

**C A G**

**Citizen consumer and civic Action Group**

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August 19, 2019

Dr. D.Karthikeyan  
Member Secretary  
Chennai Metropolitan Development Authority  
Thalamuthu Natarajan Building  
No. 1, Gandhi Irwin Road  
Egmore, Chennai – 600 008.

Dear Sir,

**Sub.: Objections to variation proposals – R2/9042/2019 & R1/9517/2019 – reg**

I write to you from Citizen consumer and civic Action Group (CAG), a 33 year old non-profit, non-political and professional organisation that works towards protecting citizens' rights in environmental, consumer and civic issues, and promoting good governance processes including transparency, accountability, and participatory decision-making.

1. I am sending the present letter seeking to put forth our objections to the land use variation proposals made by M/s. Blue Nile Properties Limited bearing CMDA Ref.No. R2/9042/2019 and M/s. Tamil Nadu Small Industries Development Corporation bearing CMDA Ref.No. R1/9517/2019, published on 03 August 2019 vide Reclassification Notification bearing No. R1/04/2019.
2. The land use variation proposal made by M/s. Blue Nile Properties Limited bearing CMDA Ref.No. R2/9042/2019, seeks to reclassify the land area, measuring about 6 acres, classified as 'waterbody' in the Second Master Plan 2026 into Residential Use Zone. The land use variation proposal made by M/s. Tamil Nadu Small Industries Development Corporation bearing CMDA Ref.No. R1/9517/2019, seeks to reclassify the land area, measuring about 53.97 acres, classified as 'Red Hills Catchment Area' into Industrial Use Zone.

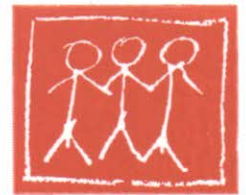
**Trustees**

Dr. Arjun Rajagopalan (*Surgeon*)  
Dr. George Thomas (*Orthopaedic Surgeon*)  
Dr. R. Hema (*Associate Professor*)

Dr. C. Rammanohar Reddy (*Economist and Editor*)  
Mr. Sriram Panchu (*Senior Advocate*)  
Dr. Suchitra Ramkumar (*Doctor and Teacher*)  
Mr. Keshav Desiraju (*IAS, Retd.*)

**Advisors**

Ms. Tara Murali (*Architect*)  
Mr. N.L. Rajah (*Senior Advocate*)



3. In the last two years (2018 and 2019) city of Chennai has been facing a severe water crisis. The reservoirs supplying water to the residents of Chennai dried up during the month of June 2019. Underground water levels in most parts of the city has also gone down alarmingly. While the deficient rainfall in Chennai seems to be the immediate cause of this fall in water table, experts have attributed the main cause to the rapid decline in the extent of water bodies, their catchment areas and water channels in the city of Chennai due to encroachment, change in land use, etc.
4. Water bodies retain the rainwater from the monsoon season, help recharge the groundwater levels and prevent floods by providing a buffer. When the extent of these water bodies gets reduced, the amount of water saved from the monsoon season also gets reduced. The catchment areas are important in increasing the amount of water received and stored by such water bodies. During the 2015 floods in Chennai, the main reason for such substantial loss of life and property was the encroachments made on the water bodies, and their catchment areas and channels that brings the water to the water bodies. Therefore, preservation of both the water bodies and their catchment areas are of great importance for the general well-being of the residents of the city.
5. Taking note of the same, the Hon'ble High Court of Madras has passed several Orders for the protection of water bodies, viz., eviction of encroachments made on water bodies, preservation of water bodies, quashed regularisation of encroachments, has set up 'Environmental Fund' for maintenance of water bodies, etc. The Full Bench of the Hon'ble High Court of Madras had observed in the case of T.K. Shanmugham vs State of Tamil Nadu as follows:

*"It is to be noted at this juncture, during the summer, water bodies would appear dry, but during rainy days/monsoon, stream would be in place to drain/take the water to the water bodies and percolation takes place which in all probability results in surcharge of ground water. Thus, on account of the default of the Revenue officials or on account of collusion of official machinery with encroachers can hardly be a premium to justify encroachments."*

The fact that a water body that merely appears dry does not mean that it has lost its character and the same does not justify someone occupying the same.



6. The High Court further held that *"..the State holds all the water bodies in public trust for the welfare of this generation and all succeeding generation. Thus it would be preposterous to suggest that a trespasser with or without the connivance of the officials enters into occupation of Government land, gradually defaces its identity then puts forth a plea that it is no longer a water body or a water channel and seeks for regularisation of his trespass be rewarded with a patta. If such acts of trespassers/encroachers are to be treated as pardonable and be rewarded for their illegal act in the form of regularisation/accommodation to say the least, it would be an absolute degradation and collapse of the public trust vested with the State to protect the lands and water bodies. If the Government is interested in allocating the poor and downtrodden, it should bring out a scheme for rehabilitating them and not to condone their act of trespass, reclassify the law and then grant patta to those encroachers."*
7. The Public Trust Doctrine with respect to water bodies was further affirmed by the Supreme Court of the United States of America in *Illinois Central Railroad Co. v. People of the State of Illinois* [146 US 387 = 36 LEd 1018 (1892)], which pointed out that the State holds title to the bed of navigable waters upon a public trust, and no alienation or disposition of such property by the State which does not recognise and is not in the execution of this trust, is permissible. Therefore, the land area classified as a water body can be used only in light of this public trust and not otherwise.
8. Further, the Madras High Court, in the T.K. Shanmugham case, held that *"...the public trust doctrine requires that natural resources such as lakes, ponds etc., are held by the State as a "trustee" of the public and can be disposed of only in a manner that is consistent with the nature of such a trust."*
9. It is relevant to state here that in the proposals made by the respective parties with respect to the above mentioned water body and the Red Hills Catchment area, they seek to completely change the nature of the water body and the catchment area by making them a residential and industrial area. This would greatly affect the nature of the water body / catchment area and if such proposal is allowed, it would only exacerbate the water crisis in Chennai in the coming years. Further, such disposal also would go against the public trust doctrine as interpreted by the Hon'ble High Court of Madras.



10. Hence, any disposal of a water body inconsistent with its nature goes against the said principle and also the Orders of the Hon'ble High Court.

11. Further, the Hon'ble Supreme Court in *Indian Council for Enviro Legal Action v. Union of India* [(1996) 5 SCC 281], held that there should not be development at the cost of environment and vice versa, but there should be development while taking due care and ensuring the protection of environment. If the development as sought by the above parties is allowed, it would only further degrade the environment and the same must not be allowed.

12. Therefore, for the reasons stated supra, I request your good self not to permit any reclassification in pursuance to the land use variation proposals made by M/s. Blue Nile Properties Limited bearing CMDA Ref.No. R2/9042/2019 and M/s. Tamil Nadu Small Industries Development Corporation bearing CMDA Ref.No. R1/9517/2019, and thus render justice.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Om Prakash Singh', written over a horizontal line.

Om Prakash Singh  
Executive Director

Copy to: Mr. Sriram Panchu, Amicus Curiae in W.P. No. 36135 of 2015,  
Madras High Court