



W.P.No.6609 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY ORDERS RESERVED ON : 12.08.2022

ORDERS PRONOUNCED ON : 12.09.2022

CORAM:

THE HON'BLE MR.MUNISHWAR NATH BHANDARI,CHIEF JUSTICE

AND

THE HON'BLE MRS.JUSTICE.N.MALA

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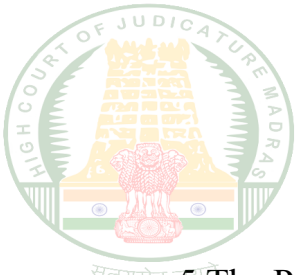
**KASTHURIBHA AND INDIRA NAGAR
RESIDENTS WELFARE FORUM**

Rep. by its Member Mr.P.Saravanan
No.4, 10th Cross Street, Indira Nagar,
Adyar, Chennai-600 020.

... Petitioner

vs.

- 1.The Secretary
Public Works Department,
Government of Tamil Nadu,
Fort St. George, Chennai-600 009.
- 2.The Commissioner,
Corporation of Chennai,
Ripon Building, Chennai-600 003.
- 3.The Department of Storm Water Drain,
Corporation of Chennai,
Ripon Building, Chennai-600 003.
- 4.The Chief Engineer (Building & Bridges),
Corporation of Chennai,
Ripon Building, Chennai-600 003.



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5. The Principal Chief Engineer,
PWD, Water Resource Organisation,
Chepauk, Chennai-600 005.
6. The Executive Engineer,
PWD, Water Resource Organisation,
Araniaru Storm Water Drain Division,
Chepauk, Chennai-600 005.
7. The Tamil Nadu Slum Clearance Board,
3rd Floor J J Complex,
Anna Nagar, Thirumangalam,
Anna Nagar West, Chennai-600 101.
8. The Member Secretary,
Chennai Metropolitan Development Authority,
No.8, Gandhi Erwin Road, Chennai-600 008.
9. The District Collector,
Singaravelar Maligai,
Chennai-600 001.
10. The Chennai River Restoration Trust,
(formerly Adyar Poonga Trust)
103/6 Greenways Road,
Raja Annamalaipuram,
Chennai-600 028.
11. The Union of India,
Ministry of Shipping Transport Bhawan,
New Delhi-110 001.
12. The Chairman,
Inland Waterways Authority of India,
Ministry of Shipping, A-13, Sector-1,
Noida, Uttar Pradesh.



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R-11 and R-12 are impleaded as per Order Dated:18.04.2016 in MEMO
U.S.R.No.8281/2016 in W.P.6609/2014 ... Respondents

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Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying “to issue a WRIT OF MANDAMUS directing the Respondents to remove the encroachments on the Canal Bank Road on the stretch of Kasthuribha Nagar and Indira Nagar as admitted by the 6th Respondent in its Reply letter No.EVAI/Ko.416/2013 dated 09.01.2014.

For Petitioner : Mr.Hari Radhakrishnan

For R1, R5,
R6, R9 : Mr.J.Ravindran, Additional Adv. General
Assisted by Mr.A.Selvendran, Special
Government Pleader

For R2, R3 & R4 : Mr.Arun Babu

For R11 and R12 : Mr.V.Chandrasekaran, SPC

Mr.S.R.Raghuathan as Amicus Curiae
Mr.A.R.L.Sundresan (SC), for
M/s.A.L.Gandhimathi,
Mr.V.Ragavachari, Mr.K.V.Babu
Assisting the Court

* * * * *

ORDER

[Order of the Court was made by N.MALA, J.]

The Writ Petition is filed as a Public Interest Litigation for a Writ of



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Mandamus directing the respondents to remove the encroachments on the

WEB CANAL Bank Road on the stretch of Kasthuriba Nagar and Indra Nagar as admitted by the sixth respondent in its reply dated 09.01.2004.

FACTS OF THE CASE:

2.The writ petition is filed for removal of encroachments on the stretch of Kasthuriba Nagar and Indra Nagar. According to the petitioner, the illegal encroachments include the hutment of the slum dwellers as well as the semi-concrete and concrete structures constructed for residential and commercial purposes. The petitioner contends that the illegal encroachments on the Canal bank road generate a lot of garbage which are thrown into the Canal and as such the Canal cannot serve as Storm water drain. Therefore, during the monsoon season the entire area of the Kasthuriba Nagar and Indra Nagar is flooded with water. The petitioner made a RTI application raising certain queries regarding the encroachments in the Buckingham Canal road in the stretch of Kasthuriba Nagar and Indra Nagar. The reply to the RTI queries was given by the 6th respondent on 09.01.2014, wherein the 6th respondent admitted that the eviction process of illegal encroachments was under consideration as per law. The writ petitioner therefore submits that once the 6th respondent admitted that there were illegal encroachments in the area, the



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respondents ought to remove the encroachments and as the respondents failed

to remove the encroachments, the petitioner is constrained to file the writ petition for removal of the encroachments.

RESPONDENT'S COUNTER:

3.The counter dated 23.11.2016 to the writ petition is filed by the First respondent i.e. the Secretary, Public Works Department, wherein it is stated that, a part of the Canal was proposed to be used for the Mass Rapid Transit System in the city of Chennai. The first phase of project was taken up for implementation in the year 1981 and the same became operational in the year 1995. The State Government through the Revenue Department issued G.O.Ms.No.525 dated 09.09.2005 by which the land measuring 2,13,490 Sq.Meters was given on a long term lease of 99 years to the M.R.T.S System Phase-II for formation of Railway Stations, Railway Tracks and Approach Roads at various places under Revenue Standing order 24-A and subject to conditions stipulated therein.

4.The counter refers to the declaration of the stretch of 132 Kms. of Buckingham Canal lying between Chennai and Puducherry as National Waterway-4 (NW-4). The Inland Waterways Authority of India had originally



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proposed to develop the Buckingham Canal from Sholinganallur to Puducherry

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for transportation, shipping and navigation purposes. But subsequently the Secretary of the Inland Waterway Authority of India issued Office Memorandum dated 03.08.2009 excluding the stretch from Ennore South to Muttukadu based on the ground realities.

5. On the issue of encroachments, the counter of the first respondent refers to 55,000 encroachments, identified in the Adyar, Cooum and Buckingham Canal and states that 4,134 encroachers were evicted and re-settled. The counter further refers to the availability of 8,000 tenements for resettlement of the encroachers. The counter therefore in sum and substance is to effect that the majority of the encroachments are to be removed in a phased manner subject to the availability of the tenements for rehabilitation and resettlement of the PAF's (Project Affected Families)

COUNTER OF INLAND WATER AUTHORITY OF INDIA:

6. The Inland Water Authority of India was impleaded as a party respondent vide order dated 18.04.2016. The Inland Water Authority of India (IWAI) filed its counter to the writ petition on 24.08.2016 both for itself and the Ministry of Shipping. The counter of Inland Water Authority of India



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(IWAI) refers to the creation of Inland Water Authority of India (IWAI) vide Act of Parliament in 1985. It further refers to the declaration of certain Inland Waterways as National Water Ways, the functions of the Authority under the provisions of the Act, permission for putting up of construction/structures on the water ways declared as National Ways and matters related to its functions and powers etc. The counter refers to the issuance of the Official Memorandums' dated 23.04.2009 and 03.08.2009 and states that the Official Memorandums were issued excluding the stretch of 50 Kms. from Ennore South to Muttukaddu in Tamil Nadu from being developed as National Waterway by taking into consideration the ground realities of existence of MRTS Pillars and MRTS Stations erected across the stretch, even before notifying Buckingham Canal as National Waterways. On the issue of removal of encroachments it is submitted that it is the responsibility of the State Government to remove the encroachments.

PREVIOUS ORDERS OF THE COURT:

7.The Writ Petition was filed in the year 2014 and thereafter it was taken up for hearing on several occasions and this Hon'ble Court issued slew of directions to the respondents to file reports on the status of the action taken by the respondents from time to time. The matter was heard further on



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23.01.2017 and thereafter there was a hiatus for 5 years and it was again listed

on 05.04.2022. On the said date of hearing this Hon'ble Court was pleased to issue directions to the respondents to file a status report by 19.04.2022 and a further direction was issued to the Standing Counsel for the 12th respondent to seek instructions so as to come up with an action plan taken by them during the intervening period to clear the Canal.

8. In pursuance to the order dated 05.04.2022, the sixth respondent filed a report on 18.04.2022. In the said report the 6th respondent states that during the intervening period of 5 years a Detail Project Report [DPR] was prepared, during the year 2020 which addressed various issues like removal and prevention of encroachments, construction of protection wall, misuse of the Canal to increase the discharging capacity, Sanitation process, removal of solid waste, installation of fence and sign boards on the banks of the Canal and development of parks and walk ways to improve the aesthetic view of the Canal. The report further refers to Administrative sanction accorded by the Government of Tamil Nadu to the tune of Rs.1,001 crores for plugging the sewage outfalls in the Buckingham Canal, Drains of B-Canal, Cooum and Adyar Rivers (under Phase I). The report refers to the construction of modular Sewage Treatment Plants [STP] and other connected matters to ensure that the



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Buckingham Canal and its associate drains are free of sewage. The report refers to an administrative sanction of Rs.1,281.88 Crores for the comprehensive Restoration and for Rejuvenation of the Buckingham Canal and its associated drains and major drains, draining in the Adyar and Cooum Rivers in the Chennai city. According to the report, an amount of Rs.408.08 Crores is to be spent with special reference to Buckingham Canal covering the stretch between Ennore to Muttukadu for a length of 48 Kms. by roping in the Line Departments such as Water Resources Department and Greater Chennai Corporation. In the Status report, it is stated that the mapping of the boundaries of the Canal in GIS format through Digital Global Positioning System would be taken up in order to avoid litigation on the boundaries of the Canal. It is reported that on completion of mapping of boundaries the encroachment on the Canal that is, the Project Affected Families (PAF) would be rehabilitated by the Tamil Nadu Urban Habitat Development Board. The identification of the PAF's would be taken up by the Water Resources Department, Greater Chennai Corporation and the Tamil Nadu Urban habitat Development Board on the basis of the joint biometric enumeration to identify the beneficiaries of the project. It is further reported that the Tamil Nadu Housing and Urban Development Department would thereafter submit the



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proposal to the Government to allocate funds for building the tenements for the beneficiaries. It is reported that as the Buckingham Canal runs parallel to the Coastal line it falls under the Coastal Regulation Zone (CRZ) which means that Clearance from the District Coastal Zone Management Authority, Tamil Nadu Coastal Zone Authority and Ministry of Environmental and Climate Change were to be obtained before the commencement of the Comprehensive project. The respondent states that the time line for obtaining the CRZ clearance would be one year. The counter ends in an optimistic note that after implementation of the Comprehensive Scheme, the water bodies within Chennai city would be developed in a very aesthetic manner which would facilitate the free flow of water during the monsoon season. In support of the submissions made in the status report, various G.O's are Annexures.

9.The matter was listed on 20.04.2022 and subsequently adjourned, and on 30.06.2022, the Hon'ble Court directed the learned Additional Advocate General to file a composite affidavit with regard to a complete plan for restoration of Buckingham Canal for which an amount of Rs.1,281.88 crores was sanctioned in the year 2020. The Court further directed that the affidavit to be filed by the respondents would also indicate as to how much area of the



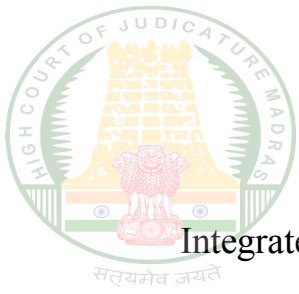
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canal was cleared from encroachments and the action taken against the encroachers. The Court observed that the Initial plan for the entire stretch in the city of Chennai, which was stated to be 48 Kms. should be given. The Court further observed that based on the affidavit and the complete plan to be submitted further directions would be issued to restore the Canal to its original position within the boundaries of the State of Tamil Nadu.

10.The 6th respondent filed a status report on 30.06.2022. The gist of the status report is given here. The report covers various topics like Eco-Restoration initiatives taken up for enhancement of ecological condition of city water ways. The Eco-Restoration project is divided into 3 phases.

- 1.Integrated Cooum River Eco-Restoration Project – Phase – 1
- 2.Adyar River Restoration Project – Phase – 2
- 3.Restoration of Buckingham Canal & associated drains and Major Drains in Cooum and Adyar River – Phase – 3.

11.Integrated Cooum River Eco-Restoration Project (ICRERP) under Phase – 1 and Adyar River Restoration Project (ARRP) under Phase – 2 are said to be taken up by the Government. The details of the Phase-1 viz.,



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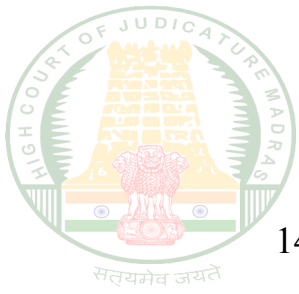
Integrated Cooum River Eco-Restoration Project are narrated and so also

WEB COPY Phase-2 viz., Adyar River Restoration Project is also narrated and it is submitted that 17,518 encroached families who were living within Cooum and Adyar River boundary were evicted and re-located.

12.The tabular figure given in the Report regarding the encroachments is extracted here under:

Name of the Waterway	Total No. of PAFs identified	No. of PAFs Resettled so far	No. of PAFs to be Resettled
Cooum River	14,257	13,056	1,201
Adyar River	9,539	4,462	5,077
Total	23,796	17,518	6,276

13.The report states that the remaining encroachments could not be removed, because of the pendency of the cases before the Hon'ble High Court. As far as the encroachments within the boundary and Right of Way (RoW) of the Buckingham Canal is concerned, it is stated that the enumeration, eviction and re-location would be possible only after the boundaries are demarcated by means of Digital Global Positioning System.



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14.The report refers to Phase-III, Eco-Restoration Project with reference to Buckingham Canal, wherein it is stated that a Detailed Project Reports (DPR) was prepared for comprehensive restoration of Buckingham Canal within Chennai Metropolitan area and its associated drains and major drains of Adyar and Cooum River in 2020 and further an Administrative sanction of an amount of Rs.1,281.88 Crores was issued under G.O.419 of Municipal Administration and Water Supply (MC.I) Department Dated 03.12.2020. The report further refers to both the financial as well as the execution aspect of the project and the detailed steps contemplated for restoration of the Canal.

15.It is pertinent to note here that the contents of the affidavit filed by the 6th respondent on 11.07.2022 and 11.08.2022 replicates the report of 30.06.2022 but with some elaboration. The report of 11.08.2022 refers to Sewage mitigation plants with a view to plugging the sewage out falls in the Buckingham Canal and its associated drains. It further states that the works in this regard are in progress and implemented by the Chennai Metropolitan Water Supply & Sewerage Board (CMWSSB). In respect to the removal of encroachments in the encroached habitations within right of way and the boundary waterway of Buckingham Canal the respondents report that the



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restoration cost for Buckingham Canal was sanctioned excluding the re-

settlement and rehabilitation cost of the encroachment/Urban poor families.

The respondent submits that only after the determination on corroboration of the encroached families by the Tamil Nadu Urban Habitat Development Board the final out come of R and R cost, would be determined. The respondent submits that all the Line Departments like Water Resource Department (WRD), Tamil Nadu Urban Housing Development Board (TNUHDB) and Revenue Department would conduct joint enumeration of the encroached families after completion of boundary survey of the Buckingham Canal.

16.The report refers to the orders of the Hon'ble Supreme Court to submit that around 625 encroachments present in the Buckingham Canal (WRD land) at Elango street, Govindasamy Nagar, Raja Annamalai Puram were directed to be evicted, that 366 encroachments were evicted during August, 2015 and inspite of stiff resistance from the encroachers, in the further eviction drive on 29.04.2022 and subsequent dates around 187 encroachers were evicted till 08.05.2022. Further eviction was stopped because of a bid to self immolate by one of the encroachers, who subsequently died on 09.05.2022. The report states that 2.65 acres of WRD lands were reclaimed in



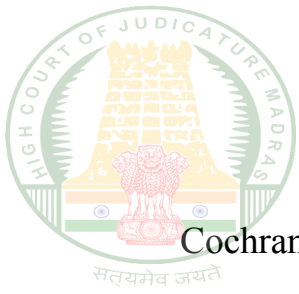
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the eviction process. It is further stated that the eviction process was also interrupted by the COVID out break and the restoration works are now expeditiously implemented. In the report dated 11.08.2022, the 6th respondent gave time lines for the various works undertaken by itself and the line Departments.

17.The learned Amicus Curiae in reply to the 6th respondent's status report dated 11.07.2022 filed a memo stating that the issue of encroachment was not dealt with in the report. The further contention is that, the report does not deal with concrete steps to remove the encroachments. According to Amicus Curiae, the Buckingham Canal remains the same and that there was no change in the places which he had photographed and filed along with the memo dated 26.05.2016. The case was listed on 11.07.2022, recording the status report and was thereafter adjourned to 03.08.2022 and was reserved for orders on 12.08.2022.

HISTORY OF BUCKINGHAM CANAL:

18.The Buckingham Canal is a man-made canal and was constructed by the British and it was originally known as Cochrane's Canal, after Basil



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Cochrane who had financed the first segment. It was an important water way

in the late 19th and 20th Centuries and was re-named as Buckingham Canal in 1878, after the Duke of Buckingham and Chandos, the erstwhile Governor of Madras.

19. The Buckingham Canal is a tidal canal with a length 418 Kms. of which 248 Kms. is in the state of Andhra Pradesh and 170 Km. in Tamil Nadu. In the state of Tamil Nadu it starts near Pulighat in North and ends at Marakanam in South. The Buckingham Canal is divided into three segments in Tamil Nadu. The North Buckingham Canal which is in the portion of North of the Cooum River which starts from Pulighat and ends into the Cooum River. It has a length of 58 Kms. and a width of 40 to 80 Meters. The Central Buckingham Canal originates from the Cooum River and ends in the Adyar River, it has a length of 7 Kms and a width of 10 to 20 Meters. It is notable that the M.R.T.S stations of Chepauk, Triplicane, Light House, Mundaga Kanni Amman Koil, Mylapore, Mandaveli and Greenways Road stations are located here. The South Buckingham Canal starts from Adyar River near Koturpuram and ends in Marakanam backwaters. The Canal is 105 Kms. in length and 20 to 100 Meters wide and it houses the M.R.T.S. Stations of Koturpuram, Kasthuriba Nagar, Indra Nagar and Thiruvanmiyur. The Canal



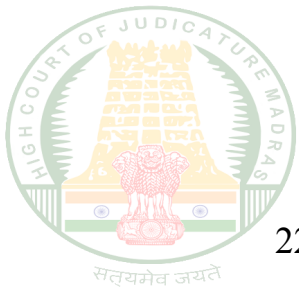
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interconnects with estuaries and streams out at Ennore, Cooum, Adyar and Paramankeni respectively. In the Chennai Metropolitan area, the total length of the Canal is 48 Km (North Canal 17 Kms., Central Canal- 7 Kms. and South Canal-24 Kms.)

20. In the early days the Buckingham Canal was navigable and it was used for transportation of men and goods. Over a period of time the Canal fell into disuse owing to various factors, both natural and man made. It is worth to note here that the Buckingham Canal acts as a flood moderator during the North-East Monsoon by discharging the flood waters into the sea through the sea mouths at Ennore, Cooum, Adyar and Muttukadu thus safe guarding the city of Chennai from flooding and inundation.

NATIONALISATION OF BUCKINGHAM CANAL:

21. The Buckingham Canal was declared as a National Waterway under the National Waterway (Kakinada – Puducherry stretch of Canals and the Kaluvelly Tank, Bhadrachalam – Rajahmundry Stretch of River Godavari and Wazirabad – Vijayawda Stretch of River Krishna) Act, 2008.



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22.Subsequently under the National Waterways Act, 2016 (Act 17 of

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navigations to the extent provided in Inland Waterways Authority of India Act

WEB C 1985. Inland Waterways Authority of India regulates and develops the Inland waterways for the purpose of shipping and navigation and for matters connected therewith and incidental thereto.

DISCUSSION:

23. We have gone through the entire records, various reports filed by the respondents and the replies filed by the learned Amicus Curiae. The learned Amicus Curiae has filed the written arguments wherein he has narrated the background of the case, the background of Buckingham Canal, Nationalisation of Buckingham Canal and the kinds of encroachments along the Buckingham Canal. The written arguments further refer to the Judgment of the Hon'ble Supreme Court on doctrine of Public trust and finally certain suggestions are given for consideration of the Hon'ble Court.

24. The various reports filed by the 6th respondent reflects the poor state of affairs, with regard to the ecological condition of the city's waterways i.e. Cooum River, Adyar River and the Buckingham Canal. The status report in effect admits that there is rampant encroachment on the said waterways. Though the report refers to various projects, schemes and administrative



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approval of finance for the restoration of the waterways it is apparent that

much needs to be done on ground.

25. Encroachments are a direct reflection on the failure of the Government to provide the basic need of shelter to the poor. Due to rapid urbanisation the urban sprawl has encroached Government vacant lands, water bodies, channels and canals etc. In this Public Interest Litigation the core issue raised is the removal of encroachment and restoration of the Buckingham Canal which once upon a time was a navigable Canal. Though the Central Government notified the Buckingham Canal as a National Inland Waterway (NW-4) with a view to develop the said Waterway for the purpose of shipping and navigation, the same got impeded because of the rampant encroachment along the canal. Therefore a Memorandum dated 03.08.2009 was issued excluding the stretch of Buckingham Canal between Ennore sea mouth and Muttukaddu sea mouth from waterway development due to ground realities. The said Official Memorandum was read down by this Hon'ble Court vide order dated 29.08.2016 on the premise that an executive order cannot override an Act of Parliament. In the said order the Hon'ble Court observed that the Government could not regularise the encroachments in the said area as the same was covered under the provisions of the National Waterways Authority



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Act 2016. The Inland Water Authority of India (IWAI) in its counter to the writ petition clarified that it was the responsibility of the State Government to remove the encroachments along the canal.

26. In this backdrop it is now to be seen as to what steps are taken by the State Government to remove the encroachments and to restore the canal.

27. In pursuance to the orders of this Hon'ble Court the 6th respondent filed status reports on the action taken by it to remove the encroachments. Before we refer to the reports, we would like to first note here the kinds of encroachments prevailing along the canal. The following kinds of encroachments are present according to the learned Amicus Curiae.

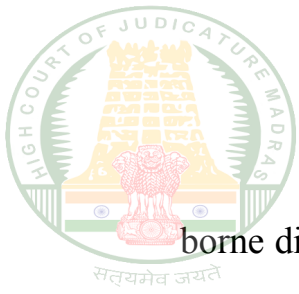
i. Huts built on the Canal and people living in inhuman conditions.

ii. Concrete Residential Buildings.

iii. Commercial Establishments.

iv. Construction of Chennai Mass Rapid Transit System (MRTS) Stations and pillars on the Canal from Chepauk to Thiruvanmiyur.

28. It transpires that sewage water is being let into the Canal and it has polluted the canal making it unutilisable. It is also a cause for several water



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borne disease, apart from being a breeding ground for mosquitoes. On perusal of the reports it is seen that there is no information provided about the encroachments on Buckingham Canal. Though statistics are provided for encroachments on Adyar and Cooum Rivers, no statistics are provided for encroachments on Buckingham Canal. The reason for not providing any data for the encroachments on the Buckingham Canal is that the boundary of the canal has to be determined and only thereafter the enumeration, eviction and rehabilitation of the encroachers could be made. Ergo it is to be seen as to what are the steps taken and what is the time line given for such exercise. The status report of the 6th respondent dated 11.08.2022 enumerates the following sequence of works:

- “i) Boundary Demarcation & Survey of Buckingham Canal;*
- ii) Differential Global Positioning System (DGPS) Survey:*
 - a. Appointment of Consultant:*
 - b. Scope of Work: Conducting field survey using DGPS*
 - c. **Timeline** – The timeline required to complete this work is around 6 months for both the banks of the Buckingham Canal.*
- iii) Enumeration and Eviction of Encroachers;*



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a.Preparation of Topo Sketch of encroached habitation.

b.Topo numbering of encroached structures.

c.Public Consultation to carry out enumeration of encroached families.

d.FORM-2: Joint Enumeration of encroached families by Land Owning Department (Water Resources Department), Tamil Nadu Urban Habitat Development Board (TNUHBD), Concerned Urban Local Body (Greater Chennai Corporation within Chennai Limits) / respective District Administration in coordination with Revenue Department.

e.FORM-2A: Bio-metric survey of enumerated encroached families / urban poor families eligible for alternate housing under Resettlement & Rehabilitation (R&R) plan.

f.Obtaining Allotment of tenements by alternate housing for urban poor families (Below Poverty Line (BPL)/ Economically Weaker Section) by the Tamil Nadu Urban Habitat Development Board (TNUHBD).

g. Announcement of eviction drive

h. Eviction of encroachments from encroached habitations within the Right of Way (RoW) / boundary of the Buckingham Canal in



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coordination of all concerned line departments viz., Water Resources Department (WRD), Tamil Nadu Urban Habitat Development Board (TNUHBD), Revenue Department, District Administration / respective Urban Local Bodies (ULBs).

Timeline : No time line is given.

iv) Coastal Regulation Zone (CRZ) Clearance

The sequence of works in obtaining the CRZ Clearance are as follows:

a.Appointment of CRZ consultant

b.Preparation of Rapid Environmental Assessment Report (REIA) report

c.District Level - DCZMA

d.State Level - TNSCZMA

e.National level - NCZMA, Government of India

Timeline:

11) It is stated that the timeline for obtaining the Coastal Regulation Zone (CRZ) Clearance will be 12 months. Only after obtaining this CRZ Clearance, the Comprehensive Restoration works of Buckingham Canal project would be taken up.



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RESTORATION PLANS:

- a) *Channel improvements*
- b) *Solid waste removal*
- c) *Urban Water front Development works*

Sewage Mitigation Plan”

29.From the said Report it is found that the 6th respondent has not given any specific time line for removal of the encroachments on the ground that without the boundary demarcation, enumeration, eviction and rehabilitation would not be possible. Time line now given for Boundary demarcation is 6 months. The status report states that the restoration of the canal would be taken up only after obtaining the CRZ Clearance. The time line for CRZ Clearance is 12 months.

30.Before we issue the directions on a conspectus of the facts and reports filed we would like to refer here to certain constitutional provisions and a few of Judgments of the Hon'ble Apex Court in this regard, though there is no dearth of precedents on environmental laws.

CONSTITUTIONAL PROVISIONS:



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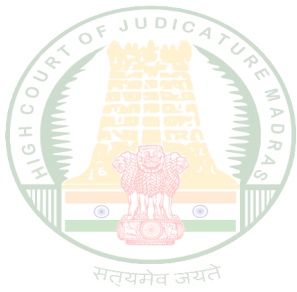
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Article 48-A: Protection and improvement of environment and safeguarding of forests and wild life.- The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.

31.Article 48-A was inserted by Constitution 42nd Amendment Act, 1976 w.e.f. 03.01.1977 in Part IV dealing with Directive Principles. According to the said Article the State shall endeavour to protect and improve the environment and to safe guard the forests and wildlife of the country. It will be relevant to mention here that under this Article the Hon'ble Supreme Court in ***M.C.Mehta Vs. Union of India and Others*** reported in ***1988 (1) SCC 471*** was pleased to issue directions to the Kanpur Nagar Mahapalika to take appropriate steps to prevent pollution of the River Ganga.

32.Article 51-A was also inserted as Part IV A by Constitution 42nd Amendment w.e.f. 03.01.1977. In respect to the present issue Clause (g) of Article 51-A is relevant and extracted hereunder:

“Article 51-A (g) to protect and improve the natural



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*environment including forests, lakes, rivers and wild life,
and to have compassion for living creatures;”*

33.The Hon'ble Supreme Court in the case of ***Sachidanand Pandey Vs. State of West Bengal*** reported in ***AIR 1987 SC 1109*** held that wherever a case relating to problem of ecology is brought to the Court and the Court hears it, it should keep in mind Article 48-A and 51-A(g).

COURT'S ROLE IN MATTERS OF ENVIRONMENTAL PROTECTION:

34.In the case of ***BDA Vs. Sudhakar Hegde*** reported in ***2020(15) SCC 63***, the Hon'ble Apex Court in the context of the Court's role in ensuring environmental Protection held as follows:

“56. (94). The adversarial system is, by its nature, rights based. In the quest for justice, it is not uncommon to postulate a winning side and a losing side. In matters of the environment and development however, there is no trade-off between the two. The protection of the environment is an inherent component of development and growth...

Professor Corker draws attention to the idea that the



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environmental protection goes beyond lawsuits. Where the State and statutory bodies fail in their duty to comply with the regulatory framework for the protection of the environment, the courts, acting on actions brought by public-spirited individuals are called to invalidate such actions....

95.The protection of the environment is premised not only on the active role of courts, but also on robust institutional frameworks within which every stakeholder complies with its duty to ensure sustainable development. A framework of environmental governance committed to the rule of law requires a regime which has effective, accountable and transparent institutions. Equally important is responsive, inclusive, participatory and representative decision-making. Environmental governance is founded on the rule of law and emerges from the values of our Constitution. Where the health of the environment is key to preserving the right to life as a constitutionally recognised value under Article 21 of the Constitution,



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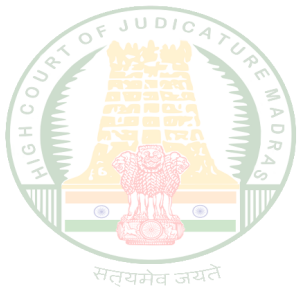
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proper structures for environmental decision-making find expression in the guarantee against arbitrary action and the affirmative duty of fair treatment under Article 14 of the Constitution. Sustainable development is premised not merely on the redressal of the failure of democratic institutions in the protection of the environment, but ensuring that such failures do not take place.”

PRECAUTIONARY PRINCIPAL IN PROTECTING THE ENVIRONMENT:

35. In a recent judgment reported in **2021(4) SCC 309**, the Hon'ble Supreme Court reaffirmed the Precautionary Principal and quoted with approval Para 39 of the judgment in ***Hospitality Assn. Of Mudumalai v. In defence of Environment & Animals*** reported in **2020(10) SCC 589**. The relevant extract is given hereunder:

“39....the “precautionary principle” has been accepted as a part of the law of our land. Articles 21, 47, 48-A and 51-A(g) of the Constitution of India give a clear mandate to the State to protect and improve the environment and to safeguard the forests and wildlife of the



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country. It is the duty of every citizen of India to protect and improve the natural environment including forests and wildlife and to have compassion for living creatures. The precautionary principle makes it mandatory for the State to anticipate, prevent and attack the causes of environmental degradation.”

DOCTRINE OF PUBLIC TRUST:

36.The Hon'ble Supreme Court in *Fomento Resorts & Hotels Ltd. v. Minguel Martins*, (2009 (3) SCC 571 held as follows:

“54. The heart of the public trust doctrine is that it imposes limits and obligations upon government agencies and their administrators on behalf of all the people and especially future generations. For example, renewable and non-renewable resources, associated uses, ecological values or objects in which the public has a special interest (i.e. public lands, waters, etc.) are held subject to the duty of the State not to impair such resources, uses or values, even if private interests are involved. The same obligations apply to



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managers of forests, monuments, parks, the public domain and other public assets. Professor Joseph L. Sax in his classic article, “The Public Trust Doctrine in natural Resources Law: Effective Judicial Intervention” (1970), indicates that the public trust doctrine, of all concepts known to law, constitutes the best practical and philosophical premise and legal tool for protecting public rights and for protecting and managing resources, ecological values or objects held in trust.

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



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people's long-term interest in that property or resource, including down slope lands, waters and resources.”

37. Keeping in Mind, the above constitutional mandate, legal Principles, precedents, the status report of the 6th respondent and the suggestions of the learned Amicus Curiae we issue the following directions:

“1. The 6th respondent shall strictly adhere to the time line of 6 months given for demarcation of the boundary of Buckingham Canal. Considering the long pendency of this case, we make it clear that under no circumstance, the time line will be extended. All the officials responsible for not keeping the time line will be made accountable for such lapse irrespective of whether they are in service or retired;

2. The demarcation of the boundary has to be made with reference to the original length and breadth of the canal as found in the original records. The canal shall be restored to its original boundaries;

3. After completion of demarcation of the boundaries of the Buckingham Canal, the encroachments shall be removed within 1 year. It is made clear again that no extension of



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time will be permitted and if the officials fail to adhere to the time line then the erring officials will be made accountable for the lapse irrespective of whether they are in service or retired;

4.As and when the encroachments are removed the Inland Waterway Authority of India will protect and maintain the Buckingham Canal free from any encroachment and the State Government shall provide necessary assistance to IWAI;

5.All structures on the Buckingham Canal except the pillars laid for Mass Rapid Transit System (MRTS), flyovers and bridges should be removed to make the canal navigable within a period of 1 year from the date of this order;

6.No courts shall entertain any case whatsoever in respect of any dispute pertaining to the Encroachments along the Buckingham Canal or grant any order restraining the authorities concerned which would affect the implementation of this order or removal of Encroachment. Any writ petition that may be filed shall be dealt with by the First Bench of this Hon'ble Court;

7.The State Government shall not regularize any constructions/ encroachments on the Buckingham Canal



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(any encroachment or construction on the original breadth/width of the said Canal as found in the original record). Any reclassification of the land falling with the original breadth of the Buckingham Canal shall be null and void and the State Government shall not reclassify the Buckingham Canal;

8.No person shall have any right whatsoever over any construction on the original breadth/width of the Buckingham Canal; and

9.No future construction should be permitted over the Buckingham Canal except with the approval of the IWAI, who shall act strictly in accordance with the Inland Waterways Authority of India Act, 1985 and Rules if any framed thereunder;

10.In areas free of encroachments, the canal shall be cleared of unwanted vegetation and restored to its original width. Immediate steps should be taken to fence the canal to prevent future encroachments and signboards should be erected declaring the areas as “Litter free zone”.

11.The Sewage Mitigation Plan aimed at plugging sewage outfalls into Buckingham Canal shall be put in place within a period of 1 year.”



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WEB COPY38. We would normally have disposed the writ petition with the above directions but as we find that even after the passage of 8 years from the date of the writ petition no significant progress is made towards removal of encroachment and restoration of Buckingham Canal, we dispose off the writ petitions with a direction to the respondents to file compliance reports with respect to the time lines given above.

39. We only hope that these directions are complied with in letter and spirit. It is the duty of every citizen to protect and improve the national environment and national Assets like Rivers, Canals, Water bodies etc. Forests, rivers, water bodies, wildlife etc. are our national wealth and they do not belong to an individual, Government or Authority. The Government is the custodian of this wealth and as beneficiaries of this wealth, it is as much our duty as that of the Government to preserve and treasure our natural resources and environment for posterity.

40. We would remind ourselves and our brethren the words of wisdom of the father of our nation ***Mahatma Gandhi*** “***Be the change you want to see***”.



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If we aspire for a clean and pollution free environment then we as civic citizens have to contribute towards it. The citizens and the Government are the two wheels of development, if any one wheel derails then there is no development. When we can litigate for our fundamental rights, why not ponder and exploit our fundamental duties, after all does this world not belong as much to the tiny ant as it does to the mighty homo sapien.

41. With the aforesaid directions, the writ petition stands disposed of.

However there shall be no order as to costs.

(M.N.B., CJ) (N.M.,J.)

12.09.2022

Index : Yes / No

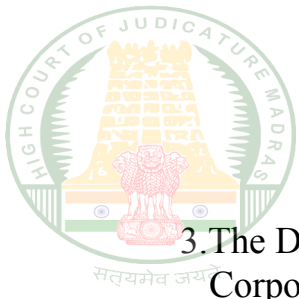
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To

1. The Secretary
Public Works Department,
Government of Tamil Nadu,
Fort St. George, Chennai-600 009.

2. The Commissioner,
Corporation of Chennai,
Ripon Building, Chennai-600 003.



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3. The Department of Storm Water Drain,
Corporation of Chennai,
Ripon Building, Chennai-600 003.

4. The Chief Engineer (Building & Bridges),
Corporation of Chennai,
Ripon Building, Chennai-600 003.

5. The Principal Chief Engineer,
PWD, Water Resource Organisation,
Chepauk, Chennai-600 005.

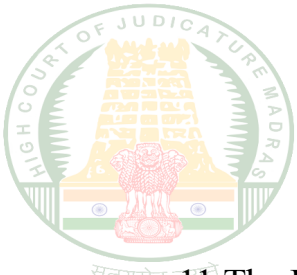
6. The Executive Engineer,
PWD, Water Resource Organisation,
Araniaru Storm Water Drain Division,
Chepauk, Chennai-600 005.

7. The Tamil Nadu Slum Clearance Board,
3rd Floor J J Complex,
Anna Nagar, Thirumangalam,
Anna Nagar West, Chennai-600 101.

8. The Member Secretary,
Chennai Metropolitan Development Authority,
No.8, Gandhi Erwin Road, Chennai-600 008.

9. The District Collector,
Singaravelar Maligai,
Chennai-600 001.

10. The Chennai River Restoration Trust,
(formerly Adyar Poonga Trust)
103/6 Greenways Road,
Raja Annamalaipuram,
Chennai-600 028.



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11. The Union of India,
Ministry of Shipping Transport Bhawan,
New Delhi-110 001.

12. The Chairman,
Inland Waterways Authority of India,
Ministry of Shipping, A-13, Sector-1,
Noida, Uttar Pradesh.

MUNISHWAR NATH BHANDARI, C.J.

and

N.MALA, J.

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PRE-DELIVERY ORDER IN
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12.09.2022