BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI.

ORIGINAL APPLICATION NO.: 543/2023

IN THE MATTER OF:

ROHIT THAKRAN **....APPLICANT**

VERSUS

STATE OF HARYANA & ORS. **.... RESPONDENTS**

INDEX

THROUGH

A.R TAKKAR, SHRIYA TAKKAR, ASMITA DUGGAL, UNNATI ANAND, KAPIL BAKSHI

BHARGAVA RAVIKUMAR, NIDHI JHA, SMRITI SRIVASTAVA, MANAN TAKKAR

ADVOCATES
M/S ARTLO
P-6/2 E, DLF PHASE-2,
GURGAON 122002
EMAIL ID: ARTAKKAR@ARTLO.IN
MOB: 8826200005/9582209633

PLACE-GURUGRAM
DATE-16.05.2024

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COMPILATION OF JUDEGMENTS ON BEHALF OF THE APPLICANT.

MOST RESPECTFULLY SHOWETH:

1. That the present Original Application has been filed by the Applicant herein for directions to the respondents to restore the water bodies which existed in Khasra No. 24 and 28 in village Adampur Gram Panchayat Jharsa, Gurgram, Haryana and to stop all construction activities in the land of said water bodies and to plant the trees in lieu of trees which have been illegally cut from the same. That the present matter is pending adjudication before this Hon'ble Tribunal and is now listed for final hearing on 17.05.2024.

2. That the Respondent No.2 – Haryana Shehri Vikas Pradhikaran filed an affidavit dated 19.04.2024 (uploaded on the website on 20.04.2024) in which it stated as follow:

> "That keeping in consideration the environmental principles as well as rights of allottees, the proposal for allotting alternative land admeasuring approx. 1.9 acres within Haryana, in lieu of land in question at Khasra No. 28, Village Adampur, Gurugram has been sent to the Competent Authority for approval and necessary exercise for identification and allotment of alternate land in lieu of Khasra No. 2 as mentioned above shall be completed within a period of 90 day with the approval of Competent Authority and

further the same will be restored as waterbody .It is also submitted that present case may not be treated as precedent."

3. That it is relevant to mention herein that as per the law of the land and as per catena of judgments passed by the Hon'ble Supreme Court of India as well as this Hon'ble Tribunal and other Hon'ble Courts, the water bodies which existed in Khasra No. 24 and 28 in village Adampur Gram Panchayat Jharsa, Gurgram, Haryana are liable to be restored to their original form by removing the construction that has been undertaken and the water bodies cannot be relocated or shifted to some other location.

Judgments relied upon:

1. **HINCH LAL TIWARI VS. KAMALA DEVI & ORS. (2001) 6 SCC 496 (SUPREME COURT)**

Relevant portions of the judgment are quoted herein below for the ready reference of this Hon'ble Tribunal:

"11. Reverting to the first part of the question, from the report of the Tahsildar dated 18-4-1990 which is termed as the first report, it is clear that in the said Survey No. 774-KA, there is a pond (talab). The same is the substance of the report of the SDO dated 20-4-1990. Two more reports were called for by the orders of the High Court. They are dated 12-9-1999 and 3-4-2000. We do not find any substantial difference between these reports and the reports prepared by the Tahsildar and the SDO. ***We may also mention here that in khasra khatauni for the years 1387 to 1392 Fasli (corresponding to years 1980 to 1985) and 1393 to 1398 Fasli (1986-92) the description of the said survey number is given as pond. Consistent with those entries the Additional Collector found it to be a pond (talab) and cancelled the allotment of plots in favour of the said respondents. The Commissioner rightly confirmed the order of the Additional Collector.*** *In writ petition, the High Court, in the impugned order, noted :*

> ***"From the report of the Sub-Divisional Officer dated 3-4-2000 it is clear that the land had the character of a pond but due to passage of time most of its part became levelled. But***

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some of the portion had still the character of a pond and during the rainy season it is covered by water. The area which is covered by water or may be covered by water in the rainy season could not be allotted as abadi site to any person."

12. On this finding, in our view, the High Court ought to have confirmed the order of the Commissioner. However, it proceeded to hold that considering the said report the area of 10 biswas could only be allotted and the remaining five biswas of land which have still the character of a pond, could not be allotted. In our view, it is difficult to sustain the impugned order of the High Court. There is concurrent finding that a pond exists and the area covered by it varies in the rainy season. ***In such a case no part of it could have been allotted to anybody for construction of house building or any allied purposes.***

13. ***It is important to notice that the material resources of the community like forests, tanks, ponds, hillock, mountain etc. are nature's bounty. They maintain delicate ecological balance. They need to be protected for a proper and healthy environment which enables people to enjoy a quality life which is the essence of the guaranteed right under Article 21 of the Constitution. The Government, including the Revenue Authorities i.e. Respondents 11 to 13, having noticed that a pond is falling in disuse, should have bestowed their attention to develop the same which would, on one hand, have prevented ecological disaster and on the other provided better environment for the benefit of the public at large. Such vigil is the best protection against knavish attempts to seek allotment in non-abadi sites.***

15. For the aforementioned reasons, we set aside the order of the High Court, restore the order of the Additional Collector dated 25-2-1999 confirmed by the Commissioner on 12-3-1999. ***Consequently, Respondents 1 to 10 shall vacate the land, which was allotted to them, within six months from today.*** *They will, however, be permitted to take away the material of the houses which they have constructed on the said land.* ***If Respondents 1 to 10 do not vacate the land within the said period the official respondents i.e. Respondents 11 to 13 shall demolish the construction and get possession of the said land in accordance with law. The State including Respondents 11 to 13 shall restore the pond,***

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develop and maintain the same as a recreational spot which will undoubtedly be in the best interest of the villagers. Further it will also help in maintaining ecological balance and protecting the environment in regard to which this Court has repeatedly expressed its concern. Such measures must begin at the grass-root level if they were to become the nation's pride.

16. The appeal is accordingly allowed. There shall be no order as to costs."

2. **SUNDER SINGH VS. STATE OF NCT OF DELHI & ORS. (OA-174/2014) (ORDER DATED 09.12.2016 PASSED BY THE PRINCIPAL BENCH, NATIONAL GREEN TRIBUNAL, NEW DELHI).**

Relevant portions of the judgment are quoted herein below for the ready reference of this Hon'ble Tribunal:

"16. In light of the arguments advanced, documents on record and the pronouncements by the Hon'ble Supreme Court, the High Court of Delhi and this Tribunal, referred to above, we dispose of the Original Application 174/2014 with the following directions:

1. **We direct the Sub-Divisional Magistrate, Najafgarh Respondent No. 7, to remove encroachments, if any, and keep the existing pond 'Johad', measuring 4 Bighas; improve its cleanliness within a period of 3 months and eventually develop the water body into a reservoir.** The MCD North and the 'BDO' will render all necessary assistance to the SDM, Najafgarh.

2. The balance land measuring 2 Bighas and 13 Biswas may be retained as a community centre and a bus stop to be used by the public at large. However, to prevent further encroachment thereon, there should be proper boundary pillars so that the same acts as a deterrent against any further illegal encroachments."

3. **JAGPAL SINGH & ORS. VS. STATE OF PUNJAB & ORS. (2011) 11 SCC 396 (SUPREME COURT)**

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Relevant portions (Observations) of the judgment are quoted herein below for the ready reference of this Hon'ble Tribunal:

> "11. *The learned Commissioner held that the village pond has been used for the common purpose of the villagers and cannot be allowed to be encroached upon by any private respondents, whether Jagirdars or anybody else. Photographs submitted before the learned Commissioner showed that recent attempts had been made to encroach into the village pond by filling it up with earth and making new constructions thereon. The matter had gone to the officials for removal of these illegal constructions, but no action was taken for reasons best known to the authorities at that time. The learned Commissioner was of the view that regularizing such kind of illegal encroachment is not in the interest of the Gram Panchayat. The learned Commissioner held that Khasra No. 369 (84-4) is a part of the village pond, and the respondents (appellants herein) illegally constructed their houses at the site without any jurisdiction and without even any resolution of the Gram Panchayat.*
>
> .....
>
> 16. *The present is a case of land recorded as a village pond. This Court in Hinch Lal Tiwari vs. Kamala Devi, AIR 2001 SC 3215 (followed by the Madras High Court in L. Krishnan vs. State of Tamil Nadu, 2005(4) CTC 1 Madras) held that land recorded as a pond must not be allowed to be allotted to anybody for construction of a house or any allied purpose. The Court ordered the respondents to vacate the land they had illegally occupied, after taking away the material of the house. We pass a similar order in this case.*
>
> 17. *In this connection we wish to say that our ancestors were not fools. They knew that in certain years there may be droughts or water shortages for some other reason, and water was also required for cattle to drink and bathe in etc. Hence they built a pond attached to every village, a tank attached to every temple, etc. These were their traditional rain water harvesting methods, which served them for thousands of years.*
>
> 18. *Over the last few decades, however, most of these ponds in our country have been filled with earth and built upon by greedy*

people, thus destroying their original character. This has contributed to the water shortages in the country.

19. ***Also, many ponds are auctioned off at throw away prices to businessmen for fisheries in collusion with authorities/Gram Panchayat officials, and even this money collected from these so called auctions are not used for the common benefit of the villagers but misappropriated by certain individuals. The time has come when these malpractices must stop."***

4. **JAYA THAKUR VS. STATE OF MADHYA PRADESH & ORS. (OA – 43/2020) (ORDER DATED 05.04.2022 (UPLOADED ON 07.04.2022) PASSED BY THE BHOPAL BENCH, NATIONAL GREEN TRIBUNAL, CENTRAL ZONE BENCH, BHOPAL)**

Relevant portions of the judgment are quoted herein below for the ready reference of this Hon'ble Tribunal:

"18. ***In the present case it is undisputed that the pond area has been converted into the cultivation of crops, construction of residential, commercial activities which is not permissible in law. The inevitable conclusion therefore is the same has to be restored.***

....

20. When the law protector becomes the law violators, how law will be protected. The basic principle of rule of law is to follow rule/ law and not to break or violate it. For the negligence of those to whom public duties have been entrusted can never be allowed to cause public mischief. Public servants if committing wrong in discharge of statutory functions and later on if it was found not be in accordance with law within the knowledge of the officer concerned then it cannot be said to be the work and duty within the definition of State Act.

.....

31. ***The philosophy of the judgment as laid-down and quoted above are very much clear that the it is the pious duty of the State and Local Authorities that the tanks and ponds of the villages are properly maintained and necessary steps be taken so that there is no water shortage and ecology is preserved. it is nowhere mentioned, authorizing anybody and everybody to make encroachment on waterbodies anywhere or everywhere.***

....

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39. It is the pious duty of the Municipal Corporation to make a planning including town planning, planning for economic and social development, roads and bridges, water supply for domestic, industrial and commercial purposes, public health, sanitation conservancy and Solid Waste Management, urban forestry, protection of the environment and promotion of ecological aspects, slum improvement and up-gradation, urban poverty alleviation. Provisions of urban amenities and facilities such as parks, gardens, playgrounds promotion of cultural educational and aesthetic aspects. Cattle ponds prevention of cruelty to animals and public amenities. ***It is nowhere mentioned that the Municipal Corporation has been directly or indirectly empowered to encroach on the public land or water bodies and to disturb environmental laws.***

.....

42. ***In the conclusion, Hon'ble the Supreme Court of India has directed to demolish the illegal and unauthorised construction and the cost of demolition and all incidental expenses including the fees payable to the experts are directed to be borne by the person who have constructed illegally.***

.....

43. When the Law Protector becomes the Law Violator, how the Law will be Protected. The action and construction by the Respondent, Municipal Corporation is not only disregard to the law but it is negation of the authority of the State by the public official doing the act and utilising the budget in contravention of the settled Principal of Law, in accordance with their wishes. An action specifically punitive action does lie for doing what the legislature has authorised, if it is done negligently, carelessly and in violation of the law. The State has never permitted the Municipal Corporation for encroachment of the water bodies. There is no authority from the Collector or from the Chief Secretary or from the State and in reply thereof the Collector has filed the affidavit to the effect that no permission has been taken by the State Authorities or from the State Government and in the guise of the concept of imaginary power, it is argued that Municipal Corporation that the Municipal Corporation is the owner of the land and can use the property according to the wishes. On the garb of beautification commercial multiplex building has been constructed on the area which is

recorded as pond. It is settled law that the public property is vested in the State. The corporation is denying the powers and authority of the State. It is negation of law. The functionaries of the State in exercise of statutory power cannot claim immunity for the acts which are in contravention of the law, except to the extent protected by the statute itself. Perpetually authorities acting in violation of Constitution or Statutory Provisions oppressively are accountable for their behaviour before the authorities created under the statute for maintaining the Rule of Law. The contention of the Municipal Corporation that there was a discharge of untreated water or sewage water into the water body and to protect the water body, the Municipal Corporation has permitted to construct and constructed the commercial building is not the aim and objective of the Environmental Laws. The Law provides that it is the sole responsibility of the Municipal Corporation or local authorities monitoring it to ensure that there shall not be any discharge of untreated water into the water bodies or open land or rivers and in case if it is found that untreated water or sewage water is being discharged by any authority or the person, he must be dealt with in accordance with law and environmental compensation must be assessed and realized according to the parameter laid down by the CPCB.

42. On the basis of above discussions and on the basis of the records and submissions of the parties, we direct as follows:

1. The Collector Sagar is directed that the area which is the subject matter of encroachment must be removed in accordance with law. In this regard the Collector has to follow the law and order and the orders passed by the Hon'ble High Court as referred above....."

4. That the present case is squarely covered by Hinchlal Tiwari Vs Kamla Devi (2001) 6 SCC 496 followed and quoted in Jagpal Singh Vs State of M.P. (2011) 11 SCC 396 and in Jaya Thakur vs. State of Madhya Pradesh & Ors. (OA – 43/2020). It is authoritatively reiterated in Hinchlal Tiwari and Jagpal Singh that land recorded as pond must not be allotted to anybody for construction of a house or any allied purpose. The court

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ordered the respondents in the case of Hinchlal Tiwari and Jagpal Singh to vacate the land they had illegally occupied after taking away the material of the house. In another case of MI Builders (P) Ltd. Vs Radheshyam Sahu (1999) 6 SCC 464 the Supreme Court ordered restoration of a park after demolition of shopping complex constructed at the cost of Rs.100 crores.

5. That the Respondents have raised issues qua the present Original Application being barred by limitation. It is imperative to mention herein that the Applicant got to know about the entire scenario when in the year 2021, the Respondent issued public notice vide its website http://hsvphry.org.in to auction the land bearing Khasra No. 28. That since then, the Applicant herein has been running from pillars to post to save the water body situated in both the Khasra No.s specially in Khasra No. 28. That at the first instance, the Applicant herein submitted a representation dated 04.10.2021 to the Administrator Gurugram **(Annexure-A/3 @ page 87-88 of the Original Application)**. The Administrator Gurugram failed to respond to the representation constrained by which the Applicant herein filed Original Application No. 388 of 2021 before the Hon'ble National Green Tribunal, Principal Bench, New Delhi praying for protection of water body existing at Khasra No. 24 and 28, village Adampur from being destroyed by the Respondent Authorities **(OA @ Annexure-A/4 @ Page 89-116 of the Original Application)**. That vide order dated 07.01.2022, while disposing of the matter, the Hon'ble National Green Tribunal directed the District Magistrate, Gurugram, Haryana to look into the matter and take remedial action in accordance with the law. It is submitted that the Applicant vide the said order dated 07.01.2022 was given the liberty to put forward his version before the District Magistrate, Gurugram, Haryana. **(Order dated 07.01.2022 passed by the Hon'ble National Green Tribunal in Original Application No. 388 of 2021 @ Annexure-A/5 @ Page 117-118 of the Original Application)**. That in furtherance of the order dated 07.01.2022 passed by the Hon'ble National Green Tribunal in Original Application No. 388 of 2021, the Applicant herein submitted an application/letter dated 09.02.2022 to the Deputy Commissioner, Gurugram stating the facts regarding illegal destruction of water

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bodies existing in Khasra No. 24 and 28 and requested for action against the Respondent Authorities. That the Deputy Commissioner, Gurugram vide letter dated 07.03.2022 inter-alia stated that according to Revenue Records gair mumkin jhohad i.e. reservoir exists in Khasra No. 24 and 28 at village Adampur, Jharsa. That vide the said letter the Administrator, Haryana Shehri Vikas Pradhikaran, Gurugram was requested to coordinate with the Chief Administrator, Haryana Shehri Vikas Pradhikaran and comply with the orders of the Hon'ble National Green Tribunal. **(Letter dated 07.03.2022 @ Annexure-A/6 @ Page 119-120 of the Original Application)**. Despite the letter having been issued by the Deputy Commissioner, Gurugram in compliance with the orders of the Hon'ble National Green Tribunal, the officials of the Haryana Shehri Vikas Pradhikaran failed to look into the matter and take any remedial action. That since the Respondent Authorities failed to take any remedial measures in view of the order dated 07.01.2022 passed by this Hon'ble Tribunal, the Applicant herein filed an Execution Application No. 10/2022 in O.A. No. 388/2021. That vide order dated 29.04.2022 the Hon'ble National Green Tribunal, Principal Bench, New Delhi directed the Haryana Shahri Vikas Pradhikaran, Panchkula to take a decision on Khasra No. 24 and 28 and convey the same to the Applicant within one month. **(Execution Application No. 10/2022 in O.A. No. 388/2021 and order dated 29.04.2022 @ Annexure-A/7 @ Page 121-135 of the Original Application)**. That the Original Applicant as incorrectly advised had challenged the order dated 29.04.2022 passed by this Hon'ble Tribunal in Execution Application No.10/2022 in OA No. 388/2021 by way of Civil Appeal bearing Diary No. 13652 of 2023, which the Hon'ble Supreme Court vide order dated 04.05.2023 was pleased to dismiss and thus the order dated 29.04.2022 passed by this Hon'ble Tribunal was upheld. **(Civil Appeal bearing Diary No. 13652 of 2023 and order dated 04.05.2023 passed by the Hon'ble Supreme Court @ Annexure-A/8 @ Page 136-173 of the Original Application)**. That despite the aforesaid directions of the Hon'ble National Green Tribunal no action was taken by the Respondents constrained by which the Applicant submitted a representation dated 28.06.2022 to the Mayor, Gurugram to take appropriate action

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against the Haryana Shahri Vikas Pradhikaran for violating orders passed by the Hon'ble National Green Tribunal. **(Representation dated 28.06.2022 @ Annexure-A/9 @ Page 175-177 of the Original Application).** That since no remedial action was undertaken by the Respondent Authorities, the Applicant herein filed M.A. No. 38 of 2022 in Execution Application No. 10 of 2022 in Original Application No. 388 of 2021 praying for imprisonment and imposition of exemplary fine upon the Respondents for violation of order passed by the Hon'ble National Green Tribunal. That the Hon'ble National Green Tribunal vide order dated 14.07.2022 dismissed M.A. No. 38 of 2022 on ground of maintainability. **(M.A. No. 38 of 2022 in Execution Application No. 10 of 2022 in Original Application No. 388 of 2021 and order dated 14.07.2022 @ Annexure-A/10 @ Page 178-183 of the Original Application).** That the Applicant herein further sent representation dated 25.07.2022 to the Chief Administrator, Haryana Shahri Vikas Pradhikaran, Panchkula, representation dated 26.07.2022 to the Administrator, Haryana Urban Development Authority, Gurugram and representation dated 26.07.2022 to the Collector Gurugram, requesting them to take remedial actions in compliance of the orders dated 07.01.2022 and 29.04.2022 passed by this Hon'ble Tribunal in O.A. No. 388/2021 and Execution Application No. 10/2022 respectively. **(Representation dated 25.07.2022 to the Chief Administrator, Haryana Shahri Vikas Pradhikaran, Panchkula, representation dated 26.07.2022 to the Administrator, Haryana Urban Development Authority, Gurugram and representation dated 26.07.2022 to the Collector Gurugram @ Annexure-A/11 @ Page 184-193 of the Original Application).** An application seeking information under the Right to Information Act 2005 was submitted by one of the residents of the village. That response dated 01.08.2022 was received from Haryana Shahri Vikas Pradhikaran, Gurugram stating that 18 number of residential plots are carved out in Khasra No. 28 and 22 number of residential plots, Ashiana Scheme and R.B. Site are carved out in Khasra No. 24. **(Reply dated 01.08.2022 by Haryana Shahri Vikas Pradhikaran, Gurugram under the Right to Information Act 2005 @ Annexure-A/12 @ Page 194-195 of the Original Application).**

That the perusal of the above would show that since October 2021, the Applicant herein has been trying his best to save the water bodies under question. That hence,

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the cause of action has been continuing and the Original Application filed by the Applicant is not barred by limitation. That despite rigorous efforts of the Applicant herein, the water bodies existing in Khasra No. 24 and 28 village Adampur continue to be destroyed by the Respondents. That construction was initiated on plots carved out in Khasra No.28 and this Hon'ble Tribunal vide order dated 24.01.2024 ordered status quo.

The judgment compilation is hence submitted before this Hon'ble Tribunal for the just and proper adjudication of the present matter.

THROUGH

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ADVOCATES
M/S ARTLO
P-6/2 E, DLF PHASE-2,
GURGAON 122002
EMAIL ID: ARTAKKAR@ARTLO.IN
MOB: 8826200005/9582209633

PLACE-GURUGRAM
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same amounts to misconduct is not clear to us at all except to state that he was only In-charge District Judge.

10. Thus we find that the findings recorded by the enquiry officer are totally vitiated for want of any legally acceptable or relevant evidence to support the charges of misconduct. In the absence of any evidence, the enquiry officer could not have reached the conclusion in the manner he did, and these findings affirmed by the disciplinary authority also stand vitiated.

11. The learned counsel for the respondents sought to rely upon a number of decisions of this Court to indicate the scope of interference in matters of this nature. We have adverted to the broad principles attracted to a case of this nature which are sufficient for disposal. Hence, we do not refer to other decisions.

12. We, therefore, have no hesitation to allow this appeal, set aside the order made by the High Court and thereby allow the writ petition filed by the appellant, directing his immediate reinstatement in service with continuity of service and all consequential benefits such as payment of arrears of salary and other benefits. No costs.

(2001) 6 Supreme Court Cases 496

(BEFORE SYED SHAH MOHAMMED QUADRI AND S.N. PHUKAN, JJ.)

HINCH LAL TIWARI . . Appellant;

Versus

KAMALA DEVI AND OTHERS . . Respondents.

Civil Appeal No. 4787 of 2001†, decided on July 25, 2001

A. **Tenancy and Land Laws — U.P. Zamindari Abolition and Land Reforms Act, 1950 (1 of 1951) — Ss. 122-C, 3(14) and 117(1)(i) — Allotment of abadi sites to SC/ST, agricultural labourers etc. — Pond (talab) having fallen into disuse because of drying up, but some portion covered by water in rainy season — Held, no part of it can be allotted to anyone as abadi site for purposes of building houses — Further held, Govt., including Revenue Authorities should have taken note of drying pond and redeveloped it so as to prevent ecological disaster — High Court erred in allowing writ petition of Respondents 1-10 and confirming allotment to them of a dry area of 10 biswas forming part of pond originally covering 15 biswas — U.P. Zamindari Abolition and Land Reforms Rules, 1952, R. 115-P — Objection regarding allotment of abadi sites for preferential categories — Generally — Water bodies — Partly dried up pond — Held, no portion of it can be allotted as a housing site for any category of person**

B. **Environment Protection and Pollution Control — Water bodies — Ponds drying up and falling into disuse — Held, Govt. including Revenue Authorities are duty-bound to clean and develop them so that ecological**

† From the Judgment and Order dated 16-8-2000 of the Allahabad High Court in CMWP No. 26572 of 1999

disaster may be prevented and a better environment provided to people at large

C. **Environment Protection and Pollution Control — Community resources — Need for their protection — Forests, tanks, ponds, hillocks and mountains etc., held, are nature's bounty — They help maintain the delicate ecological balance and need to be protected for that reason**

D. **Environment Protection and Pollution Control — Generally — Healthy environment — Held, enables people to enjoy a quality life which is the essence of the right guaranteed under Art. 21**

E. **Constitution of India — Art. 21 — Generally — Nature and scope — Enjoyment of a quality life, held, is the essence of the right guaranteed under Art. 21**

Allowing the appeal, the Supreme Court

Held :

The High Court proceeded to hold that considering the report of the SDO the area of 10 biswas only could be allotted and the remaining five biswas of land which have still the character of a pond, could not be allotted. It is difficult to sustain the impugned order of the High Court. There is a concurrent finding that a pond exists and the area covered by it varies in the rainy season. In such a case no part of it could have been allotted to anybody for the purpose of house building or any allied purposes. (Para 12)

The material resources of the community like forests, tanks, ponds, hillock, mountain etc. are nature's bounty. They maintain delicate ecological balance. They need to be protected for a proper and healthy environment which enables people to enjoy a quality life which is the essence of the guaranteed right under Article 21 of the Constitution. The Government, including the Revenue Authorities i.e. Respondents 11 to 13, having noticed that a pond is falling in disuse, should have bestowed their attention on developing the same which would, on one hand, have prevented ecological disaster and on the other provided better environment for the benefit of the public at large. Such vigil is the best protection against knavish attempts to seek allotment of non-abadi sites. (Para 13)

F. **Tenancy and Land Laws — U.P. Zamindari Abolition and Land Reforms Act, 1950 (1 of 1951) — Ss. 117(1)(vi) and (i) — Certain lands to vest in Gaon Sabha or other local authority and to be allotted as abadi sites — As a result of inappropriate drafting the expression "and abadi sites" is wrongly included in cl. (vi) which enumerates water bodies that vest in Gaon Sabha or other authority under the provisions of S. 117 — Interpretation of Statutes — Internal aids — Other provisions of same statute — Applied (Para 9)**

A-M/TZ/24377/C

Advocates who appeared in this case :

Ranjit Kumar, Senior Advocate (Pramod Swarup, B.M. Sharma, H.L. Srivastava, C.M. Patel and T.N. Singh, Advocates, with him) for the Appellant;

Dinesh Dwivedi, Senior Advocate (Kamlendra Misra, R.C. Verma, Ashok Sharma and D.K. Garg, Advocates, with him) for the Respondents.

ORDER

1. Leave is granted.

2. This appeal is from the judgment and order of the High Court of Judicature at Allahabad allowing in part Civil Miscellaneous Writ Petition No. 26572 of 1999, filed by Respondents 1 to 10, on 16-8-2000.

3. The dispute relates to Plot No. 774-KA measuring 15 biswas situated in Village Ugapur, Taluka Asnao, District Sant Ravidas Nagar (U.P.) (hereinafter referred to as "the pond"). It appears that proceeding was initiated by the Lekhpal of the village to allot plots of land to an extent of 15 biswas of the pond area on 11-8-1988. The SDO allotted 250 sq yards to each of Respondents 1 to 10 who are said to belong to one family. Seventeen persons of that village objected to the said allotment under Rule 115-P of the U.P. Zamindari Abolition and Land Reforms Rules (for short "the Rules"). The Additional Collector called for a report from the Tahsildar on their objections but the matter seems to have rested there as the objectors withdrew their objections. At that stage the appellant filed an application praying the Additional Collector to cancel the allotment of land in favour of Respondents 1 to 10. On 25-2-1999 the Additional Collector cancelled the allotment in question made in their favour. They carried the matter unsuccessfully in revision before the Commissioner who by order dated 12-3-1999 dismissed the revision. Challenging the correctness of the order of the Divisional Commissioner the said respondents filed Writ Petition No. 26572 of 1999 in the High Court of Judicature at Allahabad. By the impugned order the High Court partly allowed the writ petition by confirming the allotment in respect of 10 biswas and cancelling in respect of 5 biswas, which led to filing of this appeal.

4. Mr Ranjit Kumar, the learned Senior Counsel for the appellant vehemently contends that the power of allotment of the land is available in respect of abadi site and not in respect of a pond which is a public utility and meant for public use; that no part of it could have been allotted in favour of any person, much less in favour of Respondents 1 to 10 who do not fall in the specified categories of the beneficiaries under the Rules. He invited our attention to Section 122-C(1) which specifies the classes of land which can be earmarked for the provisions of abadi sites and pointed out that pond (talab) area is not among them.

5. Mr Dwivedi, the learned Senior Counsel appearing for the official respondents argued that having regard to the provisions of the Act and the Rules, it is difficult to support the allotment of the pond land in favour of Respondents 1 to 10 and that the order of cancellation of allotment is justified and valid. Mr Garg, the learned counsel appearing for Respondents 1 to 10 submits that the Lekhpal forwarded proposals for allotment of house sites on the land which ceased to be a pond, to the Additional Collector who allotted the plots in their favour, therefore, it must be assumed that the land was treated as an abadi site in respect of which allotment of house site would be permissible.

6. The short question that arises for our consideration is whether the allotted land forms part of a pond (talab) and if so, can it be allotted under Section 122-C(1) of the Act.

7. It would be useful to refer to the provisions of the U.P. Zamindari Abolition and Land Reforms Act, 1950 (referred to in this judgment as "the Act"). Under Section 4 of the Act, all estates shall vest in the State from the specified date. Section 117 of the Act deals with vesting of certain lands in a Gaon Sabha. Clause (*vi*) of the said section which is relevant for our purpose reads thus:

> "117. *Vesting of certain lands, etc. in Gaon Sabhas and other local authorities.*—(1) At any time after the publication of the notification referred to in Section 4, the State Government may, by general or special order to be published in the manner prescribed, declare that as from a date to be specified in this behalf, all or any of the following things, namely—
>
> (*i*)-(*v*) * * *
>
> (*vi*) tanks, ponds, private ferries, water channels, pathways and abadi sites,—
>
> which had vested in the State under this Act shall vest in a Gaon Sabha or any other local authority established for the whole or part of the village in which the said things are situate, or partly in one such local authority (including a Gaon Sabha) and partly in another:
>
> Provided that it shall be lawful for the State Government to make the declaration aforesaid subject to such exceptions and conditions as may be specified in such order."

8. A perusal of the provision extracted above makes it clear that tanks, ponds, private ferries, water channels, pathways and abadi sites which had vested in the State under Section 4 of the Act shall vest in the Gaon Sabha or any other local authority established for the whole or any part of the village in which the said things are situate, or partly in one such local authority and partly in another, from the date specified in the notification issued by the Government in this behalf. Section 122-C authorises the Assistant Collector, in charge of the sub-division to earmark the classes of land noted hereunder either on his own motion or on the resolution of the Land Management Committee, for the members of the Scheduled Castes and the Scheduled Tribes and agricultural labourers and village artisans. It would be apt to refer to clause (*a*) of sub-section (1) of Section 122-C which reads as follows:

> "122-C. *Allotment of land for housing site for members of Scheduled Castes, agricultural labourers etc.*—(1) The Assistant Collector in charge of the sub-division of his own motion or on the resolution of the Land Management Committee, may earmark any of the following classes of land for the provision of abadi sites for the members of the Scheduled Castes and the Scheduled Tribes and agricultural labourers and village artisans—
>
> (*a*) lands referred to in clause (*i*) of sub-section (1) of Section 117 and vested in the Gaon Sabha under that section;"

And the said clause (*i*) runs as follows:

> "117. (1)(*i*) lands, whether cultivable or otherwise, except lands for the time being comprised in any holding or grove,
>
> * * *"

9. The term "land" is defined in Section 3, sub-section (14) to mean land held or occupied for purposes connected with agriculture, horticulture or animal husbandry which includes pisciculture and poultry farming. The definition excludes land dealt with in Sections 109, 143, 144 and Chapter 7. We may note that we are not concerned with the excepted categories. From a combined reading of the provisions aforementioned, it is plain that the subject-matter of allotment of house sites is lands referred to in clause (*i*) of sub-section (1) and not tanks, ponds, private ferries, water channels, pathways referred to in clause (*vi*) of sub-section (1) of Section 117 of the Act. It appears to us that due to inappropriate drafting the expression "and abadi sites" is wrongly placed in clause (*vi*).

10. It would not be out of place to notice here that Section 122-C enumerates the categories of persons who are entitled to allotment of land and they are (*1*) Scheduled Castes, (*2*) Scheduled Tribes, (*3*) agricultural labourers, and (*4*) village artisans. For disposal of this case it is unnecessary to go into the question whether in a case of allottable land, the said respondents answer the description of the beneficiaries specified in sub-section (3) of Section 122-C of the Act.

11. Reverting to the first part of the question, from the report of the Tahsildar dated 18-4-1990 which is termed as the first report, it is clear that in the said Survey No. 774-KA, there is a pond (talab). The same is the substance of the report of the SDO dated 20-4-1990. Two more reports were called for by the orders of the High Court. They are dated 12-9-1999 and 3-4-2000. We do not find any substantial difference between these reports and the reports prepared by the Tahsildar and the SDO. We may also mention here that in khasra khatauni for the years 1387 to 1392 Fasli (corresponding to years 1980 to 1985) and 1393 to 1398 Fasli (1986-92) the description of the said survey number is given as pond. Consistent with those entries the Additional Collector found it to be a pond (talab) and cancelled the allotment of plots in favour of the said respondents. The Commissioner rightly confirmed the order of the Additional Collector. In writ petition, the High Court, in the impugned order, noted:

> "From the report of the Sub-Divisional Officer dated 3-4-2000 it is clear that the land had the character of a pond but due to passage of time most of its part became levelled. But some of the portion had still the character of a pond and during the rainy season it is covered by water. The area which is covered by water or may be covered by water in the rainy season could not be allotted as abadi site to any person."

12. On this finding, in our view, the High Court ought to have confirmed the order of the Commissioner. However, it proceeded to hold that considering the said report the area of 10 biswas could only be allotted and the remaining five biswas of land which have still the character of a pond,

could not be allotted. In our view, it is difficult to sustain the impugned order of the High Court. There is concurrent finding that a pond exists and the area covered by it varies in the rainy season. In such a case no part of it could have been allotted to anybody for construction of house building or any allied purposes.

13. It is important to notice that the material resources of the community like forests, tanks, ponds, hillock, mountain etc. are nature's bounty. They maintain delicate ecological balance. They need to be protected for a proper and healthy environment which enables people to enjoy a quality life which is the essence of the guaranteed right under Article 21 of the Constitution. The Government, including the Revenue Authorities i.e. Respondents 11 to 13, having noticed that a pond is falling in disuse, should have bestowed their attention to develop the same which would, on one hand, have prevented ecological disaster and on the other provided better environment for the benefit of the public at large. Such vigil is the best protection against knavish attempts to seek allotment in non-abadi sites.

14. For the aforementioned reasons, we set aside the order of the High Court, restore the order of the Additional Collector dated 25-2-1999 confirmed by the Commissioner on 12-3-1999. Consequently, Respondents 1 to 10 shall vacate the land, which was allotted to them, within six months from today. They will, however, be permitted to take away the material of the houses which they have constructed on the said land. If Respondents 1 to 10 do not vacate the land within the said period the official respondents i.e. Respondents 11 to 13 shall demolish the construction and get possession of the said land in accordance with law. The State including Respondents 11 to 13 shall restore the pond, develop and maintain the same as a recreational spot which will undoubtedly be in the best interest of the villagers. Further it will also help in maintaining ecological balance and protecting the environment in regard to which this Court has repeatedly expressed its concern. Such measures must begin at the grass-root level if they were to become the nation's pride.

15. The appeal is accordingly allowed. There shall be no order as to costs.

(2001) 6 Supreme Court Cases 501

(BEFORE S. RAJENDRA BABU AND K.G. BALAKRISHNAN, JJ.)

UNION OF INDIA AND ANOTHER . . Appellants;

Versus

CHIRANJI ESTATE (P) LTD. AND ANOTHER . . Respondents.

Civil Appeal No. 6053 of 1998†, decided on August 7, 2001

Income Tax — Compulsory purchase of immoveable property under sale — Fair market value of the property under sale if exceeded the

† From the Judgment and Order dated 17-12-1997 of the Delhi High Court in CWP No. 5613 of 1993

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH
NEW DELHI
.....

ORIGINAL APPLICATION NO. 174/2014

SUNDER SINGH
VERSUS
STATE OF NCT OF DELHI & ORS.

IN THE MATTER OF:

Sunder Singh,
President Residents Welfare Association
H. No. 275, V&P.O. Issarpur
New Delhi-110073

...Applicant

Versus

1. State of NCT of Delhi
   Through Lieutenant Governor
   Government of NCT of Delhi
   Block 6 Raj Niwas Marg,
   Civil Lines, New Delhi-110054

2. Principal Secretary
   Government of NCT of Delhi,
   Room No. A 907, A Wing,
   9th Level, Delhi Secretariat,
   I.P. Estate, New Delhi-110002

3. Director Panchayat,
   Civil Supply Building,
   Tees Hazari Court, New Delhi-110054

4. Chief Executive Officer (DPGS)/
   Nodal Officer Water Bodies
   Delhi Park & Garden Society,
   Department of Environment & Forests,
   Government of NCT of Delhi.

5. Divisional Commissioner,
   5, Sham Nath Marg,
   New Delhi-110054

6. DC/DM (S W) Chairman DTP
   Kapashera New Delhi 110037

7. Sub-Divisional Magistrate
   Tahsil Building, Tuda Mandi
   Najafgarh, New Delhi-110043

8. Block Development Officer
   Najafgarh, New Delhi-110043

9. Delhi Jal Board
   Room No. 306, Varunalaya, Phase-II,
   Jhandewalan, Karol Bagh
   New Delhi-110005

...Respondents

APPLICANT

Mr. S. M. Hashmi and Ms. Antima Bazaz, Advs.

COUNSEL FOR RESPONDENTS

Mr. Vivek Kr. Tandon, Adv. for Respondent No. 1 to 3 and 5 to7
Mr. Purnima Maheshri and Mr. D. K. Singh Advs. for Respondent No. 4
Mr. Suresh Tripathy, Adv. for Respondent No. 8
Ms. Sakshi Popli with Ms. Juhi, Advs. for Delhi Jal Board for Respondent No. 9

JUDGMENT

PRESENT:

Hon'ble Mr. Justice Swatanter Kumar (Chairperson)
Hon'ble Mr. Justice Raghuvendra S. Rathore (Judicial Member)
Hon'ble Mr. B. S. Sajwan (Expert Member)
Hon'ble Mr. Ranjan Chatterjee (Expert Member)

Reserved on: 7th September 2016
Pronounced on: 9th December 2016

1. **Whether the judgment is allowed to be published on the net?**
2. **Whether the judgment is allowed to be published in the NGT Reporter?**

Hon'ble Mr. Ranjan Chatterjee (Expert Member)

1. The present case has been filed under Section 18 (1) read with Section 14 (1) of the National Green Tribunal, Act 2010 (for short the Act of 2010) by the Applicant, Sunder Singh who is also the President of the Residents Welfare Association (RWA) of Issarpur, NCT, New Delhi. The Applicant being aggrieved by the inaction of the Respondent authorities in removal of the illegal encroachments, even after the judgment of the Hon'ble Delhi High Court in *Vikram Kumar Jain vs. Government of NCT Delhi* in W.P. (C) No. 3502/2000 has come before this Tribunal on 23.09.2014 with regard to the removal of the existing illegal encroachments made in the water body 'Johad' bearing Khasra No. 148 admeasuring 6 Bighas and 13 Biswas of the Gram Sabha of Issarpur. The layout given by the SDM Najafgarh (Respondent No. 7) also shows that Khasra No. 148 is a pond.

2. The Applicant has prayed for directing the Respondent authorities not to allow illegal encroachments on the water body and land on Khasra no. 148 admeasuring 6 Bighas and 13 Biswas. He has further prayed for evicting the encroachments from the said land and issuance of a direction to the Respondents to come up with a proper scheme for restoring the said water body.

3. The Applicant has contended that there has been illegal encroachment on the said area and no action has been taken by the Respondents in furtherance of the encroachment of water bodies in and around NCT Delhi. The said inaction by the authorities has resulted in encroachment as well as alteration of the status of water bodies of Issarpur, either by construction of private residences or the catchment areas having been obstructed and some area of the water body being used as footpaths by the encroachers. This indiscriminate use has resulted in contamination of the ground water and hence it has become unfit for human consumption.

4. The Applicant has complained on many occasions and on 22.05.2014 has filed a written complaint to the Local Commissioner (Water Bodies) against the revenue staff/ 'SDM'/DDO/Tehsildar Dist. South West for not protecting the water bodies/ water reservoir and land situated at village Issarpur, Delhi. They also requested for demarcating the water body land and removal of encroachment to safeguard the environment.

The Applicant states that pursuant to his representation, demarcation was done by INTECH Engineers on 01.07.2014 along with other documents.

5. On 16.03.2014 the Applicant association held a meeting and tried to resolve the matter within themselves. The Applicant association made various representations to the concerned

authorities for demarcation of Khasra No. 148 and pleaded for construction of a boundary around the area and to convert the encroached water body into a reservoir.

6. The Applicant contended that the illegal encroachments and the indiscriminate use of the water body have led to violation of various rules framed under the Environmental Protection Act 1986. The Applicant has placed reliance on various judgments of the Hon'ble Apex Court and the High Court of Delhi.

The Hon'ble Supreme Court in the case of *Jagpal Singh and Others vs. State of Punjab and Ors.* (2011) 11 SCC 396 dealing with the issue of illegal encroachment upon a village pond which was used for the common purpose of villagers, while discussing the legal position of encroachments in village areas has opined that:

> *"13. We find no merit in this appeal. The Appellants herein were trespassers who illegally encroached on to the Gram Panchayat land by using muscle power/money power and in collusion with the officials and even with the Gram Panchayat. We are of the opinion that such kind of blatant illegalities must not be condoned. Even if the appellants have built houses on the land in question they must be ordered to remove their constructions, and possession of the land in question must be handed back to the Gram Panchayat. Regularizing such illegalities must not be permitted because it is Gram Sabha land which must be kept for the common use of villagers of the village.*
>
> *14. In M. I. Builders (P) Ltd. Radhey Shyam Sahu, 1999(6) SCC 464 the Supreme Court ordered restoration of a park after demolition of a shopping complex constructed at the cost of over Rs. 100 crores, 2004 (8) SCC 733, this Court held that even where the law permits compounding of unsanctioned constructions, such compounding should only be by way of an exception. In our opinion this decision will apply with even greater force in cases of encroachment of village*

common land. Ordinarily, compounding in such cases should only be allowed where the land has been leased to landless labourers or members of Scheduled Castes/Scheduled Tribes, or the land is actually being used for a public purpose of the village e.g. running a school for the villagers, or a dispensary for them."

"16. The present is a case of land recorded as a village pond. This court in Hinch Lal Tiwari vs. Kamala Devi, AIR 2001 SC 3215 (followed by the Madras High Court in L. Krishnan vs. State of Tamil Nadu, 2005(4) CTC 1 Madras) held that land recorded as a pond must not be allowed to be allotted to anybody for construction of a house or any allied purpose. The court ordered the respondents to vacate the land they had illegally occupied, after taking away the material of the house. We pass a similar order in this case."

"17. In many states Government orders have been issued by the State Government permitting allotment of Gram Sabha land to private persons and commercial enterprises on payment of some money. In our opinion all such Government orders are illegal, and should be ignored.

23. Before parting with this case we give directions to all the State Governments in the country that they should prepare schemes for eviction of illegal/unauthorized occupants of Gram Sabha/Gram Panchayat/Poramboke/Shamlat land and these must be restored to the Gram Sabha/Gram Panchayat for the common use of villagers of the village. For this purpose the Chief Secretaries of all State Governments/Union Territories in India are directed to do the needful, taking the help of other senior officers of the Governments. The said scheme should provide for the speedy eviction of such illegal occupant, after giving him a show cause notice and a brief hearing. Long duration of such illegal occupation or huge expenditure in making constructions thereon or political connections must not be treated as a justification for condoning this illegal or for regularizing the illegal possession. Regularizing should only be permitted in exceptional cases e.g. where lease has been granted under some Government notification to landless labourers or members of Scheduled castes/Scheduled Tribes, or where there is already a school dispensary or other public utility on the land."

7. The Applicant has also referred to the judgment of the Hon'ble Delhi High Court in *Residents Welfare Association Ekta Enclave vs. State of NCT of Delhi & Ors.* WP. No. 4437/2013 & CM No.

10260/2013 where the Hon'ble Court, while discussing the importance of maintaining water bodies allotted during consolidation proceedings, in its order dated 31.10.2013 held in Para 6, as reiterated below:

> *"Para 6; Consequently, all Deputy Commissioners are directed to ensure that none of the water bodies/johads /water tanks/lakes/water ponds are encroached or allotted in future to make good the deficiency of land during consolidation proceedings. If any water bodies/water tanks/johads/lakes have been allotted in the past to a villager during consolidation proceedings and no permanent structure has been constructed thereon, the Deputy Commissioners are also directed to ensure that water bodies/johad/water tanks/lakes/water ponds are maintained developed as well as kept clean and if necessary, the same be revived."*

The above discussion sums up the facts put forward and the law relied upon by the applicant, wherein he has alleged that there has been illegal encroachment of the 'Johad' in Issarpur, which has altered the status of the water body and caused the water in it to become unfit for human consumption. The concern Authorities have taken no action in this regard despite several representations made by the applicant.

8. Now, we will be dealing with the replies filed by different Respondents. It is to be noted that only three Respondents have filed their replies in this regard namely Respondent No. 4, 7 and 9.

The Chief Executive Officer Delhi Parks and Gardens Society (in short 'DPGS') Respondent No. 4, in his reply has submitted that a writ petition bearing no. 21143-44/2005 titled as *Shri Khajan Singh versus Union of India and Others* was filed

before the Hon'ble High Court of Delhi pertaining to this particular Khasra number in question. This writ petition along with other batch of writ petitions, including the said petition was disposed of vide a common order dated 09.05.2007 with leading case being writ petition no. 3502 of 2000 titled *Vinod Kumar Jain versus Govt. of NCT of Delhi.*

9. That during the pendency of the said writ petition, the Hon'ble High Court appointed Court Commissioners to carry out the survey of water bodies periodically and submit reports to District Authorities and suggest action points for revival of the water bodies.

In terms of the said order, the Court Commissioners visited all sites / water bodies, periodically. A meeting was also held with the related officials on 28.10.2014 pertaining to the complaints related to revival and development of the said water body at Issarpur.

10. Respondent No. 7, Sub Divisional Magistrate (for short 'SDM') in his reply stated that during the pendency of the said writ petition before the Hon'ble Delhi High Court (No. 3502 of 2000), the Hon'ble Court appointed Shri Sanjeev Khanna, Shri Vivek Kumar Tandon and Shri Arvind Sah, Advocates as Court Commissioners, who also submitted their reports to the District authorities suggesting action points for revival of the water bodies. Among others, Khasra No. 148 which is in question, was also inspected by the Court Commissioner on 6.6.2014 and

during this visit, a direction for demarcation of the pond was given.

Upon the directions of the Court Commissioner, the demarcation of Khasra No. 148 was carried out on 02.07.2014 on the basis of 3 reference points. There were many objections raised on the said demarcation report. In order to go through the veracity of the objections received, it was thought proper to get a fresh demarcation done, after taking reference points from different angles as well. Thus, a fresh demarcation was carried out on 10.10.2014 (by tape) and on 01.11.2014 (by TSM) in presence of all the villagers wherein 5 reference points were also taken. The new demarcation report dated 10.12.2014 has now been obtained from M/s Intech Engineers and put on record.

Total area of Khasra No. 148 as per records is 6 Bigha 13 Biswas of which 4 Bighas 0 Biswas is enclosed by a boundary wall. During field inspection of the pond, it was found that the remaining area of 2 Bigha 13 Biswas was covered with concrete, approximately 8 feet higher in level than the deepest level of the pond, which is already enclosed by a boundary wall. The said concrete cover also consists of a common road which is used by residents/vehicles of the village. Villagers are using this open area for community services and for holding various functions/ceremonies/gatherings etc.

Respondent No. 7, the SDO, Najafgarh submitted that the Department would take further action, as required by law, after

deciding the objections in terms of the fresh demarcation, if received.

11. Respondent No. 9, Delhi Jal Board (hereinafter, referred to as 'DJB') which was impleaded at a later stage, has stated in its reply, that the waterline, parallel to the existing waterline is at a distance of about 2 to 4 feet from the drain to avoid any possible mixing of waste water of drain with the potable water pipeline. The new line was laid with all the requisite permissions from SDM, Najafgarh. DJB stated that there is no alternative route available to lay the new line and the laying of the new line was completed on 16.2.2015. Further, the DJB has stated that the new line could not have been laid at the existing site of the old line as waste water drain is flowing over it and potable water line could not be laid below the drain, since there are chances of contamination of potable water supply.

However, the applicant has filed a rejoinder to the counter affidavit filed by the DJB, alleging that the DJB has changed the alignment in the direction of the 'Johad' and that the DJB and SDM had worked hand in glove to lay the new pipeline at a distance of 5 meters from the existing pipeline. The applicant has alleged that the permission granted by SDM to lay the new pipeline has led to further encroachment on the Gram Sabha land.

12. The Court Commissioners inspected the site of Issarpur, Khasra No. 148 on 07.03.2016 and observed as follows:

(i) Out of total water body of 6 Bighas 13 Biswas recorded, as on date, the water body area has been reduced to 4 Bighas only. Even this area is lying undeveloped. No effort is being made to clear the water body. It was noted that the dirty water from the village is also flowing into the water body.

(ii) This whole issue of the water body has two rival groups who are engaged in a personal fight. Dispute amongst the villagers is regarding the encroachment/construction on the remaining area of the water body.

(iii) A road connecting the village runs to the open area. Allegedly people living on the periphery of the water body have extended their houses and encroached upon the boundary area of the water body. The said area is being used by the villagers for community purposes. Even DTC buses stop there and villagers board the said buses. The said group of villagers want the encroached area removed and a boundary wall constructed along it. This does not seem feasible as the public road, which is within it would be closed. This would also result in stoppage of free flow of air into the village. Since the wall would have to be constructed along the water body, houses around it would not only have to be demolished but the ingress and egress would also be stopped. It would be better if marking is done by Revenue

Authorities, whereby it is ensured that no further encroachment takes place.

(iv) In the North side there exists a temple along the boundary of the water body. The approach road to the Temple (Phirni Road) is also alleged to be a part of the water body. The rival section disputes this, claiming it to be a private road. The width of the Phirni road is also disputed. In the field book, it is shown to be 4 Gatthas whereas in the Massavi it is shown as 3 Gatthas.

(v) Houses exist along the Phirni road as well, and if the Phirni road is blocked, then access to these houses as well the temple would get blocked. However, the rival group claims that access to these houses as well as the temple is from the other side and if the boundary wall is constructed along the full length of the water body, the said water body would be fully protected from encroachments etc.

13. The Court Commissioners held meetings in Issarpur on 7.12.2015 and 15.01.2016. On 7.12.2015 there was a meeting between the villagers and the Court Commissioner with regard to Khasra No. 148 village Issarpur. In the meeting the following points were discussed.

i. It was sometime in the year 1968-69 that MCD with the general consent of the villagers created bricks 'Khandaz' by filling soil in the area, which fact can be corroborated from records of MCD, Najafgarh. The area of 'Johad' is 6 Bigha

and 13 Biswa and three wells which are existing were got repaired by MID (Minor Irrigation Department) in the year 1986-87 and all the three wells and hand pumps placed thereon are being maintained by MCD (Municipal Corporation Department).

ii. It is also mentioned therein that in the year 2000, the brick 'Khandaz' was broken and the same was constructed in concrete by MCD and the said land is used by the villagers as 'aam raasta' since then, although this land is 'Johad' land.

iii. In the year 2005-06 in pursuance to the orders of the Hon'ble High Court, the Flood Control Department after demarcation, constructed brick walls after demolishing the old one on 4 Bigha land, out of the aforesaid land.

iv. DTC buses also ply on this ground and various functions are organized by the Panchayat. Marriage ceremonies are conducted and elderly people walk on this land of 'Johad', which are all important community activities.

v. The villagers stated that a boundary wall has been constructed around 4 Bighas of the 'Johad' on Khasra No. 148. Further, they prayed that 2 Bigha 13 Biswa land should remain open so that villagers can use the said land for all public purposes.

vi. It was stated that, on the 'Johad' land which is a common open space, an old water pipeline was installed in the year 1977-78 by DJB and the same got damaged in November

2014 and the work of installing a new pipeline was started by DJB and that the entire village gets water from this pipeline.

vii. It was further stated that only one family of the village compelled the DJB officials to stop the work, on the ground that a case was pending in the Tribunal and against which a complaint was made to Block Development Officer (for short 'BDO') and SDM, Najafgarh and DC Kapeshera by DJB. The Deputy Commissioner immediately gave permission for laying of the pipelines. It is further suggested that the boundary wall of the bus terminal and open ground be not made since the villagers would throw garbage if the wall comes up and that there would be a possibility of the garbage spilling over into the village. If the boundary wall comes up, notorious elements may perform anti-social activities and as such there could be a threat to the life of villagers. The villagers do not want to create this boundary wall around 2 Bighas 13 Biswa of land for fear of antisocial activities and further desire to continue with various functions which are currently being organized by the Panchayat and other community functions.

In the meeting held on 15.01.2016 between the Court Commissioners and the villagers of Issarpur, the view expressed was that the common area is being used for 'Holi Pujan', entertainment, marriages and also as a bus stop etc. The

villagers indicated that the land measuring 2 Bighas 13 Biswas should be maintained as open area.

14. It is also pertinent to note that on 28.01.2014 the Tribunal in *Sushil Raghav vs. State of UP* passed the following orders:

> 1. *The UP Government shall file the list of the water bodies and the places where encroachments have been made in District Ghaziabad by the next date of hearing.*
> 2. *In the meantime, the Respondent No. 1 shall take all necessary steps for the purpose of removal of encroachments in all water bodies in the State of UP and such steps shall be initiated effectively in accordance with law within a period of four (4) weeks from today and report the steps taken by the Government by the next date of hearing.*
> 3. *The State Government shall issue individual orders in cases where the encroachers are putting up construction in the water bodies to stop such construction forthwith and such orders of stopping construction shall be scrupulously implemented by the authorities concerned. The report of steps taken in this regard shall also be informed to this Tribunal by way of affidavit from the responsible officer of the Government by the next date of hearing.*

15. It is thus clear that there has been a long pending dispute in Issarpur village on the 'Johad' issue. While originally the area of water body measured 6 Bighas 13 Biswas, over a period of time, it has been reduced to 4 Bighas only and the municipal authorities have also constructed a boundary wall around the 4 Bighas. The area is lying underdeveloped and no effort has been made to clear the water body. There is also report of filthy water flowing from the village into the said water body. Further, it is also true that there is hardly any water in the Johad as on date and the same is languishing with filth and waste. So at best

there is a case for restoration of the Johad and making it a reservoir and improving the water quality therein.

The balance 2 Bighas and 15 Biswas is now an open space at a much greater height compared to the Johad, which is used as a bus stand and community centre, where people organise various functions. There is no question of its being ever amalgamated with the main Johad of 4 Bighas. However, to prevent further encroachment, there is need for boundary pillars on all sides, without the same being a hindrance to the free movement of buses and people. If a wall were to be constructed alongside the open space and the water body, houses around the water body would have problems of ingress and egress. Therefore, it would be better if some marking pillars are erected by the Revenue Authorities to ensure that there is no encroachment and the remaining area of the water body remains an open land.

16. In light of the arguments advanced, documents on record and the pronouncements by the Hon'ble Supreme Court, the High Court of Delhi and this Tribunal, referred to above, we dispose of the Original Application 174/2014 with the following directions:

1. We direct the Sub-Divisional Magistrate, Najafgarh Respondent No. 7, to remove encroachments, if any, and keep the existing pond 'Johad', measuring 4 Bighas; improve its cleanliness within a period of 3 months and

eventually develop the water body into a reservoir. The MCD North and the 'BDO' will render all necessary assistance to the SDM, Najafgarh.

2. The balance land measuring 2 Bighas and 13 Biswas may be retained as a community centre and a bus stop to be used by the public at large. However, to prevent further encroachment thereon, there should be proper boundary pillars so that the same acts as a deterrent against any further illegal encroachments.

3. We constitute a team consisting of the following to monitor the progress of revival of the 'Johad' in Issarpur.

   (i) The Chief Executive Officer of Parks and Gardens, in-charge of water bodies in the NCT of Delhi (or his representative)

   (ii) An Officer who is of the level of Chief Engineer of Delhi Jal Board,

   (iii) A Senior Officer of the Central Ground Water Authority.

   This Committee would also ensure that both the 'Johad' and the community land, totally measuring 6 Bigha and 13 Biswas, be excluded from any residential/commercial infrastructure creation that may be planned in future so as to maintain the characteristics of the wetland, both in terms of their water holding capacity and their environmental role.

4. The Chief Engineer of DJB will preside over all meetings and give a report to the Tribunal every six months, of the progress made in this matter. The affidavit shall be filed by the Chief Engineer of the DJB. Funds from the existing environmental programmes of the Government for restoration of lakes and National Rural Employment Guarantee schemes can be made use of, for development of the water body at Issarpur.
5. No domestic sewage should be permitted to flow into the water bodies and any domestic sewage flowing into the tank should be diverted into the sewerage network or trapped by constructing individual septic tanks by the households. This shall be enforced in consultation with DJB.

17. With this, the Original Application No. 174/2014 stands disposed of with no order as to costs.

Justice Swatanter Kumar
Chairperson

Justice Raghuvendra S. Rathore
Judicial Member

Bikram Singh Sajwan
Expert Member

Ranjan Chatterjee
Expert Member

New Delhi
9th December 2016

test is whether it was held for the benefit of, and utilised for, the textile mill'. Relying upon this observation, it is contended by the learned counsel for the petitioners that as the vacant land, in the instant case, has not been utilised for the undertaking, it is not an asset of the undertaking. We do not think that in *Sitaram Mills case*[1] this Court really meant to lay down a proposition that in order that a piece of land be considered as the asset of the textile undertaking, it must be held for the benefit of and utilised for the undertaking in question. Can it be said that a piece of land which is held for the benefit of but not utilised for the textile undertaking, as in the instant case, is not an asset of the undertaking? The answer must be in the negative. *In Sitaram Mills case*[1] *that observation was made in the context of facts of that case, namely, that the surplus land was held for the benefit of and also utilised for the textile undertaking*."

(emphasis added)

21. In view of the above, we do not see any cogent reason not to concur with the view expressed by the High Court. The appeal lacks merit and is, accordingly, dismissed. In the facts and circumstances of the case, there will be no order as to costs.

(2011) 11 Supreme Court Cases 396

(BEFORE MARKANDEY KATJU AND GYAN SUDHA MISRA, JJ.)

JAGPAL SINGH AND OTHERS . . Appellants;

Versus

STATE OF PUNJAB AND OTHERS . . Respondents.

Civil Appeal No. 1132 of 2011†, decided on January 28, 2011

A. **Panchayats and Zila Parishads — Common village land/Community land/Commons — Encroachment of Gram Panchayat land — Regularisation of — Impermissibility — Held, illegal encroachments of village/Gram Panchayat lands shall not be regularised — Long duration of occupation or huge expenditure in making constructions thereon or political connections are no justification for regularising such illegal occupations — However, regularisation may be permitted where lease is granted to landless labourers or members of Scheduled Castes/Scheduled Tribes, or where there is already a school, dispensary or other public utility on said land — In present case, appellant unauthorisedly encroached village pond of Gram Panchayat by filling it and raising constructions thereon — Collector directing regularisation of land by recovering its cost, since huge money was spent by appellants on said land — Held, Gram Sabha land must be kept for use of villagers of the village — Common interest of villagers shall not suffer merely because unauthorised occupation has been subsisting for many years — Hence, regularisation Letter dt. 26-9-2007 by State Government in favour**

† Arising out of SLP (C) No. 3109 of 2011/SLP (C) CC No. 19869 of 2010. From the Judgment and Order dated 21-5-2010 of the High Court of Punjab and Haryana at Chandigarh in LPA No. 668 of 2010 (O&M)

of unauthorised occupants, held, illegal, not valid and without jurisdiction — Constructions must be removed and possession shall be restored to Gram Panchayat — Further held, orders issued by all State Governments permitting Gram Sabha land to private persons and commercial enterprises on payment of money are illegal and should be ignored — All State Governments are directed to prepare schemes for eviction of illegal/unauthorised occupants of Gram Sabha/Gram Panchayat/ poramboke/shamlat land and restoration to Gram Panchayat — Punjab Village Common Lands (Regulation) Act, 1961 (18 of 1961) — S. 7 — Constitution of India — Arts. 39(b) and 300-A — Utilisation of community resources for common good — Tenancy and Land Laws — Land Grabbing — Encroachment of Gram Panchayat land — Regularisation of — Impermissibility (Paras 2, 13 to 18 and 23)

Friends Colony Development Committee v. *State of Orissa*, (2004) 8 SCC 733; *Hinch Lal Tiwari* v. *Kamala Devi*, (2001) 6 SCC 496, *followed*

M.I. Builders (P) Ltd. v. *Radhey Shyam Sahu*, (1999) 6 SCC 464, *relied on*

Chigurupati Venkata Subbayya v. *Paladuga Anjayya*, (1972) 1 SCC 521, *considered*

L. Krishnan v. *State of T.N.*, (2005) 4 CTC 1 (Mad), *approved*

B. **Constitution of India — Arts. 136, 141 and 144 — Monitoring of implementation of orders by Supreme Court — Directions issued to all State Governments to prepare schemes for eviction of illegal/unauthorised occupants of Gram Sabha/Gram Panchayat/poramboke/shamlat land — Scheme should provide for speedy eviction of illegal occupants after giving show-cause notice and brief hearing — Registry directed to list case from time to time to monitor implementation of these directions (Paras 23 to 25)**

Appeal dismissed N-D/A/47268/SV

Advocates who appeared in this case :
R.K. Kapoor, Ms Neelam Sharma and H.C. Pant (for Anis Ahmed Khan), Advocates, for the Appellants.

Chronological list of cases cited ***on page(s)***

1. (2005) 4 CTC 1 (Mad), *L. Krishnan* v. *State of T.N.* 400*g-h*
2. (2004) 8 SCC 733, *Friends Colony Development Committee* v. *State of Orissa* 400*e*
3. (2001) 6 SCC 496, *Hinch Lal Tiwari* v. *Kamala Devi* 400*g-h*
4. (1999) 6 SCC 464, *M.I. Builders (P) Ltd.* v. *Radhey Shyam Sahu* 400*d-e*
5. (1972) 1 SCC 521, *Chigurupati Venkata Subbayya* v. *Paladuga Anjayya* 398*c*

The Judgment of the Court was delivered by

MARKANDEY KATJU, J.— Leave granted. Heard the learned counsel for the appellants.

2. Since time immemorial there have been common lands inhering in the village communities in India, variously called Gram Sabha land, Gram Panchayat land (in many North Indian States), shamlat deh (in Punjab, etc.), mandaveli and poramboke land (in South India), kalam, maidan, etc., depending on the nature of user. These public utility lands in the villages were for centuries used for the common benefit of the villagers of the village such as ponds for various purposes e.g. for their cattle to drink and bathe, for

storing their harvested grain, as grazing ground for the cattle, threshing floor, maidan for playing by children, carnivals, circuses, ramlila, cart stands, water bodies, passages, cremation ground or graveyards, etc. These lands stood vested through local laws in the State, which handed over their management to Gram Sabhas/Gram Panchayats. They were generally treated as inalienable in order that their status as community land be preserved. There were no doubt some exceptions to this rule which permitted the Gram Sabha/Gram Panchayat to lease out some of this land to landless labourers and members of the Scheduled Castes/Tribes, but this was only to be done in exceptional cases.

3. The protection of commons rights of the villagers were so zealously protected that some legislation expressly mentioned that even the vesting of the property with the State did not mean that the common rights of villagers were lost by such vesting. Thus, in *Chigurupati Venkata Subbayya* v. *Paladuga Anjayya*[1] SCC p. 529 this Court observed: (SCC para 23)

> "*23*. It is true that the suit lands in view of Section 3 of the Estates Abolition Act did vest in the Government. That by itself does not mean that the rights of the community over it were taken away. Our attention has not been invited to any provision of law under which the rights of the community over those lands can be said to have been taken away. ... The rights of the community over the suit lands were not created by the principal or any other landholder. Hence those rights cannot be said to have been abrogated by Section 3(*c*) of the Estates Abolition Act."

4. What we have witnessed since Independence, however, is that in large parts of the country this common village land has been grabbed by unscrupulous persons using muscle power, money power or political clout, *and in many States now there is not an inch of such land left for the common use of the people of the village, though it may exist on paper*. People with power and pelf operating in villages all over India systematically encroached upon communal lands and put them to uses totally inconsistent with their original character, for personal aggrandisement at the cost of the village community. This was done with active connivance of the State authorities and local powerful vested interests and goondas. This appeal is a glaring example of this lamentable state of affairs.

5. This appeal has been filed against the impugned judgment of a Division Bench of the Punjab and Haryana High Court dated 21-5-2010. By that judgment the Division Bench upheld the judgment of the learned Single Judge of the High Court dated 10-2-2010.

6. It is undisputed that the appellants herein are neither the owners nor the tenants of the land in question which is recorded as a pond situated in Village Rohar Jagir, Tehsil and District Patiala. They are in fact trespassers and unauthorised occupants of the land relating to Khewat Khatuni No. 115/310, Khasra No. 369 (84-4) in the said village. They appear to have filled in the village pond and made constructions thereon.

1 (1972) 1 SCC 521

7. The Gram Panchayat, Rohar Jagir filed an application under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 to evict the appellants herein who had unauthorisedly occupied the aforesaid land. In its petition the Gram Panchayat, Rohar Jagir alleged that the land in question belongs to the Gram Panchayat, Rohar as is clear from the revenue records. However, the respondents (the appellants herein) forcibly occupied the said land and started making constructions thereon illegally.

8. An application was consequently moved before the Deputy Commissioner informing him about the illegal acts of the respondents (the appellants herein) and stating that the aforesaid land is recorded in the revenue records as gair mumkin toba i.e. a village pond. The villagers have been using the same, since drain water of the village falls into the pond, and it is used by the cattle of the village for drinking and bathing. Since the respondents (the appellants herein) illegally occupied the said land an FIR was filed against them but to no avail. It was alleged that the respondents (the appellants herein) have illegally raised constructions on the said land, and the lower officials of the Department and even the Gram Panchayat colluded with them.

9. Instead of ordering the eviction of these unauthorised occupants, the Collector, Patiala surprisingly held that it would not be in the public interest to dispossess them, and instead directed the Gram Panchayat, Rohar to recover the cost of the land as per the Collector's rates from the respondents (the appellants herein). Thus, the Collector colluded in regularising this illegality on the ground that the respondents (the appellants herein) have spent huge money on constructing houses on the said land.

10. Some persons then appealed to the learned Commissioner against the said order of the Collector dated 13-9-2005 and this appeal was allowed on 12-12-2007. The learned Commissioner held that it was clear that the Gram Panchayat was colluding with these respondents (the appellants herein), and it had not even opposed the order passed by the Collector in which directions were issued to the Gram Panchayat to transfer the property to these persons, nor filed an appeal against the Collector's order.

11. The learned Commissioner held that the village pond has been used for the common purpose of the villagers and cannot be allowed to be encroached upon by any private respondents, whether Jagirdars or anybody else. Photographs submitted before the learned Commissioner showed that recent attempts had been made to encroach into the village pond by filling it up with earth and making new constructions thereon. The matter had gone to the officials for removal of these illegal constructions, but no action was taken for reasons best known to the authorities at that time. The learned Commissioner was of the view that regularising such kind of illegal encroachment is not in the interest of the Gram Panchayat. The learned Commissioner held that Khasra No. 369 (84-4) is a part of the village pond, and the respondents (the appellants herein) illegally constructed their houses

at the site without any jurisdiction and without even any resolution of the Gram Panchayat.

12. Against the order of the learned Commissioner a writ petition was filed before the learned Single Judge of the High Court which was dismissed by the judgment dated 10-2-2010, and the judgment of the learned Single Judge has been affirmed in appeal by the Division Bench of the High Court. Hence this appeal.

13. We find no merit in this appeal. The appellants herein were trespassers who illegally encroached on to the Gram Panchayat land by using muscle power/money power and in collusion with the officials and even with the Gram Panchayat. We are of the opinion that such kind of blatant illegalities must not be condoned. Even if the appellants have built houses on the land in question they must be ordered to remove their constructions, and possession of the land in question must be handed back to the Gram Panchayat. Regularising such illegalities must not be permitted because it is Gram Sabha land which must be kept for the common use of the villagers of the village.

14. The Letter dated 26-9-2007 of the Government of Punjab permitting regularisation of possession of these unauthorised occupants is not valid. We are of the opinion that such letters are wholly illegal and without jurisdiction. In our opinion such illegalities cannot be regularised. We cannot allow the common interest of the villagers to suffer merely because the unauthorised occupation has subsisted for many years.

15. In *M.I. Builders (P) Ltd.* v. *Radhey Shyam Sahu*[2] the Supreme Court ordered restoration of a park after demolition of a shopping complex constructed at the cost of over ₹100 crores.

16. In *Friends Colony Development Committee* v. *State of Orissa*[3] this Court held that even where the law permits compounding of unsanctioned constructions, such compounding *should only be by way of an exception*. In our opinion this decision will apply with even greater force in cases of encroachment of village common land. Ordinarily, compounding in such cases should only be allowed where the land has been leased to landless labourers or members of the Scheduled Castes/Scheduled Tribes, or the land is actually being used for a public purpose of the village e.g. running a school for the villagers, or a dispensary for them.

17. In many States government orders have been issued by the State Government permitting allotment of the Gram Sabha land to private persons and commercial enterprises on payment of some money. In our opinion all such government orders are illegal, and should be ignored.

18. The present is a case of land recorded as a village pond. This Court in *Hinch Lal Tiwari* v. *Kamala Devi*[4] (followed by the Madras High Court in *L.*

2 (1999) 6 SCC 464
3 (2004) 8 SCC 733
4 (2001) 6 SCC 496 : AIR 2001 SC 3215

Krishnan v. *State of T.N.*[5]) held that land recorded as a pond must not be allowed to be allotted to anybody for construction of a house or any allied purpose. The Court ordered the respondents to vacate the land they had illegally occupied, after taking away the material of the house. We pass a similar order in this case.

19. In this connection we wish to say that our ancestors were not fools. They knew that in certain years there may be droughts or water shortages for some other reason, and water was also required for cattle to drink and bathe in, etc. Hence they built a pond attached to every village, a tank attached to every temple, etc. These were their traditional rainwater harvesting methods, which served them for thousands of years.

20. Over the last few decades, however, most of these ponds in our country have been filled with earth and built upon by greedy people, thus destroying their original character. This has contributed to the water shortages in the country. Also, many ponds are auctioned off at throw away prices to businessmen for fisheries in collusion with authorities/Gram Panchayat officials, and even this money collected from these so-called auctions is not used for the common benefit of the villagers but misappropriated by certain individuals. The time has come when these malpractices must stop.

21. In Uttar Pradesh the U.P. Consolidation of Holdings Act, 1954 was widely misused to usurp the Gram Sabha lands either with connivance of the Consolidation Authorities, or by forging orders purported to have been passed by Consolidation Officers in the long past so that they may not be compared with the original revenue record showing the land as Gram Sabha land, as these revenue records had been weeded out. Similar may have been the practice in other States. The time has now come to review all these orders by which the common village land has been grabbed by such fraudulent practices.

22. For the reasons given above there is no merit in this appeal and it is dismissed.

23. Before parting with this case we give directions to all the State Governments in the country that they should prepare schemes for eviction of illegal/unauthorised occupants of the Gram Sabha/Gram Panchayat/ poramboke/ shamlat land and these must be restored to the Gram Sabha/Gram Panchayat for the common use of villagers of the village. For this purpose the Chief Secretaries of all State Governments/Union Territories in India are directed to do the needful, taking the help of other senior officers of the Governments. The said scheme should provide for the speedy eviction of such illegal occupant, after giving him a show-cause notice and a brief hearing. Long duration of such illegal occupation or huge expenditure in making constructions thereon or political connections must not be treated as a justification for condoning this illegal act or for regularising the illegal possession. Regularisation should only be permitted in exceptional cases e.g.

5 (2005) 4 CTC 1 (Mad)

where lease has been granted under some government notification to landless labourers or members of the Scheduled Castes/Scheduled Tribes, or where there is already a school, dispensary or other public utility on the land.

24. Let a copy of this order be sent to all the Chief Secretaries of all States and Union Territories in India who will ensure strict and prompt compliance with this order and submit compliance reports to this Court from time to time.

25. Although we have dismissed this appeal, it shall be listed before this Court from time to time (on dates fixed by us), so that we can monitor implementation of our directions herein. List again before us on 3-5-2011 on which date all the Chief Secretaries in India will submit their reports.

(2011) 11 Supreme Court Cases 402

(BEFORE DR. DALVEER BHANDARI AND DEEPAK VERMA, JJ.)

MRITUNJOY SETT (DEAD) BY LRS. . . Appellant;

Versus

JADUNATH BASAK (DEAD) BY LRS. . . Respondent.

Civil Appeal No. 3617 of 2011†, decided on April 26, 2011

A. **Rent Control and Eviction — Eviction decree/order — Interference with, in second appeal under S. 100 CPC — When not warranted — Without there arising any substantial question of law or perversity in findings of first appellate court, High Court setting aside eviction decree on flimsy and cursory grounds — Unsustainability — Landlord having bona fide requirement for eviction and complying with statutory requirements of S. 13(6), W.B. Act notice — High Court wrongly appreciating factual aspects and therefore, wrongly concluding that S. 13(6), W.B. Act notice should have been given as per Bengali calendar and therefore, holding notice invalid and dismissing eviction decree, held, unsustainable — Civil Procedure Code, 1908 — S. 100 — Second appeal — Finding of fact — Interference with — When not warranted — W.B. Premises Tenancy Act, 1956 (12 of 1956) — S. 13(6) — Notice under — Validity (Paras 19 to 21, 9 and 10)**

B. **Evidence Act, 1872 — Ss. 17, 21, 58 and 61 to 65 — Unsubstantiated documentary evidence vis-à-vis admission in an earlier proceedings by a party against whom it is sought to be used — Relative evidentiary value — Dispute being as to whether tenancy agreement would be determined as per Bengali calendar or English calendar — Tenant in his written statement in earlier suit admitting that tenancy would be determined as per English calendar — Deed of conveyance also revealing that tenancy would be as per English calendar — But tenant in later eviction suit taking plea that as per endorsement on rent receipts collected by his agent, tenancy would be determined as per Bengali calendar — But agent not having been examined**

† Arising out of SLP (C) No. 16921 of 2006. From the Judgment and Order dated 7-2-2006 of the High Court at Calcutta in SA No. 110 of 2005

Item No.3

BEFORE THE NATIONAL GREEN TRIBUNAL
CENTRAL ZONE BENCH, BHOPAL
(Through Video Conferencing)

Original Application No. 43/2020

Jaya Thakur — Applicant (s)

Versus

State of Madhya Pradesh & Ors — Respondent(s)

Date of hearing: 05.04.2022

Date of uploading : 07 .04.2022

CORAM: HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI JUDICIAL MEMBER
HON'BLE DR. ARUN KUMAR VERMA, EXPERT MEMBER
HON'BLE DR. AFROZ AHMAD EXPERT MEMBER

For Applicant (s): Mr. Varun Thakur, Adv.

For Respondent(s) : Mr. Sachin K. Verma, Adv.

ORDER

1. Grievances raised in this application are illegal construction both residential and commercial by way of encroachment and dumping of the solid waste, medical waste material, domestic waste material and municipal waste materials, discharge of sewage and polluted water into the lake named Sagar lake situated in the heart of the city known as Sagar in the State of Madhya Pradesh and thus badly affecting the ecology of the lake. The submission of the applicant are that :

"I. The lake which forms the centre of the town, extends over an area about 400 acres. Formally it was perhaps much larger and covered the ground on which the Town Hall, the Tehsil Office and Gopal ganj quarters now stand. The present Collectorate a large

building situated on a hill overlooking the City, was constructed in 1820 as the residence of the Governors General's Agent. The lake was improved and deepened during the famine of 1900 at a cost of about Rs. 7000. Due to topography of the region and the existence of the Sagar Lake very little improvement was effected in the old parts of the town.

II. That Sagar Lake is situated in the heart of Sagar city (23 degree 50 Minutes N: 78 degree 45 Minutes E and 517 MSL) with an area of 82 hectares. It is a shallow, rained lake with a small catchment (588 hectares), and its north westward drainage agrees well with the general north westward drainage pattern of the district (Mishra, 1969). The entire lake can be divided into two parts; the main lake occupying an area 68 hectares and a small wetland of 14 hectares . The main lake is well protected by a large number of ghats, houses, roads and a stone fencing wall all around, except on the southern open side which ultimately terminates in the satellite wetland which is connected to the main lake by a narrow passage through the earthen bund. The rain water from the south-western side enters in the satellite lake through the feeder canal in the west, whereas the outflow is through Mongha weir in the main lake situated at the back of the Ganga Mandir.

III. That the weir regulates the outflow and helps to maintain the water level. The main lake is shallower on the north-eastern eastern and south-western sides, with its deepest point (5.5m) near the fort side and the average depth is around 2 meters. The lake is used for bathing, washing clothes, recreation, navigation, Trapa cultivation etc. A large number of cattle may be seen wallowing specially at the southern side, disturbing and churning the sediments.

IV. That over the years, in the above Lake lot of constructions both residential and commercial by way of encroachment have been made within the lake and the District Administration and Local Authorities are allowing constructions to come up and thereby the lake is getting polluted and the water body itself has shrunk inside as a result of above. The result of the encroachment is that lake is shrinking in size and pollution is being caused to the water body.

V. That one building namely Vandana Bhawan, Parkota is also constructed and running their office after the encroaching the land of Sagar Lake. That, Chetanya Hospital is also constructed and running after encroaching the land of Sagar Lake. The people encroached the Lake after constructing the temple also. It is further submitted that builder and colonizer with collusion developing many colony by encroaching the Sagar Lake and near of Bagraj Temple. One of the connected roads was also constructed on the name of beautification of the Lake but in fact, said road was constructed to give the benefits to the colonizers, who developed the colony near of Sagar Lake.

VI. That huge religious ideals are frequently dumped during festival seasons. The Hospital which are running on the Sagar Lake area, regularly dumping the entire medical waste, which is very dangerous for the entire ecology of the lake. It is further stated that the said Sagar Lake is using as dumping station, where anybody can come for dumping of their waste materials and the entire ecology of the Sagar Lake is badly affected. Therefore interference of this Hon'ble Tribunal is necessary in the interest of justice to safe the entire ecology system of the locality."

2. The matter was taken up on 23.07.2020 and a Joint Committee was directed to submit a report with regard to the encroachment on the water body. The report reveals that on Southern and Western side of Talab the residential areas, temples, institutions establishments and agriculture fields are established. Due to no boundary of Talab, possibilities of encroachment are observed and for this, detail measurement and micro levels survey is necessary to access the actual area of encroachment. It has further been reported that residential and commercial activities are established all around the lake area. Domestic effluent from these areas is discharging to lake through 04 Nala and 09 numbers of small drains from nearby buildings and other establishments.

3. The matter was taken up on 17.06.2021 and the Tribunal constituted a committee as follows :

> "In light of the above facts, we direct the District Administration/Collector, District Sagar to constitute a Committee consisting the following and direct them to survey the area, demarcate actual measurement on the basis of available oldest record of lake/water body and submit the report with regard to the actual area and area under encroachment. He is further directed to take necessary remedial measures to remove the encroachments and to protect the area from further encroachment. Further action report be submitted within 04 weeks:
>
> (a) One representative from Revenue Department
>
> (b) One representative from Wetland Authority; and
>
> (c) One representative from State Pollution Control Board."

4. The committee discussed the issues in a meeting held on 01.10.2020 and visited the area and observed as follows :

"3.(i) Sagar Talab which is also known as Lakhan Banajara lake is located in the main city area of Sagar city having an area of about 160 hectares. The main Sagar city is established all around the Sagar lake. The lake is divided in 02 parts. The northern part is main lake which is surrounded by road on 03 sides and on western side dense residential area is established close to lake boundary.

(ii) The eastern and northern boundary of lake is surrounded by road, so no possibilities of any encroachments on there side. On Southern and Western side of Talab, the residential area, Temples, institution establishment and agriculture fields are established. Due to no clear boundary of talab, possibilities of encroachment is observed. It is also observed that the constructions, closed to lake are very old and peoples of nearby place informed that it is very old about 20-25 years old. Details measurement and micro level survey is necessary to assess the actual area of encroachment.

(iii) Residential and commercial activities are established all around the lake area. Domestic effluent from these areae is discharging to lake through 04 nala and 09 numbers of small drains from near by buildings and other establishments.

(iv) The representative from municipal corporation Sagar informed that under program of Smart City Sagar a project is developed for pollution control restoration and area development of Sagar lake by Sagar Smart City Limited, Sagar.

(v) Municipal Solid Waste generated from residential and commercial area around the Sagar lake is collected by Municipal Corporation Sagar and waste is send for treatment/disposal at municipal solid waste disposal site.

Disposal of municipal solid waste was not observed at lake site.

(vi) Biomedical waste generated from Hospital and helth care facilities of Sagar city is regularly collected by an agency M/s Devis Surgico (Common Bio Medical Treatment Facility) and send the waste for final treatment and disposed. Disposal of biomedical waste in lake was not observed.

(vii) No industry established near the lake side.

4. SDM sagar has constituted a team vide order no. 1800 date 05.10.2020 to survey the area of lake to assess any encroachment of Sagar lake. Necessary action will be taken after finalization of encroachment assessment report.

5. A project under Smart City Sagar program is developed for environmental conservation, restoration and area development of Sagar lake by Sagar Smart City Limited. The cost of project is Rs. 92.26 crores and duration 18 months from date of agreement 04.06.2020 for Lakha Banjara Lake Rejuvenation and Lake front Development is Sagar City. The project include conservation of the lake, measures to maintain the water balance of the lake., mitigating environmental impact and restoring lake's ecosystems."

5. After submission of the report the applicant moved an application in the form of response/objection to the report in the following manner :

"5. That the said report is completely silent towards division of the Sagar lake and other allegation made in the O.A. towards construction. They admitted about the drainage water in the Sagar Lake but no action has been taken till date.

6. That due to encroachments the entire ecology of Sagar Lake is badly affected. Therefore Direction of this Hon'ble Tribunal is necessary in the interest of justice to safe the entire ecology system of the locality, as Nazul Department himself admitted about the encroachment, as per list annexed hereinabove.

7. That the District Administration and Local Authorities are allowing constructions to come up and thereby the lake is getting polluted and the water body itself has shrunk inside as a result of above.

8. That due to the above encroachment, lake is shrinking in size and construction of residential and commercial building is going on, resulting pollution was being caused to the water body.

9. That the one building namely Vandana Bhawan, situated in lake near Parkota is also constructed and running their office after the encroaching the land of Sagar Lake.

10. That the Hon'ble Apex court in the case of "Centre for Environmental Law, World Wide Fund-India Vs. Union of India, 2013 (8) SCC 228 held that:

> "48. Article 21 of the Constitution of India protects not only the human rights but also casts an obligation on human beings to protect and preserve a specie becoming extinct, conservation and protection of environment is an inseparable part of right to life. In M. C. Mehta v. Kamal Nath and Others (1997) 1 SCC 388, this Court enunciated the doctrine of "public trust", the thrust of that theory is that certain common properties such as rivers, seashores, forests and the air are held by the Government in trusteeship for the free and unimpeded use of the general public. The resources like air, sea, waters and the forests have such a great importance to the people as a whole, that it would be totally unjustified to make them a subject of private ownership. The State, as a custodian of the natural resources, has a duty to maintain them not merely for the

benefit of the public, but for the best interest of flora and fauna, wildlife and so on. The doctrine of 'public trust' has to be addressed in that perspective."

6. The Nazul Department has submitted the list of encroachments as follows :

:: तालाब की सीमा में अतिक्रमणकारियों की सूची ::

तालाव की सीमा में अतिकमणकारियों की सूची

कमांक	खसरा नंबर	नाम	रकवा वर्गमीटर में	मकान/बाडा/खुली जगह
1	435	श्री राजन/राजेन्द्र केशरवानी (गांधी नेत्र वि.)	12X6=72	मकान
2	435	श्री संतोष/कन्छेदी तिवारी	12X6=72	मकान
3	435	श्री सुधीर/लक्ष्मीनारायण यादव सांसद	12X8=96	मकान
4	435	वंदना संघ कार्यालय (आर.एस.एस)	12X30=360	मकान
5	435	श्रीमति कुसुमलता/मनोहर लाल गुरू	15X18=270	मकान
6	435	श्री सीताराम/राजाराम गुरू	7X12=84	मकान
7	435	श्री परशोत्तम/शिवनारायन गुरू	7X18=126	खाली जगह
8	435	श्री पद्मभाम/गौरीशंकर गौतम	7X22=154	खाली जगह
9	435	श्री मुकेश /जयनारायण पांडे	10X9=90	मकान
10	435	श्री बृजबिहारी/दुर्गाप्रसाद, चन्द्रवती/जयनारायण पांडे	8X15=120	मकान
11	435	श्री हरिनारायण यादव	5X27=135	फाउन्डेशन मंदिर
12	435	श्री अरूणकुमार, नंदकिशोर/जमना प्रसाद	5X27=135	मकान
13	435	श्री गगनकृष्ण गंगेले	6X3=18	मकान
14	435	श्री महेश/शंकर लाल चौरसिया	9X12=108	बाडा एवं कुंआ
15	435	श्री मानक लखारया (कोष्टी)	9X12=108	बाडा
16	435	श्री मुन्ना/पन्नालाल रैकवार	1X9=9	मकान
17	435	श्री लक्ष्मीनारायण/बालकिशन कोष्टी	2X12=24	मकान
18	435	श्री नरेन्द्र/खुमान रैकवार	6X3=18	मकान
19	435	श्री महेन्द्र/तेजराम रैकवार	12X9=108	दीवार बनाकर
20	435	श्री रामेन्द्र/लाडले रैकवार	8X12=96	मकान
21	435	श्री मुन्ना/लाडले रैकवार	8X12=96	मकान
22	435	श्री सीताराम/लाडले रैकवार	8X12=96	मकान
23	435	श्री राजेश/लाडले रैकवार	8X12=96	मकान
24	435	धर्मशाला रैकवार समाज	15X9=135	मकान
25	435	श्री संजीव/गिरधारी लाल रैकवार	15X9=135	मकान
26	435	श्री देवेन्द्र/शंकर रैकवार	15X9=135	मकान
27	435	श्री अमित/पिम्मा रैकवार	15X9=135	मकान
28	435	श्री प्रमोद/हरी रैकवार	15X9=135	मकान

तालाब के अतिक्रमण को तोड़ा जाना प्रस्तावित

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वाजुब अधिकारी

29	435	श्री विजय / सीताराम चौरसिया	10X80=800 10X15=150 950	खाली जगह फसल बोकर
30	435	गोपाल	10X10=100	फसल बोकर
31	435	उमाकांत	10X10=100	फसल बोकर
32	435	राकेश	10X10=100	फसल बोकर
33	435	प्रफुल्ल तिवारी	10X10=100	फसल बोकर
34	435	राजकुमार नामदेव	10X10=100	फसल बोकर
35	435	घनश्याम पिता भगवानदास व अन्य 3	10X10=100	फसल बोकर
36	437	रमादेवी पत्नि कृष्ण मुरारी सावित्री देवी पति श्याममुरारी	12X100=1200	मेड पर फसल बोकर
37	437	मोतीलाल पिता बुन्नी लाल	12X100=1200	तालाब की मेड पर फसल बोकर
38	437	शंकर लाल पिता डालले	10X10=100	फसल बोकर
39	437	मास्वन, पूरन पि.स. मानक	12X100=1200	तालाब की मेड पर फसल बोकर
40	437	रोशन पिता रज्जू	12X50=600	तालाब की मेड पर फसल बोकर
41	437	हल्के पिता लच्छू	12X50=600	तालाब की मेड पर फसल बोकर
42	437	सीताराम पिता छोटे लाल हिम्मू पटेल	12X50=600 12X50=600 1200	तालाब की मेड पर फसल बोकर
43	437	राजेन्द्र दुबे	20X30=600 10X30=300 900	फसल बोकर

कुल — 43

अधीक्षक
भू-अभिलेख सागर

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7. In light of the above facts the Collector Sagar was directed to take necessary action and in light of the above the Collector Sagar vide order dated 19.06.2021 constituted a committee of four officers to submit the report and later on, on the request of the committee a further team consisting 25 officers and officials were constituted to demarcate the land in question.

8. The report with regard to the encroachment duly signed by the revenue officers has been submitted as follows :

कार्यालय अधीक्षक भू–अभिलेख जिला सागर(म0प्र0)

क्र0 1969/अ.भू.अ./स.अ.भू.अ./सीमांकन/2021 सागर दिनांक 27/09/2021

प्रति,

श्रीमान कलेक्टर महोदय
(नजूल),
जिला सागर(म0प्र0)

विषय :– सागर तालाब(लाखा बंजारा झील) का सीमांकन प्रतिवेदन प्रस्तुत करने बाबत्।

संदर्भ :– श्रीमान कलेक्टर महोदय सागर का आदेश क्र0 6513/रीडर–नजूल/2021 सागर दिनांक 25/06/2021

विषयांतर्गत संदर्भित आदेश के परिपालन में अनुरोध है कि मौजा सागर खास स्थित लाखा बंजारा झील की भूमि खसरा नं0 435/1 एवं 437/2 रकवा क्रमशः 131.805 हे0 एवं 27.393 हे0 का सीमांकन कार्य ई0टी0एस0 मशीन की सहायता से श्रीमान के आदेशानुसार गठित 25 अधिकारी/कर्मचारियों की टीम द्वारा प्रेस विज्ञप्ति दिनांक 06.07.2021 के द्वारा सार्वजनिक सूचना प्रकाशन उपरांत सीमांकन कार्य दिनांक 07/07/2021 से प्रारंभ किया गया। सर्वप्रथम छोटा तालाब भूमि खसरा 437/2 का सीमांकन भूमिस्वामी स्वत्व के खसरा नं0 438 पर स्थित कुंआ को आधार बनाकर सीमांकन कार्य प्रारंभ किया गया। इस प्रकार खसरा नं0 437/2 की सीमाओं का निर्धारण किया गया तथा अतिक्रामकों की सूची तैयार की गई। इन्हीं चांदों तथा म्युनिसिपल स्कूल तीन बत्ती के प्रांगण में स्थित ख0नं0 154/1, 154/4(154/4 से लगकर) मौके पर उपलब्ध एवं नक्शे में बने कुंओं को आधार बनाकर बड़ा तालाब खसरा नं0 435/1 की सीमाओं का निर्धारण ई0टी0एस0 मशीन से करते हुए निशानात लगवाये गये। सीमांकन के दौरान नगर निगम सागर का अमला भी मौके पर उपस्थित रहा। भूमि खसरा नं0 435/1 बड़ा तालाब के उत्तरी एवं पश्चिमी भाग में पक्के स्थाई निर्माण होने से परमानेन्ट मार्कर से चिन्ह लगाकर तालाब की सीमा का निर्धारण किया गया। इसमें पाये गये अतिक्रमणों को नाप कर सूची तैयार की गई। जो कि पंचनामा में उल्लेखित है। खसरा नं0 435/1 में 35 अतिक्रामकों का रकवा 4607 वर्गमीटर पर तथा खसरा नं0 437/2 में 1 अतिक्रामक का रकवा 840 वर्गमीटर पर अतिक्रमण पाया गया। इस प्रकार खसरा नं0 435/1 एवं 437/2 के कुल रकवा 159.198 हे0 में से 5447 वर्गमीटर पर कुल 36 अतिक्रामकों का अतिक्रमण पाया गया। सीमांकन कार्य के दौरान पक्षकारगणों आपत्तिकर्ता क्रमशः एड. निशांत दुबे द्वारा श्री कौशलकिशोर दुबे निवासी शनिचरी वार्ड सागर, श्रीमति कुसुमलता गुरू नि0 परकोटा वार्ड सागर, श्रीमति रेखा यादव परकोटा वार्ड सागर द्वारा प्रस्तुत आपत्तियां एवं दस्तावेज प्रतिवेदन के साथ संलग्न हैं।

अतः प्रतिवेदन अग्रिम कार्यवाही हेतु सादर संप्रेषित है।

संलग्न :–

1. ई0टी0एस0 मशीन की फील्डबुक एवं नक्शा।
2. आदेश की छायाप्रति।
3. प्रेस विज्ञप्ति की छायाप्रति।
4. स्थल पंचनामा।
5. अतिक्रामकों की सूची।
6. आपत्तियां मय दस्तावेज।

कुल (47) पृष्ठ

नायब तहसीलदार
सुरखी तह0 सागर

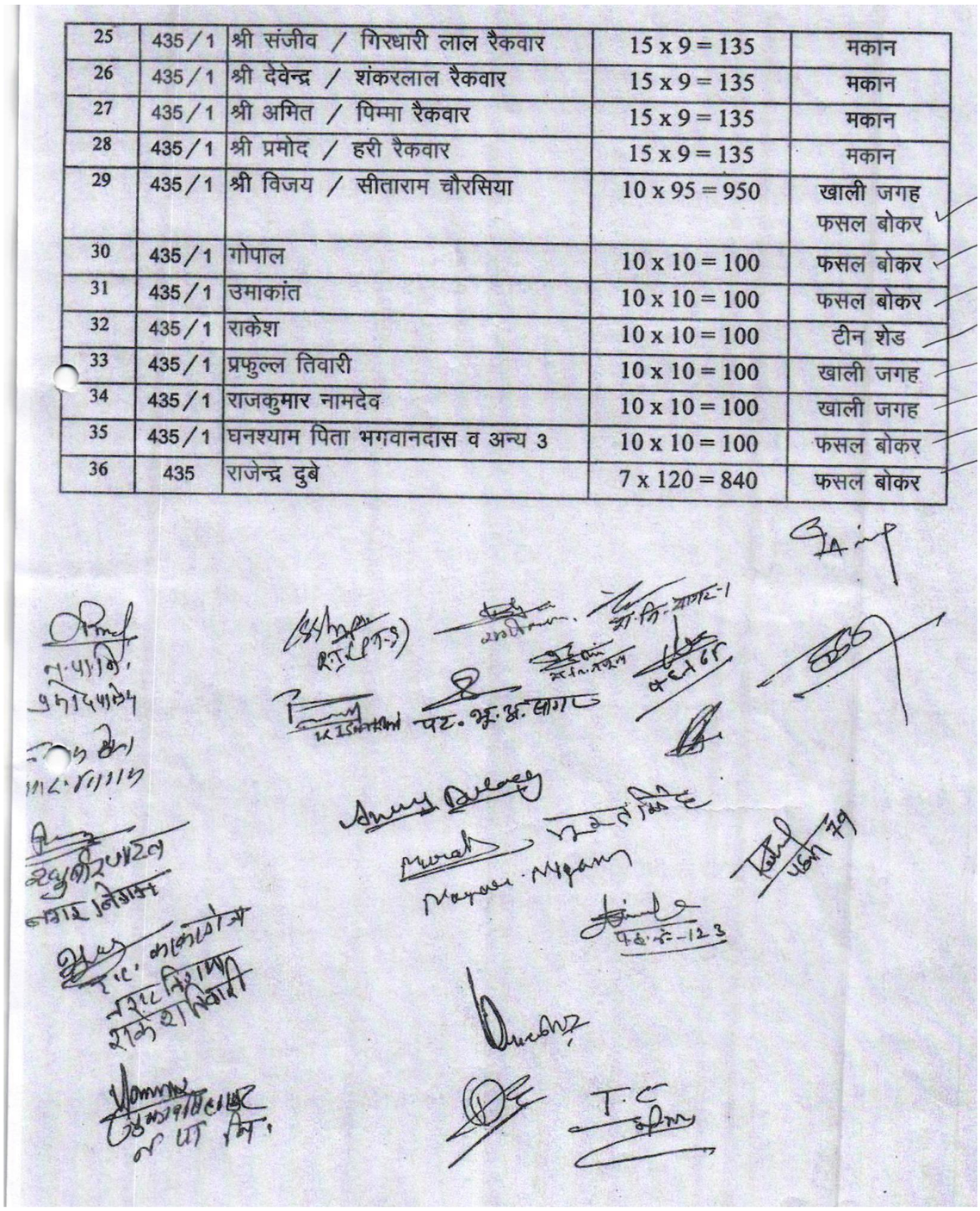
अधीक्षक
भू–अभिलेख जिला सागर

The list of encroachers as duly signed by the all 25 officers and officials with the local persons are as follows :

लाखा बंजारा तालाब सागर की सीमा में अतिक्रमणकारियों की सूची

क्रमांक	खसरा नं.	नाम	रकवा वर्गमीटर में लं. x चौ.	मकान/बाड़ा/खुली जगह
1	435/1	श्री संतोष रामशंकर/कन्छेदी तिवारी	6 x 12 = 72	मकान
2	435/1	श्री राजन / राजेन्द्र केशरवानी गांधी नेत्र चिकत्सालय	6 x 27 = 162	मकान
3	435/1	श्री सुधीर / लक्ष्मीनारायण यादव	6 x 9 = 54	मकान
4	435/1	वंदना भवन (संघ कार्यालय)	8 x 34 = 272	मकान एवं खाली जगह
5	435/1	श्रीमति कुसुमलता / मनोहरलाल गुरू	8 x 15.50 = 124	मकान
6	435/1	श्री सीताराम / राजाराम गुरू	11 x 16 = 176	मकान
7	435/1	श्री परसोत्तम / शिवनारायण गुरू (मधुसूदन / मनोहरलाल गुरू)	17 x 8 = 136	खाली
8	435/1	श्री चंद्रभान / गोरीशंकर गौतम	7 x 25 = 175	खाली
9	435/1	श्री मुकेश / रामनारायण पाण्डे	9 x 9 = 81	मकान
10	435/1	श्री बृजबिहारी / दुर्गाप्रसाद श्री मति चंद्रवति /जयनारायण पाण्डे	8 x 15 = 120	मकान
11	435/1	श्री हरिनारायण यादव	05 x 25 = 125	फाउण्डेशन
12	435/1	श्री अरूण कुमार नंदकिशोर / जमनाप्रसाद	4 x 27 = 108	मकान
13	435/1	श्री गगन कृष्ण गंगेले	6 x 3 = 18	मकान
14	435/1	श्री महेश / शंकर लाल चौरसिया	9 x 12 = 108	बाडा एवं कुंआ
15	435/1	श्री मानक लखारया (कोष्टी)	9 x 12 = 108	बाडा
16	435/1	श्री मुन्ना / पंचमलाल रैकवार	1 x 9 = 9	मकान
17	435/1	श्री लक्ष्मीनारायण / बालकृष्ण कोष्टी	2 x 12 = 24	मकान
18	435/1	श्री नरेन्द्र / खुमान रैकवार	6 x 3 = 18	मकान
19	435/1	श्री महेन्द्र / तेजराम रैकवार	12 x 9 = 108	दीवार बनाकर
20	435/1	श्री रामेन्द्र / लाडले रैकवार	8 x 12 = 96	मकान
21	435/1	श्री मुन्ना / लाडले रैकवार	8 x 12 = 96	मकान
22	435/1	श्री सीताराम / लाडले रैकवार	8 x 12 = 96	मकान
23	435/1	श्री राजेश / लाडले रैकवार	8 x 12 = 96	मकान
24	435/1	धर्मशाला रैकवार समाज	15 x 9 = 135	मकान

25	435/1	श्री संजीव / गिरधारी लाल रैकवार	15 x 9 = 135	मकान
26	435/1	श्री देवेन्द्र / शंकरलाल रैकवार	15 x 9 = 135	मकान
27	435/1	श्री अमित / पिम्मा रैकवार	15 x 9 = 135	मकान
28	435/1	श्री प्रमोद / हरी रैकवार	15 x 9 = 135	मकान
29	435/1	श्री विजय / सीताराम चौरसिया	10 x 95 = 950	खाली जगह फसल बोकर
30	435/1	गोपाल	10 x 10 = 100	फसल बोकर
31	435/1	उमाकांत	10 x 10 = 100	फसल बोकर
32	435/1	राकेश	10 x 10 = 100	टीन शेड
33	435/1	प्रफुल्ल तिवारी	10 x 10 = 100	खाली जगह
34	435/1	राजकुमार नामदेव	10 x 10 = 100	खाली जगह
35	435/1	घनश्याम पिता भगवानदास व अन्य 3	10 x 10 = 100	फसल बोकर
36	435	राजेन्द्र दुबे	7 x 120 = 840	फसल बोकर



9. The Respondent no. 2/Collector, Sagar has filed the reply as follows :

"3. The member of the joint team constituted by the District Collector, District Sagar for removal of the encroachment District Sagar, Tehsildar Sagar issued the statutory show cause notices dated 22.12.2021 & 24.12.2021 to the encroachers which were duly received by the encroachers.

4. The Tehsildar Sagar vide letter dated 30.03.2022 has duly informed the District Collector, District Sagar, that in compliance to the directions passed by Tribunal demarcation was carried out by the Joint team constituted by the District Collector, District

Sagar and in furtherance to the demarcation report the District Collector, District Sagar has constituted a joint team for removal of encroachments from the subjective water body subsequently, the court of Tehsildar Sagar registered the encroachment case at revenue case no. 0004/A-68/2021-22 and issued show cause notices to the 36 encroachers who had submitted their written reply to the show cause notice thereafter from 13.01.2022 to 11.02.2022 continuous hearing was conducted by the court of Tehsildar Sagar."

10. Collector Sagar has again directed the Tehsildar Sagar vide order dated 03.12.2021 to remove the encroachments according to the law. Again vide an order dated 03.12.2021 the Collector constituted a committee of 08 officers to remove the encroachments. The Tehsildar Sagar in compliance of the order issues notices to all 36 persons and again by the show cause notice 03 of the encroachers moved a Writ Petition No. 1871 of 2022 before Hon'ble High Court of Madhya Pradesh and Hon'ble the High Court vide order dated 04.02.2022 passed an order as follows :

"**Jabalpur, Dated 04.02.2022**

Heard on admission as well as for grant of stay, through Video Conferencing.

Shri Naveen Dubey, Advocate for the petitioners.

Shri Manu V. John, PL for the respondents/State, on advance copy.

The petitioner no.1 to 3 are aggrieved by the show cause notices dated 22.12.2021, 13.12.2021 and 22.12.2021, respectively, whereby they have been directed to remove the encroachment from the land in question.

The contention of learned counsel for the petitioners is that demarcation was conducted by a Committee formed at the instructions of the Collector, however, no notice or opportunity of hearing was given to the petitioners regarding the said demarcation. It is submitted that

proceedings under Section 248 of the MPLRC are not applicable to the case of present petitioners as they are running an eye-hospital over the alleged land and the same has been constructed after obtaining different permissions from the respondents/authorities.

Considering the aforesaid, let notices be issued to the respondents on payment of process fee within a week by ordinary as well as RAD mode, returnable within three weeks.

As an interim measure, it is directed that the effect and operation of impugned show cause notices dated 22.12.2021, 13.12.2021 and 22.12.2021 shall remain stayed, till next date of hearing."

11. Learned counsel appearing for the applicant has argued that Hon'ble the Supreme Court of India in so many decisions had directed that the heart of the public trust is that it imposes limits and obligations upon Government agencies and their administrators on behalf of all the people and especially future generations. All the property which is vested in the state are indirectly managed by the local administration on the Principal of Public Trust. It does not mean that the local administration is at liberty or at the discretion to use it in own way. We have two things, sovereignty of the State and the doctrine of public trust. We have to make a balance between the two though the State has every authority to utilize the land but Public Trust Doctrine says that the property of the public should be utilized for the public purposes and not for the private purposes. The water bodies, lake, air and land all these are the public properties and should be made available to all for maintaining the health and environment. This Doctrine of public trust and precautionary measures was discussed in public interest litigation no. 87/ 2006; Bombay Environmental Action Group Vs. State of Maharashtra 2018 SCC online bombay 2680.2019(1) Bombay CRI and it was held as follows:-

—Apex Court observed thus: —

"2. The Indian society has, for many centuries, been aware and conscious of the necessity of protecting environment and ecology. Sages and saints of India lived in forests. Their preachings contained in vedas, upanishads, smritis, etc. are ample evidence of the society's respect for plants, trees, earth, sky, air, water and every form of life. The main motto of social life is to live in harmony with nature. It was regarded as a sacred duty of everyone to protect them. In those days, people worshipped trees, rivers and sea which were treated as belonging to all living creatures. The children were educated by elders of the society about the necessity of keeping the environment clean and protecting earth, rivers, sea, forests, trees, flora, fauna and every species of life.‖ —The ancient Roman Empire developed a legal theory known as the —doctrine of the public trust‖ . It was founded on the premise that certain common properties such as air, sea, water and forests are of immense importance to the people in general and they must be held by the Government as a trustee for the free and unimpeded use by the general public and it would be wholly unjustified to make them a subject of private ownership. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial exploitation to satisfy the greed of a few."

12. *In the case of M.C. Mehta v. Kamal Nath, in paragraph 34 and 35, the Apex Court held thus:*

> *"34. Our legal system - based on English common law - includes the public trust doctrine as part of its jurisprudence. The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the seashore, running waters, airs, forests and ecologically fragile lands. The State as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership.*
>
> *35. We are fully aware that the issues presented in this case illustrate the classic struggle between those members of the public who would preserve our rivers, forests, parks and open lands in their pristine purity and those charged with administrative responsibilities who, under the pressures of the changing needs of an increasingly complex society, find it necessary to encroach to some extent upon open lands*

heretofore considered inviolate to change. The resolution of this conflict in any given case is for the legislature and not the courts. If there is a law made by Parliament or the State Legislatures the courts can serve as an instrument of determining legislative intent in the exercise of its powers of judicial review under the Constitution. But in the absence of any legislation, the executive acting under the doctrine of public trust cannot abdicate the natural resources and convert them into private ownership, or for commercial use. The aesthetic use and the pristine glory of the natural resources, the environment and the ecosystems of our country cannot be permitted to be eroded for private, commercial or any other use unless the courts find it necessary, in good faith, for the public good and in public interest to encroach upon the said resources.

13. *In the case of Fomento Resorts & Hotels Limited v. Minguel Martins 4, In paragraphs 53 to 55 and 65, the Apex Court held thus*:

"- The public trust doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes. This doctrine puts an implicit embargo on the right of the State to transfer public properties to private party if such transfer affects public interest, mandates affirmative State action for effective management of natural resources and empowers the citizens to question ineffective management thereof.

- The heart of the public trust doctrine is that it imposes limits and obligations upon government agencies and their administrators on behalf of all the people and especially future generations. For example, renewable and non-renewable resources, associated uses, ecological values or objects in which the public has a special interest (i.e. public lands, waters, etc.) are held subject to the duty of the State not to impair such resources, uses or values, even if private interests are involved. The same obligations apply to managers of forests, monuments, parks, the public domain and other public assets. Professor Joseph L. Sax in his classic article, —The Public Trust Doctrine in Natural Resources Law: Effective Judicial Intervention‖ (1970), indicates that the

public trust doctrine, of all concepts known to law, constitutes the best practical and philosophical premise and legal tool for protecting public rights and for protecting and managing resources, ecological values or objects held in trust.

- The public trust doctrine is a tool for exerting long-established public rights over short-term public rights and private gain. Today every person exercising his or her right to use the air, water, or land and associated natural ecosystems has the obligation to secure for the rest of us the right to live or otherwise use that same resource or property for the long-term and enjoyment by future generations. To say it another way, a landowner or lessee and a water right holder has an obligation to use such resources in a manner as not to impair or diminish the people's rights and the people's long-term interest in that property or resource, including 15 down slope lands, waters and resources.

- We reiterate that natural resources including forests, water bodies, rivers, seashores, etc. are held by the State as a trustee on behalf of the people and especially the future generations. These constitute common properties and people are entitled to uninterrupted use thereof. The State cannot transfer public trust properties to a private party, if such a transfer interferes with the right of the public and the court can invoke the public trust doctrine and take affirmative action for protecting the right of people to have access to light, air and water and also for protecting rivers, sea, tanks, trees, forests and associated natural ecosystems.‖ (emphasis added)

- Public at large has a right to enjoy and have a benefit of our forests including mangroves forest. The pristine glory of such forests must be protected by the State. The mangroves protect our environment. Therefore, apart from the provisions of various statutes, the doctrine of public trust which is very much applicable in India makes it obligatory duty of the State to protect and preserve mangroves.‖

PRECAUTIONARY PRINCIPLE

14. *In M.C. Mehta v. Union of India [(1987) 4 SCC 463] this Court held as under:*

"The financial capacity of the tanneries should be considered as irrelevant while requiring them to establish primary treatment plants. Just like an industry which cannot pay minimum wages to its workers cannot be allowed to exist, a tannery which cannot set up a primary treatment plant cannot be permitted to continue to be in existence for the adverse effects on the public. Life, public health and ecology have priority over unemployment and loss of revenue problem."

The —Precautionary Principle‖ has been accepted as a part of the law of the land. Articles 21, 47, 48-A and 51- A(g) of the Constitution of India give a clear mandate to the State to protect and improve the environment and to safeguard the forests and wildlife of the country. It is the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures. The —Precautionary Principle‖ makes it mandatory for the State Government to anticipate, prevent and attack the causes of environment degradation. We have no hesitation in holding that in order to protect the two lakes from environmental degradation it is necessary to limit the construction activity in the close vicinity of the lakes.

17. India is endowed with extraordinarily diverse and distinctive traditional water bodies found in different parts of the country, commonly known as ponds, tanks, lakes, vayalgam, ahars, bawdis, talabs and others. They play an important role in maintaining and restoring the ecological balance. They act as sources of drinking water, recharge groundwater, control floods, support biodiversity, and provide livelihood opportunities to a large number of people. Currently, a major water crisis is being faced by India, where 100 million people are on the frontlines of a nationwide water crisis and many major cities facing an acute water shortage. The situation will worsen as United Nations and Niti Ayog reports say that the demand for water will reach twice the available supply, and 40 per cent of India's population will not have access to clean drinking water by 2030. One of the reasons is our increasing negligence and lack of conservation of waterbodies. Since independence, the government has

taken control over the waterbodies and water supply. With a colonial mindset, authorities move further and further away in the quest of water supply, emphasing more on networks, infrastructure and construction of dams. This, over time, has led to the neglect of waterbodies and catchments areas. As a result, we have started valuing land more than water. In the last few decades, waterbodies have been under continuous and unrelenting stress, caused primarily by rapid urbanisation and unplanned growth. Encroachment of waterbodies has been identified as a major cause of flash floods in Mumbai (2005), Uttrakhand (2013), Jammu and Kashmir (2014) and Chennai (2015). Further, waterbodies are being polluted by untreated effluents and sewage that are continuously being dumped into them. Across the country, 86 waterbodies are critically polluted, having a chemical oxygen demand or COD concentration of more than 250 mg/l, which is the discharge standard for a polluting source such as sewage treatment plants and industrial effluent treatment plants. In urban India, the number of waterbodies is declining rapidly. For example, in the 1960s Bangalore had 262 lakes. Now, only 10 hold water.

Similarly, in 2001, 137 lakes were listed in Ahmedabad. However, by 2012, 65 were already destroyed and built upon. Hyderabad is another example. In the last 12 years, it has lost 3,245 hectares of its wetlands. The decline in both the quality and quantity of these waterbodies is to the extent that their potential to render various economic and environmental services has reduced drastically. Although there are sufficient polices and acts for protection and restoration of waterbodies, they remain insufficient and ineffective.

18. Realizing the seriousness of the problem confronting waterbodies, the Centre had launched the Repair, Renovation and Restoration of Water Bodies' scheme in 2005 with the objectives of comprehensive improvement and restoration of traditional water bodies. These included increasing tank storage capacity, ground water recharge, increased availability of drinking water, improvement of catchment areas of tank commands and others. However, in this regard, not much has been seen on the ground.

19. It is of utmost importance for meeting the rising demand for water augmentation, improving the health of waterbodies as they provide various ecosystem services that are required to manage microclimate, biodiversity and nutrient cycling. Many cities are working towards conservation of waterbodies like the steps initiated in the capital city of Delhi for instance. In turning Delhi into a city of lakes, rejuvenation of 201 waterbodies has been finalised. Of these, the Delhi Jal Board (DJB) plans to revive 155 bodies while the Flood and Irrigation Department will revive 46. DJB claims that the aim is to achieve biological oxygen demand or BOD to 10ppm and total suspended solids to 10mg/l. Also the establishment of the Wetlands Authority by the Delhi government is a welcome step towards notifying and conserving natural waterbodies. In order to achieve the goal of revival of waterbodies, it is important to understand that one solution may not fit all the waterbodies. Depending on the purpose, ecological services, livelihood and socio-cultural practices, the approach will vary from one waterbody to another. However the issues with regard to lack of data and action plans, encroachments, interrupted water flow from the catchment, siltation, violations of laws, solid waste deposit and polluted water, involvement of too many agencies, etc have to be taken into consideration.

Action needs to be taken towards:

1. *Attaining sustainability. Thus, emphasis on long-term goals, operation and maintenance should be included along with the allocation of budget.*

2. *Success of the lakes should be tested on all three fronts namely economic, environmental and social. Many studies point that a deliberate effort has to be made on the social front for which better publicity of the environmental benefits of the project and enhancing environmental awareness, especially among the local community is required.*

3. *Encouraging local people to collaborate with other stakeholders to successfully utilise resources and ensure the protection and conservation of waterbodies.*

> *4. Traditionally, water was seen as a responsibility of citizens and the community collectively took the responsibility of not only building but also of maintaining the water bodies. This needs to be brought back into the system.*
>
> *5. Thus, an integrated approach taking into account the long-term sustainability, starting from the planning stage where looking at every waterbody along with its catchment, is required.*

15. The natural source of air, water and soil cannot be utilized, if the utilization results in irreversible damage to environment. There has been accelerated degradation of the environment primarily on account of lack of effective enforcement of environmental laws and non- compliance with statutory norms. It has been repeatedly held by the Supreme Court that the right to live is a fundamental right under Article 21 of the Constitution and it includes the right to enjoyment of pollution free water and air for full enjoyment of life. The definition of sustainable development which was given more than three decades back still holds goods. The phrase covers the development that meets the need of the present without compromising the availability of future generation to meet their own needs. Sustainable development means the type or extent of development that can take place and which can be sustained by nature / ecology with or without mitigation. In these matters the required standards now is that the risk or harm to the environment or to human health is to be decided in public interest according to a reasonable person test. Life, public health and ecology has priority over unemployment and loss of revenue.

16. It is further contented by the learned counsel for the applicant that this is a condition which is squarely covered by Hinchlal Tiwari Vs Kamla Devi 2001 AIR SCW 2865 followed and quoted in Jagpal Singh Vs State of M.P. (2011) 11 SCC 396. It is authoritatively reiterated in Hinchlal Tiwari and

Jagpal Singh that land recorded as pond must not be allotted to anybody for construction of a house or any allied purpose. The court ordered the respondents in the case of Hinchlal Tiwari and Jagpal Singh to vacate the land they had illegally occupied after taking away the material of the house. In another case of MI Builders (P) Ltd. Vs Radheshyam Sahu (1999) 6 SCC 464 the Supreme Court ordered restoration of a park after demolition of shopping complex constructed at the cost of Rs.100 crores.

17. Both these judgments of Hinchlal Tiwari and Jagpal Singh have been appreciated by a Division Bench of the court in (2011) 2 MPLJ 618 Rinkesh Goyal Vs. State of M.P. in which under similar circumstances drastic directions have been given that there should not be any encroachment over the land of ponds, tanks and lakes. Long period of encroachment is no defence and does not give any equity. The cost of construction done after destroying a pond is also immaterial.

18. In the present case it is undisputed that the pond area has been converted into the cultivation of crops, construction of residential, commercial activities which is not permissible in law. The inevitable conclusion therefore is the same has to be restored.

19. Rule 4(v) of the Wetland Conservation and Management Rule, 2017 states that any construction of the permanent nature within specified distance of the high flood level is prohibited. It is further provided that the wet land shall be conserved and managed in accordance with the principles of wise use as determined by the wet land authority. The perusal of the report submitted by the Collector reveals that the construction of a permanent nature and inside from the edge of the full reservoir flood level which would mean it is in the water body itself. Thus the construction is in violation of Rule 4(v) Wetland Conservation and Management Rule, 2017 which expressly prohibits such construction. Hon'ble the Supreme Court in the matter of Peoples united for better living in Kolkata Vs. East Kolkata Wet Land Management

Authority and others reported in 2017 SCC online had directed for the removal of illegal construction within the East Kolkata Wet land in the following way.

"*In view of the established fact that the Respondents No. 3 and 8 have encroached upon the protected East Kolkata Wetland, we leave it upon the Respondent No. 1 to take appropriate steps to remove all illegal 235 structures in exercise of its powers vested in it under clauses (b) and (c) of Sec. 4 of the East Kolkata Wetlands (Conservation and Management) Act, 2006 and further to consider imposition of appropriate penalty upon the Respondents No. 8 & 3 31 under Sec. 18 of the Act. However, we make it clear that the EKWMA while taking such steps shall follow the due process of law*

The entire process for removal of illegal structures of the Respondents No. 3 and 8 shall be completed within three months without fail."

14. That furthermore, the Hon"ble Supreme Court in M/s Vaamika Island v. Union of India and Ors. reported in (2013) 8 SCC 760 upheld the order of the High Court of Kerala directing for demolition of structures in the Vembanad Backwater, which is the second largest wetland in India and held that any violation of notifications for the protection of the environment cannot be condoned:

We are of the considered view that the above direction was issued by the High Court taking into consideration the larger public interest and to save the Vembanad Lake which is an ecologically sensitive area, so proclaimed nationally and internationally. The Vembanad Lake is presently undergoing severe environmental degradation due to increased human intervention and, as already indicated, recognizing the socio-economic importance of this waterbody, it has recently been scheduled under —vulnerable wetlands to be protected‖ and declared as CVCA. We are of the view that the directions given by the High Court are perfectly in order in the above mentioned perspective.

Further, the directions given by the High Court in directing demolition of illegal construction effected during the currency of CRZ Notifications 1991 and 2011 are perfectly in tune with the decision of this Court in Piedade Filomena Gonsalves v. State of Goa and

Others (2004) 3 SCC 445, wherein this Court has held that such notifications have been issued in the interest of protecting environment and ecology in the coastal area and the construction raised in violation of such regulations cannot be lightly condoned." (emphasis supplied)

That further, this Tribunal in a recent order dated 27.08.2020 passed in O.A. No. 351/2019 titled Raja Muzaffar Bhat v. State of Jammu and Kashmir & Ors. has also held that there is an inadequacy of monitoring of action of restoration of wetlands which is necessary to be executed for public health and strengthening the environment rule of law.

Conservation of wetlands in general and Ramsar sites in particular is a significant aspect of protection of environment. To give effect to the Sustainable Development and Precautionary Principles, which have been held to be part of right to life and are to be statutorily enforced by this Tribunal under Section 20 of the National Green Tribunal Act, 2010, effective action plan and its execution is imperative. There is discussion in the media about inadequacy of monitoring of action for restoration of lakes, wetlands and ponds which is certainly necessary for strengthening the rule of law and protection of public health and environment

Wetland (Conservation and Management) Rules, 2017 contain elaborate provisions for protection of Wetlands and National and State Wetland Authorities have been set up. However, the fact remain that the wetlands are facing serious challenge of conservation as shown by the present case and other cases which are the Tribunal dealing with from time to time.

The Hon'ble Supreme Court in M.K. Balakrishnan and Ors v. Union of India and Ors reported in (2017) 7 SCC 810 has specifically directed for the application of the principles of Rule 4 of the Wetlands (Conservation and Management) Rules, 2010 for all 2,01,503 wetlands identified in the —National Wetland Inventory & Assessment‖ and held that no construction of a permanent nature in the past 10 years will be allowed:

23. Accordingly, we direct the application of the principles of Rule 4 of the Wetlands (Conservation and Management) Rules, 2010 to these 2,01,503 wetlands that have been mapped by the Union of

India. The Union of India will identify and inventories all these 2,01,503 wetlands with the assistance of the State Governments which will also bind the State Governments to the effect that these identified 2,01,503 wetlands are subject to the principles of Rule 4 of the Wetlands (Conservation and Management) Rules, 2010, that is to say:

4.(1)(i) reclamation of wetlands;

...
(vi) any construction of a permanent nature except for boat jetties within fifty meters from the mean high flood level observed in the past ten years calculated from the date of commencement of these Rules;

Thus, the present construction took place in 2015-2016 and will be covered by this decision and must be removed.

17. In light of the above orders as well as the rules framed under the Wetlands (Conservation and Management) Rules 2017, it is submitted that the illegal construction within the Dhamapur wetland is therefore liable to be demolished.

Hon'ble Supreme Court in Mantri Techzone Pvt. Ltd. v. Forward Foundation reportedin 2019 (18) SCC 494while directing for the demolition of illegal constructions within wetlands, had ordered for the restoration of the area to its original condition. The Hon'ble Supreme Court has held that this Hon'ble Tribunal is has wide powers of restoration and all orders must be 237 governed by the principles in Section 20 for taking restorative measures for the environment: —42. The Tribunal also has jurisdiction under Section 15(1)(a) of the Act to provide relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in Schedule I. Further, under Section 15(1)(b) and 15(1)(c) the Tribunal can provide for restitution of property damaged and for restitution of the environment for such area or areas as the Tribunal may think fit. It is noteworthy that Section 15(1)(b) & (c) have not been made relatable to Schedule I enactments of the Act. Rightly so, this grants a glimpse into the wide range of powers that the Tribunal has been cloaked with respect to restoration of the environment. 43. Section 15(1)(c) of the Act is an entire island of power and jurisdiction read with Section 20 of the Act. The principles of sustainable development, precautionary principle and polluter pays, propounded by this Court by way of multiple judicial pronouncements, have now been embedded as a bedrock of environmental jurisprudence under the NGT Act. Therefore, wherever the environment and ecology are being compromised and jeopardized, the Tribunal can apply Section 20 for taking restorative measures in the interest of the environment. 44. The NGT Act being a beneficial legislation, the power bestowed upon the Tribunal would not be read narrowly. An interpretation which furthers the interests of environment must be given a broader reading. (See Kishsore Lal v. Chairman, Employees'

State Insurance Corpn. (2007) 4 SCC 579, para 17). The existence of the Tribunal without its broad restorative powers under Section 15(1)(c) read with Section 20 of the Act, would render it ineffective and toothless, and shall betray the legislative intent in setting up a specialized Tribunal specifically to address environmental concerns. The Tribunal, specially constituted with Judicial Members as well as with Experts in the field of environment, has a legal obligation to provide for preventive and restorative measures in the interest of the environment. … 60…All the offending constructions raised by Respondents Nos. 9 and 10 of any kind including boundary wall shall be demolished which falls within such areas. Wherever necessary dredging operations are required, the same should be carried out to restore the original capacity of the water spread area and/or wetlands. Not only the existing construction would be removed but also none of these Respondents - Project Proponent would be permitted to raise any construction in this zone.

20. When the law protector becomes the law violators, how law will be protected. The basic principle of rule of law is to follow rule/ law and not to break or violate it. For the negligence of those to whom public duties have been entrusted can never be allowed to cause public mischief. Public servants if committing wrong in discharge of statutory functions and later on if it was found not be in accordance with law within the knowledge of the officer concerned then it cannot be said to be the work and duty within the definition of State Act.

21. The action and construction is not only disregard to the law but it is negation of the authority of the State by the public official doing the act and expending the budget in accordance with their wishes. An action specifically punitive action does lie for doing what the legislature has authorized if it is done negligently, carelessly and in violation of the law. Under our Constitution sovereignty vests in the people. Every limb of the constitutional machinery is obliged to be people oriented. No functionary in exercise of statutory power can claim immunity, except to the extent protected by the statute itself. Public authorities acting in violation of constitutional or statutory provisions oppressively are accountable for their behaviour before authorities created under the statute like the commission or the courts entrusted with responsibility of maintaining the rule of law. Each hierarchy in the Act is empowered to entertain a

complaint by the consumer for value of the goods or services and compensation. Any act by any officer in violation of the rules is abuse of power, deliberate maladministration, and perhaps also other unlawful acts causing injury. The servants of the government are also the servants of the people and the use of their power must always be subordinate to their duty of service. A public functionary if he acts maliciously or oppressively and the exercise of power results in harassment and agony then it is not an exercise of power but its abuse. No law provides protection against it. He who is responsible for it must suffer it. Compensation or damage as explained earlier may arise even when the officer discharges his duty mala-fidely and not in accordance with the guidelines, when it arises due to arbitrary or capricious behaviour then it loses its individual character and assumes social significance. Harassment of a common man by public authorities is socially abhorring and legally impermissible. It may harm him personally but the injury to society is far more grievous. Crime and corruption thrive and prosper in the society due to lack of public resistance. Nothing is more damaging than the feeling of helplessness. An ordinary citizen instead of complaining and fighting succumbs to the pressure of undesirable functioning in offices instead of standing against it. Therefore the award of compensation for harassment by public authorities not only compensates the individual, satisfies him personally but helps in curing social evil. It may result in improving the work culture and help in changing the outlook.

22. Absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within clearly defined limits. The Rule of Law means that the decisions should be made by the application of known principles and rules, such decisions should be predictable and the citizens should know where he is. If decision is taken without any

principle or without any rule, it is unpredictable and such decision is the anti-thesis of a decision taken in accordance with the Rule of Law. Even where there is no ministerial duty as above, and even where no recognised tort such as trespass, nuisance, or 36 negligence is committed, public authorities or officers may be liable in damages for malicious, deliberate or injurious wrong-doing. There is thus a tort which has been called misfeasance in public office, and which includes malicious abuse of power, deliberate maladministration, and perhaps also other unlawful acts causing injury.

23. An ordinary citizen or a common man is hardly equipped to match the might of the State or its instrumentalities. That is provided by the rule of law. It acts as a check on arbitrary and capricious exercise of power. The servants of the government are also the servants of the people and the use of their power must always be subordinate to their duty of service. A public functionary if he acts maliciously or oppressively and the exercise of powers results in harassment and agony then it is not an exercise of power but its abuse. No law provides protection against it. He who is responsible for it must suffer it.

24. The matter of protection of identification, production and restoration of waterbodies was taken up by the Principal Bench of this Tribunal in Original Application No. 325 of 2015 and vide order dated 18.11.2020, the Tribunal observed as follows :-

> *"7.* ***Next order of the Tribunal is dated 1.6.2020 on consideration of the report dated 22.05.2020 filed by the CPCB giving information received from some of the States and seeking time on account of COVID situation. The Tribunal extended the time for completion of the action in terms of order dated 25.2.2020 by four months i.e. upto 31.07.2020, instead of 31.3.2020. It was further directed that capacity of the water bodies be increased to utilise surplus rain water and rain water harvesting structures be set up in the sub-watersheds utilizing the***

MGNREGA funds, involving the community at large including the panchayats which action may be coordinated by the District Magistrates, Department of Irrigation and Flood Control, Department of Rural Development/Urban Development/Local Bodies/ Forests/ Revenue etc. On both these aspects, the Tribunal sought report from the CPCB. The operative part of the order dated 1.6.2020 is reproduced below:

"... ....

5. *Having regard to the fact situation noted above, we extend the time for the States to complete action in terms of order dated 25.02.2020 till 31.07.2020. The CPCB may thereafter file its report by 31.10.2020 by e-mail at judicialngt@gov.in preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF.*

6. *However, we wish to add a further direction having bearing on the subject. We have already noted the significance of protection and restoration of water bodies for the environment. The protection of water bodies not only add to availability of water for different purposes, it also contributes to recharge of ground and maintaining e-flow in the rivers, is congenial to micro climate in sub-watersheds as well as enhancing the natural aesthetics. While the rain water harvesting is certainly important,* ***harvesting surplus water during excessive rains from any areas of catchment needs to be optimized by enhancing the capacity of the existing ponds/water bodies, creation of water harvesting structures in the sub-watersheds to the extent possible, apart from setting up of additional water bodies/water harvesting structures wherever viable, utilizing available funds including under MGNREGA and involving the community at large at every level.*** *Gram Panchayats can certainly play a significant role in the matter. Once adequate capacity enhancement of waterbodies takes place, excess flood/rain water can be channelized by using appropriate water harvesting techniques. This action needs to be coordinated by the District Magistrates in coordination with the Department of Irrigation and Flood Control or other concerned Departments such as Department of Rural Development / Urban Development / Local Bodies / Forests / Revenue etc. The District Magistrate may as far as possible hold a meeting of all the stakeholders for the purpose as per the District Environment Plan or Watershed Plan within*

one month from today. The District Magistrates may also ensure that as far as possible atleast one pond/water body must be restored in every village, apart from creation of any new pond/water body."

12. Part B of the report deals with the status of rain water harvesting systems. The report mentions that meetings of joint Committee comprising the CPCB and the Ministry of Jal Shakti were held to comply with the directions of this Tribunal. Information was sought from all the States/UTs. Only 25 States/UTs have provided information. The information has been compiled as follows:-

- *As regards provisions for Rain Water¬ Harvesting in Building Bye- laws, 11 States viz. Arunachal Pradesh, Haryana, HP, Karnataka, Madhya Pradesh, Maharashtra, Meghalaya, Odisha, Punjab, Tamil Nadu, Tripura and 3 UTs viz Delhi, J&K, Puducherry have provisions for RWH in Building Bye-laws. Two States viz. Assam and Mizoram have communicated that there are no provisions for RWH in Building Bye-laws yet.*
- *Multiple organizations are implementing Rain¬ Water Harvesting in the States /UTs.*
- *None of the States/UTs have provided time¬ frame for installation of Rain Water Harvesting structures on all Government and Private buildings that require Rain Water Harvesting systems/structures in accordance with Building Bye-Laws."*

19. As regards, report of the CPCB on the subject of rain water harvesting, it appears that CPCB has not appreciated the direction of this Tribunal on the subject. While rain water harvesting may be required in all buildings and other places in urban areas, in the present context, the Tribunal has directed setting up of such facilities in sub water sheds along ponds for utilization of surplus rain water for restoration of the ponds which have become dry and for augmenting other ponds.

25. Learned Counsel for the applicant has argued that in view of the provision as contained in Section 57 Madhya Pradesh Land Revenue Code the entire land of water body, minerals etc. are the property of the

State Government. The State Government is the owner of the land including water bodies and the Municipal Corporation was not competent to take any decision to construct commercial shops or residential buildings on and around the said water body. He has also taken reliance on the judgement of the Hon'ble the Madhya Pradesh High Court in Sukchain vs. the State of Madhya Pradesh decided on 20.09.2017 (High Court of Madhya Pradesh at Jabalpur in Writ Petition No. 1377/2016). The relevant portions are quoted as below:

> "14. ***This is a case where Gram Sabha and petitioners on the strength of Article 243(A) and Sections-5(A) and 7 of the 41 Adhiniyam, trying to justify the resolution and construction of shops at the pond whereas Government's stand is that said provisions do not confer any such licence to Gram Sabha to construct the shops at the pond***. *This interesting conundrum can be best defined in the words of Justice K.K. Mathew:*
>
> > *"The major problem of human society is to combine that degree of liberty without which law is tyranny with that degree of law without which liberty become licence; and the difficulty has been to discover the practical means of achieving this grand objective and to find the opportunity for applying these means in the ever shifting tangle of human affairs."*
>
> *[see- 'Legends in Law', Page 372, Universal Publication]*
>
> *15. Before dealing with rival contentions, it is apposite to refer the relevant portion of Sections-5-A and 7 of the Adhiniyam: Section-5-A. Constitution and incorporation of Gram Sabha.- There shall be a Gram Sabha for every village. The Gram Sabha shall be a body corporate by the name specified therefor having perpetual succession and a common seal and shall by the said name sue and be sued and shall subject to the provisions of this Act and the rules made there under have power to acquire, hold and dispose of any*

property movable or immovable, to enter into contract and to do all other things necessary for the purpose of this Act."

Writ Petition No.1377 of 2016.

[Section-7. Powers and functions and Annual meeting of Gram Sabha. - (1) Subject to the rules, which the State Government may make in this behalf, and subject to the general or special orders, as may be issued by the State Government from time to time, the Gram Sabha shall have the following powers and functions, namely,- (j-ii) to manage natural resources including land, water, forests within the area of the village in accordance with provisions of the Constitution and other relevant laws forthe lime being in force;

(j-iii) to advise the Gram Panchayat in the regulation and use of minor water bodies;

(l) construction, repair and maintenance of public wells, ponds and tanks and supply of water for domestic use;

(m) construction and maintenance of sources of water for bathing and washing and supply of water for domestic animal;

(o) construction, maintenance and clearing of public streets, latrines, drains, tanks, wells and other public places;

(p) filling in of disused wells, unsanitary ponds, Pools ditches and pits and conversion of step wells into sanitary wells;

[Emphasis supplied]

16. As noticed, the constitutional provision and Sections-5-A and 7 of the Adhiniyam in no uncertain terms makes it clear that powers and functions of Gram Sabha are not absolute in nature. Such powers and functions are subject to the provisions of local laws and general instructions/orders issued by the Government. The State legislature introduced Madhya Pradesh Gram Panchayat (Registration of Coloniser Terms & Conditions) Rules, 1999 (hereinafter called as 'Rules of 1999'). Rule 2(i) describes 'Competent Authority' which means such Sub Divisional Officer who has jurisdiction over Gram Panchayat concerned. Rule 2(d) defines

'Coloniser'. This definition is wide enough to include the activity of converting any land including agricultural land into plots and action to transfer such plots to the persons desirous to construct residential or non-residential or group housing etc. The Rules of 1999 further provide the methodology for the purpose of registration etc. As per these rules, the Government has made attempt to ensure that even land situated in a Panchayat is regulated by way of statutory rules. Section-57 of Madhya Pradesh Land Revenue Code reads as under:

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"57. State ownership in all lands.-(1) All lands belong to the State Government and it is hereby declared that all such lands, including standing and flowing water, mines, quarries, minerals and forests reserved or not, and all rights in the sub-soil of any land are the property of the State Government:

[Provided that nothing, in this section shall, save as otherwise provided in this Code, be deemed to affect any rights of any person subsisting at the coming into force of this Code in any such property.] (2) Where a dispute arises between the State Government and any person in respect of any right under subsection (1) such dispute shall be decided by the [State Government].

[Emphasis supplied]

17. As per this provision, the legislature has declared that not only the lands but all such things including -(a) standing and flowing water, (b) mines, (c) quarries, (d) minerals, (e) forest reserved or not and (f) all rights in the sub-soil of any land, shall be the property of the State Government.

In exercise of power under Section-172 of the said Code, rules regarding diversion of land for building purposes were notified by

notification No.1183-(VIII)-63, 03.05.1963. Rules 7 of these rules reads as under:

> *"7. If any portion of the land included in a holding is occupied by a public road or public tank for irrigation or any nistar purposes or is being used by the general public for any kind of nistar, permission to divert it to any other purpose except agriculture shall not be granted, unless the road or tank thereon has ceased to exist or to meet the convenience of the public, or the land is no longer required for a public purpose.* ***Permission to divert the remaining portion of the holding may be granted, subject to the condition that such diversion shall not adversely affect the use and utility of the excluded portion as above. Explanation.- For the purpose of this rule "Public tank"*** *shall not include a tank which is used only for irrigation of land in the sole occupation of the Bhoomiswami in whose holding the tank lies."*

18. A careful reading of this provision shows that if a public tank is being used for the purpose of nistar etc. by general public, permission for its diversion can be granted only for the purpose of agriculture. Thus, the Government has taken pains to ensure that pond/water bodies are properly preserved.

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19. Reverting back to Section-7 of the Adhiniyam, on which great emphasis was laid by Shri Trivedi, it is apposite to mention that clause (j-ii) provides that in order to manage natural resources, the necessary powers can be exercised. Interestingly, we 'manage' something which is precious to us. We manage our family, finance, property, resources etc. ***Thus, the word 'manage' in the context it is used, shows an endeavour to keep, preserve and protect the natural resources including the pond.*** *In Black's Law Dictionary the word 'manage' is defined as 'to control and direct', 'to administer', 'to take charge of' etc. Almost similar meaning is given to this word in Webster's Comprehensive Dictionary and P. Ramanatha Aiyar's Law Lexicon. This is golden rule of interpretation that 'interpretation must depend on the text and the*

context'. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statue is best interpreted when we know why it was enacted. (See 1987 (1) SCC 424 [Reserve Bank of India Vs. Peerless General Finance and Investment Company Limited & others]). It is equally well settled that adopting the principle of literal construction of the statue alone, in all circumstances without examining the context and scheme of the statue, may not subserve the purpose of the statue. In the words of V.R.Krishna Iyer, J., such an approach would be 'to see the skin and miss the soul'. Whereas, 'the judicial key to construction is the composite perception of deha and dehi of theprovision'. (See 1977 (2) SCC 256 [The Chairman, Board of Mining Vs. Ramjee] followed in 2013 (3) SCC 489 [Ajay Maken Vs. Adesh Kumar Gupta and another]).

20. Thus, in my view, the word 'manage' cannot be read in the manner suggested by the petitioners. A combined reading of aforesaid reproduced clauses of Section-7 shows that the legislative intention behind it is to preserve and protect the water bodies/tanks. I am unable to hold that Gram Sabha has any unfettered/unbridled power to 'manage' its water bodies in the manner it likes. The preservation of water bodies is the constitutional mandate and the statutory duty of the Gram Sabha.

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21. On more than one occasion, the Courts have expressed their concern for preservation of water bodies. In 2001 (6) SCC 496 [Hinch Lal Tiwari Vs Kamla Devi], the Apex Court considered Section-117 of U.P. Zamindari Abolition and Land Reforms Act, 1950. As per said provision, certain powers were given to the Gaon Sabhas and other local Authorities. While interpreting the said provision, it was held that it is difficult to sustain the order of the High Court. There exists a concurrent finding that a pond exists and

the area covered by it varies in the rainy season. In such a case, no part of it could have been allotted to anybody for construction of house building or any allied purposes.

22. The judgment of Hinchlal Tiwari (supra) was again considered in 2011 (11) SCC 396 [Jagpal Singh Vs State of Punjab]. In addition, the judgment of Madras High Court reported in 2005 (4)CTC 1 (MAD) [L. Krishnan Vs State of T.N.] was considered and it was held that the Court will pass a similar order as it was passed in Hinchlal Tiwari and L. Krishnan (supra). A Division Bench of this Court also expressed its concern about conservation of water and natural resources in 2011 (2) MPLJ 618 [Rinkesh Goyal Vs State of Madhya Pradesh]. Pertinently, it was a PIL in which necessary directions as under were issued.

"10. In this view of the matter, this petition is disposed of with the following directions:-

(1) That, in each divisional level a Committee be constituted under the chairmanship of Revenue Commissioner of the division to monitor the effective implementation of the water conservation schemes introduced by the Government for the aforesaid purpose.

(2) The Committee shall also ensure that there should not be any encroachment over the land of ponds, tanks and lakes, and if, there is any encroachment that be removed immediately.

(3) The State Government shall take effective steps in regard to water harvesting and ground water level management so the problem of reducing the level of ground water could be tackled.

(4) A copy of this order be sent to the Chief Secretary of the State and also the Secretary, Revenue Department of the State."

[Emphasis supplied]

Writ Petition No.1377 of 2016. 23. In 2006 (1) SCC 1 [T.N. Godavaraman Thirumulpad Vs. Union of India & others] the Apex Court poignantly held as under: "Natural, resources are the assets of the entire nation. It is the obligation of all concerned, including the Union Government and State Governments to conserve and not waste these resources. Article 48-A of the Constitution requires that the State shall endeavour to protect and improve the environment and to safeguard the forest and wildlife of the country. Under Article 51-A, it is the duty of every citizen to protect and improve the natural environment including forest, lakes, rivers and wildlife and to have compassion for living creatures."

[Emphasis supplied]

24. In the same judgment, the Supreme Court held that we are trustees of natural resources which belong to all including the future generation as well. The public trust doctrine has to be used to protect the right of this as also the future generation.

25. Similarly, a Division Bench of Madras High Court presided over by Markandey Katju, CJ and F.M. Ibrahim Kalifulla, J. (as their Lordships' then were) in 2005 SCC Online Mad 438 [L. Krishnan Vs. State of T.N] considered the need of protecting water bodies. After considering Articles 21, 47, 48-A and 51-A (g) of Constitution, it was held that the State has to protect and improve the environment. It has to safeguard the forest, lakes, rivers and wildlife. The 'precautionary principles' makes it mandatory for the State Government to anticipate, prevent and attack all of environmental degeneration. The Madras High Court followed the judgment reported in 1997 (3) SCC 715 [M.C.Mehta Vs Union of India] and came to hold that we have no hesitation in holding that in order to protect the two lakes from environmental degradation, it is necessary to limit the construction activity in close vicinity of

lakes. This finding is based on para-10 of the judgment of Supreme Court in the case of M.C. Mehta (supra). In 2015 SCC Online Utt 1829 [Tahseen Vs. State of Uttarakhand and others] Alok Singh, J. held as under:-

> *"What we have witnessed since Independence, however, is that in large parts of the country this common village land has been grabbed by unscrupulous person using muscle power, money power or political clout, and in many States now there is not an inch of such land left for the common use of the people of the village, though it may exist on paper. People with power and pelf operating in villages all over India systematically encroached upon communal lands and put them to uses totally inconsistent with their original character, for personal aggrandizement at the cost of the village community. This was done with active connivance of the State authorities and local powerful vested interests and goondas. This appeal is a glaring example of this lamentable state of affairs.*
>
> *[Emphasis supplied]*
>
> *At the cost of repetition, it is apposite to remember* ***that the Apex Court, in no uncertain terms, clarified that construction activity even in the close vicinity of the lakes; is impermissible. Resultantly, the High Court directed the Authorities to remove encroachments and restore the water body in its original form****.*

26. In 2013 SCC Online P&H 10564 [Jagdev Singh Vs. State of Punjab & Haryana and others], the High Court followed the ratio decidendi of Hinchlal Tiwari (supra) and opined that the Gram Panchayat which has a statutory obligation to ensure that water bodies are not diverted for any other use and further to ensure that these water bodies are protected, cleaned and recharged, it cannot be allowed to use a part of it for installation of a statue of a resident

of the village. A Division Bench of Calcutta High Court in 2013 SCC Online Cal 1060 [Sandhya Barik & others Vs. State of West Bengal & others] expressed its view that this is bounden duty of panchayat and other authorities to prohibit such construction and said property cannot be alienated or permitted to be destroyed in any manner. No construction can be permitted over such water body. Construction, if any, which have been made by any person, the respondent cannot claim equity. Even if any sanction is granted with regard to construction over the canal, the same is illegal and void. It was further directed that if there exists any encroachment on water body, appropriate action must be taken for clearing the encroachment made over the canal. The public trust doctrine expounded by Supreme Court in M.C. Mehta was followed by Calcutta High Court in Sandhya Barik (supra).

27. ***Indisputably, in the instant case, the Gram Sabha took a decision to construct shops on the periphery (esM-) of the pond. In view of constitutional scheme, public trust doctrine and object engrained in Section-7 of the Adhiniyam, Gram Sabha cannot take any decision or pass resolution to raise construction either by disturbing the water body or on the periphery(esM-) of the water tank. In M.C. Mehta (supra), such action was clearly disapproved by Supreme Court. The common string in the judgments referred hereinabove is that herculean efforts should to be made to protect the water bodies. Such bodies are required to be protected from greedy politicians and persons****. Ancient poet Rahim said:*

रहिमन पानी राखिए, बिन पानी सब सून । पानी गये न उबरे मोती, मानुष, चून ।।

Meaning thereby:

Water is most important. As without water, there is no wealth (pearls), life or earth.

28. Interestingly, in Jagpal Singh (supra), the Apex Court with pains recorded that 'our ancestors were not fools'. They knew that in

certain years, there may be droughts or water shortages for some other reasons, and water was also required for cattle to drink and bathe in etc. Hence they built a pond attached to every village, a tank attached to every temple etc. These were their traditional rain water harvesting methods, which, served them for thousands of years. With great concern, Apex Court emphasized that the ponds are now a day's auctioned of at throw away prices to businessmen for fisheries in collusion with Authorities/ Gram Panchayat Officials, and even this money collected from these so called auctions are not used for the common benefit of the villagers but misappropriated by certain individuals. The time has come when these malpractices must stop.

29. In the considered opinion of this Court, neither Constitution nor the Adhiniyam gives any unbridled/unfettered power and discretion to Gram Sabha to raise construction at or on the periphery (esM-) of the pond. Thus, argument of petitioners in this regard must fail. The judgments of Rajendra Shankar Shukla and S.N. Chandrashekhar (supra) have no application in the facts and circumstances of this case. Any autonomy 49 given by the Constitution or by the Adhiniyam needs to be tested on the anvil of enabling provision. When impugned action was tested on the anvil of such enabling provision, the said action was not found to be in consonance with the enabling provisions nor such action can be said to be in larger public interest. At this stage, it is apt to remember the words of Douglas, J. (in United States Vs. Winderlince [1996 L. Ed. 113:342 US 98 (1951)]) 'Law has reached its finest moments when it has freed man from the unlimited discretion of some ruler.....where discretion is absolute, man has always suffered'. The Apex Court followed this principle in 2012 (10) SCC 1[Natural Resources Allocation In Re, Special Reference No.1 of 2012] and expressed that it is in this sense that the rule of law may be said to be the sworn enemy of caprice. Discretion, as

Lord Mansfield stated it in classic terms in Wilkes, (ER p. 334): Burr at p.2539 means sound discretion guided by law. It must be governed by rule, not by humour: it must not be arbitrary, vague and fanciful.

Article 343-A read with Section-7 of the Adhiniyam makes it clear like noon day that law makers have taken care of this aspect and ensured that unfettered and uncanalized discretion or power is not given to Gram Sabha in the matter of exercise of their power and functions. The powers and functions are subject to the provisions of law and its interpretation by the Courts*.*

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30. The reliance was placed by petitioners on the case of 2008 (3) MPLJ 617 [Prathmik Om Sai Gramin Mahila Bahuddeshiya Sehkari Samitie Maryadit Vs. Sub Divisional Officer, Baihar and other]. This judgment was relied upon to bolster the submission that if the complainants/private respondent was aggrieved by decision of Gram Sabha, the proper course was to assail the said resolution as per the procedure laid down in Section- 7(H) of the Adhiniyam. In view of relevant provision of the Constitution, Adhiniyam and Rules made under the ***Adhiniyam and Land Revenue Code, the Gram Sabha was not justified in taking the decision to construct shops on the periphery (esM-) of the pond. In view of settled legal position, this Court has no scintilla of doubt that the Gram Sabha has exceeded its authority while passing such resolution. In that case, it is not necessary to relegate the complainant/party to avail alternative remedy as per Section 7(H) of the Adhiniyam. Since resolution is passed by exceeding 50 jurisdiction/authority, it will not be proper to compel the complainant to go through the procedural technicalities of law. The action of Gram Sabha also runs contrary to public trust doctrine. Thus, such resolution and***

further action based there upon cannot be permitted to stand.

31. As noticed, in the present case, the learned Collector has taken decision on the basis of directions issued by this Court in a Public Interest Litigation. It is important to note here that Punjab & Haryana, Madras and Calcutta High Courts have entertained Public Interest Litigation and issued necessary directions for preservation of water bodies. M.P. High Court in Rinkesh Goyal (supra) also entertained a PIL and issued necessary directions.

Since the impugned order is passed as per the directions issued in PIL, it cannot be said that said order is without jurisdiction or without authority of law.

32. So far the contention of the petitioners regarding two different reports of Revenue Authorities regarding (report of partwari and demarcation report) encroachment on the pond is concerned, I do not find much substance in the said argument. True it is that the order of Tehsildar is based on the report of Patwari and as per Patwari's report, the shops are being constructed by making encroachment in the pond whereas Revenue Inspector gave a different report stating that the construction has been made on the periphery (esM-) of the water body. In view of clear principles laid down in M.C. Mehta, permission of construction even in the close vicinity of water bodies is impermissible. In the present case, as per the petitioners own claim, the shops are being constructed on the periphery (esM-) of the lake. Thus, it is clearly done in the close vicinity of the lake. Thus, contradiction (if any) in the report of Patwari and Revenue Inspector is of no help to the petitioners.

33. In view of foregoing analysis, the resolution of Gram Sabha regarding construction of shops in the periphery (esM-) of pond cannot be countenanced. The said action runs contrary to the relevant provisions and law laid down by the Courts. Thus, no fault can be found in the impugned order.

34. Before parting with the matter, I deem it apposite to direct the State Government and the concerned Collector to ensure that all such constructions/encroachments are removed. The official respondents shall remove such constructions and encroachments and file a compliance report before this Court within 60 days. It shall be the duty of respondents to restore water pond to its original shape and condition and preserve it as per the constitutional mandate."

26. Hon'ble the High Court while disposing the various Writ Petitions has directed the Collector to ensure that all such construction encroachments are removed. The officer respondent shall remove such constructions and encroachments and file a compliance report within Sixty days and it shall be the duty of respondent to restore water pond to its original shape and condition and preserve it as for the Constitution mandate. In view of the Constitution Provisions, Adhiniyam and the Rules and Governments Orders issued under the Adhinyam and Land Revenue Code, the Municipal Corporation is not justified in taking the decision to construct the commercial shops on the periphery of the pond. In view of settled legal position this Tribunal has scintilla of doubt that the corporation has exceeded its authority while passing such resolution. The action of Corporation runs contrary to public trust doctrine. It is to be noted that any autonomy given by the Constitution or by Adhiniyam needs to be tested on anvil of enabling provisions. When impugned action was tested on the anvil of such enabling provisions, the said action was not found to be inconsonance with the enabling provisions nor such action can be said to be in a larger public interest.

27. Learned Counsel for the respondent has submitted that the said pond has lost its nature because of the encroachments and some beautifications measures there initiated, In reply, thereof, the applicant has argued that the respondent has clearly admitted in writing as well

as in the arguments that the area under question was recorded as pond and this was made subject matter of encroachment for commercial use. Decision in accordance with Master Plan does not create any right in the favour of the Municipal Corporation an example has been raised by the Learned Counsel for the applicant that by including the area or any other area within the Master Plan for commercial purpose can never be permitted by Law and the Municipal Corporation has no authority to convert the property of the public purposes, as commercial purposes specially in light of the order of Hon'ble the Supreme Court with regard to water body. It must be protected for meeting out the crisis of water and also for reasons that it is the public property and shall always be used for the public purposes.

28. The contention of the learned counsel for the respondent that the municipal corporation is sole authority to decide to do in accordance with their own wishes for beautification of the pond, the supremacy of the Constitution and the supremacy of the state shall frustrate. Municipal Corporation cannot act as a State within State. State of MP is soul authority to have control over the public property and the public property which is in nature of public use cannot in general circumstances be converted for other purposes unless and until it is in the interest of the public and the nation, specifically the nature of the waterbodies can never be permitted to be used for commercial purposes.

29. A similar matter was raised before this Tribunal in Original Application No. 128/2017 (CZ) titled as *Suvidha Seva Sansthan Vs. State of Madhya Pradesh* & Ors. and the Tribunal observed.....

> "37. The conduct of the municipal corporation clearly shows the abuse of power, and if the respondent municipal corporation have committed a wrong in occupying the public land, they cannot be permitted to take the benefit of thereown wrong. It has been clearly held in the case G.S. Lamba & Ors. Vs. Union of India & Ors. AIR 1985 Supreme Court 1019 and

in T. Shrinivasan Vs. T. Varalaxmi (1998)3 SCC 112, that a person approaching the judicial forum has to satisfy that his conduct was lawful otherwise his contention cannot be taken into account. It is settled law when a person approaches in court of equity, he should approach the court not only with clean hands but also with clean minds, clean heart, clean objective. Judicial process should never become an instrument of appreciation or abuse or a means in the process of the court to suvert justice. No litigant has right to unlimited draught on a court time and public money in order to get his affairs settled in the manner he wishes, easy access to justice should not be misused as a licence to file misconceived and frivolous petitions and submissions. On the one hand, the municipal corporation clearly admits that it is in the nature of pond further admits that it is the property of the State but on the ground of Panchayat the contention of the learned counsel for the respondent is that the assets and liabilities of the Panchayat was transferred to the Municipal Corporation. The contention is totally baseless. Since the property waste in the State of Madhya Pradesh, Nagar Panchayat or Municipal Corporation can never be the sole owner of the property which has been recorded as a public property in the name of the State of Madhya Pradesh. Nature of the property which is recorded as pond will not be changed unless and until policy is taken by the Government. Further, in light of the decisions as referred above and various other pronouncements the nature of the waterbody should not generally be changed. It is a legal duty of the local administration/municipal corporation to protect the property and not to damage it or to convert for a commercial purposes. By change of use from pond to commercial complex the property which was in nature of pond, was not only misused but it was damaged. It can never be said a beautification work. On the name of beautification work, commercial complex and residential complex has been constructed by the Municipal Corporation which cannot said to be protection of the pond.

38. We are surprised to hear the argument that the property in question which is recorded in the name of the State of Madhya Pradesh and is nature of pond is alleged to be the property of municipal corporation and further with the argument that the municipal corporation has decided to

change the nature of the pond and on this imaginary illusion multi-storey building has been constructed. Where the orders of the Hon'ble Supreme Court and the Hon'ble High Court are sought to be violated or thwarted with impunity, the Court/Tribunal cannot be a silent spectator in such extraordinary situation. This Tribunal cannot pass any order which is contrary to law or which gives anyway any power to any authority curtailing the power of the State Government. The contention that the property which is vested in the State of Madhya Pradesh, by virtue of internal resolution it is vested in the municipal corporation is baseless. The resolution does not create any right of ownership in favour of the Municipal Corporation. This Tribunal is required to enforce the rule of law and not to pass any order or direction which is contrary to what has been injected by law."

30. The reliance has been placed by the learned counsel on Susetha vs. State of Tamilnadu decided on 08.08.2006 by Hon'ble Supreme Court of India, Appeal (Civil) No. 3418 of 2006 (AIR 2006 SC 2893). The relevant portion are quoted below :

"*Drawing our attention to a decision of the Division Bench of the Madras High Court in L. Krishnan v. State of Tamil Nadu, AIR (2005) Madras 311,* ***it was argued that the State Government was enjoined with a duty to preserve the tank by taking all possible steps both by way of preventive measures as well as removal of unlawful encroachments and not to use the same for commercial purpose."***

"Concededly, the water bodies are required to be retained. Such requirement is envisaged not only in view of the fact that the right to water as also quality life are envisaged under Article 21 of the Constitution of India, but also in view of the fact that the same has been recognized in Articles 47 and 48-A of the Constitution of India. Article 51-A of the Constitution of India furthermore makes a fundamental duty of every citizen to protect and improve the natural

environment including forests, lakes, rivers and wild life. [See Animal and Environment Legal Defence Fund v. Union of India and Ors., AIR (1997) SC 1071; M.C. Mehta (Badkhal and Surajkund Lakes Matter v. Union of India and Ors., [1997] 3 SCC 715 and Intellectuals Forum, Tirupathi v. State of A.P. and Ors., [2006] 3 SCC 549.

Maintenance of wetlands was highlighted by the Calcutta High Court in People united for better living in Calcutta - Public and Anr. v. State of West Bengal and Ors., AIR (1993) Cal. 215, observing that the wetland acts as a benefactor to the society.

Recently, in T.N. Godavaraman Thirumulpad (99) v. Union of India and Ors., [2006] 5 SCC 47, this Court again highlighted the importance of preservation of natural lakes and in particular those which are protected under the Wild Life (Protection) Act, 1972.

We may, however, notice that whereas natural water storage resources are not only required to be protected but also steps are required to be taken for restoring the same if it has fallen in disuse. The same principle, in our opinion, cannot be applied in relation to artificial tanks.

In L. Krishnan (supra), the Division Bench of the Madras High Court had been dealing with natural resources providing for water storage facility and in that view of the matter ***the State was directed to take all possible steps both preventive as also removal of unlawful encroachments so as to maintain the ecological balance.***

The matter has also been considered at some details by this Court in Intellectuals Forum, Tirupathi (supra), wherein again while dealing with natural resources, it was opined:

"This is an articulation of the doctrine from the angle of the affirmative duties of the State with regard to public trust, Formulated from a negatory angle, the doctrine does not exactly prohibit the alienation of the property held as a public trust. However, when the state holds a resource that is freely available for the use of the public, it provides for a high degree of judicial scrutiny on any action of the Government, no matter how consistent with the existing legislations, that attempts to restrict such free use. To properly scrutinize such actions of the Government, the Courts must make a distinction between the government's general obligation to act for the public benefit, and the special, more demanding obligation which it may have as a trustee of certain public resources." [Emphasis supplied] This Courts have not, in the aforesaid decisions, laid down a law that alienation of the property held as a public trust is necessarily prohibited. What was emphasized was a higher degree of judicial scrutiny. The doctrine of sustainable development although is not an empty slogan, it is required to be implemented taking a pragmatic view and not on ipse dixit of the court.

In Bombay Dyeing & Mfg. Co. Ltd. (3) v. Bombay Environmental Action Group and Ors., [2006] 3 SCC 434, referring to a large number of decisions, it was stated that whereas need to protect the environment is a priority, it is also necessary to promote development stating:

> *"The harmonization of the two needs has led to the concept of sustainable development, so such that it has become the most significant and focal point of environmental legislation and judicial decisions relating to the same. Sustainable development, simply put, is a process in which development can be*

sustained over generations. Brundtland Report defines `sustainable development' as development that meets the needs of the present generations without compromising the ability of the future generations to meet their own needs. Making the concept of sustainable development operational for public policies raises important challenges that involve complex synergies and trade offs."

Treating the principle of sustainable development as a fundamental concept of Indian law, it was opined:

"The development of the doctrine of sustainable development indeed is a welcome feature but while emphasizing the need of ecological impact, a delicate balance between it and the necessity for development must be struck. Whereas it is not possible to ignore inter-generational interest, it is also not possible to ignore the dire need which the society urgently requires."

xx.....xx.....x.....xx

"We would, however, direct the State and Gram Panchayat to see that other tanks in or around the village are properly maintained and necessary steps are taken so that there is no water shortage and ecology is preserved."

31. The philosophy of the judgment as laid-down and quoted above are very much clear that the it is the pious duty of the State and Local Authorities that the tanks and ponds of the villages are properly maintained and necessary steps be taken so that there is no water shortage and ecology is preserved. it is nowhere mentioned, authorizing anybody and everybody to make encroachment on waterbodies anywhere or everywhere.

32. Further in a constitutional framework which is intended to create, foster and protect a democracy committed to liberal values, the Rule of Law provides the corner stone. The Rule of Law is to be distinguished from rule by the law. The farmer comprehence the setting up of a legal regime with clearly define the rules and principles of even application, a regime of law which maintains the fundamental postulates of liberty, equality and due process. The rule of law postulates a law which is answerable to constitutional norms. The law in that sense is accountable as much as it is culpable of exacting compliance. Rule by the law on other hand can mean rule by a despotic law. It is to maintain the just quality the law and its observance of reason that Rule of Law precepts in constitutional democracy rest on constitutional foundation. The conduct of any authority or local administration denying the sovereignty of the State, challenging the power and ownership of the public or the State is not permitted in the Constitution. Local authority or local administration cannot run as a State within the State. Further the rule referred by the learned counsel for the respondent cited above which is of 2006 has clear mandate to protect the ecology and protect the tanks and ponds. It no where permits anybody to encroach the ponds or change the nature from waterbodies to commercial activities. Further, in Hanuman Laxman Arokar case referred above it has been clearly mentioned that the fundamental to the outcome is a quest for environmental governance with a rule of law. The nation is bound to follow the guidelines of Stockholm Conference. The Rule of Law requires a regime which has effective, accountable and transparent institutions. The aim of the environmental Rule of Law and the distension between environmental rule of law and other area of law is a need of being a decision to protect a human health and the environment in the face of uncertainty and the gaps. The protections of waterbodies and natural source of air and water are intended to protect the health of the public, ―we the people which is enshrined in the Constitution of India‖. The

commercial activities cannot be permitted on the cost of the human health. There should be a balance between the two. The Courts and the Tribunals must be able to grant meaningful legal remedies in order to resolve disputes and the enforce environmental law. In Goel Ganga Developers India Pvt. Ltd. vs Union of India (2018) SCC 257 the Hon'ble Supreme Court of India held that when the authorities has violated the law with impunity it cannot be allowed to go Court free and the court awarded the environmental compensation @ 10% of the project cost. Further in the State of Madhya Pradesh vs. Centre For Environmental Protection Research And Development (2020) 9SCC page no. 781 it was held that the National Green Tribunal has a jurisdiction to decide and has power to take remedial actions against the violation of environmental laws.

33. It is to be noted that the right to the people to live in the healthy environment with minimum disturbance of ecological balance and without avoidable hazard to them and to their cattle, homes and agriculture land and undue affection of air, water and environment. It is for the Government for the Nation and not for the Court to decide whether the deposit should be exploited at the cost of ecology and environmental consideration or the industrial requirement should be otherwise satisfied. It may be perhaps possible to exercise greater control and vision over the operation and strike a balance between preservation and utilization, that could indeed be a matter for an expert body to examine and on the basis of appropriate advise, the Government should take a policy decision and formally implement the same and for the purpose it is for the expert committee to examine as to whether the ponds and water bodies can be converted into commercial complex and can these operations be permitted on the cost of environmental damage.

34. On the cost of repetition we may further quote the decisions of Hon'ble Supreme Court in case of N.D. Jayal & Anr. Vs. Union of India & Ors.

reported in (2004) 9 SCC 362 dealing with the matter of Tehri Dam observed as follows:

> "*22. Before adverting to other issues, certain aspects pertaining to the preservation of ecology and development have to be noticed. In Vellore Citizens Welfare Forum v. Union of India, and in M C Mehta v. Union of India, it was observed that the balance between environmental protection and developmental activities could only be maintained by strictly following the principle of' sustainable development.' This is a development strategy that caters the needs of the present without negotiating the ability of upcoming generations to satisfy their needs. The strict observance of sustainable development will put us on a path that ensures development while protecting the environment, a path that works for all peoples and for all generations. It is a guarantee to the present and a bequeath to the future. All environmental related developmental activities should benefit more people while maintaining the environmental balance. This could be ensured only by the strict adherence of sustainable development without which life of coming generations will be in jeopardy.*
>
> *23. In a catena of cases we have reiterated that right to clean environment is a guaranteed fundamental right. May be in different context, the right to development is also declared as a component of Article 21 in cases like Samata v. State of Andhra Pradesh and in Madhu Kishore v. State of Bihar.*
>
> *24. The right to development cannot be treated as a mere right to economic betterment or cannot be limited to as a misnomer to simple construction activities. The right to development encompasses much more than economic well being, and includes within its definition the guarantee of fundamental human rights. The 'development' is not related only to the growth of GNP. In the classic work – _Development As Freedom' the Nobel prize winner Amartya Sen pointed out that the issue of development cannot be separated from the conceptual framework of human right'. This idea is also part of the UN Declaration on the Right to Development. The right to development includes the whole spectrum of civil, cultural, economic, political and social process, for the improvement of peoples' well being and*

realization of their full potential. It is an integral part of human right. Of course, construction of a dam or a mega project is definitely an attempt to achieve the goal of wholesome development. Such works could very well be treated as integral component for development..

25. Therefore, the adherence of sustainable development principle is a sine qua non for the maintenance of the symbiotic balance between the rights to environment and development. Right to environment is a fundamental right. On the other hand right to development is also one. Here the right to _sustainable development' cannot be singled out. Therefore, the concept of 'sustainable development' is to be treated an integral part of 'life' under Article 21. The weighty concepts like inter-generational equity State of Himachal Pradesh v. Ganesh Wood Products, public trust doctrine M C Mehta v. Kamal Nath, and precautionary principle (Vellore Citizens), which we declared as inseparable ingredients of our environmental jurisprudence, could only be nurtured by ensuring sustainable development.

26. To ensure sustainable development is one of the goals of Environmental Protection Act, 1986 (for short 'the Act') and this is quiet necessary to guarantee 'right to life' under Article 21. If the Act is not armed with the powers to ensure sustainable development, it will become a barren shell. In other words, sustainable development is one of the means to achieve the object and purpose of the Act as well as the protection of 'life' under Article 21. Acknowledgment of this principle will breath new life into our environmental jurisprudence and constitutional resolve. Sustainable development could be achieved only by strict compliance of the directions under the Act. The object and purpose of the Act - "to provide for the protection and improvement of environment" could only be achieved by ensuring the strict compliance of its directions. The concerned authorities by exercising its powers under the Act will have to ensure the acquiescence of sustainable development. Therefore, the directions or conditions put forward by the Act need to be strictly complied with. Thus the power under the Act cannot be treated as a power simpliciter, but it is a power coupled with duty. It is the duty of the State to make sure the fulfillment of conditions or direction under the Act. Without strict compliance, right to

environment under Article 21 could not be guaranteed and the purpose of the Act will also be defeated. The commitment to the conditions thereof is an obligation both under Article 21 and under the Act. The conditions glued to the environmental clearance for the Tehri Dam Project given by the Ministry of Environment vide its Order dated July 19, 1990 has to be viewed from this perspective.

137. When natural resources are exploited in a big way for big projects by State with all sincerity and good intentions for general common benefit, social conflicts arise as a natural adverse consequence. Generally the conflicts arise between marginal farmers, peasants and other landless persons who survive on natural resources and those who are better off, rich or affluent and who desire to undertake agriculture and industry. When river projects for dams are undertaken to generate electricity and improve irrigation facilities, conflicts arise between people living up-stream who have to necessarily lose their source of living and habitat and those living down-stream who need water and electricity for their homes, industries and agricultural fields. When such social conflicts between different social groups i.e. up-stream population and down-stream population, between rural population and urban population, between poor surviving on natural resources and others needing natural resources for further development arise what should be the duty and priorities of the State and its authorities who have undertaken the projects? When such social conflicts arise between poor and more needy on one side and rich or affluent or less needy on the other, prior attention has to be paid to the former group which is both financially and politically weak. Such less advantaged group is expected to be given prior attention by Welfare State like ours which is committed and obliged by the Constitution, particularly by its provisions contained in the Preamble, Fundamental rights, Fundamental duties and Directive Principles, to take care of such deprived sections of people who are likely to lose their home and source of livelihood.

53. In the case of M.C. Mehta Vs. Union of India reported in (2004) 12 SCC 166, the Hon'ble Apex Court has held as follows:

> *"45. The natural sources of air, water and soil cannot be utilized if the utilization results in irreversible damage to environments. There has been accelerated degradation of environment primarily on account of lack of effective*

enforcement of environmental laws and non-compliance of the statutory norms. This Court has repeatedly said that the right to live is a fundamental right under Article 21 of the Constitution and it includes the right to enjoyment of pollution- free water and air for full enjoyment of life. (See Subhash Kumar v. State of Bihar)

46. Further, by 42nd Constitutional Amendment, Article 48- A was inserted in the Constitution in Part IV stipulating that the State shall endeavour to protect and improve the environment and to safeguard the forest and wildlife of the country. Article 51A, inter alia, provides that it shall be the duty of every citizen of India to protect and improve the natural environment including forest, lakes, rivers and wildlife and to have compassion for living creatures. Article 47 which provides that it shall be the duty of the State to raise the level of nutrition and the standard of living and to improve public health is also relevant in this connection. The most vital necessities, namely, air, water and soil, having regard to right of life under Article 21 cannot be permitted to be misused and polluted so as to reduce the quality of life of others. Having regard to the right of the community at large it is permissible to encourage the participation of Amicus Curiae, the appointment of experts and the appointments of monitory committees. The approach of the Court has to be liberal towards ensuring social justice and protection of human rights. In M.C. Mehta v. Union of India, this Court held that life, public health and ecology has priority over unemployment and loss of revenue. The definition of 'sustainable development' which Brundtland gave more than 3 decades back still holds good. The phrase covers the development that meets the needs of the present without compromising the ability of the future generation to meet their own needs. In Narmada Bachao Andolan v. Union of India & Ors., this Court observed that sustainable development means the type or extent of development that can take place and which can be sustained by nature/ecology with or without mitigation. In these matters, the required standard now is that the risk of harm to the environment or to human health is to be decided in public interest, according to a "reasonable person's " test. [See Chairman Barton : The Status of the Precautionary Principle in Australia : (Vol. 22) (1998)

(Harv. Envtt. Law Review, p. 509 at p.549-A) as referred to in para 28 in AP Pollution Control Board vs. Prof. M.V. Nayuder.

35. The matter of encroachment on the water bodies was taken up by the Principal Bench of this Tribunal and in Appeal No. 54 of 2018 (heard on 22.06.2021 & uploaded on 30.07.2021) it was observed, as follows:

"292. We know and can take judicial cognizance of the fact that entire country is facing a tremendous scarcity of drinking and potable water almost everywhere and, in fact, it is a global phenomenon. It is this reason which required Regulators/Statutory Authorities to act responsibly for protection of environment and ecology and in particular, wetland/water bodies. They are expected to function in a more responsible and accountable manner and deeper study ought to have been made, before allowing any construction activities in vicinity of a wetland/water body, more so when project site is abutting the wetland itself.

293. Importance of water no one can deny.

294. It cannot be doubted that water though cover three-fourth of earth, still drinking and potable water is in great scarcity. Manmade ventures are the basic cause for this situation. Protection of wetland assumed international importance at very late stage. However, serious concern at global level is writ large from the fact that in 1991, Convention in Ramsar was held only to discuss protection of wetland. Some important wetlands across the world were identified therein. Signatory countries vowed to protect wetland by taking all necessary measures including stringent actions.

295. This is a matter of common knowledge that people residing in urban areas had turned cities into jungles of concrete. Nature has lost its place, healthy and clean environment has been compromised in the name of development. The consequences are air pollution, scarcity of drinking water, extreme heat and cold, lack of raining etc. Earlier's comfortable life in such cities has become a nightmare. Resourceful people are now resorting to other areas on the outskirt or near such cities where they can enjoy proximity with nature. This attempt or desire is nothing but costing heavy to nature. It is a concerted effort by greedy elite class to cause destruction of nature in un-probed areas, which have remained untouched till date, but now are being frequently occupied by them.

296. These constructions near water bodies or forest areas etc. are not as a necessity to provide shelter to homeless needy people or development to economy in general but virtually a part of luxury life for those who can afford. The elite class and its greed, in the name of development, has already destroyed cities and now moving towards the areas, rich in natural flora and fauna including forests, lakes, rivers, streams i.e., different type to water bodies and wetlands. In the name of stay in the lap of nature, in reality they are causing damage and destructing nature.

297. In fact, commercial or residential construction projects do not need vicinity of wetlands or water bodies etc., as a necessity but Promoters/PPs/Developers normally choose such sites so as to increase salability and commercial value of their projects/constructions.

298. Various statutory authorities which were constituted to serve as a watchdog for protection of these places, rich in natural flora and fauna, are not very sincere and serious in protection but working only technically. They are liberal in allowing these activities instead of adopting strict and stringent measures necessary for protection. We can see destruction of Aravalli Hills in National Capital Delhi itself, and disappearance of several small chains of hills in many States. When we come to the garden city of Bengaluru itself, the facts have already been noted that in the past there were hundreds of lakes in the city which are now reduced to just two figures. Most of the lakes have been reclaimed, encroached or otherwise usurped by the so called development activities.

299. The concept of wetlands, as we already said, is not a mere water contained water body but its interface and surrounding i.e., the catchment area/buffer zone/zone of influence etc., which, if allowed to be used for purposes other than wetland connected activities, may erode/damage or extinct the entire wetland itself. Whenever, commercial and other activities i.e., other than what can be termed as activities for protection and preservation of wetlands and its surroundings, are allowed to be taken near or abutting wetland, it has to be ensured that certain area from the periphery of wetland is reserved and no commercial or development activities should be allowed thereon otherwise wetland/water bodies will suffer adversely. How much area should be reserved or be declared non-development area around a wetland/ water body has to be determined looking to various aspects relating to concerned wetland/water bodies. A universal determination may not be proper.

It is true that provisions may be made declaring certain minimum area within which no development activities can be allowed so as to protect wetlands/water bodies but this minimum area is not the maximum and restriction over further area, if any required, will depend upon the nature of wetland/water bodies, its vegetation, flora, fauna and other activities connected therewith which may be found necessary for its protection and preservation. With that view of the matter, in Wetlands (Conservation and Management) Rules, 2010 and 2017, instead of using the term —Buffer Zone, the term —Zone of Influence has been used which is obviously a wider term then —Buffer Zone.

300. When we talk of maintaining greenbelt surrounding a wetland/water body, it does not mean a public recreation place like public park, open space etc. It means a place reserved for natural wetland_s own activities untouched by any PP/Developer for taking it as a part of its project.

301. In Indians sub-continent, with the passage of time, for one or the other reasons or sometimes compelling reasons, when inhabitants were ruled by people from outside Indian sub-continent, the Rulers ignored or missed dictates of Vedic Literature and propagate to the people also. The result is, with passage of time, nature has got worst affected and deteriorated quality and contents significantly.

302. Problem of environment today is a Global phenomenon. The irresponsible and unmindful development has proved an enemy to environment. It has increased pollution everywhere compelling Global leaders to take recourse for protection of environment, if necessary, by framing strict and stringent provisions, but fact remains, that condition of environment today is extremely alarming.

303. In the Tribune 23rd June, 2006, it was published that 70 percent of all available water in India is polluted. Even, Supreme Court realised the pace with which even wetland were eroding and disappearing in ***M.K. Balakrishnan vs. Union of India (Supra)*** *and found need of immediate action. It directed Government of India to apply Rule 4 of Wetlands Rules, 2010 to 2,01,503 wetlands identified and mentioned in —National Wetland Inventory & Assessment, to avoid any further extinction of wetlands.*

304. Therefore, protection of wetlands in all seriousness is a matter of great concern. It cannot be done in a technical or formal manner but require sincere, wholesome and comprehensive effort to protect not

only territorial boundary of water or periphery of wetland but the entire surrounding of wetland necessary for its preservation.

305. When we look into the matter objectively and apprehend what is latent, we have no manner of doubt that any economic activity which is a part of a civic amenity of any particular project cannot be allowed either in a wetland or within its ―Zone of Influence which would include buffer zone also. PP, even if has ownership of some land abutting a wetland, the area of such land of PP which comes within the ―Zone of Influence including buffer zone cannot be allowed to be used or developed for the purpose of the Project. It has to be left as it is, as a part of wetland itself and needs be protected as a greenbelt i.e., only trees etc., can be planted but for that purpose also Horticulture and Forest Expert's opinion has to be obtained so that characteristic of specific flora and fauna of the area is not disturbed and coherence is maintained.‖

36 The Tribunal has also observed the role of the executive for protection of environment and observed as follows :

"320. Before parting, we also intend to place on record that torch bearer for protection of environment in the last about 40 years is only judiciary. Executives primarily have responsibility to preserve, protect and maintain environment as clean and green but unfortunately, treat as enemy to their own notion of development. A lot of seminars, lectures and debates are held in the name of protection of environment by Executives, political and otherwise but on the ground level substantial work is wanting. The Executives feel satisfied sometimes by framing some laws without being serious to the execution and implementation thereof. Statutory Authorities/Regulators who are made responsible for protection of environment and heavily managed by Executives lack will to do, intention to perform and desire to achieve the ultimate goal of protection of environment. Even when orders are passed on judicial side, the real problem comes with regard to implementation and execution of the orders. All excuses and pretext are put forth more to demonstrate difficulties in execution instead of showing any genuine effort towards compliance. Even the concerned departments are not honest to discharge functions in a manner which will promote preservation and protection of environment and ecology. On the other hand, it appears to be taken as a burden and obstruction in development. This approach is neither conducive nor coherent to the concept of sustainable development. Sooner is the better that the Executives understand and show more responsibility and

accountability towards nature and ecology before it is too late rendering the things improbable and impossible to be reversed."

37. If we examine the operative part of the judgment, the Tribunal in the above noted case imposed heavy cost on the authority municipal corporation who allowed construction / alteration of storm water drain passing through the site and also imposed environmental compensation @ 10% of the project cost. Law as laid down by the Hon'ble Supreme Court of India in Goel Ganga Developers India Pvt. Ltd. vs Union of India as quoted above has been regularly followed by the Hon'ble Supreme Court of India in the cases decided later on which has been referred above and also in the latest judgment of the Hon'ble Supreme Court and Principal Bench of this Tribunal.

38. Learned Counsel for the municipal Corporation has distinguished the case of *Hinchlal Tiwari Vs Kamla Devi & Anr.* Civil 4787 of 2001 on the ground that both the cases are of different nature and in the aforesaid case authorities have allotted the plots of pond to 10 different persons whereas in the case at hand pond which has lost its nature has been rejuvenated. The above version as narrated by the municipal corporation makes it clear that the action of the municipal corporation is more serious than the matter in issue in the case of Hinchlal Tiwari Vs Kamla Devi & Anr. In that case atleast the persons who made the encroachment were allotted the land. In the present case Municipal Corporation has firstly violated the law to encroach the waterbody without any authority and with further violating the Constitution of India with negation of the authority of the State. Here the municipal corporation says that the State has no authority over the land in issue and Municipal Corporation is owner. It is total denial of the sovereignty of the State, which cannot be permitted. Further the problem of encroachment cannot be resolved by making further encroachment, which is prohibited by law.

39. It is the pious duty of the Municipal Corporation to make a planning including town planning, planning for economic and social development, roads and bridges, water supply for domestic, industrial and commercial purposes, public health, sanitation conservancy and Solid Waste Management, urban forestry, protection of the environment and promotion of ecological aspects, slum improvement and up-gradation, urban poverty alleviation. Provisions of urban amenities and facilities such as parks, gardens, playgrounds promotion of cultural educational and aesthetic aspects. Cattle ponds prevention of cruelty to animals and public amenities. It is nowhere mentioned that the Municipal Corporation has been directly or indirectly empowered to encroach on the public land or water bodies and to disturb environmental laws.

40. The identification, protection and restoration of water bodies was taken up by the Principal Bench of this Tribunal in Original Application No. 325/2015 and vide order dated 18.11.2020, the Tribunal observed as follows :

> *"5. The Tribunal noted the need for conservation of water bodies throughout India for healthy environment, particularly in the light of judgment of the Hon'ble Supreme Court in Hinch Lal Tiwari v. Kamala Devi & Ors. (2001) 6 SCC 496. The Tribunal observed that under Public Trust Doctrine, the State has to maintain and restore the water bodies. This inter-alia helps availability of water, protection of aquatic life, maintaining micro climate, recharge the ground water and e-flow of the rivers. In view of mandate of law laid down by the Hon'ble Supreme Court and the NGT Act, 2010, the Tribunal directed all States/UTs to take up the task of restoration of the water bodies in their respective jurisdiction and the Chief Secretaries of all States/UTs to oversee the compliance in the course of monitoring compliance of waste management rules and other significant environmental issues for which separate directions were issued by this Tribunal (in OA 606/2018) in the light of directions of the Hon'ble Supreme Court. Further directions of this Tribunal (in OA 673/2018) related to remedial action for abatement of 351 identified polluted river stretches which were also to be monitored by the Chief Secretaries. A Central Monitoring Committee (CMC) comprising Secretary Ministry of Jal Shakti with CPCB and other authorities were to monitor compliance at National level. A status report was*

directed to be compiled and filed by the CPCB. Operative part of order dated 10.5.2019 is reproduced below:

> *"13. Thus, to give effect to _Precautionary' principle and Sustainable Development' principle, we direct all the States and UTs to review the existing framework of restoration all the water bodies by preparing an appropriate action plan. Such action plans may be prepared within three months and a report furnished to the CPCB. The CPCB may examine all such plans and furnish its comments to this Tribunal within two months thereafter. The Chief Secretaries of all the States/UTs in the course of undertaking monitoring exercise in pursuance of the order of this Tribunal in O.A No. 606/2018, Compliance of MSW Rules, 2016, may also include restoration of water bodies as one of the items as the same is also incidental to waste management which are covered by orders in O.A No. 606/2018, Compliance of MSW Rules, 2016.*
>
> *14. The CPCB may prepare and place on its website guidelines in the matter of restoration of water bodies in the light of above order within one month.*
>
> *15. The matter may also be monitored by Central Monitoring Committee constituted in terms of order dated 08.04.2019 in O.A No. 673/2018, News item published in —The Hindu‖ authored by Shri Jacob Koshy titled —More river stretches are now critically polluted: CPCB, as this matter is connected to the steps required for remedying the polluted river stretches as already explained.*

Orders dated 25.02.2020 and 01.06.2020

6. The matter was then considered on 25.02.2020 in the light of the report of the CPCB. The report mentioned that CPCB had issued the necessary guidelines on the subject such as identification and geo-tagging of ponds and lakes, maintaining water quality as per norms and removing encroachments. It was further stated that the States had failed to give proper response and the requisite information. The Tribunal, on consideration, directed as follows:

> *3. In pursuance of the above, the learned counsel for the CPCB has handed over a status report during the course of hearing to the effect that indicative guidelines for restoration of water bodies have been uploaded on the website of the CPCB on 18.06.2019 but most the States have not submitted their action plans. Out of 435 locations monitored, 357 locations were not complying with the primary water quality criteria for bathing.*

CPCB constituted an expert committee vide order dated 28.08.2019 under the Chairmanship of MS, CPCB comprising, representatives of MoEF&CC, MoJS, MoHUA, IIT Delhi, officials of CPCB and DHWQM-I as member convener. First meeting of the expert Committee was held on 16.09.2019. The Tribunal has suggested following actions:

S. No.	***Activity proposed***	***Organization Responsible***
1	*Identification and Geo- Tagging of Ponds or Lakes in the Country*	*NRSA, State Space Application Centre and Concerned State Departments*
2	*Assessment of Water Quality of Ponds or lakes.*	*Through Laboratories approved under E(P) Act, 1986 by the Concerned State Department /ULBs/State Environment Dept./SPCB/PCC.*
3	*Prioritization of Ponds or Lakes for restoration in consultation with the respective SPCB.*	*State Environment Dept./SPCB /PCC.*
4	*Preparation and submission of action plans for restoration of prioritized Ponds or Lakes to CPCB for random scrutiny of proposed action plans.*	*State Environment Dept./SPCB /PCC.*
5	*Execution of approved action plans.*	*State Environment Dept./SPCB /PCC under the overall supervision of Principal Secretary, Environment Department.*

The CPCB conducted a workshop on the subject on 30.01.2020.

4.Learned counsel for the CPCB states that further progress in the matter is being monitored and a status report will be 86 *filed before the next date. It is stated that only 14 States/UTs have furnished information which is not complete while 22 States/UTs have not furnished any information.*

5.Having regard to the significance of the issue and unsatisfactory response of the States as shown above, we direct that the information may be furnished by all the States/UTs by March 31, 2020 positively to the CPCB failing which the States will be liable to pay compensation at the rate of Rs. 1 lakh per month till information is furnished. Payment of compensation will be the responsibility of the Chief Secretaries of the respective States/UTs. ***Since we are informed that plans for***

restoration furnished by some of the States run even upto ten years, we direct that the action plans should provide for commencement of the work by 01.04.2020 and conclusion by 31.03.2021. The CPCB will be at liberty to issue appropriate directions to all the States/UTs by for compliance. The Ministry of Jal Shakti is also at liberty to take further remedial action in the matter."

Today"s proceedings in Original Application No. 325 of 2015 dated 18.11.2020, a report was submitted by CPCB, the relevant abstract is as follows:

8. Accordingly, a consolidated report has been filed by the CPCB on 29.10.2020 in two parts. Part A deals with the aspect of plans for restoration of water bodies and status of their execution while part B deals with the status of compliance of direction relating to water harvesting. The CPCB report points out the need for making a proper and centralized inventory of water bodies, and assessment of their water quality; the absence of a single nodal agency to oversee the management of restoration of polluted water bodies, and water harvesting; and recommends that the relevant Central Ministries, especially MoJS, play an increased and major role in implementation and oversight."

9. We first consider ***part A*** *of the report. It mentions 87 that 24 States mentioned therein have provided information on the subject which has been compiled in Table 1 and 2 as follows:-*

"Based on the information received from the States/UTs, State-wise status on Ponds, Lakes and Restoration of Water Bodies, State-wise Status on Inventorisation, Geo-Tagging, UIN Allocation, Water Quality Assessment, Action Plans for Restoration of Water Bodies Pond compiled and presented at Table 1 and Table 2 below :

Table 1. State-wise Status on Ponds, Lakes and Restoration of Water Bodies

S. No	Name of State/UT	Informati on submitted as Per the format circulated by CPCB	Identified Water Bodies					Status on Restoration of Wate Bodies		
			Lakes	Ponds	Tanks	Others (Pynes/ Aahars/ wells/ Reservoirs etc.)	Total No. of Water Bodies Identified	No. of Water Bodies Selected for Restoration	No. of Water Bodies Restored so far	No. of Water Bodies presently under Restoratio n
1	Andaman & Nicobar	No	-	-	-	-	37	-	-	
	Andhra Pradesh (Panchayati Raj and Rural									

2	Development Department, Municipal Administration & Urban Development (MA&UD) Department, Municipal Administration & Urban Development (MA&UD) Department, Irrigation Department)	No	-		1699	-	13171	9284	6608	781
3	Arunachal Pradesh	-	-	-	-	-	-	-	-	-
4	Assam	Yes	17	14	-	-	31	-	-	-
5	Bihar	Yes		50150		51437	101587		12867	24075
6	Chattisgarh (Department of Panchayat and Rural Development)	Yes	-	-	-	-	1658	68803	271110	-
7	Daman & Diu & Dadra & Nagar Haveli	Yes	1	5		-	6	-	-	-
8	Delhi	Yes	-	-	-	-	256	49	4	-
9	Goa	Yes	9	-	-	-	9	4	- 3	- 153
10	Gujarat	Yes	1939	42119	-	-	44058	156		
11	Haryana	Yes	3	16534	-	-	16537	10794	146	189
12	Himachal Pradesh	Yes	6	-	-	-	6	4	-	4
13	Jammu & Kashmir	No	-	2815	-	-	1230	-	-	-
14	Jharkhand	Yes	-	282	-	-	282	221	4	6
15	Karnataka	Yes	-	-	-	-	33350	-	-	-
16	Kerala	Yes	-	40000	-	-	40000	-	-	-
17	Lakshadweep	Yes	-	297	-	-	297	-	59	238
18	Madhya Pradesh	Yes	-	-	-	-	66438	-	-	-
19	Maharashtra	Yes	-	-	-	-	354	-	-	-
20	Manipur	Yes	4	14	-	-	18	-	-	-
21	Meghalaya	Yes	2	-	-	-	2	1	-	---1 -
22	Mizoram	Yes	9	31	-	-	40	-		-
23	Nagaland	Yes	1	8	-	1	10	2	-	2
24	Odisha	Yes	1	8		2	11	2	1	-
25	Punjab	Yes	-	15715	-	-	15715	600	310	290
26	Puducherry	Yes	84	843	-	-	927	547	321	43
27	Rajasthan	No	-	-	-	-	-	12127	1963	6348
28	Sikkim	Yes	4	-		-	4	4	1	3
29	Tamil Nadu (Public Works Department (PWD), Director of Town Panchayats)	Yes	-	-	-	-	15658	1317	5986	1766
30	Telangana	Yes	-	-	-	-	46531	27631	21436	6195
31	Tripura	Yes	-	180	-	-	180	30	-	26
32	Uttar Pradesh	Yes	-	508	-	-	508	504	84	424
33	Uttarakhand	No	-	-		-	-	-	-	-
34	West Bengal	No	-	-	-	-	15000	-	-	-
		Total	**2080**	**169523**	**1699**	**51440**	**413911**	**132080**	**320903**	**40543**

Table 2. State-wise Status on Inventorisation, Geo-Tagging, UIN Allocation, Water Quality Assessment, Action Plans for Restoration of Water Bodies Pond

S. No	Name of State/UT	Information submitted as per the format circulated by CPCB	Inventory Status as Reported by States/ UTs	Status on Geotagging	Status on UIN Allocated	Statuson Assessment Of Water Quality of Water Bodies in the State	Prioritisation based on Designated Best Use Criteria or Bathing Criteria Compliance	Preparation & Submission of Action Plans	Proposed Timelines for Restoration	Water Bodiesunder the Custody of Concerned Authorities in the State/UT
1	Andaman & Nicobar	No	Yes	No	No	Not Provided	Not Provided	Not required as per A & N UT	Not Provided	Port Blair Municipal Council & Andaman Public Works

										Department.
2	Andhra Pradesh	No	Yes	Yes	No	No	No	No	Not Provided	Panchayati Raj and Rural Development Department ,Irrigation Department, Municipal Administration & Urban Development (MA & UD) Department, Municipal Administratio n and Urban Development (MA & UD) Department,
3	Arunachal Pradesh	No	No	No	No	No	No	Being prepared for 3 lakes	-	Department of Environment & Forest
4	Assam	Yes	Yes	No	No	Yes	No	No	-	Environment and Forest Department, Government of Assam
5	Bihar	No	Yes	Yes	No	No	No	No	-	*Environment*
6	Chhattisga rh	Yes	Yes	Yes	Yes	Not provided	Yes	Yes (Pi lot Project)	-	*Department*
7	Daman & Diu & Dadra & Nagar Haveli	Yes	Yes	No	No	No	No	Yes	Not provided	*Daman Municipal Council, District Panchayat, Daman*
8	Delhi	Yes	Yes	Yes	No	No	No	Yes	-	*DDA,BDO/REV.(PANCHAYAT), EDMC, SDMC, NORTH MCD, DJB, PWD, CPWD, ASI, FOREST, DELHI ARCHAEOLOG1 CL DEPTT., DELHI WAKF BOARD,DUSIB, DSIIDC, JNU and lIT*
9	Goa	Yes	Yes	NO	Not provided	Yes	Yes	Yes	March 2021	*Goa State Wetland Authority (GSWA) ,Goa State Pollution Control Board (GSPCB) ,*
10	Gujarat	Yes	Yes	In Progress	No	No	No	No	-	*Panchayat Department, Revenue Department , Water Resources Department), and Urban Development Department)*

10. The CPCB has observed that the information given by the States/UTs was not scientific. Proper inventories were required to be made. Water quality was required to be monitored. Instead of different departments dealing with the issue, single agency was required to be set up as a nodal agency for restoration of all water bodies in the States/UTs. It was also necessary to constitute Wetland Authority in

every State/UT as per Wetland (Conservation and Management) Rules, 2017. The said authority can be given responsibility for restoration of water bodies or a separate body for the purpose can be set up on a pattern of Haryana, Madhya Pradesh and Mizoram. The Ministry of Jal Shakti can provide assistance in the light of programmes undertaken by the Government of India like AMRUT, Smart City, MGNREGA and other programmes.

11. It will be appropriate to reproduce the observations and suggestions of the CPCB:-

—***2.5 Observations and suggestions of CPCB***

- *23 States & 4 UTs have provided information as per the format circulated by CPCB.*

- *Based on the information received from the States/UTs, there are Lakes- 2,080 (11 States and 2 UTs), Ponds- 1,69,523 (13 States and 4 UTs), Tanks- 1,699 (1 State), Others like pynes, aahars, reservoirs etc. - 1,51,440 (3 States), Total number of water bodies identified as - 4, 13,911 (25 States and 6 UTs), Total number of identified water bodies selected for restoration- 1,32,080 (17 States and 02 UTs), Total number of identified water bodies already restored- 3, 20,903 (13 States and 3 UTs), Total number of identified water bodies presently under restoration- 40,543 (14 States and 2 UTs).*

- *It appears, number of water bodies identified by the States/UTs as reported is not scientific and therefore* ***States/UTs have to carry out proper inventory of water bodies using Geological Survey Maps of India (reconnaissance survey) or using any other available technologies like Remote Sensing****.*

- *For prioritization of all the identified water bodies is possible only after* ***assessment of water quality*** *of all the water bodies. Presently, water quality of water bodies are monitored by the State Water Resources Department /Agricultural Department /Fisheries Department/Public Health Engineering Departments apart from Central Water Commission (CWC), Central Pollution Control Board (under National Water Quality Monitoring Programme).* ***Therefore, all the water bodies to be assessed for water quality for prioritisation and for restoration. Also, there is a need to pool all the water quality data under /NOIA -WRIS Portal under National Water Informatics Centre as it facilitates policy decision****.*

- *Presently, various departments in the States/UTs are custodians of water bodies* ***therefore there is a need that all the States/UTs need to designate a 'single agency' as a nodal agency to ensure restoration of all polluted stagnant water bodies in the respective State/UT in consultation with the concerned departments****. Such a nodal agency also may co-ordinate with the respective State Pollution Control Board (SPCB) in*

the State or Pollution Control Committee (PCC) in the respective UT for ensuring timely compliance to Hon'ble NGT directions in the matter.

- *Presently, States Governments /UT Administrations are required to constitute Wetland Authority in the respective States/UTs under the Wetland (Conservation and Management) Rules, 2017. The wetland authority may be given responsibility of restoration of water bodies or a nodal agency or a separate body may be designated as done incase of Haryana (Haryana Pond Waste Water Management Authority), Madhya Pradesh (The Environmental Planning and Coordination Organization (EPCO) and Mizoram (Irrigation and Water Resource Department).*

- *Presently, water bodies are undergoing restoration of water bodies under the various schemes like financial support of Ministry of Jal Shakti or State schemes (like Mission Kakatiya in case of Telangana). Therefore, Ministry of Jal Shakti being nodal Ministry for Water Resources in the country, there is a need to integrate with the programmes such as 'National Lake Conservation Programme, National Wetland Conservation Programme, Ministry of Water Resources Programmes like 'Repair, Renovation & Restoration of Water bodies with Domestic/External Assistance which are undertaken by Government of India, Central Sector Schemes like AMRUT, Smart City, MGNREGA or any other programmes for restoration of water bodies in the country.*

13. Finally, the CPCB has given following suggestions:-

"7.0 Suggestions

- *As multiple agencies or State Departments/UT Administration Departments are involved in implantation of policies related to Rain Water Harvesting (RWH), information provided by different departments of the State/UT are not corroborating with each other leading to confusion. All the States/UTs shall nominate single Nodal Department for implementation of policies relating to rain water harvesting system.*

- *Every ULBs should have one Rain Water Harvesting cell in place to regulate and monitor the Rain Water Harvesting related activities effectively.*

- *Ministry of Housing & Urban Affairs (MoHUA), Central Ground Water Authority (CGWA) and Department of Water Resources (DoWR), Ministry of Jal Shakti (MoJS) should play a major role in ensuring implementation of policies relating to rain water harvesting in the Country with a mutual co-ordination and for providing requisite guidance and necessary initiatives for ensuring compliance to Hon'ble NGT orders passed in the matter of Tribunal in its Own Motion Vs Government of NCT of Delhi & Ors in OA No. 496/2016 in connection with Rain Water Harvesting and Ground water recharging for water conservation.*

- *Presently, provisions for Rain Water Harvesting (RWH) Systems are incorporated mainly under Building Bye-Laws by the States/UTs/ULBs. There is a need to enact legislation/law by 17 various States/UTs as done by Tamil Nadu to make RWH*
measures mandatory."

Analysis and Directions

16. We find that the steps taken so far can hardly be held to be adequate. As already noted, protection of water bodies serves great public purpose and is essential for protection of the environment. It helps not only aesthetics but also water availability, aquatic life, micro climate, recharge of ground water and maintaining e-flow of the rivers. Under the Public

Trust Doctrine, the State has to act as trustee of the water bodies to protect them for the public use and enjoyment for current and future generations. We may note the observations of the Hon'ble Supreme Court on the subject which are as follows:

i. ***State of T.N. v. Hind Stone, (1981) 2 SCC 205*, at page 212:**

6. Rivers, Forests, Minerals and such other resources constitute a nation's natural wealth. These resources are not to be frittered away and exhausted by any one generation. Every generation owes a duty to all succeeding generations to develop and conserve the natural resources of the nation in the best possible way. It is in the interest of mankind. It is in the interest of the nation.

ii. ***Hinch Lal Tiwari v. Kamala Devi, (2001) 6 SCC 496*, at page 500:**

"13. It is important to notice that the material resources of the community like forests, tanks, ponds, hillock, mountain etc. are nature"s bounty. They maintain delicate ecological balance. They need to be protected for a proper and healthy environment which enables people to enjoy a quality life which is the essence of the guaranteed right under Article 21 of the Constitution."

iii. ***T.N. Godavarman Thirumulpad v. Union of India, (2002) 10 SCC 606*, at page 628:**

....

33. ... As was observed by this Court in M.C. Mehta v. Kamal Nath our legal system based on English common law includes the public trust doctrine as part of its jurisprudence. ***The State is the* trustee of all natural resources which are by nature meant for public use and enjoyment.** The public at large is the beneficiary of the seashore, running waters, air, forests and ecologically fragile lands. **The State as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership**.

iv. ***Intellectuals Forum v. State of A.P., (2006) 3 SCC 549*, at page 574:**

75. In M.C. Mehta v. Kamal Nath & Ors. (1997) 1 SCC 388, Kuldip Singh, J., writing for the majority held:

> *"34. Our legal system ... includes the public trust doctrine as part of its jurisprudence. The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. ... The State as a trustee is under a legal duty to protect the natural resources."*

76. The Supreme Court of California, in National Audubon Society v. Superior Court of Alpine Country also known as Mono Lake case summed up the substance of the doctrine. The Court said:

> *"Thus, the public trust is more than an affirmation of State power to use public property for public purposes. It is an affirmation of the duty of the State to protect the people's common heritage of streams, lakes, marshlands and tidelands, surrendering the right only in those rare cases when the abandonment of the right is consistent with the purposes of the trust."*

This is an articulation of the doctrine from the angle of the affirmative duties of the State with regard to public trust. Formulated from a negatory angle, the doctrine does not exactly prohibit the alienation of the property held as a public trust. However, when the State holds a resource that is freely available for the use of the public, it provides for a high degree of judicial scrutiny on any action of the Government, no matter how consistent with the existing legislations, that attempts to restrict such free use. To properly scrutinise such actions of the Government, the courts must make a distinction between the Government's general obligation to act for the public benefit, and the special, more demanding obligation which it may have as a trustee of certain public resources [Joseph L. Sax —The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention‖ , Michigan Law Review, Vol. 68, No. 3 (Jan. 1970) pp. 471-566]. According to Prof. Sax, whose article on this subject is considered to be an authority, three types of restrictions on governmental authority are often thought to be imposed by the public trust doctrine [ibid]:

1. The property subject to the trust must not only be used for a public purpose, but it must be held available for use by the general public;

2. The property may not be sold, even for fair cash equivalent;

3. The property must be maintained for particular types of use (i) either traditional uses, or (ii) some uses particular to that form of resources."

—…

v. Jitendra Singh v. Ministry of Environment & Ors., 2019 SCC Online 1510 pr 20

"

…. …….

20. …. Waterbodies, specifically, are an important source of fishery and much needed potable water. Many areas of this country perennially face a water crisis and access to drinking water is woefully inadequate for most Indians. Allowing such invaluable community resources to be taken over by a few is hence grossly illegal."

17. In NGT order dated 27.08.2020 in OA 351/2019, Raja Muzaffar Bhat vs. State of Jammu and Kashmir & Ors., it was observed:

"

…… …… ……

34. One of the serious challenges is solid and liquid waste management, apart from encroachments. There are binding directions of the Hon"ble Supreme Court in Almitra H. Patel Vs. Union of India & Ors1. and Paryavaran Suraksha vs. Union of India2 on the subject of scientific management of solid waste and sewage/effluents in accordance with the statutory provisions of the Water (Prevention and Control of Pollution) Act, 1974, („Water Act") Air (Prevention and Control of Pollution) Act, 1981, („Air Act) and waste management rules framed under the Environment (Protection) Act, 1986 („EP Act"). There is large scale non-compliance of the said statutory provisions which

has led this Tribunal to consider the issue of river pollution in OA No. 673/2018, News item published in "The Hindu" authored by Shri Jacob Koshy Titled "More river stretches are now critically polluted: CPCB" in view of acknowledged data of 351 polluted river stretches in the country. Apart from the said issue, large scale failure has been found in the matter of solid waste management as repeatedly recorded in O.A. No. 606/2018. The Chief Secretaries of all the States/UTs were required to remain present in person before this Tribunal for interaction and further planning. In O.A. No. 325/2015, Lt. Col. Sarvadaman Singh Oberoi v. UOI & Ors., the Tribunal has considered the issue of restoration of water bodies. In Original Application No. 593/2017, Paryavaran Suraksha Samiti & Anr. v. UOI & Ors., the issue of untreated sewage or effluent being discharged in water bodies have been taken up for consideration. There are several other matters dealing with the such issues, including coastal pollution, pollution of industrial clusters etc.

35. There is discussion in the media about inadequacy of monitoring of action for restoration of lakes, wetlands and ponds which is certainly necessary for strengthening the rule of law and protection of public health and environment3. Several directions have been issued by the Hon" ble Supreme Court in M.K. Balakrishnan and Ors. v. UOI & Ors."

18. We also note that the Ministry of Urban Development, Government of India, Central Public Health and Environmental Engineering Organization (CPHEEO) has issued an advisory on ***"Conservation and Restoration of Water Bodies in Urban Areas"5*** *in August, 2013 which need to be followed. The matter was also considered by the* Standing Committee on Water Resources (2015-16), Sixteenth Lok Sabha. Its Tenth Report has been published by the Ministry of Water Resources, River Development and Ganga Rejuvenation under the heading **"Repair, Renovation and Restoration of Water Bodies- Encroachment on Water Bodies and Steps Required to Remove the Encroachment and Restore the Water Bodies"6** in August, 2016. Further, the **"Guidelines for the Scheme on Repair, Renovation and Restoration (RRR) of Water Bodies under PMKSY (HKKP)"7** have been published by the Ministry of Water Resources, River Development and Ganga Rejuvenation, Govt. of India in June, 2017. The said report also provides useful material to be looked into by the enforcement agencies.

20. There is, thus, need for continuous planning and monitoring at National, State and District levels. Suggestions and observations of CPCB and the Oversight Committee need to be acted upon.

21. As suggested by the CPCB, a single agency needs to be set up in every State/UTs within one month. This work may either be assigned to the Wetland Authority of the State or the River Rejuvenation Committee or to any other designated authority such as the Secretary, Irrigation and Public

Health/Water Resources. It is made clear that if the State Wetland Authority is to be assigned the task of protection of all water bodies, this task will be in addition to the normal functioning of the State Wetland Authority under the Wetland (Conservation and Management) Rules, 2017. Such nodal agency must call a preliminary meeting on the subject with all the District Magistrates on or before 31.01.2021 to take stock of the situation and to plan further steps. Thereafter, a regular meeting may be held for periodic monitoring at the District level as well as the State level with the identified targets of proper and scientific identification and protection of all water bodies, assigning unique identification number, removing encroachments, preventing dumping of waste, maintaining water quality and restoration by taking other appropriate steps, involving the Panchayats and the community, utilizing the financial resources available from different sources. Steps taken need to be documented and compiled and reported to a central authority, preferably the CPCB. This Tribunal has already constituted a CMC to be headed by the Secretary, MoJS with the assistance of CPCB and other authorities to monitor remedial action for 351 polluted river stretches. Restoration of water bodies is also a connected issue which can be monitored by the same Committee atleast thrice a year at the national level.

Directions

22. Accordingly, we dispose of this application with following directions:

(i) All States/UTs may forthwith designate a nodal agency for restoration of water bodies, wherever no such agency has so far been so designated.

(ii) Under oversight of the Chief Secretaries of the States/UTs, the designated nodal agency may

a. Hold its meeting not later than 31.1.2021 to take stock of the situation and plan further steps, including directions to District authorities for further course of action upto Panchayat levels and to evolve further monitoring mechanism as well as Grievance Redressal Mechanism (GRM).

b. Submit periodical reports to the CPCB/Secretary Jal Shakti, Government of India. First such report may be furnished by 28.02.2021.

(iii) The CMC for monitoring remediation of 351 polluted river stretches, headed by the Secretary, MoJS may monitor the steps for restoration of water bodies by all the States periodically, atleast thrice in a year. First such monitoring may take place by 31.3.2021.

(iv) The CMC may give its action reports to this Tribunal in OA 673/2018 and first such report may be furnished preferably by 30.4.2021 by e-mail."

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41. The matter of illegal construction in violation of Environmental Laws has again been dealt with by the Hon'ble Supreme Court of India in Civil Appellate Jurisdiction Civil Appeal No. 5041 of 2021 arising out of SLP (C) No. 11959 of 2014 decided on 31.08.2021 where Hon'ble the Supreme Court of India discussed the matter of illegal /unauthorised constructions as follows:-

> *"*146 *The rampant increase in unauthorized constructions across urban areas, particularly in metropolitan cities where soaring values of land place a premium on dubious dealings has been noticed in several decisions of this Court. This state of affairs has often come to pass in no small a measure because of the collusion between developers and planning authorities."*
>
> *"147 From commencement to completion, the process of construction by developers is regulated within the framework of law. The regulatory framework encompasses all stages of construction, including allocation of land, sanctioning of the plan for construction, regulation of the structural integrity of the structures under construction, obtaining clearances from different departments (fire, garden, sewage, etc.), and the issuance of occupation and completion certificates. While the availability of housing stock, especially in metropolitan cities, is necessary to accommodate the constant influx of people, it has to be balanced with two crucial considerations – the protection of the environment and the well-being and safety of those who occupy these constructions. The regulation of the entire process is intended to ensure that constructions which will have a severe negative environmental impact are not sanctioned. Hence, when these regulations are brazenly violated by developers, more often than not with the connivance of regulatory authorities, it strikes at the very core of urban planning, thereby directly resulting in an increased harm to the environment and a dilution of safety standards.*
>
> *Hence, illegal construction has to be dealt with strictly to ensure compliance with the rule of law."*
>
> *"148 The judgments of this Court spanning the last four decades emphasize the duty of planning bodies, while sanctioning building plans and enforcing building regulations and bye-laws to*

conform to the norms by which they are governed. A breach by the planning authority of its obligation to ensure compliance with building regulations is actionable at the instance of residents whose rights are infringed by the violation of law. Their quality of life is directly affected by the failure of the planning authority to enforce compliance. Unfortunately, the diverse and unseen group of flat buyers suffers the impact of the unholy nexus between builders and planners. Their quality of life is affected the most. Yet, confronted with the economic might of developers and the might of legal authority wielded by planning bodies, the few who raise their voices have to pursue a long and expensive battle for rights with little certainty of outcomes. As this case demonstrates, they are denied access to information and are victims of misinformation. Hence, the law must step in to protect their legitimate concerns"

"149 In ***K. Ramadas Shenoy v. Chief Officer, Town Municipal Council,*** *Chief Justice AN Ray speaking for a two judge Bench of this Court observed that the municipality functions for public benefit and when it —acts in excess of the powers conferred by the Act or abuses those powers then in those cases it is not exercising its jurisdiction irregularly or wrongly but it is usurping powers which it does not possess". This Court also held:*

> *"27…The right to build on his own land is a right incidental to the ownership of that land. Within the Municipality the exercise of that right has been regulated in the interest of the community residing within the limits of the Municipal Committee. If under pretence of any authority which the law does give to the Municipality it goes beyond the line of its authority, and infringes or violates the rights of others, it becomes like all other individuals amenable to the jurisdiction of the courts. If sanction is given to build by contravening a bye-law the jurisdiction of the courts will be invoked on the ground that the approval by an authority of building plans which contravene the bye-laws made by that authority is illegal and inoperative. (See Yabbicom v. King [(1899) 1 QB 444])."*

".This Court held that an unregulated construction materially affects the right of enjoyment of property by persons residing in a residential area, and hence, it is the duty of the municipal authority to ensure that the area is not adversely affected by unauthorized construction".

"150 These principles were re-affirmed by a two judge Bench in ***Dr. G.N. Khajuria v. Delhi Development Authority9*** *where this Court held that it was not open to the Delhi Development Authority to carve out a space, which was meant for a park for a nursery school. Justice BL Hansaria, speaking for the Court, observed:*

> *10. Before parting, we have an observation to make. The same is that a feeling is gathering ground that where unauthorised constructions are demolished on the force of the order of courts, the illegality is not taken care of fully inasmuch as the officers of the statutory body who had allowed the unauthorised construction to be made or make illegal allotments go scot free. This should not, however, have happened for two reasons. First, it is the illegal action/order of the officer which lies at the root of the unlawful act of the citizen concerned, because of which the officer is more to be blamed than the recipient of the illegal benefit. It is thus imperative, according to us, that while undoing the mischief which would require the demolition of the unauthorised construction, the delinquent officer has also to be punished in accordance with law. This, however, seldom happens. Secondly, to take care of the injustice completely, the officer who had misused his power has also to be properly punished. Otherwise, what happens is that the officer, who made the hay when the sun shined (sic), retains the hay, which tempts others to do the same. This really gives fillip to the commission of tainted acts, whereas the aim should be opposite."*

"151. ***In Friends Colony Development Committee v. State of Orissa****, this Court dealt with a case where the builder had exceeded the permissible construction under the sanctioned plan and had constructed an additional floor on the building, which was unauthorized. Chief Justice RC Lahoti, speaking for a two judge Bench, observed :*

> *"24. Structural and lot area regulations authorise the municipal authorities to regulate and restrict the height, number of storeys and other structures; the percentage of a plot that may be occupied; the size of yards, courts and open spaces; the density of population; and the location and use of buildings and structures. All these have in our view and do achieve the larger purpose of the public health, safety or general welfare. So are front setback provisions, average*

alignments and structural alterations. Any violation of zoning and regulation laws takes the toll in terms of public welfare and convenience being sacrificed apart from the risk, inconvenience and hardship which is posed to the occupants of the building."

Noting that the private interest of land owners stands subordinate to the public good while enforcing building and municipal regulations, the Court issued a caution against the tendency to compound violations of building regulations:

"25…The cases of professional builders stand on a different footing from an individual constructing his own building. A professional builder is supposed to understand the laws better and deviations by such builders can safely be assumed to be deliberate and done with the intention of earning profits and hence deserve to be dealt with sternly so as to act as a deterrent for future. It is common knowledge that the builders enter into underhand dealings. Be that as it may, the State Governments should think of levying heavy penalties on such builders and therefrom develop a welfare fund which can be utilised for compensating and rehabilitating such innocent or unwary buyers who are displaced on account of demolition of illegal constructions."

"152 In ***Priyanka Estates International (P) Ltd. v. State of Assam*** *, Justice Deepak Verma, speaking for a two judge Bench, observed:*

"55. It is a matter of common knowledge that illegal and unauthorised constructions beyond the sanctioned plans are on rise, may be due to paucity of land in big cities. Such activitiesare required to be dealt with by firm hands otherwise builders/colonisers would continue to build or construct beyond the sanctioned and approved plans and would still go scot-free. Ultimately, it is the flat owners who fall prey to such activities as the ultimate desire of a common man is to have a shelter of his own. Such unlawful constructions are definitely against the public interest and hazardous to the safety of occupiers and residents of multi-storeyed buildings. To some extent both parties can be said to be equally responsible for this. Still the greater loss would be of those flat owners whose flats are to be demolished as compared to the builder."

The Court lamented that the earlier decisions on the subject had not resulted in enhancing compliance by developers with building regulations. Further, the Court noted that if unauthorized constructions were allowed to stand or are ―given a seal of approval by Court‖ , it was bound to affect the public at large. It also noted that the jurisdiction and power of Courts to indemnify citizens who are affected by an unauthorized construction erected by a developer could be utilized to compensate ordinary citizens.

*"153 In **Esha Ekta Apartments Coop. Housing Society Ltd. v. Municipal Corpn. of Mumbai12**, Justice GS Singhvi, writing for a two judge Bench, reiterated the earlier decisions on this subject and observed:*

> *"8. At the outset, we would like to observe that by rejecting the prayer for regularisation of the floors constructed in wanton violation of the sanctioned plan, the Deputy Chief Engineer and the appellate authority have demonstrated their determination to ensure planned development of the commercial capital of the country and the orders passed by them have given a hope to the law-abiding citizens that someone in the hierarchy of administration will not allow unscrupulous developers/builders to take law into their hands and get away with it."*

The Court further observed that an unauthorized construction destroys the concept of planned development, and places an unbearable burden on basic amenities provided by public authorities. The Court held that it was imperative for the public authority to not only demolish such constructions but also to impose a penalty on the wrongdoers involved. This lament of this Court, over the brazen violation of building regulations by developers acting in collusion with planning bodies, was brought to the fore-front when the Court prefaced its judgment with the following observations:

> *"1. In the last five decades, the provisions contained in various municipal laws for planned development of the areas to which such laws are applicable have been violated with impunity in all the cities, big or small, and those entrusted with the task of ensuring implementation of the master plan, etc. have miserably failed to perform their duties. It is highly regrettable that this is so despite the fact that this Court has, keeping in view the imperatives of preserving the ecology and environment of the area and protecting the rights of the*

citizens, repeatedly cautioned the authorities concerned against arbitrary regularisation of illegal constructions by way of compounding and otherwise."

Finally, the Court also observed that no case has been made out for directing the municipal corporation to regularize a construction which has been made in violation of the sanctioned plan and cautioned against doing so. In that context, it held:

"56. We would like to reiterate that no authority administering municipal laws and other similar laws can encourage violation of the sanctioned plan. The courts are also expected to refrain from exercising equitable jurisdiction for regularisation of illegal and unauthorised constructions else it would encourage violators of the planning laws and destroy the very idea and concept of planned development of urban as well as rural areas."

"154 These concerns have been reiterated in the more recent decisions of this Court in ***Kerala State Coastal Zone Management Authority v. State of Kerala13, Kerala State Coastal Zone Management Authority v. Maradu Municipality, Maradu and Bikram Chatterji v. Union of India****.*

42. In the conclusion, Hon'ble the Supreme Court of India has directed to demolish the illegal and unauthorised construction and the cost of demolition and all incidental expenses including the fees payable to the experts are directed to be borne by the person who have constructed illegally.

43. When the Law Protector becomes the Law Violator, how the Law will be Protected. The action and construction by the Respondent, Municipal Corporation is not only disregard to the law but it is negation of the authority of the State by the public official doing the act and utilising the budget in contravention of the settled Principal of Law, in accordance with their wishes. An action specifically punitive action does lie for doing what the legislature has authorised, if it is done negligently, carelessly and in violation of the law. The State has never permitted the Municipal Corporation for encroachment of the water bodies. There is no authority from the Collector or from the Chief Secretary or from the State and in reply thereof the Collector has filed the affidavit to the effect that no permission has been taken by the State Authorities or from the State Government and in the guise of the concept of imaginary power, it

is argued that Municipal Corporation that the Municipal Corporation is the owner of the land and can use the property according to the wishes. On the garb of beautification commercial multiplex building has been constructed on the area which is recorded as pond. It is settled law that the public property is vested in the State. The corporation is denying the powers and authority of the State. It is negation of law. The functionaries of the State in exercise of statutory power cannot claim immunity for the acts which are in contravention of the law, except to the extent protected by the statute itself. Perpetually authorities acting in violation of Constitution or Statutory Provisions oppressively are accountable for their behaviour before the authorities created under the statute for maintaining the Rule of Law. The contention of the Municipal Corporation that there was a discharge of untreated water or sewage water into the water body and to protect the water body, the Municipal Corporation has permitted to construct and constructed the commercial building is not the aim and objective of the Environmental Laws. The Law provides that it is the sole responsibility of the Municipal Corporation or local authorities monitoring it to ensure that there shall not be any discharge of untreated water into the water bodies or open land or rivers and in case if it is found that untreated water or sewage water is being discharged by any authority or the person, he must be dealt with in accordance with law and environmental compensation must be assessed and realized according to the parameter laid down by the CPCB.

44. The Municipal Corporation failed to protect the water body, failed to protect and prevent the discharge of untreated water into the water bodies and what remedial action has been taken by the Municipal Corporation is surprising that they have made construction over the pond area. This is not intended by the law or not intention of Environmental Rules.

45. On the basis of above discussion the conclusion are as follows :

1. Sagar Talab, known as Lakhabanjara lake, located in the main city area of Sagar having an area about 160 hectare is in District Sagar.

2. The joint committee found and observed certain constructions closed to lake.

3. Residential and commercial activities are established all around the lake area. Domestic effluents from these area is discharging to lake to 04 nala and 09 numbers of small

drains from nearby buildings and other establishments which requires immediate stoppage and remedial measures by the local administration.

4. There is a project named Sagar Smart City Ltd. Sagar which is being developed within the lake area, in violation of the orders of Hon'ble Supreme Court passed in Hinchlal Tiwari's case (supra) and in violation of environmental rules which shall be immediately reconsidered by the Administration and further construction cannot be proceeded except without approval and sanction of the State of Madhya Pradesh. The activities which are permitted are conservation of lake, measures the water balance of the lake, mitigating environmental impacts and restoring the lake eco system, which cannot be interpreted to develop the residential and commercial complex within the lake area.

5. The report submitted by the Superintendant of Land Revenue, Sagar which is quoted above reveals the encroachment by 43 persons while the committee consisted by the collector including 25 officers and officials found number of encroachers as 36. Some of the land is used for agricultural purpose which shall always be interpreted to be deemed to be in possession of State Government and necessary action must be initiated within a time frame to remove the encroachments as per rule.

41. Learned Counsel appearing for the State had submitted that a Writ Petition has been filed before the Hon'ble High Court and an interim order has been passed by the Hon'ble High Court. Since, we are finally disposing the matter, thus in view of the existing order of Hon'ble High Court, the local administration shall take cognizance of the order passed by the Hon'ble High Court of Madhya Pradesh in the referred Writ Petition and follow and comply the order. We also make it clear that the subject matter which are matter in issue in the Writ Petition referred above shall be dealt with according to the directions and orders passed by the Hon'ble High Court and the local administration shall take care of it.

42. On the basis of above discussions and on the basis of the records and submissions of the parties, we direct as follows :

1. The Collector Sagar is directed that the area which is the subject matter of encroachment must be removed in accordance with law. In this regard the Collector has to follow the law and order and the orders passed by the Hon'ble High Court as referred above.

2. The Collector, Sagar and the Municipal Corporation/Municipal Council, Sagar are directed to ensure that no solid waste should be thrown in the pond area and in case if it is found that there is a violation of Solid Waste Management Rules, 2016, State Pollution Control Board is directed to take necessary action, initiating prosecution as well as calculation and realisation of Environmental Compensation as per parameters laid down by the Central Pollution Control Board.

3. The Collector, Sagar and the Municipal Corporation/Municipal Council, Sagar are directed to ensure that there shall not be any discharge of untreated sewage water in to the water body/pond and if there is any violation of the Water (Prevention and Control of Pollution) Act, 1974 or direction issued by the Hon'ble Supreme Court of India and Principal Bench of this Tribunal, environmental compensation at the rate prescribed must be assessed and realised.

4. There must be a provision of Treatment Plant to treat the sewage water and Municipal Corporation shall ensure installation of STP and also proper functioning of the STP already installed and in the mean time the during the period the *insitu* remedial process may also be considered where there is no STP.

5. There are discharge of untreated /sewage water into the water bodies and inspite of the repeated direction of the National Green Tribunal and Hon'ble the Supreme Court no action has been taken and no remedial action has been taken by the Municipal Corporation to prevent the discharge of untreated water, into the water body.

6. In light of the settled pronouncement of Hon'ble the Supreme Court in *Goal Gang Developers India Pvt. Ltd. vs. Union of India* referred above with regard to the calculation of environmental compensation, 10% of the project cost shall be assessed and realized from the polluter. State Pollution Control Board is directed to proceed and to exercise its statutory duty to initiate the proceedings of prosecution as well as the calculation and assessment of the realization of environmental compensation in accordance with law.

43. A copy of the order should be sent to the Secretary (Environment), State of Madhya Pradesh who shall monitor or may constitute a committee or direct the authorities concerned to comply the order and remove the encroachment on the State land/water bodies which was found unauthorized and illegal. He shall monitor periodically and ensure the removal of encroachment at the earliest in due process of law.

The Original Application No. 43 of 2020 (CZ) is **disposed of** accordingly.

Sheo Kumar Singh, JM

Arun Kumar Tyagi, JM

Dr. Arun Kumar Verma, EM

Dr. Afroz Ahmad,EM

07th April 2022
O.A. No. 43/2020 (CZ)
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