

Madras High Court

S. Nandakumar vs The Secretary To Government Of ... on 22 April, 2010

Dated: 22.04.2010

Coram:

The Honourable Mr.Justice ELIPE DHARMA RAO

AND

The Honourable Mr.Justice K.K.SASIDHARAN

W.P.Nos.10641 to 10643 of 2009, 15525 &

15526 of 2009 and Writ Appeal No.1100 of 2009

M.P.Nos.1 of 2009 (4 Nos.) , 2/2009 (5 Nos.) &

M.P.No.3 of 2009

W.P.No.10641 to 10643 of 2009

S. Nandakumar ... Petitioner in all the three W.Ps

Versus

1. The Secretary to Government of Tamil Nadu

Department of Environment and Forest

Fort St.George

Chennai-600 009.

2. The Secretary to Government of Tamil Nadu

Department of Revenue

Fort St.George

Chennai-60 009.

3. The Tamil Nadu Pollution Control Board

Rep.by its Chairperson

76, Anna Salai

Chennai-60 032.

4. The Collector, Thiruvallur District.

5. The Executive Authority

Kuthambakkam Panchayat

Thiruvallur District.

6. Union of India

rep.by Secretary to Government

Ministry of Environment and Forests

6th Floor, C.G.O. Complex

Paryavaran Bhavan, Lodhi Road

New Delhi.

7. The Chief Engineer

Public Works Department

Thiruvallur District.

8. The Commissioner

Ambattur Municipality

Thiruvallur Distirct.

9. The Commissioner

Maduravayal Municipality

Thiruvallur District.

10. The Commissioner

Tiruverkadu Municipality

Thiruvallur District.

11. The Commissioner

Valasaravakkam Municipality

Thiruvallur District.

12. The Commissioner

Poonamallee Municipality

Thiruvallur District.

13. The Executive Officer

Porur Town Panchayat

Thiruvallur District. ..Respondents in all the three WPs

W.P.Nos.15525 and 15526 of 2009

Kuthambakkam Panchayat

Rep.by its President, P.Geetha

Kuthambakkam Panchayat Office

Amman Koil Street

Kuthambakkam Centre

Poonamallee Block

Thiruvallur District-602 107. ..Petitioner in both W.Ps

Versus

1. The Secretary to Government of Tamil Nadu

Department of Environment and Forest

Fort St.George

Chennai-600 009.

2. The Secretary to Government of Tamil Nadu

Department of Revenue

Fort St.George

Chennai-60 009.

3. The Tamil Nadu Pollution Control Board

Rep.by its Chairperson

76, Anna Salai

Chennai-60 032.

4. The Collector

Thiruvallur District, Thiruvallur.

5. Union of India

rep.by Secretary to Government

Ministry of Environment and Forests

6th Floor, C.G.O. Complex

Paryavaran Bhavan, Lodhi Road

New Delhi.

6. The Chief Engineer

Public Works Department

J.N.Road, Thiruvallur,

Thiruvallur District.

7. The Commissioner

Ambattur Municipality

Ambattur, Thiruvallur District.

8. The Commissioner

Maduravayal Municipality

Maduravayal, Thiruvallur District.

9. The Commissioner

Thiruverkadu Municipality

Thiruverkadu, Thiruvallur District.

10. The Commissioner

Valasaravakkam Municipality

Valasaravakkam, Thiruvallur District.

11. The Commissioner

Poonamalle Municipality

Poonamallee, Thiruvallur District.

12. The Executive Officer

Porur Town Panchayat

Thiruvallur District.

13. Airports Authority of India

Rajiv Gandhi Bhawan

Saftharjung Airport

New Delhi-110 03. ...Respondents in both WPs.

W.A.No.1100 of 2009

Kuthambakkam Village Panchayat

Rep.by its President, P.Geetha

Kuthambakkam

Poonamallee Taluk

Thiruvallur District-602 107. ...Appellant

Versus

1. State of Tamil Nadu

rep.by its Secretary to Government

Revenue Department

Fort St.George, Chennai-600 009.

2. The Principal Commissioner and

Commissioner of Land Administration

Chepauk, Chennai-600 005.

3. The District Collector

Thiruvallur District.

4. The Tahsildar

Poonamallee Taluk

Poonamallee, Thiruvallur District.

5. The Commissioner

Ambattur Municipality

Ambattur, Chennai-600 053.

6. The Executive Officer

Thiruverkadu Gr.III Panchayat

Thiruverkadu, Chennai-600 077. ..Respondents

Prayer in W.P.No.10641 of 2009

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records and quash the G.O.Ms.No.78 dated 23 February, 2009 issued by the second respondent, restrain respondents 1 to 4 and 7 to 13 from in any manner divesting the land in Survey No.820/1C from the fourth respondent Panchayat and from setting up the Solid Waste Management Facility at the said Survey No.820/1C or anywhere else in Kuthambakkam Village.

Prayer in W.P.No.10642 of 2009

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records and quash the proceedings in 24325/2007/No.1 issued by the fourth respondent dated 10.3.2009 rejecting the objections of the Kuthambakkam Village and restrain respondents 1 to 4 and 7 to 13 from in any manner divesting the land in Survey No.820/1C from the fourth respondent Panchayat and from setting up the Solid Waste Management Facility at the said Survey No.820/1C or anywhere else in Kuthambakkam Village.

Prayer in W.P.No.10643 of 2009

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records and quash the letter No.TNPCB/SWM/32481 dated 29.10.2008 that "No Objection Certificate" issued by the third respondent for the proposed Solid Waste Management facility in Survey No.820/C in Kuthambakkam Village.

Prayer in W.P.No.15525 of 2009

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to quash the letter No. TNPCB/SWM/32481 dated 29.10.2008 issued by the third respondent for the proposed Solid Waste Management facility in Survey No.820/C in Kuthambakkam Village after calling for the connected records.

Prayer in W.P.No.15526 of 2009

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to quash the proceedings in 24325/2007/No.1 dated 10.3.2009 issued by the herein after calling for the records and consequently restrain the respondents from divesting the lands in Survey No.820/1C from petitioner Panchayat or change its land use for setting up the Solid Waste Management Facility for respondents 7 to 12.

Prayer in Writ Appeal No.1100 of 2009

Writ Appeal against the order dated 8 April, 2009 in W.P.No.5668 of 2009.

For Petitioner

in W.P.Nos.10641 to

10643/2009 .. Mr.D.Nagasaila

For Petitioner in

W.P.Nos.15525 &

15526 of 2009 &

For Appellant in

W.A.No.1100 of 209 .. Ms.R. Vaigai,

for Ms. S. Meenakshi

For Respondents 1,2,4,5 & 7

in W.P.Nos.10641 to 10643

of 2009, RR 1,2,4 & 6 in

W.P.Nos.15525 & 15526

of 2009 and RR 1 to 4 in

W.A.No.1100 of 2009 .. Mr.P.S.Raman

Advocate General

Assisted by

Mr.G.Desingu

Spl.Government Pleader

For R5 in W.A.No.1100 of 2009

For R7 in W.P.Nos.15525 & 15526

of 2009 and R8 in W.P.Nos.10641

to 10643 of 2009 .. Mr.P.Srinivas

For R3 in W.P.Nos.15525 & 15526

of 2009 & W.P.Nos.10641 to 10643

of 2009 .. Mr.R.Ramanlal

For R5 in W.P.Nos.15525 & 15526

of 2009 & R6 in W.P.Nos.10641

to 10643 of 2009 .. Mr.C.V.Ramachandra

Murthy

For RR 8 to 12 in W.P.Nos.15525

& 15526 of 2009 & RR 9 to 13

in W.P.Nos.10641 to 10643 of

2009 and R6 in W.A.No.1100

of 2009 .. Mr.I.Paranthaman

COMMON JUDGMENT

K.K.SASIDHARAN, J

The substantial issue involved in all these writ petitions and connected writ appeal pertains to the decision taken by the Government of Tamil Nadu to allot an extent of 70 acres of land and the consequential entry permission given to the municipalities of Ambattur, Maduravoyal, Thiruverkadu, Valasaravakkam and Poonamallee and Porur Town Panchayat to establish their Solid Waste Management Plant in Kuthambakkam Village in the District of Thiruvallur.

2. The writ petitions in W.P.Nos.15525 and 15526 of 2009 and Writ Appeal No.1100 of 2009 are at the instance of Kuthambakkam Panchayat and Writ Petition Nos.10641 to 10643 of 2009 were preferred by a local resident of Kuthambakkam Panchayat.

3. Since the issue involved in all these matters are basically the same and the main grievance was on account of allotment of land in the possession of the panchayat for the purpose of establishment of Solid Waste Management station for other local bodies, the factual matrix as found in W.P.No.15525 of 2009 is taken to narrate the background facts.

W.P.NO.15525 OF 2009

THE FACTS - THE CASE OF THE PETITIONER:

4. The petitioner is the President of Kuthambakkam Panchayat, which is stated to be a model village and nominated for the UN Habitat award and the recipient of commendation from the United Nations.

5. The Panchayat by name Kuthambakkam Panchayat, situated at Poonamallee Taluk, Thiruvallur District consists of seven hamlets and agriculture is the main source of livelihood for the villagers. There are about 1,195 families and more than 55% of them are Dalits and landless labourers. Nearly 1000 cattle of the villagers are dependant on 100 acres of common grazing land in the village. These live-stock also provide a

substantial source of livelihood for the villagers at Kuthambakkam. For many of these families the cattle they possess is a major source of livelihood and being landless, they are entirely dependant on the common grazing lands. In the absence of these grazing lands, cattle cannot survive and the villagers would be left with no other economic sustenance. The revenue records of Kuthambakkam Village shows that an extent of 99.61 acres of land in Survey No.820/1C had been classified as grazing ground and the said land is vested with the petitioner Panchayat as provided under Sections 132 and 134 of the Tamil Nadu Panchayats Act. The said land which is the communal property of the villagers of Kuthambakkam village is being administered by the petitioner for common benefit. The village is situated less than 50 metres from Chembarabakkam lake, which is a fresh water lake and is one of the main sources for supply of drinking water to Chennai City and its suburban areas. The entire Kuthambakkam and neighbouring area which consists of vast tracts of agricultural land, is the main catchment area for the Chembarabakkam lake.

6. While the matters stood thus, the Municipalities of Ambattur, Maduravayal, Tiruverkadu, Valasaravakkam, Poonamallee and Porur Town Panchayat appears to have approached the Government with a proposal for establishing a Municipal Solid Waste Generation Station. The local bodies were in need of adequate lands for establishing common Integrated Solid Waste Management and sanitary land fill facility. The Collector of Thiruvallur District identified the grazing land in Kuthambakkam village as the suitable site for setting up the proposed project and it was intended for all these local bodies. However before taking a decision by the Collector and the Government, no notice was issued to the Village Panchayat.

7. There is a prescribed procedure as contained under Section 134 of the Tamil Nadu Panchayats Act and Rules 3 and 4 of the Tamil Nadu Panchayats (Restriction and Control to Regulate the use of Porombokes in Ryotwari Tracts) Rules, 2000, in the matter of taking over the land for any other specific purpose. However the said procedure was not followed by the District Collector. In fact, when the petitioner and the other villagers came to know of the proposal through other sources, they have promptly approached the authorities. The Panchayat also passed a resolution against the proposal. In the meantime, the petitioner came to know that the Government has passed an order as per G.O.Ms.No.78 dated 23 February, 2009 conveying the land in favour of the local bodies.

8. The Government Order in G.O.Ms.No.78 dated 23 February, 2009 was challenged in W.P.No.5668 of 2009. When the matter was taken up for consideration, the Court having found that there were references about the objections raised by the Village Panchayat and the consideration of such objections by the Government, dismissed the writ petition. The said order is the subject matter in Writ Appeal No.1100 of 2009.

9. The petitioner preferred a writ petition in W.P.No.1230 of 2009 and the said writ petition was disposed of as per order dated 23 January, 2009 directing the District Collector to consider and pass orders in respect of the objections raised by the petitioner against the assignment of land and establishment of the Integrated Solid Waste Management project. Accordingly, objections were considered by the District Collector, Thiruvallur and as per proceedings dated 10 March, 2009, the objections were overruled. The said order is the subject matter in W.P.No.15526 of 2009.

10. The Tamil Nadu Pollution Control Board as per its proceedings dated 29 October, 2008 granted no objection certificate for the proposed Solid Waste Management Facility in Survey No.820/1C in Kuthambakkam Village. The said proceeding is challenged in W.P.No.15525/2009. The order passed by the Government in G.O.Ms.No.78 dated 23 February, 2009 is once again challenged at the instance of the petitioner in W.P.No.10641 of 2009. The order passed by the Collector dated 10 March, 2009 and the No Objection Certificate issued by the Pollution Control Board dated 29 October, 2008 are the subject matter in W.P.Nos.10642 and 10643 of 2009 respectively again at the instance of the very same Villager of Kuthambakkam Panchayat.

THE DEFENCE:-

11. The District Collector, Thiruvallur has filed a counter in answer to the contentions raised in all these writ petitions. The counter reads thus:- There is a proposal for alienation of 70 acres out of 99.66 acres of land in Survey No.820/1C of Kuthambakkam Village in favour of six local bodies namely, Poonamallee, Valasaravakkam, Maduravoyal, Ambattur, Tiruverkadu and Porur. When the authorities were considering this proposal, Kuthambakkam panchayat filed writ petition in W.P.No.1230 of 2009 and the said writ petition was disposed of with a direction to consider the objection submitted by the Panchayat. In the meantime, the Government as per G.O.Ms.No.78 dated 23 February, 2009 have granted entry permission in respect of 47 acres of land in Survey No.820/1C of Kuthambakkam Village pending issue of orders of alienation. The writ petition filed against the said proceeding was dismissed by the High Court. The objections raised by the Kuthambakkam Village against the proposal was considered by the revenue administration and as per proceedings dated 10 March, 2009, those objections were rejected. The proposal was considered at the level of the District Administration as well as by the Government. It was found that only a portion of grazing ground in Survey No.821/C was intended to be used as a compost yard. The subject land is classified as Government Poramboke grazing land. The District Administration considered the proposal and the subject land was found to be suitable for establishing a common Solid Waste Management station. The Tamil Nadu Pollution Control Board granted "No Objection Certificate" for establishing the project. Before taking a decision by the Government, public notice was given by the Tahsildar, Poonamallee as per proceedings dated 3 July, 2007. The Panchayat President and others raised objections and while forwarding the proposal, such objections were considered. It was only thereafter the Government passed an order in G.O.Ms.No.78 dated 23 February, 2009. In pursuance of the said Government Order, possession of the land was given to the concerned local body. The Solid Waste Management Plant would be established only after getting necessary permission from the concerned statutory authorities and that too after taking appropriate safety measures.

12. The Revenue department in their counter justified the action taken by the Government to establish a common treatment plant in the subject property. The counter reads thus:- The proposal received from the six Municipalities and one village panchayat for establishment of a common garbage management plant was considered by the Government along with the report received from the District Collector, Thiruvallur. The area earmarked for the proposed Solid Waste Management project does not form part of the catchment area of Chembarambakkam lake. Before recommending the matter, the District Revenue Officer inspected the site on 28 August, 2007 and the issue was considered at various levels in extenso and then only the Government has taken a decision to handover the land to the local bodies for establishing the common plant. The decision was taken in public interest and as such no interference is called for in the said decision.

13. The Tamil Nadu Pollution Control Board has filed a separate counter affidavit, which reads thus:-

The Government of India has notified the Municipal Solid Wastes (Management and Handling) Rules, 2000 under the Environment (Protection) Act, 1986 to regulate the management and handling of municipal solid wastes. As per Schedule I, the Municipalities should have set up the waste processing and disposal facility by 31 December, 2003. The statute has also laid down the specifications and the measures to be taken for prevention of pollution by setting up of Municipal Solid Waste Processing Facility. Though the dead line for implementation of the Rule expired long back, the local bodies were not in a position to establish the facility on account of non-availability of suitable and sufficient land. It was only in such circumstances, Poonamallee, Valasaravakkam, Ambattur, Thiruverkadu and Maduravoyal Municipalities and Porur Panchayat initiated steps for establishing a common Municipal Solid Waste Plant. The site was inspected by the officials of the Pollution Control Board and a No Objection Certificate was issued on 29 October, 2008. As per EIA Notification 2006, Common Municipal Solid Waste Management Facility requires environmental clearance from State Environment Impact Assessment Authority. Therefore the No Objection Certificate issued by the Pollution Control Board was only for the purpose of acquiring the land for establishing the Solid Waste Management Facility and it was not an environmental clearance.

THE ARGUMENTS:-

14. The learned counsel for the Kuthambakkam Panchayat made extensive submissions with respect to the violation of the mandatory provisions as contained under Section 134 of the Tamil Nadu Panchayats Act. According to the learned counsel, porambores, which includes grazing ground shall always vest with the local panchayat. The Collector can exclude the land only after completing the statutory formalities which includes consultation with the village panchayat. According to the learned counsel before passing the Government Order in G.O.Ms.No.78 dated 23 February, 2009, no kind of consultation was initiated by the District Collector with the village panchayat and therefore the order passed by the Government in G.O.Ms.No.78 is non est in law. The learned counsel by placing reliance on various judgments of the Supreme Court on environmental degradation and sustainable development contended that the subject land consists of water body and grazing land and as such, the very action in taking away the land for the purpose of Solid Waste Management Plant would ruin the environment. The learned counsel has taken us through various proceedings to justify her contention that even before considering the objections made by the panchayat and the local public, a decision was taken by the Government to hand over the site to the local bodies. The learned counsel has drawn our attention to the report of the expert team appointed by the Pollution Control Board and their finding that the subject site is not suitable for establishing a garbage disposal plant. The learned counsel also pointed out that the substantial issues raised by the panchayat were never considered in the matter before taking a decision by the Government and as such all the proceedings impugned in these writ petitions are liable to be quashed. The learned counsel has also made submissions with respect to the order passed by the learned Single Judge which is the subject matter in W.A.No.1100 of 2009. According to the learned counsel by placing reliance on certain observations made in the Government Order, the learned Single Judge was pleased to dismiss the writ petition. However, the basic issues raised by the panchayat remain unanswered and as such the order passed by the learned Single Judge also requires interference.

15. The learned counsel for the petitioner in W.P.Nos.10641 to 10643 of 2009 adopted the arguments of the learned counsel for the Village Panchayat.

16. The learned Advocate General appearing on behalf of the Government justified the action taken in public interest. According to the learned Advocate General, before issuing the order in G.O.Ms.No.78 dated 23 February, 2009, the objections submitted by the Village Panchayat as well as the villagers were considered and a reference to that effect is contained even in the impugned Government Order. According to the learned Advocate General, everything depends upon the clearance to be given by the Environmental Assessment Authority and the no objection certificate issued by the Pollution Control Board is only tentative in nature. The learned Advocate General made a statement before us that in case the Environmental Assessment Authority comes to a conclusion that the subject site is not fit for establishing the Solid Waste Management Plant, the land would be returned to the Kuthambakkam Panchayat.

DISCUSSION:-

17. The poramboke land which is the subject matter of these writ petitions vested with Kuthambakkam Panchayat and admittedly the land has been administered by the Panchayat for the benefit of the villagers. Section 134 of the Tamil Nadu Panchayats Act provides that the porambores namely, grazing grounds, threshing floors, burning and burial grounds, cattle-stands, cart-stands and topes shall vest in the village panchayat and the panchayat shall have power to regulate the use of such porambores. Section 134(3) authorises the Collector, after consulting the Village Panchayat to exclude the land from the operation of the Act. Section 134 reads thus:- "134. Village panchayat to regulate the use of certain porambores in ryotwari tracts:-

(1) The provisions of this section shall apply only in ryotwari tracts.

(2) The following porambores namely, grazing grounds, threshing floors, burning and burial-grounds, cattle-stands, cart stands and topes shall vest in the village panchayat, and the village panchayat shall have power, subject to such restrictions and control *as may be prescribed to regulate the use of such porambores,

provided the poramboke are at the disposal of the Government. (3) The collector, after consulting the village panchayat, may, by notification exclude from the operation of this Act, any poramboke referred to in sub-section(2), may also modify or cancel such notification. (4) The village panchayat shall also have power, subject to *such restrictions and control as may be prescribed, to regulate the use of any other poramboke which is at the disposal of the Government, if the village panchayat is authorised in that behalf by an order of the Government. (5) The village panchayat may, subject to such restrictions and control as maybe prescribed, plant trees on any poramboke, the use of which is regulated by it under sub-section (2) or sub-section (4).

18. There is no dispute that it was only in public interest the Government initiated action to allot 70 acres of poramboke land to the local bodies. However the fact remains that the land has all along being in the possession and enjoyment of the petitioner panchayat and it was only by way of the impugned Government order in G.O.Ms.No.78 it was sought to be taken out of their control. The State was concerned about the problem of disposal of the garbage in six of its municipalities and one local panchayat. The State was expected to assist the local bodies in their efforts for effective garbage disposal. However the State should be equally concerned with the difficulties of the other local bodies whose lands are sought to be taken for the purpose of other Municipalities or panchayats. The petitioner panchayat is only a custodian of the land and the ownership always vests with the State. However before the custodian is divested of its control, an opportunity should be given to offer their views.

19. The core question is as to whether the Government was justified in allotting its poramboke land to the local bodies for establishing the common Municipal Solid Waste Processing Station without making an effective consultation with the local panchayat.

20. The Municipalities and panchayats have taken action for waste processing and disposal. But it was not by way of a scientific method. The collection, storage, segregation, treatment and disposal of the Municipal Solid Wastes always posed serious questions to the Municipalities and other local bodies. Of late, it has become a burning issue. It was only in such circumstances, the Government of India has come up with the notification with respect to the disposal of the Municipal Solid Wastes. The Municipal Solid Wastes (Management and Handling) Rules, 2000 issued under the Environment and Protection Act,1986, seeks to regulate the management and handling of municipal solid wastes. The Municipal Authorities were given the task of collection, reception, storage, segregation, transportation, treatment and disposal of the municipal solid wastes and for the said purpose they have to set up waste processing and disposal facilities including landfills. The Government of India also fixed the cut-off date for establishing the solid waste disposal facility. The time granted by the Government of India expired as early as in the year 2003. Even now most of the municipalities are following the conventional method of disposal of wastes.

21. The Municipalities of Poonamallee, Valasaravakkam, Ambattur, Thiruverkadu and Maduravoyal and Porur Panchayat were not in a position to establish their solid waste processing plant on account of various reasons including the non-availability of unobjectionable site. It was only in such circumstances they have joined together and made an application before the Government to permit them to establish a common solid waste processing plant. Accordingly, the Government initiated steps. The Collector of Thiruvallur having found that a suitable poramboke land was available in Kuthambakkam panchayat, submitted a report before the Government for allotting about 70 acres of poramboke land for this public purpose. Though the District Collector has not strictly followed the mandatory provisions of Section 134 of the Tamil Nadu Panchayats Act before passing the order, the background facts clearly shows that there was substantial compliance.

22. Section 134(3) of the Tamil Nadu Panchayats Act, 1994 permits the Collector to exclude certain lands from the operation of the Act and to modify or cancel such exclusion by way of further notifications. However, there is a mandatory condition that before issuing such notification for exclusion or modification or cancellation, the village panchayat should be consulted. In a matter like this, consultation cannot be taken as consent. However, it does not mean that consultation is an empty formality.

23. Since the poramboke land has been in the possession of the panchayat, naturally, they exercise certain rights in respect of those lands. The property has been used only for public purpose. Therefore before resuming possession of such porambokes from the panchayat, Law requires that consultation should be made with the concerned panchayat. However in the case on hand, effective consultation made by the District Collector was only after granting entry permission by the Government as per G.O.Ms.No.78 dated 23 February, 2009. Therefore mandatory consultation process was not resorted to by the District Collector before recommending the case to the Government. However in view of the larger public interest involved in establishing garbage disposal plant and the developments which have taken place subsequently, coupled with the statement made by the learned Advocate General, we are of the view that no interference is called for in the action taken by the Collector culminating in issuing the order by the Government.

24. The challenge made to the "no objection certificate" issued by the Tamil Nadu Pollution Control Board is liable to be rejected for the simple reason that no right would accrue to the local bodies on the basis of such No objection Certificate. The "No Objection Certificate" was issued only for the purpose of proceeding further. The Municipalities and the panchayat would be in a position to establish the common solid waste management system only after the grant of permission by the Environmental Assessment Authority. Therefore everything depends upon the approval to be given by the Environmental Assessment Authority. In fact the Tamil Nadu Pollution Control Board has clarified the position that their No Objection Certificate is only tentative and the ultimate authority is only the Environmental Assessment Authority. The writ petition challenging the "No Objection Certificate" is therefore closed with the above observation with regard to its nature and application.

25. Though the order of the Collector dated 10.3.209 was made only after the Government Order in G.O.Ms.No.78 dated 23 February, 2009, there are indications about the objection submitted by the President of the Panchayat and the report of the District Collector. In such circumstances, we are of the view that no interference is called for in the order passed by the Government in G.O.Ms.No.78 dated 23 February, 2009 as well as the order passed by the District Collector dated 10 March, 2009.

26. The Environmental Impact Assessment notification, 2006 clearly shows that common solid waste management facility requires environmental clearance from the Environmental Impact Assessment Authority. Before giving such clearance, the Environmental Impact Assessment Authority is expected to conduct a study including the impact of the project on the water, air, noise, biological and land environment. The authority is also expected to study the negative impacts and in the event of coming to a conclusion that remedial measures should be taken it has to give such suggestions in the form of Environment Management Plan.

27. When the environmental issues and the threat which would be caused to the ecology were taken up by the learned counsel for the petitioner, the learned Advocate General submitted that such issues can be raised before the Environmental Assessment Authority. The learned Advocate General further submitted that it was open to the panchayat and the other affected parties to appear before the authorities during the course of public hearing and they are free to express their opinion. However, the learned counsel for the Panchayat expressed her reservations and serious concern with respect to the way in which the public hearing had been conducted by the authorities in cases like this. According to the learned counsel, often the grievances of the affected parties were not considered and the public hearings are only a make belief affair.

28. The public consultation is a mandatory procedure in the process of environmental clearance. However, it was submitted at the bar that the public hearing is now more or less a "ritual" and the affected persons were never given audience to express their views. In fact, in a similar matter in W.P.No.18888/1998, an affidavit was filed by a practising lawyer of this Court in W.P.M.P.No.302/2010, in respect of a public hearing and the way in which supporters in favour of a particular project denied entry to the local people to attend the public hearing and the steps taken to restrain those local affected persons, who managed to enter the premises from opening their mouth. Therefore, we are constrained to indicate the importance of public hearing and the need to ascertain the views of the affected persons by the authorities before issuing the

environmental clearance.

29. The notification issued by the Ministry of Environment and Forest dated 14 September 2006 is a compendium of Regulations dealing with assessment of Environmental impact. The notification contains categorization of projects and activities. All projects included in Category 'A' to the schedule appended to the notification including expansion and modernization of existing projects requires mandatory prior environmental clearance from the Central Government through its Ministry of Environment and Forests, on the recommendations of an Expert Appraisal Committee constituted by the Central Government. Similarly, all projects or activities included in Category 'B1' require prior environmental clearance from the concerned State / Union Territory Environmental Impact Assessment Authority. Application seeking prior environmental clearance shall be made in the prescribed statutory format.

30. The process of environmental clearance involves screening of applications, scoping, public consultation and appraisal.

31. The process of public consultation is an essential part of the environmental clearance process. The notification dated 14 September 2006 contains the provisions regarding public consultation. It reads thus :- III Stage (3) Public Consultation :-

(i) 'Public Consultation' refers to the process by which the concerns of local affected persons and others who have plausible stake in the environmental impacts of the project or activity are ascertained with a view to taking into account all the material concerns in the project or activity design as appropriate. All Category 'A' and Category 'B1' projects or activities shall undertake Public Consultation, except the following :- (a) modernization of irrigation projects (item 1(c)(ii) of the Schedule).

(b) All projects or activities located within industrial estates or parks (item 7(c) of the Schedule) approved by the concerned authorities, and which are not disallowed in such approvals. (c) expansion of roads and highways (item 7(f) of the schedule) which do not involve any further acquisition of land.

(d) all building/ construction projects/Area Development projects and Townships (Item 8).

(e) all Category B2 projects and activities.

(f) all projects or activities concerning national defence and security or involving other strategic considerations as determined by the Central Government.

(ii) The Public Consultation shall ordinarily have two components comprising of:-

(a) a public hearing at the site or in its close proximity district wise, to be carried out in the manner prescribed in Appendix IV, for ascertaining concerns of local affected person; (b) obtain responses in writing from other concerned persons having a plausible stake in the environmental aspects of the project or activity. (iii) The public hearing at, or in close proximity to, the site(s) in all cases shall be conducted by the State Pollution Control Board (SPCB) or the Union Territory Pollution Control Committee (UTPCC) concerned in the specified manner and forward the proceedings to the regulatory authority concerned within 45 (forty five) of a request to the effect from the applicant. (iv) In case the State Pollution Control Board or the Union Territory Pollution Control Committee concerned does not undertake and complete the public hearing within the specified period and/or does not convey the proceedings of the public hearing within the prescribed period directly to the regulatory authority concerned as above, the regulatory authority shall engage another public agency or authority which is not subordinate to the regulatory authority, to complete the process within a further period of forty five days. (v) If the public agency or authority nominated under the sub paragraph (iii) above reports to the regulatory authority concerned owing to the local situation, it is not possible to conduct the public hearing in a manner which will enable the views of the concerned local persons to be freely

expressed, it shall report the facts in detail to the concerned regulatory authority, which may, after due consideration of the report and other reliable information that it may have, decide that the public consultation in the case need not include the public hearing. (vi) For obtaining responses in writing from other concerned persons having a plausible stake in the environmental aspects of the project or activity, the concerned regulatory authority and the State Pollution Control Board (SPCB) or the Union Territory Pollution Control Committee (UTPCC) shall invite responses from such concerned persons by placing on their website the summary EIA report prepared in the format given in Appendix IIIA by the applicant along with a copy of the application in the prescribed form, within seven days of the receipt of a written request for arranging the public hearing. Confidential information including non-disclosable or legally privileged information involving Intellectual Property Right, source specified in the application shall not be placed on the web site. The regulatory authority concerned may also use other appropriate media for ensuring wide publicity about the project or activity. The regulatory authority shall, however, make available on a written request from any concerned person the Draft EIA report for inspection at a notified place during normal office hours till the date of the public hearing. All the responses received as part of this public consultation process shall be forwarded to the applicant through the quickest available means. (vii) After completion of the public consultation, the applicant shall address all the material environmental concerns expressed during this process, and make appropriate changes in the draft EIA and EMP. The final EIA report, so prepared, shall be submitted by the applicant to the concerned regulatory authority for appraisal. The applicant may alternatively submit a supplementary report to draft EIA and EMP addressing all the concerns expressed during the public consultation."

32. Appendix IV of the notification contains the detailed procedure for conduct of public hearing. It reads:-

"PROCEDURE FOR CONDUCT OF PUBLIC HEARING:

1.0 The Public Hearing shall be arranged in a systematic, time bound and transparent manner ensuring widest possible public participation at the project site(s) or in its close proximity District wise, by the concerned State Pollution Control Board (SPCB) or the Union Territory Pollution Control committee (UTPCC). 2.0 The Process:

2.1 The applicant shall make a request through a simple letter to the Member Secretary of the SPCB or Union Territory Pollution Control Committee, in whose jurisdiction the project is located, to arrange the public hearing within the prescribed statutory period. In case the project site is extending beyond a State or Union Territory, the public hearing is mandated in each State or Union Territory in which the project is sited and the applicant shall make separate requests to each concerned SPCB or UTPCC for holding the public hearing as per this procedure. 2.2 The applicant shall enclose with the letter of request, at least 10 hard copies and an equivalent number of soft (electronic) copies of the draft EIA Report with the generic structure given in Appendix III including the Summary Environment Impact Assessment report in English and in the local language, prepared strictly in accordance with the terms of reference communicated after Scoping (Stage -2). Simultaneously the applicant shall arrange to forward copies, one hard and one soft, of the above draft EIA Report along with the Summary EIA report to the Ministry of Environment and Forests and to the following authorities or offices, within whose jurisdiction the project will be located: (a) District Magistrate/s

(b) Zila Parishad or Municipal Corporation

(c) District Industries Office

(d) Concerned Regional Office of the Ministry of Environment and Forests.

2.3 On receiving the draft Environmental Impact Assessment Report, the above mentioned authorities except the MoEF, shall arrange to widely publicize it within their respective jurisdictions requesting the interested persons to send their comments to the concerned regulatory authorities. They shall also make available the

draft EIA Report for inspection electronically or otherwise to the public during normal office hours till the Public Hearing is over. The Ministry of Environment and Forests shall promptly display the Summary of the draft Environmental Impact Assessment report on its website, and also make the full draft EIA available for reference at a notified place during normal office hours in the Ministry of Delhi. 2.4 The SPCB or UTPCC concerned shall also make similar arrangements for giving publicity about the project within the State/Union Territory and make available the Summary of the draft Environmental Impact Assessment report (Appendix III A) for inspection in select offices or public libraries or panchayats etc. They shall also additionally make available a copy of the draft Environmental Impact Assessment report to the above five authorities/offices viz., Ministry of Environment and Forests, District Magistrate etc.

3.0 Notice of Public Hearing:

3.1 The Member Secretary of the concerned SPCB or UTPCC shall finalize the date, time and exact venue for the conduct of public hearing within 7(seven) days of the date of receipt of the draft Environmental Impact Assessment report from the project proponent, and advertise the same in one major National Daily and one Regional Vernacular Daily. A minimum notice period of 30 (thirty) days shall be provided to the public for furnishing their responses; 3.2 The advertisement shall also inform the public about the places or offices where the public could access the draft Environmental Impact Assessment report and the Summary Environmental Impact Assessment report before the public hearing. 3.3 No postponement of the date, time, venue of the public hearing shall be undertaken unless some untoward emergency situation occurs and only on the recommendation of the concerned District Magistrate the postponement shall be notified to the public through the same National and Regional vernacular dailies and also prominently displayed at all the identified offices by the concerned SPCB or Union Territory Pollution Control Committee. 3.4 In the above exceptional circumstances fresh date, time and venue for the public consultation shall be decided by the Member-Secretary of the concerned SPCB or UTPCC only in consultation with the District Magistrate and notified afresh as per procedure under 3.1 above.

4.0 The Panel:

4.1 The District Magistrate or his or her representative not below the rank of an Additional District Magistrate assisted by a representative of SPCB or UTPCC, shall supervise and preside over the entire public hearing process.

5.0 Videography:

5.1 The SPCB or UTPCC shall arrange to video film the entire proceedings. A copy of the videotape or a CD shall be enclosed with the public hearing proceedings while forwarding it to the Regulatory Authority concerned.

6.0 Proceedings:

6.1 The attendance of all those who are present at the venue shall be noted and annexed with the final proceedings.

6.2 There shall be no quorum required for attendance for starting the proceedings.

6.3 A representative of the applicant shall initiate the proceedings with a presentation on the project and the Summary EIA report. 6.4 Every person present at the venue shall be granted the opportunity to seek information or clarifications on the project from the applicant. The summary of the public hearing proceedings accurately reflecting all the views and concerns expressed shall be recorded by the representative of the SPCB or UTPCC and read over to the audience at the end of the proceedings explaining the contents in the vernacular language and the agreed minutes shall be signed by the District Magistrate or his or her

representative on the same day and forwarded to the SPCB/ UTPCC concerned. 6.5 A statement of the issues raised by the public and the comments of the applicant shall also be prepared in the local language and in English and annexed to the proceedings. 6.6 The proceedings of the public hearing shall be conspicuously displayed at the office of the Panchayats within whose jurisdiction the project is located. Office of the concerned Zila Parishad, District Magistrate, and the SPCB or UTPCC. The SPCB or UTPCC shall also display the proceedings on its website for general information, Comments if any, on the proceedings which may be sent directly to the concerned regulatory authorities and the applicant concerned.

7.0 Time period for completion of public hearing:

7.1 The public hearing shall be completed within a period of 45 (forty five) days from date of receipt of the request letter from the applicant. Therefore the SPCB or UTPCC concerned shall sent the public hearing proceedings to the concerned regulatory authority within 8 (eight) days of the completion of the public hearing. The applicant may also directly forward a copy of the approved public hearing proceedings to the regulatory authority concerned along with the final Environmental Impact Assessment report or supplementary report to the draft EIA report prepared after the public hearing and public consultations. 7.2 If the SPCB or UTPCC fails to hold the public hearing within the stipulated 45 (forty five) days, the Central Government in Ministry of Environment and Forests for Category "A" project or activity and the State Government or Union Territory Administration for Category "B" project or activity at the request of the SEIAA, shall engage any other agency or authority to complete the process, as per procedure laid down in this notification."

33. The public consultative process is therefore an essential component in the process of environmental impact assessment. It is essentially an embodiment of the principles of natural justice. The importance of conducting public hearing in a peaceful atmosphere with opportunity to all the local affected persons and others, who have plausible stake in the environmental impacts of the project is evident by the fact that the notification wanted the District Magistrate or any other officer not below the rank of an additional District Magistrate to supervise the conduct of public hearing. Similarly, while conducting appraisal of the application and the documents submitted by the applicant for environmental clearance, the Expert Appraisal Committee has to consider the out come of the public consultations, including report of public hearing proceedings. Therefore, public hearing occupies a pivotal position in the matter of environmental impact assessment.

34. When the notification itself indicates the manner and method of conducting public hearings, the statutory authorities are expected to conduct the hearing by giving reasonable opportunity to all the local affected persons and others who have interest in the particular project or activity. Such public hearings should not be a make belief affair, just to comply with the requirements of the notification. It is the responsibility of the District Magistrate or officers of equal status to see that all the affected persons are given audience. The panel of officers conducting the public hearing must remember that such hearings are conducted only to record the views of the affected parties. The statutory panel should hear the views of the affected persons and not those who have assembled in the meeting hall at the behest of the developer with a hidden agenda to block or prevent the opposition to the project. The regulation therefore provides for recording the attendance of those who are present at the venue and such attendance registers should be forwarded with the minutes of proceedings. Therefore, the attempt should be to conduct the hearing in an open and transparent manner with opportunity to express even the dissenting views without fear. The authorities owe a duty to the society to conduct such meetings in the manner prescribed by the Statute and if necessary, by taking police assistance. The minutes of the hearing should contain a true note of what has transpired in the meeting. Such positive steps on the part of the statutory authorities would inspire confidence in the affected people.

35. The consultative process is an essential facet of the environmental impact assessment study and therefore, any violation of the mandatory procedure in the matter of conducting public hearing and recording the views or objections of the affected persons would give the aggrieved a cause of action to challenge the legality and correctness of the public hearing proceedings, without waiting for the final outcome of the impact assessment

proceedings.

36. The learned counsel for the Kuthambakkam Panchayat by placing reliance on the application submitted by the Municipalities before Environmental Impact Assessment Authority submitted that the required particulars were not furnished by the local bodies and as such, the petitioner is in darkness with respect to the distance between the proposed solid waste management station and the water body and other natural streams. However, the learned Advocate General fairly submitted that all necessary details would be submitted before the Environmental Assessment Authority, so as to enable the authority to conduct a detailed study in the matter before issuing environmental clearance.

37. Though we are of the view that no interference is called for in the order passed by the Government in G.O.Ms.No.78 as well as the order passed by the District Collector dated 10 March, 2009, we make the legal position clear that before taking action under Section 134 (3) of the Tamil Nadu Panchayats Act, the concerned panchayat should be consulted.

Disposal :-

38. In the result, we issue the following directions.

(i) The concerned Panchayat and the Municipalities are directed to approach the Environmental Impact Assessment Authority with full particulars of the proposed common Solid Waste Management Plant.

(ii) The Environmental Impact Assessment Authority is directed to give a copy of the application submitted by the Municipalities and Panchayat for granting prior environmental clearance in the matter of establishing the solid waste management Plant to the panchayat so as to enable the petitioner to submit their views or objections in the matter.

(iii) The Kuthambakkam Panchayat and the local affected persons should be given an opportunity to offer their comments during the public hearing.

(iv) The environmental and ecological aspect of the project should be evaluated by the statutory authority before granting clearance.

(iv) In case the Environmental Impact Assessment Authority rejects the application for prior environmental clearance, liberty is given to the Kuthambakkam Panchayat to approach the Government for cancellation of the allotment to respondents 7 to 12, in view of the statement made by the learned Advocate General.

39. The Writ Appeal and the writ petitions are disposed of as indicated above. Consequently, the connected miscellaneous petitions are also closed. No costs.

Tr/

To

1. The Secretary to Government of Tamil Nadu

Department of Environment and Forest

Fort St.George, Chennai-600 009.

2. The Secretary to Government of Tamil Nadu

Department of Revenue

Fort St.George, Chennai-60 009.

3. The Chairperson

The Tamil Nadu Pollution Control Board

76, Anna Salai, Chennai-60 032.

4. The Collector

Thiruvallur District.

5. The Executive Authority

Kuthambakkam Panchayat

Thiruvallur District.

6. Secretary to Government

Ministry of Environment and Forests

6th Floor, C.G.O. Complex

Paryavaran Bhavan, Lodhi Road, New Delhi.

7. The Chief Engineer

Public Works Department

Thiruvallur District.

8. The Commissioner

Ambattur Municipality

Thiruvallur Distirct.

9. The Commissioner

Maduravayal Municipality

Thiruvallur District.

10. The Commissioner

Tiruverkadu Municipality

Thiruvallur District.

11. The Commissioner

Valasaravakkam Municipality

Thiruvallur District.

12. The Commissioner

Poonamallee Municipality

Thiruvallur District.

13. The Executive Officer

Porur Town Panchayat

Thiruvallur District.

14. Airports Authority of India

Rajiv Gandhi Bhawan

Safdarjung Airport

New Delhi