

ITEM NO.2

COURT NO.1

SECTION IIIA

SUPREME COURT OF INDIA  
RECORD OF PROCEEDINGS

I.A.NO.1-5 IN ORIGINAL SUIT NO.3/2006

STATE OF TAMIL NADU

Plaintiff(s)

VERSUS

STATE OF KERALA &amp; ANR.

Defendant(s)

(With appln(s) for ex-Parte stay,c/delay in filing counter affidavit,taking affidavit on record,permission to file suppl.affidavit and office report )

WITH I.A.NOs.2 & 3 in T.C.(C) NO. 97&98 of 2002  
(With appln.(s) for directions and office report)

Date: 13/12/2007 These appln.s/Petitions were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE  
HON'BLE MR. JUSTICE R.V. RAVEENDRAN  
HON'BLE MR. JUSTICE J.M. PANCHAL

For Petitioner(s) Mr.V.Krishnamurthy, Sr.Adv.  
Mr.G.Umapathy, Adv.  
Mr. R. Nedumaran,Adv.

Petitioner-In-Person

For Respondent(s) Mr.Harish N.Salve, Sr.Adv.

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Mr. G. Prakash,Adv.  
Ms.Beena Prakash, Adv.  
Mr.Mohan Katarki, Adv.

Mr.G.E.Vahanvati, Sol.Genl.for India  
Mr.Wasim A.Qadri, Adv.  
Mr.D.D.Kamat, Adv.  
Mr.Gaurav Agrawal, Adv.  
Mr. D.S. Mahra ,Adv

Mr. K.R. Sasiprabhu, Adv.

Mr.Shreekant N.Terdal, Adv.

Ms.T. Kanaka Durga, Adv.

Mr.P.N.Ramalingam, Adv.

UPON hearing counsel the Court made the following  
ORDER

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After hearing both sides, the following issues are framed:  
ISSUES

1. Whether the suit is maintainable under Article 131 of the Constitution of India.
2. (a) Whether the Kerala Irrigation and Water Conservation (Amendment) Act 2006 is unconstitutional and ultra vires, in its application to and effect on the Mullai Periyar Dam?  
(b) Whether plaintiff is entitled to a permanent injunction restraining the first defendant from applying and enforcing the Kerala Irrigation and Water Conservation (Amendment) Act, 2006 with reference to Mullai Periyar Dam?
3. Whether the rights of the plaintiff, crystallised in the Judgment dated 27.02.2006 passed by this Court in WP(C) NO.386/2001 can be nullified by a legislation made by the Kerala State Legislature?
4. (a) Whether the judgment dated 27.2.2006 of this Court in WP(C) No.286/2001 operates as res judicata, in respect of all or any of the defences set up by the first defendant in its written statement?  
  
(b) Whether the pleas relating to validity and binding nature of the deed dated 29.10.1886, the nature of Periyar River, structural safety of Mullai Periyar Dam etc. raised by the first defendant in its defence, are finally decided by the judgment of this Court dated 27.2.2006 in WP(C) No.386/2001, and consequently first defendant is barred from raising or rearguing those issues and pleas in this suit, by the principle of res judicata and constructive res judicata?
5. Whether the suit based on a legal right claimed under the lease deed executed between the Government of the Maharaja of Travancore and the Secretary of State for India on 29.10.1886, is barred by the proviso to Article 131 of the Constitution of India?
6. Whether the first defendant is estopped from raising the plea that the deed dated 29.10.1886 has lapsed, in view of subsequent conduct of the first defendant and execution of the supplemental agreements dated 29.05.1970 ratifying the various provisions of the original Deed dated 29.10.1886.
7. Whether the lease deed executed between the Government of the Maharaja of Travancore and Secretary of State for India on 29.10.1886 is valid, binding on first defendant and enforceable by plaintiff against the first defendant.
8. Whether the first defendant is estopped from contending that Periyar River is not an inter-State river.

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9. Whether the offer of the first defendant, to construct a new dam across River Periyar in the downstream region of Mullai Periyar Dam would meet the ends of justice and requirements of plaintiff.
10. Whether the first defendant can obstruct the plaintiff from increasing the water level of Mullai Periyar Dam to 142 ft. and from carrying out repair works as per the judgment dated 27.2.2006 of this Court in WP(C) No.386/2001.
11. To what relief is the plaintiff entitled to?

Parties are directed to file their documents and list of witnesses within six weeks. List the

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suit in the last week of January, 2008 for directions.

(G.V.Ramana)  
Court Master

(Veera Verma)  
Court Master