr Tirumoorthy Nagar Main Road, Nungambakkam, Chennai 600034 (previously at No.140A, Ground Floor, Rukmini Lakshmi pathy Salai, Egmore, Chennai 600008) do hereby solemnly affirm and sincerely state as follows:

1. I am the Managing Trustee of the registered trust Arappor Iyakkam and as such I am well aware of the facts and circumstances of the case.
2. Arappor Iyakkam is the Petitioner, which is a non-governmental organization registered under the Indian Trust Act 1882 bearing Registration No 304 of 2015.
3. I submit that we had filed this case with the prayer to direct the respondents to restore the entire remaining 39 acres of Villivakkam Konnur lake along with its inlets and outlets, with the assistance of Chennai River Restoration Trust or any other specialized authority in a time bound manner and consequently ensure that the Villivakkam Konnur lake is restored to its original state as a clean waterbody by removal of debris dumped by the Respondent 5 and pollutants discharged by Respondent 3.

For ARAPPOR IYAKKAM

  
Trustee

4. The Hon'ble Tribunal in its order had said that the parties are at liberty to file an additional written submission within a week's time. I am therefore filing this written submission.
5. I submit that the argument of Respondent 4 that this is not a natural waterbody is irrelevant. It must be understood that most waterbodies are man made waterbodies. The Petitioner had submitted the revenue map of the Villivakkam and Konnur villages clearly showing survey number 249 of Villivakkam village and survey number 335 of Konnur village together as the Konnur tank, a waterbody. This can be seen in page number 16 and 17 of the Petitioner's original Typed set. The original copy of the bigger map was also shown to the Hon'ble Judges during the arguments. These 2 survey numbers together account for 214 acres.
6. I submit that the over the last several decades this waterbody has been subdivided further and further by the Government resulting in legalized encroachment of it. Through GO (Ms) No 1759 of the Revenue Department, 126.12 acres of the subdivided survey numbers of the above waterbody with S. No 335/2 measuring 44.12 acres of Konnur village and S.No 249/3A1A3B measuring 82.01 acres of Villivakkam village was handed over to TamilNadu Housing Board as mentioned in the Typed . Later 39 acres of the waterbody within this 126.12 acres were handed over to Respondent 3 in 1991.
7. I submit that R3 claims to have been using the waterbody as an oxidation pond. Letting in sewage directly from pumping station into a waterbody is termed as 'oxidation pond'. By the same measure, one may call Koovum and Adayar rivers as oxidation rivers. Oxidation pond is just a fancy term used for polluting the waterbody.

For ARAPPOR IYAKKAM

  
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8. The Hon'ble Supreme court in *Hinch Lal Tiwari vs Kamala Devi And Ors*, (2001) 6 SCC 496 stated:

*"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."*

9. I submit that therefore even if a waterbody is put into disuse, it is the duty of the Government to restore it. Therefore, the argument of Respondent 4 that this was not a natural waterbody and that it should not be seen in the same way as other waterbodies does not hold any water.
10. I submit that Respondent 5 filled up 20 acres of the waterbody with metro rail earth in 2013 and 2014 and this contributed to the heavy flooding of the surrounding areas in 2015. Respondent 5 has so far not even been penalized for this huge disaster that they unleashed on the citizens of Villivakkam as all inlets to the lake was blocked and the water inundated the entire surrounding area

For ARAPPOR IYAKKAM

  
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for 13 days. Since violators are not made accountable, such violations continue in the precious resources of waterbodies. Respondent 5 has not been penalized till date.

11. I submit that after the petitioner filed this case in the Hon'ble High court which was later transferred to this Hon'ble tribunal, out of 39 acres of the waterbody, 27.5 acres of the Villivakkam Konnur lake was handed over to Respondent 4 for restoration and 11.5 acres continues to be under the control of Respondent 3.
12. I submit that Respondent 4 instead of restoring the entire waterbody handed over to them restored only 17.5 acres as a waterbody and has reserved the other 10 acres of the waterbody for construction of ecopark/ amusement park, parking facility, restaurants etc. I submit that in the 10 acres reserved for purposes other than waterbody, an office building has been constructed and several pile foundations were done over the last few months.
13. I submit that throughout the arguments from 2017, we have continued to oppose using the waterbody for any purpose other than that of creating it as a waterspread area. According to the Public Trust Doctrine, the Government holds the waterbodies only as a trustee of the public. Any action by the Government that violates the purpose for which the land was originally vested shall be deemed to be considered as illegal. If the Government fails to protect these water bodies, it amounts to breach of the public trust. These principles have been stated in the Judgement of Madras High Court in the case of *T.K. Shanmugam vs The State Of Tamil Nadu* (W.P.No.1294 of 2009). Contrary to these principles, the Respondents 1 and 3 have acted in detriment of the waterbodies in breach of the public trust.

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14. In *T.K. Shanmugam vs The State Of Tamil Nadu and Ors* (W.P.No.1294 of 2009), the Hon'ble Madras High Court observed:

*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.*

*40.... 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 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.*

For ARAPPOR IYAKKAM



Trustee

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.*

In *T.K. Shanmugam Vs The State of Tamil Nadu and Ors* in WP 1295 of 2009 dated 27.11.2015, the Hon'ble Division Bench of the Madras High court stated:

*27. It has become inevitable for this Court to put on record that the authorities in power cannot destroy the water bodies or water courses formed naturally for the benefit of mankind for ever and it is beyond the power of the State to alienate or re-classify the water bodies for some other purposes without compensating the effect of such water bodies.*

15. Therefore, allocation of the waterbody for purposes such as amusement park should not be allowed. Respondent 4 says in para 7 of his affidavit that the water spread area of the lake was less than 4 acres and that it has been now increased to 17.5 acres. The main reasons behind the decrease in waterspread area in the lake was because Metrorail earth was dumped by Respondent 5 upto an area of 20 acres. The original waterspread

For ARAPPOR IYAKKAM



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area of this waterbody extended to 214 acres at an average of 6 feet depth as per revenue map produced. Therefore, the total waterholding capacity would have been around 15,83,789 cubic metre. The argument of Respondent 4 that they have compensated the loss in area by deepening the 17.5 acres of waterbody to 6 metres depth is unacceptable. The 2,90,000 cum capacity created today is a miniscule out of the original capacity of 15,83,789 cubic metre. Therefore, given the water stress nature of the Chennai city and the legal directions of Hon'ble Supreme court and Hon'ble High Court, it is essential to restore the rest 10 acres of the waterbody available with Respondent 4 so that atleast part of the original capacity is achieved. I submit that in particular, reducing the waterspread area from what is potentially possible will increase the risk of flooding during years of heavy monsoon.

16. I submit that out of the other 11.5 acres with Respondent 3, 0.5 acres have already been utilized for relay pumping station. The rest of the 11 acres needs to be restored in full as well by handing it over to Respondent 4. The above measures will result in restoring the water holding capacity to atleast one third of the original capacity of the Villivakkam lake.

17. I submit that this Hon'ble Tribunal may be pleased to pass appropriate Judgement for the restoration of the entire remaining 38.5 acres of the Villivakkam Konnur Lake waterbody in full. While we do not agree to the proposition of using the waterbody for other purposes, however, in case the Hon'ble Tribunal decides otherwise to handover part of the waterbody for amusement park or Tertiary treatment facilities, we humbly request the Hon'ble Tribunal that the acreage of such facilities

For ARAPPOR IYAKKAM

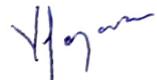
  
Trustee

be brought down from 13 acres (10 acres for amusement park + 3 acres of TTF) requested by R3 and R4 to a minimal level so that the waterspread area could be increased to its maximum level.

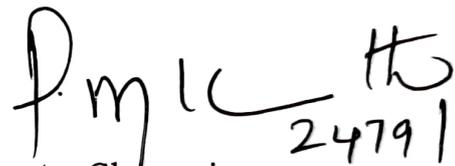
18. Therefore, it is respectfully prayed that this Hon'ble Tribunal may be pleased to pass appropriate orders as prayed for in the above Original Application and thus render justice.

Solemnly affirmed at Chennai  
on this 09<sup>th</sup> May, 2022  
Signed his name in my presence

For ARAPPOR IYAKKAM

  
Trustee

Before Me

  
Advocate: Chennai  
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Chennai  
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**[Southern Zone]**

**Original Application**

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Arappor Iyakkam

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Vs.

Government of  
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...Respondents

**ADDITIONAL AFFIDAVIT  
OF THE PETITIONER**

Petitioner in Person  
Jayaram Venkatesan  
**9841894700**