

The Tamil Nadu Water Sources (Conservation, Development and Management) bill...2001

Statement of Objects and Reasons

Encroachment and destruction of irrigation sources spell danger to agriculture and food production besides causing ecological imbalance and leads to environmental deterioration. This has also led to the depletion of ground water resources. The continued neglect of water sources and its destruction unless Prevented immediately will result in a serious situation not only affecting agricultural activities but also pose threat to human and animal survival and social and economic development. Dumping, of waste products in the water sources are contaminating available water sources. Untreated or partially treated sewage, agricultural chemicals and industrial effluents are seriously affecting the quality of water for domestic and other uses.

Until today, water conservation and efficient use of water and protection of water sources have not received the attention they deserve. No comprehensive legislation is available for the conservation, protection and development of water sources. It is therefore necessary to conserve the water sources, improve their capacity and protect them from encroachment. Hence the enactment.

The main sources of irrigation in Tamil Nadu are tanks and irrigation wells. There are 10711 P.W.D. tanks of which 17 have been abandoned. 39,003 minor irrigation tanks are under the control of panchayat unions and panchayats. Besides a good number of tanks having an ayacut of below 10 acres in Pudukottai district were not transferred to panchayats or panchayat unions and are maintained privately. Thus there are more than 50,000 tanks in Tamil Nadu.

According to one estimate nearly 3000 tanks are now non-existing and are only on records.

According to Tank Information Report, December 1999 of the P.W.D., Chennai once had nearly 200 tanks which are all now abandoned for irrigation due to urbanization (Adayar minor basin memoir).

Many tanks have gone completely defunct due to various reasons such as heavy siltation, urbanization and encroachments resulting in extremely poor storage capacity. Many tanks are destroyed due to effluent discharge from tanneries and factories. Tanks are the most important sources for storage of rainwater. They also facilitate recharge of ground water. Ground water is fast depleting in Tamil Nadu and posing a great threat to the availability of water. There is a great need to enact legislation for this purpose. The existing The Madras Metroloplitan Area Groundwater (Regulation) Act (XXVII of 1987) is applicable to Madras city and 229 villages in Chengalpat and Thiruvallur districts. The groundwater legislation for the entire Tamil Nadu is in the offing.

As regards tanks, the important acts dealing with the improvement and protection of irrigation sources are (a) THE TAMILNADU COMPULSARY LABOUR ACT (I OF 1858 (b) THE MADRAS IRRIGATION CESS ACT (VII OF 1865 (c) THE MADRAS IRRIGATION (LEVY OF DETERMENT, CONTRIBUTION) ACT (III OF 1955) AND (d) THE MADRAS IRRIGATION TANKS (IMPROVEMENT) ACT (XIX OF 1949). These acts deals with particular aspects of protection of tanks during emergency by compulsory customary labour or by improvement of tanks by government by making some levy. They do not take into consideration the encroachment, pollution and destruction of tanks by urbanization and by other means of reducing the capacity of the tank. These acts do not deal with other water sources like ponds, ooranies, rivers etc. There is no comprehensive legislation for preservation and improvement of the irrigation sources and for protecting them from encroachment and pollution. Hence the need for a new Act encompassing all measures for the conservation, protection and improvement of irrigation sources.

1) Short Title Extent and Commencement

- a) This Act may be called The Tamil Nadu water sources (Conservation, Development and Management) Act 2002.
- b) It extends to the whole of Tamil Nadu.
- c) It shall come into effect on such date as may be notified by the Government in the official gazatte.

2) Definitions

In this Act, unless the context, otherwise requires

- a) "Govt" means the Govt. of Tamil Nadu
- b) "Water source" means and includes reservoirs tanks, rivers, irrigation wells, ooranis swamps, spring heads, streams, lakes, all backwaters, canals, percolation ponds and water-courses and all standing and flowing water, open head channels, diversion systems, lift irrigation schemes, Water fall's, Creeks and the like.
- c) "Collector" means the collector of a revenue district.
- d) "Officer in charge of a water source" means an officer not below the rank of the Tahsildar of the Dept. of Revene, PWD or equivalent rank in Forest, Highways & Rural works, Panchayat, Panchayat Union which owns or with whom the water source is vested or entrusted.
- e) "Pollution" means such contamination of water or such alteration of the physical, chemical or biological properties of water or such discharge of any sewage or trade effluent or of any other liquid, gaseous or solid substance into water (whether directly or indirectly) as may or is likely to create a nuisance or render such water harmful or injurious to public health or safety or to domestic, commercial, industrial, agricultural or other legitimate uses, or to the life and health of animals or plants or of aquatic organism.
- f) "Sewage effluent" means effluent from any sewerage system or sewage disposal works and includes sullage from open drain.

3. *Restrict on the reservation or use of land occupied by the water sources for non-irrigation purposes.*

Notwithstanding anything contained in any other law for the time being in force, no authority other than Govt. shall make any order directing

- a) that any land in which a water source exists or existed be used for any non-irrigation purpose.
- b) that any land or any portion thereof in which a water source exists or existed may be assigned by way of lease or otherwise or permitted to be used by any person or authority, corporation agency or any other organisation.

3A. *Duty to maintain and improve the water sources*

It is the primary duty of the officers in charge of the water sources to maintain and improve the surces and their capacity by getting grants from the government and enlisting cooperation and active involvement of the land owners or by invoking the provisions of the Tamil Nadu Compulsory Labour Act (I of 1858), or The Madras Irrigation Cess Act (VII of 1865) or The Madras Irrigation Tanks (Improvement) Act (XIX of 1949).

4. *No rights acquired over land occupied by the water sources except as here under provided.*

No right of any description shall be acquired in or over the land on which a water source exists or existed except under a grant or contrAct in writing made by or on behalf of the Govt. or on behalf of some person in whom such right or other power to create such right was vested when this Act comes into force or by succession from such person;

Provided that no patta shall without previous sanction of the Govt. be granted for any portion of land included in the water source and every patta granted without such sanction shall be null and void.

4A Sinking of wells in or near the supply channel or tank bed or preventing the flow of water in the supply channel prohibited

No person shall be permitted to sink a well in the supply channel or within ten meters from the channel or the tank bed of the water source which will have the effect of reducing the flow of water or depletion of ground water except with the permission of the collector or the officer in charge of the water source.

5. Liability of person unauthorisedly occupying any portion of land in a water source etc. to summary eviction.

i) Any person unauthorisedly occupying any portion of land in a water sources shall be summarily evicted by the officer in charge of the water source or by a person authorized by the water users association, or distribution committee or project committee having jurisdiction over the area in which such land is situated by exercising the power under sections 22 (s) or 23 (q) or 24 (m) respectively of the Tamil Nadu. Farmers management of irrigation systems Act 2000 (Tamil Nadu Act 7 of 2000). Any crop or other product raised on such land, shall be liable for forfeiture and any building or other construction erected or anything deposited thereon shall also be liable for forfeiture. Forfeiture under this section shall be adjudged by the authorized person, association or committee referred to above and any property so forfeited, shall be disposed off in such manner as may be prescribed.

Provided that no eviction or adjudication under this section adversely affecting a person shall be made or adjudged, unless

- a) such person has been given a notice in such manner as may be prescribed; and
 - b) The representation, if any received in pursuance of such notice, has been duly considered by such authorized person, association or committee.
- ii) The power of eviction of encroachment referred to in sub section (i) of section 5 is without prejudice to the exercise of powers of eviction conferred on the executive authority of the village panchayat or the panchayat union commissioner under the Tamil Nadu Panchayat's Act 1994 (Act 21 of 1994) in respect of the water sources vested or regulated or belonging to the panchayat and panchayat unions.

If the removal of the encroachment has not been secured within three months, the officers of the revenue department shall institute proceedings under the Tamil Nadu Land Encroachment Act 1905 and secure removal.

6. Duty of village administrative officer

It shall be the duty of the village administrative officer of every revenue village to report immediately of any encroachment on water sources and the poramboke lands attached to them, to the concerned executive authority of the village panchayat, panchayat union commissioner and the concerned water users' association besides the officers of the revenue department. The village administrative officer concerned should also assist the officers and authorities referred to above in getting the encroachment evicted.

7. *Duty of Revenue / Survey and land record officers*

Officers of the revenue department, and survey and land records department shall, on receipt of request from village panchayat, panchayat union or water users' association, immediately undertake field survey, identify and fix survey stones depicting the boundary of the Govt. land, which will facilitate the eviction of encroachment if any over the water sources.

8. *Prevention of Contamination of water sources*

Notwithstanding anything contained in the water (prevention and control of pollution) Act 1974 (No.6 of 1974) or the Environment (protection) Act 1986 (No.29 of 1986) or the rules made there under or any other law for the time being in force, officers in charge of water sources or water users associations responsible to maintenance of water source vested or entrusted to them shall have the power to prevent the pollution of water sources by persons, institutions or industrial concerns by letting in wastes, contaminated water, sewage, sewage effluent or chemicals or poisonous noxious or polluting substances in the water sources. Anyone doing so even after the notice issued by the above organisations or officers in charge of water sources is liable for prosecution and punishment.

8A Prohibition against removal of sand, earth, stones, gravel or silt from water sources or deposit of such materials

- a) No one shall, except with the written permission of the govt., collector or the officer in charge of the water source remove sand, earth, stones, gravel or silt from a water source.
- b) Deposit any material on the tank or bed of any water source, which will affect the quality of water or reduce the capacity of the water source.
- c) Any person violating this provision shall be committing an offence and shall be liable for prosecution. Besides, the vehicle, and equipment used for the purpose is liable for seizure.

9. *Review of encroachment and pollution in water sources*

The district collector shall review the encroachment and pollution in the water sources periodically and take effective steps for the removal and prevention of encroachment and pollution. The failure of the officers, authorities and institutions entrusted with the responsibility of the maintenance of water sources to prevent and remove encroachment and pollution shall be viewed seriously and appropriate action taken against them.

10. *Penalties for damage in water sources and acts prohibited in such water sources*

Any person who

- a) encroaches on the water sources
- b) damages, alters or removes any construction, embankment, sluice, surplus weir or other structures
- c) deposits wastes, filth or lets in contaminated or polluted water or sewage or otherwise damages the water sources, will be deemed to have committed an offence under this Act. On the prosecution of offender in a competent court, he is liable for a punishment with imprisonment for a term of 3 months or with fine of Rs 1000 or with both.

11. Duties of police officers

- i) It shall be the duty of every police officer to assist the executive authority of the village panchayat, panchayat union commissioner, authorities of the water users' association, distributory committee and apex committee constituted under the Tamil Nadu Farmers Management of Irrigation Systems Act 2000 reasonably demanding his aid for the lawful exercise of any power vesting in the authorities referred to above.
- ii) Any police officer who omits or refuses to perform any duty imposed on him by this Act shall be deemed to have committed an offence under section 10 or under section 44 of the Madras District Police Act 1859.

12. Bar of jurisdiction of courts

Notwithstanding anything contained in any law for the time being in force no order passed or proceeding taken by any officer or authority of the State Govt. or authorities of water users' association or distributing committee or apex committee under the Tamil Nadu Farmers Management of Irrigation Systems Act 2000, shall be called in question in any court, in any suit or application and no injunction shall be granted of any action taken or to be taken by such officers or authority or the State Govt. in pursuance of any power conferred by or under this Act.

13. Appeal

An appeal shall lie

- a) to the district collector from any decision or order passed by the officers and authorities referred to in section 5 of this Act.
- b) to the commissioner of land administration from any decision passed by the collector on appeal.

The appeal to the district collector and commissioner of land administration should be preferred within 30 days from date of receipt of order or decision.

14. Power to make rules

Every rule or order made under this Act shall, as soon as possible after it is made, be placed on the table of the legislative assembly and if, before the expiry of the session in which it is so placed or the next session, the assembly makes any modification in any such rule or order, or the assembly decides that the rule or order should not be made, the rule or order thereafter will have effect only in such modified form or be of no effect as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or order.

15. Protection of action taken in good faith

No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder.