

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**Reserved on : 08.04.2019**

**Pronounced on : 19.08.2019**

**CORAM:**

**THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN  
and  
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**

**WP.(MD).No.914 of 2018  
and  
WMP(MD)Nos.962 of 2018 & 4478, 4479 & 6048 of 2019**

Kodaikanal Hotel and Resort Owners  
Association,  
Rep. by its Secretary, S.Abdul Gani Raja ... Petitioner

**Vs.**

1.The State of Tamil Nadu, Rep. by its Secretary,  
Department of Housing and Urban Development,  
Fort St.George, Chennai - 600 009.

2.The State of Tamil Nadu,  
Rep. by the Principal Secretary,  
Department of Municipal Administration  
and Water Supply,  
Fort St.George, Chennai - 600 009.

3.The District Collector, Dindigul District, Dindigul.

4.The Member Secretary/ Commissioner,  
Kodaikanal Municipality and Kodaikanal  
Local Planning Authority, Kodaikanal, Dindigul District.

5.The Director O/o. the Director,  
Town and Country Planning, Mount Road, Chennai.

6.The Deputy Director O/o. the Deputy Director,  
Town and Country Planning, Madurai.

7.The Executive Engineer, TANGEDCO,  
Kodaikanal Municipality.

(R7 is Suo Motu Impleaded Vide Court Order Dt.10/01/19)

8.The Executive Officer, Villupatti Panchayat.

(R8 is Suo Motu Impleaded Vide Court Order Dt.23/01/19)

9.Dev Ashokan

10.K.S.Khadar Mohideen

11.U.Usharani

12.Nithya Jaswanth

13.O.M.Shahul Hameed

14.P.T.Thiraviyam

(R9 to 14 are Impleaded Vide Court Order Dt.25/02/19  
in WMP(MD)No.3451 of 2019)

15.R.C.Diocese of Madurai,  
Through its Procurator, Rev Fr.Peter,  
Arch Bihop's House,  
K.Pudur, Madurai-625 007.

... Respondents

(R15 is Impleaded Vide Ct. Order Dt.19/03/19 in WMP(MD)No.5288/19)

**Prayer** : Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the Respondent No.1 to modify and approve the Master Plan for the Kodaikanal Municipality within the time frame stipulated by this Court.

For Petitioner : Mr.T.Lajapathi Roy

For Respondents : Mr.Vijay Narayan, Advocate General  
Assisted by Mr.A.K.Bhaskarapandian  
Additional Government Pleader  
for R1, R2, R3 and R5 & R6

: Mr.T.S.Mohamed Mohideen for R4

### **ORDER**

**(Order of the court was made by G.R.SWAMINATHAN, J.)**

Delivering J.R.D.Tata Oration on Business Ethics on the theme “The past and future of the environmental movement”, Dr.Ramachandra Guha, an eminent intellectual and historian, remarked that we were not bequeathed this earth by our ancestors, but have inherited it for our children. The three great ethical questions raised by the environmental movement are equality between species, equality within a single generation and equality between generations. We must, therefore, be attentive to the rights of future generations of humans.

2.After exploring these questions through the prism of historical narrative, Dr.Ramachandra Guha concludes by speculating on the

future. In this talk delivered in November, 2001, he speculated that by October 2017 the old order shall collapse under the weight of massive social unrest and an eco-fundamentalist party will come to power and initiate a series of radical measures such as abolition of the motor cars and of materials such as plastics that cannot be recycled. But, he himself dismissed such a possibility as India is far too variegated a country to be successfully ruled by authoritarian means. However, he expressed his hope that a new political formation might in time crystalise around a platform of environmental and social renewal.

3. We are inclined to think that the hopes expressed by Dr. Ramachandra Guha are more likely to be fulfilled by the judiciary by striking down environmentally destructive measures and by nudging as well as commanding the executive.

4. In this writ petition, we are concerned with Kodaikanal, a well known tourist destination. It is a part of the Palani hills and an extension of the western ghats. It is situated at a height of over 7000 feet above the sea level. It is known for its rich flora and fauna. There are shola forests, naturally occurring streams, grasslands and waterfalls.

5. In such a scenic location, Hindustan Unilever established a thermometer factory. It caused widespread mercury pollution. The unit

was shut down in the year 2001 after many years of operation. Kodaikanal has been witnessing systematic assault on its ecosystem due to indiscriminate felling of trees and construction of buildings. As early as in the year 2004, the Madras High Court issued directions in the nature of a continuing mandamus in WP No.268 of 2004. The authorities were directed to take prompt and strict action against unauthorised constructions. But, the officials turned a blind eye. The existing ones continued to flourish. Scores of new ones also sprang up. In this background, while dealing with some writ petitions during 2017-18, this Court directed the authorities to take strict enforcement action. As a result of coordinated action taken by the Kodaikanal Municipality and TANGEDCO, a number of buildings came to be locked and sealed. The case on hand espouses the cause of the affected building owners.

6.The petitioner herein represents those who are owning hotels and resorts in Kodaikanal. They are providing boarding and lodging services to the tourists visiting Kodaikanal. The petitioner proclaims that he is for a sustainable development so that the growing needs of Kodaikanal population as well as the tourist inflow can be balanced with the ecological demands. He points out that the draft Master Plan was issued in the year 1988 and that it was approved vide G.O Ms.No.170, Housing and Urban Development (UDI V) Department dated 04.03.1993

As per Section 32 (2) (b) of the Tamil Nadu Town and Country Planning Act, 1971 (Tamil Nadu Act 35 of 1972), the Master Plan should be updated once in every five years. The writ petitioner would claim that the old Master Plan lapsed in the year 1998 itself and that for over 19 years, it has not been modified. The contention of the writ petitioner is that the old Master Plan has become outdated as it was prepared by taking into consideration of the then land use, population and the tourist inflow & potential during the year 1984-1988. Even though an exercise for revising and reviewing the Master Plan was undertaken during subsequent years, it did not fructify. Hence, WP(MD)No.16792 of 2015 was filed before the Madurai Bench for directing the authorities to modify the Kodaikanal Master Plan. On 15.09.2015, this Bench passed an order directing the Government to look into the matter and decide the same at the earliest. The thrust of the argument of the petitioner's counsel is that the statutory mandate set out in Section 32(2)(b) of the Tamil Nadu Act 35 of 1972 was not honoured. He would further contend that the undertaking given before the High Court on at least two occasions was not acted upon. These circumstances led to the institution of the present writ petition.

7.The original stand of the Government was that the New Master Plan for Kodaikanal Municipality will be finalised. As undertaken before this Bench, the New Master Plan was published vide G.O Ms.No.47,



Housing and Urban Development Department dated 06.03.2019. We could have closed this writ petition as infructuous since nothing apparently survived for adjudication. But it is not so. A larger issue as to whether the Master Plan for Kodaikanal will have to be periodically revised has been pointedly raised before us and therefore we propose to adjudicate the same.

8.The Tamil Nadu Town and Country Planning Act, 1971 (Tamil Nadu Act 35 of 1972) provides for planning, development and use of rural and urban land in the State of Tamil Nadu and for purposes connected therewith. This statute has as many as 14 Chapters and 125 Sections. We are concerned with Chapter – III in this case. The Government is empowered to specify any area in the State (other than the Chennai Metropolitan Planning area) to be a regional planning area or a local planning area. The factors to be taken into consideration before making such a declaration have been set out in Section 10 of the Act. Section 11 provides for constitution of Town and Country Planning authorities. The provisions in the said Chapter provide for preparation of regional plans, present land and building use map, a master plan, a new town development plan and a detailed development plan.

9.Section 28 of the Act talks of approval to be given by the Government for the said plans. They will come into operation after they are published in the Gazette. Section 32 of the Act reads as under :

**“32.Variation, revocation and modification of regional plans, master plans and new town development plan.-**

(1)A regional plan, master plan or new town development plan approved under section 28 may, at any time, be varied or revoked by a subsequent regional plan, master plan or new town development plan, as the case may be, prepared and approved under this Act.

(2)(a)Once in every ten years after the date on which the regional plan for an area comes into operation, the regional planning authority may, and if so directed by the Government shall, after carrying out such fresh surveys as may be considered necessary and in consultation with the Director, review the regional plan and make such modifications in such plan wherever necessary and submit the modified regional plan for the approval of the Government.

(b)Once in every five years after the date on which the master plan for an area comes into operation, the local planning authority may, and if so directed by the Government shall, after carrying out such fresh surveys as may be considered necessary and in consultation with the regional planning authority and the local authorities concerned, review the master plan and make such modifications in such plan wherever necessary and submit the modified master plan for the approval of the Government.

(3)The provisions of sections 26, 28 and 30 with such modifications as may be necessary shall apply to



such modified regional plan or the master plan, as the case may be.

(4)The Government may, at any time by notification in the Tamil Nadu Government Gazette, vary or revoke the regional plan, a master plan or a new town development plan, as the case may be, prepared and approved under this Act.”

10.The contention of the writ petitioner's counsel is that when a power has been conferred on the authority, there arises a duty to exercise the same. The earlier master plan published more than 25 years ago taking note of the then prevailing situation, cannot be holding good even now.

11.We are of the view that a mechanical and routine approach cannot be adopted in this case. As already pointed out, the statute provides for planning, development and use of rural and urban lands in the State of Tamil Nadu. But, Kodaikanal is not one more piece of rural or urban land. It is a unique eco-system by itself. Therefore, the imperatives will have to be altogether different. The Government has to plan for the preservation of the unique natural heritage of Kodaikanal. We can take judicial notice of the fact that Kodaikanal has already been polluted and damaged enough. We must preserve atleast what is left. That is why we cannot countenance the contention that to meet the demands of urbanisation and the tourist industry, the Master Plan will have to periodically modified and revised.

12. We must refer to the scholarly essay of Gwendolyn J. Gordon on "Environmental Personhood" published in 43, Columbia Journal of Environmental Law (2018). He writes that legal personhood appears to be a promising tool for protecting nature. In 2014, based on the agreement between the Government and a Maori Tribe, Te Urewera, formerly a New Zealand national park, was declared to be a legal entity. The country's Whanganui River followed suit in 2017. Much earlier Ecuador proclaimed under its constitution the rights of nature "to exist, persist, maintain and regenerate its vital cycles." In Bolivia, nature is defined as a juridical entity that "takes on the character of collective public interest." In the United States, a number of local governing bodies promulgated ordinances recognizing the rights of nature. The author says that these new global legal developments reevaluate the place of human interests in relation to nature. It is an unequivocal rejection of a human centered rights regime for protecting nature as property. The author refers to the endeavour of our Hon'ble Supreme Court in T.N. Godavarman Thirumulpad and A. Nagaraja cases propounding non-anthropocentric views of the protection of nature. In 2013, the Indian Government declared Cetaceans as "non human persons". The High Court of Uttarakhand in WP No.126 of 2014, granted personhood rights to the Ganga river basin. There is thus a movement toward the recognition of nature as a rights-holder, a change from a prevailing stance that protects nature by way of human interest.

13. Article 48 A of the Constitution of India mandates that the State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country. Article 51 A states that it shall be the fundamental duty of every Indian citizen to protect and improve the natural environment including forests, lakes, rivers and wild life. We can also take inspiration from Kesavananda Bharati judgment. Article 368 of the Constitution provides for amending the Constitution. But then, the Hon'ble Supreme Court held that this power to amend cannot be absolute. It read limitations into it. The power cannot be exercised in a manner as to destroy the basic structure of the Constitution. Likewise, the power conferred on the Government under Section 32 of the Tamil Nadu Act 35 of 1972 cannot be so applied as to destroy the ecosystem of Kodaikanal. The place has already become a concrete jungle. One goes to Kodaikanal to enjoy the beauty of nature. Before it becomes an eyesore, the situation has to be remedied. Otherwise, Kodaikanal will cease to be what it is. It is time to recognise and adopt the best practices followed by other nations. This is not a place to issue a set of exhaustive directions. For instance, on account of the intense movement of motor vehicles, there is a heavy emission of smoke vitiating the air quality of Kodaikanal. If need be, the vehicles can be stopped at the foothills and the tourists can be taken in ecofriendly solar based/electric public transport systems. This will also incidentally avoid the terrible traffic congestion that one witnesses during

peak seasons. The District Administration will have to come out with innovative measures and creative solutions.

14. The solid waste generated by the inhabitants and the hotel industry cannot be dumped in Kodaikanal. The cost of disposal and transportation will have to be borne only by the waste generator. In other words, pollution of every kind will have to be put an end to. The violators will have to be dealt with an iron hand. If a new construction is illegally coming up, action should be taken and the deviation should be nipped in the bud. Whenever an application for putting up a construction is submitted, it must be vetted with utmost care and the process of scrutiny will have to be strict. The authorities at the regulatory, supervisory and field level will have to ensure that every norm laid down in the laws relating to planning and environment are scrupulously adhered to. Time has come to fix personal liability on the officials and make them accountable.

15. We are conscious that the continuing mandamus issued by the First Bench in WP No.268 of 2004 turned out to be a dead letter. We therefore direct the District Collector, Dindigul to submit a report to the Registry of this Court once in six months certifying that no unauthorised construction has come up during the preceding six months in Kodaikanal hills and that no polluting activity has taken place. Such a

report shall be published in the website of the Tamil Nadu Government and it will be open to any public spirited citizen to initiate contempt proceedings if the said report filed by the District Collector, Dindigul turns out to be incorrect.

16. With these directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

[N.K.K., J.] & [G.R.S., J.]

19.08.2019

Index : Yes/No

Internet : Yes/No

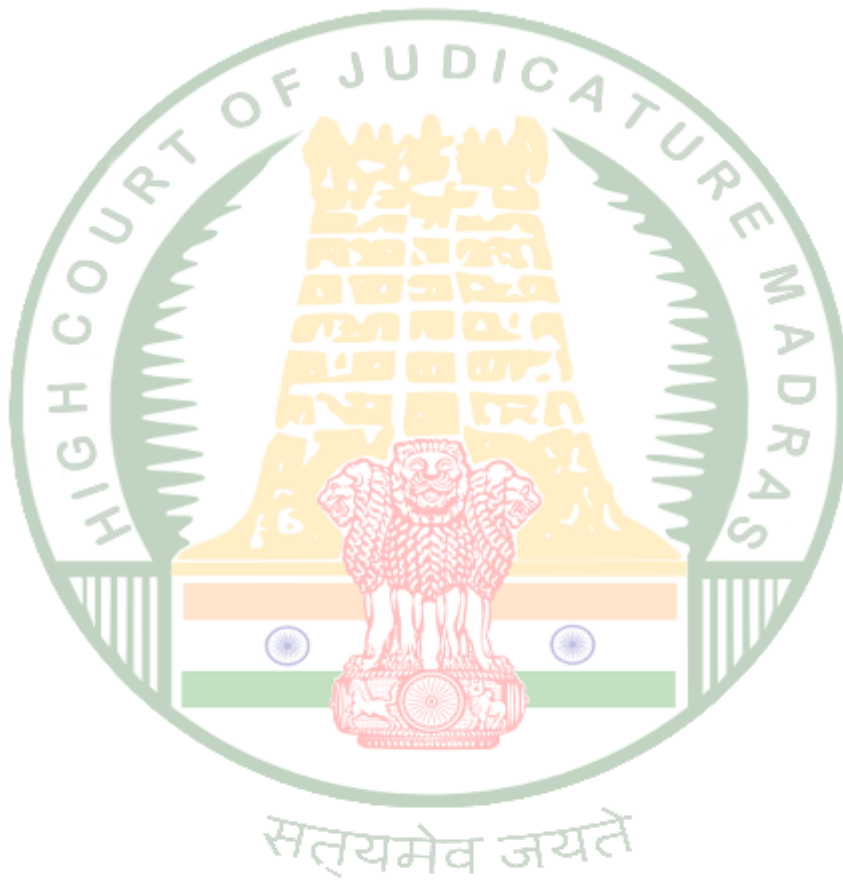
Skm

To

1. The Secretary, Department of Housing and Urban Development, Fort St. George, Chennai - 600 009.
2. The Principal Secretary, Department of Municipal Administration and Water Supply, Fort St. George, Chennai - 600 009.
3. The District Collector, Dindigul District, Dindigul.
4. The Member Secretary/ Commissioner, Kodaikanal Municipality and Kodaikanal Local Planning Authority, Kodaikanal, Dindigul District.
5. The Director O/o. the Director, Town and Country Planning, Mount Road, Chennai.
6. The Deputy Director O/o. the Deputy Director, Town and Country Planning, Madurai.

7.The Executive Engineer, TANGEDCO,  
Kodaikanal Municipality.

8.The Executive Officer, Villupatti Panchayat.

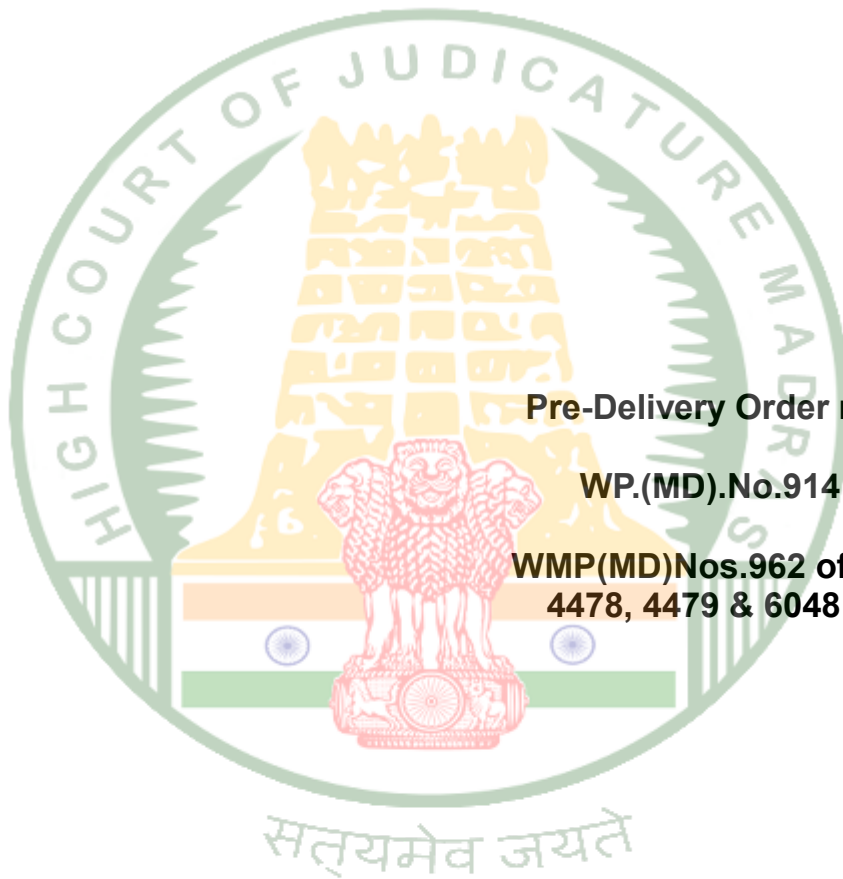


WEB COPY



**N.KIRUBAKARAN, J.**  
**and**  
**G.R.SWAMINATHAN, J.**

Skm



**Pre-Delivery Order made in**

**WP.(MD).No.914 of 2018**  
**and**  
**WMP(MD)Nos.962 of 2018 &**  
**4478, 4479 & 6048 of 2019**

**WEB COPY**

19.08.2019