

Item No. 4

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

Original Application No. 24/2022 (CZ)

Manish Sharma & Anr.

Applicant(s)

Versus

State of Madhya Pradesh & Ors.

Respondent(s)

Date of hearing: **09.05.2022**

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

For Applicant(s):

Mr. Prabhat Kumar Yadav, Adv.

For Respondent(s):

Mr. Sachin K. Verma, Adv.

Mr. Jalaj Joshi, Adv.

Ms. Samridhi Sharma, Adv.

Ms. Shagun Singh Parihar, Adv.

ORDER

1. Issue raised in this application is encroachment on the water body/pond situated at Gram Panchayat Lilwani, Halka Number 121, Bandobast 414, Khasra Number 111/1, 111/2, 111/3, 112, 113, 114 total Rakba (bhumi) 3.658 hectare Bhumi Talab (Pond) Tehsil – Gardwarwar, District Narsinghpur, the land used is mentioned as Bhu Jal Shashkiy in the record.
2. The applicant has also raised the issue of discharge of untreated water into the water body and encroachment in contravention of the order passed by the Hon'ble Supreme Court of India in the case of Hinchlal Tiwari & Ors. and the directions of the court not to encroach any water body or land of ponds , tanks and lakes and further direction that long period of encroachment is no defence and does not give any equity.
3. The matter was taken up by this Tribunal on 11.03.2022 and the committee consisting District Magistrate, Narsinghpur (M.P.) and Representative of

Madhya Pradesh Pollution Control Board, (M.P.) was constituted with direction to submit the factual and action taken report.

4. In compliance thereof, the committee visited the site and submitted the Report which is as follows :-

- “1. It is a true that the Gram Panchayat Lilwani Halka Number 121 Bandobast 414, Khasra Number 111/1, 111/2, 111/3, 112, 113, 114 Total Rakba (Bhumi) 3.658 hectare is recorded as a Bhujal Land as per revenue records.*
- 2. During inspection it is found that most of land (Lalwani Talab) is plane and about 2 acar of land is found low laying area. There is no water stored in the said land.*
- 3. About 07 acar land is almost found plane and Government has constructed A Gram Panchayat Bhawan (Size about 50x60 feet), A High School (Area about 100x100 feet) and Vilage Market (Bazar) is about 100x100 feet is constructed. All of these constructed by Jila Panchyat Narsinghpur as per information given during inspection by Revenue officer/Patwari.*
- 5. Presently there is no water is found in said land. There is no domestic effluent is meets to the land. About 2 acar of land is found low laying area. There is no water stored in the said land. Presently there is shrubs is found in the premises. Durinnng inspection nearby villager has informed that during rainy season this 02 acar land is filled with the rainy water. Depth of land is about Approx 2 feet. Remaining land is almost flat.*
- 6. There is one hand-pump is situated in the nearby school in above land. A water sample of hand-pump is taken in the presence of team member. The water quality of hand-pump water is found normal.*
- 7. As per point raised by application the lalwani talab is encroachment by the nearby farmer. During the inspection revenue employee has been directed to submit the details report regarding encroachment by nearby farmers/villager in this regard. As per the Revenue officer report encroachments if found by local villager/farmers. Panchnama made by Revenue officer is enclosed.*
- 8. Photographs along with coordinate is recorded in GPS Camera during inspection is enclosed.*

Recommendations:

1. *Illegal Encroachments of the pond area shall be removed by local authorities.*
2. *District authority shall resolve the cases of identified encroachment as per the law if any.*
3. *Presently about 07 acars of pond land is already filled in due course of time by the natural process which is converted into flat land. Out of 07 acar land remaining 02 acar land shall be restored as a pond by making arrangements of stop dam and cleaning by local authorities.*
4. *The Jila Panchyat has constructed A Gram Panchayat Bhawan (Size about 50x60 feet), A High School (Area about 100x 100 feet) and Village Market (Bazar) is about 100x1 00 feet which work done for public purpose. Permission of construction of above works is not submitted. Jila Panchayat Narsinghpur shall be submit the government approval for construction work done.*
5. *There is no problem of water pollution is found in said area.”*

5. The water quality of the hand pump was examined by the competent authority by taking the sample near high school and the parameters as found is 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.	-			
3	Colour	-	Colourless			
4	Odour	-	Odourless			
5	Specific Conductivity	µmho/cm	-			
B – CHEMICAL PARAMETERS						
6	pH	-	7.34			
7	Total Alkalinity	mg/ l	40.0			
8	Total Hardness (as CaCO ₃)	mg/ l	165.0			
9	Calcium Hardness (as CaCO ₃)	mg/ l	140.0			
10	Magnesium Hardness (as CaCO ₃)	mg/ l	25.0			
11	Chloride	mg/ l	19.98			
12	Total Solids	mg/ l	-			
13	Dissolved Solids	mg/ l	386.0			
14	Suspended Solids	mg/ l	-			
15	Ammonical Nitrogen (as N)	mg/ l	-			
16	Nitrite Nitrogen (as NO ₂)	mg/ l	0.16			
17	Nitrate Nitrogen (NH ₃)	mg/ l	-			
18	Total Kjeldahl Nitrogen (as N)	mg/ l	-			
19	Fluoride	mg/ l	0.10			
20	Dissolved Oxygen	mg/ l	-			
21	B.O.D. (3 days, 27 °C)	mg/ l	-			
22	C.O.D.	mg/ l	-			
23	Oil & Grease	mg/ l	-			

24	Phosphate (as P)	mg/ l	-			
25	Sulphate (as SO ₄)	mg/ l	4.4			
26	Chromium (CR ⁶)	mg/ l	-			
27	Copper (Cu)	mg/ l	-			
28	Zinc (Zn)	mg/ l	-			
29	Iron (Fe)	mg/ l	0.52			
30	Boron (B)	mg/ l	-			
31	Sodium	Ppm	-			
32	Potassium	ppm	-			
C – BIOLOGICAL PARAMETERS						
33	Total Coliform	MPN/ 100 ml	1.8			
34	Feacal Coliform	MPN/ 100 ml	<1.8			
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						

6. The committee has further submitted the name of the persons who have encroached the land, which is recorded as water body in the revenue records as follows :-

क्रमांक	अतिक्रमणकर्ता का नाम / पिता/ पति का नाम	अतिक्रमण का प्रकार	अतिक्रमिक रकबा
1.	रोशन / ज्ञानी नौरिया	झोपड़ी बनाकर	12 X 20 फुट
2.	गुड्डु / मल्भू नौरिया	झोपड़ी बनाकर	10 X 20 फुट
3.	छोटु/ भोजराज नौरिया	झोपड़ी बनाकर	13 X 18फुट
4.	जगदीश / मूलचंद नौरिया	झोपड़ी बनाकर	15 X 22 फुट
5.	चंदन/ मूलचंद नौरिया	झोपड़ी बनाकर	12 X 20 फुट
6.	चंदन/ भोजराज नौरिया	झोपड़ी बनाकर	13 X 20 फुट
7.	दीपक/ कुंजीलाल कौरव	बाड़ी बनाकर	10 X 12फुट
8.	जालम/ चतुर्भुज कौरव	बाड़ी बनाकर	10 X 13फुट
9.	दीवान/ चतुर्भुज कौरव	बाड़ी बनाकर	12 X 10 फुट
10.	बच्चुलाल/ श्यामलाल कौरव	बाड़ी बनाकर	12 X 12फुट
11.	मनोज/ शामनारायण कौरव	बाड़ी बनाकर	10 X 12फुट
12.	मुक्ताबाई/ कुंजबिहारी कौरव	टीन शेड बनाकर	12 X 15फुट
13.	जुझारसिंह/ मोहन सिंह कौरव	गन्ना फसल लगाकर	0.250 हे.
14.	ग्राम पंचायतभवन	शासकीय	50 X 60फुट

15.	शासकीय हाईस्कूल	शासकीय	100 X 100फुट
16.	हाट बाजार	शासकीय	100 X 100फुट

7. Learned counsel appearing for the Municipal Corporation has submitted that the corporation has no concern with the constructions and it is made by the Gram Panchayat independently. The report reveals that no necessary permission from the competent authority for approval for construction have been taken by the Gram Panchayat.
8. 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 good. 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.
9. 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.

10. 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.
11. 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.”

12. 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. Godavaram 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."

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"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."

13. The action is required to be taken by the State of Madhya Pradesh to restore the water body, to protect it and to take remedial action according to environmental laws. We deem it just and appropriate to quote the relevant portion of analysis and directions as issued in the referred case.

“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:**

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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.

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.”

14. 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 Authority**⁹ 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 activities are 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 Court¹¹, 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 Mumbai**¹², 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 Kerala**¹³, **Kerala State Coastal Zone Management Authority v. Maradu Municipality**, **Maradu and Bikram Chatterji v. Union of India**.*

15. Accordingly, we direct the Collector to ensure that the encroachments as mentioned in Sr. No. 1 to 13 must be removed immediately in accordance with law and the State Pollution Control Board, Madhya Pradesh is directed to proceed for realisation of environmental compensation in accordance with law.
16. The notice is to be issued to Gram Panchayat concerned through MPPCB to show the authority under which the constructions mentioned at Sr. nos. 14, 15 & 16 have been raised. Since, these constructions have been raised from the public fund, public state exchequer the matter may be considered after hearing the Gram Panchayat.
17. In the meantime, State Pollution Control Board is directed to initiate the proceedings for realisation of environmental compensation, if it is found that the construction has been raised on the water bodies without due approval of competent authority or by the State in accordance with law. Further action taken report including details of area of water body may be filed within three weeks.

List it on **12th July, 2022.**

Sheo Kumar Singh, JM

Dr. Arun Kumar Verma, EM

09th May, 2022
O.A. No. 24/2022(CZ)
PN