

Madras High Court  
M.Velu vs Impleaded As Per Order Dated ... on 19 March, 2010  
Dated: 19.03.2010

Coram:

The Honourable Mr.Justice ELIPE DHARMA RAO

AND

The Honourable Mr.Justice K.K.SASIDHARAN

WRIT PETITION NO.50425 OF 2006

M.Velu ... Petitioner

Versus

1. The State of Tamil Nadu

rep.by its Secretary to Government

Public Works Department

Fort St. George

Chennai-600 009.

2. The Secretary to Government

Industries Department

Fort St. George

Chennai-600009.

3. State Industries Promotion Corporation

of Tamil Nadu Ltd., (SIPCOT)

19-A, Rukmani Lakshmi pathy Road

Egmore, Chennai-600 008

Rep.by its Managing Director

4. The District Collector

Kancheepuram District

Kancheepuram.

5. K.Punnainathan

Impleaded as per order dated ..3.2010

in M.P.No.1 of 2010 ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of Mandamus forbearing the respondents from converting the use of lands covered by the lakes viz., Anderi also known as Sulleri and Sundal eri, Karanaipattu Lake, Chennappanaicker Lake, Kalkulam, Vallakottai Ponds, situated in Survey Nos.268, 285, 274 and 156 of Vallam Revenue Village, its catchment area, feeding canals and punjai and nanjai agricultural lands lying around the aforesaid lakes situated within the four boundaries viz., on the North by Sriperambudur and Vallakottai, east by Sriperambudur and Singaperumal Koil Road and West by Mettupalayam-Vallamkandigai Villages and Vallakottai Murugan Temple tank, from agricultural to industrial use and to protect the said lands covered by the lakes and ponds. For Petitioner .. Mr.T.Mohan

For Respondents .. Mr.G.Desinghu

Spl.Govt.Pleader

for RR1,2 and 4

Mr.P.Wilson,

Additional Advocate General

Assisted by Mr.M.Devaraj

for R.3

Mr.V.Ayyadurai for R5.

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**O R D E R**

**K.K.SASIDHARAN, J**

The petitioner seeks a writ of Mandamus forbearing the respondents from converting the use of lands covered by the lakes viz., Anderi also known as Sulleri and Sundal eri, Karanaipattu Lake, Chennappanaicker Lake, Kalkulam, Vallakottai Ponds, situated in Survey Nos.268, 285, 274 and 156 of Vallam Revenue Village, its catchment area, feeding canals and punjai and nanjai agricultural lands lying around the aforesaid lakes situated within the four boundaries viz., on the North by Sriperumbudur and Vallakottai, east by Sriperumbudur and Singaperumal Koil Road and West by Mettupalayam-Vallamkandigai Villages and Vallakottai Murugan Temple tank, from agricultural to industrial use and to protect the said lands covered by the lakes and ponds in the interest of general public. **THE FACTS:-**

2. In the affidavit filed in support of the writ petition, the petitioner would contend thus:-

(a) The petitioner is a Councillor of District Panchayat in Kancheepuram District. He is a social worker involved in the welfare of poor agriculturists of Kancheepuram District.

(b) The Village of Vallakottai in Kancheepuram District was gifted with several lakes and ponds, out of which, Andheri (also known as Sulleri and Sundal eri), Chennappa Naicker Lake and Karanaipattu Lake are spread over a vast area. Andheri lake is situated in Survey No.263 of Vallam Revenue Village and the same is spread over almost hundred acres . Karanaipattu, Chennappa Naicker and Kalkulam lakes are situated in Survey Nos.228, 249 and 250 respectively. In addition to these lakes, there are numerous small ponds situated in Survey Nos.268, 274, 285 and 16 of Vallam Revenue Village. (c) Those lakes and ponds are well connected with feeding canals from the punjai lands situated on the western side of the lands which lie as a perfect slope to collect rain water. Feeding canals are upto 50 feet wide as per the revenue records itself. On the eastern side of these lakes and ponds, nanjai lands are situated, which are being cultivated by the residents of Vallakottai and Vallamkandigai Villages within the Vallam Revenue Village. (d) The lakes serve a dual function, that of an invaluable source of water for the domestic and agricultural requirements of the villages of Vallakottai and Vallamkandigai, where more than 500 families reside. Most of them predominantly depend on agriculture and agricultural allied activities for their livelihood. There are four major feeding canals and several smaller ones, all of them naturally formed, leading to the lake carrying rain fed water and these canals cater to the irrigation requirements of the agriculturists. Water from Andheri flows into the tank of the ancient Vallakottai Murugan temple, a much revered place of worship. (e) The ancestors of the petitioner were engaged in cultivation and the petitioner is also an agriculturist depending on agriculture for his livelihood. The family of the petitioner and the other residents of the villages of Vallakottai and Vallamkandigai cultivate paddy and seasonal crops. Therefore agriculture is the main occupation in these two villages. (f) While the matters stood thus, respondents 2 and 3 initiated action to acquire large extent of land in Sriperambudur Taluk for the purpose of allotting lands for setting up major industries. They have acquired substantial property in and around Sriperumbudur. Now they are taking steps for acquiring lands in and around Vallakottai and Vallamkandigai in a surreptitious manner, for allotting the lands to various private industrial establishments. Therefore to prevent conversion of the use of lands from agricultural to industrial and to protect the Andheri, Kaaranaipattu eris, Chennappa Naicker Kulam, Kalkulam as well as various feeding canals and numerous ponds that dot the landscape, the petitioner has filed this writ petition in public interest. VIEWS OF THE REQUISITION BODY

3. The third respondent has filed a counter affidavit, the material contentions of which are thus:-

(a) The State of Tamil Nadu is considered as a preferred destination for investments, especially for information and Technology related industries and Automobile Units. Some giant industrial units and Multi-national Companies have preferred to locate their industrial units in and around Chennai. The situation automatically warrants expansion of the existing complexes nearby Chennai, wherever possible besides development of new industrial complexes to cater to the growing needs of the industrial units. In this process, the State Industries Promotion Corporation of Tamil Nadu Ltd. (hereinafter referred to as &quot;SIPCOT&quot;) has identified additional lands in various villages in Sriperambudur Taluk including lands in Vallam Village. (b) The property referred to in the affidavit filed in support of the writ petition and more particularly, the property in Survey No.263 is not a lake and the same is a patta land. The lands in Survey Nos.227 part, 268 part and 285 part are classified as Kuttai as per the Village accounts. Lands in Survey Nos.228 and 249 are classified as Eris. Similarly, the land in Survey No.250 is a wet land and the land in Survey No.274 is classified as dry land. The property in Survey No.16 is not covered under acquisition proposal. (c) It is not correct to say that water is accumulated in the eri which will not be stored throughout the year. Only a single crop is cultivated in the lands nearby Eri and that too subject to the availability of water in the Eri. Most of the dry lands have now been converted into housing lay outs. The Murugan Temple and the temple ponds are not covered under the land acquisition proposal. (d) The SIPCOT would incorporate necessary conditions in the lease deed to be executed by the allottees for the purpose of providing employment to the ex-land owners. There is no conversion of the agricultural land into industrial land as alleged. Only those lands that are identified as dry lands and which have not been put to agricultural use for the past several years, have been identified for acquisition. It was only to maintain the contiguity of the lands, certain pockets of wet land, which are not put to agricultural use, have also been included in the proposal. (e) Therefore only in case of preserving the compactness, wet lands will be included and that too, only after the Revenue

Authority is satisfied that the said lands are inevitable for the purpose of acquisition. The lands will be allotted to non-polluting industries, which will have to obtain the necessary clearance from the competent authorities. The development will be done only in a balanced manner without disturbing the ecology of the area.

4. The SIPCOT has also filed an additional counter affidavit wherein it was indicated that the Government have accorded administrative sanction as per order in G.O.Ms.No.3 dated 6 January, 2009 permitting acquisition of 1780.16 acres of property. The Government have invoked the provisions of the Tamil Nadu Acquisition of land for Industrial Purposes Act, 1997 and in case the petitioner is aggrieved, it is open to him to put forth his objections before the statutory authorities.

5. Though the custodian of the natural resources is the State, no counter affidavit was filed on behalf of the Government.

## THE STATUTE

6. The Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997 (hereinafter referred to as "Industrial purposes Act") was enacted for the purpose of acquisition of land for industrial purposes in the State of Tamil Nadu. The Government found that the normal process of acquisition was a time consuming process and since speedy acquisition of land for industrial purposes was the need of the hour, the Special Statute was enacted. Section 3(2) provides for issuance of notice by the Government calling upon the owner of the land it proposes to acquire or interested in such land to show cause as to why the land should not be acquired. The Government is expected to hear the land owner before issuing the notice under Section 3(1) of the Industrial Purposes Act. Section 4 provides that when a notice under sub-section (1) of Section 3 is published in the Tamil Nadu Government Gazette, the land to which the said notice is issued, on and from the date of such publication, vest absolutely in the Government free from all encumbrances. DISCUSSION:-

7. The acquisition, which is the subject matter of this writ petition was initiated by the Government of Tamil Nadu as per proceedings in G.O.Ms.No.3 , Inds.(SIPCOT-LA) dated 6 January, 2009. As per the said notification, the Government granted administrative sanction for the purpose of acquiring 642.04.0 hectares of lands in Vadagal 'A' and 'B', Vallam 'A' and 'B' and Budanur Villages, Sriperumbudur Taluk in the District of Kancheepuram by invoking the provisions of Industrial Purposes Act, 1997. The Special District Revenue Officer (Land Acquisition) was requested to send necessary land acquisition proposals for acquisition of the lands.

8. The learned counsel for the petitioner contended that the respondents have no concern about loss of ecology and their proposal would ultimately destroy the natural streams, ponds, lakes and wet lands and the entire area would become barren lands susceptible to flood and other natural calamities. According to the learned counsel, before taking steps for acquisition of property, the Government should have conducted an Impact Assessment Study. The project report prepared by ITCOT Consultancy and Services Ltd., a private consulting agency was made up only for subserving purpose to justify the land acquisition and as such no credence could be given to the said report. In short, the learned counsel for the petitioner wanted the State to conduct an Environmental Impact Assessment before taking further action in the matter of land acquisition.

9. The learned counsel appearing on behalf of the fifth respondent contended that before granting administrative approval, the objections submitted by the fifth respondent were not considered. Neither the Government nor SIPCOT made an attempt to get an expert opinion before issuing administrative sanction by the Government. The undertaking which SIPCOT now gives to maintain the Eri is a false promise, inasmuch as, similar promises were given earlier also to maintain the nearby ponds, when those lands were acquired. However, the Eri and lakes were not maintained subsequently. According to the learned counsel, the entire cattle population in the village depends upon the catchment area for grazing. The existence of huge feeding canals is evident from the revenue village map itself and the local people have been maintaining water feeding canals both voluntarily and also under various panchayat schemes. The learned counsel would further contend

that the catchment area consists of punja lands on the western side of the lake and water cascades into the said lake and fills the lake to its full level. Therefore in the event of acquisition, the entire river water bodies would be ruined.

10. SIPCOT has challenged the maintainability of the writ petition at the instance of a third party. According to SIPCOT, the acquisition was initiated as per the provisions of the Industrial Purposes Act, 1997. Therefore it is open to the concerned land owners to file their objections before the authorised officer under Section 3(2) of the Act. Such objections would be considered by the Government before proceeding further and more particularly before issuing the notice under Section 3(1) of the Act.

11. According to the learned Additional Advocate General appearing on behalf of SIPCOT, 80% of the enquiry is already over in pursuance of the objections submitted by the land owners. The learned Additional Advocate General also submitted that even the petitioner is at liberty to submit his objections before the authorized officer under Section 3(2) of the Industrial Purposes Act and such objections would be considered on merits treating him as an "interested person".

12. Several Documents were produced along with this writ petition. Copies of Village "A" Register clearly show that substantial property both dry as well as wet lands are sought to be acquired for industrial purposes. The third respondent has not denied the factum of acquisition of wet lands as well as water bodies specifically. According to the third respondent, they would take steps for preservation of those water bodies and the industrial establishments also would be made to maintain these natural resources. SIPCOT has also availed consultancy service of a private consultancy forum and the report submitted by the private consultant proceeds on the basis that the dry lands and poramboke lands alone are proposed to be acquired and as such wet lands are not under the purview of acquisition.

13. However the very report prepared by the consultant contains statement to the effect that the land actually comprised of various classifications like wet lands, dry lands and poramboke lands. The report also states that the proposed lands have so many potentials like natural wells, dug up wells, ponds or otherwise rainfed. There is a further reference in the report that the water courses like channels, inlet canals, Vaari etc., will be maintained by SIPCOT so that rain water collected from the catchment areas can be let down into irrigation tanks without any effluents/sewerage, etc. These references in the very report produced by SIPCOT confirms the apprehension raised by the petitioner.

14. There is no dispute that, in matters relating to land acquisition, only those persons whose lands are sought to be acquired alone can challenge the proceedings. Section 3(2) of the Industrial Purposes Act provides for issuing notice to the owner of the land and any other person, who in the opinion of the Government, is interested in such land, and the final notification under Section 3(1) has to be issued after hearing the owner or person interested and considering the cause shown by such person.

15. The core issue which arises for consideration is as to whether the Government is bound to conduct an Impact Assessment Study before proceeding further with the process of acquisition of such large extent of land which includes canals, ponds, eri and other water bodies as well as wet lands.

16. It is an accepted position that the State needs more and more industries so as to solve the ever increasing problem of unemployment. The setting up of industries would also enable the State to earn foreign exchange. Nobody is against the industrialization of the Country as a whole and the State in particular. The State of Tamil Nadu in the recent past has made substantial growth in the field of industrialization. There was a wrong notion earlier that it was not possible to attain industrial growth without affecting the ecology. In short, it was believed that development and ecology are two diametrically opposite concepts and it would be impossible to effect a fusion of these two concepts. The need to protect the environment has emerged as a burning issue, which ultimately lead to the new concept of 'sustainable development.'

17. Article 51-A(g) of our Constitution contains a Constitutional mandate to protect and improve the natural environment including forests, lakes, rivers and wild life. The Supreme Court of India by way of series of judgments, interpreting Article 21 of the Constitution evolved the concept of 'sustainable development', in the interest of our economy as well as environment.

18. Though Article 51-A(g) of the Constitution comes under the chapter relating to fundamental duties, it is not possible for the State also to ignore the constitutional wisdom.

19. There should be a harmonious approach in the matter of development vis-a-vis ecology. Development should not be at the cost of our ecological system. Environment plays a pivotal role in the life of human beings. Before taking up the task of major developmental schemes, its impact on ecology has to be studied. There is no point in assessing such impact at a later point of time. When massive projects of development are undertaken involving utilisation of large blocks of property, which includes wet lands, water bodies, lakes and other natural wealth, the attempt should be to assess the impact on ecology simultaneous with the feasibility study of the project.

20. In case, the ecological impact of the scheme was also made a subject matter of the project study, unnecessary public expenditure could be avoided inasmuch as the very scheme could be abandoned, in the event of coming to a conclusion that the proposed project was ecologically not feasible.

21. Lakes and water bodies are gifts of nature. There is no possibility of getting further gifts of such nature. We should be content with the resources already given by the nature. Therefore, we should protect these valuable resources so as to enable the future generation to maintain it for the years to come for common good of all.

22. Environmental management is not the concern of the Government alone. People of the country should take up these issues like any other burning issues concerning them personally. There is no question of taking an indifferent attitude in such matters. Unfortunately in the eagerness to acquire more and more property, even rivers, water bodies and lakes are not left free. Cases of alleged encroachment on water bodies are really alarming. The Government have already enacted laws for removal of encroachment on water bodies. However there are instances where the public raised fingers against the Government also when it has forgotten the laws meant for preserving water bodies and attempted to fill up those natural streams under the guise of development.

23. India was a party to the Stockholm Convention organized by the United Nations in the year 1972. The declaration in the said conference that natural resources of the earth including air, water, land, flora and fauna and especially representative samples of natural ecosystems must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate, is binding on India.

24. It is now an accepted position that international conventions and treaties, to the extent it is not in conflict with the municipal laws, are to be respected. When it is a recognised principle that tanks, rivers and water-bodies are all communal properties belonging to the public at large and the State is only a custodian of such valuables, the State holds the responsibility to preserve them by all possible means. The State by preserving these natural resources in its capacity as sovereign or as public trustee discharges the solemn function for common good.

25. The "Public Trust Doctrine" is now part of our jurisprudence and this position was confirmed by the Supreme Court in M.C.METHA v. KAMAL NATH (1997(1) SCC 388).

26. The Green Bench was constituted in accordance with the directions of the Supreme Court in VELLORE CITIZENS' WELFARE FORUM v. UNION OF INDIA (1996(5) SCC 647). The Green Bench was expected to consider the environmental issues with high degree of sensitivity. It is true that the responsibility lies with

the State to preserve the natural resources and the ecology. There is no dispute that the State has also taken effective measures to protect the environment and to maintain the ecological balance. Even then when a person approaches the Court, complaining violation of environmental laws or the alleged act of a State organ in destroying the natural resources, the Court was not expected to be a mute spectator.

27. The Supreme Court in BOMBAY DYEING & MFG.CO.LTD., v. BOMBAY ENVIRONMENTAL ACTION GROUP (AIR 2006 SC 1489) observed that Public Interest Litigations have been entertained more frequently where a question of violation of the provisions of the statutes governing the environment or ecology of the country has been brought to its notice in the matter of depletion of forest areas and/or when the executive while exercising its administrative functions or making subordinate legislations have interfered with the ecological balance with impunity.

28. Therefore writ petitions involving violation of environmental laws affecting ecological balance have to be taken serious note of and in case the Court is of the view that the case projected a matter of great environmental concern, the question of locus standi in such cases would be secondary. After all, the petitioner in a Public Interest Litigation is only an information provider and it is for the Courts to take note of the situation.

29. There is no dispute that some of the writ petitions branded as "Public Interest Writ petitions" are really in the nature of "private interest writ petitions". The noble concept of "Public Interest Litigation" is often being misused for redressal of pure private disputes. Therefore the attempt should be to encourage true and genuine public spirited writ petitions and to weed out vested interest writ petitions filed under the brand name of "Public Interest Writ Petitions."

30. In a recent decision in STATE OF UTTARANCHAL v. BALWANT SINGH CHAUFAL (2010(1) SCALE 492), the Supreme Court after surveying the earlier decisions and with reference to the law regarding Public Interest Litigation in other countries, issued comprehensive guidelines in the matter of "Public Interest Litigations". The directions read thus:-

198. In order to preserve the purity and sanctity of the PIL, it has become imperative to issue the following directions:-

(1) The courts must encourage genuine and bona fide PIL and effectively discourage and curb the PIL filed for extraneous considerations.

(2) Instead of every individual judge devising his own procedure for dealing with the public interest litigation, it would be appropriate for each High Court to properly formulate rules for encouraging the genuine PIL and discouraging the PIL filed with oblique motives. Consequently, we request that the High Courts who have not yet framed the rules, should frame the rules within three months. The Registrar General of each High Court is directed to ensure that a copy of the Rules prepared by the High Court is sent to the Secretary General of this court immediately thereafter. (3) The courts should prima facie verify the credentials of the petitioner before entertaining a P.I.L.

(4) The court should be prima facie satisfied regarding the correctness of the contents of the petition before entertaining a PIL.

(5) The court should be fully satisfied that substantial public interest is involved before entertaining the petition.

(6) The court should ensure that the petition which involves larger public interest, gravity and urgency must be given priority over other petitions.

(7) The courts before entertaining the PIL should ensure that the PIL is aimed at redressal of genuine public harm or public injury. The court should also ensure that there is no personal gain, private motive or oblique motive behind filing the public interest litigations. (8) The court should also ensure that the petitions filed by busybodies for extraneous and ulterior motives must be discouraged by imposing exemplary costs or by adopting similar novel methods to curb frivolous petitions and the petitions filed for extraneous considerations.&quot;

31. As observed by the Supreme Court in BOMBAY DYEING case (AIR 2006 SC 1489), the Court normally would lean in favour of environmental protection in view of the creative interpretation made by the Supreme Court in finding a right of environmental including right to clear water, air, etc. under Article 21 of the Constitution of India.

32. The &quot;Polluter Pays Principle&quot; has no application in this case as the land is yet to be acquired. Since prevention is better than cure, instead of directing the industries not to cause destruction of water body and other natural resources, Government itself can ascertain before acquisition as to whether development would result in ecological imbalance. In a matter like this, when there are apprehensions raised regarding possible destruction of natural resources, this Court constituted as a Green Bench for Environment Cases, got a social obligation to look into the matter and interfere in case such interference is absolutely necessary. The attempt should be to strike a balance between development and preservation of ecology. These types of litigations are really not adversarial in nature. Whenever it comes to the preservation of environment and natural resources there should be a joint effort by all concerned. It is not the look out of a section of the society alone in the matter of environmental or ecological issues. It should rather be taken as a social cause.

33. The petitioner is undoubtedly justified in expressing his genuine concern in the matter of acquisition of water body, ponds and wet lands and pointing out the perennial danger to the natural resources on account of setting up of industries by filling up the water body and other streams. THE AUTHORITIES

34. The importance of agriculture in our rural economy was underlined by the Supreme Court Samatha v. State of A.P., (1997) 8 SCC 191. The observation reads thus:-

&quot;9. Agriculture is the main part of the economy and source of livelihood to the rural Indians and a source and succour for social status and a base for dignity of person. Land is a tangible product and sustaining asset to the agriculturists. In Waman Rao v. Union of India a Constitution Bench had observed that India being a predominantly agricultural society, there is a strong linkage between the land and the person's status in social system. The strip of land on which they till and live assures them equal justice and dignity of their person by providing to them a near decent means of livelihood. Agricultural land is the foundation for a sense of security and freedom from fear. Assured possession is a lasting source for peace and prosperity.&quot;

35. The &quot;Public Trust Doctrine&quot; was explained by the Supreme Court in Karnataka Industrial Areas Development Board v. C. Kenchappa, (2006) 6 SCC 371. The relevant observation as contained in paragraph 83 reads thus:- &quot;83. The concept of public trusteeship may be accepted as a basic principle for the protection of natural resources of the land and sea. The public trust doctrine (which found its way in the ancient Roman Empire) primarily rests on the principle that certain resources like air, sea, water 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 should be made freely available to everyone irrespective of their status in life. The doctrine enjoins upon the Government and its instrumentalities to protect the resources for the enjoyment of the general public.&quot;

36. The issue before the Supreme Court in Karnataka Industrial Areas Development Board case (2006) 6 SCC 371 was the direction given by the Division Bench of the High Court of Karnataka to the Karnataka Industrial Areas Development Board to leave a land of one kilometre as a buffer zone from the outer periphery of the

village in order to maintain a &quot;green area&quot; towards preservation of land for grazing of cattle, agricultural operation and for development of social forestry and to develop the area into a green belt. The High Court further directed that whenever there was an acquisition of land for industrial, commercial or any other agricultural purposes, except for the residential purpose, authorities must leave one kilometre area from the village limits as a free zone or green area to maintain ecological equilibrium. The Supreme Court observed that if the direction in the impugned judgment of the High Court are implemented, then perhaps, the Karnataka Industrial Area Development Board cannot acquire any land for development and while setting aside the judgment, issued the following directions. &quot;100. The importance and awareness of environment and ecology is becoming so vital and important that we, in our judgment, want the appellant to insist on the conditions emanating from the principle of Sustainable Development : (1) We direct that, in future, before acquisition of lands for development, the consequence and adverse impact of development on environment must be properly comprehended and the lands be acquired for development that they do not gravely impair the ecology and environment. (2) We also direct the appellant to incorporate the condition of allotment to obtain clearance from the Karnataka State Pollution Control Board before the land is allotted for development. The said directory condition of allotment of lands be converted into a mandatory condition for all the projects to be sanctioned in future.&quot;

37. In M.C. Mehta v. Kamal Nath, (1997) 1 SCC 388, the Supreme Court while considering the Public Trust Doctrine reminded the executive of its duty to preserve the natural resources and in that factual context observed thus:- &quot;35. We are fully aware that the issues presented in this case illustrate the classic struggle between those members of the public who would preserve our rivers, forests, parks and open lands in their pristine purity and those charged with administrative responsibilities who, under the pressures of the changing needs of an increasingly complex society, find it necessary to encroach to some extent upon open lands heretofore considered inviolate to change. The resolution of this conflict in any given case is for the legislature and not the courts. If there is a law made by Parliament or the State Legislatures the courts can serve as an instrument of determining legislative intent in the exercise of its powers of judicial review under the Constitution. But in the absence of any legislation, the executive acting under the doctrine of public trust cannot abdicate the natural resources and convert them into private ownership, or for commercial use. The aesthetic use and the pristine glory of the natural resources, the environment and the ecosystems of our country cannot be permitted to be eroded for private, commercial or any other use unless the courts find it necessary, in good faith, for the public good and in public interest to encroach upon the said resources.&quot;

38. The Supreme Court in Fomento Resorts & Hotels Ltd. v. Minguel Martins, (2009) 3 SCC 571, once again indicated the relevance of &quot;Public Trust Doctrine&quot;. It reads thus:

&quot;53. The public trust doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes. This doctrine puts an implicit embargo on the right of the State to transfer public properties to private party if such transfer affects public interest, mandates affirmative State action for effective management of natural resources and empowers the citizens to question ineffective management thereof.

54. The heart of the public trust doctrine is that it imposes limits and obligations upon government agencies and their administrators on behalf of all the people and especially future generations. For example, renewable and non-renewable resources, associated uses, ecological values or objects in which the public has a special interest (i.e. public lands, waters, etc.) are held subject to the duty of the State not to impair such resources, uses or values, even if private interests are involved. The same obligations apply to managers of forests, monuments, parks, the public domain and other public assets. Professor Joseph L. Sax in his classic article, The Public Trust Doctrine in Natural Resources Law: Effective Judicial Intervention (1970), indicates that the public trust doctrine, of all concepts known to law, constitutes the best practical and philosophical premise and legal tool for protecting public rights and for protecting and managing resources, ecological values or objects held in trust.

55. The public trust doctrine is a tool for exerting long-established public rights over short-term public rights and private gain. Today every person exercising his or her right to use the air, water, or land and associated natural ecosystems has the obligation to secure for the rest of us the right to live or otherwise use that same resource or property for the long-term and enjoyment by future generations. To say it another way, a landowner or lessee and a water right holder has an obligation to use such resources in a manner as not to impair or diminish the people's rights and the people's long-term interest in that property or resource, including down slope lands, waters and resources.&quot;

39. The Supreme Court in Essar Oil Ltd. v. Halar Utkarsh Samiti (2004) 2 SCC 392, after extracting the fourth principle enunciated in the Stockholm Declaration of 1978 observed thus:-

&quot;27. This, therefore, is the aim, namely, to balance economic and social needs on the one hand with environmental considerations on the other. But in a sense all development is an environmental threat. Indeed, the very existence of humanity and the rapid increase in the population together with consequential demands to sustain the population has resulted in the concreting of open lands, cutting down of forests, the filling up of lakes and pollution of water resources and the very air which we breathe. However, there need not necessarily be a deadlock between development on the one hand and the environment on the other. The objective of all laws on environment should be to create harmony between the two since neither one can be sacrificed at the altar of the other.&quot;

40. In Fomento Resorts & Hotels Ltd. v. Minguel Martins,(2009) 3 SCC 571, the Supreme Court indicated the awareness of Indian Society, since time immemorial, with respect to the need of protecting ecology. The observation reads thus:- &quot;59. The Indian society has, since time immemorial, been conscious of the necessity of protecting environment and ecology. The main motto of social life has been to live in harmony with nature. Sages and saints of India lived in forests. Their preachings contained in vedas, upanishadas, smritis, etc. are ample evidence of the society's respect for plants, trees, earth, sky, air, water and every form of life. It was regarded as a sacred duty of everyone to protect them. In those days, people worshipped trees, rivers and sea which were treated as belonging to all living creatures. The children were educated by their parents and grandparents about the necessity of keeping the environment clean and protecting earth, rivers, sea, forests, trees, flora, fauna and every species of life.&quot;

41. The circumstances leading to the insertion of Article 48-A and 51-A in our Constitution was indicated by the Supreme Court in Fomento Resorts & Hotels Ltd. v. Minguel Martins,(2009) 3 SCC 571 thus:- &quot;60. The Constitution of India, which was enforced on 26-1-1950 did not contain any provision obligating the State to protect environment and ecology, but the people continued to treat it as their social duty to respect the nature, natural resources and protect environment and ecology. After almost three decades of independence, the legislature recognised the importance of protecting and improving environment and safeguarding forests and wildlife and Article 48-A was inserted in Part IV of the Constitution by the Constitution (Forty-second Amendment) Act, 1976 whereby a duty was imposed on the State to endeavour to protect and improve the environment and safeguard forests and wildlife of the country. By the same amendment Article 51-A was inserted in the form of Part IV-A which enumerates fundamental duties of every citizen. Article 51-A(g) declares that it shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures.

Thereafter, the courts repeatedly invoked Articles 48-A and 51-A for protecting environment and ecology and several orders were passed in public interest litigation mandating the State to take action for protecting forests, rivers and anti-pollution measures.

61. The importance of the public trust doctrine was also recognised by this Court and the same was applied for protecting natural resources which have been treated as public properties and are held by the Government as trustee of the people.&quot;

42. The role of the Courts in the matter of environmental protection was underlined by the Supreme Court in Enviro-Legal Action v. Union of India, (1996) 5 SCC 281, thus:-

"41. ....The legal position relating to the exercise of jurisdiction by the courts for preventing environmental degradation and thereby, seeking to protect the fundamental rights of the citizens, is now well settled by various decisions of this Court. The primary effort of the court, while dealing with the environmental-related issues, is to see that the enforcement agencies, whether it be the State or any other authority, take effective steps for the enforcement of the laws. The courts, in a way, act as the guardian of the people's fundamental rights but in regard to many technical matters, the courts may not be fully equipped. Perforce, it has to rely on outside agencies for reports and recommendations whereupon orders have been passed from time to time. Even though, it is not the function of the court to see the day-to-day enforcement of the law, that being the function of the Executive, but because of the non-functioning of the enforcement agencies, the courts as of necessity have had to pass orders directing the enforcement agencies to implement the law."

43. In W.P.No.9319 of 2009, the issue before this Court was again the proposal of SIPCOT to acquire large extent of property for the purpose of putting up industries. Before the Division Bench, SIPCOT contended that since extent of land involved was less than 500 hectares, no clearance as per notification dated 14 September, 2006 was necessary. The Division Bench by placing reliance on the notification dated 14 September, 2006 issued by the Government in exercise of the powers conferred under Sub Section (1) and Clause (v) of Sub-Section (2) of Section 3 of the Environment (Protection) Act, 1986 read with Clause (d) of Sub-Rule 3 of Rule 5 of the Environment (Protection) Rules, 1986 imposing certain restrictions and prohibitions on new projects or activities or on the expansion of modernization of existing projects, held that before proceeding with any construction work, SIPCOT has to obtain environmental clearance from the competent authority.

44. In the case on hand, the Government had decided to acquire 642.04.0 hectares of land by invoking the provisions of the Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997 and for alienation of 78.67.5 hectares of Government poramboke lands. Admittedly, no environment assessment study was made either before granting administrative sanction for acquisition or before issuing the notification under Section 3(2) of the Industrial Purposes Act. The enquiry proceedings in respect of the acquisition are now stated to be in progress. SIPCOT has also no objection in hearing the petitioner and the fifth respondent before issuing the notification under Section 3(1) of the Industrial Purposes Act.

45. Since the land acquisition proceeding is only in the preliminary stage now, we are of the view that before issuing the notification under Section 3(1) of the Act the authorities have to approach the statutory authority constituted under the environment (Protection) Act for environmental clearance. The report of the statutory authority must also be considered by the Government while dealing with the objections submitted by the land owners and the other interested persons, including the petitioner and the fifth respondent in pursuance of the notice issued under Section 3(2) of the Industrial Purposes Act. DIRECTIONS:-

46. Therefore keeping in view the direction given by the Supreme Court in the Karnataka Industrial Areas Development Board case, (cited supra) we are inclined to issue the following directions:- (1) The petitioner is granted liberty to make a comprehensive representation within fifteen days from the date of receipt of a copy of this order before the statutory authority constituted to hear objections relating to the land acquisition in question in pursuance to the notice issued under Section 3(2) of the Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997. Similar liberty is granted to the fifth respondent also. (2) The statutory authority exercising powers under the Industrial Purposes Act, simultaneous with the process of hearing the objections from the land owners, petitioner, fifth respondent and other interested persons should approach the State Level Environmental Impact Assessment Authority for prior environmental clearance before proceeding further in the matter of issuance of notice under Section 3(1) of the Act. (3) In case the State Environmental Impact Assessment Authority gives clearance for the project in question, it would be open to the Government

to proceed further with the acquisition of property. (4) As undertaken by SIPCOT in their counter affidavit dated 6 February, 2007, appropriate provisions should be incorporated in the Lease Agreements mandating preservation of ecology and to maintain the ponds and other natural streams by the concerned industrial units.

47. The writ petition is disposed of with the above directions. No costs. Consequently, the connected MP is closed.

(E.D.R.,J) (K.K.S,J)

19.03.2010

Index: Yes/No

Internet: Yes/No

Tr/

To

1. The State of Tamil Nadu

rep.by its Secretary to Government

Public Works Department

Fort St. George

Chennai-600 009.

2. The Secretary to Government

Industries Department

Fort St. George

Chennai-600009.

3. State Industries Promotion Corporation

of Tamil Nadu Ltd., (SIPCOT)

19-A, Rukmani Lakshmi pathy Road

Egmore, Chennai-600 008

Rep.by its Managing Director

4. The District Collector

Kancheepuram District

Kancheepuram.

ELIPE DHARMA RAO,J

AND

K.K.SASIDHARAN, J

Tr

PRE-DELIVERY ORDER IN

W.P.No.50425 OF 2006

19.03.2010