

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

Original Application No. 01/2018 (CZ)

Jeevan Lal Barbaiya

Applicant(s)

Versus

State of Madhya Pradesh & Ors.

Respondent(s)

Date of hearing: 23.06.2021

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

For Applicant(s):

Mr. Dharamveer Sharma, Adv.

For Respondent(s)

Mr. Rohit Sharma, Adv.
Mr Om Shankar Shrivastava, Adv.
Ms. Parul Bhadoria, Adv.

ORDER

1. Issue raised in this application is encroachment of the water body / Budhi Talab (Mehra Talab) in Balaghat, Madhya Pradesh. It is stated in the application that in early days Budhi Talab used to be full of water, but in recent past, it is evident from the perusal of the photographs that the water level is substantially decreased due to encroachments in its catchment area, which is the source of its water. Decreasing water of any water body directly affects its ecological balance which cannot be reverted once spoiled and damaged. It is also due to the illegal intervention of the encroachers, who are damaging the water body by making the subways started in Budhi Talab.
2. All the above activities were brought to the knowledge of authorities respondents by the applicant as well as many residents of concerned area by filing complaints/representations to the respondents vide

complaints/representations dated 06/10/2017 and 12.10.2017. With this petition it is requested that the Budhi Talab existing in Khasra No. 43 measuring 0.750 hectare should be made free from encroachment. It is submitted that though a petition before this Hon'ble Tribunal and Hon'ble High Court of M.P. was filed for making the water body free from encroachment in district Balaghat but no petition regarding Bhudhi/Mehra Talab has been specifically filed or adjudicated. It is also respectfully submitted that, neither the applicant was a party nor the present dispute of instant water body is decided or pending before any Court of Law. The applicant has specifically come before this Hon'ble Tribunal for enforcement of legal rights relating to Environment under Section 14 of National Green Tribunal Act, 2010 as well as for requesting the Patta /Lease granted in favour of the applicant for Fishery may be continued peacefully and he may also be in a position to work freely to earn his livelihood for survival of his family members. It was also requested to the concerned officials of the Nagar Palika Parishad, Balaghat who are in connivance with the Local Land Mafias who have developed illegal colony and spent huge public money which is against the laws of the land.

3. Due to the aforesaid act of these miscreants which are party for the act and are directly responsible for the decrease in the water by level of the said Budhi Talab. The encroacher Mafias intentionally encroaching upon the land of the water body has also constructed houses in the catchment of the Budhi Talab which has threatened the very existence of water body and put to the danger. These persons are responsible for making and contributing to the criminal act of encroachment upon the water body of Budhi Talab area and building their houses upon it, which are threat to the Ecology of the area, and the act is still in continuation. It is very strange to note that the administration and municipal council are keeping silent on this large issue with no thought to conservation and preservation of Budhi Talab. Therefore, there is an urgent need to intervene by this

Hon'ble Tribunal in order to restore and take the remedial measures in order to remove the encroachment and bring the Budhi Talab to its original state.

4. Now due to human intervention for the last few years due to the decreasing of water level the encroachers have started encroaching upon the catchment area of said Budhi Talab Patta owners who are issued licence for Fishery are compelled to rethink about their earning livelihood, who were completely dependent upon this business. The Patta Owners, who have some land holdings in their names have started doing the agricultural but poor persons like applicant have no other work. The encroachment has taken place to such an extent that, these persons even started to take water by making channel, even during the time of rainy season. This has threatened the very existence of the Budhi Talab, which is losing its natural and original existence, which is real concern of the residents of the area and the applicant.
5. The matter was taken up by this Tribunal and a committee consisting Collector, Balaghat, M.P. and State Pollution Control Board were directed to submit a factual and action taken report. The aforesaid committee visited the spot and submitted the report which is as follows :

तालाब के निरीक्षण के दौरान पाई गई स्थिति की जानकारी निम्नानुसार है :-

1. ग्राम बूढी स्थित तालाब जो नगर बालाघाट के नजूल सीट क्रमांक 306 भूखण्ड क्र0 43/1 एवं 44/1 रकबा क्रमश 15398.771 वर्गमीटर एवं 7895.014 वर्ग मीटर कुल 23,288.785 वर्ग मीटर अर्थात 5.75 एकड ग्रासकीय तालाब (मेहरा तालाब) है।
2. राजस्व निरीक्षक बालाघाट द्वारा ग्राम बुढी में स्थित तालाब (मेहरा तालाब) का सीमांकन किया गया है। सीमांकन उपरांत ग्राम बुढी में स्थित तालाब की भूमि पर 16 अतिक्रमणकर्ता पाये गये है जो निरीक्षण दिवस भी देखे गये है। राजस्व निरीक्षक बालाघाट की रिपोर्ट दिनांक 06/06/2019 अनुसार है। जिसमें उक्त 16 लोगों के नाम एवं स्थल पर बनाया गया पंचनामा तथा नजरी नक्शा है।

3. उक्त आसकीय तालाब का नजूल का नक्शा भी प्राप्त किया गया है जिसमें 16 अतिक्रमणकर्ताओं को लाल स्याही से चिन्हांकित किया गया है।
4. राजस्व निरीक्षक बालाघाट के प्रतिवेदन के आधार पर कार्यालय तहसीलदार बालाघाट जिला बालाघाट के पत्र क्रमांक 553 दिनांक 06/06/2019 द्वारा आसकीय भूमि से अतिक्रमण हटाये जाने बावत मुख्य नगर पालिका अधिकारी बालाघाट को पत्र लिखा गया है जिसमें उपरोक्त 16 अतिक्रमणकारियों के अतिक्रमण को हटाये जाने का लेख किया गया है।
5. निरीक्षण के दौरान उक्त तालाब में स्थानीय नालों का सीवेज मिलता देखा गया है।
6. उक्त घरों के निर्माण से तालाब का ऐरिया भी प्रभावित हुआ है।
7. उपरोक्त तालाब का निरीक्षण करने पर पाया गया कि तालाब का रखरखाव सही नहीं होने के कारण, यत्रतत्र का सीवेज मिलने के कारण जल की गुणवत्ता भी प्रभावित हुई है।
8. मौके पर निरीक्षण के दौरान तालाब के जल नमूने भी विश्लेषण हेतु एकत्रित किये गये जिसके अनुसार उक्त तालाब के जल की गुणवत्ता "डी" श्रेणी की पाई गई है।
9. तालाब में घरों के निर्माण से अतिक्रमण हुआ है। निरीक्षण में घरों को भी जल में डूबा हुआ देखा गया है।

तालाब के जीर्णोधार कराये जाने एवं अतिक्रमण मुक्त किये जाने हेतु सुझाव निम्नानुसार है :

- तालाब क्षेत्र को अतिक्रमण मुक्त कराया जाना होगा।
- तालाब क्षेत्र के चारो ओर पक्का बंड बनाकर तालाब के चारो ओर पाथवे बनाया जाना होगा जिससे तालाब को बाहर के लोगों के लिये आकर्षण का केन्द्र हो सके।
- आसपास के क्षेत्र का सीवेज को तालाब में मिलने से रोका जाना होगा।
- तालाब के चारो ओर नगरीय ठोस अपशिष्ट, कचरा इत्यादि डम्प न किया जाये इस हेतु पृथक से कचरे के एकत्रण हेतु कचरा कलेक्टरन पाइंट बनाया जाना चाहिए।
- तालाब की समय समय पर नियमित साफ सफाई की जाना चाहिए एवं तालाब के चारो ओर गंदगी न फैले इसका ध्यान रखना उचित होगा।
- तालाब क्षेत्र के चारो तरफ लगभग 3 फीट उँची झाली लगाया जाना चाहिए जिससे दुर्घटना की स्थिति निर्मित न हो।
- वर्तमान में तालाब के आसपास वृक्षारोपण नहीं है इस हेतु चारो ओर उचित प्रजाति का वृक्षारोपण किया जाना होगा।

6. The chart attached with the application reveals that more than 16 persons have encroached the land by making construction. A letter dated 20.06.2019 was issued from the Nagar Palika Parishad, Balaghat, Madhya Pradesh to all 16 persons with direction that the encroachment must be removed within a time limit, otherwise necessary action shall be initiated against them. The report further reveals the water quality of the water body as follows :

Sr. No	Parameters	Unit	Result I	Result II	Result III	Result IV
A – PHYSICAL PARAMETERS						
1	Temperature	°C	-			
2	Turbidity	N.T.U.	12.0			
3	Colour	-	Greenish			
4	Odour	-	-			
5	Specific Conductivity	µmho/cm	409.0			
B – CHEMICAL PARAMETERS						
6	pH	-	7.68			
7	Total Alkalinity	mg/l	76.0			
8	Total Hardness (as CaCO ₃)	mg/l	186.0			
9	Calcium Hardness (as CaCO ₃)	mg/l	128.0			
10	Magnesium Hardness (as CaCO ₃)	mg/l	58.0			
11	Chloride	mg/l	54.44			
12	Total Solids	mg/l	384.0			
13	Dissolved Solids	mg/l	313.0			
14	Suspended Solids	mg/l	71.0			
15	Ammonical Nitrogen (as N)	mg/l	-			
16	Nitrite Nitrogen (as NO ₂)	mg/l	-			
17	Nitrate Nitrogen (NH ₃)	mg/l	-			
18	Total Kjeldahl Nitrogen (as N)	mg/l	-			
19	Fluoride	mg/l	-			
20	Dissolved Oxygen	mg/l	4.2			
21	B.O.D. (3 days, 27 °C)	mg/l	12.0			
22	C.O.D.	mg/l	40.0			
23	Oil & Grease	mg/l	-			
24	Phosphate (as P)	mg/l	-			
25	Sulphate (as SO ₄)	mg/l	-			
26	Chromium (CR ⁶)	mg/l	-			
27	Copper (Cu)	mg/l	-			
28	Zinc (Zn)	mg/l	-			
29	Iron (Fe)	mg/l	-			
30	Boron (B)	mg/l	-			
31	Sodium	Ppm	-			
32	Potassium	ppm	-			
C – BIOLOGICAL PARAMETERS						
33	Total Coliform	MPN/100 ml	>1600			
34	Feacal Coliform	MPN/100 ml	-			
INDICATION : PARAMETER DOES NOT CONFIRM TO : -						
Standard prescribed by M.P.P.C.B. in M.P. Gazette notification, dated 25.03.1988 IS : 10500-1991 (Specification for Drinking Water)						
Standard prescribed in Bio-Medical Waste (Management & Handling) Rules, 1988						
GENERAL MARKS :- Talab water quality as per IS 2296-1982 class - D						

7. The perusal of the report of the water quality also reveals that it is in Category “D” which is neither used for drinking purposes and nor for bathing purposes.
8. 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.”

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 sea-shore, 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.”

In the case of Fomento Resorts & Hotels Limited v. Minguet

Martins 4, In paragraphs 53 to 55 and 65, the Apex Court held thus:

55. *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.*

54. *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.*

55. *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 down slope lands, waters and resources.

65. 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)

54. 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

55. In the case of M.C. Mehta (Badhkal and Surajkund Lakes matter) v. Union of India, the Apex Court held thus:

“10. 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.”

9. 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, emphasizing 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), Uttarakhand (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.

10. 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.

11. It is of utmost importance for meeting the rising demand for water augmentation, improving the health of water bodies as they provide various ecosystem services that are required to manage microclimate, biodiversity and nutrient cycling. Many cities are working towards conservation of water bodies 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.

12. 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 water body along with its catchment, is required.

13. The report further reveals that the untreated water/sewage water is being directly discharged into the water bodies, affecting the quality of water, which is reported to be of Quality "D". Accordingly, we direct the Collector, Balaghat, M.P. to constitute a committee consisting (1) One representative from the Collector, Balaghat, M.P., (2) One representative from the Municipal Corporation, Nagar Palika Parishad, Balaghat, M.P., (3) One representative from the State Pollution Control Board and direct to ensure that no untreated water / swage water be discharged into the water bodies. It is to be taken into account that the matter of discharge of untreated water into the water bodies has already been discussed and decided by the Principal Bench of this Tribunal, where it was directed that the State or the Authorities concerned must be responsible for the

payment of Rs. 5 Lac per month per nalla / drain, if the untreated water or swage water is discharged into the water bodies. The Committee /Collector is also directed to ensure the removal of encroachment within a time frame, in accordance with law. The area of the water body must be demarcated by Revenue Authorities, protected by any means and it should be ensured that no encroachment be permitted on the water bodies. Further, action taken and compliance report must be submitted within two (2) months.

14. The report in the matter be filed by the Committee by email at ngtczbbhomp@gov.in preferably in the form of searchable PDF/OCR Support PDF and not in the form of Image PDF.

List it on **27th August, 2021.**

Sheo Kumar Singh, JM

Arun Kumar Verma, EM

June 23rd 2021
O.A. 01/2018(CZ)
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