

Item No.6

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

Original Application No.72/2023(CZ)
(O.A.No.870/2022- PB)

Mahadev Singh

Applicant(s)

Versus

State of Rajasthan & Ors.

Respondent(s)

Date of Hearing : 25.09.2023

**CORAM: HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. A SENTHIL VEL EXPERT MEMBER**

For Applicant(s): None

For Respondent(s) : Mr. Rohit Sharma, Adv.
Ms. Harshita Tejwani, Adv.
Mr. Shoeb Hasan Khan, Adv.
Mr. Mukesh Kumar – Amicus Curie

ORDER

1. 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, the 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

2. This original application has been registered under Sections 14 and 15 of National Green Tribunal Act, 2010 on a letter petition dated 10.07.2022 sent by Mahadev Singh resident of Munwas, District Udaipur. There are several grievances in said application but the grievance which can be subject matter of consideration by Tribunal relating to environment is alleged irregularities in Gram Panchayat, Kailashpuri and Sare, District Udaipur, Rajasthan causing damage to environment due to following activities:

“1. Illegal encroachment and construction on grazing land and Bagela pond by filling it with debris.

2. Cutting of hills & trees and trucks full of debris is dumped in to pond in front of Munwas school. Few Hotel owners have constructed building by filling a portion of pond by discharging waste water into pond.

3. The natural source of water coming to pond have been closed for construction purposes by Valansia Resort. Sarpanch has 2 constructed houses in grazing land. Munwas dairy is a fresh example.”

3. The matter was taken up by this Tribunal on 12.01.2023 and a committee was constituted comprising State PCB, District Magistrate, Udaipur and District Forest Officer, Udaipur with the direction to visit the site and submit the factual and action taken report.

4. In compliance of the order, the Joint Committee submitted the report which was considered by this Tribunal on 07.08.2023 and this Tribunal observed as follows :

“ Now Joint Committee has submitted inspection report dated 21.03.2023 stating that in revenue village Kailashpuri there is Arazi no. 813/187 which is recorded in revenue records as grazing land whereon community building has been constructed on 2500 sq. feet, from funds made available by local MLA. Further, there is a pond in front of Munwas school which is in Arazi no. 419 and in revenue records is registered as bila naam sarak. The said land has been leveled to the extent of 25 sq. meter by Bhagwat Singh and Lalit Singh sons of Sajjan Singh and Bhopal Singh son of Shankar Singh. Similarly, there is about 750 sq. meter land on the lower side of Arazi no. 293, 294 whereon (rainwater) used to flow but that has also been filled and flow of rainwater as been obstructed. Under Section 91 a complaint has been registered as case no. 01/2023 against defaulter on 07.02.2023 and proceedings for eviction of the person concerned are given on.

Further, with regard to filing of land of the pond, it was found that Arazi no. 01 in village Munwas, is recorded in revenue record as Bila Naam kisam Dha Pe Ge Mu (as Talab) and thereon 10300 sq. feet of land as been filled in and after leveling, a wall has been constructed. With regard to obstruction created by Valensia resort it is said that matter is pending in the High Court where an interim order has been passed.

In respect of issue no. 3 it is said that Arazi no. 1450 is recorded as Bila Naam Kism Pahad and 250 sq. feet of land has been encroached upon by Suresh Patel son of Shyam Lal Patel and he has constructed a cabin and

running a dairy and General Store. Against the said persons also proceedings under Section 91 are pending.”

5. The Tribunal has further observed that the Collector Udaipur has not submitted the report with regard to the removal of encroachment and the action taken by the Collector and vide order 07.08.2023 constituted another committee.
6. But Learned Counsel for the State Pollution Control Board has submitted that the matter was not required to be again referred by another committee when competent committee was formed and submitted the joint committee report. Accordingly, the directions as contained in para 10, 11, 14 & 15 is not required and withdrawn. In view of the contention raised in application and letter petition and view of the Joint Committee Report, we have heard the Learned Counsel for the parties and perused the record. The contention raised by a petitioner in the application is with the fact that Aaraji No.813 and 187 is recorded as the state land but without any conversion of use of the land or without any order from the competent authority / revenue officer, 2500 sq. ft. of the land has been converted for for building construction, which is not in accordance with the law. It is further submitted that the area of 10300, which has been recorded as a Pond and under the *Amrut Sarovar Sceheme*, a wall has been constructed and land has been leveled. The purpose of the *Amrut Sarovar Yojna* is to protect the water bodies and rejuvenate water bodies, so that ground water may be recharged and not intended to make any construction with the

destruction of the pond. On the name of beautification or rejuvenation the area of the pond and water body cannot not be converted to be used for other purposes by damaging the very nature of the pond. Similarly in point no. 4, there is report that 250 sq.ft. of the land has been encroached by one Suresh Patel S/o Shyamlal Patel, R/o Mangthala Kailashpuri and is being used for dairy purpose and general store and no action has been taken by the Collector, who is the custodian of the property. The State Government vide notification Rajasva (Group 6) department dated 26.07.2017 has already directed in light of the order of Hon'ble Supreme Court passed in *Jagpal Singh's* case that the State Government has to take necessary actions and enforce the rule of law and remove the encroachments from the public land. The State has further reiterated that the State of Rajasthan evicted the illegal occupants and to restore such lands to Gram Sabha / Gram Panchayat and will continue to abide by the directions of Hon'ble the Supreme Court. The state has further directed all the District Collectors to remove the encroachment from the public land immediately and to report.

7. This Tribunal has jurisdiction to proceed with the case in accordance with the provisions contained in Section 14 of the NGT, Act, 2010 because the question raised in this application involves implementations of enactments specified in schedule 1, i.e., The Water (Prevention and Control of Pollution) Act, 1974 and The Water (Prevention and Control of Pollution) Cess Act, 1977. Learned counsel has referred the case of state of M.P. vs. Centre for Environmental Production, Research and

Development (2020) 9 SCC P 781, where it was held that the NGT has a jurisdiction to decide and has power to take remedial actions against the violation of environmental laws.

8. 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 is indirectly managed by the local administration on the Principle 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.”

PRECAUTIONARY PRINCIPLE

9. 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, 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 policies 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.*

10. 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.

11. 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 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.

12. 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.
13. While disposing the Original Application No. 325 of 2015 vide order dated 18.11.2020, this Tribunal, while dealing with restoration of water bodies observed as follows:

*“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.”*

14. 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.

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 for the time 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;

16. As noticed, the constitutional provision and Sections-5-A and 7 of the Adhinyam 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.

- 15.** 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.

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).

16. 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)*.

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.

- 17.** In view of constitutional scheme 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. We 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. 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.

18. The Tribunal has already disposed various Original Applications specially O.A No. 325/2015 *Lt. Colonel Sarvadaman Oberoi vs. Union of India & Ors.* and directions have already been issued to all the States and a Collector to all ensure that all such encroachments are removed. The officer respondent shall remove such constructions and encroachments and file a compliance report to the registry of this Tribunal and it shall be the duty of respondent to restore water pond to its original shape and condition and preserve as it is for the Constitution mandate.

19. In view of the Constitution Provisions, Adhinyam 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 Adhinyam 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 can such action be said to be in a larger public interest.

20. 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.

21. 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. Importance of water no one can deny.

22. 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. 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 outskirts 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. 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. 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.

- 23.** 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.
- 24.** 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.
- 25.** 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.

26. 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:**

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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.”**

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

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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:

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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 & Ors*¹ and *Paryavaran Suraksha vs. Union of India*² 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.

27. Accordingly, we dispose of this Original Application 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) The Collector is directed to remove the encroachment/ dairy and general store from the ponds, water bodies in accordance with law.

(5) The Collector, and the Municipal Corporation/Municipal Council, 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.

(6) The Collector, and the Municipal Corporation/Municipal Council, 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.

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

(8) In light of the settled pronouncement of Hon'ble the Supreme Court in Goel Gang Developers India Pvt. Ltd. vs. Union of India 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.

(9) A copy of the order be sent to the Secretary (Environment), State of Rajasthan 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.

(10) Rajasthan State Pollution Control Board is directed to implement the rule of law and enforce the environmental laws and to ensure that there shall not be any discharge of untreated water into the water bodies and there shall not be any discharge of solid waste into the water bodies as narrated above. In case of encroachment or discharge of solid waste or liquid waste in violation of Environment rules necessary action, prosecution in addition to the realization of environmental compensation must be initiated in accordance with the environmental rules.

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

- 28.** The Collector shall be responsible for removal of encroachment from any pond situated in his jurisdiction failing which he will be personally responsible for violation of rule of law and environmental law and be dealt with accordingly. Collector and State Pollution Control Board is further directed to implement the orders and

compliance report be submitted before the office of the Tribunal with reference to this Original Application after three months.

29. With these directions, the Original Application stands **disposed** of.

Sheo Kumar Singh, JM

Dr. A Senthil Vel, EM

26th September, 2023
O.A No.72/2023(CZ)
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