

IN THE HIGH COURT OF JUDICATURE AT MADRAS
(Special Original Jurisdiction)
(Under Article 226 of the Constitution)

W.P.No. of 2009

S.Nandakumar
C/o.S.Rangasamy,
No. 660/4, Perumal Koil Street,
Kuthambakkam south,
Poonamalle block,
Thiruvallur District – 602 107

...Petitioner

Vs

1. The Secretary to the Government of TamilNadu,
Department of Environment and Forest,
Fort St.George,
Chennai – 600 009.
2. The Secretary to the Government of Tamil Nadu,
Department of Revenue,
Fort St.George,
Chennai – 600 009.
3. The Tamilnadu Pollution Control Board,
Represented by its Chairperson,
76, Anna Salai
Chennai – 600 032.
4. The Collector,
Thiruvallur District
5. Executive Authority,
Kuthambakkam Panchayat,
Thiruvallur District
6. Union of India
Represented by Secretary to Government
Ministry of Environment and Forests
6th Floor, CGO Complex,
Paryavaran Bhavan, Lodhi Road,

New Delhi.

7. The Chief Engineer,
Public Works Department,
Thiruvallur District.

8. The Commissioner,
Ambattur Municipality,
Thiruvallur District.

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9. The Commissioner,
Maduravayal Municipality,
Thiruvallur District.

10. The Commissioner,
Tiruverkadu Municipality,
Thiruvallur District.

11. The Commissioner,
Valasaravakkam Municipality
Thiruvallur District.

12. The Commissioner,
Poonmallee Municipality
Thiruvallur District.

13. The Executive Officer,
Porur Town Panchayat,
Thiruvallur District.

...Respondents

AFFIDAVIT OF NANDAKUMAR

I, S.Nandakumar, C/o.S.Rangasamy, aged about 28 years residing at No.660/4, Perumal Koil Street, Kuthambakkam south, Poonamalle block, Thiruvallur District – 602 107 temporarily come down to Chennai do hereby solemnly affirm and sincerely state as follows:

1. I am the petitioner herein and as such I am well acquainted with the facts and circumstances of the case.

2. I am filing this writ petition in public interest challenging the decision of Respondents II,III and IV to locate an Integrated Solid Waste Management Facility in Kuthambakkam Village, in an extent of 67 acres of grazing land since the respondents have not obtained the mandatory consents and approvals under the Tamilnadu Air (Prevention and Control of Pollution) Act, 1981 and Water (Prevention and Control of Pollution) Act, 1974 and have also not obtained the approval under the Environment Impact Assessment Notification 2006 issued under the Environment Protection Act. Further the divesting of the grazing land vested with the Panchayat is in violation of s.134 (3) of the TamilNadu Panchayats Act, 1994.

3. I state that I have completed my Masters degree in Computer Application from the Bharathidasan University, Tiruchirapalli. I worked as a Software Engineer for a period of 3 years in Chennai city. During my employment I started volunteering at a non governmental organization (NGO) called ‘Makkal Sakthi

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Iyakkam’ which works with the local communities and encourages community involvement in matters of governance and development. In May 2007 I became a full time working committee member in the said organization. As I worked with the communities I was convinced that the appropriate development path for India is through its villages by strengthening local self government and empowering the people at the village level. I took the initiative in preparing development plans for eight Panchayats in Virudhunagar District in coordination with Gandhi Gram Rural University, Dindugal. I was a member of the editorial board of a Tamil monthly magazine called “Nammal Mudiyaum”. I have written several articles on the importance of local government and grass roots democracy. During my work with several Panchayats I came across the Kuthambakkam Panchayat which was developed as a model Indian village. This village consists of a cluster of seven hamlets and is situated 40 km from Chennai. It has a population of more than 5,300 people. By the sheer strength of community involvement

and mobilization this village has attained self sufficient in many aspects of development. Thatched houses have been replaced with proper housing based on model built with appropriate technologies and local resources. On the basis of the community initiative small scale industries were started and women in the village were encouraged to avail of the community resources to get employment. The schools in the villages were improved. The Village soon became a model village and gained reputation world over as a model to be emulated. Teams across from the world came to visit this village to learn from its experience. Its experience now has been documented as a best practice experiment on local self government for the benefit of other villages not only in India but across the globe.

4. I state that I was inspired by this successful Gandhian experiment of strengthening the villages in India and decided that I would like to devote my full time to participate in experiments like in Kuthampakkam and work towards expanding these processes to other villages. I therefore started volunteering on a full time basis in the Kuthambakkam Village.

5. I state that the Kuthambakkam Village consists of seven hamlets and agriculture is the main source of livelihood for the villages. Both landed and the landless have livestock which is another main source of livelihood. In seven hamlets alone more than 1000 cattle are dependant on the 100 acres of grazing land in the Village. As per the accepted norm for every 100 cattle about 40 acres of land is required. Thus even this 100 acres of grazing land falls short of the

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requirement. Further out of the 1100 families in the village nearly 600 families are Dalits who are landless for more than 70 to 80 of these families the cattle they possess –their only sources of livelihood. These families are dependant on the common grazing lands for their sustenance. If these grazing lands are destroyed they will be forced to sell their cattle and will be left with no economic sustenance. Out of this 100 acres of grazing land

about 67 acres is now sought to be converted into a site or solid waste management which is nothing but a euphemism for a site for garbage dumping.

6. I state that I reliably learn that the municipalities of Ambattur, Maduravayal, Tiruverkadu, Valasaravakkam, Poonamallee and Porur Town Panchayat were looking for land for disposal of the municipal solid waste generated in their towns. They wanted adequate land for establishing common Integrated Solid Waste Management and sanitary land fill facility. Under these circumstances the Collector of Thiruvalluvar district identified the grazing land as a site for setting up the proposed common Solid Waste Management Facility for all these townships. I reliably learn that there was no formal communication of this decision to the Kuthampakkam Panchayat. However the residents of Kuthambakkam Panchayat came to know that the village grazing land situated in survey No.820/1C was identified as a land for the purpose of setting up of Solid Waste Management Facility. The Panchayat passed several resolutions objecting to the conversion of their grazing land for different purpose as it would affect their livelihood. Thus resolutions dated 16.07.07, 13.08.07, 15.08.07, 12.04.08, 01.05.08, 18.11.08, 02.01.09, 26.01.09 were passed recording objections to the setting up of the Solid Waste Management Facility as it was detrimental to the local village economy and health. I state that the Kuthambakkam Village is less than 500 mts from the Chembarabakkam lake. The Chembarabakkam lake is a fresh water lake and is one of the main sources for supply of drinking water to the Chennai city. The entire Kuthampakkam and neighbouring area which consists of vast tracts of agricultural land is the main catchment area for the Chembarabakkam lake. The survey No.820/1C which has been identified for the proposed solid waste management facility is part of the catchment area for the Chembarapakkam lake. Locating a garbage dump or a Solid Waste Management Facility in the catchment area of a major fresh water source reflects complete non application of mind on the part of the Authorities who have identified the site proposed site for the dump.

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7. I state that I am advised to submit that in Air (Prevention and Control of Pollution) Act, 1981 and Water (Prevention and Control of Pollution) Act, 1974 no facility of this nature can be established without obtaining 'Consent to establish' from Tamilnadu Pollution Control Board. It is a prior requisite before setting up of any industry or factory. I am also advised to submit that under the Environment Protection Act, the Environment Impact Assessment (EIA) notification dated 2006 has been issued. As per this notification prior environmental clearance is required from the state level 'State Environment Impact Assessment Authority' before any construction work or preparation of land by the project management is started for a project activity. As per Rule-7 of the EIA notification the approval process comprises of (i) Screening, (ii) Scoping, (iii) Public consultation, and (iv) Appraisal. The regulatory authority under this notification obtains detailed information on the proposed project. Appendix-1 to the notification has an elaborate form stipulating the information to be provided for the project. The information includes the location of the project, the alternative sites locations which are under consideration, the change in land use, existing land and vegetation, the risks of contamination of land or surface waters or ground water etc. The form also calls for details if the surrounding areas are populated and occupied by sensitive man made land users such as schools, hospitals, community facility etc. Areas containing high quality scarce resources such as ground water resources, surface resources, agriculture etc. have also to be indicated.

8. I state that on enquiry I have come to know that not even an application has been filed for obtaining an approval under the Environment Impact Assessment notification in respect of the proposed Solid Waste Management Facility. In the mean time I filed an application dated 29.04.2009 under the Right to Information Act to the Tamilnadu Pollution Control Board seeking information about the proposed Solid Waste Management Facility. I received a reply dated 12.05.2009 providing me with some information. From the information provided by the Tamilnadu Pollution Control Board I learn that the Tamilnadu Pollution Control Board constituted a Committee for inspection of the site. The Committee visited the site on 17.10.2008 and gave a report. In this report

it has been recorded that the site is located between the National Highway and Paravatharajapuram at a distance of 2 kilometers. The site is full of green trees. The access to the site is a narrow village road passing through the Paravatharajapuram village and 2.5 kilometres away from the National Highway. The habitations of Paravatha

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rajapuram and Kuthambakkam Samuthavapuram are located at 250 meters from the site. There is a small pond within 600 meters from the site which is the drinking water source from Mullakattai village. The proposed site is a catchment area from the Chembarambakkam lake which is direct water source for the Chennai city. There is an approved tourism centre recognized by the government at the southern side of the site. The Inspection Committee concluded that since the proposed site was surrounded by industry, villages, drinking water ponds, recreation centre and since the site also falls in the catchment area of the Chembarambakkam lake it may not be a suitable location to establish a Solid Water Management Facility. Despite this clear and categorical report of the Inspection Committee, the Tamilnadu Pollution Control Board for reasons best known to them issued by order dated 29.10.2008 a 'no objection certificate' (NOC) for the proposed site identified in Kuthambakkam village. I am advised to submit that neither Air (Prevention and Control of Pollution) Act, 1981 nor Water (Prevention and Control of Pollution) Act, 1974 contemplates the issue of a 'no objection certificate'. The Act provides for the granting of a 'consent to establish' which is a pre-requisite for establishing any industry. In the instant case the identification of the site is the most important aspect of the project considering its potential to cause pollution and for being a source of contamination and disease. The granting of the NOC by the Tamilnadu Pollution Control Board is an attempt at subversion of the law and the procedure established by the law. It also reflects the reckless attitude on the part of Pollution Control Board which has given an NOC despite the categorical finding of its own Inspection Committee that the site is not suitable. At any rate the NOC has no sanctity in

law and is not a procedure contemplated under the Air (Prevention and Control of Pollution) Act, 1981 and Water (Prevention and Control of Pollution) Act, 1974.

9. I state that the Constitution 73rd Amendment Act was passed in the year 1992 providing for the constitution of the Panchayats. By this Amendment Act the Panchayats were for the first time given a constitutional status. Art-243G specifically provides that the legislature of a State may by law, endow the Panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats with respect to preparation of plans for economic development and social justice and implementation of schemes for economic development and

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social justice including matters listed in the Eleventh Schedule. The Eleventh Schedule to the Constitution provides interalia for the maintenance of community assets, poverty alleviation programs, fuel and fodder, drinking water, implementation of land reforms etc.

10. I am advised to submit that as per Se. 134 of the Tamil Nadu Panchayat Act, 1994 which has been enacted to give effect to the Constitution 73rd Amendment the following porambokes namely, grazing grounds, threshing floors, burial grounds, topes, etc 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 porambokes, provided the porambokes are at the disposal of the government. S.134 (3) provides the Collector after consulting the Village Panchayat may by a notification exclude from the operation of the Act any poramboke referred to sub s.(2) and may also modify or cancel such notification.

11. I state that despite the objections of the residence of the Kuthmbakkam Village and the Villager Panchayat passing resolution in the Gram Sabha against the facility the Revenue Department issued G.O.No.78 dated 23.02.2009 giving order for entry permission to Ambattur and Thiruverkadu Municipality. Subsequently the Thiruvallur

District Collector issued further proceedings dated 10.03.2009 rejecting the objections of the Kuthmabakkam Village Panchayat after giving hearing to the Panchayat representation pursuant to order dated 23.01.04 in W.P.No.1230 of 09.

12. I am advised to submit that in the instant case there has been no proper and effective consultation on the part of the Collector for issuing orders to locate the site in grazing area. Courts have repeatedly held that the consultation cannot be an empty formality and all the concerned statutory authorities should be provided with all the necessary materials and there should be a complete exchange of information between all the authorities before the consultation can be said to be effective. I reliably learn that the Collector apart from receiving the representation from the Panchayat and giving personal hearing to the Panchayat representatives did not place before the Panchayat the inspection report of the Pollution Control Board nor take the Panchayat in to confidence about any facts about the proposed projects. The Collector merely acted as a superior authority giving a formal hearing to the Panchayat. The Collector failed to understand that the Panchayat is a constitutional authority and the statutes mandates consultation with the Panchayat. So in all fairness, the entire available material ought to have been

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placed before the Panchayat in order to have effective consultation. On the contrary the Panchayat had to depend on external sources of information and I learn that till today they have not been provided with all the facts. It is not clear if the Collector himself had the report of the Tamil Nadu Pollution Control Board before him. Thus the failure to take in to consideration crucial material renders the consultation process ineffective and void. I am further advised to submit that the word 'consult' in s.134(3) can only mean 'consent' if the Act is read purposively in the backdrop of the Constitution 73rd Amendment. While interpreting s.125 of the Tamil Nadu Panchayat Act, 1994 a Division Bench of this Court in judgement dated 22.12.04 in W.A.No.977 of 98 held that when the Government decides to divest land vested with the Panchayat the power conferred on the

Government under the Act is not absolute. It must be exercised in a manner necessary to enable them to function as institution of self government under Art.243 G of the Constitution of India. It was also held that 'consultation' means 'consent'. In the present case the Kuthambakkam Panchayat has passed several resolutions opposing the setting up of Solid Waste Management Facility in the Village. It is not open to the Collector to ride rough shod over the decisions of the Gram Sabha and to issue a notification locating the facility in the Village. It is pertinent to point out that the Constitution 73rd Amendment empowers the Panchayat to plan for its own economic development. It is also vested with the powers and responsibility to maintain community assets. If the resources necessary for economic planning are taken away from the Panchayat, the Constitution 73rd Amendment becomes a dead letter. An executive order cannot override the entire scheme and spirit of the Constitution.

13. I stated that in a statutorily mandated consultation process one consultee does not have the power to objection of the other consultee which is a constitutionally recognized authority. The District Collector in the instant case has acted as reviewing authority rather than a co-consultee. Further non of this proceedings take into account the report of the Tamilnadu Pollution Control Board. The District Collector has not taken into consideration the provision of Tamilnadu Air (Prevention and Control of Pollution) Act, 1981, Water (Prevention and Control of Pollution) Act, 1974 and Environment Impact Assessment Notification.

14. I am advised to submit that as per Revenue Standing Order (RSO)

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15(5), grazing ground porambokes shall not be assigned unless there is sufficient grazing ground available to serve the needs of the cattle without specific orders from the Government. As per RSO 15 (38) (ii) great care should be taken to preserve the margins of canals, channels and streams. The transfer and assignment of such water course source porambokes can be ordered only by the Government in consultation with the Commissioner of Administration and the Chief Engineer, Public Works Department. I

state that to the best of my knowledge through the survey No.820/1C concerned is within the catchment area of the Chembarabakkam lake, the Chief Engineer, Public Works Department has not ever been informed leave alone consulted in the matter.

15. I state that natural resources such as air, water, land, flora and fauna are all part of the natural eco-systems and have to be safeguarded for the benefit of the present and future generations. As per the 'Doctrine of Public Trust' these resources vest in the government for the purpose of public good. It is the duty of the government to ensure that grazing poramboke lands are preserved for the larger good of the Village communities. Further the government also has the responsibility to preserve the waters of the Chembarabakkam lake from pollution and contamination. The location of solid waste management facility near a water source for the garbage collected from six local bodies is not only short sighted but shows a reckless disregard for public health and public safety.

16. I state that I consulted a water engineer to help me understand the contour of the land and the run off into the Chembarabakkam lake from the proposed site. After a detailed study of the contour map of the area, I am informed that the effective run off area is about 120 sq.km.and the annual run off is 12.46 MCM (Million Cubic Metre). As per the report of the Water Engineer about 1.87 MCM of ground water is prone to pollution by the proposed dumping yard. Apart from this about 30 % of the 12.46 MCM of run off water would have the possibility of interacting with the solid waste and may reach Chembarabakkam tank which is the water resource for Chennai. Further the Villages of Paranjur, Thandalam, Mevalurkuppam, Parvatharajapuram, Samathuvapuram, Irulapalayam which have population of 20,000 are dependant on the ground water obtained from about 20 borewells sunk just adjacent to the proposed site. Any contamination will leave these 20 Villages without even drinking water.

17. I state that when these very important and crucial facts which have an adverse bearing and has the potential to poison the waters of a huge fresh water

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lake which is the main source of drinking water to the Metropolitan city of Chennai has been ignored by the respondents it is only proper that this Hon'ble Court should exercise its extraordinary powers under Art.226 of the Constitution to protect public rights.

18. I state that the action of the respondents I to IV permitting the proposed solid waste management facility in such an environmentally sensitive area is illegal and unjust for the following among other

GROUND

- (i) It is submitted that the action of respondents I to IV is arbitrary and violative of Art.14 and Art.21 of the Constitution.
- (ii) It is submitted that the site has been allocated without following the mandatory procedures under the Tamilnadu Air (Prevention and Control of Pollution) Act, 1981 and Water (Prevention and Control of Pollution) Act, 1974 and Environment Impact Assessment Notification, 2006.
- (iii) It is submitted that the proposed site is located close to a water body i.e the Chembarabakkam lake which is the main source of drinking water for Chennai city.
- (iv) It is submitted that the Tamilnadu Pollution Control Board has issued a NOC despite its own Inspection Committee having found the site unsuitable because of its proximity to habitations and large water sources.
- (v) It is submitted that the divesting of Panchayat land from the Panchayat without the consent of the Panchayat is illegal and contrary to sec.134 of the Tamilnadu Panchayat Act,1994
- (vi) It is submitted that there has been no effective consultation under s.134 of the TamilNadu Panchayat Act, 1994 as relevant material such as the Inspection Committee report of the Tamilnadu Pollution Control Board and the catchment area map of the Chembarabakkam lake has not been placed before either the Collector, Thiruvallur District nor the Kuthambakkam Panchayat.
- (vii) It is submitted that the Kuthambakkam Panchayat is a constitutionally recognized Authority and there is a statutory duty cast upon the District

Collector, Thiruvallur District to have effective consultation with the Panchayat by placing all relevant material before the Panchayat to facilitate consultation.

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- (viii) It is submitted that merely giving personal hearing and considering the representation of the Panchayat when all material has not been disclosed does not satisfy the statutorily mandated procedure of 'consultation' with the Village Panchayat.
- (ix) It is submitted that when it is more than evident that the proposed solid waste management facility at the Kuthambakkam Village site can contaminate the waters of the Chembarambakkam lake "the precautionary principle" mandates that the project at the proposed site should not be pursued.

19. I state that few days back the revenue officials from the Collector's Office came in to the Village to take possession of the site and to clear the site of the trees and shrubbery. This was opposed by the residents of the Kuthambakkam Village as the clearing of the grazing land would destroy their livelihood.

Under these circumstances it is therefore prayed that this Hon'ble court may be pleased to issue an interim stay of the operation of the G.O.No.78 dated 23.12.08 issued by the Respondent II granting entry permission to Ambattur and Thiruverkadu Municipalities for 47 acres of land at survey No. 820/1C of Kuthambakkam Village pending final disposal of the writ petition.

Under these circumstances it is therefore prayed that this Hon'ble Court maybe pleased to issue an interim injunction restraining Respondents I to IV and VII to XIII from in any manner divesting the land in Survey No.820/1C in Kuthambakkam Village from the possession of the Panchayat or in any manner altering the nature of the land usage pending final disposal of petition.

For the reasons stated in the accompanying affidavit it is therefore prayed that this Hon'ble Court may be pleased to issue writs, orders or directions and in particular a writ of Certiorarified Mandamus to call for the records and quash the G.O.No.78 dated

23.12.08 issued by the 2nd respondent, restrain Respondents I to IV and VII to XIII from in any manner divesting the land in Survey No.820/1C from the 4th respondent Panchayat and from setting up the Solid Waste Management Facility at the said Survey No. 820/1C or anywhere else in kuthambakkam Village and pass such other or further orders as this Hon'ble Court may deem fit and proper and thus render justice.

Solemnly affirmed and sincerely stated) Before me
 At Chennai on this the 8th day of June, 2009)
 And signed his name in my presence.) Advocate, Chennai
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IN THE HIGH COURT OF
 JUDICATURE AT MADRAS

W.P.No. of 2009

Writ petition

M/s.D.Nagasaila
Dr. V.Suresh
S.Suganthi
V.Bhuvaneswari

Counsel for Petitioner

MEMORANDUM OF WRIT PETITION
IN THE HIGH COURT OF JUDICATURE AT MADRAS
(Special Original Jurisdiction)
(Under Article 226 of the Constitution)

W.P.No. of 2009

S.Nandakumar
C/o.S.Rangasamy,
No. 660/4, Perumal Koil Street,
Kuthambakkam south,
Poonamalle block,
Thiruvallur District – 602 107

...Petitioner

Vs

1. The Secretary to the Government of TamilNadu,

Department of Environment and Forest,
Fort St.George,
Chennai – 600 009.

2. The Secretary to the Government of Tamil Nadu,
Department of Revenue,
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Represented by its Chairperson,
76, Anna Salai
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5. Executive Authority,
Kuthambakkam Panchayat,
Thiruvallur District
6. Union of India
Represented by Secretary to Government
Ministry of Environment and Forests
6th Floor, CGO Complex,
Paryavaran Bhavan, Lodhi Road,
New Delhi.
7. The Chief Engineer,
Public Works Department,
Thiruvallur District.
8. The Commissioner,
Ambattur Municipality,
Thiruvallur District.
9. The Commissioner,
Maduravayal Municipality,
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Tiruverkadu Municipality,
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11. The Commissioner,
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Thiruvallur District.

12. The Commissioner,
Poonmallee Municipality
Thiruvallur District.

13. The Executive Officer,
Porur Town Panchayat,
Thiruvallur District.

...Respondents

WRIT PETITION

I, S.Nandakumar, C/o.S.Rangasamy, aged about 28 years residing at No.660/4, Perumal Koil Street, Kuthambakkam south, Poonamalle block, Thiruvallur District – 602 107.

The address for services of all summons and notices on the Petitioner is that of his counsels M/s.D.Nagasaila, Dr.V.Suresh, S.Suganthi and V.Bhuvaneshwari Advocates at Hussaina Manzil, III rd Floor, No.123/255, Angappa Naicken Street, Chennai – 1.

The address for services of all summons and notices on the Respondent is same as mentioned above in the cause title.

For the reasons stated in the accompanying affidavit it is therefore prayed that this Hon'ble Court may be pleased to issue writs, orders or directions and in particular a writ of Certiorarified Mandamus to call for the records and quash the G.O.No.78 dated 23.12.08 issued by the 2nd respondent, restrain Respondents I to IV and VII to XIII from in any manner divesting the land in Survey No.820/1C from the 4th respondent Panchayat and from setting up the Solid Waste Management Facility at the said Survey No. 820/1C or anywhere else in Kuthambakkam Village and pass such other or further orders as this Hon'ble Court may deem fit and proper and thus render justice.

Dated at Chennai on this the 8th day of June 2009.

Counsel for Petitioner