

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 11.04.2019  
Pronounced on: 29.04.2019

Coram

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL  
AND  
THE HONOURABLE Mr. JUSTICE S.VAIDYANATHAN

W.P.10821 of 2017 and  
W.M.P.Nos.11835 and 15424 of 2017

I.H.Sekar

... Petitioner

-vs-

1. The Principal Secretary to Government of Tamil Nadu,  
Revenue Department, Fort St. George,  
Secretariat, Chennai -600 009.
2. The Commissioner of Land Administration,  
Land Administration Department,  
Ezhilagam, Chepauk, Chennai -600 005.
3. The District Collector,  
Kancheepuram District,  
Collectorate, Kancheepuram -631 501.
4. The Principal Secretary to Government of Tamil Nadu,  
Public Works Department,  
Fort St. George, Secretariat,  
Chennai -600 009.
5. The Principal Secretary to Government of Tamil Nadu,  
Transport Department, Fort St. George,  
Secretariat, Chennai -600 009.
6. The Principal Secretary to Government of Tamil Nadu,  
Tourism, Culture and Religious Endowments Department,  
Fort St. George, Secretariat,  
Chennai -600 009.
7. The Chief Secretary,  
Government of Tamil Nadu,  
Ex-Officio Chair Person,  
State Disaster Management Authority,  
Fort St. George, Chennai -600 009.

8. The Chairperson,  
Tamilnadu State Wetland Authority,  
Environment and Forest Department,  
Secretariat, Fort St.George,  
Chennai - 600 009.

9. The Director,  
Wetlands Division,  
Ministry of Environment and Forests,  
Indira Paryavaran Bhavan,  
Jorbagh Road, New Delhi - 110 003

... Respondents

(R8 & R9 are impleaded by order dated 28.06.2018) in  
WMP.18485/18 in WP. 10821/17

Prayer: Writ Petition filed under Article 226 of the  
Constitution of India, seeking to call for the records related  
to the Government Order Nos. (i) G.O.(Ms) No. 25, Revenue [LD4  
(1)] Department dated.18.01.2013 and (ii) G.O.(Ms) No. 194,  
Revenue [LD4(1)] Department dated.09.06.2014 by the 1<sup>st</sup>  
Respondent transferring 2.83.50 Hectors of land in S.No.707/2 to  
the 5<sup>th</sup> Respondent and 12.72.00 Hectors of land in S.No.707/3 to  
the 6<sup>th</sup> Respondent respectively and to quash the same and  
consequently to direct the 3<sup>rd</sup> Respondent to restore, protect and  
preserve the entire extents of "Back Water (Kazhuveli) lands"  
lying along the sides of Buckingham Canal in the Revenue  
District of Kancheepuram.

For Petitioner : Mr.V.B.R.Menon

For R1 to R8 : Mrs.Narmadha Sampath  
Addl. Advocate General-V  
Asst. by Mr.S.N.Parthasarathy  
Govt. Advocate &  
Mr.A.Ansar, Govt. Advocate

For R9 : Mr.B.Rabu Manohar  
Sr.Central Govt. Standing Counsel

M.VENUGOPAL, J.,  
AND  
S.VAIDYANATHAN, J.,

O R D E R

"Varappu Uyara Neer Uyarum  
Neer Uyara Kadhir Uyarum  
Kadhir Uyara Kudi Uyarum  
Kudi Uyara Kol Uyarum

Koal Uyara Koan Uyarvan."

- By Avvaiyar, a Tamil  
Female Poet

Roughly, it could be translated as:

"Raising ridges raise water;  
Raising water raise crops;  
Raising crops raise the subjects;  
Raising subjects raise the king."

The above Poem has been wrongly understood by our Rulers in our Tamil Nadu, as, for the last five decades, they concentrate only on production of artificial waters (liquors) and not in safeguarding of the natural water. Likewise, the Politicians, instead of taking steps to raise the standard of living of subjects, are enriching themselves and ensure that their wards also become rich.

2. The present order aims to unfold the failure of the Government of Tamil Nadu in the past five decades in protecting the Water Bodies and to add fuel to the fire, Two Government Orders were also issued, which are under challenge in this Writ Petition for transfer of Kazhuveli / Wet / Marsh lands to the State Government Departments for elevation of buildings thereon.

3. This Writ Petition, which was specifically posted before this Bench for hearing on the orders of the then Hon'ble Chief Justice, has been filed in the form of Public Interest Litigation, seeking to quash the Government Orders issued in G.O.(Ms) No. 25, Revenue [LD4(1)] Department dated 18.01.2013 and G.O.(Ms) No. 194, Revenue [LD4(1)] Department dated 09.06.2014 by the 1<sup>st</sup> Respondent, by which, it was decided to transfer 2.83.50 Hectors of land in S.No.707/2 to the 5<sup>th</sup> Respondent and 12.72.00 Hectors of land in S.No.707/3 to the 6<sup>th</sup> Respondent respectively. The Petitioner also sought a direction to the 3<sup>rd</sup> Respondent to restore , protect and preserve the entire extent of "Back Water (Kazhuveli) lands" lying along the sides of Buckingham Canal in the Revenue District of Kancheepuram.

4. The facts, leading to filing of this Writ Petition, are as follows:

i) The Petitioner is the Founder and Managing Trustee of the "Nature Trust", which is formed with an object of protecting the environment, the Natural Resources and also the Government Poramboke lands, water ways, grazing lands etc., against encroachments. It was stated that 24.93.0 Hec. (61.60 Acres) of lands in S.No.707 of Sholinganallur Village & Taluk, Kancheepuram District has been classified as "Backwater (Kazhuveli) lands" in the Revenue Records and those lands, lying

adjacent to Buckingham Canal are Water bodies / Wetlands. The Buckingham Canal receives the excess water from Pallikaralai Marshlands through "Thoraipakkam-Okkiam Channel" and discharges into the sea and acts as a protective shield around the Chennai City;

ii) It was submitted that the Kazhuvelli land helps to avoid / mitigate the effects of floods during excess rains and high tides such as Tsunami and to store the excess water entering into the Buckingham Canal, thereby preventing wastage of water into the Sea. The land also facilitates the recharging of Wells / ponds, etc., in the nearby Villages and provide aquifer effect. It was further submitted that the Respondents, who are duty bound to protect and preserve Water bodies and Water areas / Wetlands, such as Kazhuvelli lands, have neglected their primary responsibility and sub-divided and transferred 2.83.5 Hec. in S.No.707/2 of the Kazhuvelli lands to the Tamil Nadu Transport Department for construction of Regional Transport Office through a G.O.(Ms) No. 25, Revenue [LD4(1)] Department dated 18.01.2013 and another 12.72.0 Hec. in S.No.707/3 to the Tourism, Culture and Religious Endowments Department for the formation of Tamil Nadu Music and Fine Arts University through G.O.(Ms) No. 194, Revenue [LD4(1)] Department dated 09.06.2014

iii) It was further submitted by the Petitioner that as soon as he noticed some earth-filling and dumping of rubbish materials on the Kazhuvelli land, an Application was filed before the National Green Tribunal (in short 'the NGT'), Southern Zone in A.No.145 of 2015 to restrain the Respondents from proceeding with any type of construction activities on the Kazhuvelli lands, fearing permanent damages to the above Water land / Wetland and after elaborate argument, the Judgement has been reserved by the NGT on 17.04.2017 in the said Application. While so, during the proceedings, the Petitioner came to know about the above transfers of the Kazhuvelli lands to Respondents 5 & 6 vide the above two Impugned Orders and obtained copies of the Orders by filing Application under RTI Act;

iv) It was also submitted that as the jurisdiction of the NGT is limited to Section 14 r/w Schedule 1 of the National Green Tribunal Act, 2010, it has become necessary to approach this Court under Article 226 of the Constitution of India, seeking to quash the said two Impugned orders, by which major portions of Kazhuvelli lands have been transferred in favour of the Respondents 5 and 6 for construction of buildings. According to the Petitioner, the above transfers of Kazhuvelli lands shall constitute gross violation to the dictum laid down in several Judgments / decisions of this Court as well as the Supreme Court on the subject matter regarding protection of Water bodies / Wetlands / Water Areas;

v) The stand of the Petitioner was that the Tamil Nadu Government has constituted "Tamilnadu Wetland Authority" vide G.O.No.24 dated 15.06.2016 for the protection and preservation of Wetlands in the interests of maintaining ecological balance and other benefits as stated therein. It was the stand of the Petitioner that as custodians of such properties in the Public trust, it shall be incumbent on all the Respondents to protect the remaining Wetlands / Water Areas of the State in the interests of future mankind and to avoid the consequences of floods, damages to flora and fauna, etc. It was stated by the Petitioner that the above lands act as buffer storages of excess water during rains, which get discharged from Pallikaralai Marsh lands into the Buckingham Canal through "Thoraipakkam-Okkiam-Madav" by facilitating to recharging of wells, tanks, etc. in the nearby localities through "Aquifer effect" apart from forming a home for large extents of flora and fauna and living creatures. Any construction activities in the above lands shall cause permanent damages and destructions to the above and hence need to be prevented in the interest of environmental protection and to ensure the safety and security of living creatures including human beings in the nearby villages;

vi) It was further stated that the Respondents have taken a strange and fallacious stand before the NGT that Kazhuvelli lands do not come under the Category of Water areas / Wetlands / Marshlands and hence do not enjoy any protection against re-classification, alienation or transfers for alternate uses. The above contention raised by the Respondents would amount to a clear case of contempt of the orders of this Court as well as the Hon'ble Apex court. It was the submission of the Petitioner that the Respondents have submitted before the NGT that only those portions of the Pallikaralai Marshlands, which had been transferred to the Forest department, shall be entitled to protection and that all the lands lying adjacent to the Buckingham Canal and classified as 'Kazhuvelli lands' are waste lands eligible for disposal / alienation;

vii) It was pointed out that this Court had restrained the Respondents from constructing, alienating, and transferring of all lands in Pallikaralai marshland areas by an order dated 18.11.2016 in Crl.O.P.No.4413 of 2013 and sought details of existing constructions for issuing further directions in the matter. It was also pointed out that despite such an order, the Government had passed the above impugned Orders, which are liable to be quashed, being void and un-enforceable. The Petitioner further stated that the Respondents have admitted in their Counter Affidavits before the Tribunal that the above lands are lying 10 feet below the ground level and need to be filled up with earth / rubbish to construct the proposed buildings. Therefore, it was conceded by the Government itself

that the said lands are nothing but Wetlands / Marshlands acting as a buffer area between the Buckingham Canal and the nearby residential areas during heavy rains/floods. It was the case of the Petitioner that the Respondents had also admitted in their Counter Affidavits before the NGT that the above area remains under water for 4 to 5 months in a year, which is typical of the nature of Wetlands that perform the dual roles of acting as a buffer area to store excess water during rains / floods and recharging of wells and ponds in the neighbourhood and enhancement of ground water levels. It was further case of the Petitioner that the total area of Marshlands in Pallikaranai area had struck to less than 10% of what it was about 40 years ago, which had resulted in more quantity of Water, flowing into the Buckingham Canal during rains than what it used to be earlier. Thus, it was stated that it is very much necessary that at least the existing Wetlands / Water Areas and marshlands are protected from further extinction by preventing any kind of transfers / alternate usage, which would destroy the basic nature and use of such water bodies and cause floods. It was further stated that he had submitted a Representation to the Respondents on 31.03.2017, seeking to revoke the above cited two G.Os. and to take necessary steps to restore and maintain the whole extent of 24.93.0. Hectors of the above Kazhuveli Lands to its original condition in public interest. Since no reply has been received from their end till date, the present Writ Petition has been filed.

viii) The Petitioner assailed the two Impugned Government Orders on the ground that damages to the character of the Kazhuveli lands through re-classification and alienations are in violation of Article 21 of the Constitution of India because "Right to Water" has been recognized as a part of "Right to life" under the said provision. It was further assailed, stating that the provisions of environmental laws will directly apply to the above lands under Rule 7 (4) of the Wetlands (Conservation and Management) Rules, 2010 and also Section 24 r/w Sec. 2(j) of The Water (Prevention and Control of Pollution) Act, 1974 will get attracted in the present case, based the facts and circumstances of the case.

5. The Third Respondent has filed a counter affidavit, wherein it is inter alia stated as under:

i) The petitioner, after filing an Application No.145 of 2015 before the NGT, Southern Region, Chennai, seeking for a direction to the Respondents to stop all activities in the Marsh land and Canal Kaluvveli in areas in question, had approached this Court. The very same issue raised herein was appraised before the NGT and the same was elaborately dealt with by the NGT. Subsequently, the NGR, by order dated 02.08.2017, held that

the disputed land in S.No.707 is neither a water body nor a backwater nor a Marsh land, by further holding that the 7 acres of land transferred to the 5<sup>th</sup> Respondent Transport Department vide G.O.Ms.No.25 is for the public purpose and construction. It was further held by the NGT that it was not necessary to restrain the State for utilizing the land for the construction of the structures for the 5<sup>th</sup> Respondent transport department. Insofar as the remaining land in S.No.707, it was observed by the NGT that the same could be put to use after obtaining the opinion of the Tamil Nadu Wet Lands Regulatory Authority to the effect that any proposed construction therein will not cause any environmental or ecological problem;

ii) With regard to G.O.Ms.No.25 dated 18.01.2013, the said Order was issued for administrative approval and financial sanction to 9 Unit Office of Transport Department throughout the State and Sholinganallur is one among them and in the said land, a Unit Office has been proposed to be constructed with all facilities such as electronic driving test base etc., for issuance of driving licence to skilled drivers, etc. It was stated that A1 notice was published on 12.06.2009 and it was duly ascertained that no objection was received from any public / residents/ The Sholinganallur Town Panchayat also passed a Resolution No.475 dated 30.07.2008, granting 7 acres of land for construction of Unit Office and an inspection was also conducted to ensure that no trees, ancient symbols, costly buildings, etc are located. Thereafter, it was decided to transfer the said land for public utility and the Government also accepted the recommendations of the Respondents 2 and 3 and transferred in terms of RSO 23(a);

iii) With respect to G.O.Ms.No.194 dated 09.06.2014, all the formalities were followed as that of the previous Government Order and a site inspection also showed that the land, which is a Government Poramboke-Kazhuveli is situated on the northern side of the link road, which connects Rajiv Gandhi Salai (Old Mahabalipuram Road) to East Coast Road. It was stated in the counter that the NGT, which is an expert body constituted under the NGT Act, 2010, after taking into account the judgment of this Court in *Susetha vs. Union of India* [W.P.No.30725 of 2008] decided on 28.07.2010, clearly rendered a finding that the lands are not Kazhuveli lands or marsh lands or water body. Since the issue regarding usage of these lands by the Departments is covered by the order of the NGT, Chennai, it had already attained finality;

iv) It was the stand taken by the Third Respondent in the Counter that the Hon'ble Supreme Court in *Bhopal Gas Peedith Mahila Udhayog Sangathan and others vs. Union of India*, reported in (2012) 8 SCC 326, held that after coming into force of the

NGT Act, the matters covered under Schedule I to the NGT Act must be transferred to the NGT for speedy and expeditious justice and the Hon'ble Supreme Court in several other judgments observed that findings of the expert bodies in technical matters need not be interfered with. The further stand taken was that the lands transferred to the Departments are not directly connected to the sea or Pallikaranai March and therefore, there is no possibility of water over flowing from the Canal onto these lands;

v) On behalf of the third respondent, it was stated that if all the low lying lands irrespective of the classification are declared as Marsh lands or water bodies, it would certainly create confusion and chaos and affect sustainable development, as water will get stagnated in those lands only for a short period during rainy season. Steps are being continuously and consistently taken by the State Government to protect ecologically sensitive areas, such as Pallikaranai Marsh Lands and in fact, in the recent Budget announcement also, the State Government had announced that the eco-restoration project of Pallikaranai Marsh land would be implemented over five years from 2018-2019 to 2022-23 at a cost of Rs 165.68 Crore with the help of funding from the Union Government. Stating that the lands transferred to the respective Department are not notified lands nor fall under the scope of the Wetland Rules and that the issue had already been decided by the NGT, it was prayed that this petition is liable to be dismissed.

6. The Learned Counsel for the Petitioner has strenuously submitted that the Table in Annexure-I submitted herein shall conclusively prove that the order passed by the NGT on 02.08.2017 in Application No.145 of 2015 filed by the Petitioner will, at any stretch of imagination, not constitute a Legal bar under res-judicata against the present Writ Petition filed under Article 226 of the Constitution of India, as the prayer before the NGT was against the construction activities by the 5th Respondent, whereas in this Writ Petition, the illegal transfer of Kazhuveli lands to the Respondents 5 & 6 has been called in question. Once the NGT lacks jurisdiction to decide such as issue, the only way left to the Petitioner is to challenge the Government Orders before this Court alone and therefore, the ingredients as mandated in support of the plea of the principle of Res-judicata raised by the third respondent under Section 11 of the CPC, 1908 is found absent.

7. The Learned Counsel for the Petitioner, by relying upon a recent reported Judgement dated 07.05.2015 of Four Member Full Bench of the National Green Tribunal Bench, New Delhi in Application No.222 of 2014, has vehemently contended that when the maintainability of simultaneous proceedings under NGT Act

and Writ Petition, came for consideration, it was held as under:

" 50..... Thus, it is evident from the prayers and genesis of the respective proceedings that they are entirely distinct and different in their scope and relief. The issues before the Tribunal would essentially relate to environment, ecology and its restoration and have to be essentially a civil proceeding. While the proceedings before the High Court relate to entirely different issues i.e. the acquisition of land, its allotment and its transfer to third party. Thus, the issues in both the proceedings are neither substantially nor materially identical. Both jurisdictions have to operate in different fields governed by different and distinct laws. The objection taken by the Respondent does not satisfy the basic ingredients to attract the application of res judicata or constructive res judicata."

8. It was also contended by the Learned Counsel for the Petitioner that the above view has been fortified through a catena of Judgements by various High Courts and different Benches of NGT and hence, the claim raised by the 3<sup>rd</sup> Respondent, regarding maintainability of Writ Petition under the principle of Res-judicata is liable to be rejected, as the issue is no more Res-integra. Moreover, the NGT had adjudicated the issue about non-serious nature of the environmental problems that may arise due to the construction of structures by the 5<sup>th</sup> Respondent in 7 Acres of land located at the extreme end of the S. No. 707 , subject to the conditions prescribed therein, leaving aside the determination of the nature of the lands to the State Level Wetland Authority as per Paragraph No.48 of the order dated 02.08.2017 and therefore, it is clear that the remaining lands in S.No.707, leaving the above 7 Acres transferred to the 5<sup>th</sup> Respondent, were not part of the proceedings before the NGT, which also took note of the factum of pendency of the present Writ Petition in that order dated 02.08.2017 and had refrained from expressing any view or issuing any direction to the Petitioner in respect of the pending Writ Petition.

9. It was further contended by the Petitioner that when the Third Respondent took a stand before the NGT that they were unnecessary parties to the proceedings, the plea raised by the Third Respondent regarding the claim of Res-judicata is highly unsustainable. Above all, the NGT cannot determine the validity of the transfer of Wetlands by the State Authorities, which come under the ambit of Public Trust Doctrine. The contention of the Petitioner was that the Union Ministry of Environment, Forest and Climate Change has notified the Wetlands (Conservation and Management) Rules, 2017, replacing the Wetlands Rules, 2010 and

has prescribed various powers and functions of the State Level Wetland Authority under Sub-rule No.7, such as identification, demarcation, notification and preparation of a brief document for each of the Wetland identified for notification within a period of one year from the date of publication of the Rules. Hence, any future activities on the disputed wet lands shall be subject to the provisions of the newly notified Wetland Rules, 2017 only. A careful reading of the findings of the NGT, especially Paragraph Nos.46 r/w Para No.28 would transpire that though the subject lands may be wetlands, they were not notified wetlands under the Wetlands (Conservation and Management) Rules, 2010 and therefore, no protection can be claimed under the said Rule. By relying upon those few lines, it was argued by the Learned Counsel for the Petitioner that the NGT did not completely agree with the averments raised by the Respondents therein that the lands are neither water bodies nor backwater nor Marsh land, as it had stated that those lands were not notified under the Wetland Rules, 2017 and it was not known as to whether the disputed lands are among the 2,01,503 wetlands, subjected to the preservation / protection provided by the decision of the Hon'ble Supreme Court dated 08.02.2017. Hence, it was contended that it is for the Government to decide after due inspection with the help of an expert as to whether those lands are classified as Marsh Lands under the provisions of the Wetland Rules, 2017.

10. The Learned Counsel for the Petitioner, in support of his submission that the transfer of Kazhuveli lands is violative of the settled principle, has relied upon the following judgments:

i) Jagpal Singh and Others vs. State of Punjab and Others, reported in (2011) 11 SCC 396 / MANU/SC/0078/2011, in which, the Hon'ble Supreme Court enunciated the Principle of "Public Trust Doctrine" and the Responsibilities of the State in protecting natural and communal properties.

ii) M.C.Mehta vs. Kamalnath, reported in (1997) 1 SCC 388 / MANU/SC/1007/1997, wherein it has been held as under:

"16. The ancient Roman Empire developed a legal theory known as the "Doctrine of the Public Trust". It was founded on the ideas that certain common properties such as rivers, sea-shore, forests and the air were held by Government in trusteeship for the free and unimpeded use of the general public. Our contemporary concern about "the environment" bear a very close conceptual relationship to this legal doctrine. Under the Roman Law these resources were either owned by no one (Res Nullious) or by every one in common (Res Communious). Under the English common law, however, the Sovereign could own these resources

but the ownership was limited in nature, the Crown could not grant these properties to private owners if the effect was to interfere with the public interests in navigation or fishing. Resources that were suitable for these uses were deemed to be held in trust by the Crown for the benefit of the public, Joseph L. Sax, Professor of Law, University of Michigan proponent of the Modern Public Trust Doctrine in an erudite article "Public Trust Doctrine in natural resource law; effective judicial intervention". Michigan Law Review Vol. 68 Part-I page 473 has given the historical background of the Public Trust Doctrine as under:

"The source of modern public trust law is found in a concept that received much attention in Roman and English law - the nature of property rights in rivers, the sea, and the seashore. That history has been given considerable attention in the legal literature, need not be repeated in detail here. But two points should be emphasized. First, certain interests, such as navigation and fishing, were sought to be preserved for the benefit of the public, accordingly, property used for those purposes was distinguished from general public property which the sovereign could routinely grant to private owners. Second, while it was understood that in certain common properties - such as the seashore, highways, and running water - "perpetual use was dedicated to the public," it has never been clear whether the public had an enforceable right to prevent infringement of those interests. Although the state apparently did protect public uses, no evidence is available that public rights could be legally asserted against a recalcitrant government."

17. The Public Trust Doctrine primarily rests on the principle that certain resources like air, sea, waters and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being a gift of nature. They should be made freely available to everyone irrespective of the status in life. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit them- use for private ownership or commercial purposes."

iii) T.S. Senthil Kumar vs. Government of Tamil Nadu, Rep. by its Secretary, PWD, reported in (2010) 3 MLJ 771 / MANU/TN/0281/2010:

"20. In the result, we dispose of the writ petition in the same lines adopting the same method which the Supreme Court done in the two cases cited supra Mysore v. J.V. Bhat MANU/SC/0090/1974 : 1975 (2) S.C.R. 407 and (ii) The Scheduled Caste & Weaker Section Welfare Association v. State of Karnataka MANU/SC/0271/1991 : 1991 (1) U.J. (S.C.) 628 : AIR 1991 SC 1117 : 1991 (2) SCC 604, where the Supreme Court dealt with the Mysore Slum (Improvement and Clearance) Act, 1958 and without declaring that the Act is unconstitutional since no opportunity is given, we will hold that there is nothing in the Act which excludes the principles of natural justice. The Act does not specifically indicate that the encroachers do not have a right to be heard and therefore we issue the following directions.

(a) The State shall scrupulously follow the provisions of the Act. It shall also ensure that all the District Collectors and other authorities, who are concerned with the observance of the provisions of the Act, strictly follow the letter, dated 10.10.2007.

(b) The District Collectors, while creating adequate awareness, may also enlist the help of Self Help Groups to disseminate the message that protection of water resources will actually promote the welfare of the villages and therefore it is in the interest of every citizen to make sure that he is not encroaching on a tank and to clear tanks and water bodies which are filled with garbage and to avoid dumping of garbage will automatically enhance and improve the public health of the community.

(c) As already stated, the State will ensure that alienation of tank poramboke lands, citing public interest, shall not be made under Section 12 of the Act. The meaning and weight of the words "public interest" shall be implicitly borne in mind.

(d) The State holds all the water bodies in public trust for the welfare of this generation and all the succeeding generations and, therefore, protecting water bodies must be given as much weightage, if not more as allowing house-sites or other buildings to come up on such tanks or tank poramboke lands, and

water charged lands.

(e) The State shall also bear in mind the provisions of this Act and the objects and reasons of this Act while issuing patta to persons who claim to have resided in the same place for a number of years and if necessary modify the relevant Government Orders to make sure that the implementation of these G.Os. are not in violation of this very valuable and important Act, namely Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007.

(f) We uphold the Act, while we provide for observance of principles of natural justice within the Act itself, as under.

(i) When the officer of the Public Works Department publishes the notice in Form-II in the notice boards of the offices of Village Administrative Officer, Village Panchayat Office and the Water Resources Organization, notice shall also be issued to the alleged encroacher to the effect that the survey indicates that the place in his/her occupation is an encroachment and secondly, the notice in Form-III of the Rules may be issued.

(ii) 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.

(iii) Thereafter, 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."

11. Thus, it was argued by the Learned Counsel for the Petitioner that it is absolutely mandatory on the part of the State Government to protect and preserve Kazhuveli lands in the large public interest and if any building has been constructed on the lands has to be necessarily removed and the entire extent of Kazhuveli lands needs to be restored to its original position. Hence, the Government Orders impugned herein are to be quashed, otherwise, based on these Government Orders, rest of such lands will soon disappear, as a result of which, there will not be any place for proper storage of water so as to overcome the water scarcity problem.

12. Conversely, the Learned Additional Advocate General-V strongly repudiated the above contentions raised by the Learned

Counsel for the Petitioner, stating that the lands in S.No.707 are classified as Government Poromboke - Kazhuveli, a generic term used for describing wetlands, which can include crop fields, marsh etc and under the wrong notion that all wet lands are marsh lands/back waters/water bodies, the writ petition before this Court and the Application before the NGT have been filed. It is pertinent to mention here that even wet lands can even refer to other unobjectionable revenue lands, such as assessed / un-assessed waste lands, paddy fields, etc., and these later lands are unobjectionable and assignable lands and do not have any environmental or ecological importance such as a backwater / marsh land. The Learned Additional Advocate General further added that as per the provisions of the Tamil Nadu Town and Country Planning Act, more specifically Section 47-A and the Tamil Nadu (Additional Assessment and Additional Water Cess) Act, the term Wetland is used to describe the Crop field.

13. In support of her argument that the lands assigned to the Respondents 5 and 6 are not Kazhuveli lands and cannot classified as Marsh Lands, the Learned Additional Advocate General cited the judgment of this Court in the case of *Susetha -vs- Union of India* [W.P.No.30725 of 2008] decided on 28.07.2010, wherein it has been held as under:

"55. According to the Concise Oxford English Dictionary, the term 'Marsh' means, 'an area of low-lying land which is flooded in wet seasons or at high tide, and typically remains waterlogged at all times. In Geography, a 'marsh', or 'morass', is a type of wetland that is subject to frequent or continuous flood, typically the water is shallow and features grasses, rushes, reeds, typhas, sedges and other herbaceous plants. When it has been proved beyond doubt that the entire area is already a developed one and the Government has handed over the land to the Tamil Nadu Slum Clearance Board only after clearing the encroachers in the area, no prudent man could say that the land continues to be a marshy one, since it will be unfit for human habitation. It is also within the knowledge of anybody that a 'backwater' to be in existence, it should be connected to a sea nearby. But, the Buckingham Canal and Bay of Bengal gets connected at a distance of nearly twenty kilometers away from the proposed area and the land in question is to the West of sea coast and in between the sea coast and the land there exist several well-developed areas such as Neelangarai, Injambakkam, Palavakkam etc. Therefore, the possibility of sea water flowing to the land in question is completely ruled out. Further more, no cultivation could be expected in a back water area."

14. According to the Learned Additional Advocate General,

the lands in question fall within unobjectionable category and are, therefore, suitable for assignment and since the land was below road level by few feet, there was water stagnation during certain months, which alone is not a criteria to state that the land is purely a Wetland. She also quoted a few judgments of this Court in the case of Somasekharan Nair Vs. The District Collector, Nagercoil Post, Kanyakumari District and 9 others [W.P.(MD) No.2285 of 2016] decided on 09.09.2016 and Great Eastern Energy Corporation Ltd vs. State of Tamil Nadu and Ors [W.P.No.34321 of 2016] decided on 07.08.2017, to vigorously state that the environmental issues and matters covered under the NGT Act, Schedule I should be instituted and litigated before the National Green Tribunal only and not before this Court under Article 226 of the Constitution of India. Such approach may be necessary to avoid likelihood of conflict of orders between the High Court and National Green Tribunal. She further reiterated that after the Act of NGT 2010 came into force, the environmental issues and matters covered under the NGT Act, Schedule-I should be instituted and litigated before the National Green Tribunal and this Court have no competent jurisdiction to entertain this writ petition. Thus, it was her contention that the Petitioner, having agitated the issue in length before the NGT, cannot seek to re-agitate the same again before this Court and she prayed that since the above Government Orders are issued solely for the benefit of public at large, no interference is warranted by this Court and the Writ Petition is to be dismissed with exemplary costs.

15. The Learned Senior Central Government Standing Counsel for R9 submitted that with a view to conserve and manage the Wetlands in India, the Ministry of Environment and Forests, in consultation with all the stakeholders notified the Wetlands (Conservation and Management) Rules, 2017 in replacement of the Wetlands (Conservation and Management) Rules, 2010, vide which, the powers have been delegated to the State Governments in respect of delegation of notification of wetlands. Therefore, it was argued that Ministry of Environment and Forests / R9 has no concern with the present issue on hand and it is for the State Government to take necessary action in the matter.

16. Heard the Learned Counsel for the Petitioner, the Learned Additional Advocate General-V for R1 to R8 and the Learned Senior Central Government Standing Counsel for R9.

17. According to the Petitioner, the decision of the Government in transferring 2.83.50 Hectors of land in S.No.707/2 to the Fifth Respondent and 12.72.00 Hectors of land in S.No.707/3 to the Sixth Respondent by orders dated 18.01.2013 and 09.06.2014 respectively in high-handed manner, will be

prejudicial to the Public Interest, inasmuch as those lands are the main source for storages of excess water during rains, being released from Pallikaranai Marsh lands into the Buckingham Canal through "Thoraipakkam-Okkiam-Madav". According to him, on account of such storage, the nearby localities are benefitted, including several flora and fauna and living creatures and any attempt of conversion of lands will, not only cause damages, but also be a great threat to the environmental situation of the State.

18. On the side of the Respondents, it was stated that on due inspection and consultation with the environmentalists and expert, the decision of transfer had been taken by the Government and mere conversion of a small portion of the lands cannot be construed that the entire areas have been transferred for construction of buildings for the public purpose. It was also stated that the Government is keen in consistent preservation and protection of ecologically sensitive areas, such as Pallikaranai Marsh Lands and the Government, taking into account the fact that the rain water is getting stagnated in those lands occasionally, had decided to transfer the Kazhuvelli lands for the use of public by other departments. The other plea raised was that the Writ Petition is not at all maintainable on the principle of res judicata, as the Writ Petitioner, having not achieved his object in other Forum, namely, the NGT, has invoked the Writ jurisdiction for getting an order of his choice through backdoor entry.

19. The first and foremost issue to be decided in this case is as to whether the petitioner, having exercised his remedy before the Statutory Body, namely, the NGT at the nascent stage (which also rendered its finding subsequently), can be permitted to file the present Writ Petition before this Court. According to the Petitioner, the scope of power of the NGT is very limited and is confined to Section 14 r/w Schedule 1 of the National Green Tribunal Act, 2010, whereas this Court has got a vast power under Article 226 of the Constitution of India in respect of quashing any Government Orders and also issue suitable directions to the State and Central Governments, as it may deem fit. For clear understanding, this Court feels it appropriate to extract Section 14 of the National Green Tribunal Act, 2010 as under:

"Section 14(1) in The National Green Tribunal Act, 2010:

(1) The Tribunal shall have the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved and such question arises out of the implementation of the enactments

specified in Schedule I.

20. A glance at the relief sought for before the NGT (Southern Zone), Chennai in the Application No.145 of 2015 (SZ) was for a direction to the respondents to stop all activities in the Marsh lands in S.No.707 comprising of the entire 61.60 acres at Sholinganalur Village, Kancheepuram District immediately on the petitioner coming to know of the fact of utilization of lands for some other purpose. However, in this petition, the Petitioner has challenged the very issuance of Governments Orders, seeking to transfer the lands for locating Public Offices.

21. It is relevant to point out here that though the National Green Tribunal is a Statutory Body, set up under the NGT Act, it cannot exercise the jurisdiction of all Courts like that of other Administrative Tribunals, constituted under Article 323A of the Constitution of India, which reads as under:

(1) Parliament may, by law, provide for the adjudication or trial by administrative tribunals of disputes and complaints with respect to recruitment and conditons of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation owned or controlled by the Government.

(2) A law made under clause (1) may-

(a) provide for the establishment of an administrative tribunal for the Union and a separate administrative tribunal for each State or for two or more States;

(b) specify the jurisdiction, powers (including the power to punish for contempt) and authority which may be exercised by each of the said tribunals;

(c) provide for the procedure (including provisons as to limitation and rules of evidence) to be followed by the said tribunals;

(d) exclude the jurisdiction of all courts, except the jurisdiction of the Supreme Court under article 136, with respect to the disputes or complaints referred to in clause (1);

(e) provide for the transfer to each such administrative tribunal of any cases pending before any court or other authority immediately before the establishment of such tribunal as would have been within the jurisdiction of such tribunal if the causes of

action on which such suits or proceedings are based had arisen after such establishment;

(f) repeal or amend any order made by the President under clause (3) of article 371D;

(g) contain such supplemental, incidental and consequential provisions (including provisions as to fees) as Parliament may deem necessary for the effective functioning of, and for the speedy disposal of cases by, and the enforcement of the orders of, such tribunals.

3) The provisions of this article shall have effect notwithstanding anything in any other provision of this Constitution or in any other law for the time being in force."

22. It is obvious that the National Green Tribunal was established in terms of the provisions of Section 3 of the NGT Act, 2010 and for clarity, Section 3 is extracted below:

"3. Establishment of Tribunal -

The Central Government shall, by notification, establish, with effect from such date as may be specified therein, a Tribunal to be known as the National Green Tribunal to exercise the jurisdiction, powers and authority conferred on such Tribunal by or under this Act."

23. There are catena of judgments to the effect that the Rules cannot override the Act and similarly, the Act cannot override any of the provisions enacted under the provisions of the Constitution of India. The Hon'ble Supreme Court in the case of B.N.Nagarajan and Others vs. State Of Karnataka and Others, reported in 1979 AIR 1676, held as under:

"....What could not be done under the three sets of Rules as they stood, would thus be achieved by an executive fiat. And such a course is not permissible because an act done in the exercise of the executive power of the Government as already stated, cannot override rules framed under Article 309 of the Constitution."

24. In yet another case in Union of India and others vs. Major General Shri Kant Sharma and another [Civil Appeal No.7400 of 2013] decided on 11.03.2015, has categorically held as follows:

"24. A three-Judge Bench of this Court in R.K. Jain vs. Union of India & ors., (1993) 4 SCC 119, observed:

"66. In S.P. Sampath Kumar v. Union of India, this Court held that the primary duty of the judiciary is to interpret the Constitution and the laws and this would predominantly be a matter fit to be

decided by the judiciary, as judiciary alone would be possessed of expertise in this field and secondly the constitutional and legal protection afforded to the citizen would become illusory, if it were left to the executive to determine the legality of its own action. The Constitution has, therefore, created an independent machinery i.e. judiciary to resolve disputes, which is vested with the power of judicial review to determine the legality of the legislative and executive actions and to ensure compliance with the requirements of law on the part of the executive and other authorities. This function is discharged by the judiciary by exercising the power of judicial review which is a most potent weapon in the hands of the judiciary for maintenance of the rule of law. The power of judicial review is an integral part of our constitutional system and without it, there will be no government of laws and the rule of law would become a teasing illusion and a promise of unreality. The judicial review, therefore, is a basic and essential feature of the Constitution and it cannot be abrogated without affecting the basic structure of the Constitution. The basic and essential feature of judicial review cannot be dispensed with but it would be within the competence of Parliament to amend the Constitution and to provide alternative institutional mechanism or arrangement for judicial [pic]review, provided it is no less efficacious than the High Court. It must, therefore, be read as implicit in the constitutional scheme that the law excluding the jurisdiction of the High Court under Articles 226 and 227 permissible under it, must not leave a void but it must set up another effective institutional mechanism or authority and vest the power of judicial review in it which must be equally effective and efficacious in exercising the power of judicial review. The tribunal set up under the Administrative Tribunals Act, 1985 was required to interpret and apply Articles 14, 15, 16 and 311 in quite a large number of cases. Therefore, the personnel manning the administrative tribunal in their determinations not only require judicial approach but also knowledge and expertise in that particular branch of constitutional and administrative law. The efficacy of the administrative tribunal and the legal input would undeniably be more important and

sacrificing the legal input and not giving it sufficient weightage would definitely impair the efficacy and effectiveness of the Administrative Tribunal. Therefore, it was held that an appropriate rule should be made to recruit the members; and to consult the Chief Justice of India in recommending appointment of the Chairman, Vice-Chairman and Members of the Tribunal and to constitute a committee presided over by Judge of the Supreme Court to recruit the members for appointment. In *M.B. Majumdar v. Union of India* when the members of CAT claimed parity of pay and superannuation as is available to the Judges of the High Court, this Court held that they are not on a par with the judges but a separate mechanism created for their appointment pursuant to Article 323-A of the Constitution. Therefore, what was meant by this Court in *Sampath Kumar* case ratio is that the tribunals when exercise the power and functions, the Act created institutional alternative mechanism or authority to adjudicate the service disputes. It must be effective and efficacious to exercise the power of judicial review. This Court did not appear to have meant that the tribunals are substitutes of the High Court under Articles 226 and 227 of the Constitution. *J.B. Chopra v. Union of India* merely followed the ratio of *Sampath Kumar*."

25. From the aforesaid decisions of this Court in *L. Chandra* and *S.N. Mukherjee*, we find that the power of judicial review vested in the High Court under Article 226 is one of the basic essential features of the Constitution and any legislation including Armed Forces Act, 2007 cannot override or curtail jurisdiction of the High Court under Article 226 of the Constitution of India."

25. Though this Court has no quarrel with the propositions that i) no petition filed under Article 226 of the Constitution of India can be entertained, when an effective alternative remedy is available to the aggrieved person or the statute, under which, the action complained of has been taken itself contains a mechanism for redressal of grievance and ii) when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation, at the same time, it cannot be lost sight of the fact that in the present case on hand, the NGT has no general power akin to that of this Court under Article 226 of the Constitution of India and cannot strike down even rules or

regulations, in view of the authoritative pronouncement of the recent judgment in the case of Tamil Nadu Pollution Control Board vs. Sterlite Industries (I) Ltd., reported in 2019 (3) Scale 721 / MANU/SC/0223/2019, wherein it is held as follows:

"40. Shri Sundaram then argued that this Court in L. Chandra Kumar (supra) made it clear that Tribunals that are set up, generally have the power of judicial review, save and except a challenge to the vires of the legislation under which such Tribunals are themselves set up. For this, he relied strongly upon paragraphs 90 and 93 of the judgment in L. Chandra Kumar (supra). It is important to notice that L. Chandra Kumar (supra) pertained to a Tribunal that was set up Under Article 323A of the Constitution of India. Under Article 323A(2) (d), the Administrative Tribunal so set up would be able to exercise the jurisdiction of all courts except the jurisdiction of the Supreme Court Under Article 136 of the Constitution. This would mean that the Administrative Tribunal so set up could exercise the jurisdiction of all High Courts when it came to the matters specified in Article 323A. This is further made clear by a conjoint reading of Section 14 and Section 28 of the Administrative Tribunals Act, 1985, which read as follows:

14. Jurisdiction, powers and authority of the Central Administrative Tribunal.--(1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts (except the Supreme Court) in relation to--

(a) recruitment, and matters concerning recruitment, to any All-India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian;

(b) all service matters concerning--

(i) a member of any All-India Service; or

(ii) a person not being a member of an All-India Service or a person referred to in Clause (c) appointed to any civil service of the Union or any civil post under the Union; or

(iii) a civilian not being a member of an All-India Service or a person referred to in Clause (c) appointed to any defence services or a post connected with defence,

and pertaining to the service of such member, person or civilian, in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation or society owned or controlled by the Government;

(c) all service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in Sub-clause (ii) or Sub-clause (iii) of Clause (b), being a person whose services have been placed by a State Government or any local or other authority or any corporation or society or other body, at the disposal of the Central Government for such appointment.

Explanation.--For the removal of doubts, it is hereby declared that references to "Union" in this Sub-section shall be construed as including references also to a Union Territory.

(2) The Central Government may, by notification, apply with effect from such date as may be specified in the notification the provisions of Sub-section (3) to local or other authorities within the territory of India or under the control of the Government of India and to corporations or societies owned or controlled by Government, not being a local or other authority or corporation or society controlled or owned by a State Government:

Provided that if the Central Government considers it expedient so to do for the purpose of facilitating transition to the scheme as envisaged by this Act, different dates may be so specified under this Sub-section in respect of different classes of, or different categories under any class of, local or other authorities or corporations or societies.

(3) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall also exercise, on and from the date with effect from which the provisions of this Sub-section apply to any local or other authority or corporation or society, all the jurisdiction, powers and authority exercisable immediately before that date by all courts (except the Supreme Court) in relation to--

(a) recruitment, and matters concerning recruitment, to any service or post in connection with the affairs of such local or other authority or corporation or society;

and

(b) all service matters concerning a person other than a person referred to in Clause (a) or Clause (b) of Sub-section (1) appointed to any service or post in connection with the affairs of such local or other authority or corporation or society and pertaining to the service of such person in connection with such affairs.

28. Exclusion of jurisdiction of courts except the Supreme Court Under Article 136 of the Constitution.--On and from the date from which any jurisdiction, powers and authority becomes exercisable under this Act by a Tribunal in relation to recruitment and matters concerning recruitment to any Service or post or service matters concerning members of any Service or persons appointed to any Service or post, no court except--

(a) the Supreme Court; or

(b) any Industrial Tribunal, Labour Court or other authority under the Industrial Disputes Act, 1947 or any other corresponding law for the time being in force, shall have, or be entitled to exercise any jurisdiction, powers or authority in relation to such recruitment or matters concerning such recruitment or matters concerning such recruitment or such service matters.

Article 323B of the Constitution of India also provides for Tribunals for certain other matters which are specified by Sub-clause (2) thereof. Suffice it to say that the NGT is not a Tribunal set up either Under Article 323A or Article 323B of the Constitution, but is a statutory Tribunal set up under the NGT Act. That such a Tribunal does not exercise the jurisdiction of all courts except the Supreme Court is clear from a reading of Section 29 of the NGT Act (supra). Thus, a conjoint reading of Section 14 and Section 29 of the NGT Act must be contrasted with a conjoint reading of Section 14 and Section 28 of the Administrative Tribunals Act, 1985.

41. It is in the context of Article 323A and the Administrative Tribunals Act, 1985 that this Court in L. Chandra Kumar (supra) has observed in paragraph 93 as follows:

93. Before moving on to other aspects, we may summarise our conclusions on the jurisdictional powers of these Tribunals. The Tribunals are competent to hear matters where the vires of statutory provisions are questioned.

However, in discharging this duty, they cannot act as substitutes for the High Courts and the Supreme Court which have, under our constitutional set-up, been specifically entrusted with such an obligation. Their function in this respect is only supplementary and all such decisions of the Tribunals will be subject to scrutiny before a Division Bench of the respective High Courts. The Tribunals will consequently also have the power to test the vires of subordinate legislations and rules. However, this power of the Tribunals will be subject to one important exception. The Tribunals shall not entertain any question regarding the vires of their parent statutes following the settled principle that a Tribunal which is a creature of an Act cannot declare that very Act to be unconstitutional. In such cases alone, the High Court concerned may be approached directly. All other decisions of these Tribunals, rendered in cases that they are specifically empowered to adjudicate upon by virtue of their parent statutes, will also be subject to scrutiny before a Division Bench of their respective High Courts. We may add that the Tribunals will, however, continue to act as the only courts of first instance in respect of the areas of law for which they have been constituted. By this, we mean that it will not be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except, as mentioned, where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned.

42. In *Bharat Sanchar Nigam Limited v. Telecom Regulatory Authority of India and Ors.*, MANU/SC/1264/2013 : (2014) 3 SCC 222 ["BSNL"], this Court had to construe the appellate power that is contained in Section 14 of the Telecom Regulatory Authority of India Act, 1997, by which, the TDSAT was conferred with the power to hear and dispose of appeals against any direction, decision, or order of the TRAI. In this context, after distinguishing the judgment in *L. Chandra Kumar* (supra), this Court held:

108. Before the 2000 Amendment, the applications were required to be filed Under Section 15 which also contained detailed procedure for deciding the same. While Sub-section (2) of Section 15 used the word "orders", Sub-sections (3) and (4) thereof used the word "decision". In terms of Sub-section (5), the orders and directions of TRAI were treated as binding on the service providers, Government and all other persons concerned.

Section 18 provided for an appeal against any decision or order of TRAI. Such an appeal could be filed before the High Court. The Amendment made in 2000 is intended to vest the original jurisdiction of TRAI in TDSAT and the same is achieved by Section 14(a). The appellate jurisdiction exercisable by the High Court is also vested in TDSAT by virtue of Section 14(b) but this does not include decision made by TRAI. Section 14-N provides for transfer to all appeals pending before the High Court to TDSAT and in terms of Clause (b) of Sub-section (2), TDSAT was required to proceed to deal with the appeal from the stage which was reached before such transfer or from any earlier stage or de novo as considered appropriate by it. Since the High Court while hearing appeal did not have the power of judicial review of subordinate legislation, the transferee adjudicatory forum i.e. TDSAT cannot exercise that power Under Section 14(b).

114. ... From the above-extracted portion of the order it is evident that the Bench, which decided the matter, felt that the view taken by TDSAT would encourage rampant violation of the orders without any penal consequence and the entire scheme of the TRAI Act would become unworkable. The word "directions" used in Section 29 of the TRAI Act was interpreted to include orders and Regulations in the context of the factual matrix of that case and the apprehension of the Court that Section 29 would otherwise become unworkable, but the same cannot be read as laying down a proposition of law that the words "direction", "decision" or "order" used in Section 14(b) would include Regulations framed Under Section 36, which are in the nature of subordinate legislation.

123. In Union of India v. Madras Bar Assn. [MANU/SC/0378/2010 : (2010) 11 SCC 1] and State of Gujarat v.

Gujarat Revenue Tribunal Bar Assn. [MANU/SC/0901/2012 : (2012) 10 SCC 353; (2012) 4 SCC (Civ) 1229; (2013) 1 SCC (Cri.) 35; (2013) 1 SCC (L & S) 56; (2012) 10 Scale 285], this Court applied the principles laid down in L. Chandra Kumar case [L. Chandra Kumar v. Union of India, MANU/SC/0261/1997 : (1997) 3 SCC 261; 1997 SCC (L & S) 577] and reiterated the importance of tribunals created for resolution of disputes but these judgments too have no bearing on the decision of the question formulated before us.

124. In the result, the question framed by the Court is

answered in the following terms: in exercise of the power vested in it Under Section 14(b) of the TRAI Act, TDSAT does not have the jurisdiction to entertain the challenge to the Regulations framed by TRAI Under Section 36 of the TRAI Act.

In the present case, it is clear that Section 16 of the NGT Act is cast in terms that are similar to Section 14 (b) of the Telecom Regulatory Authority of India Act, 1997, in that appeals are against the orders, decisions, directions, or determinations made under the various Acts mentioned in Section 16. It is clear, therefore, that under the NGT Act, the Tribunal exercising appellate jurisdiction cannot strike down Rules or Regulations made under this Act. Therefore, it would be fallacious to state that the Tribunal has powers of judicial review akin to that of a High Court exercising constitutional powers Under Article 226 of the Constitution of India. We must never forget the distinction between a superior court of record and courts of limited jurisdiction that was, in the felicitous language of Gajendragadkar, C.J., in *Re: Special Reference*, (1965) 1 SCR 413, made in the following words:

We ought to make it clear that we are dealing with the question of jurisdiction and are not concerned with the propriety or reasonableness of the exercise of such jurisdiction. Besides, in the case of a superior Court of Record, it is for the court to consider whether any matter falls within its jurisdiction or not. Unlike a Court of limited jurisdiction, the superior Court is entitled to determine for itself questions about its own jurisdiction. "*Prima facie*", says Halsbury, "no matter is deemed to be beyond the jurisdiction of a superior court unless it is expressly shown to be so, while nothing is within the jurisdiction of an inferior court unless it is expressly shown on the face of the proceedings that the particular matter is within the cognizance of the particular court [Halsbury's Laws of England, vol. 9, p. 349].

For this reason also, we are of the view that the State Government order made Under Section 18 of the Water Act, not being the subject matter of any appeal Under Section 16 of the NGT Act, cannot be "judicially reviewed" by the NGT. Following the judgment in *BSNL (supra)*, we are of the view that the NGT has no general power of judicial review akin to that vested Under Article 226 of the Constitution of India possessed by the High Courts of this country. Shri Sundaram's strong reliance on the NGT judgment dated 17.07.2014 in *Wilfred v. Ministry of*

Environment and Forests must also be rejected as this NGT judgment does not state the law on this aspect correctly. This contention is also without merit, and therefore, rejected."

26. Thus, once again, it has been affirmed by the Hon'ble Supreme Court that the power of judicial review vested in the High Court under Article 226 is one of the basic essential features of the Constitution and no Act can override such jurisdiction of this Court. Notwithstanding the fact that on the side of the Respondents 1 to 8, heavy reliance was placed on the order dated 07.08.2017 in W.P.No.34321 of 2019 [Great Eastern Energy Corporation Ltd vs. State of Tamil Nadu and Ors] to the effect that the environmental issues and matters covered under the National Green Tribunal Act, 2010, should be instituted and litigated before the said Tribunal, etc., this Court, bearing in mind the latest judgment of the Hon'ble Supreme Court in Tamil Nadu Pollution Control Board vs. Sterlite Industries (I) Ltd., (cited supra), comes to a resultant conclusion that the Government Orders impugned in the present Writ Petition can only be assailed before this Court under plenary jurisdiction of Article 226 of the Constitution of India. Viewed in that perspective, the contention advanced on behalf of the Respondents that the Writ Petition is hit by the principle of Res Judicata is not acceded to by this Court. That apart, the correctness, legality and validity of the Government Orders is only to be tested before the Hon'ble High Court and not before the NGT.

27. The next question to be decided is as to whether the Government is right in issuing the impugned orders for transfer of Kazhuveli Lands for the public use by way of construction of huge buildings on it. A scrutiny of the counter filed by the Third Respondent itself reveals that there are chances of stagnation of rain water during rainy season and therefore, it can be presumed that such wetlands undoubtedly play a vital role in the hydrological cycle on account of its wide ranging ecosystem services, like water supply and purification, water assimilation, buffering extreme events of floods, etc. The nature cannot be predicted and it is beyond human knowledge and wisdom and it cannot be said that the wetlands will always remain as dry lands without water. It is the stand of the Government that the Kazhuveli lands in question are proposed to be used for public use by way of setting up a transport office and tourism place and it is astonishing to note that during rainy season, especially when the building constructed thereon was surrounded by water, how can the Public make use of the Public Office for their own use, unless the Government introduces the boat service to reach the destination.

28. Article 48-A of the Constitution of India stipulates that the State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country. When Section 18(1)(b) of the Water (Prevention and Control of Pollution) Act, 1974 empowers the State to direct any State Board to seal any plant, which affects the free flow of water, how can the State itself set up a building on the Kazhuveli lands. The literal meaning of 'March' is a low-lying area and will remain waterlogged at all times pursuant to the flood during wet seasons or during high tide. The main object for introduction of the new Rules, namely, the Wetlands (Conservation and Management) Rules, 2017 is that the wetlands shall be conserved and managed in accordance with the principle of 'wise use' as determined by the Wetlands Authority. But, the decision of the Government in transferring such lands will certainly defeat the purpose, for which, the new Rule was introduced.

29. Section 4 of the Wetlands (Conservation and Management) Rules, 2017 stipulates as under:

"4. Restrictions of activities in wetlands.-

(2) The following activities shall be prohibited within the wetlands, namely,-

(i) conversion for non-wetland uses including encroachment of any kind;

(ii) setting up of any industry and expansion of existing industries;

(iii) manufacture or handling or storage or disposal of construction and demolition waste covered under the Construction and Demolition Waste Management Rules, 2016; hazardous substances covered under the Manufacture, Storage and Import of Hazardous Chemical Rules, 1989 or the Rules for Manufacture, Use, Import, Export and Storage of Hazardous Micro-organisms Genetically engineered organisms or cells, 1989 or the Hazardous Wastes (Management, Handling and Transboundary Movement) Rules, 2008; electronic waste covered under the E-Waste (Management) Rules, 2016;

(iv) solid waste dumping;

(v) discharge of untreated wastes and effluents from industries, cities, towns, villages and other human settlements;

(vi) any construction of a permanent nature except for boat jetties within fifty metres from the mean high flood level observed in the past ten years calculated from the date of commencement of these rules; and,

(vii) poaching.

Provided that the Central Government may consider proposals from the State Government or Union Territory Administration for omitting any of the activities on the recommendation of the Authority."

30. It was the stand taken by the Third Respondent in the counter that a small portion of the area was ordered to be transferred for setting up a transport for public utility and as per the Revenue Standing Order 23-A, the Collectors are empowered to transfer unobjectionable poramboke lands and lands not coming under banned category to the State Government Departments to the minimum extent, irrespective of the land value, in consultation with the Public Works Department and other departments concerned.

31. The starting point for encroachment is an allotment of the small portion of the environmental areas for some other purpose and later on, it will be widespread throughout, thereby polluting the rest of the areas. Though six feet space is sufficient for burial of a dead body, several burials will become a grave yard. It is worthwhile to refer to the judgment of the Hon'ble Supreme Court in Indian Council for Enviro-Legal Action vs. Union of India, reported in (1996) 5 SCC 281, in which it had been 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. The concept of public trust doctrine is a mixture of natural resources, such as lakes, ponds, etc and it should be disposed of only in a manner that is consistent with the nature of such a trust.

32. The Hon'ble Supreme Court in a recent case in Sarvepalli Ramaiah (D) Tr.Lrs vs District Collector, Chittoor [Civil Appeal No.7461 of 2009] decided on 14.03.2019, went on to emphasise as follows:

"31. The Single Bench as also the Division Bench of the High Court rightly held that it was well settled that poramboke (tank) cannot be alienated. No patta can be granted in respect of tanks and water bodies including those that might have dried up or fallen into disuse. The appellants and/or their predecessor in interest had not challenged the gazette notification of

3rd September, 1984 notifying the entire Survey No.234 at Tiruchanoor as "Peddacheruvu Poramboke" that is tank.

32. This Court has time and again emphasized the need to retain and restore water bodies and held that water bodies are inalienable. Land comprised in water bodies cannot be alienated to any person even if it is dry. Reference may be made to the judgments of this Court in:

(1) *Susetha vs. State of Tamil Nadu*, reported in (2006) 6 SCC 543;

(2) *M.C. Mehta (Badkhal and Surajkund Lakes Matter) vs. Union of India* reported in (1997) 3 SCC 715 and (3) *Intellectuals Forum v. State of Andhra Pradesh*, reported in (2006) 3 SCC 549

33. Both the Single Bench and the Division Bench having concurred in their well reasoned findings, interference of this Court is not warranted. For the reasons discussed above, I agree with my esteemed sister in dismissing the appeal."

33. A careful reading of the judgment of the NGT dated 02.08.2017 discloses the fact that the finding rendered therein will not come to the complete rescue of the Respondents, inasmuch as it rendered that though these lands could be wetlands, proper notification was not issued under the Wetlands (Conservation and Management) Rules, 2010 and therefore, it decided the question in general based on the available materials before it without touching upon the legal position and Rules. The National Green Tribunal further observed that in case of heavy rain like the one occurred during December, 2015, the disaster would be unimaginable, if the nature of the lands is altered by way of putting up constructions and therefore, a special care should be taken before carrying out reclamation or construction works on the lands situated on the Canal.

34. The Repondents have not adduced any piece of materials to substantiate that the disputed lands are not among the 2,01,503 wetlands, categorized by the Hon'ble Supreme Court by order dated 08.02.2017, whereas the Petitioner had annex a copy of 'A' Register Extract, wherein it has been clearly stated that S.No.707 is a Backwater (Kazhuveli land) and the adjacent S.Nos.708 and 709 are Cart-tract and Buckingham Canal respectively.

35. It is apposite to state that if Water and its storage places are not properly preserved / maintained, the day is not far off for us to beg water from other States / Countries. There was a song in one of the movies of M.G.Ramachandran, namely,

Vivasayee, released in the year 1967, which was composed by A.Maruthakasi and sung by famous and illustrious playback singer late T.M.Soundararajan, that

என்ன வளம் இல்லை இந்த திருநாட்டில்  
ஏன் கையை ஏந்த வேண்டும் வெளிநாட்டில்  
ஒழுங்காய் பாடு படு வயல்காட்டில்  
உயரும் உன் மதிப்ப, அயல்நாட்டில்

The substance of the above song is that which resource is not available in our Country? Why should we beg from other countries? Work in Agricultural Lands and your reputation will be high in Alien countries.

சுழன்றும் ஏர்ப் பின்னது உலகம் அதனால்  
உழந்தும் உழவே தலை. - குறள் (1031)

Written by Thiruvalluvar, a Historical Poet

The Literal meaning of the above Poem is that wherever it whirls, the work must follow the farmer. Thus, despite hardships, farming is the best. It is pertinent to mention that there is a separate chapter called 'Farming' with Kural 1031 to 1040 to illustrate the importance of agriculture. In Kural 11 to 20 ('Van Sirappu' - The Blessing of Rain), the Poet has emphasised the importance Rain.

36. The Government should encourage farmers to do cultivation and if the Government itself converts the paddy lands into sky touching buildings (like fence eating crops), where will the farmers go for doing agricultural work?. Though People practice different religions in our country, the feel of hungriness unites all [(in other words in Tamil பசி வந்தால் பத்தும் பறக்கும் (if the hungry comes, the power will fly)] and they all depend on the farmers irrespective of creed, caste and religion.

37. Even before our independence, the Great Poet Subramanya Bharathi suggested by way of a Poem that the excess water from the Bengal Region may be used to irrigate (and cultivate) the other areas of our country and insisted upon the need to link Rivers and said poem has been composed in a song form in the Movie "Kappalottiya Thamizhan". Actually, we do not require any excess water to be brought from the Bangal Region, if we properly store it in the Wetlands, instead of letting it run to the Ocean.

38. In view of the aforesaid upshot and observations, this Court is of the view that the Impugned Government Orders issued by the First Respondent in G.O.(Ms) No. 25, Revenue [LD4(1)] Department dated 18.01.2013 and G.O.(Ms) No. 194, Revenue [LD4

(1)] Department dated 09.06.2014 have no legs to stand and they are liable to be struck down.

39. Accordingly, the Writ Petition is allowed and the aforesaid Impugned Government Orders dated 18.01.2013 and 09.06.2014 are hereby quashed with the following directions:

i) The Respondents are directed to stop further constructions, if any carried out thereon and relocate the buildings, if any constructed on the lands to some other permitted area within a period of one year from today and in that process, the Respondents must ensure that the debris are removed from the lands properly without causing any damage to the adjacent lands. The building so constructed should not be in a prohibited area;

ii) The Chief Secretary / R7 is directed to convene a meeting with the Chairperson, Tamil Nadu State Wetland Authority / R8 and other Respondents herein once in a month to review the action taken by the Chairperson / R8 and his/her team in respect of survey and identification of wetlands throughout the State of Tamil Nadu;

iii) The Eight Respondent shall conduct periodical and surprise inspections, field survey and create a boundary marks in respect of Wetlands as per the provisions of the Wetlands (Conservation and Management) Rules, 2017 and submit a report to the Chief Secretary every month, who, in turn, is directed to forward a copy of the same in affidavit format to the Registrar General of this Court once in three months. It is open to the Petitioner to obtain a copy of the report from the Registry of this Court for follow-up;

iv) It is needless to state that in case of any encroachments on the Wetlands, the Eight Respondent shall immediately act upon and ensure that all encroachments are removed without showing any indulgence / sympathy to them, by showing the order of this Court. The initial step is to disconnect the Water Supply and Electricity supply by informing the Chairman, TNEB, Chennai and CMWSSB and any such other Authority supplying water and no Civil Court shall grant any interim order without invoking Order 18 Rule 18 of CPC (which provides for the legal leniency to the Court to personally inspect the property or thing in question and prepare a memorandum of such inspection, which can then be taken upon the records of the case matter) and the inspection needs to be videographed and photographed;;

v) The Eight Respondent must ensure that there is no further encroachment and illegal constructions made on the Wetlands, by way of periodical inspections. This Court fixes the

responsibility on the Chief Secretary and the Eight Respondent and his / her team for survey and removal of encroachments on the Wetlands and any negligence / lethargic attitude noticed shall be viewed seriously.

vi) In case of dereliction of duties, the Government is entitled to take suitable disciplinary action against the erring Officials, who are entrusted with such works and the Government should review their works prior to three months of the retirement of each Official in the team and ensure that they have discharged their works satisfactorily, failing which, the Officials may be placed under suspension and dismissed from service for their misconduct, dereliction of duty, showing no devotion to work, lack of integrity so as to deprive their entire gratuity and terminal benefits;

vii) It is made clear that this Court cannot issue directions separately to each of the Department by impleading them as parties to the proceedings and therefore, this Order shall be quoted / made reference to the concerned Department, who are also responsible for the collective work for restoring / preserving Wetlands / Water Bodies / Marsh Lands and Backwaters;

viii) The Eight Respondent shall assign a separate helpline / Phone Numbers District-wise to enable the public to contact them in case of any illegal encroachment, etc. on wet lands and in the event of non-picking of phone calls, the Officer, who is in-charge of the office on that day shall be responsible for not answering the call and necessary explanation shall be called for from the concerned Official in case of any complaint from public with evidence, as most of such helplines numbers in various Departments are only deadlines, created for name sake;

ix) Since the above directions are issued in the case relating to PIL, the non-compliance of any of the above directions shall be brought to the attention of this Court by any third party, apart from the petitioner for this Court to take (suo motu) Contempt against violators and punish them with imprisonment, if there are wilful and deliberate disobedience of the order of this Court.

39. Though this Writ Petition has been filed for a direction to the 3<sup>rd</sup> Respondent to restore, protect and preserve the entire extents of "Back Water (Kazhuveli) lands" lying along the sides of Buckingham Canal in the Revenue District of Kancheepuram, in view of the fact that this Petition is in the nature of 'Public Interest Litigation', whatever order passed herein-above is applicable to the entire State of Tamil Nadu. Last but not the least, it should be remembered that,

"Nature can survive without human beings,

But Mankind cannot live without Nature."  
No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

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To:

1. The Principal Secretary  
to Government of Tamilnadu,  
Revenue Department,  
Fort St. George,  
Secretariat,  
Chennai -600 009.
2. The Commissioner of Land Administration,  
Land Administration Department,  
Ezhilagam, Chempauk,  
Chennai -600 005.
3. The District Collector,  
Kancheepuram District,  
Collectorate,  
Kancheepuram - 631 501.
4. The Principal Secretary  
to Government of Tamilnadu,  
Public Works Department,  
Fort St. George, Secretariat,  
Chennai -600 009.
5. The Principal Secretary  
to Government of Tamilnadu,  
Transport Department,  
Fort St. George, Secretariat,  
Chennai -600 009.
6. The Principal Secretary  
to Government of Tamilnadu,  
Tourism, Culture and Religious  
Endowments Department,  
Fort St. George, Secretariat,  
Chennai -600 009.

7. The Chief Secretary,  
Government of Tamil Nadu,  
Ex-Officio Chair Person,  
State Disaster Management Authority,  
Fort St.George, Chennai -600 009.

8. The Chairperson,  
Tamilnadu State Wetland Authority,  
Environment and Forest Department,  
Secretariat, Fort St.George,  
Chennai - 600 009.

9. The Director,  
Wetlands Division,  
Ministry of Environment and Forests,  
Indira Paryavaran Bhavan,  
Jorbagh Road, New Delhi - 110 003.

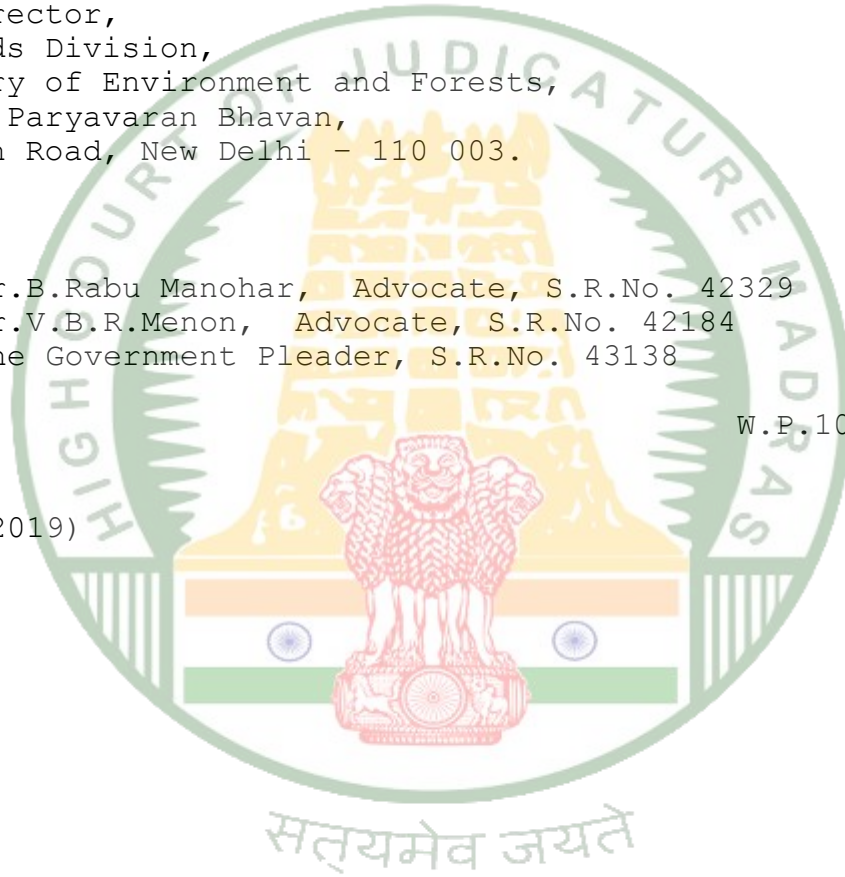
+1cc to Mr.B.Rabu Manohar, Advocate, S.R.No. 42329

+1cc to Mr.V.B.R.Menon, Advocate, S.R.No. 42184

+1cc to the Government Pleader, S.R.No. 43138

W.P.10821 of 2017

SS(CO)  
GN(06/05/2019)



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