



WP(MD)No.24989 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 07.11.2023

Pronounced on : 11.03.2024

CORAM:

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MR.JUSTICE B.PUGALENDHI**

**WP(MD)No.24989 of 2023
and
WMP(MD)Nos.21190, 21191 of 2023**

C.Ramesh

... Petitioner

v.

- 1.The Secretary to Government,
Public Works Department,
Secretariat,
Chennai - 9.
- 2.The District Collector,
Madurai District,
Madurai.
- 3.The Chief Engineer (Water Resources),
Public Works Department,
Madurai Circle,
Thallakulam,
Madurai - 2.



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4.The Executive Engineer (Water Resources),
Periyar Vaigai Basin,
Public Works Department,
Thallakulam,
Madurai.

5.The Commissioner,
Madurai Corporation,
Madurai.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Mandamus directing the respondents to clear the garbages and restore the Puthukulam Tank, comprised in S.Nos.90, 91, 92, having an extent of 10.017 sq.mts situated in between Madurai Corporation composite center and IB Office, Karpaganagar, K.Pudur, Madurai and further forbearing the respondents to discharge sewage water through the Channel running inside SIDCO Complex so as to protect the Vandiyur Kanmai.



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For Petitioner : Mr.K.Govindarajan
for Mr.B.Ponnu Pandi

For Respondents : Mr.R.Baskaran,
Additional Advocate General
Assisted by
Mr.K.Balasubramani,
Special Government Pleader
for R.1 to R.4

Ms.S.Devasena,
Standing Counsel for R.5

ORDER

B.PUGALENDHI, J.,

The petitioner is a resident of Karpaga Nagar, Madurai. He is an Office Bearer of a Residents' Welfare Association and also a practicing Advocate. He has filed this public interest litigation for a mandamus directing the respondents

i) to clear the garbage dumped in Puthukulam Tank and to restore the Puthukulam Tank in S.Nos.91, 91, 92; and

ii) not to discharge sewage water into the channels running inside the SIDCO complex so as to protect the Vandiyur Kanmoi.



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2. According to the petitioner, the Puthukulam Kanmoi situated opposite to Mattuthavani Bus Stand was to an extent of 47.32 Acres, however, considering the valuation of the land and its location in front of Madurai Central Bus Stand (Mattuthavani Bus Stand), some portions of this water body have already been allotted to several Government Agencies, Staff Quarters for the Court, assignments for press colony and now, the extent of this water body is reduced to 13.78 Acres [3 portions]. The Government, considering the necessity of preserving the existing water body, sanctioned a sum of Rs.88,09,150/- to de-silt the existing Tank Bank area, to strengthen the Tank Bank and to increase the storage capacity and also to restore the supply channels. Though this amount has been sanctioned in the month of January, 2021, the Public Works Department has not restored the water body and therefore, some of the commercial complexes situated in and around Mattuthavani Bus Stand are dumping building waste materials inside the water body during night hours and are attempting to convert its character as a water body.



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3.Learned Counsel for the petitioner, in support of this writ petition, has relied on the Advocate Commissioner's report filed in WP(MD)No.15994 of 2020, dated 18.03.2021; the orders of the National Green Tribunal, Principal Seat at New Delhi in O.A.No.125 of 2021, dated 23.08.2021; and the orders of the Hon'ble Supreme Court in Civil Appeal No.6120 of 2021, dated 12.11.2021. He has also produced a typedset of papers along with photographs as to the present condition of the water body and submitted that calculative attempts are being made to convert this Tank for some other purpose. This Tank and the supply channels have been dumped with garbage and therefore, the water gets stagnated causing numerous health hazards.

4.He further submitted that the residents of the adjacent area are also letting their sewage into the water channel. This water channel is reaching the Vandiyur Kanmoi. From there, this water reaches River Vaigai, which is the main source of irrigation for several lands, apart from being a source of drinking water for the surrounding places.



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5. Apart from this water body, a surplus water channel from Sengulam Tank runs to a length of 1.73 km merges with Sathaiyar Odai and finally, it reaches Vandiyur Kanmoi. Indiscriminate permissions were granted to put up bridges across these surplus channels, which affects the flow of water. The Hoteliers and other business establishments around Mattuthavani Bus Stand are dumping their waste into these surplus channels and on account of that also, the water gets stagnated causing health hazards to the commuters of the Bus Stand and also to the residents of the surrounding areas.

6. The petitioner has also made a serious allegation that the fifth respondent / Madurai Corporation is discharging the waste water from the nearby dumping station to this surplus channel near SIDCO complex, opposite to Mattuthavani Flower Market. In view of the same, the condition of the ground water was contaminated at Karpaga Nagar and surrounding areas. Yet another whooping allegation was also made as against the Corporation that the Mattuthavani Central Bus Stand is



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not having proper underground drainage connection and the waste water from the bus stand is directly let into the Tank through the supply channels and this obliterated water reaches the Vandiyur Tank.

7.Puthukulam Tank and the channels referred in this writ petition are in the custody of the fourth respondent / Water Resource Department, Periyar Vaigai Basin Division. A counter affidavit has been filed admitting the averments made in this writ petition. The fourth respondent has fairly stated that the original extent of this Tank was 19.16 Hectares and that an extent of 13.57 Hectares from this water body have been allotted to various Government agencies, including two cemeteries, as follows:-

"4. ... the Puthukulam tank are assigned to several departments for an extent of 13.57 Hectares, such as, 1)Hindu Cemetery, 2)Muslim Cemetery, 3)Christian Graveyard, 4)Transport Department, 5)Telecommunication Department, 6)Pandian Transport Ddepot, 7)Press Reporter Colony, 8)Tamil Nadu Water Supply and Drainage Board, 9)Office of Audit Department, 10)Hon'ble High Court Staff Quarters, 11)Forest Department, 12)Law College Hostel, etc., by the Revenue Department."



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He also admitted that after the assignment of the lands to various Departments, only 5.58 Hectares of land alone is available as Tank, however, in three portions.

8.The fourth respondent has also confirmed that the Government of Tamil Nadu has accorded administrative sanction for the work of de-silting, strengthening of banks, restoration of supply channel, formation of footpath in Puthukulam tank in Madurai North Taluk of Madurai District for Rs.88,09,150/-, vide G.O.(4D)No.07, Public Works (P1) Department, dated 19.01.2021. However, the same was not implemented in view of the litigations pending before the National Green Tribunal and now, the work is under progress.

9.The Madurai Corporation has not specifically denied the allegations levelled against them, however, has filed a status report as under:-

“Since the polluted water is entering into the vandiyur tank via channels near EB Office and Omni Bus stand, it is proposed to establish 4 Million Liter per day capacity sewage treatment plant at a



cost of Rs.6 Crore behind the Mattuthavani Integrated Bus Stand.

Polluted water entering into the tank will be redirected into the STP during the off monsoon periods, then it will be treated scientifically and let into the Vandiyur Tank.

Detailed Project Report is proposed and necessary administration sanction is obtained from the Directorate of Municipal Administration. Now the tender process is under progress."

10.We have considered the rival submissions made by the respective parties and perused the materials placed on record.

11.The petitioner has approached this Court with serious allegations as against the respondents that

i) a calculative attempt is being made to convert the existing water body as a plain surface by dumping waste materials.

ii) drainage water from the commercial properties in and around the Mattuthavani Bus Stand are directly let into the water channel leads to Vandiyur Kanmoi and thereby, the quality of water in Vandiyur Kanmoi is also allowed to be deteriorated.



iii) the Madurai Corporation is discharging the sewage water from the dumping station directly into the water channel and due to that, the quality of the ground water is deteriorated.

iv) garbages are dumped in the Puthukulam Tank as well as in the channels and thereby, the water gets stagnated causing numerous health problems.

Restoration of Puthukulam Tank:-

12.The Water Resources Department, which maintains the Puthukulam Tank and the surplus channels, has not denied the allegations made by the petitioner. They have admitted the sanction of amount by the Government vide G.O.(4D)07, Public Works Department, dated 19.01.2021 for de-silting, strengthening of banks, restoration of supply channel and formation of footpath, to the tune of Rs.88 Lakh. This Government Order, which was issued in the month of January, 2021, has not been implemented so far. The fourth respondent has produced the agreement dated 11.05.2021 that work was already allotted to a Contractor by name M/s.Ravi Electricals and that the work is in



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progress. The fourth respondent has also produced certain photographs to show that execution of work with JCBs.

13.Since this Puthukulam Tank was not maintained properly by the Water Resources Department, several encroachments have mushroomed and for removing those encroachments, a writ petition was filed before this Court in WP(MD)No.15994 & 3862 of 2020. In that writ petition, Mr.T.Lajapathi Roy, Senior Counsel, was appointed as an Amicus Curiae and his inputs were also obtained as to the ground reality. Finally, those writ petitions were disposed of by this Court, by order dated 18.03.2021, directing the Water Resources Department to maintain the existing place as a water body. By referring G.O.(4D)No.07, Public Works (P1) Department, dated 19.01.2021, the Department was directed to complete the work within a period of four months. In the said writ petition, direction was also issued to the Madurai Corporation to remove the garbage from the water body and to ensure that no such activities takes place in future.



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14. In the meantime, the Government vide G.O.(Ms)Nos.76 & 77, Revenue & Disaster Management Department, Land Disposal Wing [LD1(2)] Department, dated 28.02.2019 and G.O.(Ms)No.329, Revenue and Disaster Management Department, Land Disposal Wing [LD1(2)] Department, dated 02.07.2020, allotted certain portion of the water body from this Puthukulam Kanmoi in favour of some Journalists. These Government Orders were challenged before the National Green Tribunal, Principal Bench, New Delhi, in O.A.No.125 of 2021 and the Tribunal, by order dated 23.08.2021, following the principles laid down by the Supreme Court and this Court, has issued a direction to the Government to restore the water body, Puthukulam Kanmoi, to its original position by removing the constructions, if any, raised therein within a period of one month. This order of the National Green Tribunal, according to the petitioner's Counsel, was challenged before the Supreme Court by the Government of Tamil Nadu in Civil Appeal No. 6120 of 2021. The said appeal was dismissed by the Supreme Court on 12.11.2021. On the other hand, the order of the Tribunal was also challenged before this Court in WP(MD)No.26139 of 2022, wherein, a



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Division Bench of this Court, by order dated 25.01.2023, has set aside the order of the Tribunal dated 23.08.2021 on the grounds of violation of principles of natural justice.

15.Be that as it may, encroachments in water body, in any form, can never be permitted. This is the position reiterated by the Supreme Court and this Court in more than one occasions. This Puthukulam Kanmoi, a water body with an extent of 47.32 Acres, was allowed to be occupied by various Government agencies, considering its prime location. Even after these allotments, a remaining extent of 13.78 Acres is still remaining vacant, which can very well be restored and maintained as a water body. This water body is also having source of water through Thiruppalai distributary of the Periyar Main Canal (14th Branch Canal) apart from its own catchment. The Government, before passing G.O. (4D)No.07, Public Works Department, dated 19.01.2021, has made a detailed study and has stated that there is a supply channel from Moondru Mavadi to an extent of 586 meter (length). The Thiruppalai channel from the Thandalai distributary was relined and it is in good



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condition and therefore, there is a possibility of diverting the Periyar System Water to this Puthukulam Tank by desilting the supply channel.

Accordingly, the Government has sanctioned Rs.88,09,000/- for desilting, strengthening of banks, restoration of supply channel and formation of footpath in Puthukulam Tank. This Court in the earlier writ petition filed by Veeramani in WP(MD)No.15004 of 2020 has issued a direction on 18.03.2021 to complete the restoration of the water body and the supply channels as per G.O.(4D)No.07, Public Works Department, dated 19.01.2021, within a period of four months. However, the work has not been completed so far. Therefore, we direct the respondents 3 & 4 to complete the work as mandated in G.O.(4D)No.07, Public Works Department, dated 19.01.2021, within a period of four months from the date of receipt of a copy of this order.

Letting-in of Sewage water and Garbage:-

16.As per the Solid Waste Management Act, the recyclable wastes have to be recycled and reused, while the non-recyclable wastes have to be transported to notified landfill areas. It has not permitted the letting-



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in of sewage water or garbage into the water bodies. It is the responsibility of the local body of that area to maintain this position. The violations, if any, has to be treated as an offence and the local bodies are liable to pay compensation. The Supreme Court in *Paryavaran Suraksha Samiti v. Union of India and Others* [(2017) 5 SCC 326] has issued a slew of directions regarding waste water treatment system and has directed the National Green Tribunals to follow up the issue.

17. After passing a series of directions, the National Green Tribunal has imposed a cost of Rs.110/- Crore in O.A.No.116 of 2014, dated 13.09.2022, on the State of Bihar under the Polluter Pays principle. In yet another case, the Tribunal has imposed a cost Rs.4000/- Crore in O.A.No.606 of 2018, dated 04.05.2023, on the State of Bihar for non-implementation of the Municipal Solid Waste Management Rules, 2016. In fact, a Division Bench of this Court in *K.Mani v. District Collector, Madurai and Others* [WP(MD)No.11730 of 2022, dated 21.06.2023], has imposed a cost of Rs.1,00,000/- on the Government for polluting a water body.



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18. Likewise, cleaning of garbage is also vest with the Municipal Corporation / Local Body. Wherever commercial establishments or residents are dumping waste materials into the water channels, it has to be identified and necessary actions have to be taken as against them. The onus is on the Corporation / Local Body and they would be held responsible with imposition of compensation, as stated supra.

19. The fifth respondent / Madurai Corporation is, therefore, directed to complete the project (sewage treatment plant) within a period of six months and shall ensure that there shall not be any letting-in of any sewage, drainage, garbage into the water body by anybody.

Water-bay across channels:-

20. There cannot be any construction in the water channels. However, permissions are being granted for construction of bridges across water channels, by a letter of the Chief Engineer in Lr.No.S7(2)/NOC-General/OT4/2020, dated 28.10.2020, wherein,



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certain procedures were formulated for issuing no objection certificate for construction of bridges across water channels. As per this proceedings, the Executive Engineer can grant permission for the construction of water-bay to an extent of 0.5 to 5 meter; the Superintending Engineer can grant permission from 5 to 10 meter; and the Chief Engineer is having power for granting permission above 10 meter.

21.Though such permissions are issued with a condition that the concerned person has to maintain the free flow of water, the flow of water is obstructed in view of these constructions, causing numerous health hazards to the surrounding people. Very recently, we have witnessed the stagnation of water in the Sathaiyar supply channel and its overflow in the traffic, which is the consequences of such permissions.

22.We are, therefore, of the view that the Water Resource Department has to revisit this procedure, in line with the provisions under the Tank Protection Act. What is not permitted in the Act cannot



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be permitted by the Chief Engineer and the same is without any authority of law.

23. In the result, this writ petition stands disposed of with the following directions:-

i) The respondents 3 & 4 are directed to complete the work as mandated in G.O.(4D)No.07, Public Works Department, dated 19.01.2021, within a period of four months from the date of receipt of a copy of this order. They are also directed to erect notice boards in visible locations around the Puthukulam Tank showing the extent of this water body.

ii) The fifth respondent / Madurai Corporation is directed to complete the sewage treatment plant, as proposed by them, within a period of six months from the date of receipt of a copy of this order.

iii) The fifth respondent / Madurai Corporation, apart from ensuring the removal of garbage in the Puthukulam Tank, is also directed to ensure that there is no letting-in of any sewage, drainage or garbage into the Puthukulam Tank and its adjoining Channels and



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Kanmoi, by anybody, by imposing costs / initiating actions if need be. In the event of any non-compliance, the Corporation would be held responsible with imposition of penalty.

iv) The Water Resource Department is directed to revisit the process of issuing no objection certificate for constructing water-bays across water channels, in line with the provisions under the Tank Protection Act.

There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

[G.R.S.,J.] [B.P.,J.]
11.03.2024

Index : Yes / No
NCC : Yes / No
Internet : Yes
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To

1.The Secretary to Government,
Public Works Department,
Secretariat,
Chennai – 9.



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2.The District Collector,
Madurai District,
Madurai.

3.The Chief Engineer (Water Resources),
Public Works Department,
Madurai Circle,
Thallakulam,
Madurai – 2.

4.The Executive Engineer (Water Resources),
Periyar Vaigai Basin,
Public Works Department,
Thallakulam,
Madurai.

5.The Commissioner,
Madurai Corporation,
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