



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 21.03.2018

DELIVERED ON: 08.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

W.A(MD)No.976 of 2017

and C.M.P.(MD)Nos.6685 and 9345 of 2017

andW.P(MD)Nos.5915 of 2017 and 11718 of 2014

andM.P.(MD)Nos.4691 of 2017 and 1 & 2 of 2014

W.A(MD)No.976 of 2017

Suriyur Vivasayigal Pathukappu Sangam,

Rep. by its President,

T.Ramaraj,

S/o. Thulasiaiyah,

No.3/138, Pattaveli,

Suriyur Village, Suriyur Post,

Trichy - 620 025.

: Appellant/3rd Party

Vs.

1.LA Bottlers Private Ltd.,

Represented by its Managing Director,

Mr.Joseph Francis,

No.5, Bharathiyar Saalai,

Jenne Plaza, Cantonment,

Thiruchirappalli - 620 001.

..1st Respondent/ Petitioner

2.The State of Tamil Nadu,

Represented by its Secretary to Government,

Housing & Urban Development Department,

Secretariat,

Chennai - 600 009.

3.The Commissioner,

Directorate of Town and Country Planning,

Fourth Floor, No.807,

Anna Saalai, Chennai - 600 002.

4.The Assistant Director,

Town and Country Planning Department,

Trichy District,

No.10, Williams Road,

Cantonment, Tiruchirappalli - 620 001.



5. Navalpattu New Town Development Authority,
Represented by its Member Secretary,
Navalpattu,
Trichy District.

.. Respondents 2 to 5/ Respondent
Nos. 1 to 4

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6. Suriyur Panchayat,
Represented by its President,
Thiruverumbur Panchayat Union,
Thiruverumbur Taluk,
Trichy District.

7. Mrs. Saradadevi,
President,
Suriyur Panchayat,
Thiruverumbur Panchayat Union,
Thiruverumbur Taluk,
Trichy District.

: Respondents 6 and 7/
Respondents 5 and 6

[RR5 and 6 - Deleted vide order of this Court dt. 22/03/17]

PRAYER: Appeal filed under Clause 15 of the Letters Patent,
praying to set aside the order dated 26.04.2017, passed in W.P.
(MD) No. 19069 of 2016.

Prayer in WP(MD). 19069/ 2016 :

Writ Petition is filed under Article 226 of the
Constitution of India, praying this Court to issue a Writ of
Certiorari and Mandamus, call for the records of the 1st
respondent in G.O.(2D) No. 91 Housing and Urban Development
(Na.Va.4(i)) Department, dated 30.06.2016, quash the same and
consequently direct the 1st respondent to vary the classification
of the petitioners land in S.F.Nos. 469/1A1, 469/1A2 part (old No.
469/1A) and 469/1B1 of Suriyur Village, Thiruverumbur Taluk,
Tiruchirappalli District, from Mixed Residential Zone to
controlled Industrial Zone.

For Appellant	: Mr. T. Lajapathi Roy
For Respondent	: Mr. Isaac Mohanlal, Senior Counsel for Mr. Prasanna Vinoth for R1 : Mr. A. K. Baskarapandian Special Government Pleader for R2 to R5

W.P(MD) No. 11718 of 2014

<https://www.courts.mil/hse/11718>

: Petitioner

Vs.

1. The Government of Tamil Nadu,



Principal Secretary to Government,
Housing and Urban Development Department,
Secretariat, Chennai - 600 009.

2. The Director,

Directorate of Town and Country Planning,
Opposite to LIC, Chengalvarayan Building,
Fourth Floor, 807, Anna Salai,
Chennai - 600 002.

3. The Assistant Director of Town Country Planning,
10, Williams Road,
Cantonment,
Tiruchirappalli - 620 001.

4. The District Collector,
Trichy District, Trichy.

5. Thiruverumbur Panchayat Union,
Represented by its Commissioner/Block Development Officer,
Thiruverumbur, Trichy District.

6. Suriyoor Village Panchayat,
Suriyoor represented by its
President / Executive Authority,
Sooriyoor, Trichy.

7. Chief Engineer,
State Ground and Surface Water Resources Data Center,
Tharamani,
Chennai - 600 113.

8. The Executive Engineer,
Public Works Department,
Ground Water Division, Mannarpuram, Trichy - 20.

9. The Inspector of Factories,
Plot No.23, 3rd Street,
Khaja Nagar,
Trichy - 620 020.

10. S. Malar Vizhi

11. L.A. Bottlers Pvt. Ltd.,
Represented by its Managing Director,
Periya Suriyoor,
Trichirapalli.

: Respondents



forthwith close and seal the factory premise and stop all manufacturing and other operations in the factory of the 11th respondent situated in Survey field Nos.469/1A2 and 1B1, Periya Suriyoor Village, Thiruverumbur Panchayat Union, Tiruchi District.

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For Petitioner : Mr.T.Lajapathi Roy

For Respondents : Mr.A.K.Baskarapandian
(1 to 4 & 7 to 9) Special Government Pleader

For Respondent No.11 : Mr.Isaac Mohanlal
Senior Counsel for
Mr.Prasanna Vinoth

W.P(MD)No.5915 of 2017

Suriyur Vivasayigal Pathukappu Sangam,
Rep by its President,
T.Ramaraj,
S/o. Thulasiaiyah,
No.3/138, Pattaveli,
Suriyur Village, Suriyur Post,
Trichy - 620 025.

: Petitioner

Vs.

1.The State of Tamil Nadu,
Represented by its Secretary to Government,
Housing & Urban Development Department,
Secretariat, Chennai - 600 009.

2.The Commissioner,
Directorate of Town and Country Planning,
Fourth Floor, No.807,
Anna Salai, Chennai - 600 002.

3.The Assistant Director,
Town and Country Planning Department,
Trichy District,
No.10, Williams Road,
Cantonment, Tiruchirappalli - 620 001.

4.Navalpattu New Town Development Authority,
Represented by its Member Secretary,
Navalpattu, Trichy District.

5.LA Bottlers Private Ltd.,
Represented by its Managing Director,
Mr.Joseph Francis,

<https://hcservices.ecourt.gov.in/hcservices>
Mr.S.Pillayar Saalai,
Jenne Plaza, Cantonment,
Tiruchirappalli - 620 001.

: Respondents



PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents 1 to 4 to remove the unauthorized construction carried out by the fifth respondent Company to an extent of 8687.83 Sq.Meter (93,000 Sq.Ft) situated in S.No.469/1A1, 1A2, 1B1 in Suriyur Village, Thiruverambur Taluk, Trichy District in accordance with the Section 56 of the Tamil Nadu Town and Country Planning Act, 1971.

For Petitioner : Mr.T.Lajapathi Roy

For Respondents 1 to 4 : Mr.A.K.Baskarapandian
Special Government Pleader

For Respondent No.5 : Mr.Isaac Mohanlal
Senior Counsel for
Mr.Prasanna Vinoth

COMMON JUDGMENT

R.HEMALATHA, J.

This appeal W.A.(976/2017) is filed against the orders of a Single Judge in W.P.(MD).No.19069/2016 dated 26-04-2017. Two more related writ petitions namely W.P.(MD).No. 5915 of 2017 and W.P (MD).No.11718 of 2014 are clubbed with the present appeal, as all of them pertain to the same subject as in the present appeal and all the parties are common.

2. The related W.P.(MD).No.5915 of 2017 is filed by Suriyur Vivasayigal Pathukkappu Sangam for issue of Writ of Mandamus for directions to remove the unauthorized construction of the Factory of M/s. LA Bottlers.

3. Another related W.P(MD).No.11718 of 2014 to issue a Writ of Mandamus for directions to the concerned authorities to initiate action against M/s. LA Bottlers and close and seal their factory.

4. For the sake of convenience M/s.L A Bottlers Pvt.Ltd. will be called as petitioner company and the other parties by their names.

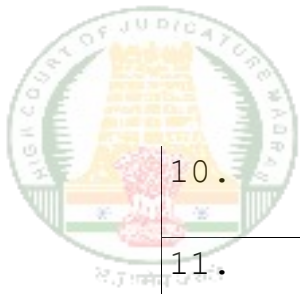
5. The petitioner Company, namely, L.A. Bottlers Private Ltd., is incorporated under the Companies Act, 1956 and in order to set up a bottling unit for Pepsico India Holding Private Limited., a factory was decided to be constructed in Survey Nos.469/1A1 and 469/1B1 of Suriyur Village, Thiruverumbur Taluk, Thiruchirappalli District covering 24 acres and the said land was purchased by the first respondent through a registered sale deed dated 04.10.2010, bearing Document No.8347 of 2010 on the file of the



Sub-Registrar, Thiruverumbur. The said land was classified as "Mixed Residential Zone". Since the petitioner company had to construct a factory, the land should be re-classified as "Controlled Industrial Zone" and an application dated 25.11.2010 requesting for change of classification of land was submitted by the Managing Director of the petitioner Company to the Secretary, Housing and Urban Development, Chennai, the Commissioner, Directorate of Town and Country Planning, Chennai and the Assistant Director, Town and Country Planning Department, Thiruchirappalli and on receipt of the said application, a notification was issued in daily newspapers both English and Tamil, inviting the general public to file their objections, if any.

6. According to the petitioner company, though there were no objections, the Assistant Director of Town and Country Planning sought certain clarifications with the petitioner company for change of classification of land. The petitioner company, accordingly, sent a communication along with the following documents.

Sl.No.	Particulars
1.	Application addressed to Principal Secretary to Government, Housing and Urban Development Department - 3 sets.
2.	Demand Draft for Rs.2500/- drawn in favour of concerned Member Secretary / Local Planning Authority (Original)
3.	Demand Draft for Rs.4000/- drawn in favour of Member Secretary, Local Planning Authority / New Town Development Authority (in original)
4.	Notary Public attested copy of documents (sale deed / Lease deed / power of attorney) - 3 sets
5.	VAO attested village map, FMB / Town Surveyor attested town survey sketch of the sita - 3 sets
6.	VAO attested - Chitta, Adangal, A' register copy and patta / Town Surveyor attested TSLR - 3 sets
7.	Encumbrance certificate for 13 years (in original upto date)
8.	VAO attested 'A' register copy and FMB sketch of the existing road (if applicable). If NH/SH lies as approach road - NOC from NH/SH.
9.	Government pleader opinion about land ownership - original



10.	Tahsildar NOC in prescribed format in original & 2 attested copies
11.	Site plan showing the access details and statement showing S.No./Sub-division wise extent in scale between 1:400 to 1:800 - 6 sets
12.	Topo plan about 1 km radius earmarking all the existing developments around the boundaries of the site - 6 sets.

7. In the meanwhile, the petitioner company have also obtained the following permissions from various authorities as mentioned below:

- (i) No Objection Certificate from the Tamil Nadu Fire Service Department.
- (ii) Notice and Certificate issued by the Inspector of Factories in his proceedings No.2914/11 dated 29.04.2011 for the commencement of the production in the factory premises of the first respondent.
- (iii) License issued by the Petroleum and Explosive Safety Organization (PESO), Ministry of Commerce and Industries, Government of India, dated 30.12.2011 and 03.12.2013 for storage of petroleum.
- (iv) License issued by the Petroleum and Explosive Safety Organization (PESO), Ministry of Commerce and Industries, Government of India, dated 30.12.2011 and 01.04.2015 for storage of Carbon Dioxide.
- (v) License under the Prevention of Food Adulteration Act, issued by the Deputy Director of Health Services and Family Welfare, Tiruchirappalli dated 12.05.2011.
- (vi) No Objection Certificate dated 02.07.2011 from the District Revenue Officer, for grant of a license for installation of the underground petroleum storage tank.
- (vii) Certificate of Registration from the Department of Labour dated 27.03.2012.
- (viii) License from the Food Safety and Standards Authority of India dated 09.05.2012.
- (ix) Letter from the Revenue Divisional Officer, Tiruchirappalli dated 29.06.2012 in O.Mu.A2-545-2012, contending that the lands in Survey Nos.469/1A1 and 469/1B1 were not covered under the Land Reforms Act, 1961.
- (x) License from the Boiler Inspection Department, bearing No.Ko.P2/3850/T-9277 dated 19.08.2014.
- (xi) Machinery Certificate from the Deputy Director, Industrial Safety and Security Department dated 04.09.2014.
- (xii) High Tension service connection from TANGEDCO, bearing Service No.209.

8. Since the petitioner company's industry has been classified



as "Orange Industry" by the Tamil Nadu Pollution Control Board, the petitioner company applied to the Tamil Nadu Pollution Control Board, for necessary approvals and obtained the consent for the operation of its new plant under Section 21 of the Air (Prevention and Control of Pollution) Act and for discharge of sewage under Section 25 of the Water (Prevention and Control of Pollution) Act. All requirements in respect of registration with the Tamil Nadu Commercial Taxes Department and the Central Excise Department were done and the certificates were obtained by the petitioner company from the said departments.

9. The petitioner company also entered into an agreement dated 12.11.2010 with the Executive Engineer, Public Works Department, Ground Water Division, Tiruchirappalli, in order to facilitate their business of bottling of Pepsi (soft drinks), drinking water, mineral water etc., by which the petitioner company was permitted to draw 1.50 lakh litres of ground water per day, which was subsequently enhanced to 2.40 lakh litres per day. This enhancement, according to the petitioner company, was done after taking into account the hydro-geological status of the area where the factory was intended to be constructed. Apart from this, the petitioner company factory was also granted permission to dig six borewells for drawal of more water. Since, the petitioner company had obtained all necessary certificates and permissions from the various departments, except the change of classification of land, it commenced the operation of the bottling unit investing huge amount of money during May 2011.

10. According to the petitioner company, the Pollution Control Board has also been periodically taking samples of water to find out any chemicals declared as hazardous were present and after conducting various lab tests, have stated that there are no complaints as far as ground water is concerned. At this juncture, in the year 2012, the Suriyur Vivasayigal Pathukappu Sangam, represented by its President, Mr.T.Ramaraj, filed a complaint, in which they have stated that drawal of water from the ground for the business of the first respondent would deplete the ground water source. Therefore, a Peace Committee Meeting was convened, wherein the Revenue Divisional Officer, Tiruchirappalli, Block Development Officer, Thiruverumbur, members of public and representatives of the Sangam participated. According to the petitioner company, it was resolved in the Peace Committee Meeting that the company should not draw water from three borewells out of six borewells dug by them and that the petitioner company also agreed for the same. This was followed by the orders of the Revenue Divisional Officer, Tiruchirappalli, vide his proceedings in Na.Ka.A1-522-2013 dated 25.04.2013 directing stoppage of drawal of water from the three borewells. In fact, the Revenue Divisional Officer, has cited the following reasons in his letter dated 25.04.2013.



- (i) there is drought in the area of Suriyur Village and water must be provided to the general public residing over there.
- (ii) there would be a law and order problem if the petitioner company is permitted to draw water from all the six borewells.

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The Revenue Divisional Officer, in the above cited proceedings, has further directed the Tahsildar, Thiruverumbur to cause inspection of the petitioner company and find out as to whether they have stopped taking out water from three of the six borewells.

11. Subsequently, the Suriyur Panchayat ordered closure of the petitioner company factory by invoking the provisions of Sec159 of the Tamil Nadu Panchayats Act, 1994, on the ground that there was no approval for the factory. This order was challenged by the petitioner in W.P.(MD).No.1198/2014 and an interim stay was granted by the High Court. In the meanwhile, the Assistant Director, Town and Country Planning Department returned the petitioner company's application for reclassification of land on 13.05.2014, on the basis of complaints from the Suriyur Panchayat as well as the complaints from general public. This was again challenged by the petitioner company in W.P.(MD).No. 9632 of 2014 and this Court had directed the petitioner to resubmit the application for reclassification to The Assistant Director, Town and Country Planning, Trichirappalli, who was in turn directed to forward the same to The State of Tamil Nadu, represented by its Secretary, Housing and Urban Development Department to pass appropriate orders. There was another peace committee meeting on 27.01.2015. The Revenue Officials issued the final notice dated 28.01.2015 to the petitioner company after the meeting on 27.01.2015 asking the petitioner company to submit the relevant permissions and licenses for the factory. W.P.(MD) No.1334 of 2015 was filed challenging this notice from the Block Development Officer, Thiruverumbur.

12. Another W.P.(MD)No. 1156 of 2015 was filed by the petitioner company seeking directions for removing the seals of the closed wells. Of the six wells, three were closed after the first peace committee meeting in 2013 and the remaining after similar meeting in 2015. Since the orders regarding the reclassification request was getting delayed even after specific instructions in W.P.(MD).No.9632 of 2014, the petitioner company preferred a contempt petition in Cont.P.(MD)No.502 of 2016 and the same was listed for hearing on 01.07.2016. This being so, the impugned order in G.O. (2D) No.91 of Housing and Urban Development, dated 30.06.2016 rejecting the application for reclassification was received and hence W.P.(MD).No.19069 of 2016 and consequently the present appeal against the orders of the Single Judge. The order of the learned Single Judge dated 26.04.2017 in W.P.(MD).No.19069 of 2016 in remitting back the



matter of reclassification to the Government of Tamil Nadu, for fresh consideration after giving due opportunity to the petitioner company and all related parties within a period of ten weeks and also evaluating the public perception vis-a- vis the rule of law, is being questioned in this writ appeal.

13. This appeal along with the related writs, all in different wordings, aim at only one aspect and that is the validity of the existence of the factory/ bottling unit which is not on a land classified as Industrial Zone and also built without proper planning approval and permission. The main grievance about the factory is the drawal of ground water in huge quantities from giant borewells in an area where agriculture continues to exist and consequent depletion of water table in an already drought stricken area causing apprehensions in the minds of the general public.

14. The learned Single Judge had accepted the contentions of the learned counsel for the petitioner company in W.P(MD).No.19069 of 2016 that the reason cited for the rejection of the application for reclassification is the public resentment or unrest and this cannot be the only decisive factor for the Government to reject the application for reclassification. Mr.P.S.Raman, the learned senior counsel for the petitioner company would contend that the company had provided job opportunities for the local population, that they were ready to outsource the supply of water from other outside sources thereby allaying the apprehensions of the villagers and that since huge amount was invested in the factory, the disruption by a few elements of the general public for vested interests should not come in the way of the decision making process of the Government. It was also contended that legal provisions were not given due weightage by the Government of Tamil Nadu while considering the petitioner company's application for reclassification.

15. The Learned Counsel for the petitioner company has also relied on the verdict of Madurai bench of this Court in W.P.(MD). No.9930 of 2011 in S.Muppithathi vs. Chief Engineer (NCES), TNEB, Chennai and others wherein it was held that,

"Once it is found that the erection of the windmill by the seventh respondent was without the permission of the local body and once it is also found that the payment of tax by the seventh respondent during the pendency of the writ petition would not amount to the grant of permission under Section 160 of the Tamil Nadu Panchayats Act, 1994, it follows automatically that the petitioner is entitled to suo-motus in this short ground. But it is claimed both by the seventh respondent and by the Tamil Nadu Electricity Board, whose officials are also parties



to the proceedings, that the installation of the windmill had already taken place. But it has not commenced operations, in view of the interim orders. Therefore, taking into account the above, the writ petition is disposed of, permitting the seventh respondent to apply to the local body, which is not a party to the proceedings. Within 2 weeks of the seventh respondent submitting an application for permission under Section 160, the local body shall convene a meeting and take a decision in accordance with law."

At this point it is relevant to point out that there have been a series of litigations on this, with the petitioner company approaching the Court on many occasions and equally those who have been resisting this factory. The learned Single Judge had taken on record an undertaking by the petitioner company that they would not draw water from the six borewells and instead get their water supply from outside. It is pertinent to mention that the learned Single Judge has not given a clear verdict either in favour of the petitioner company or the others who have resisted the factory. The order of the Single Judge puts back the clock by remitting the matter to the Government of Tamilnadu for fresh consideration of the request for reclassification of the land use. It would be a million dollar question whether an approval of the land classification as requested by the petitioner company would regularize the inherent infirmities as in the construction of the factory building without any planning approval and operating the factory without running license. In this context the counter affidavit filed by the Rural Development Assistant Director (Panchayat), Trichy and the Block Development Officer, Thiruverumbur Panchayat Union, who are the second respondents in W.P(MD) No.1334 of 2015, assumes significance. The main aspects highlighted in the counter affidavit are,

a) In the permission granted to the petitioner company for drawal of water from six borewells which was valid till 30-06-2015 the Competent Authority namely the Chief Engineer WRO(PWD). State Ground Surface Water Resource Chennai had imposed an additional condition for renewal of the water drawal permission .The clause read as " if there is any public protest for drawal of ground water in the referred borewells,it will lead to cancellation of the permission"

b) The petitioner company had constructed the factory building unauthorizedly anticipating the approval for reclassification. The building measured 66324 sq.ft. of built-up area. There is no building plan approval from Competent Authority. The only building plan approval on



record is signed by the President of Suriyur Panchayat, who is not the Competent Authority.

c) The Tamilnadu Pollution Control Board have not renewed their consent "for discharge of sewerage and trade effluent" u/s 25 of Water (Prevention and Control of Pollution) Act, 1974. Similarly, the consent for "discharge of emission from the stacks" u/s 21 of Water (Prevention and Control of Pollution) Act, 1974, is also not renewed. Both the consents expired on 31.03.2014.

d) The petitioner company was issued a show cause notice on 18.11.2014 and no response has been received.

e) The mandatory "running license" has not been obtained from the Thiruverumbur Panchayat Union, by the petitioner company as mandated in Sec.160 of Tamilnadu Panchayat Act, 1994.

f) Finally after the peace committee meeting held on 27.01.2015, which was attended by the representatives of the petitioner company also, a final notice dated 28.01.2015 was issued to the petitioner company seeking the explanation from the company for non-submission of the relevant permission/license from the authorities concerned.

16. In this context, a perusal of Sec 160 of Tamil Nadu Panchayat Act, 1994 reads as "No person shall, without the permission of the Panchayat Union Council in Panchayat villages and except in accordance with the conditions specified in such permission,

- a) Construct or establish any factory, workshop or work place in which it is proposed to employ steam water, water power or other mechanical power or electrical power, or
- b) install in any premises any machinery or manufacturing plant driven by any power as aforesaid not being machinery or manufacturing plant exempted by the rules."

17 . Besides these, the averments of the Government of Tamilnadu, represented by Secretary of Housing and Urban Development Department, Chennai, are

- The Authority to allow conversion of land use i.e, reclassification is the Government and not the Panchayat President, Therefore, the certificate of land conversion issued by the Panchayat President, Suriyur Panchayat is without authority and void *abinitio*.

<https://hcservices.boudh.org.in> Building plan approval can be given by Village Panchayats only for buildings up to 2000 sq.ft. of commercial space. Therefore, the building plan approval issued by the



President of Suriyur Panchayat, is invalid.

Similarly, the NOC issued by the President, Suriyur Panchayat, is also without jurisdiction and authority.

The directions by the Honble Court in WP(MD)No.9632 of 2014 was complied with in letter and spirit. This Court had ordered for fresh consideration of the application for reclassification.

- The invalid certificates like conversion of land use, building plan approval and NOC which were issued by the President of Suriyur Panchayat were used by the petitioner company to obtain other certificates from departments like Fire services department, PWD for drawal of water etc thus making all the certificates invalid.

18. The learned counsel for the petitioner company would contend that having obtained all the required permissions and approvals, except for the reclassification of land, which was pending with the Government for disposal, the rejection order of the first respondent was based only on the public perception and protest by a section of the public, which cannot be construed as a real expression of public sentiments. Actually, the paper publication regarding the project evoked no objections from the public in writing.

19. On the other hand, the learned counsels for the appellant in the present appeal and the petitioners in the Writ Petitions would contend that the basic permissions obtained by the petitioner company were from Authorities who were not the Competent Authorities and therefore the construction of the factory on a land classified as Mixed Residential Zone, that too without proper plan approval by the Competent Authority, in itself, was *abinitio* illegal.

20. The G.O.Ms.No.1730 of Rural Development and Local Administration Department dated 24-07-1974 by the Government of Tamil Nadu has clearly spelt out the uses permitted in different zones. In Mixed Residential Zone the uses permitted mentions only the cottage industries permissible in residential areas. This clearly implies that the petitioner company's act of constructing a factory and operating the same in a zone where it was not permitted is in itself illegal. Even in the Controlled Industrial Zone the permitted uses includes "industries using electric power not exceeding 130 HP but excluding industries of obnoxious and hazardous nature by reason of odour, liquid effluent, dust, smoke, gas, vibration etc. or otherwise likely to cause danger or nuisance to public health or amenity."

<https://hcservices.courts.gov.in/hcservices> 83 and 84 of Tamilnadu Village Panchayat Act, 1994 reads as,

"Section 83: In the case of every village panchayat,



there shall be appointed by the Government a secretary, subject to such rules as may be prescribed, to perform the functions of the executive authority.

Section 84: The executive authority shall, (a) carry into effect the resolutions of the village panchayat: Provided that where the president considers that a resolution has not been legally passed or is in excess of the powers conferred by this Act or that, if carried out, it is likely to endanger human life or health or the public safety, the executive authority shall refer the matter to the Government for orders and their decision shall be final; (b) control all the officers and servants of the village panchayat; (c) discharge all the duties specifically imposed and exercise all the powers conferred on the executive authority and subject to all restrictions and conditions imposed, by or under this Act, exercise the executive power for the purpose of carrying out the provisions of this Act and be directly responsible for the due fulfilment of the purposes thereof"

22. The learned Single judge has observed about the impugned order dated 01.07.2016 that the "rules of governance cannot be allowed to be stifled or violated and the decision of the Statutory Authority cannot be governed by mere objections from the public on the basis of street sentiments who may be driven by vested interest or camouflaged as public interest, beneath lie a personal agenda of some pressure groups."

23. This Court feels that the above observation is based on the apprehensions of the petitioner company, which is again based on assumptions only. The crux of the issue to be decided in the appeal is whether the impugned order of the first respondent rejecting the application for reclassification was as per provisions of law. The impugned order of the Government of Tamilnadu has referred to all relevant authorities and their correspondence mentioning whether petitioner company had complied with all the legal provisions to establish their bottling unit in the Suriyur village.

24. The Government of Tamilnadu in the impugned order dated 01.07.2016 has relied its decision on the correspondence with the other related departments and one such vital correspondence is that of the Revenue Divisional Officer, Trichirappalli. The Revenue Divisional Officer, Trichirappalli, in his letter A-1-S22-2014 dated 02.04.2016, has stated "M/s.LA Bottlers have without proper permission dug huge deep borewells depleting the water table and causing protests from different farmers' organizations leading to the shutting down of the factory after finding that



there was no proper approval for the factory itself." This Court feels that the reasoning by the Govt. of Tamil Nadu in the impugned order is adequate and justified. There is no reason to believe that the Statutory Authorities were influenced by "mere objections from the public on the basis of street sentiments who may be driven by vested interest or camouflaged as public interest, beneath lie a personal agenda of some pressure groups."

25. In this context we may rely on the observations made by the Apex Court in *Ugar Sugar Works Ltd. vs. Delhi Administration*, reported in AIR 2001 SC 1447. It is well settled that the Courts, in exercise of their power of judicial review, do not ordinarily interfere with the policy decisions of the executive, unless the policy can be faulted on grounds of mala fide, unreasonableness, arbitrariness or unfairness etc. Indeed, arbitrariness, irrationality, perversity and mala fide will render the policy unconstitutional. However, if the policy cannot be faulted on any of these grounds, the mere fact that it would hurt business interests of a party, does not justify invalidating the policy. In tax and economic regulation cases, there are good reasons for judicial restraint, if not judicial deference, to judgment of the executive. The Courts are not expected to express their opinion as to whether at a particular point of time or in a particular situation any such policy should have been adopted or not. It is best left to the discretion of the State."

26. In the matter of reclassification of land use, G.O(M.S) No.94 of Housing and Urban Development Department dated 12.06.2009 reads as under,

"The Government after careful examinations accept the suggestion of the Commissioner of Town and Country Planning and order that the proposal for reclassification may be received by the respective Member Secretary of Composite Local Planning Authority or Regional Deputy Director in other areas and on receipt of such proposal, these officers shall simultaneously call for the remarks of respective local bodies and at the same time invite objections and suggestions through the local newspapers from the public by giving thirty days time and on due consideration and analysis of all these objections and suggestions, the proposal should be forwarded to the Directorate with resolution of Local Planning Authority, and these proposals will then be scrutinised by the Directorate and forwarded with remarks for necessary consideration by the Government for the issue of Government orders."

<https://hcservices.e-governance.gov.in/hcservices/>

G.O.(Ms).No.79 of Housing and Urban Development Department Dated: 04.05.2017 regarding reclassification of land use states as;



"The Collector shall ensure that due to the proposed development, the irrigation canals and distribution channels or the natural storm water drains or channels are not obstructed or affected and shall not lead to depletion of ground water level of the area or inundation of nearby areas."

27. This Court does not find the impugned order of the Government of Tamil Nadu deviating from this laid down procedure. It is also pertinent to mention that public perception has to be given much importance and cannot be overlooked especially as in the instant case where the reclassification of land use is not in tune with the interest of the public. As already mentioned earlier, the impugned order in W.P. (MD) No.19069 of 2016 is not the sole decision of the Government, but is based on the objections raised by several other related departments, who basically have pointed out the major deficiencies warranting only a rejection by the government.

28. Water resource is without doubt, the most precious amenity available and this resource is vital for the very existence of this factory. Though the petitioner company had given an undertaking to the effect that they would not draw water from the wells dug by them and they would depend on the water sourced from outside, it is in one form a tacit acknowledgment of the bitter truth that the water table is indeed getting depleted due to their usage and therefore the public perception on the same cannot be brushed aside as "street sentiments driven by vested interest camouflaged as public interest". The industry as such being fully dependent on water, such an undertaking may not help in the long run.

29. Notwithstanding the fact that the petitioner company is very much aware of the potential danger to the water table due to the huge drawal of water, the crux of the issue zeroes in on the legality of the very existence of the factory. The petitioner company has neither a land conversion approval nor a valid building plan approval. No running license has been obtained by them. This Court strongly feels that the petitioner company has all along circumvented the basic statutory provisions to facilitate the construction and installation of the factory and machinery respectively, without any valid approval. The request of the reclassification of the land being used by the petitioner company is not for a public cause and is purely for a private business venture. Therefore, the order passed by the learned Single Judge in W.P.(MD)No.19069 of 2016 dated 26.04.2017 warrants ~~interference~~ ~~in this court~~ and the writ petitions are liable to be allowed.



30. In the result,

(i) Writ Appeal No.976 of 2017 is allowed and consequently, the order passed by the learned Single Judge in W.P.(MD) No.19069 of 2016 is set aside.

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(ii) Writ Petition (MD) No.11718 of 2014

This Writ Petition is allowed and the respondents 1 to 9 are directed to close and seal the 11th respondent premises and stop all manufacturing and other operations in the factory forthwith situate in Survey No. No.469/1A1, 469/1A2, and 469/1b1 of Suriyur Village, Thiruverumbur Taluk, Trichy District.

(iii) Writ Petition (MD) Nos.5915 of 2017

This Writ Petition is allowed and the respondents 1 to 4 are directed to remove the unauthorized construction put up by the 5th respondent to an extent of 8687.83 sq. meters (93000 sq.ft.) situate in Survey No.469/1A1, 469/1A2, and 469/1b1 of Suriyur Village, Thiruverumbur Taluk, Trichy District, in accordance with Section 56 of Tamil Nadu Town and Country Planning Act 1971, within a period of one month. Consequently, connected miscellaneous petitions in the above writ appeal and the writ petitions are closed. No order as to costs.

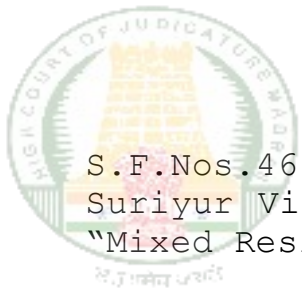
M. SATHYANARAYANAN, J.

I have gone through the common judgment proposed by the Hon'ble Mrs. Justice R. Hemalatha. I am unable to subscribe to the reasons assigned by the Hon'ble Judge and therefore, delivering a separate verdict/common judgment.

2. The litigation pertains to closure of the bottling unit of M/s. LA Bottlers Private Limited, Cantonment, Trichy-620001, who is the first respondent in W.A(MD).No.976 of 2017, fifth respondent in W.P(MD).No.5915 of 2017 and eleventh respondent in W.P(MD).No.11718 of 2014. The matters in issue and to be adjudicated are inter-wined and connected with each other and therefore, these cases are disposed of by this common judgment.

W.A(MD).No.976 of 2017

3. A third party, namely Suriyur Vivasayigal Pathukappu Sangam, represented by its President T. Ramaraj, Trichy-620 025 is the appellant herein. The first respondent herein filed W.P(MD) No.19069 of 2016 against the respondents 2 to 7, praying for issuance of a Writ of Certiorarified Mandamus to call for the records on the file of the first respondent in G.O.(2D) No.91, Services, 19069 of 2016, Urban Development [Na.Va 4(i)] Department dated 30.06.2016, quash the same and consequently directing the said official to vary the classification of the land in



S.F.Nos.469/1A1, 469/1A2 Part (Old No.469/1A) and 469/1B1 of Suriyur Village, Thiruverumbur Taluk, Tiruchirapalli District from "Mixed Residential Zone" to "Controlled Industrial Zone".

4. The Writ Petition, after contest, came to be disposed of, vide order dated 26.04.2017, by remanding the matter to the second respondent herein for fresh consideration on the basis of the facts enumerated in the impugned order, after giving due opportunity to the first respondent/writ petitioner and the proposed impleading party and other persons concerned and pass a reasoned order by taking into consideration the relevant facts, rules and regulations within a period of ten weeks from the date of receipt of a copy of this order and it was also made clear that the second respondent shall evaluate the public perception/opinion in proper perspective to ensure a balance between the rule of law and over bearing public opinion with dispassionate mind. The third party/appellant herein, aggrieved by the said order, came forward to file this Writ Appeal.

5. Facts leading to the filing of this Writ Appeal have been extracted in the impugned order, dated 26.04.2017, allowing the Writ Petition and therefore, it is not necessary to restate the facts once again except narrating the relevant facts for the purpose of disposal of this Writ Appeal.

6. The first respondent/writ petitioner was incorporated on 01.10.2010 as a Private Limited Company under the provisions of the Companies Act, 1956 with the main object of establishing plants for manufacture and bottling of soft drinks, concentrates, beverages, mineral water, drinking water etc., and they propose to set up a plant/factory at Suriyur Village, Tiruchirappalli District and after establishment, it was to function as a bottling unit for Pepsico India Holdings Pvt. Ltd. The proposed plant was to be constructed at S.Nos.469/1A2 and 469/1B1 of Suriyur Village, spread over an extent of 24 acres and for that purpose, the said lands were purchased.

7. The first respondent/writ petitioner would further aver that they also obtained Land Conversion Certificate from the sixth respondent, vide letter dated 05.10.2010 and Building Permit, vide proceedings bearing No.3/2010 dated 25.10.2010 and also No Objection Certificate from the sixth respondent dated 02.02.2011 for manufacture of soft drinks. The first respondent/writ petitioner also applied for planning permission from the third respondent for construction of factory building and the application for the same to be routed through the fourth respondent. As the said land was classified as "Mixed Residential Zone", it has to be reclassified as "Controlled Industrial Zone" by the sixth respondent and necessary application dated 25.11.2010 for change of land use was also submitted along with necessary documents and by paying the prescribed fees and it was



also forwarded by the fourth respondent to the second respondent for appropriate orders.

8. It is also the stand of the first respondent that unless and until the change of land use was ordered by the second respondent, the application for Planning Permission could not be processed by the third respondent. The fourth respondent has also issued a notification in ROC.No.72/2010 in an English and Tamil newspaper, inviting objections and suggestions for the proposed variation of land use within 30 days and according to the first respondent/writ petitioner, no such objection was received by the fourth respondent.

9. The fourth respondent was in requirement of more materials from the first respondent/writ petitioner to process the application submitted for change of land use and it was also duly complied with, vide letter dated 28.02.2011. It is also the claim of the first respondent/writ petitioner that it had also obtained the following :

"7.The petitioner also obtained the following:

- a) "No Objection" Certificate from the Fire Service Department, which was dated 03.11.2010.
- b) A Licence and Certificate from the Inspector of Factories, vide order dated 29.04.2011, in proceedings bearing No.2914/11, for the commencement of production in the factory premises of the petitioner.
- c) Certificate of Registration from the Department of Labour, dated 27.03.2012.
- d) License from the Food Safety and Standards Authority of India, dated 09.05.2012.
- e) Letter from the Revenue Divisional Officer, Trichy, dated 29.06.2012, in O.Mu.A2.545-2012, stating that the lands in Survey Nos.469/1A2 and 469/1B1 were not covered under the Land Reforms Act, 1961.
- f) Licence from the Boiler Inspection Department bearing No.T9277, dated 23.07.2014;
- g) Stability Certificate from the Chief Inspector of Factories, T.N. Government dated 21.10.2013;
- h) Machinery Certificate from the Deputy Director, Industrial Safety and Security, dated 04.09.2014;
- i) Licence issued by the Petroleum & Explosives Safety Organisation (PESO), Ministry of Commerce &



Industry, Government of India, dated 30.12.2011 & 03.12.2013, for storage of Petroleum;

j) Licence issued by the Petroleum & Explosives Safety Organisation (PESO), Ministry of Commerce & Industry, Government of India, dated 30.12.2011 & 01.04.2015, for storage of Carbon Dioxide;

k) Licence under the Prevention of Food Adulteration Act, issued by the Deputy Director of Health Services & Family Welfare, Trichy, dated 12.05.2011;

l) NOC from the District Revenue Officer, dated 02.07.2011 for grant of a licence for installation of one under-ground petroleum storage tank and

m) High Tension Service Connection from TANGEDCO bearing Service No.209.

n) The petitioner's industry has been classified as an "Orange" industry by the Tamilnadu Pollution Control Board. The petitioner applied to the Tamilnadu Pollution Control Board for necessary approvals and obtained the necessary consents for the operation of its new plant under Sec.21 of the Air (Prevention & Control of Pollution) Act and for discharge of sewage under Sec.25 of the Water (Prevention & Control of Pollution) Act.

o) All requirements in respect of registration with the Tamil Nadu Commercial Taxes Department and the Central Excise Department were done and the certificates were obtained by the petitioner from the said Departments.

10. It is also stated by the first respondent/writ petitioner that necessary resolution was also passed by the sixth respondent on 08.08.2011 and it was forwarded to the fourth respondent also. The first respondent/writ petitioner further stated that in order to meet the water requirement for running the plant, the petitioner entered into an agreement dated 12.11.2010 for ground water utilization with the Executive Engineer, Public Works Department, Ground Water Division, Trichy and they were permitted to draw 1.50 lakh litres of ground water per day from three borewells.

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11. The first respondent/writ petitioner would further state that based on the above licences and clearances, the first



respondent/writ petitioner started to run it's plant and commenced production in May, 2011 and it employed about 150 persons, 80 persons directly and 70 persons indirectly from the local village residents. It is also the claim of the first respondent/writ petitioner that the Pollution Control Board has also took samples of the water and also inspected the petitioner's factory periodically and did not note any irregularity. The first respondent/writ petitioner subsequently entered into a revised agreement dated 19.07.2011 with the Executive Engineer, Public Works Department, Ground Water Division, Trichy and the petitioner was granted permission to draw 2.40 lakh litres per day, after taking into consideration the hydro-geological status of the area and thereafter, the writ petitioner also obtained approval for total six borewells, vide clearance dated 31.01.2012, for drawal of ground water for Industries/Infrastructure projects from the Government of Tamil Nadu, Water Resources Department, State Ground and Surface Water Resources Data Centre, Chennai and also indicated that the area fell within "Safe Category" and as per the permission given, they were permitted to draw 5,80,000 litres of water per day and the said certificate was valid for a period of three years viz., till 30.01.2015. The fourth respondent also sent a communication dated 04.10.2011 to the first respondent/writ petitioner as to the process of the application submitted for change of land use.

12. The first respondent/writ petitioner would further aver that newly elected seventh respondent developed evil towards them and since the Board of Directors of the first respondent consists of three sons of former member of Lok Sabha for Trichy constituency and the seventh respondent belonging to a rival party, along with the officials of the sixth respondent, repeatedly visited the writ petitioner's plant and demanded that the writ petitioner should not draw any ground water on the pretext that the same was without authorization.

13. Suriyur Village Safety Union/appellant in W.A.(MD)No.976 of 2017/petitioner in W.P.(MD)No.5915 of 2017 also sent a representation dated 03.12.2012 to the Revenue Divisional Officer, Trichy objecting to the drawal of water and in order to settle the dispute, a Peace Committee was also constituted, wherein the first respondent/writ petitioner agreed to extract water only from 3 three bore wells instead of six and the Revenue Divisional Officer, Trichy, vide proceedings dated Na.Ka.No.522/2013 dated 25.04.2013, had ordered closure of three bore wells out of total six bore wells for which permission was accorded to draw ground water. However, the sixth respondent, without applying their mind to the relevant facts and circumstances, issued an order dated 24.06.2014 ordering closure on the ground that it is running its operations without any approval and one more ground raised is that on account of establishment of factory, agricultural operations



are affected.

14. The first respondent/writ petitioner made a challenge to the said proceedings by filing W.P(MD).No.4498 of 2014 and it was entertained and an order of interim stay was granted by this Court and it was also brought to the knowledge of this Court about the objections received from the fifth respondent as well as from the public and it was put to challenge in W.P.(MD)No.9632 of 2014 and vide final order dated 19.06.2014, the first respondent was directed to resubmit the application to the fourth respondent, who in-turn was directed to forward the same to the second respondent along with the objections received and thereafter, the second respondent was directed to consider the same after affording an opportunity of personal hearing to the seventh respondent and pass appropriate orders. However, nearly after 3½ years, the fourth respondent returned the application partly, vide proceedings dated 13.05.2014 by referring to the objections received from the sixth respondent as well as the complaint from the public and final order dated 19.06.2014, this Court directed them to resubmit the application to the fourth respondent along with the objections received, who in-turn was directed to consider the same after affording an opportunity of hearing to the seventh respondent, who subsequently got impleaded.

15. The first respondent/writ petitioner, immediately sent a communication dated 11.07.2014 by drawing the attention to the above said order and requested the fourth respondent to forward the application to the second respondent and the third respondent, vide communication dated 12.11.2014, has requested the second respondent to pass orders on the application seeking conversion of land usage. The Tamil Nadu Pollution Control Board [TNPCB] has also granted consent to the writ petitioner and vide notification, TNPCB has directed them to produce the building plan issued by the Director of Town and Country Planning Act and licence from the Local Body and it was also indicated that if they failed to respond to the notice, legal action would be initiated.

16. The first respondent/writ petitioner, in response to the said communication, submitted their replies/responses dated 14.07.2014 and 02.12.2014 and on receipt of the same, TNPCB called the petitioner for personal hearing on 26.12.2014, vide letter dated 19.12.2014 and a representation was also given to them, which disclose that the plant/factory of the first respondent was functioning within the prescribed parameters. TNPCB also directed the first respondent/writ petitioner to furnish the building plan issued by DTCP and it was received by the writ petitioner on 22.09.2015 and the petitioner responded to the same, vide reply dated 25.09.2015 by submitting that since the land conversion usage application is pending, DTCP would be processed only upon receipt of the same and in the interregnum, W.P(MD).No.11718 of



2014 came to be entertained.

17. It is also averred that the first respondent/writ petitioner has also applied for "Local Body running licence" before the Block Development Officer (BDO), Thiruverambur on 23.06.2014 and certain details were called for and it was also furnished, vide reply dated 04.09.2014 and they were also called upon to produce the Food Safety Standards Authority of India (FSSAI) Certificate and other licences/clearances and those documents were also submitted by the writ petitioner on 27.11.2014. However, the sixth respondent has passed a resolution on 13.11.2014 by referring to the interim order of stay dated 24.02.2014 for closure of the plant/factory and some of the residents got impleaded themselves in W.P(MD).No.4498 of 2014 to show their support in running the factory.

18. A Peace Committee meeting was also conducted by the jurisdictional Revenue Divisional Officer and the District Revenue Officer and the Revenue Divisional Officer, Trichy along with police officials came to the factory premises and closed three borewells functioning without any approval and despite No Objection Certification, they refused to remove the seal. In this regard, the writ petitioner/first respondent herein filed W.P. (MD).No.1156 of 2015 seeking for desealing the borewells and it was also entertained. The Block Development Officer, Tiruverambur, vide proceedings dated 28.01.2015, issued a notice under Sections 160 and 220 of the Tamil Nadu Panchayats Act, 1994, alleging that some documents sought for have not been furnished and also pointed out that no permission was granted for running the factory and also called upon the first respondent/writ petitioner to show cause as to why appropriate action should not be initiated and it was put to challenge in W.P.(MD)No.1334 of 2015 and vide order dated 05.02.2015, an undertaking given by them was recorded to the effect that till the disposal of W.P(MD) Nos.1156 and 1334 of 2015, no further proceedings would take place.

19. Since on the pretext of the administrative function of the factory sought to be interfered with by preventing the workers entering into the factory, Crl.O.P(MD).No.2956 of 2015 was filed, wherein police protection was granted for running the writ petitioner's factory, but on account of objections received from the residents and the sixth respondent, the factory could not run. Cont.P(MD).No.502 of 2016 was also filed alleging non-compliance of the order dated 19.06.2014 and pendency of the same, the second respondent has issued the impugned Government Order in G.O.(2D) No.91 dated 30.06.2016, rejecting the application submitted for ~~leave to continue the business~~ and challenging the same, W.P(MD).No.19069 of 2016 came to be filed. The appellant herein has also filed a petition to implead themselves by filing WMP(MD).No.4832 of 2017 alleging



that the entire people of the village are adversely affected by running the factory and continuous protest are also taking place and also pointed out as to the pendency of W.P.(MD)Nos.4498 of 2014 and 11718 of 2014.

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20. Counter Affidavit was filed by the first respondent, wherein it is averred that Land Use Conversion Certificate issued by the Local Body President is without authority and jurisdiction and the same is void *abinitio* and so also the Building Plan Approval for the reason that the Village Panchayats have authority to grant permission only upto 2000 sq.ft of commercial space and beyond the said area, Navalpattu New Town Development Authority is the competent authority and not the President of the Panchayat and as such, Building Plan Approval has been accorded by the Local Body without jurisdiction and without approval of the DTCP. It is further averred in the counter affidavit that on account of the Building Plan Approval, entire construction has been done illegal in an unauthorized manner and the first respondent/writ petitioner had illegally obtained clearances from incompetent authorities. It is also averred that the local residents objected for the reason that running the factory would lead to depletion of ground water level, which in-turn will affect agricultural activities and a fair decision has been taken to reclassify the land from "Mixed Residential Zone" to "Controlled Industrial Zone" and therefore, the impugned order cannot be faulted with.

21. The learned Judge, after taking note of the rival submissions and the materials, especially the contents of the counter affidavit of the second respondent herein that there was little application of mind on the part of the said official which discharging his statutory function and the application submitted for change of land usage has not been considered with reference to rules and regulations and the request made by the writ petitioner company has been considered only on the basis of public perception and complaints without any critical examination. The learned Judge has taken note of the fact that public interest is paramount while considering any individual request, but at the same time rules of governance cannot be allowed to be stifled or violated and the decision of the statutory authority cannot be governed by mere objections from the public on the basis of street sentiments who may driven by vested interest or camouflaged as public interest beneath lie a personal agenda of some pressure groups. The learned Judge, after taking note of the affidavit of undertaking filed by the first respondent/writ petitioner that water would not be drawn from the subject lands and they would also source the supply of water by other means, has remanded the matter to the second respondent for fresh consideration.

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W.P. (MD) .No.11718 of 2014

22. This writ petition, styled as Public Interest Litigation,



is filed by the petitioner, who claims to be a native of Periya Suriyur village and also a farmer who owns agricultural lands in S.Nos.318/1A, 320/4, 320/2B and 320/5 and according to him, lands purchased by the eleventh respondent herein/first respondent in W.A. (MD)No.976 of 2017 are classified as agricultural lands and he has put up a massive gigantic construction of a huge building to an extent of 80,000 Sq.ft. in the said lands and have installed heavy machineries, cold storage units and other equipments in the said building and for water needs of their industrial unit, they have dug huge borewells and drawing huge amounts of ground water every day. It is further averred that the appellant herein/11th respondent has not obtained necessary permission from the statutory authorities before construction and such an act is also the subject matter of criticism by the Principal Accountant General and upon placing the materials, the Local Body has woken up and issued the notices dated 19.02.2014 and 09.06.2014 calling upon them to furnish explanation for establishing the factory and making construction without permission and a resolution was also passed in Resolution No.38 dated 26.06.2014, resolving to recommend to the District Collector, Trichy/ Inspector of Panchayats to take action against unlicensed/unauthorized factory.

23. A stand has also been taken that the writ petitioner, since the Village Panchayat is not competent to accord approval, the so called approval obtained by the eleventh respondent/first respondent in W.A. (MD)No.976 of 2017 is of no use and therefore, in this regard, he has submitted a representation to seal the factory premises and since it has not been disposed of, came forward to file this writ petition.

W.P(MD).No.5915 of 2017

24. The appellant in W.A(MD).No.976 of 2017 has filed this writ petition, styled as Public Interest Litigation, raising same objections/stand taken by them in the writ appeal.

25. Mr.T.Lajapathi Roy, learned counsel appearing for both the appellant in W.A(MD)No.976 of 2017 and the petitioners in W.P(MD). Nos.5915 of 2017 and 11718 of 2014, has invited the attention of this Court to the typed set of documents filed in W.A(MD).No.976 of 2017 as well as the stand taken by the second respondent in the counter affidavit and would submit that admittedly the Local Body is not at all competent to accord necessary approval/permission and the first respondent/writ petitioner has managed to get clearances from various authorities and since necessary approval have not been accorded by DTCP, the alleged permissions granted in favour of the first respondent are of no use and that apart, for running a soft drinks bottling plant requires usage of large quantity of water and even as per the admission of the first respondent/writ petitioner, they have to necessarily draw 5.80 lakhs of water per day from six borewells dug by them, which would definitely deplete the ground water level and in-turn agricultural operations of the local villagers and taking into



consideration the objections, materials placed and also the relevant statutory provisions, the second respondent has acted strictly in accordance with law by rejecting the application for land use conversion.

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26. It is the further submission of the learned counsel appearing for the appellant that since the application for planning permission/building plan approval has been accorded by the Local Body, without getting approval of the DTCP, those permissions are of no use and would not confer with the first respondent any right to run the plant/factory and in the absence of necessary permission/approval by competent authority, the constructions put up by them are to be treated as unauthorized and that apart, when law contemplates that No Objection Certificate was also issued by the Local Body and the Local Body has taken note of the public sentiments and other factors, the impugned order rejecting the application cannot be found fault with. It is also the argument of the learned counsel appearing for the appellant that the learned Judge has failed to take note of the fact that the paramount consideration is public interest and without properly advertent to the materials placed, had remanded the matter for fresh adjudication and therefore, prays for interference. The learned counsel appearing for the appellant, in support of his submissions, placed reliance upon the following decisions:

- (i) *Census Commissioner and Others v. R.Krishnamurthy* [(2015) 2 SCC 796]
- (ii) *S.Muppudathi v. Chief Engineer, Non Conventional Energy Sources (NCES), Tamil Nadu Electricity Board, Chennai-600 002 and Others* [(2012) 3 MLJ 6.

27. Mr.A.K.Baskarapandian, learned Special Government Pleader appearing for the official respondents, apart from supporting the stand of the appellant/writ petitioners, would submit that since the Local Body have not been vested with the jurisdiction to accord permission/approval without getting approval from the DTCP, the second respondent, on a thorough consideration and appreciation of the materials and records, has rightly took a decision not to accord permission for Land Use Conversion and it cannot be faulted with.

28. This Court has carefully considered the rival submissions and also perused the materials placed as well as the decisions relied on by the learned counsel appearing for the appellant/writ petitioners.

29. The first respondent/writ petitioner was issued with No Objection Certificate dated 05.10.2010 for conversion of Punja lands measuring to an extent of 24 acres in Suriyur Village S.Nos.469/1A and 469/1B for factory/industrial purposes by the



sixth respondent herein and the Commercial Tax Department of the Government of Tamil Nadu, has also issued Certificate of Registration to the first respondent. The sixth respondent, vide proceedings dated 25.10.2010 in Permission No.3/2010 has granted permission to put up construction with reference to Tamil Nadu Panchayat Building Rules, 1997 in G.O.No.255, Urban Development Department (C2) dated 18.08.1997.

30. The Director of Fire and Rescue Services has also issued No Objection Certificate to the first respondent and so also the Tahsildar, Thiruverumbur dated 24.11.2010, certifying that no Government Poromboke land has been encroached and no land acquisition proceedings were initiated. The appellant sent an application dated 25.11.2010 to the respondents 2, 3 and 5 for conversion of the land usage from "Mixed Residential Zone" to "Controlled Industrial Zone" and the fourth respondent has also issued a public notice in "Dinamani" news daily on 26.11.2010 inviting objections and it was also published in "Indian Express" news daily on 26.11.2010.

31. The Revenue Divisional Officer of Thiruverumbur, vide proceedings in B.T.R.d1773/10/46/1420/20, has issued an order of transfer of patta in favour of the Managing Director of the first respondent and the seventh respondent/Local Body has also issued No Objection Certificate dated 02.02.2011 to manufacture soft drinks. The first respondent/writ petitioner, once again sent a representation dated 28.02.2011, requesting the respondents 2, 3 and 5 for Land Use Conversion by enclosing 12 documents and also paid prescribed fee and the Chief Controller of Explosives, Government of India has also granted licence to store compressed gas in pressure vessel or vessels, vide Licence No.S/HO/TN/03/769 dated 13.04.2011.

32. The sixth respondent/Local Body has also passed a resolution dated 08.08.2011 expressing No Objection for conversion and the Joint Chief Controller of Explosives, Chennai has granted Licence to Import and Store Petroleum in an Installation, vide Licence dated 30.12.2011. It is also to be pointed out at this juncture that the Government of Tamil Nadu, Water Resource Department, State Ground & Surface Water Resources Data Centre, Chennai-113, has issued Ground Water Availability Certificate/NOC/Ground Water Clearance for Drawal of Groundwater for Industries/Infrastructure Projects dated 31.01.2012, subject to 13 conditions and it is relevant to extract the same:

"GOVERNMENT OF TAMIL NADU
WATER RESOURCES DEPARTMENT

STATE GROUND & SURFACE WATER RESOURCES DATA CENTER

CHENNAI - 113.

<https://hcservices.ecourts.gov.in/hcservices/>

Ground Water Availability Certificate / NOC / Groundwater



Clearance for Drawal of Groundwater for Industries / Infrastructure Projects

This is to certify that M/s.La Bottlers Pvt. Ltd., SF.No.469/1A, 469/1B, Suriyur Village, Tiruverumbur Taluk, Trichy District falling under the "Safe" category as on 2003 for the purpose of Beverage unit has been given hereby, the Ground Water Availability Certificate / NOC / Groundwater Clearance for a total quantity of 5,80,000 LPD as per the structure listed below with strict adherence of stipulated conditions.

Sl.No.	Well No./ SF No.	Co-ordinates		Quantity restricted and recommended for pumping in LPD
		Latitude	Longitude	
1.	Bore Well No.1/	10° 39' 57"	78° 46' 21"	105000
2.	Bore Well No.2/	10° 39' 55"	78° 46' 21"	38200
3.	Bore Well No.3/	10° 40' 03"	78° 46' 32"	173000
4.	Bore Well No.4/	10° 40' 03"	78° 46' 21"	74400
5.	Bore Well No.54/	10° 40' 02"	78° 46' 27"	112600
6.	Bore Well No.6/	10° 40' 01"	78° 46' 33"	76800
Total permitted quantity in LPD				5,80,000

Conditions.

- 1.The Ground Water available certificate issued for extraction applies only to the referred Bore Wells only.
- 2.Transportation of ground water is not all permitted by using this NOC.
- 3.All the other dug wells/bore wells/dug-cum borewells if any inside the plant areas are not considered for permission.
- 4.All the other drawal structures others than the permitted well should be used for the purposes of Rain water harvesting purposes only.
- 5.The Company should install necessary "flow meters" and monitor the quantity which should not exceed the permitted level. Records should be maintained continuously from the date of drawal. Monthly statement of daily drawal of water should be sent to this office.
- 6.As and when the officials of Ground/Water inspect the site/premises, perusal of drawal records and water quality observations should be allowed.

7. Rain water harvesting structures already existing inside the plant premises should be maintained properly.



8. Violation of the above stipulations in any form may invite the cancellation of the permission accorded by the Government.
9. The Company should be ready to pay the levy/charges for drawal of ground water for commercial purposes, if Government/Ground Water Authority imposes such orders in future.
10. The Ground Water clearance now issued is valid for three years only from the date of issue.
11. The company put already one bore well as per the norms and guidelines of the department with platform and locking arrangements as per guidelines, which is to be obtained from the Executive Engineer, Ground Water Division, Trichy.
12. The bore well already handed over to AE/AG of concerned water level jurisdiction area of the applicant with platform and locking arrangements (in full shape) by the Firm and the charge paper on taken over is also enclosed with the agreement of firm.
13. The NOC is applicable only for the purpose of beverage unit purpose only, if any deviation in the usage of ground water it is informed that the NOC is automatically deemed to be considered as cancelled.

Place : Chennai

Date : .01.2012

Seal :

Signature of the Competent Authority
&

The Chief Engineer,
State Ground & Surface Water Resources
Data Center,
Chennai - 113."

33. The Department of Labour (Weight & Measures), Government of Tamil Nadu has also issued Certificate of Registration under Rule 27 of the Legal Metrology (Packed Commodities) Rules, 2011 and the Assistant Commissioner of Land Reforms (In-Charge), Tiruchirappalli, has also issued a Certificate dated 29.06.2012 certifying that the lands are not covered under Land Ceiling Act and the Revenue Divisional Officer, Tiruchirapalli, vide proceedings dated 25.04.2013, after taking note of the objections as to the drawal of water from borewells, has directed the Tahsildar, Thiruverumbur to inspect the borewells along with PWD officials and to submit a report. The first respondent/writ petitioner has sent a representation dated 22.05.2013 to the Revenue Divisional Officer, Tiruchirapalli by inviting to their proceedings dated 25.04.2013, in and by which closure order in respect of three borewells have been issued and also pointed out that they immediately offer to close one borewell and further pointed out that they are operating only 3 borewells and the balance required water from outside sources through water tankers <https://hsrtds.ecdn.gov.in/business/> monsoon and the improvement of the ground water level. The Joint Chief Controller of Explosives, Chennai has also renewed the Explosive Licence on 03.12.2013.



34. Mrs.R.Saradha Devi, Executive Officer/President of Suriyur Panchayat, Thiruverumbur, has sent a communication dated 24.02.2014 to the Managing Director of the first respondent stating that plant/factory is in operation without any permission, causing hindrance to the public and since the factory has been located on agricultural lands, agricultural activities are affected and on account of heavy drawal of water, quality of sand also get reduced and water level also getting depleted and further pointed out that the factory is running without any licence and called upon them to close the factory on 15.03.2014, failing which criminal prosecution will be launched.

35. The Tamil Nadu Pollution Control Board, vide renewal order dated 24.03.2014 had also given consent for operation of the plant under Section 21 of the Air (Prevention and Control of Pollution) Act, 1981 and imposed 7 conditions and one of the conditions is that the unit shall furnish the building plan approval obtained from the DTCP within two months. Food Safety and Standards Authority of India, Chennai-600 090, vide communication dated 25.04.2014, has accorded renewal of licence under Central Licencing -FSSAI, 2006 and also issued necessary licence. Insofar as the application submitted by the first respondent/writ petitioner seeking promotion of land usage is concerned, the fifth respondent herein sent a communication dated 13.05.2014 to the sixth respondent with a copy marked to the first respondent stating that on account of objections received from Local Body and from public, the file is kept pending and it is returned except the one part. The first respondent, in response to the same, sent a representation dated 30.05.2014 pointing out that the Local Body, represented by the earlier President had accorded necessary permission/approval and simply because somebody succeeded to the said office, they cannot turn around and started making objections and prayed for processing of the application submitted for reconversion.

36. The Government of Tamil Nadu, Water Resources Department, State Ground & Surface Water Resources Data Centre, Chennai-113 has also issued No Objection Certificate for drawal of ground water for Industries/Infrastructure Projects pertain to Bore Well No.B1, B2, B4 and B6 and also indicated recycling of water for cleaning purposes by installing RO Plant. The first respondent has also drawn the attention of the fifth respondent as to the order dated 19.06.2014 made in W.P.(MD).No.9632 of 2014 and prayed for necessary orders for land conversion and also made a request to the TNPCB pointing out that the necessary application for land conversion is pending with DTCP and therefore, prayed for renewal of the licence for the period 2014-15.

<https://hccerelivecourts.gov.in/cases/>

37. The village people of Suriyur has also submitted a



representation dated 28.07.2014 to the Collector of Tiruchirapalli District, expressing their support to run the plant as it generate employment. A Division Bench of this Court, vide order dated 12.08.2014 made in W.P(MD)Nos.4498 and 11718 of 2014, has also granted interim orders restraining the first respondent from continuing any manufacturing or other operations in their factory situated in the above said survey numbers. The first respondent/writ petitioner, vide reply dated 13.08.2014 to the fourth respondent, pointed out that as per the check list, necessary payments have been effected also.

38. The Block Development Officer of Thiruverumbur has sent a communication dated 14.08.2014 to the first respondent/writ petitioner by referring to their letter dated 23.06.2014 and the order dated 27.06.2014 made in M.P(MD)No.1 of 2014 in W.P(MD). No.4495 of 2014, pointing out that for running the factory, Local Body permission is to be obtained and the Director of Public Health permission is required and the permission accorded by DTCP have not been enclosed and only when those documents are enclosed, the application for land conversion will be processed. The first respondent has submitted their reply dated 04.09.2014 by enclosing the documents required by the Block Development Officer, Thiruverumbur Panchayat Union.

39. The Commissioner of Town and Country Planning, Chennai, vide communication dated 12.11.2014 addressed to the second respondent, did not make any recommendation for land use conversion and the sixth respondent/Local Body, in terms of the interim order passed in W.P.(MD)No.4498 of 2014, has withdrawn the earlier resolution, vide resolution dated 13.11.2014. TNPCB has also sent a communication dated 18.11.2014 pointing out that since one of the conditions namely approval of DTCP has not been produced and that the factory has been running without the licence, called upon them to show cause as to why the factory should not be closed. In response to the same, the first respondent/writ petitioner has submitted a representation, pointing out the delay in disposal of the representation for conversion and therefore, requested them to defer further proceedings, till such consideration and an opportunity of personal hearing was also accorded by TNPCB to the first respondent/writ petitioner.

40. The local residents once again submitted a representation dated 05.01.2015 to the Collector of Trichy, pointing out that they have no objection for running the factory and only some real estate people, for oblique reasons, instigating certain people to institute a complaint. The Tahsildar, Thiruverumbur also conducted a Peace Committee Meeting on 27.01.2015 and the persons, who participated in the said Peace Committee Meeting, left in the midway and except the Government Officials, none of the other



participants had signed it.

41. The sixth respondent/Local Body also sent final notice dated 28.01.2015 pointing out that necessary permission has not been obtained from the Local Body for running the factory and therefore, issued the show cause notice calling upon them to respond to the impugned notice within 7 days, failing which action would be taken under Sections 160 and 220 of the Tamil Nadu Panchayats Act, 1994 and challenging the same, W.P(MD).No.1334 of 2015 has been filed and based on the undertaking given by the learned Additional Government Pleader that no further proceedings would take place, has adjourned the matter.

42. The first respondent/writ petitioner also filed CrI.O.P. (MD)No.2956 of 2015, seeking adequate police protection and it was disposed of, vide order dated 31.03.2015, subject to certain conditions and the Explosives Licence and Fire Services Licence granted in favour of the first respondent has also been renewed/extended. TNPCB, vide communication dated 18.08.2015, has once again informed the first respondent/writ petitioner to furnish the building plan issued by the DTCP and the Local Body running licence immediately and thereafter, the second respondent has passed the impugned order dated 30.06.2016, rejecting the request for land usage conversion.

43. A perusal of the impugned order dated 30.06.2016 passed by the second respondent would disclose that the fourth respondent has sent a communication dated 04.04.2016 pointing out the closure of the plant/factory on 28.01.2014 and in the event of running the said factory, the village people started indulging in road roco, which in-turn leads to law and order problem and therefore, recommended to continue the locking and sealing of the factory. The proceedings of the Revenue Divisional Officer, Tiruchirapalli dated 02.04.2016 was also referred to in the impugned order, wherein it has been indicated that the first respondent/writ petitioner without getting permission, has put up giant borewells and started drawing water in excess and on account of the same, farmers' association as well as local public started agitations and an inspection was carried out in the factory along with other officials on 28.01.2014 and having noted that it was functioning without permission, has put up lock and seal on the premises. The impugned order also referred to the resolution of the fifth respondent pointing out that in the event of the factory being run, road roco, fasting would take place which in-turn leads to law and order problem and recommended for continuous locking and sealing of the factory and therefore, rejected the request for land conversion.

<https://hcservices.ecourts.gov.in/hcservices/>

44. A reading of the impugned order in G.O.(2D)No.91, Housing and Urban Development Department (Na.Va.4(1)] Department dated



30.06.2016 would disclose that on account of agitation/dharna/fasting undertaken by the residents of Suriyur Villagers and Agricultural Associations and apprehending law and order problem, the factory premises of the first respondent was sealed as early as on 28.01.2014 and the second respondent/Government had chose to accept the said recommendation and therefore, rejected the request for land conversion. In the considered opinion of the Court, merely on account of public agitation and law and order problem, a factory cannot be sealed that too from 28.01.2014 and the only reason that weighed with the mind of the Government/second respondent is law and order problem and public sentiments.

45. This Court, in the earlier paragraphs, had taken note of the various permissions/licences/approvals granted by concerned authorities and therefore, it cannot be said that no licence/permission has been accorded by concerned authorities. A perusal of the counter affidavit of the second respondent would disclose that Local Body is not vested with the jurisdiction to accord such permission and therefore, a stand has been taken that the factory of the first respondent has been run without prior permission. It is to be noted at this juncture that admittedly Local Body is acting as single window agency and application has to be submitted to them for obtaining necessary permission and it is for them to approach the DTCP to get necessary permission/approval and admittedly, the Local Body has given No Objection Certificate dated 05.10.2010 and also accorded planning permission on 25.10.2010 and the Revenue Divisional Officer, Tiruchirapalli and the Tahsildar, Thiruverumbur had also ordered transfer of patta and once again, the sixth respondent/Local Body has issued No Objection Certificate dated 02.02.2011 for running the factory for manufacturing soft drinks.

46. The first respondent/writ petitioner is entitled to presume that the Local Body/sixth respondent has got necessary clearance from the DTCP for the reason that it is for the Local Body to process the application submitted to them and get necessary permission/approval and technically speaking, the Doctrine of Indoor Management would also come into operation for the reason that once the Local Body has granted necessary permission/approval, the first respondent/writ petitioner is entitled to presume that the acts/things done by the sixth respondent/Local Body were in accordance with law.

47. The primordial objection is to the putting up of giant borewells and drawal of water and the apprehension expressed by the residents of Suriyur Village as well as Agricultural Associations is that on account heavy drawal of water, the ground water would get depleted and getting polluted. It is very pertinent to point out at this juncture that Water Resources



Department, State Ground & Surface Water Resources Data Centre, Chennai-113 has granted Ground Water Availability Certificate/Clearance for drawal of groundwater from Industries/Infrastructure projects dated 31.01.2012, in and by which the first respondent/writ petitioner was permitted to put up six borewells for drawal of 5.80 lakhs litres of water per day, subject to 13 conditions and the same has been reiterated in yet another certificate/communication dated 23.06.2014 in Certificate No.TW/TAN, permitting them to draw water of 5 lakhs litres per day from Bore Well Nos.B1, B2 in Velayuthamkudi Village and Bore Well Nos.B2, B4 and B6 in Suriyur Village and it is not even the case of the official respondents/private respondents that such licences/permissions have been cancelled. As already pointed out, the first respondent/writ petitioner have got the licence issued by the Chief Controller of Explosives and Food Safety and Standards Authority of India and other licences/permissions issued by statutory authorities.

48. The primordial submission made by the learned counsel appearing for the private respondents as well as the writ petitioner is that for running an industry, Local Body licence is required and infact, it has also been issued by the sixth respondent/Local Body, vide NOC dated 02.02.2011 and other objection is that since necessary permission/approval have not been granted by DTCP, the superstructure put up by the first respondent for running the factory is wholly unauthorized and it should be under lock and seal.

49. As already pointed out, it is a Single Window application and it is not in dispute that necessary permission was also accorded by Local Body and even assuming that the Local Body has failed to obtain such permission, still it is open to the Director of Town and Country Planning, through its officials to cause inspection and depending upon the result of the same, may accord post-facto approval also, subject to the fulfillment of relevant norms/regulations/Government Orders.

50. In *Census Commissioner and Others v. R.Krishnamurthy* [(2015) 2 SCC 796], judicial review of policy decision came up for consideration and it is held that "it is not within the domain of the Court to legislate and the Courts do interpret the law and in such interpretation, certain creative process is involved. The Courts have the jurisdiction to declare the law as unconstitutional, that too, where it is called for." There cannot be any difficulty in accepting the said proposition, as it is a well settled legal principle.

<https://hcservices.ecourts.gov.in/hcservices/>

51. In *S.Muppudathi v. Chief Engineer, Non Conventional Energy Sources (NCES), Tamil Nadu Electricity Board, Chennai-600 002 and*



Others [(2012) 3 MLJ 6], the matter in issue pertains to erection of windmills and it is held that such a permission is granted from the Local Body under Section 160 of the Tamil Nadu Panchayat Act. This Court has already pointed out that such permission was accorded by the sixth respondent/Local Body.

52. It is also to be noted at this juncture that for want of permission from DTCP, the request for land usage conversion is not acceded to and since it is one of the conditions prescribed/insisted for giving consent of TNPCB. In G.O.Ms.No.1730, Rural Development and Local Administration Department dated 24.07.1994, draft regulations submitted by DTCP has been approved. It is not in dispute that the plant/factory is located in Mixed Residential Zone and the request is made to convert the same into Controlled Industrial Zone. It is relevant to extract the regulations of the Mixed Residential Zone and Controlled Industrial Use Zone :

USE ZONE 1(b) MIXED RESIDENTIAL USE ZONE

Uses Permitted

1.All uses permitted under Use Zone (a) i.e. Primary Residential Use Zone

2.Hostels and single person apartments.

3.Community Halls, Kalyanamandapam, Religious buildings, welfare centres and Gymnasias.

4.Recreation clubs, Libraries and Reading rooms.

5.Clinics, Dispensaries and Nursing Homes

6.Government, Municipal and Other Institutional Sub-Offices

7.Police Stations, Post & Telegraph Offices, Fire Stations and Electric Sub-Station.

8.Banks and Safe Deposit Vaults;

9.Educational Institutions excluding colleges

10.Restaurants, Residential Hotels and Other Boarding and Lodging houses.

11. Petrol filling and Service stations

12. Departmental stores or stores or shops for the conduct of retail business.

13.Vegetables, Fruit, Flower, Fish, Eggs and Meat Shops.



14. Bakeries and Confectioneries

15. Laundry, Tailoring and Goldsmith Shops and

16. Cottage industries permissible in residential areas under G.O.Ms.No.566, dated 13.03.1962.

Use Zone III(a) Controlled Industrial Use Zone

Uses permitted

1. All commercial uses listed under zone 1(a), 1(b) and 2 i.e., residential and commercial use zones;

2. Industries using electric power not exceeding 130 H.P. (L.T. Maximum level) but excluding industries of obnoxious and hazardous nature by reason of odour, liquid effluent, dust, smoke, gas, vibration etc. or otherwise likely to cause danger or nuisance to public health or amenity; Provided that these industries may use steam, oil, or gas power during periods of power shortage or failure.

3. Hotels, Restaurants and Clubs, places for social intercourse, recreation and worship and dispensaries and clinics, and

4. Residential buildings for caretakers, watchman and other essential staff required to be maintained in the premises.

The only reason assigned in the impugned order, which was the subject matter of challenge in W.P.(MD)No.19069 of 2016, is to the objections raised by the villagers, agriculturists and apprehension of the law and order problem on account of road roco, fasting and other agitations.

53. In *Bombay Dyeing and Mfg. Co. Ltd., and Bombay Environmental Action Group and Others* [(2006) 3 SCC 434], ecological balance and maintenance and Articles 21, 48-A & 51-A(g) and 32, 226 & 136 of the Constitution of India and in para 64, it is observed that "the Courts, while entertaining a public interest litigation with regard to environmental aspects, would have to take into consideration a large number of factors, some of which may be found to be competing with each other. It may not be proper to give undue importance to one at the cost of the other which may ultimately be found to be vital; and give effect to the intent and purport for which the legislation was made". The concept of sustainable development also came up for consideration in *Shri. V. Jayaraman v. State of Tamil Nadu*, 252 and 256 and 272 of the said judgment, it is observed as follows:

"251. It is often felt that in the process of



encouraging development the environment gets sidelined. However, with major threats to the environment, such as climate change, depletion of natural resources, the entrophication of water systems and biodiversity and global warming, the need to protect the environment has become a priority. At the same time, it is also necessary to promote development. The harmonization of the two needs has led to the concept of sustainable development, so much so that it has become the most significant and focal point of environmental legislation and judicial decisions relating to the same. Sustainable development, simply put, is a process in which development can be sustained over generations. Brundtland Report defines 'sustainable development' as development that meets the needs of the present generations without compromising the ability of the future generations to meet their own needs. Making the concept of sustainable development operational for public policies raises important challenges that involve complex synergies and trade offs.

252. The Indian judiciary has time and again recognised this principle as being a fundamental concept of Indian law.

....

256. The MRTTP Act does not exclude these principles. Unless they are so excluded, they are to be read in the statute both in the substantive legislation as also delegated legislation.

.....

272. These decisions do not lay down any law which is different from what we have said herein. The development of the doctrine of sustainable development indeed is a welcome feature but while emphasizing the need of ecological impact, a delicate balance between it and the necessity for development must be struck. Whereas it is not possible to ignore inter-generational interest, it is also not possible to ignore the dire need which the society urgently requires."

54. Our country is making rapid steps in industrialization and of course it comes with advantages as well as disadvantages and however nice balance is to be struck down between environment/ecological protection and developmental activities in the form of industrialization by following the principles of sustainable development and it means that necessary guidelines should be in place to ensure development while protecting the environment and ecology.

<https://hcservices.ecourts.gov.in/hcservices/>

55. A careful scrutiny and analysis of the materials placed before this Court would also indicate that two departments of the



Government of Tamil Nadu, namely Water Resources Department, State Ground & Surface Water Resources Data Centre, Chennai and Urban Development Department acted opposite to each other. Once necessary permission has been accorded for drawal of ground water for industrial purposes, unless it is cancelled, a view may not be taken by another arm of the very same Government by citing public agitations and law and order problems and of course, a solution has to be found in the light of the principles laid down by the Hon'ble Apex Court in the above cited decisions to strike a balance between ecological/environmental aspects and industrialization.

56. The learned Judge, in para 19 of the impugned order, has also taken note of the affidavit of undertaking filed by the first respondent/writ petitioner that they would not draw water from the subject lands and they would find alternative source of water by other means and they would also source the supply of water by other means and also taken note of the fact that rules of governance cannot be allowed to be stifled or violated and the decision of the Statutory Authority cannot be governed by mere objections from the public on the basis of street sentiments who may be driven by vested interest or camouflaged as public interest, beneath lie a personal agenda of some pressure groups.

57. If law and order problem in the form of public agitation etc., is going to be the sole consideration, then it will be very difficult to attract investments in the State and the State of Tamil Nadu is always a pioneer in industrialization and it is one of the foremost States which continues to attract investments for starting very many industries and it is also known as "Detroit of India" for the reason that very many automobile industries had established their factories and other auxillary industries connected thereto. In the considered opinion of the Court, if law and order problem is the sole criteria/consideration, it may lead to a dangerous condition of stalling further industrialization and it may in-turn lead to unemployment and unrest.

58. This Court, on an independent application of mind to the entire materials placed before it, is of the considered view that there are no error or infirmity in the reasons assigned by the learned Judge in remanding the matter and also protecting the interest of the writ petitioner in para 20 of the impugned order. There are no merit in the Writ Appeal as well as in the Writ Petitions.

59. In the result,

(i) W.A.(MD).No.976 of 2017 is dismissed,

<https://hcservices.courts.gov.in/> confirming the order dated 26.04.2017 made in W.P.(MD).

No.19069 of 2016. No costs.



(ii) W.P(MD).Nos.11718 of 2014 and 5915 of 2017 are also dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed.

R. HEMALATHA, J.

In the instant case, the project is a private commercial venture and not for any public purpose to disregard the sentiments of the public based on factual position of the depletion of water table, especially when water is the main input for all the products produced in the appellant factory. Secondly, the appellant is fully aware that the competent authority for land conversion is the Tamil Nadu State Government and not the President of Suriyur Village Panchayat and therefore averred in their petition that except for land conversion certificate, they had all other approvals. Thirdly, as far as the present case is concerned the industrialization will not be adversely affected, since the industry is started in an area not earmarked for industries. The appellant have only shown scant respect for the law of the land and no regularization is possible for an illegal act (of construction of a factory in a land which is in "Mixed Residential Zone").

Therefore, I wish to stick on to my views.

Sd/

Assistant Registrar (CO)

/True copy/

Sub Assistant Registrar

To

- 1.The Secretary to Government,
The State of Tamil Nadu,
Housing & Urban Development Department,
Secretariat, Chennai - 600 009.
- 2.The Commissioner,
Directorate of Town and Country Planning,
Fourth Floor, No.807,
Anna Salai, Chennai - 600 002.
- 3.The Assistant Director,
Town and Country Planning Department,
Trichy District, No.10, Williams Road,
Cantonment, Tiruchirappalli - 620 001.
- 4.The Member Secretary,
Navalpattu, Trichy District.



5.The President,
Suriyur Panchayat,
Thiruverumbur Panchayat Union,
Thiruverumbur Taluk, Trichy District.

WEB COPY

6.The Director,
Directorate of Town and Country Planning,
Opposite to LIC, Chengalvarayan Building,
Fourth Floor, 807, Anna Salai,
Chennai - 600 002.

7.The District Collector,
Trichy District, Trichy.

Copy to:
The Registrar (Judicial),
Madurai Bench of Madras High Court,
Madurai.

+3cc to Mr.T.LAJAPATHI ROY, Advocate, SR.No.67555 ,67554,67553
+1cc to M/s.Special Government Pleader,SR.No. 67491,67902

W.A(MD)No.976 of 2017 and
W.P (MD)Nos.5915 of 2017 and 11718 of 2014

08.06.2018

MR/JVM
KK/SV/SAR-3/04.07.2018/40P-13C/