

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 01.02.2019

Orders Pronounced on : 07.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.VENUGOPAL
AND
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

W.P.No.21803 of 2016
and
W.M.P.Nos.18648 of 2016 and 7560 of 2017

M/s.Kamachi Sponge &
Power Corporation Limited,
Represented by its Director Mr.Vinod Kothari,
Corporate Office at ABC Trade Centre, 3rd Floor,
(Inside Devi Theatre Complex),
Old No.50, New No.39, Anna Salai,
Chennai-600 002.

.. Petitioner

Vs.

1. The District Collector,
Thiruvallur District, Thiruvallur.
2. The Revenue Divisional Officer,
Ponneri Division, Ponneri-601 204.
3. The Tahsildar,
Gummidipoondi Taluk,
Gummidipoondi-601 201,
Thiruvallur District.
- 4.Mr.S.Baskar

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the impugned proceedings of the First Respondent bearing Na.Ka.31973/2010/B2, dated 27.04.2016 culminating in the Third Respondent's impugned notice, dated 11.05.2016 (served on the Petitioner on 24.05.2016) issued to the Petitioner, quash the same and consequently direct the First Respondent to provide

an opportunity of hearing to the Petitioner as directed by this Court in its Order dated 03.12.2012 passed in W.P.No.31875 of 2012 before proceeding to take any decisions on the issues covered in the impugned proceedings.

For Petitioner : Mr.N.L.Rajah, Senior Counsel for
M/s.Arun Anbumani

For Respondents: Mr.J.Pothiraj, Spl.G.P. for RR-1 to 3
Mr.T.P.Sekar for R-4

ORDER

M.VENUGOPAL, J

Heard both sides and perused the materials available on record.

2. The Petitioner-Company is assailing the impugned Proceedings of the First Respondent-District Collector, Thiruvallur, dated 27.04.2016, which resulted in issuance of Notice, dated 11.05.2016 by the Third Respondent-Tahsildar, Gummidipoondi and prayed for quashing the same. Further, the Petitioner-Company has sought for passing of an Order of this Court in directing the First Respondent/District Collector, Thiruvallur, to provide an opportunity of hearing to it as directed by this Court in its Order dated 03.12.2012 passed in W.P.No.31875 of 2012 before taking any decision in respect of the issue covered in the impugned proceedings.

3. According to the Petitioner-Company (Registered under the Companies Act, 1956), it is situated in the areas of Pathapalayam and Bodireddy Kandigai Villages in SR Kandigai Panchayat of Gummidipoondi Taluk, Thiruvallur District. It is engaged in manufacture of Steel Re-Rolling products. It has put up an Integrated Steel Mill with Captive Generating Power Plants in the Lands.

4. The version of the Petitioner-Company is that on 17.07.2015, it received a Communication, dated 15.07.2015 from the First Respondent's Office, informing them that an Enquiry is to be conducted by the First Respondent/District Collector, Thiruvallur in his Office at 5 p.m. on 24.07.2015 in connection with the Order dated 03.12.2012 passed by this Court in W.P.No.31875 of 2012, alleging Encroachment of the Water Catchment Areas in "Pathapalayam" and "Kandigai" Villages. The Petitioner-Company, after making enquiries, learnt that the Fourth Respondent had filed W.P.No.31875 of 2012 before the Division Bench of this Court against the Secretary to Government, Government of Tamil Nadu, Public Works Department, Secretariat, Chennai-600 009 and five others, wherein the present Writ Petitioner-Company figured as the Sixth Respondent therein. As a matter of fact, the said Writ Petition in

W.P.No.31875 of 2012 was disposed of by this Court on 03.12.2012 by issuing direction to the Fourth Respondent therein (i.e. District Collector, Thiruvallur), the First Respondent in the present Writ Petition, to consider the Representation of the Petitioner therein, the Fourth Respondent in the present Writ Petition, dated 01.06.2012 and take appropriate action in accordance with Law, after giving notice and an opportunity of hearing to the Respondent Nos.5 and 6 therein, viz., the present Writ Petitioner-Company.

5. The stand of the Petitioner-Company is that its Representatives took part in the Enquiry held on 24.07.2015 and informed that they had not encroached upon the subject Water Catchment Areas and constructed any Compound Wall affecting the Agricultural activities, as alleged or at all. In fact, the Enquiry was subsequently adjourned to 07.08.2015. It is stated that on 07.08.2015, in the Enquiry, the Petitioner-Company's Representatives and one T.P.Baskar, the Third Respondent/Tahsildar, Gummidipoondi Taluk, Head Surveyor, Revenue Inspector, Village Administrative Officer (VAO) and the Assistant from VAO's Office were present. Indeed, the Head Surveyor furnished a Sketch showing the details of the Land and that the said T.P.Baskar requested for a Re-Survey in his presence also. The First Respondent (the then District Collector, Thiruvallur) had directed that a Re-Survey would be conducted on 12.08.2015 and adjourned the hearing to 18.08.2015. After Re-Survey, the Enquiry was conducted on 18.08.2015, 28.08.2015 and 22.09.2015.

6. On behalf of the Petitioner-Company, it is pointed out before this Court that during the first hearing itself, the Petitioner-Company brought to the notice of the First Respondent/District Collector, Thiruvallur that the Order dated 03.12.2012 passed in W.P.No.31875 of 2012 mentions the name of S.Baskar, but in the Enquiry Notice of the First Respondent/District Collector, Thiruvallur, the name was mentioned as T.P.Baskar, and therefore, a request was made to the First Respondent to verify the correctness of the person taking part in the Enquiry, viz., the said T.P.Baskar who claims to have filed W.P.No.31875 of 2012 before this Court.

7. The Learned Senior Counsel for the Petitioner-Company contends that the Petitioner-Company's Representatives took part in all the hearings before the First Respondent (the then District Collector, Thiruvallur) and reiterated their stand, namely that, in the first place, the Land was classified as "Eri" in the Revenue Records long back and it had lost its character as water bearing body and also that they had not encroached upon the subject Water Catchment Areas and constructed any Compound Wall affecting the Agricultural activities as alleged. Further, the then District Collector of Thiruvallur (First Respondent), on 18.08.2015, directed the Petitioner-Company to remove the materials which were lying in

the Land classified as "Eri", within a week and that the Petitioner-Company, after seeking more time, had subsequently removed the same.

8. The Learned Senior Counsel for the Petitioner-Company forcefully comes out with a plea that the Petitioner-Company submitted their Written Representation, dated 01.09.2015 and again it was brought to the notice of the First Respondent-District Collector, Thiruvallur that a verification is to be made in regard to the correctness of the person, namely T.P.Baskar (mentioned in the notice), but in W.P.No.31875 of 2012, the name of S.Baskar was mentioned. In this connection, the Learned Senior Counsel for the Petitioner-Company submits that the Petitioner-Company was shocked to receive the impugned Proceedings/Order of the First Respondent-District Collector, Thiruvallur, dated 27.04.2016, in and by which, the First Respondent had directed the Petitioner-Company to immediately remove the Encroachments, such as Raw Materials, Coal, Pillars and Cement Road (as listed out in the impugned Proceedings) from the Catchment Areas.

9. Expatiating his contentions, the Learned Senior Counsel for the Petitioner-Company projects an argument that the Petitioner-Company was not provided with an opportunity of Personal Hearing and in this regard, there is a violation of the Order dated 03.12.2012 passed by this Court in W.P.No.31875 of 2012. Added further, it is brought to the notice of this Court that the then District Collector, Thiruvallur (who conducted Enquiry/Personal Hearing between July and September 2015), was transferred recently and the present District Collector took over in his place. Thereafter, the present District Collector, Thiruvallur (First Respondent), without conducting any Personal Hearing, had proceeded to pass the impugned Order/Proceedings, dated 27.04.2016. That apart, the Petitioner-Company could not meet the First Respondent-District Collector, Thiruvallur, even after Election results were announced (when the State went to Polls on 16.05.2016). Hence, the Petitioner-Company addressed a Representation, dated 31.05.2016 to the First Respondent-District Collector, Thiruvallur, praying to recall the impugned Proceedings of the First Respondent, dated 27.04.2016 and a request was made to the First Respondent-District Collector, Thiruvallur District, to afford an opportunity of Personal Hearing to the Petitioner-Company before passing any order as directed by this Court in W.P.No.31875 of 2012, dated 03.12.2012.

10. Advancing his arguments, the Learned Senior Counsel for the Petitioner-Company emphatically contends that "if one person hears" and "another person decides", then the "Personal Hearing" becomes an Empty Ritualistic Formality. In fact, the impugned Proceedings issued by the First Respondent-District Collector, Thiruvallur, deserve to be set aside by this Court, since there being a negation of "Principles of Natural Justice".

11. The Learned Senior Counsel for the Petitioner-Company takes a plea that the impugned Proceedings, dated 27.04.2016 of the First Respondent-District Collector, Thiruvallur, were passed mechanically without stating the ground realities. Besides this, if the First Respondent-District Collector had visited the site or deputed any of her officer(s) to carry out the site visit before passing the impugned Proceedings, then the First Respondent-District Collector would have been in a better position to appreciate the existing facts.

12. The Learned Senior Counsel for the Petitioner-Company proceeds to point out that the Petitioner-Company took the assistance of the Centre for Water Resources, Anna University, when their factory was being put up, to survey the entire Land (s) and to identify the Water Bodies and their flow. The said Centre conducted its expert investigation in the site using GPS Survey, etc., and after a detailed study, the Centre has submitted its Report and concluded that the Pillars (for the Steam Pipeline) do not affect the flow characteristics within the Tank and that though Concrete Roads have been laid across the Catchment Area, proper approach Channel was provided to collect the run-off on the Western and Eastern sides of the Tank passing through Culvert 1 and Culvert 2. The Centre made two recommendations and that the Petitioner-Company is fully willing to implement the same.

13. To lend support to his contention that "if one person hears" and "another person decides", then the Personal Hearing itself is an Empty Formality, the Learned Senior Counsel for the Petitioner-Company cites a decision of the Honourable Supreme Court reported in 1959 Supp (1) SCR 319 : AIR 1959 SC 308 (Gullapalli Nageswara Rao and others Vs. Andhra Pradesh State Road Transport Corporation and another), wherein, at Paragraph 31, it is observed as under:

"31. The second objection is that while the Act and the Rules framed thereunder impose a duty on the State Government to give a personal hearing, the procedure prescribed by the Rules impose a duty on the Secretary to hear and the Chief Minister to decide. This divided responsibility is destructive of the concept of judicial hearing. Such a procedure defeats the object of personal hearing. Personal hearing enables the authority concerned to watch the demeanour of the witnesses and clear up his doubts during the course of the arguments, and the party appearing to persuade the authority by reasoned argument to accept his point of view. If one person hears and another decides, then personal hearing becomes an empty formality. We therefore

hold that the said procedure followed in this case also offends another basic principle of judicial procedure."

14. The Learned Senior Counsel for the Petitioner-Company also refers to a decision of the Honourable Supreme Court reported in 2011 (2) SCC 258 (Automotive Tyre Manufacturers Association Vs. Designated Authority and others), wherein, at Special Page 296 at Paragraph 83, it is observed as under:

"83. The procedure prescribed in the 1995 Rules impose a duty on the DA to afford to all the parties, who have filed objections and adduced evidence, a personal hearing before taking a final decision in the matter. Even written arguments are no substitute for an oral hearing. A personal hearing enables the authority concerned to watch the demeanour of the witnesses, etc. and also clear up his doubts during the course of the arguments. Moreover, it was also observed in Gullapalli Nageswara Rao Vs. A.P. SRTC (AIR 1959 SC 308), if one person hears and other decides, then personal hearing becomes an empty formality."

15. The Learned Senior Counsel for the Petitioner-Company contends that the arbitrary actions of the Respondents/Authorities, which is opposed to the "Principles of Natural Justice" and without authority of Law, are to be set aside by this Court in the "Interest of Justice". It is further represented on behalf of the Petitioner-Company that the Company is willing to participate in the fresh Enquiry/Personal Hearing through its Representatives, which may be conducted by the First Respondent-District Collector, Thiruvallur, and produce all the relevant information, Report, etc., by assisting the Authority to come to a suitable conclusion.

16. Per contra, it is the submission of the Learned Special Government Pleader for Respondent Nos.1 to 3 that the Petitioner-Company owned an extent of 45.69.0 Hectares (112.90 Acres) of Dry and Wet Lands comprised in Patta Nos.857, 1853, 1877, 1906, 1907, 1908, 1921, 2101, 2103, 2104 and 2185 in Pappankuppam Village of Gummidipoondi Taluk in Thiruvallur District and that the following Government Water Course Poramboke Survey Numbers are situated in the midst of the aforesaid Patta Lands owned by the Petitioner-Company:

Survey Number	Classification	Extent (in Hectares)
115	Eri (Tank)	4.91.0
116/3	Neer Pidippu (Water Catchment)	0.04.5
116/4	Neer Pidippu (Water Catchment)	0.14.0
116/5	Neer Pidippu (Water Catchment)	0.12.5
116/6	Neer Pidippu (Water Catchment)	0.13.5
116/7	Neer Pidippu (Water Catchment)	0.11.0
116/8	Neer Pidippu (Water Catchment)	0.12.0
116/9	Neer Pidippu (Water Catchment)	0.07.0
116/10	Neer Pidippu (Water Catchment)	0.08.5
116/11	Neer Pidippu (Water Catchment)	0.06.0
116/12	Neer Pidippu (Water Catchment)	0.15.0
116/13	Neer Pidippu (Water Catchment)	0.05.0
117/5	Neer Pidippu (Water Catchment)	0.44.5
117/6	Neer Pidippu (Water Catchment)	0.15.5
117/7	Neer Pidippu (Water Catchment)	0.03.5
117/9	Neer Pidippu (Water Catchment)	0.22.0
117/10	Neer Pidippu (Water Catchment)	0.18.0
119/1	Neer Pidippu (Water Catchment)	0.03.5
119/3	Neer Pidippu (Water Catchment)	0.08.5
119/6	Neer Pidippu (Water Catchment)	0.08.0
119/7	Neer Pidippu (Water Catchment)	0.18.5
119/8	Neer Pidippu (Water Catchment)	0.03.0
119/9	Neer Pidippu (Water Catchment)	0.22.0
119/10	Neer Pidippu (Water Catchment)	0.27.0
119/11	Neer Pidippu (Water Catchment)	0.44.5
119/12	Neer Pidippu (Water Catchment)	0.04.5
120/1	Neer Pidippu (Water Catchment)	0.13.0
	Total	6.85.5

17. The Learned Special Government Pleader for Respondent Nos.1 to 3 contends that the Petitioner-Company had unauthorisedly occupied the under-mentioned Poramboke Lands for

the purpose noted against each:

Survey Number	Classification	Total extent	Extent under unauthorisedly occupied	Occupation
115	Eri (Tank)	4.91.0	4.91.0	Erection of Pillars
116/7	Water catchment	0.11.0	0.11.0	Cement Road
116/10	Water catchment	0.08.5	0.08.5	Cement Road
117/5	Water catchment	0.44.5	-	Cement Road
117/6	Water catchment	0.15.5	-	Cement Road
117/7	Water catchment	0.03.5	-	Jalli Heap
117/9	Water catchment	0.22.0	0.22.0	Jalli Heap Plade Fencing
117/10	Water catchment	0.18.0	0.18.0	Plade Fencing
119/1	Water catchment	0.03.5	0.03.5	Deposit of Coal
119/3	Water catchment	0.08.5	0.08.5	Deposit of Coal
119/6	Water catchment	0.08.0	0.08.0	Road and erection of Pillar
119/7	Water catchment	0.18.5	0.18.5	Road and erection of Pillar
119/8	Water catchment	0.03.0	0.03.0	Erection of Pillar
119/9	Water catchment	0.22.0	0.22.0	Cement Road
119/10	Water catchment	0.27.0	0.27.0	Deposit of Coal
119/11	Water catchment	0.44.5	0.44.5	Deposit of Coal

18. The Learned Special Government Pleader for Respondent Nos.1 to 3 brings it to the notice of this Court that the Government, by virtue of G.O.No.41, Revenue Department, dated

20.01.1987, had banned the regularisation of "Encroachments" in "Water Course Poramboke", and apart from that, the Government had viewed in the said Government Order that the Encroachments in the Water Course Poramboke should be invariably evicted. Moreover, the Encroachments in the Lands classified as Lakes, Tanks, etc., can be evicted with a view to improve the water storage facility, since people are suffering from acute shortage of water.

19. The Learned Special Government Pleader for Respondent Nos.1 to 3 points out that pursuant to the order passed by this Court on 03.12.2012 in W.P.No.31875 of 2012, Enquiry was conducted on 24.07.2015, 07.08.2015, 18.08.2015 and 22.09.2015. In fact, the Petitioner-Company and the Fourth Respondent took part in the Enquiry conducted by the First Respondent/District Collector, Thiruvallur and subsequently, the First Respondent had passed the impugned Order/proceedings on 27.04.2016, whereby and whereunder, eviction of the Encroachment made by the Petitioner-Company in an area measuring 6.85.5 Hectares in Water Course Poramboke Lands, was ordered. Being dis-satisfied with the said order, the Petitioner-Company has filed the present Writ petition before this Court, and this Court granted an order of Status-Quo on 24.06.2016.

20. The Learned Special Government Pleader for Respondent Nos.1 to 3 comes out with a stance that even though the Petitioner-Company is said to have cleared the Encroachments of deposit of Coal and Jelli-heap in S.Nos.117/6, 117/7, 117/9, 119/8, 199/3, 119/10 and 119/11 classified as Water Course Poramboke, it had encroached by way of Road in Water Catchment Poramboke in S.Nos.116/7, 116/10, 117/5, 117/6, 119/6, 119/7, 119/9 and by way of erection of Pillars in S.Nos.115, 119/6, 119/7 and 119/8.

21. The Learned Special Government for Respondent Nos.1 to 3 strenuously contends that the Panchayat Union Council concerned had not obtained any prior approval from the First Respondent-District Collector, as per Rule 3 of the Tamil Nadu Panchayats (Restriction and Control to Regulate the use of Porambokes in Ryotwari Tracks) Rules, 2000, which granted permission on 09.09.2015 to erect Steam Pipeline in S.No.115, classified as "Eri Poramboke". The Legal Maxim is that, "Whatever is contrary to Rule of Right, is a Wrong one". Therefore, it is contended by the Learned Special Government Pleader that the permission granted by the Panchayat Union Council, Gummidipoondi on 09.09.2015 to the Petitioner-Company to erect Steam Pipeline in S.No.115, classified as "Eri Poramboke", is purely an invalid one in the eye of Law.

22. The Learned Special Government Pleader for Respondent Nos.1 to 3 also submits that it is well known Law that there is no necessity when a successor had assumed a post to conduct the pending case already conducted by the predecessor, afresh from the beginning stage, as the same will lead to cumbersome

proceedings. In short, it is for the successor to pursue the case at which stage it is left by the predecessor, and since the Enquiry was completed in all aspects in regard to the pending dispute between the parties, the First Respondent/District Collector, Thiruvallur had passed the impugned Proceedings on 27.04.2016. Also that the invalid permission obtained by the Petitioner-Company in respect of S.No.115 will not fetter the First Respondent-District Collector, Thiruvallur in passing the impugned order, dated 27.04.2016. Further, before granting permission on 09.09.2015, the Panchayat Union Council had not obtained the requisite prior approval from the First Respondent/District Collector, Thiruvallur.

23. The Learned Special Government Pleader for Respondent Nos.1 to 3 submits that when once the Enquiry and Personal Hearing were completed, there is no Locus-Standi for the Petitioner-Company to seek for hearing the matter again.

24. The Learned Special Government Pleader refers to Section 134 of the Tamil Nadu Panchayats Act, 1994, which runs as under:

"Section 134: Village Panchayat to regulate the use of certain porambokes in ryotwari tracts.-

(1) The provisions of this section shall apply only in ryotwari tracts.

(2) The following porambokes namely, grazing grounds, threshing floors, burning and burial-grounds, cattle-stands, cart-stands and topes shall vest in the Village Panchayat, and the Village Panchayat shall have power, subject to such restrictions and control as may be prescribed to regulate the use of such porambokes, provided the porambokes are at the disposal of the Government.

(3) The Collector, after consulting the Village Panchayat, may by notifications exclude from the operation of this Act, any porambokes referred to in sub-section (2), and may also modify or cancel such notification.

(4) The Village Panchayat shall also have power, subject to such restrictions and control as may be prescribed, to regulate the use of any other poramboke which is at the disposal of the Government, if the Village Panchayat is authorized in that behalf by an order of the Government.

(5) The Village Panchayat may, subject to such restrictions and control as may be prescribed, plant trees on any poramboke, the use of which is regulated by it under

subsection (2) or sub-section (4).

(6) The BDO has no power on the Government lands other than vested with panchayats under Section 134(2) of the Act."

25. The Learned Special Government Pleader for Respondent Nos.1 to 3 also refers to Rule 3 of the Tamil Nadu Panchayats (Restriction and Control to Regulate the use of Poramboke in Ryotwari Tracks) Rules, 2000, which deals with the "Regulation of Poramboke Land" and the same is extracted hereunder:

"(3): Regulation of Poramboke Land: No poramboke at the disposal of the Government, the use of which is regulated by the Village Panchayat shall be used for any purpose other than that for which it was originally intended except with the prior approval of the Collector and such use shall be subject to such condition and restriction may be imposed by the Collector."

26. In this connection, the Learned Special Government Pleader contends that the First Respondent-District Collector, Thiruvallur had not granted any prior approval to the concerned Village Panchayat to grant such permission to the Petitioner/Company, and as such, the permission granted by the Village Panchayat Council is of no use.

27. The Learned Special Government Pleader also refers to Revenue Standing Orders in R.S.O. 24(A), 9(h), which deals with the laying of Pipelines in the Government Poramboke Lands, and in fact, the said Rule 24(A) deals with the grant of Land and Buildings at the disposal of the Government for temporary occupation for Non-Agricultural purposes. Further, the track rent should be levied as follows:

Sl .N o.	Name of place	Rate	Minimum
1	Chennai Corporation	Rs.3,000/- per Km. Rs.3/- per meter	Rs.300/-
2	Madurai/Coimbatore / Tiruchirapalli/Salem/ Erode and Tirunelveli	Rs.2,000/- per Km. Rs.2/- per meter	Rs.200/-
3	Municipalities	Rs.500/- per Km. 50 paise per meter	Rs.100/-
4	Town Panchayats	Rs.300/- per Km. 30 paise per meter	Rs.50/-

Sl .N o.	Name of place	Rate	Minimum
5	Rural areas	Rs.200/- per Km. 20 paise per meter	Rs.25/-

28. According to the Learned Special Government Pleader for Respondent Nos.1 to 3, as per Rule 7 of the Tamil Nadu Panchayats (Restriction and Control to Regulate the use of Porambores in Ryotwari Tracks) Rules, 2000, tax can be levied on a person for utilising the Government Poramboke Land, but the said person should get permission from the competent Authority, as per the procedures envisaged by Law. Further, in the instant case, the Petitioner-Company had not obtained any permission from the appropriate Authority in proper manner.

29. The Learned Special Government Pleader for Respondent Nos.1 to 3 refers to a decision of the Honourable Supreme Court reported in 2011 (8) SCC 380 (P.D.Dinakaran (1) Vs. Judges Inquiry Committee), wherein at Special page 405, in Paragraph 32, it is observed as under:

"32. The traditional English Law recognised the following two principles of natural justice:

"(a) Nemo debet esse judex in propria causa: No man shall be a judge in his own cause, or no man can act as both at the one and the same time -- a party or a suitor and also as a Judge, or the deciding authority must be impartial and without bias; and

(b) Audi alteram partem : Hear the other side, or both the sides must be heard, or no man should be condemned unheard, or that there must be fairness on the part of the deciding authority."

However, over the years, the courts throughout the world have discovered new facets of the rules of natural justice and applied them to judicial, quasi-judicial and even administrative actions/decisions. At the same time, the courts have repeatedly emphasised that the rules of natural justice are flexible and their application depends upon the facts of a given case and the statutory provisions applicable, if any, nature of the right which may be affected and the consequences which may follow due to violation of the rules of natural justice."

30. The Learned Counsel for the Fourth Respondent submits that the Fourth Respondent is the Sixth Ward Member of S.R.Kandigai Village Panchayat, Thiruvallur District and no person in the name of "T.P.Baskar" took part in the Enquiry and there is no such person "T.P.Baskar" as Ward Member of S.R.Kandigai Village Panchayat. Further, instead of "S.Baskar", the Notice was issued for an Enquiry by mentioning the name as "T.P.Baskar". Further, on all hearing dates before the First Respondent-District Collector, Thiruvallur, the Fourth Respondent took part and only on his request, "Re-Survey" was conducted.

31. The Learned Counsel for the Fourth Respondent contends that the Report of the Centre for Water Resources, Anna University, filed by the Petitioner, is not a report of the Competent Authority and it cannot be decided as to whether the Land covered under the impugned Order, was used for Water Catchment purpose or otherwise. In fact, the Encroachment could not be legalised under the guise of activities performed through Social Responsibility Schemes and Self-Sufficient Schemes. The Fourth Respondent does not know as to on what authority the President of S.R.Kandigai Village Panchayat gave permission to the Petitioner-Company to lay the Steam Pipeline in Water Catchment Area, vide Letter dated 12.01.2015. Likewise, the Fourth Respondent does not know as to how the Block Development Officer gave permission to the Petitioner-Company to lay Steam Pipeline in the Water Catchment Area, vide proceedings dated 10.09.2015, and the Tamil Nadu Panchayats Act, 1994, has not empowered them to grant such permission.

32. By way of Reply, the Learned Senior Counsel for the Petitioner-Company submits that in regard to the permission prayed for by the Petitioner-Company to incur the cost of rejuvenating the depleted "Eri" under Self-Sufficient scheme under 50 : 50 participation, the First Respondent/District Collector, Thiruvallur had stated that the same can be considered on the availability of funds allotted to the Scheme. Further, the Petitioner is willing to pay the amount to be determined by the First Respondent/District Collector, Thiruvallur and in fact, the Petitioner-Company had addressed a Letter dated 02.05.2018 to the Third Respondent/Tahsildar, Gummidipoondi.

33. In the present case, Respondent Nos.1 to 3 have taken a stand that when once the Petitioner-Company had participated in the Enquiry and the Personal Hearing was conducted by the then Collector between July and September 2015, there was no necessity to hear the Petitioner-Company once again and that the impugned Order was passed only after having heard the Petitioner-Company, in person, and therefore, the "Principles of Natural Justice" were adhered to by the First Respondent/District Collector, Thiruvallur, who passed the

impugned Order dated 27.04.2016. Therefore, it is represented on behalf of the Official Respondent Nos.1 to 3 that the contra plea taken by the Petitioner-Company is to be rejected.

34. According to Lord Esher M.R. in *Voinet Vs. Barrett* ((1885) 55 L.J.Q.B. 39, 41), "Natural Justice -- that is the natural sense of what is right and wrong." Undoubtedly, the words "Natural Justice" mean the innate quality of being fair. The soul of Natural Justice is "fair play in action". The words "Natural Justice" are not to be confined to any clear-cut and precise definition. It is not "Justice" in the abstract or moral sense and is not even "Justice" according to Natural Law, as per the decision in the case of *Bangladesh Steamer Agents' Association Vs. Bangladesh* ((1981) 33 DLR 177 SC (AD), Bangladesh). Further, "Natural Justice" is treated as pervasive facet of secular law, where a spiritual touch enlivens Legislation, Administration and Adjudication, to make fairness of a creed of life. However, it has many facets. Moreover, the "Principles of Natural Justice" are not a codified statute.

35. Further, in the instant case, it is to be pointed out that where the resources are held by a State, the feature of the 'Public Trust Doctrine' is that the State or Governmental Authority, as 'Trustee', has a fiduciary duty of stewardship of the public's 'environmental capital'. As such, it is the primordial duty of any State Government to protect, conserve and augment the traditional water retaining structures.

36. Apart from that, in the decision in the case of *Illinois Central Railroad Co. Vs. People of the State of Illinois* [146 US 387 = 36 Led 1018 (1892)], the Honourable Supreme Court of the United States of America had observed that the State holds title to the bed of navigable waters upon a public trust, and no alienation or disposition of such property by the State which does not recognise and is not in execution of this trust, is permissible.

37. Moreover, the property "held in trust" for the public is the Dominant Estate and encapsulates the public's trust rights, ranging from fishing, fowling and navigation to other broader rights like recreation, vide *Gerald Torres, 'Who Owns the Sky'*, 19 Pace Env'tl. L.Rev. 515, 530 (2002). Be it noted that the State holds all the water bodies in "public trust" for the welfare and interest of the present and future generation.

38. Suffice it for this Court to point out that the water canal, pond, tank, forest etc. being National Wealth Resources are to be not only protected by the Government, but also by the "Citizens of the Country".

39. At this juncture, this Court worth recalls and recollects a decision of the Punjab High Court, reported in AIR 1965 Punjab 84 (*Shri Amir Singh Vs. Government of India*, through the Secretary, Ministry of Finance (Dept. of Revenue), New Delhi and others), wherein, at special page 85, in paragraphs 3 to 5,

it is observed as under:

"3. Mr.Chawla on behalf of the appellant has contended, as he did before the learned Single Judge, that as the personal hearing was given by Shri R.Parshad, the order for confiscation of gold bars could not be passed by his successor, Shri Deshmukh, without giving the appellant a personal hearing. In my opinion, there is considerable force in the above contention. Section 182 of the Act deals with adjudication of confiscation and penalties under the Act by the different customs authorities. It is significant that the word used in that section is "adjudged" which goes to show that the matter has to be approached judicially and the procedure to be adopted has to be such as conforms to judicial requirements. As observed by their Lordships of the Supreme Court in Leo Roy Frey Vs. Superintendent, District Jail Amritsar, AIR 1958 SC 119 and Sewpujanrai Indrasanarai Ltd. Vs. Collector of Customs, AIR 1958 SC 845 a Collector in imposing confiscation and penalties under the Sea Customs Act acts judicially, and his order in this respect cannot be deemed to be a mere administrative or executive act.

It is apparent that Shri R.Parshad was conscious of this aspect of the matter and he, accordingly, decided to give a personal hearing to the appellant and allowed him to be represented by counsel. Consequently, arguments were advanced before Shri R.Parshad by Shri M.M.Sharma, on behalf of the appellant, on 10th January 1958. Shri Parshad was, however, transferred before passing any order and was succeeded by Shri B.D.Deshmuk. Shri Deshmukh thereafter passed the impugned order on 12th of July 1958 without giving any hearing to the appellant. In my opinion, the procedure adopted by Shri Deshmukh was violative of the principles of natural justice and canons of judicial procedure. No hearing was given by Shri Deshmukh and no arguments were advanced before him before he passed the order for confiscation, and it would be no answer that hearing had been given and arguments had been advanced before his predecessor, and that the notes of those

arguments were passed on to Shri Deshmukh. It is a cardinal principle of our judicial system that a case should be decided by the authority hearing the arguments and that a successor cannot decide a case without hearing the arguments afresh on the ground that arguments have already been advanced before his predecessor who left the case without deciding it himself.

The object of hearing arguments is to give an opportunity to a party to satisfy the Tribunal about the case set up by that party and to explain any adverse facts which may emerge on the record. The doubts entertained by the Tribunal can be expressed to the party and an attempt can be made by the party concerned or his counsel to resolve those doubts. In case doubts expressed by the Presiding Officer of a Tribunal are resolved, but he leaves the matter without a decision, his successor can adjudicate upon the matter fairly only if he puts his doubts to the party against whom he decides the matter. For this purpose it is essential that the successor must hear the arguments afresh. Any other view would render the hearing of arguments an empty formality and a mere farce. I may in this context refer to the following observations of their Lordships of the Supreme Court in Gullapalli Nageswara Rao Vs. Andhra Pradesh State Road Transport Corporation, AIR 1959 SC 308:

"Personal hearing enables the authority concerned to watch the demeanour of the witnesses and clear-up his doubts during the course of the arguments, and the party appearing to persuade the authority by reasoned argument to accept his point of view. If one person hears and another decides, then personal hearing becomes an empty formality. We therefore hold that the said procedure followed in this case also offends another basic principle of judicial procedure."

4. Mr.Dewan, on behalf of the respondents, has urged that the appellant made no grievance in his appeal against the order of the Collector to the Central Board

of Revenue that arguments had been heard by Shri Parshad and order about the confiscation had been made by Shri Deshmukh. In this respect I find that in paragraph No.5 of his memorandum of appeal before the Central Board of Revenue the appellant clearly stated that the arguments had been heard by Shri Parshad and the order under reference had been made by Shri Deshmukh. It was further stated that Shri Parshad had conceded all the issues raised on behalf of the appellant during the course of the arguments. It would thus appear that the stand taken by the appellant was that if the matter had been decided by Shri Parshad, the decision would have gone in favour of the appellant. The appellant should thus be taken to have urged the ground that he had been prejudiced because the matter had not been decided by Shri Parshad who had heard the arguments.

(5) I would, accordingly, hold that the failure of Shri Deshmukh to give a personal hearing to the appellant before passing the impugned order for confiscation of the two gold bars in question, vitiates the order."

40. Also this Court aptly points out a decision of the Kerala High Court reported in 1999 (Vol.95) Company Cases 537 (Union of India and another Vs. E.K.Andrew), wherein at page 538, it is held as under:

"Held, dismissing the appeal, that strictly speaking this was not a case where an institutional decision was involved. Sub-section (3) of section 36AA of the Act does not provide for a personal hearing. No guidelines are given either as to how appeals are to be heard or decisions taken. A simple order under sub-section (3), without any direction from the court, passed in the ordinary course, might be a case involving an institutional decision. But the observance of the principles of natural justice was mandatory in this case in view of the judgment of the court on the respondent's writ petition, which necessarily dissolved its institutional character. The authority who passes the order, must apply its mind after hearing the

aggrieved party. During the course of the hearing the authority might be able to formulate the conclusions after noticing even the demeanour of the parties. Admittedly, R, who decided the appeal, had not heard the respondent and the two officers who had heard the respondent personally, did not take a decision. There was no application of mind by R. This was a case where the personal hearing ordered by the court had become an empty formality. Serious prejudice had been caused to the respondent due to the failure to grant personal hearing by the officer who passed the order dismissing the appeal against the order removing him from service. The order of the single Judge was justified."

41. In the instant case, it appears that the Petitioner-Company has submitted a Written Representation, dated 01.09.2015 before the First Respondent's Enquiry in respect of W.P.No.31875 of 2012 on the file of this Court, filed by one S.Baskar and in the Attendance Register of the District Collector's Enquiry held on 28.08.2015, one T.Ramamoorthy, Vice-President of the Petitioner-Company had affixed his signature. Further, the Village Administrative Officer (V.A.O), Pappankuppam, Baskar (Petitioner in W.P.No.31875 of 2012) and the Head Surveyor of Gummidipoondi, had also affixed their signatures. In the Enquiry of the District Collector, in the Attendance Register, dated 22.09.2015, the Tahsildar, Gummidipoondi, Deputy Inspector, Gummidipoondi, V.A.O.--Pappankuppam, the Petitioner-Company's Vice-President-T.Ramamoorthy and Su.Baskar of Pappankuppam, had affixed their signatures. Further, the Petitioner-Company had submitted a Representation, dated 15.09.2015 before the First Respondent-District Collector, Thiruvallur in regard to the laying of Steam Pipeline through S.No.115 (Lake) and 119 (Water Catchment Area).

42. As far as the present case is concerned, this Court, on a careful and meticulous consideration of the divergent stand taken by the parties, and considering the attendant facts and circumstances in an integral manner, is of the considered view that the impugned Proceedings/Order, dated 27.04.2016 was not passed by the District Collector, Thiruvallur (First Respondent) who conducted the Enquiry. In fact, the impugned Order was passed by the District Collector, Thiruvallur (First Respondent) who had not conducted the Personal Hearing between July and September 2015. Further, the erstwhile District Collector, Thiruvallur, had only conducted the Enquiry and Personal Hearing in the matter, and as such, this Court opines that it is

incumbent on the part of the subsequent District Collector, Thiruvallur, who took charge from the erstwhile District Collector, Thiruvallur, to give an opportunity of Personal Hearing to the Petitioner-Company's Representative with a view to ascertain its any further views in the pending Enquiry. Unfortunately, the subsequent District Collector, Thiruvallur, had not resorted to the option of providing an opportunity of Personal Hearing to the Petitioner-Company's Representative. As such, without hearing the Petitioner-Company's Representative in person again, passing of the impugned Order by the First Respondent-District Collector, Thiruvallur, is in violation of the "Principles of Natural Justice", and as such, it has caused prejudice to the Petitioner-Company.

43. It is to be borne in mind that providing an opportunity of Personal Hearing (with a view to find out anything more remains to be projected or anything has been left out), is not an "Empty Ritualistic Formality". Adhering to the "Principles of Natural Justice" by the concerned Administrative Authority before passing the impugned order, is a cardinal principle of a Judicial System and that the matter is to be decided by the Authority who heard the arguments. In short, the successor taking office of the predecessor, without an iota of simmering doubt, cannot determine the matter without hearing the arguments once again on the ground that the arguments were already advanced before his/her predecessor, who had left the matter without passing necessary orders. Viewed in that perspective, the impugned Order/Proceedings of the First Respondent/District Collector bristles with legal infirmity in the eye of Law. Resultantly, the subsequent Notice, dated 11.05.2016 issued by the Third Respondent/Tahsildar, Gummidipoondi, requiring the Petitioner-Company to remove the Encroachments, is not sustainable in law.

44. Consequently, the Writ Petition succeeds. In fine, the Writ Petition is allowed. The impugned Order dated 27.04.2016 and the subsequent Notice, dated 11.05.2016 are quashed. The First Respondent-District Collector, Thiruvallur is directed to pass "De-Novo" order in a free, fair, just, unbiased and dispassionate manner, uninfluenced and untrammelled by any of the observations made by this Court in the present Writ Petition, after providing an opportunity of Personal Hearing to the Petitioner-Company's Representative, and the Fourth Respondent and other interested persons if any, in the subject matter in issue, after adhering to the Principles of Natural Justice and also by keeping in mind the Order dated 03.12.2012 passed by this Court in W.P.No.31875 of 2012. The said Order shall be passed within a period of six weeks from the date of receipt of a copy of this Order. It is open for the parties to raise all factual and legal pleas before the First Respondent-District Collector, Thiruvallur, who shall meet out the same in the fresh Order to be passed by him/her as directed above, by

specifying the outline of reasoning in a speaking and reasoned order to be passed.

No costs. Consequently, W.M.Ps. are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

CS

To

1. The District Collector,
Thiruvallur District, Thiruvallur.
2. The Revenue Divisional Officer,
Ponneri Division, Ponneri-601 204.
3. The Tahsildar,
Gummidipoondi Taluk,
Gummidipoondi-601 201,
Thiruvallur District.

+2cc to Mr.T.P.Sekar, Advocate, S.R.No.10708

+1cc to Mr.Arun Anbumani, Advocate, S.R.No.10411

+1cc to the Government Pleader, S.R.No.11376

W.P.No.21803 of 2016

SV(CO)
GSP(25/02/2019)