

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.07.2015

CORAM

The Hon'ble MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
AND

The Hon'ble MR.JUSTICE T.S.SIVAGNANAM

W.P.No.2867 of 1998

A.Thilagar

.. Petitioner

-vs-

- 1.The State of Tamil Nadu,
rep. by its Secretary to Government,
Department of Environment and Forests,
Fort St. George,
Chennai-600 005.
- 2.The Collector,
Dindigul District,
Dindigul.
- 3.The Kodaikanal Municipality,
rep. by its Chairman,
Kodaikanal-624 101.
- 4.The Executive Engineer,
Agricultural Engineering Department,
LGB Compound,
Dindigul.
- 5.The Tamil Nadu Pollution Control Board,
rep. by its Member Secretary,
Guindy, Chennai.
- 6.The Commissioner,
Kodaikanal Municipality,
Kodaikanal.
(Respondent No.6 impleaded as per order
of the Court dt. 10.04.2003 in
WP.MP.No.12673 of 2003)
- 7.The Deputy Director,
Town and Country Planning,
Madurai.
(Respondent No.7 impleaded as per the order
of Court dt. 23.4.2010 in WP.No.2867/1998)

.. Respondents

Petition under Article 226 of the Constitution of India praying
for issue of Writ of Mandamus directing the respondents to forbear

from carrying on any reclamation or other construction activity, in the marsh around and near the Anna Statue outside Bryant Park, Kodaikanal and to restore the marsh to its original state.

For Petitioner : Mr.T.Mohan

For Respondents : Mr.STS.Moorthy
Govt. Pleader for R1,2,4,7
Mr.P.Srinivas for R3 & R6
Mrs.Rita Chandrasekaran for R5

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O R D E R

(Order of the Court was made by The Hon'ble Chief Justice)

The petition has been filed as a Public Interest Litigation alleging that there is an encroachment on the marsh adjoining the Kodaikanal lake. A specific reference has been made to the construction by the Agricultural Engineering Department/Respondent No.4 in one acre adjoining the Anna Statue situated in front of Bryant Park and the marsh is serving an important purpose of filtering and controlling the water into the lake, apart from providing fresh drinking water to the local poor. It is alleged that unmindful of this ecological significance, respondent No.4 is reclaiming the marsh by cutting and land filling the marsh by about six feet.

2. Interim orders were granted on 03.03.1998, as a result of which the works were stopped.

3. The counter-affidavit filed by the Tamil Nadu Pollution Control Board/Respondent No.5 affirms that the reclamation is bound to have adverse effects on the eco-system of the lake and no prior permission was obtained from the Kodaikanal Municipality or from the Architectural and Aesthetics Aspects Committee. The work is stated to have been carried out in the prohibited zone and is within the distance of 200 meters from the boundary of Kodaikanal lake. The proposed construction affects flow of water both at the surface and sub-surface, apart from the construction being within the prohibited limit.

4. The Kodaikanal Municipality/Respondent No.3 and the Collector/Respondent No.2 have filed joint counter-affidavits wherein it has been averred in paragraph 9 that the construction is unauthorised and adverse to the ecological balance impact. In a sense, this stand is common to that of the Tamil Nadu Pollution Control Board. Not only that, the land on which the construction as commenced actually vests with the Kodaikanal Municipality.

5. On our query, no counter-affidavit has been pointed out to us filed by respondent No.4, which is alleged to have carried out the activities.

6. It is unfortunate that the department of the State has carried out the construction in a prohibited area without sanction - normal privilege of private parties! Having enjoyed the privilege, they must suffer some consequence, i.e. removal of the unauthorised construction.

7. We, thus, direct respondent No.4 to remove and clear the area of the unauthorised construction within a maximum period of one month of the receipt of the order, failing which respondent No.3 would carry out the task at the cost of respondent No.4.

8. The writ petition, accordingly, stands allowed. No costs.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

- 1.The Secretary to Government,
Department of Environment and Forests,
Fort St. George,
Chennai-600 005.
- 2.The Collector,
Dindigul District, Dindigul.
- 3.The Chairman,
Kodaikanal Municipality,
Kodaikanal-624 101.
- 4.The Executive Engineer,
Agricultural Engineering Department,
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- 5.The Member Secretary,
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Guindy, Chennai.
- 6.The Commissioner,
Kodaikanal Municipality,
Kodaikanal.
- 7.The Deputy Director,
Town and Country Planning,
Madurai.

+1 cc to Mr.P.Srinivas, Advocate,SR.32985

+1 cc to Government Pleader,SR.32649.

Vsn(co)
krd 8/7

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