

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 13.02.2020

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE R.SURESH KUMER

W.P.Nos.29928 of 2019 and W.P.No.7019 of 2018
and

WMP.Nos.29837, 29839 and 29840 of 2019
and 8662 and 8663 of 2018

W.P.No.29928 of 2019

Jesu Rethinam Petitioner

-vs-

- 1.The Union of India,
Rep. by its Secretary to Government
Ministry of Environment & Forests
Paryavaran Bhavan, CGO Complex,
Lodhi Road, New Delhi.
2. The National Coastal Zone Management Authority
Rep. by its Member Secretary
O/o Ministry of Environment & Forests
Paryavaran Bhavan, CGO Complex, Lodhi Road,
New Delhi.
3. The State of Tamil Nadu
Rep by its Principal Secretary to Government
Department of Environment, Fort St. George,
Chennai.
4. The Tamil Nadu Coastal Zone Management Authority
Rep. by its Member Secretary,
Panagal Building,
Saidapet, Chennai-15. Respondents

PRAYER: Petition under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the 1st respondent culminating in the order in F.No.12-8/2018-IA-III dated 24/10/2018 approving the Coastal Zone management plans under the CRZ Notification, 2011 for the state of Tamil Nadu, quash the same and direct the 2nd and 3rd respondents to prepare the coastal zone management plans in strict accordance with the

guidelines issued in S.O.19(E) dated 06/01/2011 and GSR 37 (E) dated 18/01/2019.

W.P.No.7019 of 2018

Jesu Rethinam

...

Petitioner

-vs-

1. The Union of India,
Rep. by its Secretary to Government
Ministry of Environment & Forests
Paryavaran Bhavan, CGO Complex,
Lodhi Road, New Delhi.
2. The National Coastal Zone Management Authority
Rep. by its Member Secretary
O/o Ministry of Environment & Forests
Paryavaran Bhavan, CGO Complex, Lodhi Road,
New Delhi.
3. The State of Tamil Nadu
Rep by its Principal Secretary to Government
Department of Environment, Fort St. George,
Chennai.
4. The Tamil Nadu Coastal Zone Management Authority
Rep. by its Member Secretary,
Panagal Building, Saidapet, Chennai-15.
5. The Tamil Nadu Pollution Control Board
Rep by its Member Secretary,
76, Mount Salai,
Guindy, Chennai- 600 032.

...

Respondents

PRAYER: Petition under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus directing the 3rd and 4th respondents to withdraw the revised draft Coastal Zone Management Plan for the Districts of Thiruvallur, Chennai, Kancheepuram, Villupuram, Cuddalore, Nagaipatnam, Thiruvarur, Thanjavur, Pudukottai, Ramanathapuram, Thoothukudi, Thirunelveli and Kanyakumari uploaded on the website of the 3rd respondent at www.environment.tn.nic.in on 19/02/2018 forthwith, prepare Coastal Zone Management Plans in strict compliance with the Coastal Regulation Zone Notification, 2011, publish the same for public consultation and notify the Coastal Zone Management Plans in the manner specified by the Coastal Regulation Zone Notification, 2011.

For Petitioner
(in both W.P.'s)

:Mr.A.Yogeshwaran

For Respondents
(in W.P.No.29928
of 2019)

:Mr.G.Karthikeyan (R1 and R2)
Assistant Solicitor General
Mr.S.Prabhu (R3)
Additional Government Pleader
Mr.S.Kamalesh Kannan (R4)
Government Advocate

(in W.P.No.7019
of 2018)

Mr.G.Karthikeyan (R1 and R2)
Assistant Solicitor General
Mr.S.Kamalesh Kannan (R3)
Government Advocate

Mr.E.Manoharan (R4)
Additional Government Pleader
Ms.Rita Chandrasekar (R5)

C O M M O N O R D E R
(By Dr.Vineet Kothari,J.)

Both the Writ Petitions have been filed by the petitioner Ms.Jesu Rethinam seeking the following prayers:

W.P.No.29928 of 2019

To call for the records of the First respondent culminating in the order in F.No.12-8/2018-IA-III dated 24/10/2018 approving the Coastal Zone management plans under the CRZ Notification, 2011 for the State of Tamil Nadu, quash the same and direct the Second and Third respondents to prepare the coastal zone management plans in strict accordance with the guidelines issued in S.O.19(E) dated 06/01/2011 and GSR 37 (E) dated 18/01/2019.

W.P.No.7019 of 2018

To direct the third and fourth Respondents to withdraw the revised draft Coastal Zone Management Plan for the Districts of Thiruvallur, Chennai, Kancheepuram, Villupuram, Cuddalore, Nagaipatnam, Thiruvarur, Thanjavur, Pudukottai, Ramanathapuram, Thoothukudi, Thirunelveli and Kanyakumari uploaded on the website of the 3rd respondent at www.environment.tn.nic.in on 19/02/2018 forthwith, prepare Coastal Zone Management Plans in strict compliance with the Coastal Regulation Zone Notification, 2011, publish the same for public consultation and notify the Coastal Zone Management Plans in the manner specified by the Coastal Regulation Zone Notification, 2011.

2. These Public Interest Litigations were entertained and notice was issued to the respondents and upon hearing the learned counsel for the parties this Court passed the detailed interim order on 03.12.2019 in W.P.No.29928 of 2019 which is quoted below for ready reference:

"We have heard both Mr.A.Yogeshwaran, learned counsel for the petitioner, Mr.G.Karthikeyan, learned Assistant Solicitor General for respondents 1 and 2, Mr.Kamalesh Kannan, learned Government Advocate for the 3rd respondent and Mr.E.Manoharan, learned Standing Counsel for the 4th respondent.

2.The issues raised in this PIL are serious in nature.

3.The petitioner has filed an Affidavit dated 02nd October 2019 of Mrs.Jesu Rethinam, W/o.Late Shri Christy, wherein in para 17, specific violations of the guidelines of 2011 notification have been pointed out by the petitioner. But, the reply counter Affidavit filed before this Court by Dr.Jayanthi.M., I.F.S. on 7th November, 2019, which we have perused, does not answer the specific deficiencies pointed out in the maps prepared by the respondents in this case, so as to say that they are in compliance with the regulations of 2011 Notification. Therefore, we direct the said official Dr.Jayanthi,M., I.F.S. to file a fresh Affidavit by giving point wise reply and explanation for the deficiencies and violations pointed out in the Affidavit dated 02.10.2019 filed by the petitioner.

4.The learned Government Advocate submitted that Mr.P.H.Aravind Pandian, learned Additional Advocate General is appearing for the State and that he is not available today as he was out of station and therefore, requested for some time.

5.The learned Government Advocate further submitted that the maps produced by the petitioner in the typed set of papers at page 214, in the Scale of 1 cm :

25,000 (Kilometers), are not really legible and clear and the revised maps in the scale 1:5,000 are being prepared through Government Agency NCSCM viz., National Centre for Sustainable Coastal Management, Anna University Campus, Chennai and the same will be filed as soon as possible.

6. However, the learned counsel for the petitioner pointed out that as per the new Notification issued by the Ministry of Environment, Forest & Climate Change on 18th January, 2019 (page 104 and at page 113 of the paper book), all coastal States and Union territory administrations have to revise their coastal zone management plan (CZMP) framed under CRZ Notification, 2011 and submit the revised maps at the earliest and unless and until such CZMPs are so revised, the CRZ Notification of 2011 shall continue to be followed for appraisal and CRZ clearance to be issued to such projects. He, therefore, submitted that not only the defects as per the 2011 Notification in the maps produced by the State are there, but the revised maps in consonance with the 2019 Notification may also carry the same mistakes and deficiencies and therefore, the respondents should be directed to first produce the revised maps as per 2011 Notification.

7. Accordingly, we make the following interim directions:

(I) For better assistance from the respondents side, we direct the 3rd respondent, the Principal Secretary to Government, Environment & Forests Department, Chennai and the 4th respondent, the Member Secretary of the Tamil Nadu State Coastal Zone Management Authority, Chennai to personally attend all the proceedings of this petition on all the dates of hearing. They are directed to instruct and brief the Advocate General, Additional Advocate General or Government Advocates well in

advance with their pleadings prepared, so that the matters do not get adjourned on such technical grounds, on the given dates.

(II) The revised Affidavit of Dr. Jayanthi.M., I.F.S., Director of Department of Environment and also the Member Secretary of Tamil Nadu State Coastal Zone Management Authority - 4th respondent may be filed before the next date of hearing, explaining point wise violations, as pointed out in the Affidavit of the petitioner dated 2nd October, 2019. The said official is also directed to remain present in the Court on the next date of hearing.

(III) The respondents are called upon to rectify the mistakes or violations in the maps, in accordance with the 2011 Notification first and the same get prepared through NCSCM on the scale of 1:5,000 as early as possible and produce the same before the Court on the next date of hearing. If it is not possible to produce it on the next date of hearing, the date wise steps taken by them for preparing the same with the Affidavit of the Director of Department of Environment and also the Member Secretary of TNSCZMA shall be produced on the next date of hearing before this Court.

(IV) The Affidavit of the Member Secretary shall also include the details of the public hearings which have taken place in this regard, since in the Affidavit filed, it is stated that the public hearings took place in different Districts in the month of April 2018, but the detailed descriptions of such public hearings were not given. The Court may like to know from the respondents that if the scale of map already produced before this Court was the only available map at the time of public hearing, which are not even legible or decipherable, how effective participation of the public at large could have taken place and whether the said maps, not prepared in the

vernacular language also, was it suitably explained to the objectors or members of public or not and if any written representations or objections were made by them; how such objections were responded to or disposed by orders in writing by the respondents before finalising the said maps and the same shall be stated in the fresh Affidavit to be filed before this Court.

(V) The matter is now adjourned by four weeks, with the expectation that all bona fide and sincere efforts will be made by all concerned authorities of the respondent Departments to assist the Court in the proper manner to arrive at the conclusions as to whether the relevant Regulations under the Act and 2011 Notification and 2019 Notification have been followed by the respondents or not, to subserve the cause of Public Safety in Coastal areas in this regard.

(VI) Respondents No.1 and 2 are also directed to file their counter before the next date of hearing.

8. Put up the matter along with W.P.No.7019 of 2018 on 06th January 2020."

3. An Additional Counter Affidavit has been filed today by the fourth respondent on behalf of the third respondent. The learned counsel for the State has drawn our attention that to paragraph 11 of the said Affidavit which is quoted below for ready reference.:

"11. I humbly submit that after the receipt of Work Order, the Institute of Remote Sensing, Chennai.25 has furnished the draft contract agreement for the preparation of CZMP on 1:5000 Scale as per the CRZ Notification, 2011 with schedule for timeline indicating that the draft map will be submitted in 12 months, as the work involves the following factors.

a) Superimposition of approved HTL and LTL onto digital Cadastral Maps at

1:5000 scale (village maps in case of rural areas and ward maps in case of city/town) for entire coast of Tamil Nadu and tidal influenced water bodies in Tamil Nadu.

b) Delineation of 200m, 500m buffer lines for HTL of Bay of Bengal and 100m or width of creek buffer lines for Tidal influenced water bodies as per Coastal Regulation Notification, 2011

c) Superimposition of Ecologically Sensitive Areas like Mangroves, Coral, Coral reefs, Sand dunes, Mud flats, National Parks, Marine Parks, Sanctuaries, reserve forest, wildlife habitats and other protected areas, Salt Marshes, Turtle Nesting grounds, Horse Shoe habitats, Sea Grass beds, Bird Nesting sites, Archeological sites indicated in approved CZMP within Coastal Regulation Zone on to digital cadastral maps.

d) Generation of 50m buffer zone for mangroves patches with area more than 1000 sq.m. as indicated in approved CZMP prepared as per CRZ Notification, 2011

e) Demarcation of Coastal Regulation Zones (I-A, I-B, II, III, IV-A and IV-B) for entire coast of Tamil Nadu and 21 Islands within administrative control of Government of Tamil Nadu.

f) Generation of Local Level CRZ Maps at 1:5000 scale as per CRZ Notification, 2011 following standard national color codes, symbols used in Approved CZMP.

g) Collection and Superimposition of cyclone shelters, rain shelters, helipads and other infrastructure including road network in coastal area using GPS based filed survey and ancillary data collected from field departments on cadastral maps at 1:5000 scale.

h) Collection and Superimposition of fishing village boundaries, common properties of the fishermen communities, fishing jetties, ice palants, fish drying

platforms or areas infrastructure facilities of fishing and local communities such as dispensaries, roads, schools, fishing zones, fish breeding areas and like using GPS based filed survey on cadastral maps.

i) Generation of Local Level Coastal Zone Management Plants at 1:5000 scale for entire coast of Tamil Nadu and Islands within administrative control of Tamil Nadu Government following guidelines provided in CRZ Notification, 2011."

5. In view of the aforesaid situation and the averments made in the aforesaid Additional Counter Affidavit, we are of the opinion that in view of the new CRZ Notification 2019 issued by the Central Government, the exercise of making of maps is again required to be undertaken by the concerned authorities and which process is underway now only, when the said maps are ready, the question of again providing the public hearing can arise.

6. The grievance of the petitioner seems to be that if the original map itself is not correct as per CRZ Regulation 2011, the very purpose of fresh public hearings is likely to be frustrated.

7. We are of the opinion that we need not constantly monitor the said fresh process of making of new Maps in this PIL and no useful purpose will be served in keeping these PIL petitions pending any longer. Our directions given in the detailed interim order dated 03.12.2019 will continue to be in operation and apply to the Respondents in the said process. Let the entire process of making fresh maps as per the latest Notification dated 18.01.2019 be completed in accordance with law after the effective public hearings, where, it is needless to say that the petitioner will also have a right of participation and of raising all the objections and making her suggestions, which will be considered by the competent authorities. Thereafter also the petitioner will not be estopped to knock the doors of the Court once again for the limited scope of judicial review in such cases, if the occasion so arises.

8. Accordingly, these present PIL Writ Petitions are disposed of. We leave it free to the petitioner to file her objections before the second and the fourth respondents and the said Authorities are expected to consider the objections raised by the petitioner and proceed further in accordance

with law. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

arr

To

1. The Union of India,
Rep. by its Secretary to Government
Ministry of Environment & Forests
Paryavaran Bhavan, CGO Complex,
Lodhi Road, New Delhi.
2. The National Coastal Zone Management Authority
Rep. by its Member Secretary
O/o Ministry of Environment & Forests
Paryavaran Bhavan, CGO Complex, Lodhi Road,
New Delhi.
3. The State of Tamil Nadu
Rep by its Principal Secretary to Government
Department of Environment, Fort St. George,
Chennai.
4. The Tamil Nadu Coastal Zone Management Authority
Rep. by its Member Secretary,
Panagal Building, Saidapet, Chennai-15.
5. The Tamil Nadu Pollution Control Board
Rep by its Member Secretary,
76, Mount Salai,
Guindy, Chennai- 600 032.

+4cc to Mr.Yogeshwaran, Advocate, S.R.No. 12198 & 12199
+1cc to Mr.G.Karthikeyan, Advocate, S.R.No. 13225
+1cc to Mr.D.Ramesh, Advocate, S.R.No. 11852
+1cc to the Special Government Pleader (Forest), S.R.No.
11913

W.P.Nos.29928 of 2019 and W.P.No.7019 of 2018

NR(CO)
GN(10/03/2020)