

Madras High Court  
Susetha vs The Union Of India on 28 July, 2010  
DATED: 28.7.2010

CORAM:

THE HONOURABLE MR.JUSTICE ELIPE DHARMARAO

AND

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

Writ Petition No.30725 of 2008

and M.P.No.7 of 2009

Susetha ... Petitioner

Vs.

1.The Union of India,

rep.by its Secretary to Government,

Ministry of Environment and Forests,

VI Floor, CGO Complex,

Paryavaran Bhavan, Lodi Road,

New Delhi-110003.

2.The State of Tamil Nadu,

rep.by its Secretary to Government,

Public Works Department,

Fort St.George,

Chennai-600009.

3.The State of Tamil Nadu,

rep.by its Secretary to Government,

Revenue Department,

Fort St.George,

Chennai-600009.

4.The Special Commissioner  
and Commissioner of Land Administration,  
Ezhilagam, Kamarajar Road,  
Chepauk,  
Chennai-600005.

5.The Tamil Nadu Slum Clearance Board,  
rep.by its Chairman and Managing Director,  
Kamarajar Road,  
Chepauk,  
Chennai-600005.

6.The District Collector,  
Kancheepuram District,  
Kancheepuram.

7.The President,  
Okkiam Thoraipakkam Panchayat,  
Chennai-600096.

8.Meenakshi Narayanan Memorial  
Educational Charity Trust,  
rep.by its Managing Trustee,  
Mrs.Nalini Unni,  
having its registered office at Karthika,  
61, Kamaraj Avenue,  
II Extension, Adyar,  
Chennai-96.

9.Dhayalan

10.M.S.Jebestin

11.M/s.R.Krishnamurthy & Co.,

No.12, Perinna Street,

Erode-638001,

rep.by its Partner R.Krishnamoorthy

12.P.Gopal

13.N.Chidambaram

14.R.Rajkumar

15.R.Vinoth Kumar

16.S.Jahir Hussain

17.R.Sulochana

18.Karunanithi

19.P.Manoharan ... Respondents

(R.8 to R.19 impleaded as per the order of the

Court dated 5.10.2009 made in M.P.Nos.1 to 6/2009)

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Writ petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the Tender Notification No.1133/Va.1/Me.Po/Circle2/2008, dated 21.10.2008 issued by the fifth respondent and quash the same and direct the respondents to forbear from carrying out any reclamation and/or construction activity in Survey No.403/2,3,4,5,6 at Okkiam Thoraipakkam Village and restore the land in S.No.403/2,3,4,5,6 to its earlier state.

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For petitioner : Ms.R.Vaigai for

M/s.Mirdla Paul

For R.1 : Mr.M.Ravindran,

Addl.Solicitor General of India,

assisted by

Mr.M.Devendran, SCGSC

For R.2 to R.4, : Mr.G.Desingh, Spl.G.P.

R.6 & R7

For R.5 : Mr.P.S.Raman,

Advocate General,

assisted by Mr.R.Chellamuthu

For R.8 : Mr.K.S.Natarajan

For R.9 : M/s.LaLaw

For R.10 : Mr.S.P.Harikrishnan

For R.11 : Mr.A.V.K.Ezhilmani

For R.12 to R.19 : Mr.G.Masilamani,

Senior Counsel for

M/s.G.M.Mani Associates

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## O R D E R

ELIPE DHARMARAO, J.

This probono publico has been filed by the petitioner, a resident of Thoraipakkam and one of the Ward Members of Okkiam Thoraipakkam, praying to forbear the respondents/authorities from carrying out any reclamation and/or construction activity in Survey No.403/2,3,4,5,6 at Okkiam Thoraipakkam Village and restore the land in S.No.403/2,3,4,5,6 to its earlier state.

2. The Government of Tamil Nadu has issued orders in G.O.(Ms) No.424, Revenue Department, dated 4.7.2006, alienating a total extent of 7.95.5 hectares of land in Okkiam Thoraipakkam village, Tambaram Taluk to Tamil Nadu Slum Clearance Board for construction of tenements for the Tsunami affected people and other slum dwellers who are evacuated from slums. The Tamil Nadu Slum Clearance Board/the 5th respondent herein has invited sealed tenders by its notice dated 21.10.2008 for construction of further residential flats in the area and irked at the said move of the State and its organs, the petitioner has come forward to file this petition as a probono publico.

3. The case of the petitioner, in a nutshell, is that the Okkiam Thoraipakkam village, comprising of an extent of about 1494 acres is situated on the peripheral area of South Chennai and is a part of the Velachery-Pallikarani swamp, the catchment area of which contains as many as 90 water bodies; that apart from being a source of copious surface water and recharging the groundwater aquifers of the area, the swamp serves another important function of that of a flood plain; that during the monsoon, the entire run off from the area, now interspersed with innumerable habitations, enters Pallikaranai from Velachery in the North and from Kumili and Sonur in the South and all this water finally passes through Oggiammadavu and flows through South Buckingham Canal and enters the Kovalam Estuary.

4. It is also her case that the area wherein the constructions are proposed by the Slum Clearance Board falls within the Coastal Regulation Zone, wherein construction of such huge structures is impermissible and that if

the proposed construction is allowed to be erected, it will cause irreparable loss and damage to the eco-system, since being a back water body and marshy land. It has also been her case that any construction in the site will definitely affect the ecology of the area, tilting the balance of ecosystem and that the project site forms part of the Pallikaranai swamp and, therefore, any construction upon the same will definitely have an adverse impact on the swamp. She has further contended that tidal impact has been observed in the Pallikaranai area and measures to declare it as a 'Coastal Regulatory Zone-I area' have also been undertaken and therefore, any reclamation or construction activity is prohibited in the said area and that Pallikaranai swamp forms the western boundary of the project site.

5. On the contrary, the contention of the State Government and also the Slum Clearance Board is that the very writ petition has been filed under a wrong impression of the classification of the land. It has been submitted on the part of the 5th respondent, by filing a counter, that the Velachery-Pallikaranai swamp is situated at about 13 km. away from the land in Survey Nos.403/2,3,4,5,6 at Okkiam-Thoraipakkam village and it has nothing to do with the Velachery-Pallikarnai swamp; that in Okkiam-Thoraipakkam village, many IT companies have constructed multi-storeyed buildings and there are more than 10,000 pucca buildings and it is needless to state that the said buildings were constructed with the approval of the CMDA; that the petitioner herein is a resident of Raju Nagar at Okkiam Thoraipakkam village and she has constructed a pucca building in the land situated at Okkiam-Thoraipakkam village; that the land in S.No.403/2,3,4,5 and 6 of Okkiam Thoraipakkam village was allotted to the Slum Clearance Board by the Government under G.O.No.424, dated 4.7.2006 and it is not a marsh/swamp; that in a mistake of identity to the nature/classification of the land, the petitioner has approached this Court assuming to herself that the land is a marsh/swamp.

6. It has further been submitted on the part of the Slum Clearance Board/the 5th respondent that the Velachery-Pallikarnai swamp has nothing to do with the subject land and it is not a water body as construed in the writ petition; that the area described as 'Okkiam Maduvu' is situated at about a distance of 3 km. from the subject matter land; that the above writ petition has been framed by the writ petitioner without any knowledge of the classification of the subject land as 'assessed waste wet land'; that as per the Coastal Regulation Zone Notification there should not be any development for a distance of 100 m. from the embankment of the Buckingham Canal: that no developmental activities have been undertaken in the prohibited area and entire stretch of 100 m. from the Buckingham Canal boundary remains as a vacant site even now; that in the Okkiam-Thoraipakkam Scheme, the CMDA has approved the construction of slum tenements in Survey Nos.403/2,3,4 and 15,656 houses had been constructed and out of this 12038 tenements had been allotted to the beneficiaries about 7 years back and the people are living peacefully in their respective tenements; that the construction of slum tenements has been started only after 'environmental clearance' of the project by the Government; that in the Okkiam-Thoraipakkam Kannagi Nagar scheme 15656 tenements had been constructed so far and allotment for 12038 tenements had been completed and recently about 325 Tsunami affected families had been rehabilitated and altogether 12363 tenements had been allotted so far and people are living there peacefully; that the road leading to the construction site from Old Mahabalipuram Road, now named as Rajiv Gandhi road, is a pucca road with bituminous macadam with black toping surface (tar with stone jalli) and it is not a kutchra road as contended by the petitioner.

7. It has also been submitted on their part that the Buckingham Canal runs adjacent to the scheme area on the Eastern side and the rain water will drain into the canal easily; that the construction of additional tenements in Survey Nos.403/5 and 6 of Okkiam Thoraipakkam village, in no way, affect the Pallikarani swamp since the land is in no way connected with the Pallikaranai swamp which is about 13 kms. away from the land; that the reclamation of the 'assessed waste wet land' will not give any irreversible impact on the city of Chennai as contended by the petitioner; that the construction of 3000 additional slum tenements will not shrink the marsh since the land is not a marsh land; that moreover, for the people living in the Okkiam Thoraipakkam Kannagi Nagar, infrastructure facilities like roads, street lights, drinking water, ground drainage facilities, schools, ration shops, bus terminus had been provided and the people are living peacefully; that about 50,000 families are residing in the objectionable lands like water ways like Cooum, Adyar river, Buckingham canal and in road margins and these facilities have to be rehabilitated as per the Court directions and the allotment for the

vacant 3000 tenements would be made within a short period for the families living in the water ways of Cooum river and so, to rehabilitate the people living in the objectionable areas, the tenements need to be constructed and necessary environmental clearance for the construction of tenements in the land had already been obtained.

8. To this, a reply affidavit has been filed by the petitioner, stating that the Revision Survey and Resettlement Register of Okkiam Thoraipakkam clearly shows that S.No.403/2 is classified as a 'backwater'; that the basic infrastructure facilities inclusive of drainage for even the existing residences are inadequate and even minimum rainfall leads to flooding and stagnation of water; that the entire Pallikaranai Zone, of which Okkiam Thoraipakkam is a part, is an ecologically sensitive area and therefore a CRZ-I area and therefore, no construction can be permitted in the area.

9. The petitioner would further submit that the 1911 settlement register of Okkiam Thoraipakkam village shows that the land in S.Nos.403/2 was classified as 'Government poramboke' with usage as 'kazuveli (backwater) and subsequently in the year 1956, the classification of the land was changed to 'nanjai tharisu' and this classification on paper, which was in any case without notice to the residents, including the family of the petitioner, however, did not alter the situation on ground and the land continued and continues to be a water spread area draining the accumulated rain water into the Okkiam Madavu and therefore, any construction on the said site will definitely affect the ecology of the area.

10. When this matter came up for consideration before the First Bench of this Court on 28.4.2009, the First Bench, taking into consideration the dispute between the parties, has appointed a Committee of Experts, comprising of the following persons: (i) Dr.Sultan Ismail, D.Sc., Head of the Department, Bio-technology, New College and Director, Eco Science Foundation. (Chairman)

(ii) Prof.N.G.Anthaman, Professor, Centre for Water Resources, Anna University, Guindy, Chennai and

(iii) Ms.Supriya Sahu, I.A.S., Chairman of the Tamil Nadu Water Supply and Drainage Board.

11. The terms of reference for the Committee are as follows:

"(a) Whether any further filling up in the area of construction namely, Okkiam, Thoraipakkam Village should be permitted, and if so whether it will lead to water logging in the event of heavy rains?

(b) Whether the disputed construction by the Slum Clearance Board in S.Nos.403/5 & 6 will aggravate the ecological balance of that particular area?"

12. It is seen from the materials placed on record that aggrieved against the order of the First Bench of this Court, dated 28.4.2009, appointing the above Expert Committee, the 5th respondent/Slum Clearance Board has filed SLP (C) No.12087 of 2009 before the Honourable Supreme Court and it is also seen from the materials placed on record that when the Expert Committee has made its site visit on 12.5.2009, the learned counsel for the 5th respondent has served a memo. on them, stating that the Committee could not proceed with the inspection or any further work as they have preferred SLP before the Honourable Supreme Court, furnishing the Diary Number of the SLP filed and further requesting to defer the Committee's inspection stating that even the Revenue officials were engaged in parliamentary election work. But, the Committee has not accepted the said Memo. and proceeded with the inspection. Ultimately, the said SLP was dismissed by the Honourable Supreme Court by the order dated 6.7.2009 and the order of the Honourable Apex Court reads thus: "Although, a letter has been circulated for adjournment, we see no reason to entertain the same since the petitioner has only questioned an order passed by the High Court appointing a Committee to consider the feasibility of the project concerned. The Special Leave Petition is, accordingly dismissed. In the event the petitioner is aggrieved by the report of the Committee and findings that may be arrived thereupon, the petitioner will be free to ventilate his grievances against the same.

The question of the competence of the Committee to make such enquiry is left open and the petitioner may question the same in other proceedings.&quot;

13. In the meantime, the Committee appointed by the First Bench of this Court has submitted its report 'based on the scrutiny of the documents submitted by the petitioner and the respondents, the interactions the Committee had with them and also their counsels and their representatives, the personal observations of the Committee, the interactions of the Committee with a panel of experts and also based on two visits to the site on 12.5.2009 and 25.5.2009'. The conclusions arrived at by the Committee are extracted hereunder for easy reference: &quot;1. The Committee has come to the conclusion that no further construction should be allowed on the site in question, viz., Survey Nos.403/5 and 403/6 in Okkiyam Thoraipakkam. Any further construction on the site would lead to soil compaction, leading to increased bulk density, consequently decreasing water infiltration and recharge mechanisms, thereby creating ecological imbalance. Further, there is no doubt that the construction of the TNSCB tenements would lead to disturbance in the flow pattern of rain water in Okkiyam Thoraipakkam.

2. Pile foundations driven by the huge pile foundation laying machines have an enormous negative impact on the flood plain and ecological processes and functions. There is no denying the fact that the site has already been filled up to a height of 1.8 meters and the damage is already done, which is to an extent, irreversible. However, the fact remains that the 8,000 dwellings coming up on the wetland would affect the ecological balance of the area and it would suffer an irreparable loss forever.

3. The Committee is fully aware of the dire need of providing housing for the poor. However, locating them in an area like this is likely to expose them to continuous floods during heavy rains, thus making it unsafe and unhygienic for them.

4. TNSCB being an agency of the Government has taken all the mandatory clearances required before commissioning the work. The Board has also incurred substantial expenditure in the preparatory work as it had got all the necessary clearances. Therefore neither the Board nor the officials of the TNSCB can be faulted for pursuing the objectives of the Board for providing housing for the poor. They should not be penalized for the expenditure already incurred on the Project since they had followed all the procedures and processes envisaged for the implementation of the Project.

5. The Committee is appalled by the hundreds of public and private constructions coming up along the Buckingham Canal and the adjoining wetlands. If such constructions continue unabated in the Okkiyam Thoraipakkam flood plain, it will be something that history will not forgive. The Committee feels that one needs to go beyond the construction by TNSCB and bring a complete stop to all the constructions in the ecologically sensitive Okkiyam Thoraipakkam area. It is difficult to quantify the environmental damage that is being done, but the signs are there for us to see. Continuous floods, worsening in the quality of ground water, lack of unique vegetation of the wetlands, all are telltale signs of the ecological damage that has already been caused.

6. The Committee feels that no approvals of any kind by the CMDA on any portion of the wetlands for new or additional constructions from this date should be permitted even for the applications already submitted and pending, and if any institution (public or private) has already constructed or is in the process of construction without such existing approval from the CMDA at this point of time, it should be asked to stop such activity and put the land back to the original form and shape as it was, at their cost. All future filling up by earth has to be banned from this date on any piece of the wetland in the declared wetland area, even if it has been re-classified as 'assessed waste wetlands' (as wetlands cannot be declared waste) for any revenue number in the flood plains beside the Buckingham Canal.

7. The Committee humbly requests the Honourable Court to kindly direct all the authorities concerned to realize that parks are &quot;lungs&quot; and wetlands are the &quot;kidneys&quot; of the ecosystem, and

protecting and conserving the same should be the foremost need of the hour, which should not be &quot;sacrificed&quot; for the sake of any construction activity in the name of development.

8. The Committee is fully aware that destruction of wetlands would have a drastic impact on the south Chennai flood plain and mitigation may not be an answer for that at that point of time. Closing further construction activities is imperative and is very much essential for a new movement in green planning and implementation that may have to come into effect in this zone.&quot;

14. On such conclusions, the Committee has recommended as follows:

&quot;From the presentations of the TNSCB and the petitioner, a conclusion that one can draw is that neither party is looking at this issue in a holistic manner. This zone in the South Chennai flood plain needs to be viewed in a big canvas of ideas and perspectives and then to zoom into local plans and priorities. What is happening today is the reverse. The local development and changes are dictating and altering the big picture. In ecology, this is called &quot;Invasive Species&quot;, which takes over the original vegetation and habitat. This needs to be corrected and enough resources, manpower, ideas and investments need to be plugged in. It is time that we look at the entire coastal region and remove the structures which block the path of the Marsh-Wetlands- Buckingham Canal Sea trajectory. This path of ecosystem function is an intricate natural measure which could handle large amounts of water, polluted water, and regulate the flows. These wetlands also become rare breeding grounds for fish, prawns, bird life. There is a need to develop a green architecture, planning and a world class wetland ecological park in this zone. Too often lands which are complex and impossible to replicate get changed into &quot;monoculture spaces of unimaginative housing projects for poor people&quot;. The poor need to be housed and well. Let an interesting wetland park come up in this zone. There is a need to re-look at coastal zone development that is sustainable, promotes local ecology, is beneficial to communities and livelihoods that live around and is a unique case of benefit sharing where the public at large can appreciate an urban wetland system and revival of the Buckingham Canal inland water way project, transport and coastal eco-tourism.

1. To avoid such issues, besides preservation and development of water bodies, it may be worthwhile to consider the formation of an adequately teathed Chennai Basin Water Resources Management Authority headed by an appropriate authority.

2. It is also possible to protect this wet land on similar lines with Pallikaranai Marsh as &quot;Reserved Wetland Park&quot;. It would be appropriate to hand over the entire stretch of these wetlands to the Forest Department.&quot;

15. Not only the report of the above said Committee, but the very conduct of the 'enquiry' in the locality by the Committee has been objected to, stiffly, on the part of the 5th respondent. In the counter affidavit filed by the 5th respondent they have taken strong objection to the manner in which the inspection/enquiry was conducted by the Committee, stating that the Chairman of the Committee was completely hostile towards them on an erroneous impression that the subject land is a marshy land and thus has a pre-determined opinion and idea with regard to the nature of land in question and therefore, no credence could be attached to such biased recommendations arrived at by the Committee.

16. It is also seen from the records that well before the filing of this writ petition on 22.12.2008, the Government has awarded contracts for construction of tenements at Okkiyam Thoraipakkam on 3.12.2008 to the successful bidders and at the time of admission, the Court has passed an order on 23.12.2008 directing the respondents/authorities not to fill up the land, if the same has been classified as 'water body' in the revenue records. Therefore, the successful bidders, who were awarded with the contracts, have come forward to file M.P.Nos.1 to 6 of 2009, praying to implead them as party respondents to this writ petition and by the order dated 5.10.2009, the First Bench of this Court has allowed the said petitions, bringing them on record as respondents 8 to 19. According to them, they have invested huge amounts to make all arrangements for

construction and in fact, they have commenced the construction activity on 3.10.2008 itself and any step to stall the construction process, would throw them to a most disadvantaged position, besides causing them irreparable loss.

17. Ms.R.Vaigai, the learned counsel appearing for the petitioner would vehemently argue that it is a clear case of law-breaking by the law-maker State, through its one of the organs/the Slum Clearance Board, by flouting and violating all the Rules and Regulations relating to the protection of environment and resorting to erect huge structures in a Coastal Regulatory Zone, which are the most prohibited activities in such areas. The learned counsel would further argue that the proposed construction is contrary to law and hence it cannot be permitted. The learned counsel for the petitioner would argue that a Notification was issued by the Ministry of Environment and Forest, Government of India in the year 1991, declaring the Coastal stretches as Coastal Regulation Zone (CRZ) and regulating activities in such areas and the same has been amended from time to time. The learned counsel would rely on a judgment of the Honourable Apex Court in M.NIZAMUDEEN vs. CHEMPLAST SANMAR LTD. [(2010) 4 SCC 240], wherein a Three Judge Bench of the Honourable Apex Court have extracted the said Notification, which reads as follows: Now, therefore, in exercise of the powers conferred by clause (d) of sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986, and all other powers vesting in its behalf, the Central Government hereby declares the coastal stretches of seas, bays, estuaries, creeks, rivers and backwaters which are influenced by tidal action (in the landward side) up to 500 metres from the high tide line (HTL) and the land between the low tide line (LTL) and HTL as coastal regulation zone; and imposes with effect from the date of this notification, the following restrictions on the setting up and expansion of industries, operations or processes, etc. in the said coastal regulation zone (CRZ). (i) For the purposes of this notification, the high tide line means the line on the land up to which the highest waterline reaches during the spring tide. The high tide line shall be demarcated uniformly in all parts of the country by the demarcating authority or authorities so authorised by the Central Government, in accordance with the general guidelines issued in this regard. (ii) The distance from the high tide line shall apply to both sides in the case of rivers, creeks and backwaters and may be modified on a case-by-case basis for reasons to be recorded in writing while preparing the coastal zone management plans provided that this distance shall not be less than 100 metres or the width of the creek, river or backwaters, whichever is less. The distance up to which development along rivers, creeks and backwaters is to be regulated shall be governed by the distance up to which the tidal effects are experienced which shall be determined based on salinity concentration of 5 parts per thousand (ppt). For the purpose of this notification, the salinity measurements shall be made during the driest period of the year and the distance up to which tidal effects are experienced shall be clearly identified and demarcated accordingly in the coastal zone management plans.

2. Prohibited activities. The following activities are declared as prohibited within the coastal regulation zone, namely:

(i) \* \* \*

(ii) manufacture or handling or storage or disposal of hazardous substances as specified in the Notifications of the Government of India in the Ministry of Environment and Forests, Nos. S.O. 594(E) dated 28-7-1989, S.O. 966(E) dated 27-11-1989 and GSR 1037(E) dated 5-12-1989; 3[except transfer of hazardous substances from ships to ports, terminals and refineries and vice versa, in the port areas.

3. Regulation of permissible activities. All other activities, except those prohibited in Para 2 above, will be regulated as under:

(1) \* \* \*

(2) The following activities will require environmental clearance from the Ministry of Environment and Forests, Government of India, namely:

(i) \* \* \*

ii) Operational constructions for ports, harbours and lighthouses and construction activities of jetties, wharves, slipways, pipelines and conveying systems including transmission lines provided that environmental clearance in case of constructions or modernisation or expansion of jetties and wharves in the Union Territory of Lakshadweep for providing embarkation and disembarkation facilities shall be on the basis of a report of scientific study conducted by the Central Government or any agency authorised or recognised by it suggesting environmental safeguard measures required to be taken for minimising damage to corals and associated biodiversity. (3)(i) The coastal States and Union Territory Administrations shall prepare, within a period of one year from the date of this notification, coastal zone management plans identifying and classifying the CRZ areas within their respective territories in accordance with the guidelines given in Annexures I and II of the notification and obtain approval (with or without modifications) of the Central Government in the Ministry of Environment and Forests; (ii) Within the framework of such approved plans, all development and activities within the CRZ other than those covered in Para 2 and Para 3(2) above shall be regulated by the State Government, Union Territory Administration or the local authority as the case may be in accordance with the guidelines given in Annexures I and II of the notification; and (iii) In the interim period till the coastal zone management plans mentioned in Para 3(3)(i) above are prepared and approved, all developments and activities within the CRZ shall not violate the provisions of this notification. State Governments and Union Territory Administrations shall ensure adherence to these regulations and violations, if any, shall be subject to the provisions of the Environment (Protection) Act, 1986.

18. Extracting the above Notification, the Honourable Apex Court in Para No.31, has observed as follows:

"It is perfectly true that at the time of preparation and approval of the 1996 Plan, the amendments of 29.12.1998 and 21.5.2002 in the 1991 Notification had not seen the light of the day and the declaration made in first para that the coastal stretches of seas, bays, estuaries, creeks, rivers and backwaters which are influenced by tidal action (in the landward side) up to 500 metres from HTL and the land between LTL and HTL are CRZ was kept in view but in the absence of any modification carried out thereafter, the 1996 Plan remains operative. The authorities authorised to demarcate HTL, we are afraid, cannot override the plan prepared and approved under Para 3(3)(i) as the said paragraph leaves no manner of doubt that Coastal Zone Management Plan prepared by the coastal State (or for that matter the State Coastal Zone Management Authority) and duly approved by the MoEF is the relevant plan for identification and classification of CRZ areas. The plan prepared by NIO, thus, cannot be said to have superseded the 1996 Plan for the Cuddalore coastal stretch."

19. Mr.G.Masilamani, the learned senior counsel appearing for the impleaded parties/respondents 8 to 19 would submit that the area is already a developed housing land; that the writ petition has been filed with a mala fide intention; that between 1997 and 2008, about 15,556 tenements have been constructed on an extent of 40 acres of land owned by the Government of Tamil Nadu in Okiam Thoraipakkam village, which is the adjacent land and is in the same location of the land in question in this writ petition and the petitioner has not raised her little finger during such constructions, but when the Slum Clearance Board has framed a further scheme to construct 8,048 tenements in an extent of 49.4 acres, which is adjacent to the above said 15,556 tenements, she has come forward to file this writ petition, solely as a publicity interest litigation, to put stumbling blocks to the project with sinister motives and such practice should not be encouraged by this Court, since the present writ petition has been filed to gain political sympathy, the petitioner being an active member of the opposition political party.

20. The learned senior counsel would further submit that Okkiam Thoraipkkam is part of Pallikaranai 100 years back and it is completely a developed area as on date and it is not a 'marsh land' as has been construed in the writ petition by the petitioner. The learned senior counsel for the impleaded parties would further submit that if the proposed construction is stopped, the interest of all the beneficiaries would be at stake and because of the present writ petition, the construction is stopped for the last two years at the instance of a single writ

petitioner. The learned senior counsel would further submit that the present site is far away from the Pallikaranai marsh and has nothing to do with the marshy area.

21. The learned senior counsel would further contend that the conclusions and recommendations of the Committee appointed by the First Bench are self-contradictory and the Committee over-stepped its jurisdiction and the warrant issued by the Court. The learned senior counsel would further submit that without causing any threat or danger to the eco-system, the Government has taken a policy decision of providing shelters to the shelterless and the petitioner, who is also a resident of the same area having constructed her own building, has approached this Court with unclean hands to deter the policy decision of the Government under the garb of this pro bono publico. In support of his arguments, the learned senior counsel for the impleaded parties would rely on a judgment of the Honourable Apex Court in NARMADA BACHAO ANDOLAN ETC. vs. UNION OF INDIA AND OTHERS [AIR 2000 SC 3751], wherein a Three Judge Bench of the Honourable Apex Court has held in Para No.259 as follows: "At the same time, in exercise of its enormous power the Court should not be called upon or undertake governmental duties or functions. The Courts cannot run the Government nor the administration indulge in abuse or non-use of power and get away with it. The essence of judicial review is a constitutional fundamental. The role of the higher judiciary under the constitution casts on it a great obligation as the sentinel to defend the values of the constitution and rights of Indians. The Courts must, therefore, act within their judicially permissible limitations to uphold the rule of law and harness their power in public interest. It is precisely for this reason that it has been consistently held by this Court that in matters of policy the Court will not interfere. When there is a valid law requiring the Government to act in a particular manner the Court ought not to, without striking down the law, give any direction which is not in accordance with law. In other words the Court itself is not above the law."

22. The learned senior counsel for the impleaded parties would also rely on another judgment of the Honourable Apex Court in BOMBAY DYEING & MFG.CO.LTD. vs. BOMBAY ENVIRONMENTAL ACTION GROUP & OTHERS [AIR 2006 SC 1489], wherein in Para No.251, the Honourable Apex Court has held as follows: "It is often felt that in the process of encouraging development the environment gets sidelined. However, with major threats to the environment, such as climate change, depletion of natural resources, the eutrophication of water systems and biodiversity and global warming, the need to protect the environment has become a priority. At the same time, it is also necessary to promote development. The harmonization of the two needs has led to the concept of sustainable development, so much so that it has become the most significant and focal point of environmental legislation and judicial decisions relating to the same. Sustainable development, simply put, is a process in which development can be sustained over generations. Brundtland Report defines 'sustainable development' as development that meets the needs of the present generations without compromising the ability of the future generations to meet their own needs. Making the concept of sustainable development operational for public policies raises important challenges that involve complex synergies and trade offs." "277. While considering the environmental aspect, we must not forget that before constructions are allowed to be commenced and completed, the exercise for environmental impact assessment is mandatorily required to be done by the competent authority. An expert body albeit within the four corners of the regulatory provisions would be entitled to consider the entire question from the environmental aspect of the matter which would undoubtedly take into consideration all relevant factors including the question as to whether the same is likely to have adverse effects on ecology or not. Consideration of ecological aspects from the court's point of view cannot be one sided. It depends on the fact situation in each case. Whereas the court would take a very strict view as regard setting up of an industry which is of a hazardous nature but such a strict construction may not be resorted to in the case of town planning." (emphasis supplied)

23. Placing reliance on the above judgments, the learned senior counsel for the impleaded parties would submit that the land in dispute is not a marsh and the petitioner being the local resident, should have known the nature of the land at least before initiating these proceedings, so as to avoid the vexatious litigation; that the Committee's finding that it is a 'marsh land' is not correct and once a marsh land cannot remain as such forever; that it is an admitted fact that proper and necessary permissions were obtained for construction from

the authorities concerned and therefore, it is not an illegal construction and no allegations have been made against any authority; that out of 40 acres of land, construction has been effected only in 15 acres and the very fact that the petitioner has not challenged any constructions made in the locality all these years shows her mala fide intention of stalling the present construction wherein number of slum dwellers are the beneficiaries. On such arguments, the learned senior counsel would pray to dismiss the writ petition with costs, since by this writ petition, the petitioner has wasted public money and time.

24. But, the learned counsel appearing for the petitioner would argue that even in the above judgment in Bombay Dyeing case, relied upon by the learned senior counsel for the impleaded parties, it has been advocated that the Court should struck a balance so as to maintain harmony between several interests and since in the case on hand, the State itself has indulged in the act of flouting the rules and regulations, the Court, in the larger interest of the public and particularly the residents of the area and the ecology, should deter the respondents from proceeding with the proposed construction. At this juncture, the learned counsel for the petitioner would also argue that the petitioner being the resident of the area cannot be branded as not an aggrieved party so as to maintain the writ petition and in fact, the law on the point of public interest has already been well settled by now and that any administrative action should be exercised objectively and would rely on a judgment of the Honourable Apex Court in Bangalore Medical Trust v. B.S. Muddappa, [(1991) 4 SCC 54], wherein it has been held as follows: &quot;35. Locus standi to approach by way of writ petition and refusal to grant relief in equity jurisdiction are two different aspects, may be with same result. One relates to maintainability of the petition and other to exercise of discretion. Law on the former has marched much ahead. Many milestones have been covered. The restricted meaning of aggrieved person and narrow outlook of specific injury has yielded in favour of broad and wide construction in wake of public interest litigation. Even in private challenge to executive or administrative action having extensive fall out the dividing line between personal injury or loss and injury of a public nature is fast vanishing. Law has veered round from genuine grievance against order affecting prejudicially to sufficient interest in the matter. The rise in exercise of power by the executive and comparative decline in proper and effective administrative guidance is forcing citizens to espouse challenges with public interest flavour. It is too late in the day, therefore, to claim that petition filed by inhabitants of a locality whose park was converted into a nursing home had no cause to invoke equity jurisdiction of the High Court. In fact public spirited citizens having faith in rule of law are rendering great social and legal service by espousing cause of public nature. They cannot be ignored or overlooked on technical or conservative yardstick of the rule of locus standi or absence of personal loss or injury. Present day development of this branch of jurisprudence is towards freer movement both in nature of litigation and approach of the courts. Residents of locality seeking protection and maintenance of environment of their locality cannot be said to be busybodies or interlopers. [S.P.Gupta V. Union of India, 1981 Supp SCC 87; (1982) 2 SCR 365; AIR 1982 SC 149; Akhil Bharatiya Soshit Karamchari Sangh (Rly.) V. Union of India, (1981) 1 SCC 246; 1981 SCC (L&S) 50; AIR 1981 SC 298; Fertilizer Corporation Kamgar Union Vs. Union of India, (1981) 1 SCC 568; AIR 1981 SC 344]. Even otherwise physical or personal or economic injury may give rise to civil or criminal action but violation of rule of law either by ignoring or affronting individual or action of the executive in disregard of the provisions of law raises substantial issue of accountability of those entrusted with responsibility of the administration. It furnishes enough cause of action either for individual or community in general to approach by way of writ petition and the authorities cannot be permitted to seek shelter under cover of technicalities of locus standi nor they can be heard to plead for restraint in exercise of discretion as grave issues of public concern outweigh such considerations.&quot; &quot;36. Public park as a place reserved for beauty and recreation was developed in 19th and 20th century and is associated with growth of the concept of equality and recognition of importance of common man. Earlier it was a prerogative of the aristocracy and the affluent either as a result of royal grant or as a place reserved for private pleasure. Free and healthy air in beautiful surroundings was privilege of few. But now it is a gift from people to themselves. Its importance has multiplied with emphasis on environment and pollution. In modern planning and development it occupies an important place in social ecology. A private nursing home on the other hand is essentially a commercial venture, a profit oriented industry. Service may be its motto but earning is the objective. Its utility may not be undermined but a park is a necessity not a mere amenity. A private nursing home cannot be a substitute for a public park. No town planner would prepare a

blueprint without reserving space for it. Emphasis on open air and greenery has multiplied and the city or town planning or development Acts of different States require even private house owners to leave open space in front and back for lawn and fresh air. In 1984 the B.D. Act itself provided for reservation of not less than 15 per cent of the total area of the layout in a development scheme for public parks and playgrounds the sale and disposition of which is prohibited under Section 38-A of the Act. Absence of open space and public park, in present day when urbanisation is on increase, rural exodus is on large scale and congested areas are coming up rapidly, may give rise to health hazard. May be that it may be taken care of by a nursing home. But it is axiomatic that prevention is better than cure. What is lost by removal of a park cannot be gained by establishment of a nursing home. To say, therefore, that by conversion of a site reserved for low lying park into a private nursing home social welfare was being promoted was being oblivious of true character of the two and their utility." "47.... Public interest or general good or social betterment have no doubt priority over private or individual interest but it must not be a pretext to justify the arbitrary or illegal exercise of power. It must withstand scrutiny of the legislative standard provided by the statute itself. The authority exercising discretion must not appear to be impervious to legislative directions...." "48. Much was attempted to be made out of exercise of discretion in converting a site reserved for amenity as a civic amenity. Discretion is an effective tool in administration. But wrong notions about it results in ill-conceived consequences. In law it provides an option to the authority concerned to adopt one or the other alternative. But a better, proper and legal exercise of discretion is one where the authority examines the fact, is aware of law and then decides objectively and rationally what serves the interest better. When a statute either provides guidance or rules or regulations are framed for exercise of discretion then the action should be in accordance with it. Even where statutes are silent and only power is conferred to act in one or the other manner, the Authority cannot act whimsically or arbitrarily. It should be guided by reasonableness and fairness. The legislature never intends its authorities to abuse the law or use it unfairly."

25. Citing the above judgment, the learned counsel for the petitioner would argue that the petitioner, as a socially conscious person, always stands in the forefront to fight such issues for the common good of all and in fact on an earlier occasion, challenging the move of the very same Panchayat for construction of a shopping complex in one of the village tanks, she has filed a writ petition in W.P.No.35942 of 2006 before this Court and since the same was dismissed by this Court by the order dated 18.1.2006, she approached the Honourable Supreme Court in S.L.P.(C)No.4502 of 2006, which was later on converted as Civil Appeal No.3418 of 2006 and the Honourable Apex Court in its reported judgment, in the above matter, in SUSETHA vs. STATE OF T.N. [(2006) 6 SCC 543], though has held that 'the doctrine of sustainable development although is not an empty slogan, it is required to be implemented taking a pragmatic view and not on ipse dixit of the court', has ultimately dismissed the said appeal of the petitioner.

26. The learned counsel for the petitioner would also argue that very recently the Honourable Apex Court, in STATE OF UTTARANCHAL vs. BALWANT SINGH CHAUFAL AND OTHERS [(2010) 3 SCC 402], has issued guidelines relating to Public Interest Litigation and the present writ petition has complied with all the pre-requisites of such guidelines issued by the Honourable Apex Court and would pray to allow this writ petition. For the sake of convenience and easy reference, the said guidelines issued by the Honourable Apex Court with regard to Public Interest Litigation are extracted hereunder: "(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 PIL.

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

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

(6) The Courts 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 litigation. (8) The Courts 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;

27. The learned counsel for the petitioner would also rely on the following judgments:

(a). S.JAGANNATH vs. UNION OF INDIA [(1997) 2 SCC 87], wherein it has been held that 'sea coast and beaches are gift of nature and any activity polluting the same cannot be permitted.'

(b). T.N.GODAVARMAN THIRUMULKPAD vs. UNION OF INDIA [(1997) 2 SCC 267], wherein it has been held as follows:

&quot;The Forest Conservation Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance; and therefore, the provisions made therein for the conservation of forests and for matters connected therewith, must apply to all forests irrespective of the nature of ownership or classification thereof. The word &quot;forest&quot; must be understood according to its dictionary meaning. This description covers all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(i) of the Forest Conservation Act. The term &quot;forest land&quot;, occurring in Section 2, will not only include &quot;forest&quot; as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. This is how it has to be understood for the purpose of Section 2 of the Act....&quot; (c). A.P.POLLUTION CONTROL BOARD vs. PROF.M.V.NAYUDU (RETD.) AND OTHERS [(1999) 2 SCC 718], wherein it has been held by the Honourable Apex Court that:

&quot;While the inadequacies of science have led to the &quot;precautionary principle&quot;, which in its turn, has led to the special principle of burden of proof in environmental cases where burden as to the absence of injurious effect of the actions proposed is placed on those who want to change the status quo. This is often termed as a reversal of the burden of proof, because otherwise in environmental cases, those opposing the change would be compelled to shoulder the evidentiary burden, a procedure which is not fair. Therefore, it is necessary that the party attempting to preserve the status quo by maintaining a less polluted state should not carry the burden of proof and the party who wants to alter it, must bear this burden. If the environmental risks being run by regulatory inaction are in some way &quot;uncertain but non-negligible&quot;, then regulatory action is justified. This will lead to the question as to what is the &quot;non-negligible risk&quot;. In such a situation, the burden of proof is to be placed on those attempting to alter the status quo. If insufficient evidence is presented by them to alleviate concern about the level of uncertainty, then the presumption should operate in favour of environmental protection.&quot; (d). HINCH LAL TIWARI vs. KAMALA DEVI AND OTHERS [(2001) 6 SCC 496], wherein it has been held as follows:

&quot;The material resources of the community like forests, tanks, ponds, hillock, mountain etc. Are nature's bounty. They maintain delicate ecological balance. They need to be protected for a proper and healthy

environment which enables people to enjoy a quality life which is the essence of the guaranteed right under Article 21 of the Constitution. The Government, including the Revenue Authorities i.e. Respondents 11 to 13, having noticed that a pond is falling in disuse, should have bestowed their attention on developing the same which would, on one hand, have prevented ecological disaster and on the other provided better environment for the benefit of the public at large. Such vigil is the best protection against knavish attempts to seek allotment of non-abadi sites.&quot; (e). The Division Bench judgment of this Court in L.KRISHNAN vs. STATE OF TAMIL NADU [2005 (4) CTC 1], which has paved way for the State to enact Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007.

(f). INTELLECTUALS FORUM vs. STATE OF A.P. [(2006) 3 SCC 549], wherein the Honourable Apex Court has held:

&quot;It is true that the water tank in question is a communal property and the State authorities are trustees to hold and manage such properties for the benefit of the community and they cannot be allowed to commit any act or omission which will infringe the right of the community and alienate the property to any other person or body. It seems, that the government orders, as they stand now, are violative of the aforesaid Principles 1 and 3, even if Principle 2 is overlooked on the basis of the fact that the Government is itself developing the land in question rather than transferring it to a third party for value.&quot; (g). The learned counsel for the petitioner would also rely on a judgment of the Honourable Apex Court in T.N.GODAVARMAN THIRUMULPAD (99) vs. UNION OF INDIA [(2006) 5 SCC 47] as against the argument advanced on the part of the impleaded parties that they have invested huge amounts in the project and any upset down of their efforts would force them to sustain irreparable loss. In the above said judgment, dealing with an issue of taking away the aquaculture in the form of any tank and a similar argument advanced on the part of the objectors to such a move of the Government that they made huge investments over the years and they were permitted to put up bunds under permissions given by the Collector and that equity demands that a balance be struck between preservation of the lake and the livelihood of the persons surviving on aquaculture and pisciculture, the Honourable Apex Court has rejected the same on the ground that ecological balance should be maintained.

28. Mr.P.S.Raman, the learned Advocate-General appearing for the 5th respondent would also argue on the same lines of Mr.GMasilamani. He would further submit that the construction is in full compliance of all the Rules and Regulations in a patta land and therefore, the present writ petition filed under the garb of 'Public Interest Litigation' is not at all maintainable. He would further submit that the present writ petition has been filed on the ground that the area is a water body, which is not correct, since it is already a developed land and the Report of the Committee is based on the revenue records of 1911; that for the last ten years, there are so many constructions and developmental activities in the area, which were not at all questioned by the petitioner at any point of time, which would clearly depict her mala fide intention of stalling the ongoing project of providing shelters to the victims of tsunami and as a rehabilitation measure to the evacuated slum dwellers, for political reasons and this Court should not encourage such illegal practices being adopted by the petitioner.

29. The learned Advocate-General would further argue that the Committee appointed by the First Bench of this Court has gone beyond the scope of reference and has over-stepped its jurisdiction and gone into matters which are not germane to the issue before the Court and therefore, the report of the Committee has to be eschewed from the purview of consideration. He has further argued that by the present project, 8,048 poor and down trodden families would be the real beneficiaries and some of the existing slums in the city will be cleared and the environment of those areas also would become good and hygienic; that if the encroachments are removed from river margin, it will enable widening of the Cooum river which will improve the ecology and free flow of rain water etc.

30. In due consideration of all the above facts, circumstances and the legal points urged on either side, the following points would arise for consideration in this writ petition:

1. Whether the area under dispute falls within the prohibited zone, so as to say that the proposed construction by the Tamil Nadu Slum Clearance Board is illegal?
2. Whether the area under dispute is a 'marshy land' or a 'water body' or a 'backwater area'?
3. Whether the State is empowered to change/modify the classification of any land?
4. Whether this writ petition, as has been framed and filed by the petitioner, is maintainable?
5. What relief the parties are entitled to?

POINT No.1:

31. Before assessing this point, we must see as to what is a coastal regulatory zone. According to the Notification issued by Ministry of Environment in the year 1991, under the provisions of the Environment (Protection) Act, Coastal Regulation Zone (in short 'CRZ') is the boundary from the high tide line upto 500 m. in the land-ward site and it is the area between the low tide line and high tide line. In the case of rivers, creeks and backwaters, the distance shall not be less than 100 meters or the width of the creek, river or backwater whichever is less. This notification sought to protect and regulate the use of the land within 500 mts. of the coast and 100 mts. along the tidal influenced water bodies and under this notification, all the developmental activities proposed to be located in this zone are regulated under it and it classifies the coastal stretch of the country into four categories. They are: &quot;Category-I (CRZ I) (Ecologically sensitive areas)

Areas that are ecologically sensitive and important such as national parks , marine parks , sanctuaries , reserve forests , wildlife habitats , mangroves, corals/coral reefs, areas close to breeding and spawning grounds of fish and other marine life, areas of outstanding natural beauty. historically important and heritage areas, area rich in genetic diversity, areas likely to be inundated due to rise in sea level consequent upon global warming and such other areas as notified by government from time to time. Category-II: (Built up municipal areas)

Area that have already been developed up to or close to the shoreline. For this purpose, developed area is referred to as area within the municipal limits or other legally designated urban areas which is already substantially built up and which has been provided with drainage and approach roads and other infrastructure facilities such as water supply and sewerage lines. Category - III (CRZ III) (Rural areas)

Area that are relatively undisturbed and those which do not belong to either I or II . These will include coastal zone in the rural areas developed or undeveloped and also areas within municipal limits or in other legally designated urban areas which are not substantially built up. Category - IV (CRZ IV) (Islands of Lakshadweep and Andaman and Nicobar)

Coastal stretches in the Andaman & Nicobar islands, Lakshadweep and other small islands except those designated as category I, II and III.

32. While on the part of the writ petitioner, it has been strenuously argued that the proposed area squarely falls within the Coastal Regulatory Zone and hence no huge structures, as in the case on hand, could have been permitted, on the part of the respondents, it has been denied.

33. No doubt, the question now we are required to answer is a question of fact, which, however, could very well be decided on the basis of the material documents available and placed on record by both the parties. For this, we are armed with a judgment of the Honourable Apex Court in NATIONAL THERMAL POWER CORPORATION LIMITED vs. MAHESH DUTTA AND OTHERS [(2009) 8 SCC 339], wherein the Honourable Apex Court has held, in para No.39 of its judgment, that &quot;... There is no law denying or debaring High Court from entering into a disputed question of fact. The issue will have to be determined

keeping in view the fact situation obtaining in each case. If a disputed question can be determined on the basis of the documents and/or affidavit, the High Court may not ordinarily refuse to do so. In a given case, it may also examine witnesses. Therefore, since the disputed question in the case on hand - whether the proposed area falls within the prohibited zone so as to carry on the construction of additional tenements by the Slum Clearance Board - could very well be determined on the basis of the materials made available on record before us by both the parties, we shall now proceed to determine the said question involved.

34. From the voluminous material placed before us, including the maps, we are able to see that the subject survey Nos.403/2,3,4,5 and 6 of Okkiam Thoraipakkam village are situated at a distance of about 13 km. East from Velachery-Pallikarnai swamp and the area termed as 'Okkiam Maduvu' is situated at about a distance of 3 km. from the subject matter land. The Old Mahabalipuram Road, now known as Rajiv Gandhi Salai, is located to the Eastern side along the Pallikaranai Marsh. The flood water from Pallikaranai marsh passes through the Okkiam Pettai Bridge and Okkiam Maduvu and drains into Muttukadu backwater and joins the sea and the said Muttukadu is situated at a distance of about 20 kms. away from the proposed site of construction. It is also seen that to the South of the proposed site of construction, in S.Nos.403/5 and 6, S.No.403/2 situates, wherein already 15,000 tenements were constructed by the Tamil Nadu Slum Clearance, most of which are already occupied by the beneficiaries. To the East of the proposed site of construction, Buckingham Canal lies at a distance of about more than 100 metres and a vacant strip of about four hectares of land, at a width of 100 m. between the land for proposed construction and Buckingham canal is left open. To the East of Buckingham canal, various housing colonies and to the further East, East Coast Road and Bay of Bengal are situate. It is also seen that to the North of the construction site, the land earmarked for the High Court Staff Association Housing Colony and towards further North, the Secretariat Staff Housing Colony are situate.

35. The 5th respondent has filed a typed set of papers, with photographs showing that for the people living in the Okkiam Thoraipakkam Kannagi Nagar, infrastructure facilities like roads, streetlights, drinking water, ground drainage facilities, schools, ration shops, bus terminus have already been provided for, which fact, has not been denied on the part of the petitioner also.

36. These factual aspects would, undoubtedly, reveal that it is completely a developed area and in fact, the petitioner is also a resident of the same locality, having constructed her own house. When the factum of existence of these huge structures has not been denied on the part of the petitioner and on the other hand, she herself is a resident of the same locality having constructed her own building, without raising her little finger at any time before or during the erection of such structures in the locality, we wonder as to what prompted her to dub the area as a prohibited area now.

37. No doubt, as has been held by the Honourable Apex Court, in A.P.POLLUTION CONTROL BOARD vs. PROF.M.V.NAYUDU (RETD.) AND OTHERS [(1999) 2 SCC 718], in environmental matters, the principle of reversal of burden of proof would apply, compelling the party who wants to bring in the changes to the system, to discharge the onus of evidentiary burden. In the case on hand, the respondents/the organs of the State, by producing clinching evidence, have successfully discharged this reversal of burden of proof, by establishing that the proposed site is far away from the prohibited area and in fact, it is completely a developed area, wherein huge structures of public utility were already erected unopposed by anybody, including the petitioner, herself being a resident of the same locality. However, though the area does not fall within the prohibited limits, from the materials available on record, it is also seen that the Slum Clearance has left 100 m. wide land vacant between outer boundary line of the construction site area and the Buckingham Canal as a buffer zone to manage flood water, if any. In fact, there seems to be a high degree danger of encroachments in the area, owing to the fact that the land values in the area have skyrocketed in the recent past as a result of development of the area, having almost all facilities required for a well being of the population living in the area. Instead of permitting another slum area to come up in the city, the State and its organs have undertaken a Herculean and patting task of providing shelters to shelterless, most of them being either slum dwellers or the victims of draconian Tsunami.

38. The petitioner has stated that she is not at all against the move of the State and its organs providing shelters to the shelterless, but against raising the tenements in the subject land, which, according to her, a water body and that the residents of Kannagi Nagar themselves are suffering from various hardships because of lack of bare minimum facilities in the area. According to her, though the slum dwellers were already accommodated in the area, the area lacks basic necessity of cleanliness and water supply to the inmates, which cannot be ignored.

39. At this juncture, we have no hesitation to hold that right to life enshrined under Article 21 of the Constitution, includes cleanly living and it is the duty of the State and its organs to provide clean and living conditions to its citizens. The duty of the State does not come to a grinding halt, by providing mere shelters to the shelterless or underprivileged, but it extends to providing a clean, hygienic and living atmosphere to the residents of the locality, otherwise, no purpose would be served in re-allocating them, rather it would amount to throwing them from disadvantageous position to most disadvantageous situation.

40. Right to life under Article 21 does not mean an animal life, but to live life with human dignity. We must remember that non-provision of/denying even the bare minimum necessities, leave alone the niceties, for the human beings to live in a hygienic and cleanly atmosphere, would prone the individuals to turn indifferent to the society and ultimately anti-social and as a menace to the society itself in due course of time and the burden to nip the menace at the budding stage lies definitely on the State and its organs by discharging their constitutional obligations and duties with spirit and vigour.

41. Though, no doubt, all the required facilities have been provided for in the already existing area, as has been explained supra, when the residents complain that the area lacks cleanliness and they suffer for want of regular water supply in the area and all such so-called facilities are lying as a mere showcase pieces, the State and its Authorities are duty bound to address and redress this genuine grievance of the residents. The State is burdened to provide not only mere living rooms but also living conditions to the residents of such homes under the slum clearance activities. Empty water lines are like veins without blood, which could neither protect nor give a life, and the State and its organs have to discharge their constitutional obligations of securing the rights and interest of the citizens with pride and dignity. The mere provision of the facilities, for name sake, and without caring for them to serve the real purpose for which they have been constructed and without concentrating on their proper maintenance, does not absolve the State of its obligations. The newspaper reports and the photographs submitted on the part of the petitioner are alarming to the situation that the residents of the already constructed tenements are in dire need of proper care and protection, since even the law and order situation in the area is in dangerous condition. Therefore, we direct the State and the 5th respondent/the Slum Clearance Board, to immediately attend to the basic needs and requirements of the residents of the area, by providing clean, healthy and protective atmosphere to the residents and also to ensure regular water supply to the residents, which would solve many a problem being faced by the residents. We do not doubt the probity of the State and its organs, particularly the 5th respondent, which has indulged in its constitutional obligation of providing shelter to the shelterless, in discharge of their constitutional obligations, but what we insist upon them is to clear out all the teething problems encountered by the residents, to make their surviving in the locality a human and meaningful.

42. It would be germane, at this juncture, to refer to the undertaking given by the Tamil Nadu Slum Clearance Board in their Additional Counter Affidavit dated 30.7.2009 at Para No.38:

“It is submitted that clearing the unwanted cobweb and reaching to the actual grievance of the people shows that water logging/stagnation is the hazard that is to be addressed. The respondent Board has proposed and it undertakes to implement the following measures to eradicate the water logging during rainy season. a) Rain water harvesting system such as Oorani in CRZ area and connecting the same with storm water drains.

b) Storm water drain network inside the scheme area with two channels in North and South boundaries of the Scheme for disposing the rain water from the upstream areas into the Oorani and surplus to the B'Canal.

c) Rain water collection from roof in to the sumps after filtering system and utilizing the same for ablution purpose.

d) Already Public Works Department has initiated the desilting and widening of B'Canal under JNNURM to improve the over all storm water management system.&quot;

The above undertaking of the Slum Clearance Board is recorded and we direct the 5th respondent to implement the above undertakings in their letter and spirit.

43. In view of the above discussed unassailable and clinching evidence available on record, undoubtedly making it clear that the area is a completely developed one, far away from the coastal area, we have no hesitation to hold that the proposed site does not fall within the prohibited area, as has been construed on the part of the petitioner in the writ petition. This would make us to abstain ourselves from entering into the fray of other points urged in this connection by either of the parties. This point is answered accordingly. POINT No.2 :

44. While on the part of the petitioner, the land proposed for construction is a 'marshy land' and a 'water body' and a 'backwater area', on the part of the 5th respondent, it has been denied stiffly.

45. On the part of the respondents, it has been submitted that the proposed land is an 'assessed waste wet land'. This classification has been objected to on the part of the petitioner and also by the Expert Committee appointed by the First Bench of this Court. In their report, the Expert Committee has commented that the wetlands cannot be termed as 'waste lands' by any stretch of imagination. The report of the Expert Committee was attacked on various grounds by the respondents, including that of exceeding jurisdiction, which we would discuss in due course.

46. On the part of the 5th respondent, it has been submitted that the Chairman of the Committee was completely hostile towards them on an erroneous impression that the subject land is a marshy land and thus has pre-determined opinion and idea with regard to the nature of land in question.

47. From the materials placed on record, it is seen that to levy land tax, all lands are classified under two general heads by the Revenue, called 'wet' and 'dry'. The other type of classification of land is 'Manavari'. 'Wet land' is one which is fit for agricultural purposes and gets water supply from a Government source of irrigation. The wet land assessed as 'waste' and fit for assignment has been named and termed as 'assessed waste wet land'. The petitioner sought reclamation of the land in S.No.403/2,3,4,5 and 6, ignoring the fact that in S.No.403/2, the 5th respondent/Slum Clearance Board has already constructed 15,656 tenements, out of which 13554 tenements have already been handed over to the beneficiaries; S.No.403/3 belongs to Madras High Court Staff Housing Association; S.No.403/4 has been classified as a road and only S.Nos.403/5 and 6 are shown as belonging to the Tamil Nadu Slum Clearance Board. From a perusal of the adangal extracts for the periods from 1980 to 2009, it is clear that the S.No.403/2, which was later sub-divided into 403/2 to 403/6 and were classified as 'assessed waste wet land' in the revenue records. It has also been seen that there were massive encroachments in the area during the years 1994-1996 and even though B-memos. were issued to the encroachers, subsequently, the encroachers were evicted from the area and the land was handed over to the Slum Clearance Board.

48. The report of the Expert Committee appointed by the First Bench of this Court has been pooh-poohed by the respondents, furnishing meanings of various water bodies, as given in Winolows Tamil to English Dictionary, which we extract hereunder for easy reference:

1. Madu, Maduvu : A pond, pool

2. Maduvangarai : Side or brink of a pool or tank

3. Madhaku : Sluice

4. Uppanaar : Backwater

5. Uppangali : Salt pan

49. Having regard to these particulars, we have no hesitation to hold that we are unable to agree with the findings of the Expert Committee constituted by the First Bench of this Court that wet lands are traditionally being referred to as 'Madavus', 'Madhagus' or Ooranis', since from the above meanings it is clear that 'Madu' and 'oorani' are water bodies and 'Madhagu' is a 'sluice' of a channel or a pond, to facilitate regulation of water for irrigation. At this juncture, at the cost of repetition, we feel it apt to mention that we have already held, while answering Point No.1 above, that Pallikaranai Marsh is situated at a distance of about thirteen kilometers on the Western side of the proposed site and the Old Mahabalipuram Road, now named as Rajiv Gandhi Salai is located in between Pallikaranai and Okkiam Thoraipakkam, which runs North-South and Okkiam Thoraipakkam lies on East of the said Rajiv Gandhi Road, whereas Pallikaranai lies on the West of the said road. It is seen that 'Okkiam Madavu', which has been construed as a water body by the petitioner, is situated in S.No.401/1, which has been indicated in the revenue records as 'Government Poramboke', while Survey No.401/2 has been shown as belonging to Telephone Department and S.Nos.402/1A, 1B, 1C and 1D are shown as 'waste dry land'.

50. At this juncture, as an ancillary to the above questions, we have been required to verify as to whether the Expert Committee has exceeded its jurisdiction?

51. As has already been observed supra, the report of the Expert Committee has been attacked on the part of the 5th respondent/Slum Clearance Board as biased.

52. The First Bench of this Court has referred two questions to the Expert Committee, which we re-iterate here for ready reference:

&quot;(a) Whether any further filling up in the area of construction namely, Okkiam, Thoraipakkam village should be permitted, and if so whether it will lead to water logging in the event of heavy rains?

(b) Whether the disputed construction by the Slum Clearance Board in S.Nos.403/5&amp;6 will aggravate the ecological balance of that particular area?&quot;

53. A thorough and careful perusal of the entire report of the Committee, whose conclusions and recommendations have been extracted by us supra, would make it unambiguously clear that the Committee has proceeded on the basis of the classification of the land made by the Government in the revenue records in the year 1911, without taking into consideration the contemporary classification of not only the proposed site but the adjoining ones. We are pained to observe that the Expert Committee, which is expected to answer the specific references, has gone a step further, commenting on various aspects, which are not at all germane. One such recommendation being to 'protect' the officials of the TNSCB for the expenditure already incurred on the Project, since they had followed all the procedures and processes envisaged for the implementation of the Project. The Committee has also over-stretched its hands by recommending formation of an adequately teathed Chennai Basin Water Resources Management Authority headed by an appropriate Authority and as to how to 'protect' the land as reserved 'wetland park'. The Committee seems to have ignored the fact that it has been required and constituted for a specific and limited purpose of answering the reference and not to act as a Committee constituted to redress the grievances of the area, assuming powers to itself, ignoring the fact that the matter is sub-judice and needs restraint from one and all who are connected with the issue. In the light of this and in the light of the fact that the Committee has based and proceeded all its proceedings on the revenue classification of the year 1911, without taking into consideration the ground realities existing as of now and the re-classification of the land already effected by the Government, we do not want to attach any importance

to the findings of the Committee and accordingly, it is eschewed from the consideration.

54. Now, again reverting back to our discussion on the point as to whether the subject land is a marshy land or not, we have to see as to what is a 'marsh'.

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

56. The 5th respondent/Slum Clearance Board has furnished the water test report received from the Chennai Metropolitan Water Supply and Sewerage Board, on three samples taken from the proposed project site, which is extracted hereunder: Chemical Compositor's name

Analyst measures

Acceptable levels for drinking, washing and gardening

Remarks

TDS (Total Dissolved solids)

58565 (avg.)

500 to 2000

As per IS 10500-1991

Turbidity

301.66 (avg.)

5 to 10

As per IS 10500-1991

Chloride

26453

250 to 1000

As per IS 10500-1991

Total Hardness (Calcium, Magnesium & Sulphate)

15400

300 to 600

As per IS 10500-1991

57. Therefore, it is clear that the ground water is not fit for drinking purpose and the same cannot be made suitable for potable purpose, by leaving the land unused even for years together as the ground water level has not improved all these years. Therefore, it is beyond anybody's imagination that in such a land there was any paddy cultivation any time earlier. Therefore, in the absence of any material to show that the land is a marshy one, we are not able to appreciate this argument advanced on the part of the petitioner and the same is, accordingly, rejected, holding for Point No.2 that the proposed land is neither a 'marshy land' nor a 'water body' nor a 'backwater area'. POINT No.3:

58. Classification is an abstract representation of the situation in the field using well-defined diagnostic criteria. The character of land will not be static and stagnate for all the years. The State, depending upon the contemporary nature of the land, could very well re-classify the land and there cannot be any doubt about the same. Otherwise, most of the unused wet or poramboke lands would not have attained the status of residential areas, answering the needs of growing demand for residential areas. Therefore, the accusation made against the State by the petitioner that to the whims and fancies, the land has been re-classified by the State while allocating land to big-wigs cannot be accepted, particularly when neither the petitioner nor anybody else has challenged such of the actions of the State at any time prior to this. Therefore, it is not correct to say that there is any classification, much less any impermissible classification by the State and that any group has been treated favourably as against another group or that the law has treated a group more favourably than the other, refusing equal protection to such group. At this juncture, it is also to be stated that no ill-motives can be attributed to the State and its organs, who have involved in discharging their constitutional obligations. In fact, even the petitioner herself has not attributed any motives to any individual officer/authority so as to doubt the veracity or genesis of the schemes, launched by the States. Point No.3 is answered accordingly.

POINT No.4:

59. The principle of personal injury and that in all matters the affected party alone must knock the doors of legal fora was eschewed long back, paving way for the enunciation of the principles of Public Interest Litigation by the upper Courts in the country for the common good of one and all. In this view of the matter, we cannot say that the present writ petition filed by the petitioner, saying that she is a socially conscious person and in fact a resident of the same locality, is not maintainable. But, we must see the bonafides of the petition.

60. The petitioner, admittedly, is a resident of the same locality, having constructed her own residence and residing there for quite a long number of years. At no point of time, she has raised her little finger when many huge structures were raised in the locality. And not even when the re-classification of the land was made by the Crown. In this backdrop, it has been strenuously argued on the part of the respondents that the petitioner has filed this writ petition to settle her political scores, being a member of the opposite political party, with the ruling party and with the sole aim of stalling the avowed project of providing shelters to the shelterless, she has filed this writ petition under the garb of probono publico. No considerable reply of any sort has been offered on the part of the petitioner to justify her inaction earlier, before or during the transgression of the area as a completely developed one. What made the petitioner, said to be a socially conscious person and as a person always in the forefront to fight for the rights of the ecosystem and the residents of the locality, to restrain herself all these years without ever raising her little finger as against any of the developmental activities is a million dollar question which was throughout hovering in our minds and remained unanswered.

Being a resident of the area, the petitioner should have verified the classification of the land before filing the writ petition. When the petitioner herself has constructed a residence of herself and is residing in the area, she lacks bonafides in contending that the area is a prohibited one for making any such constructions. Thus, we have no hesitation to hold that the petitioner has not approached the Court with clean hands. On the ground that the already accommodated slum dwellers themselves were not provided with better living conditions (for which we have given necessary directions to the State and its authorities now), the petitioner has filed the present writ petition, ignoring the fact that providing amenities to the already existing tenements and constructing new tenements in the area are two different and distinct causes of action, further ignoring the fact that S.Nos.403/2,3 and 4 of Okkiam Thoraipakkam Village have already been put to various public purposes since being neither a prohibited area nor a wetland or marshy land or a backwater body, as has been construed on the part of the petitioner. By virtue of the pendency of the writ petition, the entire project has come to a grinding-halt and it is within everybody's knowledge that because of the escalation of the cost of building materials, ultimately, the extra burden on the exchequer is inevitable. As has been repeatedly observed by us in this writ petition, the petitioner having constructed her house in the very same locality is trying to stall the proposed venture of the State to provide shelters to the shelterless on the baseless and presumed ground of 'prohibited area' relying on the classification of the land in the revenue records of the year 1911, which has long back been re-classified by the State owing to the contemporary nature and position of the land. In fact, it is undoubtedly a well developed area as of now. Though in her pleadings the petitioner has stated that she is not at all against providing shelters to the shelterless by the State and its organs, she has waited till the work orders are issued in favour of the impleaded parties and in fact till the construction work has commenced and thereafter filed this writ petition and obtained an order of stay, by virtue of which, the period of completion of the proposed construction got extended at the cost of not only the exchequer because of escalation of construction cost in the meantime but also at the cost of the benefit and welfare of the beneficiaries of the tenements. Therefore, to serve as an eye-opener for such litigants, who often misuse the public interest litigation, by adopting the principle of reading between the lines of each and everything that Executive indulges in, this writ petition shall be dismissed.

61. Though on this simple and sole ground of bonafides of the petitioner, the present writ petition could have very well been rejected by us, owing to the fact of involvement of many legal and factual questions in the matter and in the larger interest of the public and to give a quietus to the entire issue once and for all, we have entertained the writ petition for consideration.

62. Thus, the gist of our conclusions are as follows:

1. The proposed area for construction of additional tenements by the 5th respondent/Tamil Nadu State Slum Clearance Board does not fall within the prohibited zone and it is not a 'marshy land' or a 'water body' or a 'backwater area'.
2. The Expert Committee appointed by the First Bench of this Court has over-stretched its hands and has rendered recommendations and conclusions which are not at all germane to the issue on hand, forgetting the fact that the matter is sub judice and needs utmost restraint by one and all.
3. The Crown is empowered to change and modify the classification of the land, having regard to the contemporary nature of the land and one cannot expect that the classification of the land will be static and stagnate at all times without change by the passage of time.
4. The writ petition filed by the petitioner lacks bonafides. The petitioner herself having constructed a house in the area is trying to term the area as a prohibited one relying on the revenue classification of the land in the year 1911, which has long back been re-classified by the State owing to the contemporary nature and position of the land. In fact, it is undoubtedly a well developed area as of now. All this would clearly show that the petitioner has not approached the Court with clean hands.

5. The Right to life under Article 21 does not mean an animal life, but to live life with human dignity. Non-provision of/denying even the bare minimum necessities, leave alone the niceties, for the human beings to live in a hygienic and cleanly atmosphere, would prone the individuals to turn indifferent to the society and ultimately anti-social and as a menace to the society itself in due course of time and the burden to nip the menace at the budding stage lies definitely on the State and its organs by discharging their constitutional obligations and duties with spirit and vigour. The State is burdened to provide not only mere living rooms but also living conditions to the residents of such homes under the slum clearance activities. Empty water lines are like veins without blood, which could neither protect nor give a life, and the State and its organs have to discharge their constitutional obligations of securing the rights and interest of the citizens with pride and dignity. The mere provision of the facilities, for name sake, and without caring for them to serve the real purpose for which they have been constructed and without concentrating on their proper maintenance, does not absolve the State of its obligations. POINT No.5:

63. For all the above discussions held, this writ petition filed by the petitioner lacks merits and accordingly it is dismissed. No costs.

However, the State Government and the 5th respondent/the Slum Clearance Board, are directed to immediately attend to the basic needs and requirements of the residents of the already existing area of Kannagi Nagar and the surrounding areas, by providing clean, healthy and protective atmosphere to the residents and also to ensure regular water supply to the residents, which would solve many a problem being faced by the residents. The 5th respondent shall abide by the undertaking given by them in Para No.38 of the additional counter affidavit, dated 30.7.2009 filed by them and extracted by us in para No.42 of this order. Accordingly, M.P.No.7 of 2009 filed by the 5th respondent/the Tamil Nadu Slum Clearance Board is allowed.  
Index: Yes

Internet: Yes (E.D.R., J.) (K.K.S., J.)

Rao 28.7.2010

To

1.The Secretary to Government of India,

Ministry of Environment and Forests,

VI Floor, CGO Complex,

Paryavaran Bhavan, Lodi Road,

New Delhi-110003.

2.The Secretary to the Government of Tamil Ndu,

Public Works Department,

Fort St.George,

Chennai-600009.

3.The Secretary to the Government of Tamil Nadu,

Revenue Department,

Fort St.George, Chennai-600009.

4.The Special Commissioner  
and Commissioner of Land Administration,  
Ezhilagam, Kamarajar Road,  
Chepauk,  
Chennai-600005.

5.TheChairman and Managing Director,  
Tamil Nadu Slum Clearance Board,  
Kamarajar Road,  
Chepauk,  
Chennai-600005.

6.The District Collector,  
Kancheepuram District,  
Kancheepuram.

7.The President,  
Okkiam Thoraipakkam Panchayat,  
Chennai-600096.

ELIPE DHARMARAO, J.

AND

K.K.SASIDHARAN, J.

(Rao)

Pre-delivery

Order in W.P.No.30725 of 2008

28.7.2010