

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.01.2019

PRONOUNCED ON :14.02.2019

CORAM

THE HON'BLE Mr. JUSTICE M.VENUGOPAL
And

THE HON'BLE Mr. JUSTICE R.PONGIAPPAN

W.P.No.4864 of 2016

and

W.M.P.Nos.20278 & 24152 of 2017

- 1.XS Real Properties Pvt. Ltd.,
No.12 South Mada Street,
Srinagar Colony, Saidapet,
Chennai - 600 015
- 2.M/s.Jacaranda Properties Pvt. Ltd.,
No.12 South Mada Street,
Srinagar Colony, Saidapet,
Chennai 600 015. Petitioners

Vs.

- 1.Anaithu Vivasaya Sagupadi
Payirkal Urpathy Vivasayigal Sangam
Reg. No.190/2009,
No.5, Vaithiyar Street, Periyakanchipuram
Kanchipuram District,
Rep. By General Secretary
- 2.State of Tamil Nadu,
Rep. By its Secretary to Government,
Public Works Department,
Fort St. George, Chennai - 600 009.

- 3.The District Collector,
District Collector's Office,
Kancheepuram,
Kancheepuram District.
- 4.The Revenue Divisional Officer,
Kancheepuram, Kancheepuram District.

5.The Tahsildar,
Kancheepuram Taluk Office,
Kancheepuram, Kancheepuram District.

6.The Director,
Directorate of Town and Country Planning
No.807, Anna Salai, Chennai - 600 002.

7.The Member Secretary,
Mamallapuram Local Planning Authority,
Five Radhas Commercial Complex,
Mamallapuram - 603 104.

8.V.Murugan

9.R.Anbuvelrajan
[R9 given up vide order dated 11.01.2018]

10.The Secretary to Government,
Housing and Urban Development Department,
Chennai - 9.
[R10 - Suo motu impleaded as per order
dated 23.10.2017]

.. Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records quashing the impugned order dated 02.09.2015 bearing Na.Ka.No.14539/ 2015/Aa1 issued by the 3rd Respondent.

For Petitioner : M/s.Shivakumar and Suresh

For 1st Respondent : Mr.P.Selvaraj

For Mr.Devadasan & Sagar

For RR 2 to 7 : Mr.S.N.Parthasarathy
Government Advocate

For 8th Respondent : Mr.D.Jayasingh

For 10th Respondent : Mr.V.Anandhamurthy

WEB COPY
ORDER

M.VENUGOPAL, J.

The Petitioners have filed the present Writ Petition seeking to call for the records in regard to the impugned order dated 02.09.2015 bearing Na.Ka.No.14539/2015/Aa1 issued by the 3rd Respondent and to quash the same.

2.Writ Facts:

2.1.The 1st Petitioner is a leading Developer in the Chennai Real Estate Market and has carved out a niche for itself in the construction industry by developing several award winning projects in Chennai. As a matter of fact, the 2nd Petitioner is carrying on the business of constructing Residential Apartments, Villas, Row-Houses, Cottages, etc. and had obtained 'Foreign Direct Investment' for developing the Project named as "Catalunya City" in Siruseri Village. The 2nd Petitioner is the 1st Petitioner's Group Company which engaged the 1st Petitioner as its 'Marketing Agent' for promoting the aforesaid using the brands of the 1st Petitioner. The 2nd Petitioner is currently developing the first phase of the Project named as 'Barcelona' after obtaining the required statutory 'Approvals' and 'Permissions' for 'Construction'.

2.2.The 2nd Petitioner, after scouting around for immovable properties, had identified Lands at Siruseri for development. The 9th Respondent (later given up), who was the 'Real Estate Aggregator' along with 8th Respondent had approached the Petitioners and stated that he would aggregate Lands as may found suitable by them. It was also represented that the 8th Respondent being the Thalayari of Siruseri Village, owned Lands along with his relatives, in Survey Nos.148/1, 148/2, 149/2A, 150/2 and 181/3 in Siruseri, which would also be sold to the 2nd Petitioner. The 8th Respondent [Real Estate Broker/Land Aggregator] had procured properties for an adjacent project developed by another prominent Developer for their project at Siruseri. Further, based on the representations of the 8th and 9th Respondents that they would facilitate the procurement and purchase of immovable properties, and based on internal studies, the proposal was found acceptable, by the Petitioners.

2.3.The 2nd Petitioner had purchased the Lands of about 14 acres in S.Nos.147, 148, 149, 166, 169, 170, 171, 172, 173, 177, 178, 179, 181 and 182 and their sub-divisions among other Land/s in Siruseri village, Thiruporur Taluk, Kancheepuram District, being the Lands identified and aggregated by the 9th Respondent. It was assured that the Title to the Lands were clear. The Lands were adjacent to the SIPCOT Lands. Various IT companies such as TCS, Wipro, etc. had built huge offices nearby. The above area was developed after the Lands were classified as 'Urbanisable Use Zone'. The Government of Tamil Nadu had published the Mamallapuram Master Plan in the year 2004 as per G.O.(Ms.) 287 dated 08.07.2004 and as per the said Plan, the entire Siruseri Village barring few survey numbers was declared as 'Nil'. In 2000, the Government had declared that there is no agricultural activity in the entire Siruseri Village and that many International and National Software Companies had

built huge office structures in that area. Moreover, many leading Real Estate Developers were also building various residential complexes nearby fuelled by the growth and requirement for IT Buildings.

2.4.The Land aggregators had assured that there was no Agriculture Lands, in the Lands identified by the Petitioners. All the Lands were barren Lands and the surrounding Lands were also barren. The 8th Respondent agreed to sell his Lands and the Lands of his relatives to the 2nd Petitioner, in addition to other Lands identified by the 9th Respondent. On 17.07.2013, the Government of Tamil Nadu (Housing and Urban Development) published a G.O.Ms.No.28 for classifying the Lands as "Mixed Residential Zone" from "Urbanisable Use Zone". After obtaining Sale Deeds in its favour, the 2nd Petitioner had also obtained 'Patta' in respect of the aforesaid survey numbers.

2.5.After the rates for purchase of Lands were finalised and the 2nd Petitioner had proceeded to obtain 'Demand Drafts' for the Sale Consideration as well as the stamp duty and registration fees, from its bankers State Bank of India, CCPC, Chennai. The Petitioner and its group company have a strict policy not to deal with cash, in order to bring respectability and transparency to the realty segment. The 8th Respondent, at the last minute, made a demand for an increase in Sale Consideration, but the transaction had not fructified because of dispute.

2.6.The 5th Respondent/Tahsildar, Kancheepuram Taluk Office issued a 'No Objection Certificate' on 23.04.2014 confirming that the Lands were not Government Poramboke Lands, there were no pending Land acquisition proceedings and there were no ceiling proceedings. Also, it was certified that the 2nd Petitioner's Lands were not prone to flooding. Apart from that, it was certified that it was part of the local planning authority. Indeed, the 2nd Petitioner had also executed registered Gift Deeds dated 09.02.2015 [Document No.1865 and 1866 of 2015] in favour of the Siruseri Panchayat as per the Development Control Rules towards the public road and open space reservation area. The 7th Respondent had granted the Site Approval and Planning Permit Approval and on 14.03.2015 the Building Plan Approval was obtained from the Siruseri Panchayat Board. The 2nd Petitioner commenced its development activities only after payment of Statutory Fees and securing statutory 'Approvals'.

2.7.Because of the numerous problems created by the 8th Respondent either directly or through his relatives etc., the 2nd Petitioner was constrained to lodge a complaint before the Jurisdictional Inspector of Police seeking to take necessary

action. Further, he laid a Civil Suit in O.S.No.579 of 2014 on the file of the Learned District Munsif, Chengalpet for injunction restraining the 1st Petitioner from blocking the 'Water Canal' showed in the related map and sketch filed by him. The 1st Petitioner was falsely implicated by the 8th Respondent knowing full well that the 2nd Petitioner is the owner of the Lands. The 8th Respondent through one Mrs.K.Rani and E.Palandiammal filed W.P.No.16969 and 16970 of 2015 in February, 2015 before this Court praying for similar/identical reliefs and the said Writ Petitions are pending. Further, the 8th Respondent, through the 1st Respondent/ Agriculturists/Sangam filed W.P.No.13495 of 2015 as Public Interest Litigation and this Court had directed the 'Representation' to be disposed of within a a period of two months. There is no Canal (Vaikal) carrying water from Periya Eri and Sitteri. There cannot be a 'Canal' (Vaikal) as there is no water in the 'Periya Eri' and 'Sitteri'. Even if there is water due to stagnation, it cannot flow through the alleged Canal (Vaikal).

3.Gist of Counter of 1st Respondent/Sangam:

3.1. The 1st Respondent/Sangam filed W.P.No.13495 of 2015 to protect the riparian right of the farmers and the right of the farmers' and villagers over channels and pathways duly recognised by the Government and is duly reflected in the Village Map. The 3rd Respondent/District Collector, Kancheepuram passed an order on 02.09.2015 recognizing the rights of villagers and farmers in respect of riparian rights resting the Channels and Pathways, after issuing notice and providing due opportunity to the Writ Petitioners.

3.2.The 1st Respondent/Sangam filed W.P.No.36952 of 2015 to implement the orders passed by the 3rd Respondent/District Collector, Kancheepuram dated 02.09.2015 and that the 5th Respondent/Tahsildar, Thiruporur (4th Respondent therein) filed counter stating that '... action is being initiated and to inform the encroachment portion so as to evict all the encroachments in channel by the public works department'.

3.3.One Mrs.Palaniammal filed W.P.No.16969 of 2015 and Mrs.Rani filed W.P.No.16970 of 2015 and that the 2nd Petitioner filed counter affidavit in both the Writ Petitions. As a matter of fact, W.P.No.36952 of 2015, W.P.Nos.16969 & 16970 of 2015 were disposed of on 03.02.2016 in view of the present Writ Petition. The existence of vaikal cannot be disputed. Further that, the villagers are cultivating the Lands with the help of water available in the tank cannot also be disputed. The water tank, vaikals and foot path could not be intermeddled with by the developers in the manner it was done. The 6th Respondent/Director, Directorate of Town and Country Planning, Chennai and the 7th Respondent/Member Secretary, Mamallapuram

Local Planning Authority, Mamallapuram have no authority to grant sanction or planning permission for development of Land ignoring the rights of Agriculturists. The rights of agriculturists to irrigate their Lands and to use of pathway is interfered with in violation of their fundamental right to life and existence.

3.4.The Land sought to be developed by the Petitioners was shown in pink colour. The Green marked portion was shown as 'Road' which branched from the existing road connecting the property. Indeed, the 'Road' is formed in a property belonging to 'Vallaba Ganapathy Temple'. By Settlement Deed dated 05.12.1973, an extent of 6.40 acres of Land comprised in Survey Numbers viz., (1)146/1 measuring 0.26 acres, (2)146/3 measuring 0.62 Acres, (3) 139/1 measuring 0.32 acres, (4) 152 measuring 1.31 acres, (5) 200/4 measuring 0.40 acres, (6) 179/1B measuring 0.72 acres, (7) 180/2 measuring 0.40 acres, (8) 212/2 measuring 0.20 acres, (9) 144/2B measuring 0.44 acres, (10) 144/2A measuring 0.43 acres, (11) 116/6 measuring 0.16 acres, (12) 116/7 measuring 0.16 acres, (13) 145/6 measuring 0.61 acres, (14) 200/4 measuring 0.16 acres, and (15) 199/1A measuring 0.23 acres in Siruseri Village and an extent of 3.28 acres of Land comprised in Survey Numbers viz., 125/14, measuring 1.36 acres, (2) 139/3 measuring 0.22 acres, (3) 129/14 measuring 0.22 acres, (4) 131/7 measuring 0.38 acres, (5) 147/5 measuring 0.86 acres and (6) 102/2A3 measuring 0.30 acres in Pudupakkam village, was gifted to the 'Vallaba Ganapathy Temple' and for other charitable purposes. The property belonging to the Temple could not be grabbed by the Developers. In the 'A' Register, the properties are shown as belonging to the aforesaid Temple.

4.Contents of 2nd Respondent's Counter:

4.1.There is no pathway for the 'Agricultural Land'. The 1st Petitioner viz., XS Real Property Private Limited had promised that 'No Objection' for utilising the roads of the Siruseri Panchayat, that was given by planning permission. In the encroached plan marked channel in S.F.No.166/3, a 'Multistoried Building' was constructed. The 3rd Respondent/District Collector, Kancheepuram had ordered the Tahsildar, Tiruporur that the plan marked channel should be maintained as in Village Plan and the encroachment area is to be measured by the Public Works Department, based on the order dated 30.04.2015 in W.P.No.13495 of 2015.

4.2.The 3rd Respondent/District Collector, Kancheepuram, through proceedings dated 02.09.2015, had directed the Tahsildar, Thiruporur to maintain the channels marked in the Map (Plan Marked Channels) as per the Village Map in Siruseri Village, Thiruporur Taluk, Kancheepuram District and to remove

the encroachments made by the 1st Petitioner/Private Company, after measuring the encroachments by the Public Works Department etc.

4.3. In implementing the 3rd Respondent/District Collector's order dated 02.09.2015, there are technical and legal difficulties:

(i) There is no F.M. Sketch and Measurement for plan marked channel. For plan marked channels the same will not be shown in the F.M. Sketch.

(ii) Plan marked channel did not come under the purview of Public Works Department. This type of channel will be maintained by Revenue Department and formers by "Kudimaramath Scheme". Therefore it is requested to reconsider the existing proceedings.

(iii) Plan marked channel did not come under purview of Public Works Department. Hence, "The Tamil Nadu Protection of Tanks and Eviction of Encroachments Act, 2007" did not cover the plan marked channel it is not possible to issue eviction notice to the petitioner in the said Act.

On site inspection, it was found that the maximum Ayacut of Siruseri Tank was converted into Residential plots, I.T. Park and remaining Lands are vacant.

4.4. The Government of Tamil Nadu had published the Mamallapuram Master Plan in the year 2004, as per G.O.(Ms.) No.287, Housing and Urban Development (UD 4.2) Department, dated 08.07.2004, the entire Siruseri Village barring few survey numbers was declared as 'Urbanisable Use Zone' and 'Agricultural Use Zone' was declared as 'Nil'. While issuing the 'No Objection Certificate', the Mamallapuram Master Plan had not sought the 'NOC from the Public Works Department', since it is a 'Plan Marked Channel'.

4.5. In this situation, the solution is to form a 'Catch Drain cum Field Channel' along the outer periphery of the Petitioners and that the catch drain (0.45 m x 0.60m) inner dimension should be formed by the 1st Petitioner at their own costs under the 'Supervision of Public Works Department'.

5. Counter of 3rd Respondent [Erstwhile District Collector]:

5.1. The 1st Petitioner filed an application seeking grant of building permission contending that Siruseri Village was declared as 'Urbanizable Use Zone' by means of G.O.(Ms.) No.287, Housing and Urban Development (UD 4.2) Department, dated 08.07.2004. The application of the 1st Petitioner was scrutinised by the Local Planning Authority viz., Mahapalipuram Local Planning Authority of which as a District Collector, he was a Member. After receipt of application and on scrutiny of the

same, the said application was forwarded to the 6th Respondent/Director, Directorate of Town and Country Planning, Chennai for approval on 18.06.2012 and the said authority, after verification of records, gave technical clearance for construction on 08.12.2014 and later the relevant files were forwarded to the Siruseri Panchayat for building permission and that the said Panchayat granted permission at its Council Meeting that took place on 11.03.2015. In fact, the Building Permission issued on 14.03.2015. The construction was put up, based on the Permission and Approval being granted thereto.

5.2. None of the 'Authorities' including and not restricted to 'Siruseri Panchayat' had complained of an existence of any water channel or intermeddling of the same. On perusal of 'A' Register, F.M.B. Records available with the authorities concerned, the approvals and permissions were given. The Village Map was not perused or noticed. It could be seen that it is not a water channel and it is only a Plan Marked Channel. The Plan Marked Channel is in 3' width and 1 to 1 ½' in depth, which supply excess water from the lake to agricultural fields down the lake. The supply of water through this Land was restricted to a short period. The supply is normally done from the lake by lifting the sludge during November - January and in some places, it is done upto March depending on the storage of water in the lake. The supply of water is done after it is ensured that there is sufficient water for drinking purposes for the village available in the lake and that Siruseri, after urbanization was classified as 'Nil Agricultural Zone'.

5.3. Further, upon urbanization, the Public Works Department would not maintain these Detailed or Plan Marked Channels and they kept erased from the Map owing to urbanization. As a Plan Marked or Detailed Channel, it is only the farmers "Aayakattutharars" are the persons who maintain these channels, depending on their requirements and usage and the order impugned is legally valid and sustainable one in Law.

6. Counter of 3rd Respondent [Present District Collector]:

6.1. As per G.O.(Ms.) No.287, dated 08.07.2004 issued by Housing and Urban Development (UD 4.2) Department through the order of Master Plan by the 7th Respondent/Mamallapuram Local Planning Authority 'Revised consent of the Government' to the publication of notice of preparation of Master Plan under Section (2) of Section 24 of the Tamil Nadu Town and Country Planning Act, 1971 was granted accord that No.40, Siruseri Village comprised under various survey numbers is classified as 'Urbanizable Use Zone'. The property which they are developing also falls under the aforesaid survey numbers are classified as "Urbanizable Use Zone".

6.2.By virtue of the Government Order passed in 2004 by the Housing and Urban Development Department, it is confirmed that there is 'Nil Agricultural Zone' in the said Siruseri Village. In terms of the order passed by the Housing and Urban Development Department, viz., Government Notification Ms.No.28 dated 17.07.2013 that the Siruseri Village earlier classified as 'Urbanizable Zone' was further advanced and classified as 'Mixed Residential Zone'. By this order, the Land in Siruseri Village is purported to be developed for Residential and Commercial use.

6.3.Based on the direction issued by this Court on 30.04.2015 in W.P.No.13495 of 2015, the impugned order dated 02.09.2015 came to be passed by his Predecessor. Further, from the verification of FMB Sketch, 'A' Register and the Village Map that there are two lakes; one is Periyaeri and another is Sitheri (Periya Eri and Chinna Eri) and a Detailed or Plan Marked Channel was allegedly obstructed or intermeddled from Sitheri Eri flowing from North to South. A Detailed or Plan Marked Channel is in 3' width and 1' to 1 ½' in depth, primarily aimed at supplying water for the agricultural fields situate down the lake and it terminates at some point in a patta Land and the entire channel runs on patta Land mostly abutting the boundary of the property and in the 'A' Register, since it is on a property belonging to an individual and only in 3' width and 1' - 1 ½' depth, there was no marking or noting of the same.

6.4.The existence of 'Plan Marked Channel' or 'Detailed Channel' could be verified or ascertained from the perusal of the Village Map and existence of 'Sluice (Madhaku)' on the Lake. In the Sitheri Eri, as per the Village Map, there is marking for 4 sluices (madhaku). Apart from the one, being the subject matter of the Writ Petition, all other three are not in existence or not in use. The Village Map, from his experience and perusal was not to be updated for many number of years. The non-marking of the same in FMB sketch is possible or attributable to non-usage of the Detailed or Plan Marked Channel over a period of time or owing to a Human error. Further, the Post Urbanization and Siruseri Village being classified as 'Urbanized Zone', the village registers and records would reveal that no agricultural activity, though certain persons might have carried on certain activities and marking to that effect are found in the Adangal Register, which is maintained.

6.5.By means of G.O(Ms.)No.287, Housing and Urban Development (UD 4.2) Department, dated 08.07.2004 passed in the year 2004, the Siruseri Village was urbanized. The Chitta and Adangal Registers in respect of the village would be maintained till the time town Survey was conducted. The Post town survey, the survey numbers would be assigned as T.S. Numbers and Adangal and Chitta Registers are not maintained.

6.6.The Detailed or Plan Marked Channel is sought to be classified as 'Vaikal' and evidently and pellucidly it is only a Plan Marked Channel, which is used for the supply of water depending on the storage for wet Lands. Siruseri has become a 'hub for industrial activity' and housed several information technology parks, software companies, multinational companies. Even in the urbanization, the zones are classified. It could be owing to the fact that Siruseri village was brought into urbanized zone when an application was made by the Writ Petitioners, a sanction without verification of the Village Map, was granted.

6.7.In any event, at the time when the Urbanization Notification was issued, there was no objection or there is any challenge to the same before any Forum. The persons who are interested in carrying on development in the urbanization zone have to submit an application seeking Approval from the Secretary to Government, Housing and Urban Development Department and these applications are submitted to the Local Planning Authority and in the present case, the 7th Respondent/ Mamallapuram Local Planning Authority, after scrutiny, had cleared the same on 22.07.2014 and the Director of Town and Country Planning Authority was given Approval on 08.12.2014 and later, the Siruseri Panchayat in its Council Meeting held on 11.03.2015 had accorded permission and the building permits was accorded in Approval No.5/2015 and pursuant to the same, the construction was made and also that, none of the authorities have even raised a little finger as to the existence of Detailed/Plan Marked Channel.

7.The 5th Respondent's/Tahsildar's Counter:

7.1.There is a Plan Marked Channel passing through the Survey Nos.211, 212, 219, 180, 169, 166, 157, 149, 148 and the same was reflected in the Village Accounts. However, there is no such Field Measurement Book to reflect the same. As per the 7th Respondent's/Mamallapuram Master Plan (vide G.O.(Ms.)No.287 dated 08.07.2004), the entire Siruseri Village barring few survey numbers was declared as 'Urbanisable Use Zone' and 'Agricultural Use Zone' was declared as 'Nil'. However, it does not show that there is no Plan Marked Channel and the Agricultural activities of the 1st Respondent/Sangam Members.

7.2.The Petitioners have rights over only the Patta Land and not on the Plan Marked Channel and that patta cannot be granted to the water bodies including Irrigation Channel, Plan Marked Channel, Incoming and Outgoing Channels of a Lake. The Petitioners have no right to close the 'Plan Marked Channel' and encroached upon such Plan Marked Channel. As such, the impugned order of the 3rd Respondent in directing the removal of encroachment made by the Petitioners is sustainable one.

8.Resume of the 7th Respondent's (Planning Authority) Counter:

8.1.For the 2nd Petitioner's proposal in 14 acres, the 6th Respondent/Director of Town and Country Planning had issued technical clearance in Roc.NO.14158/BA2/dated 08.12.2014. The Planning Permission was issued by this Respondent dated 06.03.2015 in Planning Permission No.3 (1 to 8/2015) in Roc.No.387/2014. The 2nd Petitioner had developed and completed the first phase as approved by the 6th Respondent/Director of Town and Country Planning and also an additional proposal with an additional survey number 229/3B, was submitted by the 2nd Petitioner through this Respondent/Planning Authority to the 6th Respondent/Director of Town and Country Planning, Chennai. While scrutinising the first phase and the second phase additional construction by the 2nd Petitioner, there was no such alleged canal (Vaikal) exist at the time of inspection by the Member Secretary of the Mamallapuram Local Planning Authority, as stated in the impugned order of the 3rd Respondent.

8.2.The 6th Respondent/Director of Town and Country Planning called for additional particulars for the 2nd Petitioner's proposal in 14 acres and the 6th Respondent issued technical clearance on 08.12.2014. The 7th Respondent/Planning Authority had issued the Planning Permission for the aforesaid Planning Permission No.3 (1 to 8/2015) in Roc.No.387/2014 MLPA dated 06.03.2015. The 2nd Petitioner had developed and completed the first phase as approved by the 6th Respondent/Director of Town and Country Planning and the 7th Respondent/Planning Authority. In fact, the 2nd Petitioner's site in respect of 14 acres in Survey Nos.147/2, 148/3B, 149/1, 2B; 166/1A, 1B, 1C, 2A, 166/2B, 3; 169/1, 2; 170/1, 2; 171/1, 2, 3, 171/4; 172, 173/1, 2; 177/4, 5; 178/1, 2, 3A, 3B; 179/1B, 2A, 179/2B, 181/1, 2; 182/2 - (56793.44 m2) technical clearance was given by the 6th Respondent/Director of Town and Country Planning, Chennai dated 08.12.2014 and this Respondent had issued the Planning Permission for the above phase on 06.03.2015.

8.3.The 2nd Petitioner submitted a proposal through this Respondent to the 6th Respondent on 28.02.2015 with an inspection report. While scrutinising the Building Approvals for the first phase and the second phase construction by the 2nd Petitioner, there was no such alleged canal (Vaikal) existing in the site at the time of inspection by the 7th Respondent and that the NOC was issued by the 5th Respondent/Tahsildar, Thiruporur Taluk dated 23.04.2014 for the entire Lands. There was no remarks of such alleged canal (Vaikal) in various survey numbers of the 2nd Petitioner's proposal in 'A' register and also that there was no marking and remarks of such alleged canal (Vaikal) in the Field Measurement Book of the 2nd Petitioner's Land parcel.

8.4.The 2nd Petitioner had obtained a patta for the entire Land in its name issued by the 5th Respondent/Tahsildar, Thiruporur. Further, there was no remarks in the environmental clearance certificate dated 24.12.2014 issued by the Member Secretary SEIAA-TN which was submitted to the Mamallapuram Local Planning Authority for their scrutiny. As the Land was fit for development, the Mamallapuram Local Planning Authority had issued permission for the first phase of the 2nd Petitioner's Lands viz., No.3 (1 to 8/2015) dated 06.03.2015.

9.Counter and Additional Counter Averments of 8th Respondent:

9.1.He never agreed to sell any Land to the Writ Petitioners. The Writ Petitioners had created 'Bogus Documents' to make defamatory allegations against him. The Road is formed in a property belonging to Vallaba Ganapathy Alaya Madam and how the Writ Petitioners grabbed the Land and converted them is not known.

9.2.The Petitioners had filed two First Information Reports against him and his family members. They caused his arrest and arrest of his son illegally. If an Advocate Commissioner is appointed to inspect the properties in Survey Nos.147, 149, 166, 165, 169, 170, 1717, 178, 179 in Siruseri Village, Thiruporur Taluk, Kancheepuram District and the channels emanating from Sitteri, Periyaeri and Mynamthangal tanks and to submit a Report concerning the Vaikal to which the water for irrigation was provided, then the existence of channels and obstruction of the same by the Petitioners can be easily ascertained.

9.3.He lodged a complaint on 06.03.2017 seeking action against Police and the Petitioners for registration of false First Information Report against him and his family members. He had filed three Writ Petitions. The entire complex is protected by the Petitioners private security personnel. After arresting him and keeping him under custody, the Petitioners had taken control of the gate leading to his property in Survey No.149/2. They had put up a barricade preventing entry of vehicles and the people in the Panchayat road leading to the Petitioners' property.

9.4.The 8th Respondent's father Late Varathan owned the following properties: (i) Property measuring 41 cents in S.No.35/D, (ii) Property measuring 72 cents in S.No.46/2, (iii) property measuring 2 Acres and 8 cents in S.No.234/4 and (iv) property measuring 21 cents in S.No.197 Siruseri Village, Thiruporur Taluk, Chengalpattu District. Further that, Item (i) to (iii) owned by his father were sold and out of the sale proceeds, he purchased (i) property measuring 1 acre and 29 cents in S.No.124 & 118/4, (ii)property measuring 30 cents in

S.No.149/2 and (iii) property measuring 41 cents in S.No.181/3 in Siruseri Village, Thiruporur Taluk, Kancheepuram District in his name. His mother late Logammal was the owner of (i) Property measuring 1 acre and 11 cents in S.No.148/1 & 148/2, (ii) Property measuring 7 cents in S.No.39/11 and (iii) property measuring 64 cents in S.No.150/2 Siruseri Village, Thiruporur Taluk, Kancheepuram District and his daughter owned 54 cents of Land in S.No.179/1A in Siruseri Village.

9.5.After the demise of his parents, the properties were inherited by him and his sisters (i) PaLandi Ammal (ii) Muthammal and (iii) Kumari. The property in Survey No.197 is Punja Land and all other properties are agricultural wet Lands (Nanja) and that they were cultivating the Lands for generations and the primary crop is paddy. During summer seasons, groundnut, gingili, watermelon, sneak gourd, bitter gourd crops etc. are raised. In Survey No.148/1 there is a well with free agricultural electricity connection standing in the name of his mother late Logammal. In June 2014, the Petitioners commenced preparations for putting up a huge multistoried complex in 15 acres of Land comprised in Survey Nos.170/1, 170/2, 171/1, 171/2, 171/3, 171/4, 172, 173/1, 173/2, 177/4, 177/5, 178/1, 178/2, 178/3A, 178/3B, 166/2B, 166/1B, 166/1C, 166/3, 169/1, 169/2, 179/2A, 179/2B, 179/1B, 149/1, 147 pt. and 152 pt. Siruseri Village, Kancheepuram District.

9.6.The properties belonging to his family and his daughter are situated on the northern, southern and eastern part of the proposed building complex of petitioners' property in which residential flats are being constructed in wet Lands/Nanja also.

9.7.Under the pretext of laying foundation for the multistoried residential flats, the Petitioners had obstructed the Vaikal / Channel through which water was supplied to their paddy fields from Sitteri, Periyaeri and Mynamthangal tanks. The Writ Petitioners closed the channels during the pendency of W.P.No.13495 of 2015.

10.Petitioners' Reply Affidavits [In respect of Counter of 5th Respondent]:

10.1.The fact that no such alleged Plan Marked Channels mentioned in the 'Remarks' of the Village Map, A - Register, FMB and anywhere in the Government Records. The 5th Respondent/ Tahsildar, Thiruporur while issuing a No Objection Certificate (NOC) dated 23.04.2014 to the 2nd Petitioner had stated that the entire Lands owned by the 2nd Petitioner at Siruseri Village in S.Nos.147, 148, 149, 166, 169 were not Government Poramboke Lands and not prone to floods ought not to come at the latter stage with a statement that "there are a plan marked channels has been passed through the S.Nos.169, 166, 149, 148 and the

same has been reflected in the village account, but there is no such FMB to reflect the same."

10.2.The impugned order of the 3rd Respondent is running contrary to his findings that the alleged Plan Marked Channels as mentioned in the Writ Petition are not visible/found in the ground or in the Field Measurement Book Sketch. The 'Reference' of the Village Map does not contain any details about Plan Marked Channel and hence, the impugned order passed by the 3rd Respondent to remove the encroachment in the ownership holding of the Petitioners are unsustainable and are required to be reconsidered. Also, no authenticated revenue records shows the existence of the alleged Plan Marked Channels.

10.3.The Respondents 1 and 8 had sufficient opportunity to establish their rights as farmers prior to the passing of the G.O.(Ms.)No.287 dated 08.07.2004. There were no objections from the Respondents 1 and 8 though sufficient time given for objection from the villagers were given and only on 17.07.2013, the Government of Tamil Nadu published an order vide G.O.(Ms.) No.28 for classifying the Lands as "Mixed Residential Zone" from "Urbanizable Use Zone". Based on the NOC of the 5th Respondent (Tahsildar, Thiruporur Taluk), the 7th Respondent/Planning Authority's designated officers had inspected the 2nd Petitioner's property on 16.07.2014. In fact, the 2nd Petitioner had obtained technical clearance for construction by the Director of Town and Country Planning on 08.12.2014. After getting prior approvals from the Government organisation, the 2nd Petitioner had constructed the project Residential Buildings in its Lands including the Survey No.166/3 and that the issuance of an order for removal of encroachment in 2nd Petitioner's own patta Lands is an arbitrary, improper and unsustainable one because of the fact the said order is contrary to Government Orders and Statutory Records and further the Lands in question were in continuous possession and enjoyment through proper documents like sale deeds.

10.4.The Petitioners had obtained all necessary sanctions and approvals including site approval from DTCP/MPLA for the entire development. Further, the 2nd Petitioner followed the approval process and obtained approvals for development of phase 1 of its project. The approval and process are as follows:

- "a)Tahsildar NOC issued on 23.04.2014.
- b) Panchayat President forwarding letter to MLPA.
- c)MLPA after visiting the proposed site ad scrutinising NOCs, revenue records and documents forwards clearance letter to DTCP along with construction plans.
- d)DTCP sanctions site approval and technical clearance for the project.

- e)The file was placed before MLPA committee for approval of the project.
- f)MLPA committee approved the file and forwarded to MLPA.
- g)MLPA issued planning permit on 06.03.2015.
- h)Panchayat President issued Building approval on 14.03.2015.
- i)Environmental clearance obtained for the entire site of 15 acres on 24.12.2014."

10.5.After obtaining due sanction and approvals as per Government norms, the 2nd Petitioner in March 2015, had constructed Phase 1 of the project which is about 1.5 lakhs sq.ft. of residential development comprising of 114 apartments. The 2nd Petitioner had completed construction of 114 apartments of phase 1 of the project in full and possession intimation was sent to all customers and as of now, about 75 customers had taken possession and few of them had already occupied their apartments.

10.6.The Petitioners filed a complaint against the 8th Respondent and his hooligans before the Inspector of Police, Thazambur Police Station, with evidence like photographs and other records in respect of the 8th Respondent and his hooligans illegally digging and opening up the Sitteri bund by punching holes in the bund using JCBs, thereby releasing water from the bund which had inundated all the adjoining area including project area which is being developed by the 2nd Petitioner. The Petitioners had filed enough evidences against the 8th Respondent in digging and opening up the sitter Bund, and for Trespass into their project and threatening their employees and for stoppage of construction of compound wall and catch drain cum field channel along the outer periphery of their project, which altogether caused monetary losses and also hindered the project being developed by them.

10.7.The first complaint against the 8th Respondent for his illegal acts as mentioned supra was lodged before E-9, Thazhambur Police Station and the second complaint was lodged against the 8th Respondent and his son for pelting stones on the apartment occupied by the customer in Phase 1 of the 2nd Petitioner's project which broke the French door wherein glass pieces shattered all across rooms where the customer was living. The complaints were inquired and F.I.R. was registered against the 8th Respondent and his son.

10.8.The 8th Respondent claims that there is a Vaikal/Canal passing from Sitteri to his Land based on the Village Map of Siruseri Village. However, in the said Village Map for Siruseri Village consists of reference details in which no information was furnished about the said Vaikal/Canal. As per the

Engineering and Survey Standards all the symbols/marks specified in the Map/Drawings ought to be supported by a Reference.

10.9.The Siruseri Village Map also supported by reference details of about 50 different items even though no information was found about the alleged Vaikal/Canal. The appointment of Advocate Commissioner is not required, since there were no reference about the said Vaikal/Canal anywhere in the records being maintained by the authorities. There is no 'Metes and Bounds' of the said Vaikal/Canal. The Petitioners had posted security personnel at the entrance of the project being developed by them to protect the project, customers and its employees against any illegal acts. The barricade placed in the entrance of the Petitioners project does not prevent the 8th Respondent in accessing his property and the contra plea of the Respondent in this regard is baseless one.

10.10.The 8th Respondent plays a major role in the 1st Respondent/Sangam as "Treasurer". Therefore, the notice boards were displayed and put up in the Lands owned by the 8th Respondent clearly proves that he influenced the Sangam for displaying the notice board against the Petitioners without any authority.

11.Gist of Petitioners' Additional Affidavit [In respect of 8th Respondent's Counter]:

11.1.Due to the illegal and unauthorised action of the 8th Respondent, the project area and the adjoining Lands were inundated with water. The 2nd Petitioner had incurred substantial loss towards damage to their project, due to the flooding of the water, which was discharged illegally by the 8th Respondent, for which it is initiating independent civil action. The 8th Respondent is a Thalaiyari or Headman of the Siruseri Village and by misusing his contacts and his official capacity, despite being a Government Servant. The 8th Respondent had defamed their reputation by using 3rd Respondent's name in the notice boards which stated that the Collector has ordered to demolish the building of the Petitioners.

11.2.The 2nd Petitioner had lodged a complaint before the 3rd Respondent/ District Collector on 26.12.2016 and further, he lodged a complaint with the Inspector General of Police, Northern Range on 27.12.2016. Apart from that, the 2nd Petitioner filed a complaint before the Superintendent of Police, Kancheepuram on 28.12.2016. A First Information Report bearing No.487 dated 28.12.2016 was registered by the Police under the Indian Penal Code and the Tamil Nadu Public Property (Prevention

of Damage & Loss) Act, 1992. Based on the complaint lodged by the 2nd Petitioner, the Police arrested the 8th Respondent for illegal acts.

12. Petitioners' Contentions:

12.1. The Learned Counsel for the Petitioners submits that the 3rd Respondent/District Collector, Kancheepuram District had passed the impugned order dated 02.09.2015 without obtaining the submissions and findings of the 4th Respondent, who exercises jurisdiction over the Siruseri Village and is well aware of the revenue records, Land classification etc.

12.2. The Learned Counsel for the Petitioners contends that the 3rd Respondent/District Collector, Kancheepuram had not considered the course of the alleged channel which is based on the Village Map of the year 1985 and further that, he had not considered the fact that there are various other survey numbers before the property being developed by the Petitioners and also other survey numbers after the Petitioners property which are owned by others. Furthermore, it is represented on the side of the Petitioners that no notice or information was sought for from these owners. As such, the action of the 3rd Respondent/District Collector, Kancheepuram is an arbitrary and discriminatory one.

12.3. The Learned Counsel for the Petitioners projects an argument that the impugned order dated 02.09.2015 of the 3rd Respondent seeks to completely stop any construction activity of the Petitioners when there is no 'Water Channel' existing as can be seen from the Topo Plan and photos filed by the Petitioners. Moreover, it is the stand of the Petitioners that the 3rd Respondent had failed to consider that the alleged water channel is across the road and no direction was issued to any other owner or authority for the alleged encroachment.

12.4. The Learned Counsel for the Petitioners proceeds to point out that the representation of the 1st Respondent that the Petitioners are preventing access way to agricultural Lands and are blocking the water canals and in fact, the 3rd Respondent in its order had not verified whether the Lands mentioned by the 1st Respondent/ Sangam are Agricultural Lands or not.

12.5. The Learned Counsel for the Petitioners comes out with a plea that the 3rd Respondent had not perused or verified the G.O.(Ms.)No.287 dated 08.07.2004 and G.O.Ms.No.28 dated 17.07.2013 to ascertain that there exist 'no cultivable Lands' in Siruseri Village as both the Government orders had mentioned that in the entire Siruseri Village, 'Agricultural Zone is Nil' and that the Lands are barren Lands unfit for agricultural activity.

12.6.The Learned Counsel for the Petitioners contends that the 3rd Respondent had not considered the report of the 4th Respondent that the Lands were reclassified by the Government for urbanisable use and in fact, the 3rd Respondent had not considered the submissions of the 5th Respondent/Tahsildar, Kancheepuram District that the Petitioners Lands and the 1st Respondent's Lands had already been converted as residential plots and that the entire Siruseri Village is not fit for agricultural activities and the Lands purchased by the 2nd Petitioner were classified as 'Urbanizable Zone' Lands.

12.7.The Learned Counsel for the Petitioners submits that the Lands are owned by the 2nd Petitioner after having paid valuable and valid consideration and the 2nd Petitioner had obtained patta and mutation was done in the revenue records in its name. Indeed, the 2nd Petitioner had purchased the Lands after obtaining due diligence report from its Advocates.

12.8.The Learned Counsel for the Petitioners takes a stand that the 3rd Respondent/District Collector, Kancheepuram had not ascertained whether the channels shown in the Village Map are 'Patta' canal or 'PWD' canal and that all the canals which feed the Agricultural Lands or which are used to drain Flood water will be shown in the FMB sketch (Revenue Records) and the same are maintained by the PWD Department even now.

12.9.The Learned Counsel for the Petitioners points out that there are no water canal markings in the FMB sketch of S.No.166/3 where the alleged encroached was made. In this connection, the Learned Counsel for the Petitioners strenuously takes a plea that even in the 'A' Register, there was no remark of any canal passing through the 2nd Petitioner's Lands and these aspects were considered by the 6th and 7th Respondents before the approvals for construction were accorded and only thereafter the Site Approval, Planning permit and Building Plan permits were issued to the 2nd Petitioner's Lands.

12.10.The Learned Counsel for the Petitioners submits that the 3rd Respondent, without calling for any documentary proof from the 1st Respondent in regard to their ownership, Land classification, their cultivation, their Revenue Records such as patta, chitta, adangal, FMB sketch, their agriculture free electricity connection, etc. had believed the one page representation of the 1st Respondent and passed the impugned order. Besides this, the 3rd Respondent had not noted the statement of the Head Surveyor that there are no water channels shown in the FMB sketch.

12.11.The Learned Counsel for the Petitioners refers to the impugned order of the 3rd Respondent dated 02.09.2015 and contends that the Plan Marked Channels were not visible either on ground or in the Field Measurement Book Sketch/Revenue Records, but wrongly stated that the 1st Petitioner had dried up the channels and this is contrary to the findings of the 3rd Respondent that there was no channel and hence, there is no basis on the part of the 3rd Respondent to hold that there was any encroachment made by the Petitioners.

12.12.The Learned Counsel for the Petitioners contends that the 5th Respondent had clearly submitted that for the last 10 years there was no cultivation and that there was no channel either on ground or in the revenue records which were used for carrying water. While doing so, the conclusion of the 3rd Respondent that the channels were present in the Village Map was clearly without any basis.

12.13.The Learned Counsel for the Petitioners strenuously takes a stand that there was no justification to come to a conclusion that S.No.166/3 was encroached upon by the Petitioner, when these Lands are Patta Lands and appropriate statutory Approvals were obtained for Building construction.

12.14.The Learned Counsel for the Petitioners submits that the 3rd Respondent had not taken steps to verify and ascertain if there is water channel present in S.Nos.207, 211, 201, 212, 180, 179 and 169, but merely concluded that in S.No.166/3 the water channel was encroached by putting up construction.

12.15.The Learned Counsel for the Petitioners submits that the 3rd Respondent had not checked the facts that when there is no water channel present in S.Nos.205, 207, 211, 201, 212, 180, 179 and 169 which are closer to the Periya Eri/Sitteri, there cannot be a water channel in S.No.166/3 alone. Therefore, the impugned order was passed without analysing the factual position.

12.16.The Learned Counsel for the Petitioners contends that the order of the 3rd Respondent that the encroachment in S.No.166/ 3 was to be removed and that the channels shown in the Village Map will have to be maintained is unsustainable, since the same is contrary to Government Orders and Statutory Records. Further, since there is no agricultural activity in the entire Village of Siruseri, the order of the 3rd Respondent that the 4th Respondent should take steps to create access through patta Lands from the gifted public road to take agricultural produce of owners of Land in S.No.147 and other Land owners, is invalid.

12.17.The Learned Counsel for the Petitioners projects an argument that the Petitioners had sold majority of the apartments in first phase of the project and that the third party interests were already created. Further, the Petitioners customers had invested their hard earned monies into the apartments constructed in the project and since the project is a joint development between an Indian entity and FDI entity from Kuwait, then, the foreign investor's investment will be in Jeopardy.

12.18.It is projected on the side of Petitioners that they developed the Lands only after securing requisite statutory approvals and had marketed and sold majority of the apartments in first phase of the project and therefore, when the Lands in S.No.166/3 being owned by the 2nd Petitioner, there is no legal justification to state that the Lands were encroached by the Petitioners.

13. 1st Respondent's Submissions:

13.1.The Learned Counsel for the 1st Respondent/Sangam contends that the existence of Vaikal/Canal cannot be disputed and that the cultivation of Lands by the Villagers with the help of water available in the tank also cannot be disputed and further that, brushing aside the rights of agriculturists, the Respondents 6 and 7 have no authority to grant sanction or planning permission for the development of the Land.

13.2.The Learned Counsel for the 1st Respondent refers to the definition of Section 2(1) of the Tamil Nadu Patta Pass Book Act, 1983 which reads as under:

"In this Act, unless the context otherwise requires, -

(1) "agriculture" includes, -

- (a) horticulture;
- (b) the raising of crops, grass or garden produce;
- (c) the use by an agriculturist of Land held by him, or part thereof, for grazing;
- (d) the use of any Land for the purpose of raising manure crops;
- (e) dairy farming;
- (f) poultry farming;
- (g) livestock breeding;
- (h) growing of trees;

and "agricultural" shall be construed accordingly."

13.3.The Learned Counsel for the 1st Respondent adverts to Section 2(4) of the Act, 1983, which defines the term "Land" meaning agricultural Land, that is to say, Land which is used or capable of being used for agricultural purposes or purposes subservient thereto and is either assessed to Land revenue in the State or is subject to a local rate assessed and collected

by officers of the Government as such and includes horticultural Land, forest Land, garden Land and plantations, but does not include house site." Also that, Section 3 of the Act speaks of 'Issue of Patta Pass Book'.

13.4.It is represented on behalf of the 1st Respondent that except the two properties purchased by the Petitioners other Lands are 'Agricultural Lands'.

13.5.The Learned Counsel for the 1st Respondent contends that the Revenue Inspector, Mambakkam, Thiruporur Taluk [with reference to the complaint of Murugan and another submitted on the public grievance day] had submitted an 'Enquiry Report' dated 21.04.2014 to the Tahsildar, Thiruporur wherein he had mentioned as under:

"... The complainant cultivated his nanja Lands for the present fasli 1423 in survey number 166/5, 181/3 149/2, 150/2, 148/1 and 151/1 by using the water from the well. There is a water channel in Siruchary village which starts from Periyaeri in survey number 219 and passes through patta Lands in survey numbers 206, 207, 202, 211, 212, 179, 169, 166 and 168 and it goes up to survey number 162. The above particulars are mentioned in the village map by marking it as a line. As per the village records, the Lands surrounding the channel are in the name of Jagarandha Properties PVT LTD. It is made known that now the company has fenced the property using iron mesh leaving the channel."

13.6.Further, in his Report, he had also enclosed the statement of Village Administrative Officer No.(13) of Siruseri Village, which points out that 'Murugan and Kannan give the complaint to the District Collector regarding the supply of water for irrigation to their property in Siruseri Village, Tiruporur Taluk and the Petitioners cultivated nanjai Lands in survey number 166/5, 181/3, 149/2, 150/2, 148/1, 151/1 and 166/5 for the fasali 1423 by using water from the well and that the irrigation channel in the Siruchary Village starts from Periyaeri survey number 219 and goes through patta Lands in survey numbers 206, 207, 202, 211, 212, 179, 169, 166 and 168 and reaches the Land in survey number 162 and these particulars are mentioned in the Village Map by marking it as a line and as per the village records the Lands surrounding the channel are in the name of the 2nd Petitioner and that now the company had fenced the property using iron mesh leaving the channel'. Under these circumstances, the approval and certificate were given by

the authorities concerned and even now the Petitioners are carrying out the developmental activities.

13.7.The Learned Counsel for the 1st Respondent brings it to the notice of this Court that the Executive Engineer, W.R.O. (P.W.D.), Lower Palar Basin Division, Kancheepuram had filed a counter on behalf of the 2nd Respondent stating that there was no F.M. Sketch and Measurement for plan marked channel and that for plan marked channels, the same would not be shown in the F.M. Sketch. Further, the plan marked channel does not come under the purview of Public Works Department and that this type of channel will be maintained by the Revenue Department and farmers by 'Kudimaramath Scheme' etc. Further, the Learned Counsel for the 1st Respondent points out that while issuing NOC, Mamallapuram Master Plan had not sought NOC from Public Works Department, since it is a plan marked channel.

13.8.The Learned Counsel for the 1st Respondent submits that the Petitioners, after getting patta or planning permission and obtained NOC order from Tahsildar, had put up the multistoried building and these would not affect the rights of the agriculturists so long as they want to use the Vaikal/Canal for cultivation because of the reason they have 'Riparian Rights'.

13.9.The Learned Counsel for the 1st Respondent points out that in the Siruseri Village Accounts for fasali 1423 in respect of survey number 166/5, 181/3 149/2, 150/2, 148/1 and 151/1, the name of 'K.Rani' (one of the Writ Petitioner in W.P.No.16970 of 2015) is seen and the nature of cultivation was mentioned as 'paddy'. Likewise, for the Fasli in respect of Survey No.147, 148 (1)(2) in the Village Accounts of Siruseri, the name of 'Shanmugammal' is seen and the nature of cultivation was mentioned as 'paddy' (No.1155). In respect of S.No.148/1 and 2 in the said Village Accounts, the name of 'Yogamani' is mentioned and the nature of cultivation was described as 'paddy'.

13.10.The Learned Counsel for the 1st Respondent submits that the 1st Respondent/Sangam as Petitioner filed W.P.No.13495 of 2015 against the State of Tamil Nadu and four others and the 1st Petitioner in the present W.P.No.4864 of 2016 figured as 5th Respondent. Further, W.P.No.16969 of 2015 was filed by Mrs.E.Palandi Ammal against the State of Tamil Nadu rep. By Secretary to Government, Public Works Department, Chennai and four others (in which the 2nd Petitioner in W.P.No.4864/2016 figured as 5th Respondent).

13.11.The Learned Counsel for the 1st Respondent submits that it is for the Revenue Authorities and the Writ Petitioners to ensure that the agriculturists get water from the Channel/Vaikal. Furthermore, the action of the Revenue

Authorities was a wrong one and further, the 5th Respondent/Tahsildar is aware of the full situation especially when records are with him.

Contentions of Respondents 2 to 7:

14.The Learned Government Advocate for Respondents 2 to 7 submits that there was a Channel existing from time immemorial and that now there is no such water flowing and that the Executive Engineer of P.W.D. had filed a counter affidavit before this Court and according to the Executive Engineer, W.R.O. (P.W.D.), Lower Palar Basin Division, Kancheepuram District, the site inspection was made and it was found that the maximum ayacut of Siruseri tank converted into residential plots, I.T. Park and the remaining Lands are vacant.

15.Further, it is represented on behalf of the Respondents 2 to 7 that as per the Mamallapuram Master Plan, the entire Siruseri Village barring few survey numbers was declared as 'Urbanisable Use Zone' and 'Agricultural Use Zone' was declared as 'Nil' and further that, the NOC was not sought for from the Public Works Department at the time of issuance of NOC by the Mamallapuram Master Plan authority.

16.The Learned Government Advocate for Respondents 2 to 7 submits that the Executive Engineer, W.R.O. (P.W.D.), Lower Palar Basin Division, Kancheepuram District had filed a Counter Affidavit dated 29.11.2016 (on behalf of the 2nd Respondent) that the solution is to form a Catch Drain cum Field Channel along the outer periphery of the Petitioners and the catch drain (0.45 m x 0.60 m) inner dimension should be formed by the 1st Petitioner at their own costs under the supervision of Public Works Department.

Plea of the 8th Respondent:

17.The Learned Counsel for the 8th Respondent submits that the 8th Respondent never agreed to sell any Land to the Writ Petitioners and that the Petitioners had created bogus documents to make defamatory allegations against him. Further, the road was formed in a property belonging to Vallaba Ganapathy Aalaya Madam and that the channels and pathways were in enjoyment of the Agriculturists for generations to generations are being destroyed by the developers in violation of the Law with the active support of the Revenue Authorities. Furthermore, the 1st Writ Petitioner is the Defendant in O.S.No.579 of 2014 filed by the 8th Respondent on the file of the Learned District Minsif, Chengalpat and that the 2nd Writ Petitioner is the sister concern of the 1st Petitioner.

Petitioners' Reply:

18.The Learned Counsel for the Petitioners submits that due to efflux of time, there is no 'Channel' and if it is a 'Channel', there must be a source and that it is not a public tank controlled by Government. Further, the plan given by the 2nd Respondent is not a correct one.

An Appraisal:

19.It is to be pointed out that the 1st Respondent/Sangam in its Representation/Petition dated 06.04.2015 addressed to the 3rd Respondent/District Collector, Kancheepuram had stated that the 'Agricultural Lands' in Siruseri Village, Thiruporur Taluk were cultivated by the water from 'Eri' and that the 1st Petitioner/Company had purchased 15 acres of Land in the middle of Agricultural Lands in Survey Nos.147, 149 and 166 and that based on the alleged permission from the Government was planning to construct multistoried building. That apart, the Agriculturists were cultivating the Lands surrounding property owned by them. In fact, they were cultivating the brinjal, watermelon, paddy etc. by utilising the water from the Eri and that the Company prevented flow of water by digging foundation for construction of buildings and after coming to know of the same, the agriculturists lodged a complaint to the Village Administrative Officer and the 3rd Respondent.

20.The 1st Respondent/Sangam in its Representation dated 06.04.2015 had stated that as per the direction of the 3rd Respondent/District Collector, Kancheepuram, the Tahsildar and the Village Administrative Officer inspected the spot and orally advised the Company not to ban the Channel/canal and not to prevent the pathway. But after their exit, the Company with audacity, had prevented the Agriculturists from entering into the Lands through the said pathway etc. In short, the 1st Respondent/Sangam had sought the intervention of the 3rd Respondent/District Collector, Kancheepuram and to take necessary action so that the Agriculturists can continue their agriculture by using the pathway without any disturbance besides ensuring the free flow of water in the channel.

21.Based on the orders of this Court dated 30.04.2015 passed in W.P.No.13495 of 2015 filed by the 1st Respondent/Sangam (as Writ Petitioner) wherein the 3rd Respondent/District Collector, Kancheepuram (2nd Respondent therein) was directed to dispose of the Representation of the 1st Respondent/Sangam dated 06.04.2015 within two months from the date of receipt of this order etc.

22.The 3rd Respondent/District Collector, Kancheepuram, after conducting an enquiry, passed a final order dated 02.09.2015 inter alia observing that "(i)the channel marked in the map (Plan Marked Channels) as averred in the Writ Petition were not found in the Land as well as the Field Map but found only in the Village Map; (ii) the aforesaid company had closed the channel marked in the Map (Plan Marked Channel); (iii) there is no approach pathway to enter into the agricultural Lands on any side situated on the eastern side of the 1st Petitioner/Company and that there are some agricultural paddy Lands belonging to some private persons in Survey No.147/1, 182/2 in between the Land gifted to the Panchayat by the Company and that in the Written Statement of the 1st Petitioner/ Company (through an Authorised person) had mentioned that they have no objection to use the Land gifted to the Panchayat for road by the aforesaid agriculturists; and (iv) that the private company (1st Petitioner) had encroached the Plan Marked Channels in Survey No.166/3" and after accepting the representation of the 1st Respondent/Sangam, directed the Tahsildar to maintain the channels marked in the Map (Plan Marked Channels) as per the Village Map in Siruseri Village, Thiruporur Taluk, Kancheepuram District and to remove the encroachments made by the 1st Petitioner /Company after measuring the encroached portion through Public Works Department.

23.Added further, the 3rd Respondent/District Collector, Kancheepuram District had directed the Revenue Divisional Officer, Chengalpet to take appropriate action to see that the owners of the Land in Survey No.147 and in other survey numbers to secure way for ingress and egress in taking their articles for cultivation and the agricultural products from their Lands through the (common pathway) Land gifted by the 1st Petitioner/Company to the Panchayat.

24.The categorical stand of the Petitioners in the present Writ Petition is that the Lands are owned by the 2nd Petitioner (M/s.Jacaranda Properties Private Limited) being purchased for a valuable Sale Consideration and that the 2nd Petitioner had obtained a patta and only after obtaining necessary Statutory Approvals as specified in the Town and Country Planning Act and Development Control Rules, the Petitioners had commenced their activities. Moreover, the Petitioners had gifted the Lands in Open Space Reservation Area.

25.The other plea of the Petitioners is that there was no mark of any canal or passing through the 2nd Petitioner's Land even in the 'A' Register and there were no water canal markings in the F.M.B. Sketch in respect of S.No.166/3 where encroachments were purportedly made. Furthermore, all the canals

which feed the agricultural Lands or which were used to drain flood water would be shown in the FMB sketch (Revenue Records) and the same are maintained by the Public Works Department even now.

26.As a matter of fact, the 6th and 7th Respondents had considered the aforesaid aspects before granting approvals for construction and subsequently, the Site Approval, Planning Permit and Building Plan permits were issued for the 2nd Petitioner's Lands by them.

27.In fact, the impugned order of the 3rd Respondent dated 02.09.2015 is assailed by the Petitioners before this Court on the ground that the 3rd Respondent had not taken steps to verify and ascertain if there is water channel present in S.Nos.207, 211, 201, 212, 180, 179 and 169, but merely came to the conclusion that in S.No.166, the water channel was encroached by putting up the construction and that when there is no water channel present in Survey Nos.205, 207, 211, 201, 212, 180, 179 and 169 which are closer to the Periya Eri/Sitteri, there cannot be water channel in S.No.166/3 alone. Also that, the 3rd Respondent/District Collector, Kancheepuram passed an impugned order dated 02.09.2015, notwithstanding the Letter/Report of the 5th Respondent/Tahsildar, Thiruporur dated 16.07.2015 and 02.09.2015 stating that the channel shown in the Field Map had already dried up and during the last 10 years, there were no water in the canals and that the Lands are barren Lands and in those Lands, there is no foot track or cart track either on ground or in Government Revenue Records etc.

28.The 1st Respondent/Sangam emphatically takes a plea that the existence of Vaikal/Channel cannot be disputed and also the Villagers cultivating the Lands with the help of water available in the tank cannot be disputed and that the water tank, Vaikals and foot path cannot be intermeddled with the Developers in the manner that it was done and that the right of agriculturists to irrigate the Lands and the use of pathway cannot be interfered with in breach of their fundamental right to life and existence as Human Beings.

29.The 2nd Respondent's view is that to implement the order of the 3rd Respondent/District Collector, Kancheepuram dated 02.09.2015, there are some technical and legal defects viz., (i) there is no F.M. Sketch and Measurement for Plan Marked Channel and for the Plan Marked Channels, the same will not be shown in the F.M. Sketch and that (ii) Plan Marked Channel had not come into ambit of Public Works Department and this type of channel will be maintained by the Revenue Department and farmers by 'Kudimaramath Scheme' and the Plan Marked Channel would not come into purview of Public Works Department and further that,

the Tamil Nadu Protection of Tanks and Eviction of Encroachments Act, 2007, does not possible to issue eviction notice to the Petitioner under the said Act.

30.The version of the 3rd Respondent (erstwhile District Collector, Kancheepuram) is that the 'Approvals' and permissions were afforded upon perusal of 'A' Register, F.M.B., records available with the authorities concerned and that the Village Map was not perused or noticed and also that, it is not a water channel and it is only Plan Marked Channel is 3' width and 1 ½' depth which supply excess water from the lake to agricultural fields down the lake and the supply of water through this channel is restricted for a short period. Further, none of the authorities including and not restricted to Siruseri Panchayat had complained of existence of any water channel or intermeddling of the same.

31.It comes to be known that for the 2nd Petitioner's proposal in 14 acres, the 6th Respondent/Director of Town and Country Planning, Chennai had given a technical clearance on 08.12.2014 and the 7th Respondent/Member Secretary, Mamallapuram Local Planning Authority had granted Planning Permission No.3 (1 to 8/2015) dated 06.03.2015 and that the 2nd Petitioner had developed and completed the first phase as approved by the 6th Respondent. In respect of the additional proposal of the 2nd Petitioner with an additional Survey No.229/3B (submitted through the 7th Respondent to the 6th Respondent), while scrutinising the first phase and the second phase additional construction of the 2nd Petitioner, there was no such alleged Vaikal/Canal existing at the time of inspection by the 7th Respondent.

32.It transpires that in respect of the Petitioners' site about 14 acres in Survey Nos.147/2, 148/3B, 149/1, 2B; 166/1A, 1B, 1C, 2A, 166/2B, 3; 169/1, 2; 170/1, 2; 171/1, 2, 3, 171/4; 172, 173/1, 2; 177/4, 5; 178/1, 2, 3A, 3B; 179/1B, 2A, 179/2B, 181/1, 2; 182/2 - (56793.44 m²), technical clearance was given by the 6th Respondent/Director of Town and Country Planning, Chennai dated 06.03.2015 and in respect of the 2nd Petitioner's proposal for second phase construction submitted to the 6th Respondent on 28.02.2015 with an Inspection Report. While scrutinising the said Building Approvals for the second phase construction by the 2nd Petitioner, there was no such alleged canal (Vaikal) existing in the site at the time of inspection by the 7th Respondent and further that, the NOC was issued by the 5th Respondent/Tahsildar, Thiruporur Taluk on 23.04.2014 for the entire Lands.

33.In this connection, it may not be out of place for this Court to make a mention that the Government of Tamil Nadu had

accorded his Revised consent/Nod for the Mamallapuram Local Planning Authority Master Plan as per G.O.(Ms.)No.287 dated 08.07.2004 that the Siruseri Village barring few survey numbers was declared as 'Urbanisable Use Zone' and the 'Agricultural Use Zone' was declared as 'Nil'. The said Master Plan was approved by the State Government in G.O.Ms.No.153, Housing and Urban Development (UD4 (2)) Department, dated 20.06.2013 which classified the 2nd Petitioner's Land as 'Mixed Residential Zone' from the 'Urbanizable Use Zone' and that the Agricultural Zone was declared as 'Nil' and the entire Siruseri Village was permitted to be developed as Residential and Commercial Buildings. Moreover, as per G.O.Ms.No.1730, Rural Development and Local Administration Department, dated 24.07.1974 allowable use zone is permitted.

34.The 8th Respondent (as Plaintiff) had instituted the Suit in O.S.No.579 of 2014 on the file of the Learned District Munsif, Chengalpet against the 1st Petitioner wherein he had sought a relief of permanent injunction restraining the Defendant viz., M/s.XS Real Properties Private Limited (1st Petitioner in W.P.No.4864 of 2016), his men, agents etc. causing disturbance from using the water canal showed in the Village Map and rough sketch filed by him and also sought the relief of Mandatory Injunction (in respect of 'B' Schedule) in directing the Defendant (1st Petitioner) to clear the wire fencing on the water canal situated in Siruseri Village, Thiruporur Taluk, Kancheepuram District comprised in Survey No.219 and travelled upto Survey No.162 which is a Periya Eri Canal.

35.Further, the 8th Respondent/Plaintiff, in his Complaint, had averred that he is the absolute owner of 'A' Schedule property agricultural Nanja Lands situated in Siruseri Village, Thiruporur Taluk, Kancheepuram District comprised in Survey Nos.181/3, 148/1, 148/2, 150/2 and is cultivating the said Lands by decades and is paying the entire outgoings etc. Also that, according to him, he along with other Land owners are using the canal for their cultivation and it is the only access to him and other Land owners for their access to have ingress and egress to the external world and enjoying the same without any interference.

36.Moreover, the 1st Respondent, in his Additional Counter to the present W.P.No.4864 of 2016, had averred that on account of the obstruction to the irrigation canal by the Petitioners irrigation of 20 acres of Land belonging to the members of the 1st Respondent/ Sangam were affected and also that the paddy fields lying on the south of the Petitioners property were totally affected.

37. Before the trial Court, it is the stand of the 1st Petitioner/ Defendant that the 8th Respondent/Plaintiff should have impleaded all the owners of Lands in Survey Nos. 209, 211, 212, 179, 181, 163, 162, 157, 151, 149 and 148 as these owners can only establish the fact that whether there is a Water Canal existing and flowing from the Periya Eri in S.No. 219 and travelling upto S.No. 162.

38. Besides this, the 1st Petitioner/1st Defendant, in its Written Statement, at paragraph 10, had averred that in order to regularise the developments in a proper environment, by providing the required infrastructure, the Government had even drawn a Master Plan as early as in 2004 vide G.O.Ms. 287 dated 08.07.2004 bringing about 40 villages under the planning area consisting of vast extent of Lands so as to make them available for urban and industrial uses. In 2004, the Government had declared that there is no agricultural activity in the entire Siruseri Village and that in the Master Plan, constitution of IT Corridor, CII's Knowledge Industry Township are also included etc.

39. Apart from that, the 1st Petitioner/1st Defendant, at para 14 of its Written Statement, had as averred as under:

"There is no entry in the A register and Field Measurement Book to show that there is a water canal running through the survey numbers alleged in the plaint and petition. There is evidence to show that the plaintiff ever cultivated the suit A schedule Lands with the aid of the water flowing through the alleged water canal. On the other hand the plaintiff has only been engaged in the sale of water drawn from his well and other adjacent owners' wells to various companies and institutions on commercial basis. He is not carrying on any agricultural activity on the properties alleged in the plaint. The plaintiff has abused his position as village Thalayari to fabricate documents to suit his present case. The plaint documents are all fabricated ones."

40. The ingredients of the T.N. Town and Country Planning Act, 1971:

40.1. At the outset, this Court pertinently points out that the aim/purpose of the Town Planning Act is to streamline the development of towns with a view to secure their present and future persons amenities, convenience and sanitary aspects. While making of a Town Planning Scheme, the care and attention

are to be bestowed to the laying out and utilisation of neighbouring Lands besides the subject matter of the scheme Land. As a matter of fact, when new areas are included and the scheme is widened, the Authorities are necessarily to publish it and to obtain a sanction afresh.

40.2. Indeed, the Town Planning Scheme, Rules and Regulations are framed for regulating the buildings mainly for 'Public Interest' and ordinarily, a Court will not interfere with it. Moreover, the power to a planned Development of a city and to regulate the building activity therein flows from the 'Police power of the State'. Also that, the exercise of Governmental Power is justified because of the fact that the same is necessary for Public Health, safety, morals or general welfare and ecological considerations, although unreasonable or unnecessary interfering and intermeddling with the private ownership of properties may not be a justiciable one. Undoubtedly, the aspect of 'sustainable development' is an integral part of the term 'Life' as per Article 21 of the Constitution of India.

40.3. It is to be remembered that the Town Planning Legislation is enacted for the purpose of 'Regulation of Land use' so that haphazard development of a Town may be prevented as per decision in M/s.D.L.F. Qutab Enclave Complex Educational Charitable Trust V. State of Haryana, AIR 2003 SC 1648 at special page 1650.

40.4. Insofar as Section 24 of the Tamil Nadu Town and Country Planning Act, 1971 is concerned, it is to be pointed out that this Section pertains to the consent of Government to the publication of notice of preparation of the regional plan, the Master Plan or the new Town Development Plan as the case may be. Section 25 of the Act speaks of 'Giving of consent by the Director of Town and Country Planning, Chennai to the publication of notice of the preparation of the Detailed Development Plan by the Local Planning Authority'.

40.5. Section 26 of the Act, enjoins the publication of the preparation of the regional plan, the Master Plan or the new town development plan. After receipt of consent from the Government for the Master Plan, it should be published for inviting objections and suggestion from the public. Resting upon the suggestion and objection and also hearing the objections, if an amendment is necessary, the Planning Authority shall incorporate the same in the Master Plan and to project the same for approval of the Government.

40.6. Section 27 of the Act concerns with the 'Publication of Notice of the Preparation of the Detailed Development Plan to

be prepared under the Tamil Nadu Town and Country Planning Act, 1971'. Section 28 of the Act refers to the 'Approval by the Government of the regional plan, the Master Plan or the new town development plan with or without modifications under this Act'. Section 29 deals with 'Approval by the Director of Town and Country Planning of the Detailed Development Plan'.

41.Scenario of Decisions:

41.1.At this stage, it is worthwhile to quote the Full Bench Decision of this Court in T.K.Shanmugam, Secretary, C.P.I. (M) North Chennai District Committee V. The State of Tamil Nadu represented by its Secretary to Government, Department of Revenue, Fort St. George, Chennai, 2015 Writ L.R. 1029 at special pages 1047 to 1051, wherein at paragraphs 32, 34 to 36, 40, 41, 44, it is observed and held as follows:

"32. Whatever approach is taken, the fundamental emphasis is on communal rather than private rights. In cases where communal rights protector negates the rights of some, it implies a denial of the application of the Public Trust Doctrine. Natural resources have traditionally been found either under the sovereignty of a particular state or in the so-called global commons. Where the resources are held by a state, the essence 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. Thus it is the duty of the State to protect, conserve and augment traditional water retaining structures.

34. In Michigan Law Review, Vol.68, No.3 (Jan.1970), Pages 471-566, Prof. Sax said that three types of restrictions on governmental authority are often thought to be imposed by the public trust doctrine, namely:

- '1. the property subject to the trust must not only be used for a public purpose, but it must be held available for use by the general public;
2. the property may not be sold, even for fair cash equivalent;
3. the property must be maintained for particular types of use (i) either traditional uses, or (ii) some uses particular to that form of resources.

35. The Hon'ble Supreme Court in Indian Council for Enviro-Legal Action v. Union of India [(1996) 5 SCC 281], held that there should not be development at the cost of environment and vice versa, but there should be development while taking due care and ensuring the protection of environment.

36. Thus, the public trust doctrine requires that natural resources such as lakes, ponds etc., are held by the State as a trustee of the public and can be disposed of only in a manner that is consistent with the nature of such a trust.

40. As noticed above, the Division Bench while adding a word of caution that they are not advocating a general principle to regularise all encroachments or encourage them observed that if the State Government takes a conscious decision to regularise certain encroachments and if the Land is not required for any public purpose, the State Government would be well within the jurisdiction to do so. Thus, the question would be as to what is a conscious decision and what would be the manner in which the appropriate authority will come to a conclusion that the Land is not required for public purpose. In our view a conscious decision in such cases with particular reference to encroachment in water bodies should be in consonance with the public trust reposed on the Government in respect of such Lands (water bodies). The State being a trustee of these natural resources such as tanks, lakes etc., has to necessarily act consistent with the nature of such trust. The vesting of these Lands and water bodies with the Government is to benefit the public and any attempt made by the Government to act in a manner derogatory to the object for which the Land was vested, has to be held to be illegal. The underlying fundamental principle being that such rights are public rights are in a higher pedestal than private rights. We may take a look of the matter from a different perspective. The Government has considered that water bodies, which have fallen into dis-use and have been encroached upon could be declared as not

required for any public purpose and the encroachments could be regularised. What the Government has failed to see is the cause as to why these water bodies, lakes, tanks have fallen into dis-use. If this aspect is analysed, it would come to light that in several cases the disuse was man-made and there appears to be a cartel, which systematically works with a view to grab Government property. In such scenario while taking a conscious decision, the Government cannot ignore the fiduciary duty of care and responsibility cast upon it and simultaneously analyse as to why such disuse has occurred. The plethora of decisions on the point elucidate the basic principle of the public trust doctrine when the water bodies vest with the Government, placing the Government in the capacity of a trustee, there is little option except to strictly adhere to the trust and faith reposed and if the Government has failed to protect these water bodies, it amounts to breach of the public trust and in such cases, the duty of the Government is more onerous to restore the Land back to its original position and thereby restore the trust reposed on it. Therefore, we are not inclined to accept the proposition that merely because a water body has put to dis-use that by itself would be a good ground to regularise the encroachments.

41. The next aspect would be as to how and in what manner the appropriate authority would come to a conclusion that such Land is not required for any public purpose or for the State. It may be a policy decision in this regard, but such policy decision has to satisfy the touch-stone of fairness and reasonableness and satisfy Article 14 of the Constitution of India. Reading of the Government Orders show that the decision taken with regard to a particular Land is not required for the Government for any public purpose is largely based on report submitted by the officials of the Revenue Department and invariably the justification is that people have been residing for a long period of time and there has not been any flow of water into tank/lake for several

years or the water is unfit for human consumption. In our view, this can hardly be a justification, since the Revenue Authorities have turned a blind eye to encroachments on Lands which have, canals/channels through which the water flows into such water bodies. Once again the Government having failed to protect those feeder channels and canals cannot sight that as an excuse to say that there is no flow of water into the tank/lake and therefore, they would be justified in recommending regularisation of the encroachments.

44. Moreover, Article 51-A of the Constitution of India enjoins that it shall be the duty of every citizen of India, inter alia, to protect and improve the national environment including forests, lakes, rivers, wildlife and to have compassion for living creatures. This Article is not only fundamental in the governance of the country but a duty on the State to apply these principles in making laws and further to be kept in mind in understanding the scope and purport of the fundamental rights guaranteed by the Constitution including Articles 14, 19 and 21 of the Constitution and also the various laws enacted by Parliament and the State Legislatures....."

41.2. Further, this Court aptly points out the decision in G.Chandrasekar and another V. State Government of Tamil Nadu represented by its Secretary, Department of Revenue, Chennai and others, 2015-4-L.W.103 at special page 105 wherein at paragraphs 10 & 11, it is observed as under:

"10. The lakes, rivers, forests are national wealth. They belong to the community and the same have to be protected for the benefit of the people and for the posterity. It is apt to quote the observations of the Supreme Court rendered in Intellectuals Forum, Tirupathi Vs. State of A.P. and others¹, which reads as under :

86. The judicial wing of the country, more particularly this Court, has laid down a plethora of decisions asserting the need for environmental protection and conservation of natural resources. The environmental protection and conservation of

natural resources has been given a status of a fundamental right and brought under Article 21 of the Constitution. This apart, the directive principles of State policy as also the fundamental duties enshrined in Part IV and Part IV-A of the Constitution respectively also stress the need to protect and improve the natural environment including the forests, lakes, rivers and wildlife and to have compassion for living creatures.

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91. It is true that the tank is a communal property and the State authorities are trustees to hold and manage such properties for the benefits of the community and they cannot be allowed to commit any act or omission which will infringe the right of the Community and alienate the property to any other person or body.

11. It is the bounden duty of each and every citizen, particularly the Government, to protect the national wealth, which is in the form of water canal, pond, tank, forest, etc., and as such, no such direction can be given which erodes the national wealth and causes climatic hazard to other people and also to the posterity. However, in the facts of the case, if, on enquiry, it is found that the petitioners are hapless poor people, having no Land even for house sites, the authorities are expected to consider the same and make an alternative arrangement so as to provide at least basic need of shelter. Needless to state that no eviction order can be passed without taking a final decision on the aforesaid representations / explanations made by the petitioners."

41.3. In the decision of the Hon'ble Supreme Court in State of Maharashtra and others V. Atma Ram Sadashiv Dongarwar and others, (1978) 4 Supreme Court Cases 170 at special page 171, wherein it is held as under:

"(1) The provisions of the Abolition of Proprietary Rights Act (Sections 45 to 47) make it clear that the occupancy tenants and malik-makbuza (Zamindar) who were appropriating the water of the Tank for

raising paddy and sugarcane crops before the date of vesting under the Act were to continue to enjoy those rights without any let or hindrance even after the date of vesting. (Para 17)

(2) Section 239 of the M.P. Land Revenue Code provides that all rules, assessments, appointments and transfers made, notifications and proclamations issued, authorities and powers conferred, farms and leases granted, records-of-rights and other records framed or Confirmed, rights acquired, liabilities incurred, times and places appointed, and other things done under any of the enactments hereby re pealed shall, so far as may be, be deemed to have been respectively made, issued, conferred, granted, etc., under the Code. Section 239 thus did not destroy the rights of the irrigation enjoyed by the respondents. On the contrary, the use of words "all rights acquired" occurring in the section are comprehensive enough to take in the irrigation and other rights acquired by the tenants and Malik Makbuza under the Abolition of Proprietary Rights Act which was repealed by Section 238 of the Code. The right of free irrigation which accrued to the respondents under the Abolition of Proprietary Rights Act was not only not destroyed but was also saved by section 239 of the Code and is, therefore, to continue to be enjoyed by the respondents without being affected, curtailed or whittled down in any manner despite the repeal of Sections 45 to 47 of the Abolition of Proprietary Rights Act by the Code. (Paras 18 and 19)"

Further, in the aforesaid decision at page 180 & 181, at paragraphs 20 and 21, it is observed as follows:

"20. The last contention advanced by the learned counsel for the appellants that the Government was competent to recover water charges by virtue of the provisions contained in section 26 of the Central Provinces Irrigation Act, 1931 is also devoid of substance. The said section, it would be noticed, vests in the Government

all rights in the water or any river, natural stream or natural drainage channel, natural lake or other natural collection of water. As in the instant case, it is clear not only from the averments of the respondents but also of the appellants themselves that the tank in question is not a natural lake, section 26 of the Central Provinces Irrigation Act, 1931 can be of no avail to the appellants and the water rights which could be acquired by custom as indicated in Harrop v. Hirst, (1868) LR 4 Exch 43, and were in fact acquired by custom by the respondents in the instant case as shown above and were recognised and preserved both under the Abolition of Proprietary Rights Act and the Code cannot in any manner be interfered with by the appellants.

21. The importance attached to the need for recognition of the right to irrigation may also be gleaned from the following observations made by Chief Justice Callaway in Allen v. Petrick (69 Mont. 373, 377, 379, 380; 22 Pac 451, 452, 453; 1924):

The appropriator does not own the water.... He has a right of ownership in its use only. The use of water in Montana is vital to the prosperity of our people. Its use, even by an individual, to irrigate a farm, is so much a contributing factor to the welfare of the State that the people, in adopting the Constitution, declared it to be a public use."

41.4. Also, this Court worth recalls and recollects the decision in Lakshminarasu Avadhanulu V. Secretary of State for India, 1918-Vol.II-L.W.-1 at special page 2, wherein it is held as under:

"(I) Every riparian owner has the right to enjoy without disturbance the natural advantages arising from the situation of his Land including the right to irrigate his Land from the natural stream provided he does not by exercise of such right cause material injury to other like owners.

Such riparian right extends not merely to lifting the water from the natural stream and carrying it to the Land direct but also to strong it in wells in his Land temporarily

as a measure of prudence before actual distribution.

(II) The Government has no right to levy a separate water cess for the use of the water of the river in irrigating a riparian Land irrespective of the fact whether the bed of the stream belongs wholly to Government or partly to Government and partly to the riparian owner or wholly to the riparian owner.

Secretary of State for India v. Janakirmayya (1) and Ambalavana Pandara Sannadhi v. The Secretary of State for India (2): Referred to.

(III) All Land must be regarded as riparian Land (a) when it is within the natural watershed of the stream, (b) the title to which is in one owner and (c) the boundaries of which have been established with the requirements of the conditions which will best serve the interests of individual Land owners; but in India, riparian Land must be confined to Land which is on the bank of the stream and which extends from that bank to a reasonable depth in Land."

41.5. Moreover, in the decision Secretary of State V. Kannepalli Jankiramayya and others, AIR 1914 Madras 534, wherein it is observed as under:

"Madras Act 3 of 1905 cannot be used to interpret Act 7 of 1865; it does not make the river or water therein Government property. Under the Customary law of the country, river-water belongs to the owner of the estate through which it passes subject to the claims of the proprietors below.

The Government have a right to regulate the distribution of water among ryotwari villages without causing injury to any of them. But they have no such right in zamindaris 32 Mad.141, not Appr.; 26 Mad. 66; 3 I.C. 456 and 6 I.C. 199, Dist."

41.6. In the decision of the Hon'ble Supreme Court in Ramkanya Bai and another V. Jagdish and others, 2011 (7) Supreme Court Cases 452 at special page 462 wherein at paragraphs 30 & 31, it is observed and held as under:

"30. Wajib-ul-arz is thus the record of customs in a village in regard to (i) easements (including the right to irrigation and right of way); and (ii) the right to

fishing in privately owned/held Lands and water bodies. The entries therein could be modified in the manner provided in sub-section (5) of section 242 of the Code. Though the Code provides for maintaining a record of all customary easements imposed upon privately held Lands and water bodies, significantly the Code does not provide the remedies available in the event of disturbance or interference with such easements recorded in Wajib- ul-arz, as the remedy is only way of a suit before the civil court.

31. Customary easements are the most difficult to prove among easements. To establish a custom, the plaintiff will have to show that (a) the usage is ancient or from time immemorial; (b) the usage is regular and continuous; (c) the usage is certain and not varied; and (d) the usage is reasonable. If the Wajib-ul-arz (where such a record is maintained) records or shows the customary easement, it would make the task of civil courts comparatively easy, as there will be no need for detailed evidence to establish the custom. Be that as it may. If the remedy for violation of a customary easement recognized and recorded in the Wajib-ul-arz is by way of a civil suit, it is inconceivable that in regard to violation of a customary easement not recognized or recorded in the Wajib-ul-arz, the remedy would be only by way of a summary enquiry by the Tahsildar under section 131 of the Code, and not by a suit, before the civil court."

41.7. In the decision *S. Venkatesan V. Government of Tamil Nadu*, represented by its Secretary, Municipal Administration and Water Supply Department, Fort St. George, Chennai and others, 2009-4-L.W. 459 wherein at paragraph 17 it is observed as under:

"17. The court is aware of the need of the public for a new bus stand, in view of the congestion of the old bus stand which is located inside the municipal town. The court is also aware of the need to protect the water bodies, particularly, Erys, Ponds, Lakes, etc. In a book, by name, *The Ery Systems of South India* authored by T.M. Mukundan, an Ery is described as follows:-

"An ery (Fig.1) or tank is a reservoir of water contained behind earthen bunds or embankments. Here the bund surrounds the water on three sides. The fourth side is open to the catchment from which water flows down to collect in the ery. Normally the middle of the bund is the deepest portion of the ery and the depth decreases as we go away from the middle of the bund to the sides or flanks of the bund."

According to the author, the main function of the Ery is for irrigation of field for cultivation, viz., the ayakat Lands of the Ery. The water flow is regulated by sluice. The Ery also as an arrangement for overflow of water. He also states that the Erys are normally inter-connected where excess water will go from one Ery to another Ery. The classification of Ery is as follows:-

"Erys which are fed by channels diverted from rivers are known as "System erys" or riverfed erys. Erys which have their own catchment are called "Non-system erys or rainfed erys."

In the present case, the Tindivanam Ery appears to be a rainfed Ery as can be seen from the topography. The author has traced the history of the Ery System under the pre-British India, then under the British System and the Decay of Ery Irrigation System due to passage of time. However, he hasten to add that subsequently the Government has through the Public Works Department have started to maintain the Erys and irrigation. There is a constant demand for water resources to cultivate Land for food to feed the hungry millions of this country and Lands to provide shelter for the people. In the present case, the bus stand proposal is based on municipality's demand for a public cause. The two needs have to be harmonized so that there is a sustained development. The development on one side should not sound the death knell for another (i.e.) Ery system."

4.1.8. In the decision Gann V. Fres Fishers of Whitstable reported in (1865) 11 Halsbury Law Cases 192, it is observed

that 'the bed of all navigable rivers where the tide flows, and all estuaries or arms of the sea, is by law vested in the crown and in fact, the said ownership of the crown is for the benefit of the subject, and the same cannot be utilised in any way so as to interfere with the right of navigation etc.' To put it succinctly, the State Government holds the 'Water bodies in Public Trust' for the welfare of present and future generations to come.

41.9. In the decision of the Hon'ble Supreme Court in Hinch Lal Tiwari V. Kamala Devi and others, (2001) 6 Supreme Court Cases 496 at special page 497, it is held that 'Government including Revenue Authorities are duty bound to clean and develop them so that ecological disaster may be prevented and a better environment provided to people at large.'

41.10. In the decision Jaswant Singh Mathurasingh V. Ahmedabad Municipal Corporation, AIR 1991 Supreme Court 2130 at special page 2131, wherein it is observed as under:

"A tenant or a sub-tenant in possession of a tenement in the Town Planning Scheme is a person interested within the meaning of Rules 21(3) & (4) of the Rules. But he must be in possession of the property on the crucial date i.e. when the town plan scheme is notified in the official gazette. Every owner or tenant or a sub-tenant, in possession on that date alone shall be entitled to a notice and opportunity. It is settled that before depriving a person of his property or imposing any further liability, the principles of natural justice require prior notice and reasonable opportunity to him to put forth his claim or objections. Rule 21 (3) speaks of special notice of at least three days duration. It is inconsonance with and in compliance of the principles of natural justice. The legislature thus made a distinction between the general notice envisaged in sub-rule (1) of Rule 21 and special notice under sub-rule (3) of the Rule 21, which was in addition to the former.

The purposes of clauses (3) and (4) of Rule 21 are obvious and the consequences that would ensue are self-evident. The issuance of notice under sub-rule (3) and giving of sufficient opportunity under sub-rule (4) are self evident to subserve the basic concept of fair and just procedure.

These sub-rules subserve the principles of natural Justice to avoid arbitrariness offending Article 14 and to be Just and fair procedure satisfying the mandate of Article 21. Non-observance otherwise would render the scheme illegal. No provision of a statute or Rule would be rendered surplusage or otiose. Town Planning Officer shall give to a person affected by the scheme sufficient opportunity to state his views and shall not give any decision till he duly considers the representation, if any. The issuance of notice under sub-rule (3) and giving of sufficient opportunity under sub-rule (4) are self-evident to subserve the basic concept of fair and just procedure. Therefore, the issuance of special notice of at least three clear days duration and giving sufficient opportunity to the person affected to put forth his views of the scheme are mandatory and non-compliance thereof vitiates the validity of the final scheme."

Further, at paragraph 14 of the aforesaid decision at page 2136, it is observed as follows:

"14. The principle of Waiver connotes issuance of notice and non-response thereto. Everyone has a right to waive an advantage or protection which law seeks to give him. Undoubtedly, if a notice is issued and no representation is made by either the owner, tenant or a sub-tenant, it would amount to waive the opportunity and such person cannot be permitted to turn round, after the scheme reaches finality, to say that :here is non-compliance of sub-rules (3) and (4) of Rule 21. It would amount to putting premium on dilatory and dishonest conduct. "

41.11. In the decision T.S.Senthil Kumar V. Government of Tamil Nadu, rep. By its Secretary, Public Works Department, Chennai and others, (2010) 3 MLJ 771 wherein it is held as under:

"The Act does not specifically indicate that the encroachers do not have a right to be heard. Notice to be issued to the alleged encroacher to the effect that the survey indicates that the place in his/her occupation is an encroachment and the notice in Form-III of the Rules may be issued. On

receipt of the said notice, the encroacher may give his/her objections relating to the classification of the land

in his/her occupation and the nature of the encroachment within a period of two weeks and the authorities shall consider the objections and pass appropriate orders, in accordance with the provisions of the Act, giving time to the encroachers to remove the encroachment."

41.12. In the decision of the Hon'ble Supreme Court in Jagpal Singh and others V. State of Punjab and others, (2011) 11 Supreme Court Cases 396 at special page 397 wherein it is held that 'Orders issued by all State Governments permitting Gram Sabha land to private persons and commercial enterprises on payment of money are illegal and should be ignored'.

42. One cannot brush aside a very vital fact that in Democratic Polite, the 'Community' or the 'Persons' being sovereign the exercise of discretion by any Administrative or an Executive Authority is to be tested based on 'Rule of Law'/'Fairness' or 'Justice' because of the reason that he/it is 'Accountable' for the action in issue.

43. It may not be out of place for this Court to make a significant mention that the exercise of discretion by the Administrative or Quasi Judicial Authorities cannot be goaded/guided owing to an 'Exigency'. Further, the Administrative or Executive Authorities are not expected to exercise their discretion cementing on their special likings/peculiar dispositions, in the considered opinion of this Court.

44. It is to be remembered that an individual may waive a right either expressly or in an implied manner. Also that, in a given case, he is disentitled to secure an equitable relief especially when he allows a thing to come to an 'Irreversible Situation'.

45. Further, the term 'Waiver' is a 'Contractual one' and may give rise to a 'Cause of Action'. It is an agreement between the two parties and a person fully aware of his rights had agreed not to assert a right for consideration. However, the word 'Estoppel' is not a 'Cause of Action', but is a 'Rule of Evidence'. If a plea of 'Waiver' is taken the onus is on a person pleading the same to exhibit that an agreement waiving the right in consideration of some compromise came into being. By the conduct of a person, a statutory right may also be waived. If a person has waived his right in respect of an

equitable remedy, then, such conduct precludes and will operate as 'Estoppel' against him as regards the assertion of a right in the subject matter in issue. Be it noted that when a power is showered under a Statue to perform a certain thing in a particular way, the thing must be done in that way or not at all.

46.As regards the pending suit in O.S.No.579 of 2014, this Court is not expressing any opinion on the merits of the matter wherein a plea is taken on behalf of the 1st Petitioner/Defendant that the owners of Lands in Survey Nos.209, 211, 212, 179, 181, 163, 162, 157, 151, 149 and 148 can only prove that whether there is a water Canal existing and flowing from the Periya Eri in S.No.219 and travelling upto S.No.162 etc. Similarly, it is open to the respective parties to workout their remedies in respect of Criminal Proceedings before the Competent Forum in accordance with Law and hence, this Court is not expressing any opinion one way or other in this regard.

47.As far as the present case is concerned, in the sworn Counter Affidavit of the 3rd Respondent (erstwhile District Collector, Kancheepuram) dated 10.04.2018 at paragraph 3, it is, in a crystalline fashion, mentioned that '... It could be seen that it is not a water channel and it is only Plan Marked Channel etc.' Also, the present District Collector, in his Counter, at paragraph 4, had averred that '.. None of the authorities have even raised a little finger as to the existence of Detailed/Plan Marked Channel is not fixed ad it could be varied'. Even the 5th Respondent/Tahsildar had taken a stance that there is a Plan Marked Channel, passed through Survey Nos.211, 212, 219, 180, 169, 166, 157, 149, 148, but the same was not reflected in the Village Account. However, there was no Field Measurement Book to reflect the same etc.

48.Be that as it may, in view of the admissions made by the 3rd Respondent (erstwhile District Collector - Member of the 7th Respondent and the present District Collector) that the Village Map was not perused or noticed and none of the authorities had raised even a little finger in regard to the existence of the Detailed/Plan Marked Channel and also this Court, taking note of the fact that the Tahsildar, Thiruporur had submitted a Report dated 16.07.2015 and 02.09.2015 wherein it is mentioned that from the Map that the particular channel (Plan Marked Channels) in Siruseri Village starts from big lake in survey No.219 and flows through the survey Nos.211, 212, 219, 180, 169, 166, 157, 149, 148 in Siruseri Village and the water from the lake flows through the channel and it is to be used for cultivation to the wet Lands etc. and further that, as per the Map, the Channels (Plan Marked Channels) flows through the Lands purchased by the said company in Survey Nos.166/3, 169/1, 169/2, 178/1, 178/3A, 179/1B, 179/2A, 179/2B but the channels were closed and that the

said Company constructed multistoried building in Survey No.166/3 and apart from that, there is no path or cart track in the said Land or Village Accounts, this Court is of the earnest opinion that there is a costly lapse/act of commission or glaring omission on the part of the concerned Authorities in not pointing out the Channel shown in the Village Map of Siruseri Village, Thiruporur Taluk, Kancheepuram District at the relevant point of time and it is pellucidly clear that the 'Public Trust Doctrine' was given a go by the concerned Authorities in a nonchalant manner. Also that, when the Rejoinder of the 5th Respondent/ Tahsildar, Thiruporur mentions that the maximum Ayacut of Siruseri Tank was converted into Residential Plots, I.T. Park etc. and remaining lands are vacant, no convincing/satisfactory/tangible explanation was forthcoming on the part of the concerned Authorities as to how in Mamallapuram Master Plan, the entire Siruseri Village barring few survey numbers was declared as 'Urbanisable Use Zone' and further that, 'Agricultural Use Zone' was declared as 'Nil'. Also that, just because the Water Channel/Vaikal/ Canal was put into disuse or there is no water in it and the same is not utilised for availability of water, yet, by no stretch of imagination, it can be said that the said Channal/Vaikal/Canal had lost its original identity, as opined by this Court. Especially keeping in mind Article 51A(g) and (i) of the Constitution of India, which enjoins as follows:

- (g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;
- (i) to safeguard public property and to abjure violence."

49. Furthermore, in view of the fact that the 2nd Petitioner had completed the construction of 114 apartments of phase 1 of the project in full and that 75 customers had taken possession, besides some of them had already occupied their apartments etc., and because of the fact that the 2nd Respondent/Executive Engineer, W.R.O. (P.W.D), Lower Palar Basin Division, Kancheepuram had taken a plea that the Plan Marked Channel does not come under the purview of P.W.D. and that this type of Channel will be maintained by the Revenue Department and farmers by 'Kudimaramath Scheme' and to find out a suitable, right, practical, pragmatic, purposeful, meaningful and rational Solution i.e., Formation of Catch Drain cum Field Channel (0.45 m x 0.60m) inner dimension along the outer periphery of the Petitioners, to be formed by the 1st Petitioner at their own expenses, of course, under the supervision of Public Works Department or to maintain the Channel marked in the Village Map of Siruseri, the 3rd Respondent/District Collector is hereby directed to reconsider the entire gamut of the subject matter of

the controversies revolving around the Writ Petition, De novo, after analysing the same in threadbare manner, by looking into the plea of the 1st Respondent/Sangam that irrigation of the 20 acres of Land belonging to the members of the 1st Respondent/Sangam were affected and likewise the paddy fields lying on the south of the Petitioners' property were affected etc. and keeping in mind the Riparian Rights of Agriculturists of the 1st Respondent/ Sangam and also the developmental aspect of Urbanization on one side and not to bury/dispense with the practice of Vaikal/Channel Water being used once and for all. Viewed in that perspective, this Court is perforced to interfere with the impugned order of the 3rd Respondent/District Collector, Kancheepuram dated 02.09.2015 and sets aside the same, in furtherance of substantial cause of Justice.

Conclusion:

50. In fine, the Writ Petition is disposed of. The impugned order of the 3rd Respondent/District Collector, Kancheepuram dated 02.09.2015 is set aside by this Court for the reasons assigned in this Writ Petition. The 3rd Respondent/District Collector, Kancheepuram is directed to conduct a De novo/Fresh Enquiry into the Representation of the 1st Respondent/Sangam dated 06.04.2015 and to pass a reasoned speaking orders in qualitative and quantitative terms, after affording necessary opportunities to the Petitioners, Official Respondents and the 8th Respondent/Plaintiff to substantiate their version through oral and documentary evidence by examining necessary witnesses. In the fresh Enquiry, the 3rd Respondent/District Collector shall ensure that the Official Village Map of Siruseri Village, Thiruporur Taluk, Kancheepuram District is marked through the Official Witnesses or through Witnesses to be produced by the parties as an Exhibit/Document to show the existence of a Detailed Canal/Vaikal/Channel, as claimed by the Executive Engineer, W.R.O. (P.W.D.), Lower Palar Basin Division, Kancheepuram. Further, the 3rd Respondent/District Collector, Kancheepuram, quite in the fitness of things, shall appoint any Officer not below the rank of Taluk Surveyor as Survey Officer for conducting a spot Inspection/Survey in respect of Survey Nos. 166/ 3, 169/1, 169/2, 178/1, 178/3A, 179/1B, 179/2A, 179/2B, 209, 211, 212, 179, 181, 163, 162, 157, 151, 149 and 148 to find out (i) as to whether on ground the Water Channel existed/runs through the aforesaid survey numbers and other relevant survey numbers if any, having a bearing on the controversies in the subject matter in issue; (ii) to ascertain whether the owners of the Land in Survey No. 147 and other survey numbers are basically entitled to secure the right of way for an Ingress and Egress (as an Easementary Right) with a view to move out/carry their Agricultural Produce(s) etc. through the Land gifted by the 1st Petitioner as regards cultivation; and the said Survey Officer is required to take the assistance of concerned Officers of

Public Works Department, who are duty bound to assist him in carrying out the assigned task and based on the said Report, shall pass a resultant follow up prompt Order/Direction centering around the Writ Petition. The aforesaid exercise shall be carried out by the 3rd Respondent/District Collector, Kancheepuram within a period of four months from the date of receipt of copy of this order, after affording necessary opportunities to the respective parties, by adhering to the Principles of Natural Justice. It is open to the respective parties to raise all Factual and Legal pleas before the 3rd Respondent/District Collector, so as to give a quietus in a Complete and Comprehensive manner to the controversies revolving around the Petition and also looking into the averments of the 8th Respondent/ Plaintiff as well as the 1st Petitioner/Defendant stand in O.S.No.579 of 2014 on the file of the Learned District Munsif, Chengalpet. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Sgl
To

- 1.The Secretary to Government,
State of Tamil Nadu,
Public Works Department,
Fort St. George, Chennai - 600 009.
- 2.The District Collector,
District Collector's Office,
Kancheepuram, Kancheepuram District.
- 3.The Revenue Divisional Officer,
Kancheepuram, Kancheepuram District.
- 4.The Tahsildar,
Kancheepuram Taluk Office,
Kancheepuram, Kancheepuram District.
- 5.The Director,
Directorate of Town and Country Planning
No.807, Anna Salai, Chennai - 600 002.

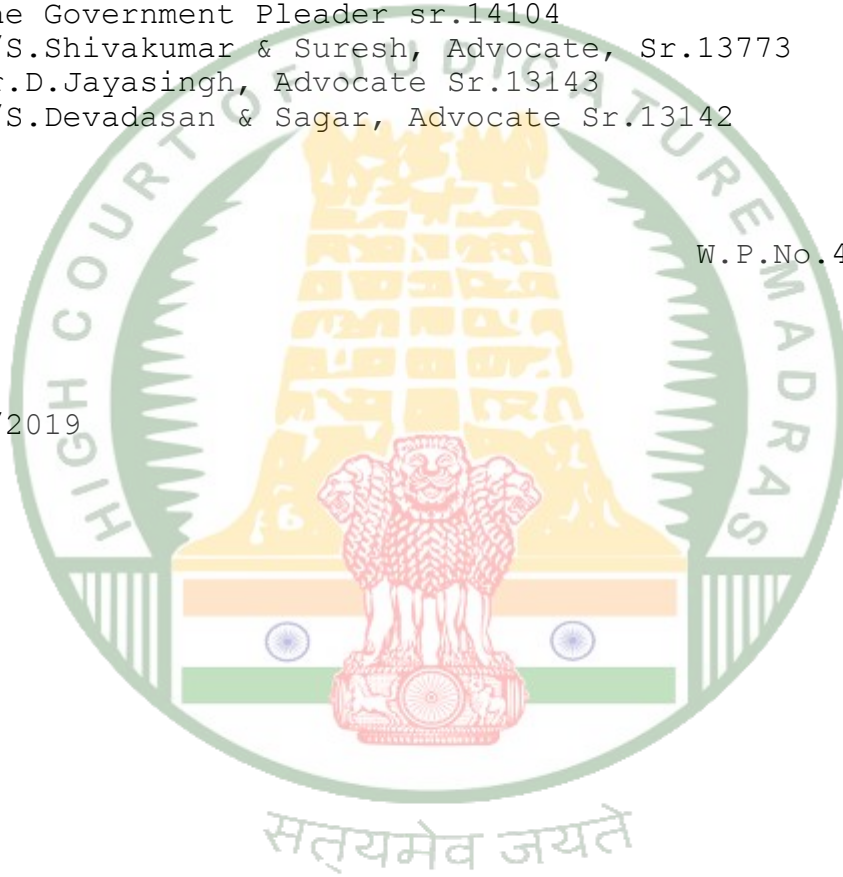
6.The Member Secretary,
Mamallapuram Local Planning Authority,
Five Radhas Commercial Complex, Mamallapuram - 603 104.

7.The Secretary to Government,
Housing and Urban Development Department,
Chennai - 9.

+1cc to The Government Pleader sr.14104
+1cc to M/S.Shivakumar & Suresh, Advocate, Sr.13773
+1cc to Mr.D.Jayasingh, Advocate Sr.13143
+2cc to M/S.Devadasan & Sagar, Advocate Sr.13142

W.P.No.4864 of 2016

srg 25/02/2019



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