



W.P.(MD)No.26466 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Order reserved on	Order pronounced on
02.12.2022	23.01.2023

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN

and

THE HONOURABLE MR.JUSTICE J. SATHYA NARAYANA PRASAD

Writ Petition (MD) No. 26466 of 2022

R. Vinoth

.. Petitioner

Versus

1. Additional Chief Secretary to Government
Tourism and Culture Department
Secretariat, Chennai - 600 009
2. Additional Chief Secretary to Government
Department of Environment, Climate Change and Forests
Secretariat, Chennai - 600 009
3. The District Collector
Collectorate
Tenkasi - 627 811
4. The District Collector
Kokkila Kulam Road
Near Science Centre
Kokkirakulam
Tirunelveli - 627 009
5. The District Collector
Collector's Office



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Nagercoil
Kanyakumari - 629 001

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6. The District Collector
State Bank Road
Gopalapuram
Coimbatore - 641 018
7. The District Collector
Church Hill Road
near Charing Cross
Pudumund, Ooty - 643 001
8. District Forest Officer & Wildlife Garden
Tirunelveli Division
NGO Colony, North Main Road
Tirunelveli - 627 009
9. Tamil Nadu Tourism Development Corporation
Tourism Complex
No.2, Wallajah Road, Anna Salai
Triplicane, Chennai,
Tamil Nadu - 600 002

.. Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Mandamus directing the respondents to consider the petitioner's representation dated 07.10.2022 and consequently direct the respondents to take action against those who have set up the illegal artificial private waterfalls and demolish them and restore the original flow of the stream, river and rivulet in the fragile Western Ghats ecosystem.

For Petitioner : Mr. M. Karthikeyan
For Respondents : Mr. R. Baskaran
Additional Advocate General



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assisted by Mr. S. Shanmugavel
Additional Government Pleader for RR1 to 9

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ORDER

R. MAHADEVAN, J.

We have heard the learned counsel appearing on either side and also perused the materials available on record.

2. The Nature has gifted us with several resources like water, forests, mountains, land and wildlife, the existence of which is essential for the survival of the Earth's fragile ecosystems. There is a scientific purpose behind such creation or formation. The existence of one resource is related to the existence of the other, in turn, the survival of the humanity. Any disturbance in this delicate balance has repercussions, one can never expect with its effects vexing generations together. Our Constitution enjoins a duty not only on the State but also on every individual to protect the environment. Therefore, protection and preservation of the environment is paramount consideration.

3. The petitioner has come up with this writ petition as a Public Interest Litigation seeking to issue a writ of Mandamus directing the respondents to



consider his representation dated 07.10.2022 and take action against those, who have set up the illegal artificial private waterfalls by diverting the natural falls in their property, demolish the same and restore the original flow of the stream, river and rivulet in the fragile Western Ghats ecosystem.

4. The petitioner who is a resident of Tirunelveli District, claims himself to be an avid traveller visiting various tourist places of importance. During one such visit to Courtallam falls in Western Ghats, he has noticed that water from the falls has been diverted to set up private waterfalls exclusively for their customers at a fixed price. He has also noticed that various private waterfalls have mushroomed in similar fashion by diverting the water from the natural falls. According to the petitioner, waterfalls are bounties of nature and it cannot be confined to one's private use to earn money. The Government is the custodian of all the natural resources including waterfalls and it identifies places of waterfalls and converts the same into tourist destination so that public can enjoy it. The petitioner also stated that the water falling is unpolluted and has medicinal benefits capable of curing illnesses as the water has flown through various herbs and shrubs.

5. The petitioner further stated that every year, the number of persons visiting the waterfalls in Western Ghats is on the rise. By taking advantage of the demand of the number of tourists visiting the waterfalls, private resorts and



hotels have set up artificial waterfalls to attract tourists. Such waterfalls are meant for celebrities and Very Important Persons (VIPs) and they enjoy water so diverted in private much to the chagrin of the general public. For the purpose of setting up private waterfalls, the hotel owners purchase huge tracts of land and with the connivance of the officials of the Forest Department, divert the natural flow of the water. It is also stated that natural flow of stream, river and rivulets are being diverted to an artificial pond in order to create artificial waterfalls in places where it never existed at all. Such artificial waterfalls or pond is being set up for commercial activities and hence, it should not be permitted.

6. The main grievance of the petitioner is that such diversion of river, stream and rivulets have severe environmental ramifications. Numerous flora and fauna including birds, fishes, snakes etc., are dependent on the eco-system to survive. The health of a forest depends on its rivers and water source. If a river in the forest or the water source dries, it has its own repercussions and impact on the eco-system and biodiversity. Similarly, cutting the water flow and setting up private waterfalls, according to the petitioner, will lead to disastrous consequences on the eco-system.

7. In the writ petition, the petitioner has tabulated some of the critically



endangered mammals, fishes, trees and plants which are endemic to the Western Ghats. He has also furnished a list of resorts/hotels where private falls are set up and water is exploited for commercial activity. In the affidavit filed in support of the writ petition, the petitioner has enclosed an advertisement on private falls by a resort to attract tourists. Further, he has also enclosed photographs showing the manner in which the private falls have been set up exclusively for certain privileged customers. Stating so, the petitioner submitted a detailed representation dated 07.10.2022 to the respondents with a request to take appropriate action to protect the eco-system in the Western Ghats by ordering closure of the artificial private waterfalls. Finding no action on the same, he has filed this writ petition for the aforesaid relief.

8. During the pendency of this writ petition, the petitioner has filed an additional affidavit *inter alia*, stating that several lands belonging to Thiruvaduthurai Adheenam, which were let out for rent to third parties, have been exploited by setting up private waterfalls without even the knowledge or consent of the Adheenam / HR&CE Department. The petitioner has listed out the details of the name of the river, the survey number of the land and the manner in which such land of Thiruvaduthurai Adheenam has been encroached upon to set up artificial waterfalls.



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9. Reiterating the averments made in the affidavit filed in support of the writ petition, the learned counsel for the petitioner has also drawn the attention of this Court to a communication dated 11.07.2022 sent by the Engineer, Water Resources Department, Tenkasi addressed to the Manager of Thiruvaduthurai Adheenam, Tirunelveli, which disclosed the unlawful setting up of artificial waterfalls in the lands belonging to Thiruvaduthurai Adheenam. Pursuant to the said communication, the Adheenam sent a notice through their counsel to remove the artificial waterfalls in the lands owned by them forthwith and to ensure that the activities of the lessee will not in any manner affect the water sources or agricultural activities in the localities and the lands are utilised only for the purpose for which they were let out to them. Thus, it is submitted by the learned counsel that existence of artificial waterfalls is rampant in Tirunelveli District and surrounding areas and that, most of the hotels/resorts have set up private artificial waterfalls by diverting the natural water course. The learned counsel therefore prayed this Court to issue appropriate direction to the official respondents herein to ensure that such private waterfalls should not be permitted to function and to restore the eco-system.

10. On 23.11.2022, when this writ petition was taken up for hearing, this



Court, after having observed that natural waterfalls which emerge after thousands of years of natural wear, tear, erosion and geomorphological changes cannot be permitted to be cut and diverted by illegal means to the private resorts/estates/ properties by the private persons, directed the respondents 3 to 7/District Collectors to take immediate steps to form a Committee in the Districts concerned so as to curtail illegal diversion of the natural flow of waterfalls by the private resorts/estates/properties' owners by claiming the same as artificial falls for their commercial activities. This court has also directed the Committee to be constituted to conduct necessary inspection and find out the private resorts/estates/properties situated all over the Tamil Nadu with the assistance of District Forest Officers concerned, and take necessary action of sealing the same until further orders. That apart, this court has directed the authorities concerned to initiate criminal proceedings against such private resorts/ estates / properties' owners, besides taking departmental action against the officers concerned, who colluded with such owners. Ultimately, the respondent authorities were directed to file a detailed report in this regard.

11. Pursuant to the aforesaid order, the first respondent has filed a status report dated 30.11.2022, in which, it is stated that a Committee has been constituted by the Government vide G.O. Ms. No.283, Tourism, Culture and



Religious Endowments Department dated 28.11.2022 presided by the Director of Tourism along with Commissioner of Land Administration or his representative; Thiru.Giridhar, I.F.S., Assistant Principal Chief Conservator of Forest and others as members. The status report further stated that the Committee is expected to study the problem and oversee the process to remedy the situation and that, further action will be taken in due course, in respect of other directions.

12. Adding further, the learned Additional Advocate General appearing for the respondents submitted that as directed by this court, a Committee has been constituted and it is likely to inspect all the private resorts/hotels where illegal and unauthorised waterfalls have been set up. It is also submitted that the respondents would swiftly act upon to ensure that the natural resources are adequately protected and that, based on the report to be submitted by the Committee, appropriate action will be taken against the illegal private waterfalls set up by the land owners and against the officials of the Forest Department and other departments for dereliction of their duties, if any.

13. At this juncture, it is pertinent to mention the relevant constitutional provisions, which create a right and impose a duty on the State as well as the citizens, as under:



"Article 21. Protection of Life and Personal Liberty: No person shall be deprived of his life or personal liberty except according to procedure established by law."

"Article 48A. Protection and improvement of environment and safeguarding of forests and wild life The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country."

"Article 51 A. Fundamental Duties

It shall be the duty of every citizens of India-

(a) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;

.....

(f) to value and preserve the rich heritage of our composite culture;

(g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;"

From the above, it is lucid that Article 21 of the Constitution guarantees the fundamental right to life, which encompasses within it the right to environment, the right to healthy life, the right to live with dignity among other things. It can be said that anything that is essential and everything that can be accommodated shall fall within the scope of Article 21 to ensure that every citizen of this country, shall lead a life with liberty and protection.

14.1. The scope of Article 21 has been expanded by the Hon'ble Apex Court to protect the natural resources of this country in the following decisions, which in our opinion, are relevant and are hence, extracted below:

(A) State of T.N. v. Hind Stone, (1981) 2 SCC 205 at page 212



“6. Rivers, Forests, Minerals and such other resources constitute a nation's natural wealth. These resources are not to be frittered away and exhausted by any one generation. Every generation owes a duty to all succeeding generations to develop and conserve the natural resources of the nation in the best possible way. It is in the interest of mankind. It is in the interest of the nation. It is recognised by Parliament. ..”

(B) Rural Litigation and Entitlement Kendra v. State of U.P., 1989 Supp (1) SCC 504

“24. It is time to turn to the contention relating to forests. Air and water are the most indispensable gifts of Nature for preservation of life. Abundant sunshine together with adequate rain keeps Nature's generating force at work. Human habitations all through the ages have thrived on river banks and in close proximity of water sources. Forests have natural growth of herbs which provide cure for diseases. Our ancestors knew that trees were friends of mankind and forests were necessary for human existence and civilization to thrive. It is these forests that provided shelter for the “rishis” and accommodated the ancient “gurukulas”. They too provided food and sport for our forefathers living in the State of Nature. That is why there is copious reference to forests in the Vedas and the ancient literature of ours. In ancient times trees were worshipped as gods and prayers for upkeep of forests were offered to the Divine. In the Atharva Veda (5.30.6) it has been said:

*Man's paradise is on earth;
This living world is the beloved place of all;
It has the blessings of Nature's bounties;
Live in a lovely spirit.*

25. In due course civilization developed and men came to live away from forests. Yet the human community depended heavily upon the forests which caused rains and provided timber, fruits, herbs and sports. With sufficient sunshine and water there was luxuriant growth of forests in the tropical and semi-tropical zones all over the globe. Then came the age of science and outburst of human population. Man required more of space for living as also for cultivation as well as more of timber. In that pursuit the forests were cleared and exploitation was arbitrary and excessive; the deep forests were depleted; consequently rainfall got reduced; soil erosion took place. The earth crust was washed away and places like Cherapunji in Assam which used to receive an average annual rainfall of 500 inches suffered occasional drought.

26. Scientists came to realise that forests play a vital role in maintaining the balance of the ecological system. They came to know that forests preserve the soil and heavy humus acts as a porous reservoir for retaining water and gradually releasing it in a sustained flow. The trees in the forests draw water from the bowels of the earth and release the same into the atmosphere by the process of transpiration and the same is received back by way of rain as a result



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of condensation of clouds formed out of the atmospheric moisture. Forests thus help the cycle to be completed. Trees are responsible to purify the air by releasing oxygen into the atmosphere through the process of photosynthesis. It has, therefore, been rightly said that there is a balance on earth between air, water, soil and plant. Forests hold up the mountains, cushion the rains and they discipline the rivers and control the floods. They sustain the springs; they break the winds; they foster the bulks; they keep the air cool and clean. Forests also prevent erosion by wind and water and preserve the carpet of the soil.”

(C) M.C. Mehta v. Kamal Nath, (1997) 1 SCC 388

“23. The notion that the public has a right to expect certain lands and natural areas to retain their natural characteristic is finding its way into the law of the land. The need to protect the environment and ecology has been summed up by David B. Hunter (University of Michigan) in an article titled An ecological perspective on property : A call for judicial protection of the public's interest in environmentally critical resources published in Harvard Environmental Law Review, Vol. 12 1988, p. 311 is in the following words:

“Another major ecological tenet is that the world is finite. The earth can support only so many people and only so much human activity before limits are reached. This lesson was driven home by the oil crisis of the 1970s as well as by the pesticide scare of the 1960s. The current deterioration of the ozone layer is another vivid example of the complex, unpredictable and potentially catastrophic effects posed by our disregard of the environmental limits to economic growth. The absolute finiteness of the environment, when coupled with human dependency on the environment, leads to the unquestionable result that human activities will at some point be constrained.

‘[H]uman activity finds in the natural world its external limits. In short, the environment imposes constraints on our freedom; these constraints are not the product of value choices but of the scientific imperative of the environment's limitations. Reliance on improving technology can delay temporarily, but not forever, the inevitable constraints. There is a limit to the capacity of the environment to service ... growth, both in providing raw materials and in assimilating by-product wastes due to consumption. The largesse of technology can only postpone or disguise the inevitable.’

Professor Barbara Ward has written of this ecological imperative in particularly vivid language:

‘We can forget moral imperatives. But today the morals of respect and care and modesty come to us in a form we cannot evade. We cannot cheat on DNA. We cannot get round photosynthesis. We cannot say I am not going to give a damn about phytoplankton. All these tiny mechanisms provide the preconditions of our planetary life. To say we do not care is to say in the most literal sense that “we choose death”.’



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There is a commonly-recognized link between laws and social values, but to ecologists a balance between laws and values is not alone sufficient to ensure a stable relationship between humans and their environment. Laws and values must also contend with the constraints imposed by the outside environment. Unfortunately, current legal doctrine rarely accounts for such constraints, and thus environmental stability is threatened.

Historically, we have changed the environment to fit our conceptions of property. We have fenced, plowed and paved. The environment has proven malleable and to a large extent still is. But there is a limit to this malleability, and certain types of ecologically important resources — for example, wetlands and riparian forests — can no longer be destroyed without enormous long-term effects on environmental and therefore social stability. To ecologists, the need for preserving sensitive resources does not reflect value choices but rather is the necessary result of objective observations of the laws of nature.

In sum, ecologists view the environmental sciences as providing us with certain laws of nature. These laws, just like our own laws, restrict our freedom of conduct and choice. Unlike our laws, the laws of nature cannot be changed by legislative fiat; they are imposed on us by the natural world. An understanding of the laws of nature must therefore inform all of our social institutions.”

24. The ancient Roman Empire developed a legal theory known as the “Doctrine of the Public Trust”. It was founded on the ideas that certain common properties such as rivers, seashore, forests and the air were held by Government in trusteeship for the free and unimpeded use of the general public. Our contemporary concern about “the environment” bear a very close conceptual relationship to this legal doctrine. Under the Roman law these resources were either owned by no one (res nullius) or by every one in common (res communis). Under the English common law, however, the Sovereign could own these resources but the ownership was limited in nature, the Crown could not grant these properties to private owners if the effect was to interfere with the public interests in navigation or fishing. Resources that were suitable for these uses were deemed to be held in trust by the Crown for the benefit of the public. Joseph L. Sax, Professor of Law, University of Michigan — proponent of the Modern Public Trust Doctrine — in an erudite article “Public Trust Doctrine in Natural Resource Law : Effective Judicial Intervention”, Michigan Law Review, Vol. 68, Part 1 p. 473, has given the historical background of the Public Trust Doctrine as under:

“The source of modern public trust law is found in a concept that received much attention in Roman and English law — the nature of property rights in rivers, the sea, and the seashore. That history has been given considerable attention in the legal literature, need not be repeated in detail here. But two points should be emphasized. First, certain interests, such as navigation and fishing, were sought to be preserved for the benefit of the public; accordingly, property used for those purposes



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was distinguished from general public property which the sovereign could routinely grant to private owners. Second, while it was understood that in certain common properties — such as the seashore, highways, and running water — ‘perpetual use was dedicated to the public’, it has never been clear whether the public had an enforceable right to prevent infringement of those interests. Although the State apparently did protect public uses, no evidence is available that public rights could be legally asserted against a recalcitrant government.”

25. The Public Trust Doctrine primarily rests on the principle that certain resources like air, sea, waters and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being a gift of nature, they should be made freely available to everyone irrespective of the status in life. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes. According to Professor Sax the Public Trust Doctrine imposes the following restrictions on governmental authority:

“Three types of restrictions on governmental authority are often thought to be imposed by the public trust: first, 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; second, the property may not be sold, even for a fair cash equivalent; and third the property must be maintained for particular types of uses.”

.....

34. Our legal system — based on English common law — includes the public trust doctrine as part of its jurisprudence. The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the sea-shore, running waters, airs, forests and ecologically fragile lands. The State as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership.

35. We are fully aware that the issues presented in this case illustrate the classic struggle between those members of the public who would preserve our rivers, forests, parks and open lands in their pristine purity and those charged with administrative responsibilities who, under the pressures of the changing needs of an increasingly complex society, find it necessary to encroach to some extent upon open lands heretofore considered inviolate to change. The resolution of this conflict in any given case is for the legislature and not the courts. If there is a law made by Parliament or the State Legislatures the courts can serve as an instrument of determining legislative intent in the exercise of its powers of judicial review under the Constitution. But in the absence of any legislation, the executive acting under the doctrine of public trust cannot abdicate the natural resources and convert them into private ownership, or for commercial use. The aesthetic use and the pristine glory of the natural resources, the environment and



the ecosystems of our country cannot be permitted to be eroded for private, commercial or any other use unless the courts find it necessary, in good faith, for the public good and in public interest to encroach upon the said resources.”

(D) Hinch Lal Tiwari v. Kamala Devi, (2001) 6 SCC 496 : 2001 SCC OnLine SC 862

“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.”

(E) Intellectuals Forum v. State of A.P., (2006) 3 SCC 549 : 2006 SCC OnLine SC 210

“76. The Supreme Court of California, in National Audubon Society v. Superior Court of Alpine Country [33 Cali 419] also known as Mono Lake case [33 Cali 419] summed up the substance of the doctrine. The Court said:

“Thus the public trust is more than an affirmation of State power to use public property for public purposes. It is an affirmation of the duty of the State to protect the people's common heritage of streams, lakes, marshlands and tidelands, surrendering the right only in those rare cases when the abandonment of the right is consistent with the purposes of the trust.”

This is an articulation of the doctrine from the angle of the affirmative duties of the State with regard to public trust. Formulated from a negatory angle, the doctrine does not exactly prohibit the alienation of the property held as a public trust. However, when the State holds a resource that is freely available for the use of the public, it provides for a high degree of judicial scrutiny on any action of the Government, no matter how consistent with the existing legislations, that attempts to restrict such free use. To properly scrutinise such actions of the Government, the courts must make a distinction between the Government's general obligation to act for the public benefit, and the special, more demanding obligation which it may have as a trustee of certain public resources [Joseph L. Sax “The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention”, Michigan Law Review, Vol. 68, No. 3 (Jan. 1970) pp. 471-566]. According to Prof. Sax, whose article on this subject is considered to be an authority, three types of restrictions on governmental authority are often thought



to be imposed by the public trust doctrine [ibid]:

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.

.....

79. Further the principle of “Inter-Generational Equity” has also been adopted while determining cases involving environmental issues. This Court in *A.P. Pollution Control Board v. Prof. M.V. Nayudu* [(1999) 2 SCC 718] in para 53 held as under: (SCC p. 739)

“53. The principle of inter-generational equity is of recent origin. The 1972 Stockholm Declaration refers to it in Principles 1 and 2. In this context, the environment is viewed more as a resource basis for the survival of the present and future generations.

‘Principle 1.—Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for the present and future generations....

Principle 2.—The natural resources of the earth, including the air, water, lands, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of the present and future generations through careful planning or management, as appropriate.

(emphasis in original)

80. Several international conventions and treaties have recognised the above principles and, in fact, several imaginative proposals have been submitted including the locus standi of individuals or groups to take out actions as representatives of future generations, or appointing an ombudsman to take care of the rights of the future against the present (proposals of Sands and Brown Weiss referred to by Dr. Sreenivas Rao Permmaraju, Special Rapporteur, paras 97 and 98 of his report).

81. The principles mentioned above wholly apply for adjudicating matters concerning environment and ecology. These principles must, therefore, be applied in full force for protecting the natural resources of this country.

82. Article 48-A of the Constitution mandates that the State shall endeavour to protect and improve the environment to safeguard the forests and wildlife of the country. Article 51-A of the Constitution 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. These two articles are not only fundamental in the governance of the country but also it shall be the duty of the State to apply these principles in making laws and further these two articles are 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."

14.2. In the recent ***order dated 03.06.2022 passed in Writ Petition (Civil) No. 202 of 1995 [T.N. GodavarmanThirumalpad v. Union of India]***, the Hon'ble Supreme Court has categorically held that the Public Trust Doctrine primarily rests on the principle that certain resources like air, sea, waters and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being a gift of nature, they should be made freely available to everyone irrespective of the status in life. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes. The observation of the Hon'ble Supreme Court in paragraph 28 being relevant, is extracted below:

"28. The role of the State cannot be confined to that of a facilitator or generator of economic activities for immediate upliftment of the fortunes of the State. The State also has to act as a trustee for the benefit of the general public in relation to the natural resources so that sustainable development can be achieved in the long term. Such role of the State is more relevant today, than, possibly, at any point of time in history with the threat of climate catastrophe resulting from global warming looming large. This Court has highlighted the Public Trust Doctrine in the case of M.C.Mehta v. Kamala Nath and others [(1997) 1 SCC 388] and opined that the Public Trust Doctrine is part of the



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law of land. In Paragraph 25 of the said judgment, as reported, this doctrine has been explained with reference to writings of Joseph L. Sax, Professor of Law, University of Michigan, the proponent of Modern Public Trust Doctrine:

“25. The Public Trust Doctrine primarily rests on the principle that certain resources like air, sea, waters and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being a gift of nature, they should be made freely available to everyone irrespective of the status in life. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes. According to Professor Sax the Public Trust Doctrine imposes the following restrictions on governmental authority....”.

Thus, the importance of the preservation and the role of the State, as custodian of the natural resources based on the “Public Trust Doctrine” cannot be undermined. Rivers, which not only carry fertility with them, but also are very important for the wild life, as without it, the wild life, would over a period of time become extinct. The existence of water in land signifies the possibility of human life. When endeavours are undertaken to verify the possibility of life in other planets, only now the awareness of climate change and the importance of the preservation of the environment has spiralled into movement, vouching for the preservation of the forests, rivers, minerals and other natural resources for the existence of this planet. It is significant to point out that the cultural changes have also caused a considerable impact on the approach of certain individual towards the environment and wild life, which have been worshipped and preserved by our ancestors over a period of time.



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15. In the present case, from the materials furnished by the petitioner which are quite shocking, it could be seen that several illegal artificial private waterfalls have been set up by diverting the natural falls in Tenkasi District. The Chittar River and its tributaries over the courtallam hills contribute to the formation of the falls which attract the tourist. Out of the same, few areas come under the control of Forest department. It is not only illegal to divert the rivers for commercial purpose, but also illegal to fell the trees for such purpose. Some of the lands in which private falls are situated, belong to Adheenam lands. Similarly, at Ooty, such illegal waterfalls have been found out and the details have also been placed before us. The Government, which is the custodian of all the natural resources, has not taken earnest steps to curtail the same. Even the officials colluded with the land owners for creation of such private falls unauthorisedly. Though complaints have been received to take appropriate action, nothing progressed. Such inaction / callous attitude on the part of the respondent authorities cannot be countenanced.

16. This court is of the opinion that natural resources must be protected, as there has already been rising level of global warming and gradual reduction in precious non-renewable resources. Unfortunately, despite awareness of such



issues, a sect of people continue to cause intentional harm to the flora, fauna and other natural resources. Diversion of the natural flow of a river or any water body is to be prevented and original position is to be restored. Such diversion has long lasting effect of depleting the water flow and after few years, the rivers become extinct. Then, the encroachment starts and the entire area is converted into residential or commercial zone. Such diversion has also long lasting effect on wild life including migrating birds. One of such instances is the present issue of unauthorized and illegal creation of rivulets from natural waterfalls in Tenkasi District by the private parties. Such acts not only cause an imbalance in the already existing river ecosystem, but also compel all of its dependents, the schools of fish and animals to suffer. To cater to their VIP guests and line their pockets with the tourist populations, resorts have been 'resorting' to such acts. Therefore, the authorities, who are bound to regulate and maintain the waterfalls, must take swift action to prevent such illegal water rivulets and falls, by identifying the defaulters and punishing them severely, so that no one can utilize and deprive others of natural resources for their own selfish gains.

17. Like the provision of The River and Canals Act, 1863 of the Mauritius, which is comprehensive to measure, protect and take appropriate action against the offenders, there are various laws in our country on the subject,



such as, the Indian Forest Act, 1927, the Environmental Protection Act, 1986, The Wild Life (Protection) Act, 1972, the Water (Prevention and Control of Pollution) Act, 1974, apart from our constitution. There is also a National River Conservative Directorate of the Central Government, which aims to protect and restore the water bodies. Therefore, the State must also endeavour to set up a separate permanent body in this regard.

18. As stated earlier on the side of the respondent authorities, pursuant to the order of this court, a Committee has already been constituted to study the problem and oversee the process of curtailing illegal diversion of the natural flow of waterfalls by the private resorts / estates / properties' owners for commercial activities and appropriate action will be taken by the respondent authorities, based on the report to be filed by the committee, upon inspection. Therefore, considering the importance of the issue involved herein and for effective functioning of the Committee, this court is inclined to issue the following directions:

(i) The Committee shall complete the inspection of all the rivers in the State and identify any diversion of such water body for private or commercial gain and submit a report to the respondent authorities,

(ii) The Committee should inspect all the resorts where private falls have



been created by private resorts / estates / properties' owners by diverting the natural flow of water illegally and file a detailed report to the respondent authorities within a period of three months from the date of receipt of a copy of this order. Such an inspection shall be done by utilising the scientific instruments like drone, etc. so as to identify the illegal waterfalls even in dense forest area,

(iii) The Committee shall also ascertain whether all necessary approvals, planning and building permits and licences have been obtained from the local bodies and forest department, before the resorts have been set up,

(iv) Upon receipt of the report from the Committee, the respondent authorities shall forthwith close such illegal private falls and take criminal action against the owners, who created / set up the same for commercial purposes by following due process under law,

(v) The respondent authorities shall also initiate departmental action against the officials, who involved / colluded with the land owners in creation of such artificial private falls,

(vi) The Commissioner of HR&CE department shall ensure that the Adheenam cancels the lease deed and restore the properties, where such illegal private falls have been set up by the lessees. Necessary action shall also be taken against the officials connected to Thiruvaduthurai Adheenam, who are found to



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be colluded / involved in such illegal / unauthorised acts.

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(vii) The forest department should inspect all such premises and take appropriate action, if deforestation has taken place to set up such resorts and private waterfalls.

19. With the aforesaid directions, this writ petition stands disposed of. No costs.

20. Post the matter before this Bench, after three months “for reporting compliance”.

(R.M.D., J.) (J.S.N.P., J.)

23.01.2023

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Index : Yes / No

Internet : Yes / No

To

1. Additional Chief Secretary to Government
Tourism and Culture Department
Secretariat, Chennai - 600 009
2. Additional Chief Secretary to Government
Department of Environment, Climate Change and Forests
Secretariat, Chennai - 600 009



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3. The District Collector
Collectorate
Tenkasi - 627 811
4. The District Collector
Kokkila Kulam Road
Near Science Centre
Kokkirakulam, Tirunelveli - 627 009
5. The District Collector
Collector's Office
Nagercoil
Kanyakumari - 629 001
6. The District Collector
State Bank Road
Gopalapuram
Coimbatore - 641 018
7. The District Collector
Church Hill Road
near Charing Cross
Pudumund, Ooty - 643 001
8. District Forest Officer & Wildlife Garden
Tirunelveli Division
NGO Colony, North Main Road
Tirunelveli - 627 009
9. Tamil Nadu Tourism Development Corporation
Tourism Complex
No.2, Wallajah Road, Anna Salai
Triplicane, Chennai,
Tamil Nadu - 600 002



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and
J. SATHYA NARAYANA PRASAD, J.

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Pre-delivery order in
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23.01.2023