

IN THE HIGH COURT OF JUDICATURE AT MADRAS

W.P. No. of 2007

1. K. Balamurugan,
Co-ordinator,
Lake, Pond, Water Resources Protection Movement,
No. 32, Old Gingee Road,
Villupuram – 605 602.

2. P. Kalyani
NO.7, College Road,
Bharathidasan Nagar
Tinidivanam
Villupuram District.

3. M. Kanthasamy
21, Subramanya Sami Koil Street,
Tindivanam.
Villupuram District.

4. P.V. Ramesh
186, Thiru. Vi. Ka. Salai,
Villupuram – 605 602.

5. M. Nagarajan,
Siruvalai Village and Post
Villupuram District.

6. P. A. Lucia
2/833, Periyar Street,
Vazhuthareddi
Villupuram -605 602.

7. A. K. Kuppusamy
2/112, Yaz Kudil
Periyar Street
Sennakunam Post
Thirukovillur
Villupuram

- 2 -

8. V. Antony Cruz
10, Visvalingam Lay out,
Villupuram – 6005 602

...Petitioners

-Vs-

1. The State of Tamilnadu
Represented by the Secretary,
Environment and Forest Department,
Secretariat,
Fort St.Goerge,
Chennai – 600009.

2. The Secretary,
Education Department
Fort St.George
Chennai – 600 009.

3. The Secretary
Public Works Department
Fort St. George
Chennai – 600 009.

4. The District Collector,
Villupuram District,
Collectorate,
Villupuram.

5. The District Revenue Officer
Villupuram District
Villupuram.

6. The Director of Medical Education
DMS Compound,
Chennai – 10.

7. The Tamil Nadu Pollution Control Board
Guindy
Chennai

....Respondents

AFFIDAVIT OF K. BALAMURUGAN

I, K. Balamurugan, S/o. Kaasinathan, aged about 31 years, residing at No.

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32, Old Gingee Road, (Behind Mariamman Koil), Villupuram – 605 602 now temporarily come down to Chennai, do hereby solemnly affirm and sincerely state as follows.

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

2. I am filing this Writ Petition in the nature of a Public Interest Litigation seeking a Direction from this Hon'ble Court restraining the Respondents from interfering with the natural resources namely the Mundiambakkam Lake in Villupuram District and from disturbing the lake by putting up any construction or from altering the landscape in Survey No. 144-1, Mundiambakkam Village, Villupuram District.

3. I am the Coordinator of the Lake, Pond, Water Resources Protection Movement – hereinafter referred to as Movement - which is a consortium of many organizations, networks, professionals, human rights activists, educationists, individuals and community based organizations. The said movement was formed on 05-01-07, with an objective to protect and prevent the degradation of the natural water sources like the lakes, ponds and other water resources throughout the state. The Second Petitioner is a retired College Lecturer and a renowned human rights activist. He is also the Secretary of Tindivanam Town and Rural Education Improvement Trust. He is also the Organiser of Makkal Kalvi Iyakkam. The Third Petitioner is the Tindivanam Town Secretary of the Tamizh Desa Podhuvudamai Katchi, President of Town Education Improvement Committee and also the President of the Tindivanam Town and Rural Education Improvement Trust. The Fourth Petitioner is the Villupuram District Principal Organiser, Human Rights Organisation working for the past 20 years on various human rights issues. The Fifth Petitioner is the State Treasurer of Pazhangudi Irullar Padugappu Sangam working for the welfare and the rights of the Irula Tribals. The Sixth Petitioner is an advocate and also women's rights and tribal rights activist. The Seventh Petitioner is District Secretary, Marxist Periyar Podhuvudamai Katchi.

and a senior activist working towards abolition of social evils and rights of people. The Eighth Petitioner is a child rights activist working towards the promotion and protection of the rights of children.

4. We came to know that the Government of Tamil Nadu was planning to start a Medical College in Villupuram District and the same was announced on 22-06-06 during the Budget session of the Legislative Assembly of Tamilnadu for the year 2006-2007. Following the said announcement, the Director of Medical Education had sent necessary proposals to the government for starting a new Medical College at Villupuram District. The government, based on the said proposal, issued orders vide G.O.Ms. No. 161, Health and Family Welfare (MCA1) department, dated 30.08.2006, stating that a new Medical college shall be established at Villupuram district with an intake of hundred students from the academic year 2007-2008.

5. We welcomed the decision to start a Medical College in Villupuram District. Based on the said government order, a committee comprising of the Fifth Respondent and the other concerned authorities started looking out for the appropriate place for the construction of the Medical college building. We came to know from News Paper reports dated 27-12-2006 that the Hon'ble Health Minister and Education Minister of Tamilnadu visited Villupuram to select the site for construction of Medical College; that they inspected the four lakes in and around Villupuram, viz., the Virattikuppam Lake, the Mundiampakkam Lake, the Vikkiravaandi Lake and the Muthaampalayam Lake; that the final decision will be announced later.

6. Knowing that the officials are considering only the lakes for construction of Medical College, there were widespread oppositions from the general public that the lakes should be protected and Medical College should not be constructed in any of the lakes mentioned above. Prof. K. Dhanaraj, the Member of Parliament, Tindivanam Constituency also addressed a letter to the District Revenue Officer

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seeking clarification about the site chosen for construction of Medical College. In response to these oppositions from the general public, the Minister for Education Department issued a statement on 10-01-07 that though water catchment areas were visited to select the land for the Medical college, the agricultural lands will not be taken for construction of Medical college and that the District Collector was asked to identify alternate sites.

7. Despite the oppositions and the clarification issued by the Minister for Higher Education, it was reported in the news papers on 07-02-07 that a meeting on the development activities of Villupuram Town was held at the Office of Villupuram Municipality on 06-02-07 which was presided over by the Minister of Education in the presence of the District Collector. In the said meeting the Minister for Education announced that 25 acres of land is needed for construction of Medical College; that there is no other land available in the District and hence it was decided to construct the Medical College building at Mundiambakkam Lake. The same was reiterated by the 5th Respondent in his response to Prof. K. Dhanaraj, Member of Parliament in his letter dated 12-02-07.

8. Prof. Dhanraj, Member of Parliament, on the same day, i.e., on 12-02-07, addressed another letter to the District Revenue Officer registering his objection in choosing the Mundiambakkam Lake for construction of the Medical College. He has stated in that letter that the general public has given complaints to him that no construction activity should be initiated at the lake site. On hearing the decision that Mundiambakkam Lake has been chosen as the site for the construction of Medical College, a protest demonstration was held on 02-03-07 by the Movement stating that the lakes should not be used for any construction activities. In the protest The Movement also condemned the effort of Tindivanam Municipality to bring the Bus stand in Tindivanam Lake.

9. As soon as the decision of the authorities was known to the people,

opposition started pouring in from all sections against the decision of choosing the Mundiampakkam Lake for construction of the Medical college. Apart from the common people, the activists, people belonging to various political parties and even the Member of Parliament from Tindivanam constituency had also raised serious objections over the decision of the officials concerned to construct the Medical college building in the Mundiampakkam Lake. By a letter dated 31-03-07, Mr. Dhanaraj, Member of Parliament, has addressed a letter to the Minister of Public health and Family welfare, stating that the general public and people from different walks of life are opposing the construction of Medical College at the Mundiampakkam Lake and that the same should be taken into consideration to review the site for construction of Medical College.

10. It is pertinent to note here that the Minister for Public Works Department announced on 04-04-07, that a new legislation would be enacted in order to protect the lakes, which have been affected by encroachments and pollution. But only two days later i.e., on 06-04-07, the same minister who had announced about the enactment of the new legislation to protect the lakes, visited the Mundiampakkam Lake and informed the media that the Government Medical college would indeed be built in the Mundiampakkam Lake.

11. The announcement by the Minister for Public Works Department enraged the people and activists alike as everyone were expecting that the proposal would be revised since the said Minister had announced about the new Legislation to protect the lakes and water bodies. Hence an emergency meeting of the Movement was convened on 08.04.07. Based on the discussions that emerged during the meeting, a Representation dated 09-04-07 was sent to various Officials including the Chief Minister's Special Cell and the First Respondent herein.

12. The said representation was forwarded by the Chief Minister Special Cell to the 4th Respondent. Thereafter the Revenue Divisional Officer by a letter dated

23-05-07 invited me to participate in an enquiry in this regard. Accordingly I met the 5th Respondent along with few other members on 29-05-07 and gave our explanations about our opposition to construct the Medical College in Mundiambakkam Lake. On 08-06-07, we received a letter dated 29-05-07 from the Revenue Divisional Officer informing us that he had sent a report to the 4th respondent about the explanations given by us. But the Respondents have neither informed us about the contents of the report nor about the action taken by him based on the said report.

13. In spite of the mounting opposition against the building of Medical college in the Mundiampakkam Lake, the officials concerned did not seem to heed to the demands and requests of the people, but went ahead with the proposal. The 4th Respondent organised a grand ceremony to lay the foundation stone for Villupuram Government Medical College on 19-05-07, by printing invitations. On 19-05-07, foundation stone was laid to begin the construction of the building for the Medical college in the Mundiampakkam Lake by the Minister for Local Administration Department. The said function was attended by the Ministers of Education Department, Health Department, the 4th Respondent and several other officials. To organise the said function the lake area was levelled by filling debris.

14. Certain basic facts about the water bodies in Tamilnadu will be helpful to appreciate the opposition of the general public against the construction of Medical College in the Lake. There are more than 10 thousands lakes in Tamilnadu. In the past as soon as the Lakes reached its fullest level there used to be a system by which the sluices of the lakes will be opened and the water will be diverted to the next lake. Around 15 lakes used to be connected like this through water channels. More than 100 hectares of cultivable lands used to benefit from these lakes. The maintenance of the lakes was always with the people or the local panchayats. The lakes were not filled every year. On an average in a period of every 5 years the lakes remain full for three years. Accordingly the farmers planned their cultivation. In the year 1960, 880 thousand hectares of land (36%) were under

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river and water channels irrigation, 936 thousand hectares of land (38%) under lake irrigation, 597 thousand hectares (24%) under well irrigation and 46 thousand hectares (2%) by other sources. Totally 2462 thousand hectares were under cultivation. According to the Department of Statistics even by the year 2003 the same extent of land was under cultivation. But 38% of Lake irrigation came down by 18%, Channel irrigation came down by 26% and well irrigation went up from 24% to 54%. Because of the raise of 30% cultivation depending on well irrigation the demand on ground water has gone up and this has also led to the consumption of electricity by bore-wells and pump-sets. The ground water level has gone from 20ft to the range of 200 to 2000 ft in various parts of the State.

15. The area of Mundiambakkam Lake is about of 42 acres. It is situated near the Villupuram Town. Many acres of land are being irrigated with this water source. It is pertinent to note that the Villupuram Poonthottam Lake was earlier taken over by the Government of Tamilnadu to construct Villupuram Bus stand and various other Government offices. That was one of the biggest lakes of Villupuram with an extent of 48.39 acres. That lake was the source of drinking water for the people of Villupuram Town and has now disappeared for the needs of the Government. Another big lake of Villupuram District has been ignored without any attention or measures to repair the feeder channels for natural flow of water into the lake during the rainy season. The same is now being identified for construction of a Medical College. Further it has been stated by the people that there are vast stretch of lands available around Villupuram town which can be utilized for construction of Medical college. Hence the chosen site is not appropriate for the benefit of the people of Villupuram District.

16. It is pertinent note that before laying the foundation stone for building the Medical college in Mundiampakkam Lake, no environment impact assessment was done by the concerned department. Further, if the lake is covered up by the Medical college buildings, it would diminish the chances of water storage in and

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around the area and hence there would be further reduction in the ground water table, which is now below 200ft. I am constrained to state that in the last few years, the ground water table which was at 20ft. surged below 200ft. due to various encroachments leading to the permanent destruction of many lakes in Villupuram district.

17. I state that the Secretary to the Government, Revenue Department issued a circular to all the Government Officials on 26.11.2004 stating that considering the importance of the Poramboke Water bodies, Poramboke Burial Grounds and Poramboke green-lands, the State Government has prohibited any Transaction with regard to the above mentioned lands. The Prohibition was also extended to include the use of these lands for Government Departments as well as Government corporations. The Collectors as well as the District Revenue Officers were advised not to recommend or to give preference to the use of these lands, even in situations of utmost importance. The District Collectors and the Revenue Development Officers were instructed to adhere to this notification strictly even in future. While so, the act of the Respondents in identifying the Mundiambakkam Lake for construction of the Medical College is highly arbitrary and against the Policy of the Government.

18. I state that in-spite of various Representations sent to the Respondents and other concerned officials, no action has been initiated by the concerned authorities as well as the Respondents. The Respondents have started digging the soil in the Mundiambakkam Lake for the purpose of testing the same to check if it would suit the needs of the Respondents to construct the buildings for the Medical College. The Respondents did not even bother to look into other options like the poramboke lands along the stretch of the National Highway from Villupuram towards Chennai.

19. The activities of the Respondents in finalizing the Mundiambakkam Lake for the construction of the buildings for Medical College are highly unreasonable.

The Respondents have failed to take into consideration the existence of a Sugar Factory nearby, the effluents of which would affect the hygiene of the patients when a hospital is going to be situated near it.

20. The Respondents have failed to consider the fact that the Mundiambakkam Lake is the lifeline of the Farmers in and around it. If the Lake is closed for the purpose of constructing the buildings for the Medical College, it would wreak havoc to the lives of the farmers who are dependent on the storage of rain water in the said Lake for replenishing the ground water during and after the rainy season. But all these reasons have failed to appeal to the Respondents who are bent upon destroying the Lake along with the lives and livelihoods of thousands of people living in and around the Lake.

In these circumstances, as I am left with no other alternate and equally efficacious remedy, I am constrained to approach this Hon'ble Court by way of this Writ Petition under Article 226 of the Constitution of India for the following among other

GROUNDS

A. The act of the Respondents in choosing the Mundiampakkam Lake for construction of Medical college in Villupuram District is arbitrary, unreasonable and in violation of Art 14, 19 and 21 of the Constitution.

B. The impugned order is violative of provisions of S.O.1533 dated 14-09-2006 issued by the Environment and Forest Department of the Union Government under Rule % (3) of the Environment (Protection) Rules, 1986.

C. Under the provisions of S.O.1533 dated 14-09-2006 issued by the Environment and Forest Department of the Union Government, no construction activity, whether preliminary or otherwise can be commenced without grant of Environmental Clearance by the Environment Impact Assessment Authority, for the projects listed in Annexure I of the said notification.

D. The First Respondent has failed to see that what is involved is not a mere procedural infraction but is the question of Rule of Law and the adherence to Environmental Regulation.

E. The First Respondent has failed to see that lakes and water bodies have to be preserved and any failure in this regard would have serious repercussions on the livelihood and water security for communities.

F. The First Respondent has failed to see that any construction in the catchments, which cut off water flows into the lake would eventually cause the lake to dry up, leading to severe ill-effects on the farmers and other people around the lake.

G. The failure of the First Respondent to enforce the law and the failure to protect a significant water body affects the rights of the citizens to clean and healthy environment, which has been recognised as part of right to life enshrined in Art. 21 of the Constitution.

H. The construction of Medical college at Mundiyaibakkam Lake is in violation of Arts. 48A and 51A of the Constitution. The Apex Court has held in various instances that these two Constitutional provisions are fundamental in the governance of the country and need to be read with Arts. 14, 19 and 21 of the Constitution.

I. The Respondents have failed to see that the tanks, lakes and water bodies are communal property and the State authorities are trustees to hold and manage such properties for the benefits of the community and that they cannot commit any act or omission which will infringe the right of the community and alienate the property for any other purpose. The decision of the Respondents to construct Medical college in the Lake is in violation of Doctrine of Public Trust, as the State being the “trustee” of the natural resources and public property should maintain the traditional usage particular to that form of resources.

J. The Respondents have failed to apply the principles enunciated by the Supreme Court in plethora of judgements asserting the need for environmental protection and conservation of natural resources.

K. The decision to construct the Medical college at the Mundiyaibakkam Lake is in violation of the principle of “State Responsibility” for pollution emanating within one’s own territories. This responsibility is clearly enunciated in the United Nations Conference on the Human Environment, Stockholm 1972 (Stockholm Convention) to which India is a party. In the said Declaration it is stated that

“The natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generation through careful planning or management, as appropriate.”

The responsibility bestowed upon the Government in the said Declaration is being violated by constructing Medical college in the lake.

L. The decision of Respondents to construct Medical college at Mundiambakkam Lake is in violation of the Principle of “Inter Generational Equity” which is enunciated in Principles 1 and 2 of the Stockholm Declaration, which has been ratified by the Government of India.

The Petitioners herein are filing this Petition jointly as the cause of action and the Respondents are one and the same. It is therefore just and necessary that the Petitioners be permitted to file a Single Writ Petition as the relief sought is also common.

It is therefore prayed that this Hon’ble Court may be pleased to permit the Petitioners to join together and file a Single Writ Petition and thus render justice.

The Petitioners have made out a prima facie case. The Respondents are indulging in changing the landscape of the Mundiambakkam Lake by filling with debris collected from the demolition of buildings due to expansion of the National Highway NH 45. It is therefore just and necessary that the Respondents are restrained from interfering with the landscape of Mundiambakkam Lake in Survey No. 144-1 at Mundiambakkam Village, Villupuram District being an extent of 16.45 hectares, failing which the general public will be put to irreparable

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loss, hardship and injury. The Respondents will not be prejudiced by the same and the balance of convenience lies in favour of protecting the natural resources and the common property of the people.

It is therefore prayed that this Hon'ble Court may be pleased to pass an order of interim injunction restraining the Respondents from proceeding with any construction activity or from interfering with the landscape of Mundiambakkam Lake in Survey No. 144-1 at Mundiambakkam Village, Villupuram District being an extent of 16.45 hectares pending disposal of the writ petition and thus render justice.

It is therefore prayed that this Hon'ble Court may be pleased to pass an interim direction directing the Respondents to remove the debris filled in Mundiambakkam Lake in Survey No. 144-1 at Mundiambakkam Village, Villupuram District being an extent of 16.45 hectares pending disposal of the writ petition and thus render justice.

It is therefore prayed that this Hon'ble Court may be pleased to pass an Order or a Direction or a Writ particularly in the nature of Writ of Mandamus directing the Respondent not to commit any act or omission which will interfere with landscape of Mundiambakkam Lake in Survey No. 144-1 at Mundiambakkam Village, Villupuram District being an extent of 16.45 hectares and consequentially protect and preserve the said Lake from any development and construction activities whatsoever and be maintained as a water body by restoring status quo anti prior to G.O.Ms. No.161 date 30-08-06 and pass such further or other order or orders as may be deemed fit and proper in the circumstances of the case and thus render Justice.

Solemnly affirmed at Chennai this
the day of July, 2007 and affixed
his signature in my presence.

Before Me

Advocate, Chennai

**MEMORANDUM OF WRIT PETITION
(U/A 226 of the Constitution of India)**

**IN THE HIGH COURT OF JUDICATURE AT MADRAS
(Special Original Jurisdiction)**

W.P.No. of 2007

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Co-ordinator,
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8. V. Antony Cruz
10, Visvalingam Lay out,
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...Petitioners

-Vs-

1. The State of Tamilnadu
Represented by the Secretary,
Environment and Forest Department,
Secretariat,

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Chennai – 600009.

2. The Secretary,
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Collectorate,
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5. The District Revenue Officer
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6. The Director of Medical Education
DMS Compound,
Chennai – 10.

7. The Tamil Nadu Pollution Control Board
Guindy
Chennai

....Respondents

WRIT PETITION

The address for service of all notices and processes on the Petitioners are that of their Counsel M/s. D. Geetha, R. Diwakaran and S. Anbazhagan having office at No.319, II Floor, Linghi Chetty Street, George Town, Chennai - 1.

- 3 -

The address for service of all notices and process on the Respondent is the same as above.

For the reasons stated in the accompanying Affidavit it is therefore prayed that this Hon'ble Court may be pleased to pass an Order or a Direction or a Writ particularly in the nature of Writ of Mandamus directing the Respondent not to commit any act or omission which will interfere with landscape of

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....Respondents

INTERIM INJUNCTION PETITION

For the reasons stated in the accompanying Affidavit it is therefore prayed

- 3 -

that this Hon'ble Court may be pleased to pass an order of interim injunction restraining the Respondents from proceeding with any construction activity or from interfering with the landscape of Mundiambakkam Lake in Survey No. 144-1 at Mundiambakkam Village, Villupuram District being an extent of 16.45 hectares pending disposal of the writ petition and thus render justice.

Dated at Chennai this the 26th day of July 2007.

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....Respondents

DIRECTION PETITION

For the reasons stated in the accompanying Affidavit it is therefore prayed that this Hon'ble Court may be pleased to pass an interim direction directing the Respondents to remove the debris filled in Mundiambakkam Lake in Survey No.

- 3 -

144-1 at Mundiambakkam Village, Villupuram District being an extent of 16.45 hectares pending disposal of the writ petition and thus render justice.

Dated at Chennai this the 26th day of July 2007.

Counsel for Petitioner.

**MEMORANDUM OF WRIT OF MISCELLANEOUS PETITION
(U/A 226 of the Constitution of India)**

**IN THE HIGH COURT OF JUDICATURE AT MADRAS
(Special Original Jurisdiction)**

**M.P.No. of 2007
in**

W.P.No. of 2007

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For the reasons stated in the accompanying Affidavit it is therefore prayed that this Hon'ble Court may be pleased to pass an interim direction directing the Respondents to remove the debris filled in Mundiambakkam Lake in Survey No. 144-1 at Mundiambakkam Village, Villupuram District being an extent of 16.45 hectares pending disposal of the writ petition and thus render justice.

Dated at Chennai this the 26th day of July 2007.

Counsel for Petitioner.

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**IN THE HIGH COURT OF JUDICATURE AT MADRAS
(Special Original Jurisdiction)**

**M.P.No. of 2007
 in
W.P.No. of 2007**

1. K. Balamurugan,
Co-ordinator,
Lake, Pond, Water Resources Protection Movement,
No. 32, Old Gingee Road,
Villupuram – 605 602.

2. P. Kalyani
NO.7, College Road,
Bharathidasan Nagar
Tinidivanam
Villupuram District.

3. M. Kanthasamy
21, Subramanya Sami Koil Street,
Tindivanam.
Villupuram District.

4. P.V. Ramesh
186, Thiru. Vi. Ka. Salai,
Villupuram – 605 602.

5. M. Nagarajan,
Siruvalai Village and Post
Villupuram District.

6. P. A. Lucia
2/833, Periyar Street,
Vazhuthareddi
Villupuram -605 602.

7. A. K. Kuppusamy
2/112, Yaz Kudil
Periyar Street
Sennakunam Post

Thirukovillur
Villupuram

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8. V. Antony Cruz
10, Visvalingam Lay out,
Villupuram – 6005 602

...Petitioners

-Vs-

1. The State of Tamilnadu
Represented by the Secretary,
Environment and Forest Department,
Secretariat,
Fort St.Goerge,
Chennai – 600009.

2. The Secretary,
Education Department
Fort St.George
Chennai – 600 009.

3. The Secretary
Public Works Department
Fort St. George
Chennai – 600 009.

4. The District Collector,
Villupuram District,
Collectorate,
Villupuram.

5. The District Revenue Officer
Villupuram District
Villupuram.

6. The Director of Medical Education
DMS Compound,
Chennai – 10.

7. The Tamil Nadu Pollution Control Board
Guindy
Chennai

...Respondents

2-B PETITION

(UNDER RULE 2-B APPENDIX (4) A.S. RULES)

For the reasons stated in the accompanying affidavit it is prayed that this

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Hon'ble Court may be pleased to permit the petitioners to join together to file a single Writ Petition and thus render justice.

Dated at Chennai on this 26th day of July of 2007.

Counsel for Petitioner.

**DISTRICT :: VILLUPURAM
HIGH COURT :: MADRAS**

W.P . No. of 2007

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OF PAPERS**

**M/S. D.GEETHA
R.DIWAKARAN
S.ANBAZHAGAN**

COUNSEL FOR PETITIONER

IN THE HIGH COURT OF JUDICATURE AT MADRAS

W.P. No. of 2007

1. K. Balamurugan,
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No. 32, Old Gingee Road,
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and 7 others

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Dated at Chennai this the day of July 2007.

Counsel for Petitioners.