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W.P.(MD)NO.18351 OF 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.03.2026

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

AND

THE HON'BLE MRS.JUSTICE R.POORNIMA

W.P.(MD)No.18351 of 2019

N.S.Parthasarathi,
S/o.S.N.Sinniveeran,
President of Thiruvaalavayanallur Kanmai Pasana
Vivasayigal Sangam,
Having Registration No.122 of 2019,
Office at 1/60, Thiruvaalavayanallur,
Vadipatti Taluk, Madurai District.

... Petitioner

Vs.

1. The District Collector,
Madurai District, Madurai.
2. The Revenue Divisional Officer,
Madurai District, Madurai.
3. The Tahsildar, Vadipatti Taluk, Madurai.
4. The Assistant Engineer,
Public Works Department,
Water Resource Department,
Periyar-Vaigai Basin Circle,
Madurai -2.
5. The Executive Engineer,
Public Works Department,
Water Resource Department,
Periyar-Vaigai Basin Circle,
Madurai -2.



6. Kothari Plantation,
Thiruvahalavayanallur,
Vadipatti Taluk, Madurai
Rep. By its authorised person.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents 1 to 5 to take appropriate action to preserve the water body namely Thiruvahalavayanallur kanmai lying in the three villages namely, Thiruvahalavayanallur, Nagari and Nedungulam in Vadipatti Taluk, based on the fourth respondent proceedings in Ka.No.Ko.04/Tha-Aa/U.Po-1/2019 dated 23.07.2019 and also consequently direct the respondents 1 to 5 to preserve the Thiruvahalavayanallur kanmai by removing the unauthorised persons in the said kanmai.

For Petitioner : Mr.P.T.Ramesh Raja

For Respondents : Mr.T.Amjad Khan,
Government Advocate for R-1 to R-5

Mr.N.Sathish Babu for R-6.

* * *

ORDER

(By G.R.SWAMINATHAN, J.)

Heard both sides.

2.The writ petitioner is the president of a water users association.

Its members depend upon Thiruvahalayanallur Kanmoi for their irrigation requirements. The said water body is spread over 79.3 acres of land.

The petitioner's grievance is that there are encroachments in the water



body. He would further allege that patta has been granted in respect of the water catchment areas and that they should be cancelled. He points out that the pattadhars have erected concrete barriers thereby preventing free flow of water. Taking note of the petitioner's representation, the Assistant Engineer, PWD/WRD, Periyar-Vaigai Basin Circle, Madurai vide letter dated 23.07.2019 called upon the Tahsildar, Vadipatti to take steps to cancel the pattas issued in respect of water catchment areas. Since consequential action was not taken, the present writ petition came to be filed.

3.The photographs enclosed in the typed set of papers indicate that the pattadhars have erected concrete barriers thereby preventing the free flow of water. The issue that arose before the Hon'ble Division Bench of the Madras High Court in ***J.Amsaveni v. State of T.N (2023 (3) L.W 419)*** was as follows :

"where certain areas have been classified as water catchment areas for Red Hills Lake and declared as a "no development zone" under the Master Plan for Chennai, whether a landholder of a portion of such area can seek reclassification as Urban Use Zone so that development activity can be carried out."

His Lordship Mr.Justice V.Lakshminarayanan who authored the judgment declared in eloquent terms that the environmental interest will trump



the property rights of the individual. When we indicated our intention to dispose of this writ petition by following **J.Amsaveni**, it was pointed out by Ms.V.Janaki Devi a member of the Bar, that a co-ordinate Bench in **M/s.Global Waste Recyclers Ltd. vs The Government of Tamil Nadu and Ors., WP 13419 of 2017, etc., batch dated 30.04.2024**, has declared the judgment in **J.Amsaveni vs The State of Tamil Nadu, W.P.No.26673 of 2017 dated 24.04.2023** case as per incuriam.

4.A perusal of the judgment shows that the later Division Bench had framed the following issue:-

*(g) Whether the judgment in **J. Amsaveni vs State of Tamil Nadu** is in ignorance of statutory provisions and several binding precedents of the Hon'ble Supreme Court on the interpretation of provisions under the Town Planning Legislations of different States?*

We should note in Paragraph No.79, the Bench in **Global Waste Recyclers Ltd** has referred to the practice settled by the Supreme Court that if one Coordinate Bench does not agree with the principles of law enunciated by an earlier Bench of coordinate strength, the matter has to be referred to a Larger Bench. Having rightly noticed this position, the Bench held that it is entitled to invoke the doctrine of per



incuriam and hold that the previous judgment is not a binding precedent.

5. In Paragraph No. 84, the Division Bench in ***Global Waste Recyclers Ltd's case*** held that, in ***Amsaveni's case*** the Bench had not noticed the *stare decisis* or decisions of the Supreme Court in ***Indore Vikas Pradhikaran Vs. Pure Industrial Coke and Chemicals Limited, 2007 [8] SCC 705*** and ***Association of Vasanth Apartments' Owners Vs. V.Gopinath and Others, 2023 SCC Online 137***. We would have adopted the same course of action as done in ***Global Waste Recyclers Ltd's case*** had the Bench in ***Amsaveni's case*** not referred to the aforesaid judgments. To convince ourselves, we pursued the order in ***Amsaveni's case***. To our surprise, we found that the Division Bench in ***Amsaveni's case*** had, in fact, referred to the judgment in ***Vikas Pradhikaran Vs. Pure Industrial Coke and Chemicals Limited, 2007 [8] SCC 705*** in Paragraph No. 12 and to the judgment in ***Association of Vasanth Apartments' Owners Vs. V.Gopinath and Others, 2023 SCC Online 137*** in Paragraph No. 29. Therefore, the conclusion in Paragraph No. 84 that the Division Bench had not noticed the two judgments of the Supreme Court, is erroneous.



6.A perusal of Paragraph No. 89 shows that the Division Bench in

Global Waste Recyclers Ltd's case had also found fault with the Division Bench in **Amsaveni's case** for not referring to Sections 36, 37 and 39 of the Town and Country Planning Act. Yet again, we were surprised as Sections 36 and 38 were specifically noticed in Paragraph No. 16 in **Amsaveni's case**. The Bench in **Amsaveni's case** had also taken into notice that it was not a case of acquisition but a case of zoning regulation and hence, the State had the power under the Master Plan to declare certain areas to be free of any development. In this respect, we will refer to a recent judgment of the Supreme Court in **Naveen Solanki vs Rail Land Development Authority, Civil Appeal No. 10656 of 2024 dated 20.03.2026**, whereunder the Supreme Court had held that a duly approved and notified Master Plan possesses statutory force and provides the governing framework for land use. In fact, it is on this basis in **Amsaveni's case** in Paragraph No. 32, the Bench has held that the right of an owner to develop a property should be in accordance with the zoning regulations. We are of the view that the view taken in **Amsaveni's case** is in line with the statutes and the views of the Supreme Court.



7.The principle of *per incuriam* will apply only in cases of ignorance or forgetfulness of some statutory provision or binding authority. When the Sections have been referred to and so were the judgments, we are not in a position to agree with the later Division Bench in holding that ***Amsaveni's case*** did not refer to the statutory provisions or the binding case laws.

8.If the Division Bench in ***Global Waste Recyclers Ltd's case*** doubted the correctness of the earlier Coordinate Bench, it could not have delivered a contrary judgment. It should have recorded its reasons, and requested Hon'ble The Chief Justice to refer the matter to a Larger Bench. A Constitution Bench of the Supreme Court in the ***Central Board of Dawoodi Bohra Community and Anr. vs State of Maharashtra, (2005) 2 SCC 673*** has declared that, if a Bench of equal strength has a disagreement with the position of law laid down by an earlier Bench, it must refer the disagreement to a Larger quorum, rather than overruling the earlier view. This is because ignoring a binding precedent of a Coordinate Bench is considered as "subversion of judicial process" and "judicial impropriety".



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9. When the binding judgments as well as the Sections have been referred to in ***Amsaveni's case***, the Division Bench in ***Global Waste Recyclers Ltd's case*** ought not to have resorted to the device of declaring the judgment *per incuriam*. When the doctrine of *per incuriam* does not apply as the judgments and statutes had been taken note of in ***Amsaveni's case***, we have to hold that ***Amsaveni's case*** continues to hold the field and the view taken by the ***Global Waste Recyclers Ltd's case*** cannot be considered as a binding precedent. We say so with deep respect and regard for the Judges who rendered the judgment in ***Global Waste Recyclers Ltd's case***. It is relevant to note that the Government of Tamil Nadu has challenged the judgement in ***Global Waste Recyclers Ltd's*** case by filing SLP (Civil) Diary No. 157/2025. Interim order of status quo regarding the construction over the disputed area has also been granted on 17.01.2025. The matter is however still pending.

10. A Division Bench of the Madurai Bench of the Madras High Court in ***The State of Tamil Nadu Represented by The District Collector, Madurai vs. Panthanathammal and ors (2025 (1) L.W 940)*** had followed ***J.Amsaveni***. In Cre-A's Tamil Dictionary, the following definition is found :



நீர்ப்பிடிப்புப் பகுதி பெ. (ஆற்றில்) நீர் வந்து
சேருவதற்கு ஆதாரமான பகுதியாக அமையும்
மழை பெய்யும் பரப்பு; catchment area. காவிரி
ஆற்றின் நீர்ப்பிடிப்புப் பகுதிகளான மேற்குத்
தொடர்ச்சி மலையில் கன மழை பெய்துவரு
கிறது./ நீர்ப்பிடிப்புப் பகுதிகளில் உரிய நடவடிக்கைகள்
எடுப்பதன்மூலம் நிலத்தடி நீரைப் பெருக்
கக்கூடிய சாத்தியக்கூறு அதிகமாகிறது./ நீர்ப்
பிடிப்புப் பகுதிகளில் மழை பெய்யாததுதான்
குடிநீர்த் தட்டுப்பாட்டுக்கு முக்கியக் காரணமாகக்
கூறப்படுகிறது.

The judgment in **J.Amsaveni** would cover cases where there are Town Planning Regulations. Does it mean that in respect of those catchment areas to which such regulations are not applicable, **J.Amsaveni** will not apply ?. We hold that no development or construction activities can be permitted on lands that have been classified as water catchment areas. The High Court of Rajasthan in Abdul Rahman v. State of Rajasthan (**2004 SCC Online Raj 676 and State of Rajasthan, In Re (2012 Scc OnLine Raj 1732)**) issued a slew of directions to protect water catchment areas. The High Court of Rajasthan noted that if the catchment areas are choked, water flow into tanks and lakes and rivers will be affected thereby turning them dry. These directions were put to challenge before the Hon'ble Supreme Court in **National Institute of**

***Medical Sciences University v. State of Rajasthan (2018) 13***

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SCC 390. The Hon'ble Supreme Court emphasised the need to ensure free flow of water through the catchment areas and dismissed the SLPs.

11. We would also look at the issue from yet another perspective. The members of the petitioner-association have been customarily drawing water from the petition mentioned Kanmoi. The said Kanmoi receives water which flow through the catchment areas. If obstructions are made in the catchment areas, then, the Kanmoi will go dry. That in turn would affect the rights of the petitioner and the members of his association. We, therefore, endorse the stand taken in ***J.Amsaveni*** that the authorities have a constitutional duty to ensure free flow of water through the catchment areas. This constitutional duty has to be performed even if there is no Master Plan or planning regulations prohibiting development activities in the water catchment areas.

12. We direct the respondents 1 to 3 to take consequential steps pursuant to the communication dated 23.07.2019 issued by the fourth respondent herein. This exercise shall be completed within a period of four months from the date of receipt of a copy of this order.



13.This writ petition stands partly allowed. No costs.

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(G.R.SWAMINATHAN, J.) & (R.POORNIMA, J.)
23rd March 2026

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

PMU/skm

To:

1. The District Collector,
Madurai District, Madurai.
2. The Revenue Divisional Officer,
Madurai District, Madurai.
3. The Tahsildar,
Vadipatti Taluk, Madurai.



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