

**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

## 5. Managing Director

Chennai Metro Rail Limited

Admin Building, CMRL Depot,

Poonamallee High Road, Koyambedu,

Chennai – 600107

...Respondents

For ARAPPOR IYAKKAM

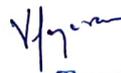
Trustee.

**REPLY AFFIDAVIT OF THE PETITIONER TO THE REPORT FILED BY  
THE 3<sup>RD</sup> RESPONDENT AND THE JOINT INSPECTION REPORT FILED  
BY THE 4<sup>TH</sup> RESPONDENT**

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 Lakshmipathy Salai, Egmore, Chennai 600008) do hereby solemnly affirm and sincerely state as follows:

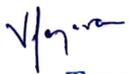
1. I am the Managing Trustee of the registered trust Arappor Iyakkam and as such I am well aware of the facts and circumstances of the case.
2. Arappor Iyakkam is the Petitioner, which is a non-governmental organization registered under the Indian Trust Act 1882 bearing Registration No 304 of 2015.
3. 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.
4. As the petitioner in the case, I have received the report of the 3<sup>rd</sup> Respondent as well as the Joint Inspection Report filed by the 4<sup>th</sup> Respondent. I hereby deny all the averments contained therein except those that are specifically admitted herein.
5. I submit that the report filed by the 3<sup>rd</sup> respondent says that a 10 MLD Tertiary Treatment Ultra Filtration plant has been proposed for rejuvenation of ground water in the surrounding Villivakkam and Korattur lake and for supply of efficient water from plant to the upcoming ecopark under GCC. Out of the 11.5 acres of Villivakkam lake under the control of the 3<sup>rd</sup> Respondent, the 3<sup>rd</sup> Respondent proposes the above plant in 5 acres of land and also proposes tree plantation in the other 6.5 acres of land. I hereby bring forth the

For ARAPPOR IYAKKAM

  
 Trustee

reasons why such a proposal within the Villivakkam lake should be outrightly rejected by this Hon'ble Tribunal and also the reasons for the need for restoration of the Villivakkam lake to its entire available extent of 39 acres.

6. I submit that there is already an order of this Hon'ble Tribunal dated 12.10.2017 staying any construction on the 11.5 acres of the land within the Villivakkam lake under the control of the 3<sup>rd</sup> Respondent and that the 11.5 acres shall also be restored with inlets and outlets to ensure free flow of rain water. This Hon'ble Tribunal gave the order after the 3<sup>rd</sup> Respondent on an earlier occasion filed an affidavit seeking construction of Sewage Treatment Plant in the 11.5 acres of Villivakkam lake land in January 2017. Instead of restoring the lake as per the Hon'ble Tribunal's order, I submit that the same proposal is now again being made by the 3<sup>rd</sup> respondent, although in a different form of a tertiary treatment plant in 5 acres and tree plantation in 6.5 acres. I list below some of the key reasons on the need for restoration of the entire 39 acres of Villivakkam lake including the 11.5 acres under the control of CMWSSB.
7. I submit that the original extent of Villivakkam Konnur Lake is 214 acres as per revenue records and this has also been mentioned in the report of the Joint Committee placed before this Hon'ble High Court. Due to rampant encroachments of the lake by the authorities in power itself, the lake is currently left with 39 acres only. I submit that such rampant encroachment of the lake has resulted in very small water spread area of 39 acres only.
8. I submit that the SIDCO Nagar area adjoining the lake was inundated with water for 2 weeks after the 2015 rain. The area also saw flooding and inundation during the 2005 floods. Infact, during every monsoon whenever the rain is more than average rainfall, the area has been witnessing inundation. Therefore, restoration of the Villivakkam lake plays a key role in preventing flooding and inundation in the neighbouring areas of the lake. The lake has witnessed heavy dumping of metro rail earth on Northern and Eastern part of the lake in the year 2014. Most part of the 11.5 acres of the CMWSSB controlled lake still have metro rail earth to the height of around 15 feet as can be seen from the Additional Typed set of photos.

For ARAPPORIYAKKAM  
  
Trustee

9. I submit that the heavy shrinking of the lake areas from 214 acres to 39 acres and the urban developments along with the Metro rail earth dumping in Villivakkam lake resulted in the heavy flooding of the area in 2015. The proof of heavy inundation has been attached in the original typed set of papers. Therefore, restoration of the entire available 39 acres of Villivakkam lake becomes extremely necessary in order to prevent future flooding of the surrounding areas.
10. I submit that the Hon'ble Supreme Court as well as several High Courts, in a plethora of decisions, have time and again held that no encroachment should be tolerated over the water bodies which constitute part of the precious natural resources.
11. It is the responsibility of the Government authorities to the general public to protect and restore waterbodies, and also have an active vigil against any attempts to encroach waterbodies even if the waterbodies are in disuse. While it is the responsibility of the Government to prevent encroachment and restore waterbodies even if the waterbodies were put into disuse, allowing the authorities themselves to encroach upon the waterbody for other purposes will severely affect the ecological balance and will also embolden other private encroachers.
12. 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."*

For ARAPPORIYAKKAM

Trustee

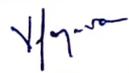
13. According to the Public Trust Doctrine, the Government holds the waterbodies only as a trustee of the public. Any action by the Government that violates the purpose for which the land was originally vested shall be deemed to be considered as illegal. If the Government fails to protect these water 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.

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*

For ARAPPOR IYAKKAM  
  
 Trustee

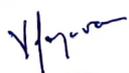
*these water bodies, it amounts to breach of the public trust and in such cases, the duty of the Government is more onerous to restore the land back to its original position and thereby restore the trust reposed on it.*

*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.*

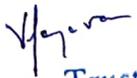
15. While so, the Respondent's proposal to construct a tertiary treatment plant or plant trees within 11.5 acres of the Villivakkam lake area is clearly illegal if proceeded with. While such treatment plants may be necessary for infrastructure purposes, it can never be allowed to be constructed inside a waterbody leaving the residents of Villivakkam and nearby areas flood prone. Instead Government may identify other lands for such constructions. Even if they are unable to identify land for construction, waterbodies cannot be used for such purposes. It must also be understood that such big tanks are the major rain water harvesting structures of

For ARAPPOR IYAKKAM  
  
 Trustee

the city as well and the rejuvenation of the ground water will best happen when the lake is restored entirely to its available extent of 39 acres. Therefore, the 11.5 acres of the Villivakkam lake in control with CMWSSB needs to be restored in full.

16. I submit that the last page of the Joint Inspection Report of the 4<sup>th</sup> Respondent points out that an amusement park is proposed to be developed inside the lake in a public private partnership for 25 years. I submit that photos taken on 16.07.2021 attached in the additional typed set clearly shows that significant number of acres even within the 27.5 acres that is being restored currently by the 4<sup>th</sup> Respondent have not been converted into pond area and instead kept for Amusement / Eco park, car park and construction of buildings etc. While it is understandable that a small area may be required for parking etc, leaving out such large acres of land for purposes other than what the waterbody is originally intended will have adverse effect of flooding and reduced harvesting of rain water than needed.
17. I submit that therefore, it is also necessary to ensure that such amusement/ eco park activities are not allowed inside the Villivakkam lake and the entire 27.5 acres of the Villivakkam lake is restored to its full with maximum waterspread area.
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 19<sup>th</sup> July, 2021  
Signed his name in my presence

For ARAPPOR IYAKKAM  
  
Trustee  
Before Me

Advocate: Chennai  
P. Balaji  
(P. BALAJI)  
3414 / 2017  
255, HUSSAINA MANEIL  
3<sup>rd</sup> FLOOR, ANGAPPAN ROAD  
CHENNAI - 1

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NATIONAL GREEN TRIBUNAL  
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... Petitioner in Person

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1. Government of TamilNadu  
Represented by its Secretary to  
Government and 4 ORS...

...Respondents

**REPLY AFFIDAVIT OF THE PETITIONER**

Petitioner in Person  
Jayaram Venkatesan  
**9841894700**