

IN THE HIGH COURT OF JUDICATURE MADRAS,
MADURAI BENCH

(Special Original Jurisdiction)

W.P.(MD).No. of 2007

1. Dr.R.S.Lal mohan,
Former Principle Scientist of
Indian Council of Agriculture Research (Govt. of India),
Chairman,
Nature Trust,
43/C, Water Tank Road, Nagercoil,
Kanyakumari District.

2. Mr.Mano Thangaraj,
23 C/15A, Bharathi Illam.
Weavers Colony Road,
Nagercoil,
Kanyakumari District.

3. R.Nagarajan,
President
Manithavalam Iyarkai Mattrum Chuttru Chulal-
-Mempattu Arrakattalai,
Santhi Nigethan,
Villkuri Post,
Kanyakumari District.

4. K.Bathma doss,
S/o. Kollappa Pillai,
Bathma Vilas,
Kunnamangalam,
Friday Market Post,
Kanyakumari District.

...Petitioners

-Vs-

1. The Executive Engineer (WRO),
Public Works Department,
Kanyakumari District.

2. The District Collector,
Kanyakumari District,
Nagercoil.

3. The Assistant Enviromental Engineer,
Pollution Control Board,
No.49, Ambrose Street,
Nagaercoil,
Kanyakumari District – 629 001.

...Respondents

AFFIDAVIT OF Dr.R.S.LAL MOHAN

I, Dr.R.S.Lal Mohan, Chairman, Conservation of Nature Trust, aged 68 years, Christian, residing at 43/C, Water Tank Road, Nagercoil, Kanyakumari District, now temporarily come down to Madurai, do hereby solemnly affirm and sincerely state as follows:

1. I am the petitioner herein and as such am well acquainted with the facts deposed to hereunder. I am also filing the affidavit on behalf of the other petitioners.

2. I submit that, I am the Former Principal Scientist to the Indian Council for Agricultural Research, Government of India and a Public spirited person who is striving for the protection and conservation of Environment in Kanyakumari District. I was involved in major projects in and across the country with a view to protect and preserve the environment and ecology. Some of the projects which I have completed are:

- i) Studies on the population of river dolphin *plantaista gangetica* of Ganges and Brahmaputra 1992- 1996.
- ii) Population and ecology of the Nilgiri Tahrs of Kanyakumari District Tamil Nadu 1992.
- iii) Studies on the biodiversity of Brahmaputra River Assam, 1996.
- iv) Studies on the fishes of Karimpuzha, Nilambur, North Malabar Kerala, 1996-98.
- v) Investigation of the ecology of the river islands of Brahmaputra, 1994- 95.
- vi) Reforestation of Chungankadai Hills, 1999-2001.
- vii) Environment awareness to school education in Kanyakumari District 10,000 students covered (HRD Government of India and CPRF project 2000-2001) etc.,

3. I submit that, with the objectives of protecting and conserving the nature and natural resources the conservation of Natural Trust was founded by me as a Non-Governmental Organization in the year 1991. I am also currently.

- a) The Chairman of the OISCA International, Nagercoil Chapter
- b) Member of the United Nations Dolphin Conservation.
- c) The convenor of INTAC, Nagercoil Chapter and striving to preserve the forts, palaces, ancient parks and wetlands.

4. The 2nd petitioner is a public spirited person who is in fore front in exposing the public cause in Kanyakumari District he is also

- ii) The President of District Planning Commission Kanyakumari District.
- ii) The President of Citizen Trust Nagercoil.
- iii) President of Pattanagal Passanai Sabai Water users Association and also.
- iv) The Former District Panchayat President of Kanyakumari District.

5. The 3rd petitioner is a public spirited person and who is the president of Manithavalam Iyarkai Mattrum Chuttru Chulal-Mempattu Arrakattalai Trust which was registered in the year 2006.

6. The 3rd petitioner was instrumental in desilting the essalor Kulam tank at Kalkulam Taluk, under the “grama Thannirauu thittam” in the year 2005-2006. As a public spirited person the 3rd petitioner also donated $\frac{3}{4}$ cents of land comprised in Re-Survey.No.108/1 of Villukuri Village for the construction of overhead water tank to cater to the needs of villagers.

7. The 4th petitioner is also a public spirited person who strives for the public cause and is the president of Boomi Patha

kappu Sangam, which caters of the needs of agriculturists and formers in the District.

8. I submit that we are filing this Writ Petition in public interest aggrieved over the action on the part of the 1st Respondent to lease out the public Tanks in Kanyakumari District, for the purpose of cultivation of lotus plants to private persons which result in degradation and destruction of tanks leading to environmental disaster.

9. I submit that though Kanyakumari District is one of the smallest District in the state of Tamil Nadu it consists of numerous water bodies such as ponds, lakes, rivers etc and it abounds in natural beauty

10. I submit that the natural ecosystem in the District was very sound even 50 years back and now the delicate ecological balance is slowly vanishing due to the degradation and destruction of the environment due to Lack of awareness, unsustainable development and other man made factors etc.,

11. I submit that wetlands are the primary source of water and Agriculture being the back bone of Kanyakumari District ponds and rivers serves as essential ingredients for recharging the aquifers, serves as buffer zones during floods, save the inhabitant from droughts and moderating the climate during summer, serves as fertile rice producing fields, instrumental in providing habitats for fishes and other aquatic fauna and flora and keeping the aesthetic beauty of the District.

12. I submit that though as per 1962 censuses Kanyakumari District had more than 3,500 tanks and within a short span of 50 years the District has lost more the 1000 tanks due to human interference and as per 1998 censuses the number of existing tanks is only 2447 and one of the main cause of degradation of Tanks is

due to the infestation of tanks by aquatic weeds, gradually leading to encroachment.

13. I submit that the out of 2447 tanks in Kanyakumari District which are existing now, 1486 tanks are rainfed (i.e) tanks filled by the rainwater and 161 tanks are system tanks (i.e) tanks connected to canals of the dams in the District.

14. I submit that the impact of cultivation of lotus plants has resulted in huge ecological imbalance as the tanks slowly loose its sheen and dies slow death.

15. I submit that aquatic weeds such as Lotus plants paves way for the breeding ground for other aquatic weeds allowing the other weeds to grow. When the lotus is cultivated in tank it grows in large numbers choking entire tank rendering the surface tank covered with lotus leaves.

16. I submit that as a result of the covering of the entire surface area of tank by lotus plants it increases the evaporation of tanks at a very faster rate and it also dwindles the holding capacity. Moreover the evaporation in a thickly aquatic weed infested pond is ten times higher than in a tank were there is aquatic vegetation.

17. I submit that the cultivation of lotus plants also result in siltation of the tank to a large extent when the lotus leaves along with other weeds grow and choke the pond, the depth of the pond decreases when the dead leaves die, disintegrate and settle in the bottom and when the dead organic debris settles on the tank bed it reduces the holding capacity of the tank. A few thousand tones of debris settle at the bottom of the tanks every year. The holding capacity reduces the drying of the pond will at a faster rate and the utility of the tanks as a water source for irrigation, ground water discharge and as a source fore drinking water also gets reduced.

18. I submit that agriculture being the back bone of Kanyakumari District the reduction in the holding capacity of the

Tank and fast drying of the Tank dastardly affects the cultivation which inturn Jeopardizes the interest of the formers in the district. For the years from 1975 to 1988 though the population of the District increased from 8 lakhs to 15 lakhs on the contrary the area of paddy cultivation shrunk from 53, 034 hectare in 1975 to 30, 661 hectare in 1998 largely due to water scarcity caused by destruction and degradation of Tanks.

19. I submit that the presence of aquatic weeds like lotus result in eutrophication of wet lands. When the tank is full of lotus leaves, stems and roots, die and disintegrate after about 3 months. The decayed and decaying plant matter of the organic debris render the water foul and color of the water itself changes to brown color. This colored water having high organic content promotes further growth of the weeds as the water have nutrient value and the aquatic weeds thrive on nutrient water .

20. I submit that eutrophication is one of the major water quality problem affecting tanks. The accumulation of excess nutrients in Tanks result in excessive algal growth and aquatic weed growth and the area becomes swamped with algae and foreign species starving the water body of precious oxygen essential for the survival of aquatic animal life. When the water body is rich in oxygen and has only a few nutrients, sunlight can penetrate deep and many aquatic animals thrive. This is the condition when the water is clear, healthy and is free from excessive nutrients.

21. I submit that the eutrophication of Tanks renders the water non potable and the people also can not take bath in the water and taking bath in the tank infested with aquatic weeds result in developing irritation and skin deceases. Most of the villagers take bath only in tanks and it keeps them healthy and removes the dirt. The weeds especially the long roots and the stems prevent people to swim in the tanks. There are instances of boys drowning in the weed infested tanks as the long stems of

lotus plant coil round the body and incapacitate the arms and legs.

22. I submit that the water of high organic content is the suitable media for the mosquito, larvae to flourish as the organic water will have enough food for the mosquito larvae to flourish. It is not strange that the recent out break of diseases like chickungunya, Malaria and filarial and viral diseases in the district is also due to the stagnant organic rich water, due to the lotus leaf cultivation and consequent growth of other weeds.

23. I submit that siltation due to lotus cultivation also encourages encroachment. When there is excessive grow of plants in the tanks, other epiphytes and grass grow. Due to the dust trapped by the epiphytes, floating plants, debris and grass, platform is formed along the banks of the tanks and the area of the tanks shrink and allow people to convert the tank for other purposes.

24. I submit that the 1st respondent is periodically Leasing out public tanks for the purpose of cultivation of lotus plants every year in the month of March and April. In the year 2004-2005 the 1st Respondent leased out 230 tanks for lotus cultivation.

25. I submit that the 1st respondent is incompetent under law to lease out the tanks for lotus cultivation. The leasing out of tanks for lotus cultivation is done by the respondent by misquoting rule 343 of Tamilnadu Public Work Department code.

26. I submit that the 1st respondent has already conducted public auction through his subordinates with respect to 129 tanks on 12.03.2000 and 16.3.2007 and for another set of tanks the auction is to be held on 26.3.2007

27. I submit that I myself and the third petitioner herein sent various representations to the respondents and other

authorities concerned on 7.3.2007 and 8.3.2007 but the first respondent through his subordinates is taking steps to lease out the entire ponds in a phased manner though the second respondent has recommended to the government to stop leasing of the ponds for lotus cultivation

28. I submit that due to the public outcry and the opposition from the inhabitants of the district the second respondent after due enquiry and calling for reports from the officials concerned has send a recommendation to the government to stop lotus cultivation.

29. I submit that inspite of the report submitted by the collector to the government to stop leasing of public ponds in favour of private persons for lotus cultivation taking into consideration the environmental degradation an ecological imbalance leading to the death knell of ponds the 1st respondent is again taking steps to lease out the ponds infavour of private person in a phased manner.

30. I submit that having no other alternative efficacious remedy we have approached this Hon'able Court under Article 226 of the Indian constitution for the following among other grounds.

GROUNDS

- (i) The 1st respondent is incompetent under law to lease out the public Tanks in Kanyakumari District for cultivation of lotus plants.
- (ii) Protection of environment is a matter of great public concern and of interest and the respondents are duty bound under law to protect the water bodies.
- (iii) Aquatic weeds such as lotus plants hinder free flow of water in canal and cause damage to irrigation structures.

- (iv) The Presence of lotus leaves in tanks increases evapo transpiration of fresh water ponds.
- (v) Cultivation of lotus plants alters the color and taste of water bodies and it renders the water no potable.
- (vi) Cultivation of lotus plants paves way for the growth of other aquatic weeds and it's a breeding ground for mosquito and other insects
- (vii) Recreation in terms of Bathing swimming and sight seeing are at stake in weedy water bodies.
- (viii) Tanks infested with aquatic weeds like lotus plants leads to eutrophication of tanks.
- (ix) Tanking bath in a Tank infested with aquatic weeds like Lotus plants causes irritation and skin deceases.
- (x) Siltation caused due to cultivation of lotus plants results in encroachments of tanks.

31. I submit that having regard to the nature of grievance and the source of right which we seek to enforce, the cause of action raised and the relief sought for in the writ petition are one and the same it is just and necessary that we should be permitted to jointly file this single writ petition.

So in the interest of Justice it is very much essential that this Hon'ble Court may be pleased to pass an order of interim injunction restraining the Respondents from conducting public auction for leasing out the public tanks in Kanyakumari District for the purpose of cultivation of lotus plants pending disposal of the Writ petition and thus render justice.

Hence, it is prayed that this Hon'ble Court may be pleased to permit the petitioners herein to jointly and file a single writ petition under rule 2-B of Appendix IV of the High Court appellate side rules regulating the proceeding under article 226 of the constitution of India and thus render justice.

It is therefore prayed that this Hon'ble Court may pleased to issue a Writ of mandamus or any other appropriate Writ or order of direction in the nature of the Writ forbearing the Respondents from leasing out the public tanks in Kanyakumari District for the purpose of cultivation of lotus plants in favor of private person and pass such other or further orders as this Hon'ble Court may deem fit and proper in the fact and circumstances of the case and thus render justice.

Solemnly affirmed at Madurai on this the day of January 2007 and the contents of the affidavit read over to the deponent and explained in Tamil and he understood the same, signed his name in my presence.

BEFORE ME

ADVOCATE : MADURAI

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No. of Corns: