

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.18355 of 2017
and WMP Nos.19927 & 19928 of 2017

Meenava Thanthai K.R.Selvaraj Kumar,
Meenavar Nala Sangam,
Rep. by its President,
M.R.Thiyagarajan ... Petitioner

Vs.

1. M/s.Kamarajar Port Limited,
Rep. by its Chairman,
4th Floor, Super Speciality Diabetic Centre,
(Erstwhile DLB Building),
Rajaji Salai, Chennai - 600 001.

2. The State of Tamil Nadu,
Rep. by its Secretary to Government,
Public Works Department,
Fort St.George,
Chennai - 9.

3. The District Collector,
Thiruvallur District,
Thiruvallur.

4. The Executive Engineer,
Thiruvallur District,
Buildings Construction and Maintenance Division,
Tiruttani Road, Master Plan Complex,
Near Check Post, Tiruvallur.

5. The Commissioner of Police,
Chennai City,
Vepery, Chennai - 600 007.

6. The Commissioner of Corporation,
Chennai Corporation, Ripon Building,
Park Town, Chennai - 600 003.

7. The Thasildhar,
Thasildhar Office,
Thiruvottriyur High Road,
Thiruvottriyur, Chennai - 600 019.

8. M/s.International Seaport Dredging Private Limited,
Rep. by its Managing Director
Chennai.

9. K.Kuppan

10.M.Kannan

11.H.Nithyanandham

12.P.Aravindan .. Respondents

Prayer: Writ Petition is filed under Article 226 of the
Constitution of India, issuance of a Writ of Mandamus, directing
the 2nd respondent to remove the private road across the
Kosasthalaiyar River at Ennore, encroached by respondents 1, 8
to 12.

For Petitioner : Mr.K.Mageshwaran

For R1 : Mr.M.T.Arunan

For R2 to R5 and R7 : Mr.E.Manoharan
Additional Government Pleader.

For R6 : Mr.K.Soundararajan

For R8 : Mr.R.Thirunavukarasu

For R9 : Mr.P.Krishnan

O R D E R
(Order of this Court was made by S.Manikumar, J.)

Instant writ petition has been filed for a writ of mandamus,
Writ of Mandamus, directing the Secretary to the Government,
Public Works Department, Chennai, 2nd respondent, to remove the
private road across the Kosasthalaiyar River at Ennore,
encroached by respondents 1, 8 to 12.

2. Short facts leading to the filing of writ petition, are as follows:

(i) Petitioner Association-"MEENAVA THANTHAI K.R. SELVARAJKUMAR MEENAVAR NALA SANGAM" has been established for the welfare of the fishermen community living along the coastal stretch of Tamil Nadu, as well as for conserving the coastal resources and to do social service with great sincerity, as a mode of service towards the upliftment of fishermen community.

(ii) Petitioner association is formed and registered for the upliftment of the downtrodden people especially the fisherman communities and also to protect, save and promote the seashore environment and other places connected therewith, like creek, river, foreshore places, mangrove forest, canal etc.

(iii) According to the petitioner, action of M/s.Kamarajar Port Limited, represented by its Chariman, Chennai, the 1st respondent, regarding mis-handling of dredging materials, sand, has caused pollution in CRZ zone and also in Kosasthalaiyar river. Further the activities of respondents 1 and 8 to 12, are severely hampering the fishing profession and destroying their livelihood. The fishing communities, who were self-sufficient, are now depending on exploitative low paying factory jobs. The communities have been protesting all types of illegal activities, like polluting, encroaching the sea shore areas. Further Kosasthalaiyar River with the Bay of Bengal, is an important aquatic ecosystem. However, encroachment and pollution caused, have led to regular depletion of biodiversity in the region. The increasing pollution levels have affected the marine life, adversely affecting the livelihood of the fishing communities.

(iv) According to the petitioner, Secretary to the Government, Public Works Department, Chennai, the 2nd respondent, is the overall authority of Tamil Nadu for Water Resource Department in the state and other related issues in respect of the said department. District Collector, Thiruvallur, is the District Administrative authority of Thiruvallur District to implement all the welfare programmes, as well as to look into the health hazard and other related issues. Commissioner of Police, Chennai City, the 5th respondent is head of the police department for Chennai City and to lay down policies and procedures and also responsible for coordinating the activities of various divisions, such as patrol services, criminal investigations and code enforcement, and overseeing the performance of the officers and civilian staff etc. and other related issues. Commissioner of Corporation, Chennai, the sixth respondent is an authority to take necessary action

against illegal construction of Buildings, Theatres, Companies, unauthorized encroachments etc.

(v) Grievance of the petitioner is that M/s.International Seaport Dredging Private Limited, represented by its Managing Director, Chennai, the 8th respondent, has taken a project work in the name of capital dredging phase III from Kamarajar Port Limited, 1st respondent herein. All the dredging materials, and sand shall be disposed off only through a tender, or auction or in any other manner, which is beneficial to the Public and Government. Now this sand collected from the Kamarajar Port through dredging work is given to Mr.Kuppan Ex.M.L.A the 9th respondent, without following any norms. The value and worth of the sand will be approximately Rs.2,00,00,000 (2 Crores). If the dredging sand is sold out through auction, the Government will get the benefit of Rs.2,00,00,000 (2 Crores) which can be utilized for any public purpose. Now this sand is given to Mr.Kuppan (9th Respondent) for his personal benefit without collecting even a single pie. A public road is connecting Athipattu to Ennore. There is a long bridge over Kosasthalaiyar River. Though this bridge restricts free flow of river, the same was constructed with the approval of the competent authority for public purpose. Being so, a private road is being formed by Mr.Kuppan Ex.M.L.A, Mr.M.Kannan (Nettukuppam), Mr.P.Aravindan (Nettukuppam), Mr.H.Nithyanandham (Nettukuppam) and their associates alongside of the bridge, blocking the entire Kosasthalaiyar River to develop their private lands, on the other side of the river.

(vi) Petitioner reliably came to know that Mr.Kuppan has got large extent of private lands in the name of his benamidars. Now they are taking speedy action, in laying such a big road, without any approval from the competent authority, particularly, from Public Works Department. Blocking the free flow of Kosasthalaiyar River and forming a road by a private person, with his political power and money for his personal gain cannot be allowed in public interest.

(vii) There is eminent need and urgency in preventing or restraining the private persons from forming such a road blocking the river. The natural flow of water is that, during the rainy seasons the rain water captured from Thiruvallur district, North Madras have to reach the ocean only through this river and there is no other alternative way. Now rainy season has started and heavy rain is expected. If this happens, the entire North Madras will be flooded with water, which would endanger the lives of the people, animals. Huge disaster may occur.

(viii) In this regard, petitioner has sent a representation to authorities respondents through registered post, received by

the authorities on 14.06.2017. However till date no action is taken. Since there is eminent threat to the lives of the people, the petitioner has filed the instant writ petition, for the relief stated supra.

3. On notice, respondents, 1, 6, 8 and 9 have filed their respective counters. and prayed for dismissal of the writ petition.

4. When the matter came up for hearing, Mr.K.Soundararajan, learned counsel for the Commissioner of Corporation, Greater Chennai, 6th respondent submitted that the project itself has been shelved and the approach/private road removed.

5. As per the counter affidavit of the Chairman, M/s.Kamarajar Port Limited, Chennai, the 1st respondent is not directly or indirectly involved in laying a road in and across the Kosasthalyar River, as alleged by the Petitioner. Further it is learnt that the road was formed by TNEB/ TANGEDCO/ETPS to use as a temporary approach road for the construction of coal conveyor and the 1st respondent Port is no way connected, to the alleged activities of laying of road across the River.

6. First Respondent has not given/handed over any dredged sand to Mr.Kuppan, Ex.M.LA as alleged by the % petitioner. Further, the 1st respondent has no connection / relation to the road formation work. 1st respondent is neither directly nor indirectly involved in any of the allegation leveled in this petition.

7. DRO, Zonal Officer, Chennai Corporation, on behalf of Commissioner of Corporation, Chennai Corporation, Chennai, the 6th respondent, has stated that, TANGEDCO a subsidiary of Tamil Nadu Electricity Board is establishing Ennore Thermal Power Station Expansion Project in the vacant land of the existing Ennore Thermal Power Station, Ennore. Project has been awarded to Lanco Infra Tech Limited, Gurgaon, Haryana. For the said project, Coal has been used which was imported through the 1st respondent Port and sent to the Project Site by way of Coal Pipe Conveyor from North Chennai Thermal Power Station to Ennore Thermal Power Station which would cross a Highways Bridge constructed at Ennore Creek, Ennore Creek backwater, Buckingham Canal and Chennai Howrah Railway Track.

8. For constructing the Coal Pipe Conveyor for a length of 3720 Metres with a width of 8 Metres, as per the Agreement, Lanco Infra Tech Limited has to form a temporary approach road inside Buckingham Canal near ETPS boundary and Ennore Creek Korattalaiyar River along the pipe conveyor alignment to facilitate foundation work and erection of Coal Pipe Conveyor

System for the above said project.

9. In the agreement, it was also agreed that after completion of the work, the materials used for the construction like any cross bunds formed inside the water body should be removed completely at the cost of Lanco Infra Tech Limited. This temporary road is laid only for the purpose of laying the Coal Pipe Conveyor System for which necessary approvals has been obtained from the 2nd respondent department and it is not a private road, as alleged by the Petitioner. Even Lanco Infra Tech Limited also not completed the project since they become bankrupt and, therefore, finally the temporary road laid by the Contractor has been removed by Ennore Thermal Power Station under the directions of the District Collector, Thiruvallur District, 3rd respondent, before the onset of monsoon.

10. The Managing Director, International Seaport Dredging Private Limited, Chennai, the 8th respondent in his counter affidavit has averred that they have not laid any private road, in and across the Kosathalaiyar river. They deny the allegation that the activities of this respondent are hampering the fishing profession and destroying their livelihood. Such a sweeping allegation has been made without any substance. It is submitted that they are dumping the dredged material either within the Port in the area allocated by their employer, namely, the 1st respondent herein or dumping the material at offshore at the designated dumping ground allocated by their employer for which all necessary permits have been issued by the 1st respondent and this respondent has no role to play independently in this regard. All the activities in connection with the dredging materials were carried out by this respondent as per the provisions of the contract with the 1st respondent and there is no mishandling of the dredged material by this respondent.

11. This respondent has been awarded a contract for Capital Dredging, Dredging Phase III by the 1st respondent. As per the provisions of the Contract, material up to +0 level have to be dry excavated and transported to the area on shore ear marked by the 1st respondent. The said material belongs to the 1st respondent and this respondent has no ownership of the same. This respondent had engaged subcontractors for dry excavation and transported the excavated material after following due internal process. This respondent has no knowledge of any sand given to Mr.Kuppan as alleged by the Petitioner. This respondent is not aware of formation of any private road and this respondent has no role to play in this regard.

12. This respondent is not aware of laying any private road on the private lands of Mr. Kuppan as alleged by the Petitioner. All the operations connected with the dredging are being executed by this respondent as per the provisions of the contract with the 1st respondent. The responsibility of this respondent ends with the transportation of the dredged materials to the place, as instructed by the 1st respondent. This respondent has no hold over the excavated materials and the related activities. This respondent further submits and assures that the dredging activities earned on by this respondent are being done after following all the procedures and they are not causing any pollution to the environment.

13. Mr. Kuppan, the 9th respondent against whom allegations are made has stated that the petitioner has filed the above writ petition to issue a writ of Mandamus by directing the 2nd respondent to remove the private road laid across the Kosasthalaiyar River at Ennore. The entire allegations and averments made in the writ petition are totally misconceived.

14. He further submitted that the above Public Interest Litigation has been filed with an oblique motive and for extraneous reasons. The writ petitioner and his associates have used the PIL with a view to coerce and extract money from the private respondents. Absolutely, there is no bonafides in the PIL. No public interest or public cause is involved. Above all, this respondent has been purposely arraigned as 9th respondent with a view to tarnish his image and reputation in public life.

15. Allegations and averments made in Para Nos. 1 to 9 of the affidavit are specifically denied as false and frivolous. Further the allegations made in Para No. 10 to 12 of the affidavit that the 1st respondent has given the dredging work to the 9th respondent without following any norms, and that removal of sand worth Rs.2 crores has been given for his personal benefit without collecting any paise, and that this respondent along with Tvl. M. Kannan, P. Aravindan and H. Nithiyanandam, have formed a private road by blocking the River, and that the 9th respondent has purchased larger extent of private lands in the name of his benamidars, are all stoutly denied as false, and without any iota of truth.

16. He further submitted that 9th respondent is in no way concerned with the road formed by TANGEDCO as a temporary approach for the construction of coal conveyor to the Port. From the counter affidavit filed by the respondents 1, 6 and 8, this respondent came to know that TNEB is carrying on expansion

of Ennore Thermal Power Station in the vacant nearby land available and a contract has been given to LANCO Infra Tech Ltd., Gurgaon, Haryana. In fact, the 8th respondent has also filed his counter affidavit dated 02.11.2017 inter alia narrating the award of contract given for dredging work. The counter affidavits filed by the respondents 1, 6 and 8 would prove the frivolous allegations made in the affidavit filed by the writ petitioner.

17. He further submitted that the writ petitioner Sangam has been in the habit of giving some fictitious petitions/representations/complaints to the authorities with a view to harass and coerce the contractors and other public functionaries to extract money. In fact, after knowing the above dredging work being carried out for public purpose, the writ petitioner and his associates have impleaded the 9th respondent with an oblique motive to get an unfair and unjust monetary gain. This respondent is not a contractor or beneficiary in the above project being carried out by the official respondents, but, he has been unnecessarily impleaded and imputations have been casually made, with a view to tarnish his public image.

18. He further submitted that the allegations made in Para No. 12 that this respondent has purchased large extent of lands in the name of benamies is a blatant lie. This respondent has been in public life for the past 25 years and this respondent's integrity is well known to the public at large. However, the writ petitioner Sangam has filed the above frivolous writ petition.

19. It could be deduced from the counter affidavits of the respondents TANGEDCO a subsidiary of Tamil Nadu Electricity Board is establishing Ennore Thermal Power Station Expansion Project in the vacant land of the existing Ennore Thermal Power Station, Ennore. Project has been awarded to Lanco Infra Tech Limited, Gurgaon, Haryana. For the said project, Coal has been used which was imported through the 1st respondent Port and sent to the Project Site by way of Coal Pipe Conveyor from North Chennai Thermal Power Station to Ennore Thermal Power Station which would cross the Highways Bridge constructed at Ennore Creek, Ennore Creek backwater, Buckingham Canal and Chennai Howrah Railway Track. For constructing the Coal Pipe Conveyor for a length of 3720 Metres with a width of 8 Metres, as per the Agreement, Lanco Infra Tech Limited has to form a temporary approach road inside Buckingham Canal near ETPS boundary and Ennore Creek Korattalaiyar River along the pipe conveyor alignment to facilitate foundation work and erection of Coal Pipe Conveyor System for the above said project.

20. The road formed by the contractor is only a temporary approach road to facilitate foundation work and erection of Coal Pipe Conveyor System for the project. Necessary orders have been issued. It is not a private road. Allegations made in the supporting affidavit to the writ petition, are not substantiated. Moreover, as per the counter affidavit of Corporation of Chennai, the project itself has been shelved, and the temporary approach road removed.

21. Placing on record the above averments, no further directions are required to be issued in this writ petition. Hence the instant writ petition is closed. No Costs. Consequently, the connected writ miscellaneous petition is closed.

s/d-
Assistant Registrar (CS V)

True Copy

Sub-Assistant Registrar

ars/dm

To

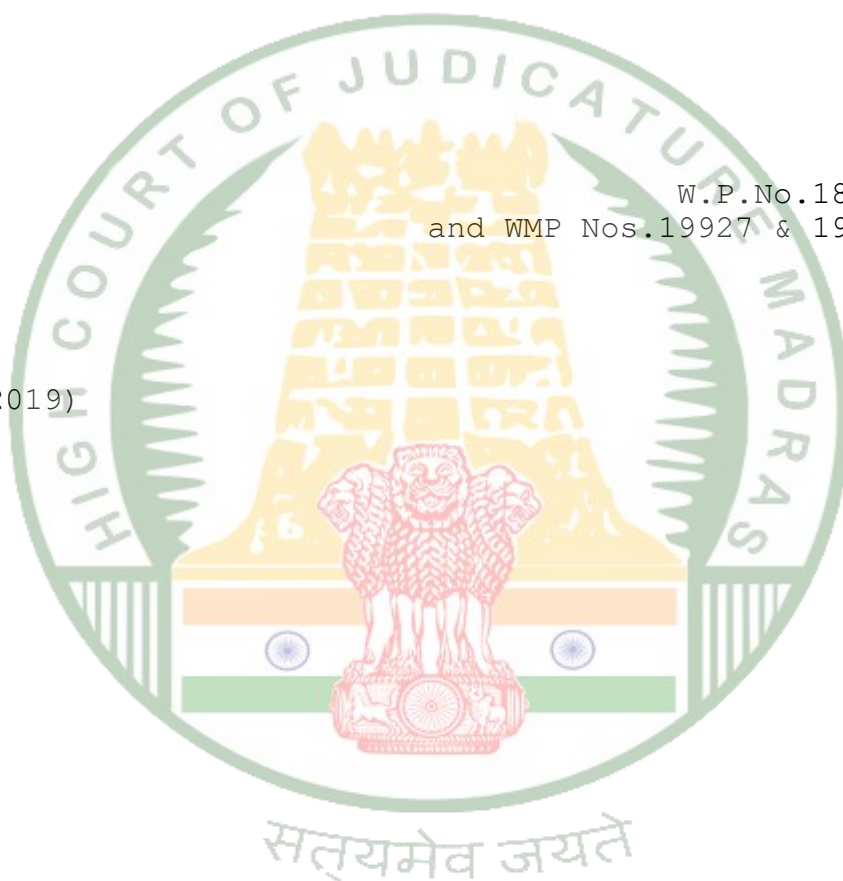
1. Secretary to the Government,
State of Tamil Nadu,
Public Works Department,
Fort St. George,
Chennai - 9.
2. The District Collector,
Thiruvallur District,
Thiruvallur.
3. The Executive Engineer,
Thiruvallur District,
Buildings Construction and Maintenance Division,
Tiruttani Road, Master Plan Complex,
Near Check Post, Tiruvallur.
4. The Commissioner of Police,
Chennai City,
Vepery, Chennai - 600 007.
5. The Commissioner of Corporation,
Chennai Corporation, Ripon Building,
Park Town, Chennai - 600 003.

6.The Thasildhar,
Thasildhar Office,
Thiruvottriyur High Road,
Thiruvottriyur, Chennai - 600 019.

+1 CC to Mr.R. Thirunavukarasu, Advocate sr 51073.
+1 CC to Mr.P.Krishnan, Advocate sr 51304.
+1 CC to Mr.K.Soundararajan, Advocate sr 51313.
+1 CC to Mr.M.T. Arunan, Advocate sr 50645.
+1 CC to Govt. Pleader sr 37139.

W.P.No.18355 of 2017
and WMP Nos.19927 & 19928 of 2017

SP(29/07/2019)



WEB COPY