Item No. 3

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

Original Application No. 11/2022 (CZ)

Bakir Ali Rangwala — Applicant(s)

Versus

State of M.P. through Principal Secretary & Ors. — Respondent(s)

Date of Hearing: 05.05.2022

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

For Applicant(s): Mr. Rohit Sharma, Adv
Mr. Amol Shrivastava, Adv

For Respondent(s): Mr. Sachin. K. Verma, Adv
Ms. Parul Bhadoria, Adv
Mr. Harsh Wardhan Sharma, Adv
Mr. Anshul Gupta, Commissioner, Ujjain
Mr. Ashish Singh, DM, Ujjain

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. The issues raised in this application are encroachment on water bodies, Talab around the Govardhan Sagar Tank situated in the city Ujjain, Madhya Pradesh with prayer to issue directions to the Respondents to protect the water body/talab situated in Survey No. 1281 admeasuring around 36 bigha approx. (which has nearly shrunk to half) commonly known as Govardhan Sagar. It is submitted that the tank is situated near Nagar Kot Mata temple and is used by the general public since time immemorial for religious and other purposes. As a result of the continuous neglect, certain private persons and housing societies have made various encroachment constructions along the talab which is causing damage to the water body and depletion of water resource„ and rampant pollution, due to which almost the entire Lake has vanished and is on the verge of extinction. The survey number was previously recorded in the name of Municipal Committee, Ujjain shown in revenue records of the year 1927-28 as Milkiyat Sarkar Municipal Committee Ujjain. The said land was always in the ownership of the State Government through Municipal Corporation and has always been accessible and use by general public, and the same was never under the control of any private persons. Throughout, the years various encroachments and settlements have cropped up near the Gowardhan Sagar possibly by playing fraud with the revenue records as is reflected from the survey and report of revenue authorities. As a result of this certain private persons and housing societies have made various constructions along the talab which is causing damage to the water body and depletion of water resource, and pollution. After enactment of the M. P. Abolition of Proprietary Rights Act, 1950, and also the insertion of Section 251 of the M.P. Land Revenue Code, 1959, all propriety and non-proprietary rights of private individuals

and land owners in respect of any tanks, ponds water channels etc., stand abolished and the same is vested in the State Government. The State Government by virtue of law is the protector and conservator of the said water body. Special provisions have been made in the Ujjain Master Plan 2021- highlighting the immediate reasons and need or water consideration in Goverdhan Sagar, and restrict building and polluting activities within and near the talab to the extent of 30 mtrs.

3. A further prayer has been made to issue directions to remove encroachment, to take remedial measures from discharging the untreated water / sewage water into the water bodies, to take necessary steps and planning with scheme for reformation and reclamation of water in the Goverdhan Sagar and to formulate a viable and realistic policy for its future conservation and maintenance and to ensure that no construction takes place within 30 meter of Goverdhan Sagar and that no building permission be granted within the area of the water bodies and to preserve the environment on the principals of sustainable development, Precautionary Principals and Polluters Pay Principal.

Brief facts:

4. The talaab, is of historical and religious importance as the same is a part of "Sapt Sagar" as mentioned in Indian Cultural History. The "Sapt Sagar" includes Rudrasagar, Pushkar Sagar, Kshirsagar, Goverdhansagar, Ratnakar Sagar, Vishnusagar and Purshottam Sagar. The "Sapt Sagar" is also mentioned in Puranas and is related with various historical and mythological events. The fact of pollution and reasons for the same are also highlighted in the Ujjain Master Plan 2021 as follows:

(i) Filling of talab by various encroachers and public

(ii) The use of the tank as a garbage dump by the public,

(iii) The use of the same as a toilet by the population,

(iv) Permanent unchecked constructions that have been erected nearby.

The effect of the same has been stated as follows:

(i) extremely depleted quality of the water,

(ii) home to various diseases,

(iii) Mosquitoes.

Under the head of scope for improvement it has been mentioned as:

(i) Cleaning of the sources form which water is supplied, to initiate pisciculture for ecological improvement,

(ii) To improve sewage,

(iii) To restrict all construction, purav and land filling near the talab in the future.

Proceedings before this Tribunal

5. The matter was taken up by this Tribunal on 07.02.2022 and a Joint Committee consisting (i) Collector, Ujjain, M.P, (ii) One representative from Central Pollution Control Board, M.P. (iii) One representative from Madhya Pradesh Pollution Control Board, M.P was constituted with directions to submit Factual and Action Taken Report.

6. In compliance thereof, the Joint Committee has submitted the report which is as follows:

The facts observed during the site visit (dated 09/03/2022) of the Committee are as follows:-

1. *GPS locations of the site are recorded using a mobile-based GPS application. The location of GoverdhanSagar (further mentioned as Pond) and places around the pond that the committee visited are marked on the Google Map (Annexure-1), and photographs taken during the inspection are attached (Annexure-2).*
2. *Committee observed that the Pond is located at (23^0.11'.53.37''N,77^0.39'. 21.33''E) at the backside of Vikramaditya cloth market Ujjain. On the west side of the pond, a road exists-the Vikramaditya cloth market is located on the South side of the pond*

just adjacent to the pond boundary. The residential colony exists on the north and eastern side of the pond.

3. *At the time of visit, no solid waste, garbage, or floating waste material was observed in the pond; however,* ***a large quantity of municipal solid waste and water hyacinth weeded out from the pond was found lying on the boundaries of the pond****. Ujjain's religious leaders recently organised a massive clean-up to conserve the Goverdhan Sagar.*
4. *The Committee observed* ***a thin water stream emerging from inside the Patel Nagar area, joining the pond, a surface run-off from the residential area.***
5. *In the Vikramaditya cloth market, around 300 shops and residential houses exist,* ***and the domestic waste water collected in a sump****. It. is pumped to the Fazalpura drain, further drained in Somwarinala. Septic tanks were constructed on the backside of the residential houses, and the overflow of this tank was also collected in the main sump.* ***At the time of the visit small quantity of the waste water was found overflowing from the sump, which is further drained out in the pond****.*
6. *To assess the pond's present water quality, two samples have been collected, i.e. pond in front of Charitable hospital, Nikaschouraha and the pond at the backside of Nagarkotki rani temple.*
7. *To assess the present ground water quality due to pond water's percolation, two samples have been collected, i.e. handpump near Bhuvaneshwari temple and Ganesh tekri Ujjain.*
8. *The waste water sample of the overflow sump of Vikramadityacloth market was also collected.*
9. *The Ujjain municipal corporation also submitted the Goverdhan Sagarlake area plan under the sewerage project. A map shows the network of seweragepiplines and open sewers flowing into the Goverdhan Sagar lake. Thesewer from areas around the Goverdhan Sagar lake, i.e., from Patel Nagar, Vikramaditya market, Fazalpura, Nagar Kot Mata mandir, Charitable hospital main road is flowing into the Goverdhan Sagar lake. The above area is considered in the DPR of the phase-1 underground sewerage scheme. After the construction of this proposed pipeline, the open channels from the sewer around Goverdhan Sagar lake will be connected with the main trunk link.*
10. *Smart City Ujjain vide its resolution dated 18.01.2021 (Agenda item 66) has* ***recognized the problem of encroachments and other development around Goverdhan Sagar****, one of the major water body among famous sapt sagar of Ujjain. The Smart*

City Ujjain has resolved to take up the project for the rejuvenation of Goverdhan Sagar lake, conserving the environment and its development as a recreational city, as one of the interventions of the Ujjain Smart City. The Board of the Smart City Ujjain has resolved to accord in-principle approval for Rejuvenation and Development of Govardhan Sagar Lake, Ujjain. The estimate for this work around 13 crores.

Information regarding Encroachment of Govardhan Sagar

As per information received from Tehsildar Ujjain regarding encroachment and area of Goverdhan Sagar vide letter No. 339 dt. 21/03/2022, the present status of survey No. 1281 (Total Area 7.716 Hact.) is as follows:-

I. *Area under waterbody-4.560 Hact.*
II. ***Area of encroachment in the form of houses, Shop & Temporary Huts-1.150 Hact.***
III. *The area of water works office & Road on Govt. land-0.313 Hact.*
IV. *The remaining open area is covered as ponds banks, hillocks & shrubs- 1.693 Hact.*

Status of Goverdhan Sagar per Revenue Record

A. *As per the oldest available record of the map of the year 1899, the said survey No. 2279/1 at* ***the relevant point of time was recorded as a pond/water body****.*
B. *That, after that, as per the Khasra of 1911, the said land was* ***recorded as Tallaab****, admeasuring* ***34 Biswas, at Survey No. 1205.***
C. *From the record, it appears that the said tank is under public ownership through Municipal Committee Ujjain, also shown in the revenue records of the year 1927-28 in the name of Milkiyat Sarkar Municipal Committee, Ujjain as the Survey No. 1281. After that, in the year 1950-51 the* ***said survey number was split into Survey Nos. 1281/1, 1281/2, 1281/3 and 1281/4 and the said talab was recorded in the name of some private persons erroneously and possibly fraudulently without any legal or valid order of the revenue authorities.*** *Thereafter, the said parcels of land were transferred to various others persons. The fact of fraudulent changes in the revenue records in respect of the tank is borne from a report dated 11.12.2020 written by the Tehsildar to the sub-Divisional Officer in respect of the said survey number and tank.*
D. *That, from the aforesaid, it appears clearly that from 1950-51 onwards, the said talab, which is primarily under the ownership*

and management of the Municipality and was placed under protection through various circulars and orders of the erstwhile Gwalior riyasat have been ***transferred fraudulently and without any proper decree of court or orders of the competent authorities in favour of private persons in clear violation of the provisions of the law as applicable at the relevant time,*** *and ever since before.*

E. *In the present condition survey no 1281 total area 70716 hec. Is divided in 20 sub-survey numbers in revenue record and area 7.403 hec. Is* ***mentioned as private ownership and remaining 0.313 hec****. is Govt. ownership.*

F. *That it is pertinent to mention here that the Gwalior municipalities act* ***1911 came into force and as per section 81(b) of the said act, all the open talaabs were deemed to be under public control and were vested into the management and possession of the Municipality therein.***

G. *That, thereafter as per* ***gazette notification of the Gwalior Riyasat, revenue Department dated 25.06.1925*** *prohibition was placed upon the cultivation of various crops and use of talab water for irrigation and other purposes. Detailed guidelines were laid down in respect of the municipality's role. Also revenue officers were authority used to take action against the persons using the talab in violation of the said notification and prohibitions. In the said gazette notification the Goverdhan talab is named as Nakhasa and has been recognized for its religious and ecological significance and has been placed under protection by the erstwhile government.*

H. *That after the* ***1925 gazette publication in settlement took place in 1927****, wherein it has been recorded explicitly* ***that the talabs whiich are situated in Kasba haja*** *are under the* ***ownership of milkiyat sarkar*** *and possession of the Municipal Committee. Here clearly the name of Municipal Committee has been recorded in respect of the said Goverdhan Sagar pond.*

I. *That it is also pertinent to mention that many persons who have unauthorisedly occupied the said talab on the basis of revenue entries or otherwise have attempted to legalize their possession by way of filing suits before the competent civil court, but* ***till not have been successful in getting any relief****. Anil S/o Munnalal Joshi filed one such suit and the civil suit filed by him RCS #A/2019 has been dismissed vide judgment dated 19.07.2019 by the trial cout holding in para 29 and 31 of the judgment that without any order of competent authority the name of the plaintiff's father was mutated in place of Milkiyat Sarkar. It has also been held that the said land*

was always talab and nobody can claim any ownership or bhumiswami rights over a talab

Status of Govardhan Sagar and Land Use as per Town & Country Planning Department

As per the information collected from Joint Director, Town & Country Planning Ujjain vide their letter no. 700 dated 07.04.2022 regarding Govardhan Sagar, the information is as follows:-

A. *In relation to the letter referred to in the above subject it is informed that according to the adopted Ujjain Development Plan 2021 (with effect from 16.06.2006 publication in the Gazette) no. 17 of paragraph 2.15 has been mentioned in the development and protection of water sources. Govardhan Sagar has been mentioned at number 4 of Table 2-Sa-4 to Sapta Sagar.*

Ujjain Development Plan 2021 (wef 16.06.2006 publication in the Gazette) no. 17 of paragaraph 2.15, number 4 of Table 2-Sa-4 to Sapta Sagar (English translation form original Hindi Text)

No.	***Details***	***Situation***	***Status of Sagar***	***Reasons of pollution***	***Effect on the Sagar***	***Possibility of improvement***
4	*Govardhan Sagar*	*East of the Nikasa and on the south-west of Nagarkot's Rani Devi Budhwaria intersection and Ankpat road*	*Water catchment area (Cleaning of main channels supplying water to the sagar)*	- *Filling of the sagar* - *To use as a garbage dumping site* - *Use as a toilet by the surrounding population* - *Massive construction of permanent nature*	- *Waer quality is very poor* - *Breeding ground of various diseases* - *Mosquitoes*	- *Cleaning the sources supplying water to the sagar* - *Improving water ecology through fist farming* - *Improvement in the sewerage system of the surrounding population. In future there must be a ban on any construction or filling of the sagar.*

Remarks: *The study of Sapt Sagars suggest that the basic structure is changing and area is reducing due to the surrounding land use. Wherever there has been soil erosion in the embankment area of the sagar it should be prevented. The ecological changes taking place in these water sources should be informed to the adjacent rural areas and the abadi so that they can be conserved properly. And these religious and cultural heritage of Ujjain city should continue to exist. It will be necessary to bring 30 meters green belt around Sapta Sagar.*

B. *In the integrated Ujjain development plan 2021(effective from 16.06.2006) land use of survey number 1281 of Govardhan Sagar is kept as a reservoir and 300 meters around Govardhan Sagaris kept as green belt. The relevant point number -17 of paragraph-2.15 of development plan 2021 is development and protection of resources.*

C. *It is very clear that Govardhan Sagar is a pond of religious and historical value and efforts have been made in the master plan of Ujjain with effect from 2006 to conserve and preserve the land as a water body. However some private persons have erroneously and possibly fraudulently got the land entered into the land records and have tried to develop the land for commercial and residential activities. Indeed one Bhanushali Grah Nirman Cooperative Society got a colony layout approved on the site of the water body on survey number 1281/1/1 further information regarding commercial and residential use of survey number 1281 related to Govardhan Sagaris as follows –*

- *The application of Bhanushali Grah Nirman Cooperative Society Ujjain was received on 15.03.1987 which was received by this office's inward number 4435 dated 15.12.1987.*
- *The land survey number 1281/1/1 area 5.322 located in Ujjain town was proposed for residential use in the* ***Ujjain development plan 1991****. According to the technical analysis report in the T&CP office, the*

land in question is under residential use according to the development plan map, and Govardhan Sagar was initially earmarked for educational use as per clause 14.34 of the English book number 250 of the development plan 1991. But if no educational institution is established here in five years then it is proposed to be developed as a leisure centre. ***In such a situation what should be considered as land use of the land in question****", this remark is mentioned in the note sheet of the T&CP on page no. 1.*

- *In this regard, guidance from the Director, T & CP was sough vide the official letter no. 222 dated 18.01.1988. The Director did not give any guidance in this regard within the stipulated time period. The matter was to be resolved* ***within the stipulated period of 60 days****, therefore, considering the color map of the Ujjain Development Scheme 1991 as the basis, permission was issued by the official letter no. 728-734 dated 02.03.1988 residential land use.*
- *Application was received regarding extension of the approved layout on 13.02.1989, which was extended vide letter no. 673 dated 02.03.1989. The letter is available in the file but the file and the* ***note sheet is not available****. Letter no. 1440/ Namani/93 Ujjain dated* ***19.07.1990 is registered in the outgoing register but is not available in the file****. In the said letter, it has been written that it* ***is not appropriate to extend the time period of the layout*** *as per the instructions received by from Director City and Village Investment Bhopal, 268/CTC/90 Bhopal dated 06.07.1990 on following grounds:*

  i. The land in question is part of the existing reservoir which is famous as Govardhan Sagar.

ii. *Reservoir is of Historical and Religious Importance and on consideration of associated public sentiments it important to keep it intact.*

iii. ***It is not possible to develop for residential use due to the presence of a reservoir at the present site.***

Therefore, on the basis of the above facts, the extension of the time ***period of the layout in question is refused.***

Bhanushali Grah Nirman Co-operative Society Limited, Ujjain preferred appeal before the Commissioner, Ujjain Division. Commissioner Ujjain vide order dated 17.06.91 in the case number 101/89-90 Appeal, cancelled the letter no.1440 dated 19.07.1990 and the case was reverted with the direction that the case be disposed as per the law after giving the opportunity of hearing to the Appellant Bhanushali Grah Nirman Samiti and taking evidence etc. on the facts of the case. The office does not know what action was taken after the said order of the commissioner. The said file is not available in the official records.

7. During the course of hearing today on 04.05.2022, the Collector, Ujjain and the Municipal Commissioner were present and presented the facts before this Tribunal through Video Conference. It is informed that to find out the truth Tehsildar, Ujjain was directed to go through the records and submit a detailed report. In compliance thereof, the Tehsildar submitted the report which is as follows:

कार्यालय तहसीलदार तहसील उज्जैन नगर जिला उज्जैन

क्रमांक/1560/री.1/2020 उज्जैन दिनांक: 11.12.2020

प्रति,

अनुविभागीय अधिकारी महोदय
अनुभाग उज्जैन नगर

विषयः म.प्र. भू–राजस्व संहिता 1959 की धारा 115 के अंतर्गत प्रस्तुत आवेदन द्वारा नगर पालिक निगम उज्जैन द्वारा आयुक्त न.पा.नि. उज्जैन कस्बा उज्जैन स्थित भूमि सर्वे क्रमांक 1281 रकबा 7.476 के संबंध में जॉच प्रतिवेदन बाबत।

संदर्भः श्रीमान का पत्र क्रं./रीडर–1/एस.डी.एम.नगर/2020/1730 दिनांक 24.11.2020

——00——

उपरोक्त विषयांतर्गत संदर्भित क्रम में निवेदन है कि आयुक्त महोदय न.पा.नि. उज्जैन के द्वारा म.प्र. भू–राजस्व संहिता 1959 की धारा 115 के अंतर्गत प्रस्तुत आवेदन पत्र प्रस्तुत कर कस्बा उज्जैन स्थित भूमि सर्वे क्रं. 1281 रकबा 7.476 हे. के बटांकनो पर अनावेदकगण के नाम असत्य एवं अवैधानिक आधारो पर दर्ज किया गया है जबकि उपरोक्त गोवर्धन सागर की सम्पर्ण भूमि पर अनावेदकगण को किसी भी प्रकार का स्वत्व, हित एवं अधिकार प्राप्त नही होने से गोवर्धन सागर तालाब की सम्पूर्ण भूमि सर्वे नं., रकबा पर अनावेदकगण के नाम के इन्द्राज को निरस्त किये जाने तथा पूर्वानुसार नगर पालिक निगम के नाम का इन्द्राज बहैसियत भूमि स्वामी के दर्ज किये जाने का अनुरोध किया गया है।

सर्वे नंबर 1281 रकबा 7.476 हे. की पटवारी प्रतिवेदन अनुसार जॉच निम्नानुसार हैः–

1. उक्त सर्वे नंबर वर्ष 1911–12 में 1205 नंबर होकर 40 बीधा 3 बिस्वा रकबा था उक्त नंबर पर पट्टी हटेसिंह ब न 35 काश्तकार भाउलाल एवं विवरण में बाडा 1 – 6 बीधा तालाब – 34 बीधा 3 बिस्वा रबी फसल में 6 बीधा चने दर्ज है।

2. वर्ष 1927–28 में उक्त सर्वे नंबर के दो भागो में बटकर सर्वे नंबर 1280 एवं 1281 हो गये । सर्वे नंबर 1280 में रकबा 3 बीधा 5 बिस्वा मालिक मुन्नालाल काश्तकार जेशंकर वल्द किशनलाल कोम ब्राहम्ण सा. दह. माफी देवस्थान एवं विवरण में किस्म – गे.मु. टेकरी 3 बीधा 5 बिस्वा कैफियत मंदिर श्री गणपति भुवर एवं सर्वे नंबर 1281 में रकबा 36 बीधा 18 बिस्वा मालिक मि. सरकार ब. न. 194 कमेटी (ब.न. 194 में मी. सरकार मु. कमेटी) काश्तकार छोटेलाल वल्द भाउलाल कायस्थ सा. देह द. कार. तथा शिकमी काश्तकार रधुनाथ वल्द रामचन्द्र व रामचन्द्र वल्द नाना सा. देह. अंकपात अहीर सा. देह. हिसा बराबर साल 1 एवं विवरण में तालाब – 36 बीधा 18 बिस्वा दर्ज है।

3. वर्ष 1950–51 के शासकीय रिकार्ड में उक्त भूमि सर्वे कमांक 1281 चार भागो में बटकर 1281/1, 1281/2, 1281/3, 1281/4 हो गया तथा रिकार्ड में कॉलम नं. 03 में पट्टी रामरतन के भूमि स्वामी स्वत्व पर बिना किसी आदेश के दर्ज हो गया। तथा तालाब की प्रविष्टि 1281/1 पर दर्ज है अर्थात उक्त तालाब 1950–51 के रिकार्ड में निजी स्वत्व पर दर्ज हो गया।

4. 1950–51 में ही कृषक के तौर पर सन् 1281/1 पर मुन्नालाल पिता कन्हैयालाल भूमि स्वामी का नाम बिना किसी आदेश के दर्ज हो गया । 1950–51 से 1963–64 तक का रिकार्ड कार्यालय में उपलब्ध नही है।

5. बाद के बर्ष अर्थात 1963–64 के रिकार्ड में उक्त गोरधन सागर तालाब की भूमि पर भूमि स्वामी स्वत्व पर मन्नूलाल पिता कन्हैयालाल जाति ब्राहम्ण का नाम बिना किसी आदेश के दर्ज हो गया । व तालाब का रकबा 27 बीधा व 10 बिसवा होकर शेष भाग में कृषि व आबादी क्षेत्र दर्ज हो गया है।

6. 1281 का कुछ भाग शासकीय सडक (1281/2) वाटर वर्क्स विभाग (1281/3) व श्री हनुमान मंदिर (1281/4) के नाम पर भी दर्ज पाया गया। तथा समस्त प्रविष्टियो के साथ उपरोक्त मन्नूलाल पिता कन्हैयालाल का नाम भी दर्ज पाया गया।

7. उक्त प्रविष्टिया खसरा वर्ष 1970–71 तक निरंतर रही। बाद के वर्ष अर्थात 1971–72 में 1281/1/1 पर मन्नूलाल के वारिसान मनमोहन पिता मन्नूलाल व रेवतीबाई विधवा मन्नूलाल जाति ब्राहम्ण का नाम नामांतरण र.क. 27/1970–71 आदेश दिनांक 19.06.1971 से दर्ज हुआ है। तालाब का रकबा 5.780 हे. व शेष रकबा अर्थात 1.506 हे. पर कृषि संबंधी प्रविष्टिया दर्ज है एवं 1281/1/2 रकबा 0.105 हे. पर आबादी दर्ज है।

8. उपरोक्त प्रविष्टिया वर्ष 1982–83 तक यथावत चलती रही है। बाद के वर्ष अर्थात 1983–84 में उपरोक्त तालाब की भूमि सर्वे कं. 1281/1/1 क रकबा 0.964 हे. मनमोहन पिता मुन्नालाल आदि तथा उक्त रकबे में से 0.045 हे. पर अशोक कुमार पिता सूरजमल व श्रीमती आशादेवी पत्नि अशोक कुमार जैन निवासी गीता कालोनी नामांतरण रजिस्टर कमांक 24 आदेश दिनांक 04.11.1988 से दर्ज हुये तथा शेष रकबा पडत कदीम दर्शाया गया।

9. इसी आधार वर्ष 1983–84 में बिना किसी आधार के सर्वे कं. 1281/1/1 ख रकबा 1.672 हे. ईश्वरदास पिता जयरामदास सिंधी सर्वे कमांक 1281/1/1 ग रकबा 1.515 हे. लक्ष्मणदास पिता जयरामदास सिंधी, सर्वे कं. 1281/1/1 ध रकबा 1.045 हे. गोरधनलाल पिता हेमनदास सिंधी, सर्वे कं. 1281/1/1 च, रकबा 1.045 ईश्वरलाल पिता हेमनदास सिंधी सर्वे नं. 1281/1/ छ, रकबा 1.045 कन्हैयालाल पिता हेमनदास सिंधी व 1281/1/2 रकबा 0.105 बिना किसी आदेश के मन्नुलाल पिता कन्हैयालाल (कृषि भिन्न) दर्ज हुआ। उपरोक्त सर्वे कमांक 1281/1/1 ख से छ तक पडत कदीम दर्ज होकर वर्ष 1987–88 में सिंघाडा फसल दर्ज है।

10. वर्ष 1988–89 के खसरे में सर्वे कमांक 1281/1/1 मि. क रकबा 0.919 पर सर्वे नं. के नीचे सिर्फ गोरधन सागर तालाब दर्ज हे रकबा पडत कदीम ही दर्शाया गया है।

11. वर्ष 1988–89 के वर्ष में उपरोक्त सर्वे कमांक 1281/1/1 ख से छ तक की संपूर्ण भूमि का नामांतरण श्री भानुशाली गृह निर्माण सहकारी समिति को नामांतरण रजिस्टर कं. 60 आदेश दिनांक 25.07.1988 से किया गया । उक्त समिति के अध्यक्ष ईश्वरदास पिता जयरामदास थे तथा वर्ष 1988–89 के रिकार्ड में खसरे के कॉलम 10 में संपूर्ण रकबा तालाब की मद में दर्ज है। उपरोक्त व्यक्तियों द्वारा प्रत्येक ने अर्थात ईश्वरलाल, लक्ष्मणदास, गोरधनदास, ईश्वरलाल व कन्हैयालाल द्वारा अपने अपने रकबे में से 0.200 हे. भूमि स्वयं के स्वामित्व की छोडकर शेष संपूर्ण रकबा उक्त भानुशाली सहकारी समिति को विकय कर दिया।

12. वर्तमान में उक्त सर्वे क्रमांक 1281 में उपरोक्त भूमि स्वामियों जो कि बिन्दु क्रमांक 8 व 9 व 11 में बताए गए है, के अतिरिक्त सर्वे क्रमांक 1281/1/1 मि. 1 रकबा 0.506, अनिल पिता मन्नुलाल प्र.क्रं. 56/अ–6/2011–12 दिनांक 16.04.2012 से प्रविष्ठि दर्ज है। 1281/1/1 मि. 2 रकबा 0.379 हे., चांदमल आदि पिता शेजमल पंजी क्रं. 71/2010–11 दिनांक 17.07.2010 से प्रविष्ठि दर्ज है। 1281/1/1 मि. 3 रकबा 0.025 बंसीलाल पिता अनंतनारायण, पंजी क्रं. 87/2010–11 दिनांक 10.09.2010 से प्रविष्ठि दर्ज है। सर्वे नं. 1281/1/1 मि. 4 रकबा 0.010 प्रेमनारायण पिता सत्यनारायण पंजी क्रं. 88/2010–11 दिनांक 10.09.2010 से प्रविष्ठि दर्ज है। अनुविभागीय अधिकारी महोदय उज्जैन के प्र.क्रं. 473, 474, 475, 476, 477, 478, 480, 481, 482, 484, 486, 487/अ–2/1982–83 दिनांक 06.07. 1983 से भूमि परिवर्तन किया गया व्यपवर्तित क्षेत्रफल 3790 वर्गमीटर प्रविष्ठि कालम नं. 12 में दर्ज है।

13. उपरोक्त भूमिस्वामियों में से अनिल पिता मन्नुलाल जोशी द्वारा उपरोक्त भूमि सर्वे क्रमांक 1281/1/1 रकबा 0.505 हे., सर्वे क्रमांक 1281/1/2 रकबा 0.105 हे. एवं सर्वे क्रमांक 1281/4 रकबा 0.011 हे. के स्वत्व के संबंध में माननीय व्यवहार न्यायाधीश वर्ग–1 के न्यायालय में एक वाद क्रमांक 3ए/2019 दिनाक 17.03.2015 दायर किया गया था जिसे कि माननीय व्यवहार न्यायाधीश महोदय द्वारा उक्त आवेदक के स्वत्व के वाद को निरस्त करते हुए उपरोक्त भूमि को तालाब की भूमि माना है। आदेश की प्रति संलग्न है।

अतः उपरोक्त संपूर्ण विवेचन से स्पष्ट है कि उक्त स.क्र. 1281 पूर्व से ही तालाब की भूमि रही है जो कि गोरधन सागर के नाम से प्रचलित है एवं मौके पर भी तालाब है।

अतः जॉच प्रतिवेदन सादर प्रेषित है।

संलग्नः उपरोक्तानुसार।

तहसीलदार
तहसील–उज्जैन नगर

8. The Collector, Ujjain, while finalizing the development plan, directed the Joint Director, Nagar & Gram Niwesh, Ujjain to submit the Ujjain Development Plan, 2021 and in compliance thereof, vide letter dated 17.03.2022, following details has been reported:

16. कब्रिस्तान एवं श्मशान घाट

ग्रामीण क्षेत्रों में स्थित कब्रिस्तान एवं शमशान यथावत् रहेंगे. वर्तमान में निर्मित क्षेत्र के अन्तर्गत कार्यशील कब्रिस्तान एवं शमशान को यथावत् रखने का प्रस्ताव है. जब तक कि जनसामान्य की मांग या उचित कारण से कहीं अन्यत्र विस्थापित किये जाने की स्थिति न बनें. कब्रिस्तान एवं शमशान घाट के समीप शासकीय भूमि उपलब्ध होने पर उसका विस्तार किया जा सकता है. नये कब्रिस्तान व शमशान घाट कृषि उपयोग के अंतर्गत अनुज्ञेय होंगे. किन्तु इनके स्थल का चयन जन सामान्य की मांग पर स्थानीय प्राधिकारी द्वारा किया जायेगा.

17. जल स्त्रोतों का विकास एवं संरक्षण

जलस्त्रोत उज्जैन नगर की प्राकृतिक विरासत का एक महत्वपूर्ण व अभिन्न अंग है. उज्जैन नगर का धार्मिक ही नहीं वरन् इकोलॉजीकल महत्व भी है. क्षिप्रा नदी व सप्त सागर इस प्राकृतिक विरासत का भाग है.

उज्जैन : सप्त सागर (जल स्त्रोत)

2-सा-14

क्र.	विवरण	स्थिति	सागर का स्वरूप	प्रदूषण के कारण	सागर पर प्रभाव	सुधार की संभावना
1	2	3	4	5	6	7
1	रुद्र सागर	• महाकाल मंदिर के समीप.	• रिचार्ज क्षेत्र गंदा नाला व हनुमान नाले का डिस्चार्ज क्षेत्र.	• केचमेंट क्षेत्र में विकसित आबादी का कचरा व सीवेज. • सागर के क्षेत्र पर निर्माण अतिक्रमण.	• तटों का कटाव तथा किनारों पर नगरीय गतिविधि के कारण पुराव, जल की गुणवत्ता अत्यधिक खराब.	• ग्रंथों के अनुसार क्षिप्रा नदी से जुड़े दो चैनल का पुनर्द्वार सागर के किनारे भवन निर्माण गतिविधि पर रोक. सागर के किनारों पर गंदगी/मलबा हटाना क्षेत्रीय वृक्षों का रोपण व नगर निगम उज्जैन द्वारा प्रस्तावित ईकोसिटी योजना के अनुसार विकास.
2	विष्णु सागर	• अंकपात राम जनार्दन मंदिर के पास.	• डिस्चार्ज क्षेत्र	• सागर में मिट्टी/ गाद का भर जाना. • सागर में वनस्पति • सागर की पाल का कटाव.	—	• गहरी करण (डिसिल्ट्रेशन). • तटों पर वृक्षारोपण.
3	क्षीर सागर (बावड़ी रुप)	• स्कंद पुराण अवंतिका कांड में उल्लेख.	• जल संग्रहण क्षेत्र गंधावती का स्रोत किंतु नयी सड़क व कंठाल क्षेत्र के विकास से अवरुद्ध.	• मुख्य कारण मिट्टी का जमा होना (सिलट्रेशन).	• पानी का बहाव न होना तथा जल की गुणवत्ता खराब.	• डिसिल्ट्रेशन तथा सफाई. • तालाब की मरम्मत व सफाई. • सागर के पर्यावरण हेतु मछली पालन.

1	2	3	4	5	6	7
4	गोवर्धन सागर.	• निकास के पूर्व तथा नगरकोट की रानी देवी के दक्षिण-पश्चिम में स्थित. • बुधवारिया चौराहा तथा अकंपात पर.	• जल संग्रहण क्षेत्र (सागर को जल प्रदाय करने वाले मुख्य चैनलों की सफाई).	• सागर का पुराव • कचरा घर की तरह उपयोग. • आसपास की आबादी द्वारा शौचालय की तरह उपयोग. • वृहद रूप में स्थायी निर्माण.	• जल की गुणवत्ता का अत्यंत खराब होना. • विभिन्न बीमारियों का घर. • मच्छर.	• सागर को जल प्रदाय करने वाले स्रोतों की सफाई. • मछली पालन से जल की इकोलॉजी सुधारना. • आसपास की आबादी की सीवेज व्यवस्था में सुधार. • भविष्य में सागर में कोई पुराव/निर्माण, भराव पर प्रतिबंध.
5	पुरुषोत्तम सागर (सप्त सागर).	• ईदगाह के उत्तर में अंकपात मार्ग पर.	• जल संग्रहण क्षेत्र (वर्ष भर) जल उपलब्ध है.	• रेत (सिलट्रेशन)	• वर्षा में सिंघाड़े की खेती (200 वर्ष से).	• सिंघाड़े की खेती जारी रखी जाये. • पर्यटन केन्द्र के रूप में विकसित किया जा सकता है.
6	रत्न सागर (उंडासा-तलाब).	• उज्जैन नगर से 12 कि.मी. दूर मक्सी मार्ग पर.	• सिंचाई के उपयोग हेतु तथा आसपास के उद्योगों को जल प्रदाय (सिंथेटिक्स) फेक्ट्री, दुग्ध डेरी. • पिंगला नदी से जल प्राप्त क्षेत्र.	• खेती पर उपयोग होने वाली रसायनिक खाद. • आसपास के क्षेत्र का गंदा पानी.	• जल की गुणवत्ता वर्तमान में काफी उपयुक्त है.	• आसपास की आबादी एवं गतिविधियों पर नियंत्रण ताकि सागर को जल प्राप्त होने के चैनल बंद न हो.
7	पुष्प सागर (सूरज कुंड)	• रुद्र सागर के समीप साकीपुर क्षेत्र में.	• सूरज कुंड के अतिरिक्त मूल स्वरूप नष्ट प्राय:. • सागर में स्थित बावड़ी में पानी उपलब्ध.	• बावड़ी पर मकानों द्वारा अतिक्रमण. • पानी का स्रोत भी बंद हो गया है.	• सिलट्रेशन • जल की गुणवत्ता खराब.	• मूल स्वरूप को पुन: बनाया जावे. • जल स्रोत को पुनर्जीवित करना.

नोट.—इन सभी सप्त सागर के अध्ययन से पता चलता है कि इनका मूल स्वरूप व क्षेत्र आसपास के भू-उपयोग के कारण कम होता जा रहा है. सागर के किनारे के क्षेत्र में जहां-कहीं भी मृदा कटाव हुआ है, बचाया जाना चाहिए. आसपास के ग्रामीण क्षेत्र व आबादी को इन जल स्रोतों में होने वाले 'ईकोलॉजिकल' बदलाव के कारण बतलाये जाना चाहिए, ताकि इनका उपयोग ठीक ढंग से हो सके व उज्जैन नगर की धार्मिक व सांस्कृतिक धरोहरों का अस्तित्व बना रहे.

सप्त सागर के चारों ओर 30 मीटर ग्रीन बेल्ट रखा जाना आवश्यक होगा.

9. The Joint Committee has taken some photographs of the site which reveals that there are encroachments, discharge of garbage, solid waste into the water bodies, there is also discharge of untreated water, sewage water into the water bodies and water quality of the

pond has been repeatedly deteriorated due to discharge of untreated water, which is reported to be dangerous to the human health. The quality of the water as reported are as follows:

a. Govardhan Sagar in front of charitable hospital, Nikas Choraha, Ujjain

Report No. 1372/2022

TEST REPORT

Sample from :- Goverdhan Sagar in front of Charitable Hospital, Nikas Chauraha, Ujjain
Description of Sample :- Pond water
Sampling Method :- *APHA, 23rd Edition, 1060*

Date of Collection	09-03-22	Sample Volume- 2 Litre
Date of Receipt	09-03-22	Plastic bottel 2 litre marked "1"
Start of Analysis	09-03-22	Colletcted by :- Mr. Anup Chaturvedi, Scientist - B, CPCB Bhopal
Date of Completion of Analysis	15-03-22	Analysed by :- Mr. Devendra Solanki, Chemist

S.No.	Parameters	Unit	Test Method	Range of testing	Result
1	pH	pH Units	APHA 23rd edi. 2017, Electrometric Method 4500-H+B,	1 to 14 pH Unit	8.32
2	Specific Conductance	micromho/cm	APHA 23rd edi. 2017, By Conductivity Meter 2510-B	1 to 20000 micromho/cm	3316
3	Chloride as Cl^-	mg/l	APHA 23rd edi. 2017, Argentometric Method 4500-Cl--B	5 to 50000 mg/l	532
4	Total Alkalinity as $CaCo_3$	mg/l	APHA 23rd edi. 2017, Titrimetric Method 2320-B	10 to 1000 mg/l	1092
5	Total Hardness as $CaCo_3$	mg/l	APHA 23rd edi. 2017, EDTA Titrimetric Method 2340-C	10 to 5000 mg/l	780
6	Calcium Hardness as $CaCo_3$	mg/l	APHA 23rd edi. 2017, EDTA Titrimetric Mehod 3500-Ca-B	5 to 5000 mg/l	486
7	Magnesium Hardness as $CaCo_3$	mg/l	APHA 23rd edi. 2017, Calculation Method 2340-B	5 to 5000 mg/l	294
8	Total Solids	mg/l	APHA 23rd edi. 2017, Gravimetric Method 2540 B	10 to 100000 mg/l	2350
9	Suspended Solids	mg/l	APHA 23rd edi. 2017, Gravimetric Method 2540 D	5 to 1000 mg/l	32
10	Total Dissolved Solids	mg/l	APHA 23rd edi. 2017, Gravimetric Method 2540 C	10 to 100000 mg/l	2318
11	B.O.D.(3 Days 27^0C)	mg/l	IS 3025,P-44, 1993 (3-Day B.O.D. Test)	1 to 50000 mg/l	38
12	Chemical Oxygen Demand	mg/l	APHA 23rd edi. 2017, Open Reflux Method 5220-B	5 to 100000 mg/l	70
13	Ammonical Nitrogen as NH_3-N	mg/l	APHA 23rd edi. 2017, Phenate Method 4500-NH3F	0.1 to 200 mg/l	11.86
14	Nitrite as NO_2^--N	mg/l	APHA 23rd edi. 2017, Colorimetric Method 4500-NO2-B	0.002 to 5 mg/l	0.018
15	Nitrate as NO_3^--N	mg/l	APHA 23rd edi. 2017, UV Spectrometer Method 4500-NO3-B	0.1 to 100 mg/l	1.12
16	Phosphate as PO_4^{3-}-P	mg/l	APHA 23rd edi. 2017, Method ,4500-PD-Stannous Chloride	0.1 to 20 mg/l	1.53
17	Sulphate as SO_4^{2-}	mg/l	APHA 23rd edi. 2017, Turbidimetric Method 4500-E	1 to 5000 mg/l	152.6
18	Sodium as Na	mg/l	APHA 23rd edi. 2017, Flame photometer Method 3500-Na-B	5 to 1000 mg/l	356
19	Potassium as K	mg/l	APHA 23rd edi. 2017, Flame photometer Method 3500-K-B	1 to 200 mg/l	8.32
20	*Total Coliform	MPN/100ml	APHA 23rd edi. 2017, Standard Method	--	>1600
21	*Fecal Coliform	MPN/100ml	APHA 23rd edi. 2017, Standard Method	--	920

INDICATION : ☐ PARAMETER DOES NOT CONFIRM TO-		Note:-
1	Standards prescribed by M.P.P.C.B. in M.P. Gazette notification, dated 25-03-1988.	(1) The report shall not be reproduced except in full, without permission of Regional Laboratory, M.P. Pollution Control Board, Ujjain
2	Standards prescribed in Enviroment (Protection) Rules 1986.	(2) No Statutory liability accepted for samples not collected by M.P.P.C.B.
3	The Tests mark with an * are not accredited by NABL.	(3) The result relate only to the sampale tested.
4	ND - Not Detected, BDL- Below Detectable Limit	(4) Sample received in sealed condition.

(A.D. Sant)
Senior Scientific Officer

TEST REPORT

Sample from :- Govardhan Sagar back site of Nagarkot ki Rani Temple, Ujjain
Description of Sample :- Pond water
Sampling Method :- *APHA, 23rd Edition, 1060*

Date of Collection	09-03-22	Sample Volume- 2 Litre	
Date of Receipt	09-03-22	Plastic bottel 2 litre marked "3"	
Start of Analysis	09-03-22	Colletcted by :- Mr. Anup Chaturvedi, Scientist - B, CPCB Bhopal	
Date of Completion of Analysis	15-03-22	Analysed by :- Mr. Devendra Solanki, Chemist	

S.No.	Parameters	Unit	Test Method	Range of testing	Result
1	pH	pH Units	APHA 23rd edi. 2017, Electrometric Method 4500-H+B,	1 to 14 pH Unit	8.24
2	Specific Conductance	micromho/cm	APHA 23rd edi. 2017, By Conductivity Meter 2510-B	1 to 20000 micromho/cm	3374
3	Chloride as Cl^-	mg/l	APHA 23rd edi. 2017, Argentometric Method 4500-Cl--B	5 to 50000 mg/l	540
4	Total Alkalinity as $CaCo_3$	mg/l	APHA 23rd edi. 2017, Titrimetric Method 2320-B	10 to 1000 mg/l	1160
5	Total Hardness as $CaCo_3$	mg/l	APHA 23rd edi. 2017, EDTA Titrimetric Method 2340-C	10 to 5000 mg/l	792
6	Calcium Hardness as $CaCo_3$	mg/l	APHA 23rd edi. 2017, EDTA Titrimetric Mehod 3500-Ca-B	5 to 5000 mg/l	502
7	Magnesium Hardness as $CaCo_3$	mg/l	APHA 23rd edi. 2017, Calculation Method 2340-B	5 to 5000 mg/l	290
8	Total Solids	mg/l	APHA 23rd edi. 2017, Gravimetric Method 2540 B	10 to 100000 mg/l	2400
9	Suspended Solids	mg/l	APHA 23rd edi. 2017, Gravimetric Method 2540 D	5 to 1000 mg/l	38
10	Total Dissolved Solids	mg/l	APHA 23rd edi. 2017, Gravimetric Method 2540 C	10 to 100000 mg/l	2362
11	B.O.D.(3 Days 27^0C)	mg/l	IS 3025,P-44, 1993 (3-Day B.O.D. Test)	1 to 50000 mg/l	38
12	Chemical Oxygen Demand	mg/l	APHA 23rd edi. 2017, Open Reflux Method 5220-B	5 to 100000 mg/l	80
13	Ammonical Nitrogen as NH_3-N	mg/l	APHA 23rd edi. 2017, Phenate Method 4500-NH3F	0.1 to 200 mg/l	11.72
14	Nitrite as NO_2^--N	mg/l	APHA 23rd edi. 2017, Colorimetric Method 4500-NO2-B	0.002 to 5 mg/l	0.016
15	Nitrate as NO_3^--N	mg/l	APHA 23rd edi. 2017, UV Spectrometer Method 4500-NO3-B	0.1 to 100 mg/l	1.24
16	Phosphate as PO_4^{3-}-P	mg/l	APHA 23rd edi. 2017, Method ,4500-PD-Stannous Chloride	0.1 to 20 mg/l	1.62
17	Sulphate as SO_4^{2-}	mg/l	APHA 23rd edi. 2017, Turbidimetric Method 4500-E	1 to 5000 mg/l	131.4
18	Sodium as Na	mg/l	APHA 23rd edi. 2017, Flame photometer Method 3500-Na-B	5 to 1000 mg/l	342.6
19	Potassium as K	mg/l	APHA 23rd edi. 2017, Flame photometer Method 3500-K-B	1 to 200 mg/l	7.94
20	*Total Coliform	MPN/100ml	APHA 23rd edi. 2017, Standard Method	--	>1600
21	*Fecal Coliform	MPN/100ml	APHA 23rd edi. 2017, Standard Method	--	540

INDICATION : □ PARAMETER DOES NOT CONFIRM TO-

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2	Standards prescribed in Enviroment (Protection) Rules 1986.
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(3) The result relate only to the sampale tested.

(4) Sample received in sealed condition.

(A.D. Sant)
Senior Scientific Officer

Report No. 1375/2022

TEST REPORT

Sample from :- Handpump water sample near Bhuvaneshwari Temple, Nagar Kot ki Rani, Ujjain

Description of Sample :- Underground water

Sampling Method :- *APHA, 23rd Edition, 1060*

Date of Collection		09-03-22	Sample Volume- 2 Litre
Date of Receipt		09-03-22	Plastic bottel 2 litre marked " 4 "
Start of Analysis		09-03-22	Colletcted by :- Mr. Anup Chaturvedi, Scientist - B, CPCB Bhopal
Date of Completion of Analysis		15-03-22	Analysed by :- Mr. Devendra Solanki, Chemist

S.No.	Characteristic	Unit	Indian Standard Drinking Water Specification (Second Revision) IS 10500 : 2012		Result
			Requirement (Acceptable Limit)	Permissible in the Absence of Alternate Source	
1	Colour	Pt.Co.Sc.	--	--	Colourless
2	Odour	--	--	--	Odourless
3	pH	pH Unit	6.5-8.5	No relaxation	7.44
4	Specific Conductivity	µMhos/cm.	--	--	2052
5	Total Solids	mg/l	--	--	1446
6	Suspended Solids	mg/l	--	--	8
7	Total Dissolved Solids	mg/l	500	2000	1438
8	Chloride as Cl	mg/l	250	1000	330
9	Total Alkalinity as $CaCo_3$	mg/l	200	600	576
10	Total Hardness as $CaCo_3$	mg/l	200	600	468
11	Calcium Hardness as $CaCo_3$	mg/l	--	--	294
12	Magnesium Hardness as $CaCo_3$	mg/l	--	--	174
13	Ammonical Nitrogen as NH_3-N	mg/l	0.5	No relaxation	0.11
14	Nitrite as NO_2- -N	mg/l	--	--	0.003
15	Nitrate as NO_3	mg/l	45	No relaxation	18.96
16	Phosphate as PO_4--P	mg/l	--	--	BDL
17	Sulphate as SO_4	mg/l	200	400	29.4
18	Chemical Oxygen Demand	mg/l	--	--	10
19	B.O.D. (3 Days 27^0 C)	mg/l	--	--	1
20	Sodium as Na	mg/l	--	--	20.2
21	Potassium as K	mg/l	--	--	1.4
22	*Total Coliform	MPN/100ml	--	--	8.2
23	*Fecal Coliform	MPN/100ml	--	--	<1.8

ND - Not Detected, BDL- Below Detectable Limit

(A.D. Sant)
Senior Scientific Officer

Report No. 1376/2022

TEST REPORT

Sample from :- Handpump water sample Ganesh Tekari, Nagar Kot Ki Rani, Ujjain

Description of Sample :- Underground Water

Sampling Method :- *APHA, 23rd Edition, 1060*

Date of Collection	09-03-22	Sample Volume- 2 Litre	
Date of Receipt	09-03-22	Plastic bottel 2 litre marked " 5 "	
Start of Analysis	09-03-22	Colletcted by :- Mr. Anup Chaturvedi, Scientist - B, CPCB Bhopal	
Date of Completion of Analysis	15-03-22	Analysed by :- Mr. Devendra Solanki, Chemist	

S.No.	Characteristic	Unit	Indian Standard Drinking Water Specification (Second Revision) IS 10500 : 2012		Result
			Requirement (Acceptable Limit)	Permissible in the Absence of Alternate Source	
1	Colour	Pt.Co.Sc.	--	--	Colourless
2	Odour	--	--	--	Odourless
3	pH	pH Unit	6.5-8.5	No relaxation	7.32
4	Specific Conductivity	µMhos/cm.	--	--	4116
5	Total Solids	mg/l	--	--	2898
6	Suspended Solids	mg/l	--	--	12
7	Total Dissolved Solids	mg/l	500	2000	2886
8	Chloride as Cl	mg/l	250	1000	672
9	Total Alkalinity as $CaCo_3$	mg/l	200	600	568
10	Total Hardness as $CaCo_3$	mg/l	200	600	610
11	Calcium Hardness as $CaCo_3$	mg/l	--	--	344
12	Magnesium Hardness as $CaCo_3$	mg/l	--	--	266
13	Ammonical Nitrogen as NH_3-N	mg/l	0.5	No relaxation	0.216
14	Nitrite as NO_2- -N	mg/l	--	--	0.003
15	Nitrate as NO_3	mg/l	45	No relaxation	30.38
16	Phosphate as PO_4--P	mg/l	--	--	0.012
17	Sulphate as SO_4	mg/l	200	400	134.4
18	Chemical Oxygen Demand	mg/l	--	--	20
19	B.O.D. (3 Days 27^0 C)	mg/l	--	--	1.4
20	Sodium as Na	mg/l	--	--	76.2
21	Potassium as K	mg/l	--	--	1.7
22	*Total Coliform	MPN/100ml	--	--	10
23	*Fecal Coliform	MPN/100ml	--	--	<1.8

ND - Not Detected, BDL- Below Detectable Limit

(A.D. Sant)
Senior Scientific Officer

Report No. 1373/2021

TEST REPORT

Sample from :- Nallah water V. D. Market Society, Fajalpura, Ujjain
Description of Sample :- Nallah water before mixing to Govardhan Sagar
Reference :- As per Monitoring Package 2019-20 / Payment Basis/Complaint
Sampling Method :- *APHA, 23rd Edition, 1060*

Date of Collection	09-03-22	Sample Volume- 2 Litre
Date of Receipt	09-03-22	Plastic bottel 2 litre marked "2"
Start of Analysis	09-03-22	Colletcted by :- Mr. Anup Chaturvedi, Scientist - B, CPCB Bhopal
Date of Completion of Analysis	15-03-22	Analysed by :- Mr. Devendra Solanki, Chemist

Observation: Turbid, liquid with unpleasant odour.

S.No.	Parameters	Unit	Test Method	Range of testing	Result
1	pH	pH Units	APHA 23rd edi. 2017, Electrometric Method 4500-H+B,	1 to 14 pH Unit	7.46
2	Total Solids	mg/l	APHA 23rd edi. 2017, Gravimetric Method 2540 B	10 to 100000 mg/l	1584
3	Total Dissolved Solids	mg/l	APHA 23rd edi. 2017, Gravimetric Method 2540 C	10 to 100000 mg/l	1462
4	Suspended Solids	mg/l	APHA 23rd edi. 2017, Gravimetric Method 2540 D	5 to 1000 mg/l	122
5	Chloride as Cl^-	mg/l	APHA 23rd edi. 2017, Argentometric Method 4500-Cl--B	5 to 50000 mg/l	232
6	B.O.D.(3 Days 27°C)	mg/l	IS 3025,P-44, 1993 (3-Day B.O.D. Test)	1 to 50000 mg/l	60
7	Chemical Oxygen Demand	mg/l	APHA 23rd edi. 2017, Open Reflux Method 5220-B	5 to 100000 mg/l	130

INDICATION : □ PARAMETER DOES NOT CONFIRM TO-

1. Standards prescribed by M.P.P.C.B. in M.P. Gazette notification, dated 25-03-1988.
2. Standards prescribed in Enviroment (Protection) Rules 1986.
3. The Tests mark with an * are not accredited by NABL.

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(4) Sample received in sealed condition.

A.D. Sant
(Senior Scientific Officer)

10. Learned Collector, Ujjain personally present with records through Video Conference has submitted that the Tehsildar concerned has prepared a detailed report with all the documents which depicts that there are various encroachments in the water body. It is further submitted that one Anil s/o Mannulal Joshi filed a Civil Suit before the Court of Civil Judge, Ujjain, M.P. as a civil case no. 3A/2019 which was heard and decided where it was found that the land in question is pond and the property of the State of M.P and the plaintiff have no right title and interest of the property, thus the competent civil court has finally decided the matter. It is surprising that the State land was transferred by different persons at different point of time and compensation was also awarded by the National Highway Authority of India which was received by the private person though the land belongs to State of Madhya Pradesh.

11. Learned counsel Sh. Sachin K Verma, appearing for the State of Madhya Pradesh had submitted that 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.

12. Learned counsel appearing for the applicant has argued that Hon'ble the Supreme Court of India in so many decisions had directed that the heart of the public trust is that it imposes limits and obligations upon Government agencies and their administrators on behalf of all the people and especially future generations. All the property which is vested in the state 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."

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

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

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

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

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

- The heart of the public trust doctrine is that it imposes limits and obligations upon government agencies and their administrators on behalf of all the people and especially future generations. For example, renewable and non-renewable resources, associated uses, ecological values or objects in which the public has a special interest (i.e. public lands, waters, etc.) are held subject to the duty of the State not to impair such resources, uses or values, even if private interests are

involved. The same obligations apply to managers of forests, monuments, parks, the public domain and other public assets. Professor Joseph L. Sax in his classic article, —The Public Trust Doctrine in Natural Resources Law: Effective Judicial Intervention‖ (1970), indicates that the public trust doctrine, of all concepts known to law, constitutes the best practical and philosophical premise and legal tool for protecting public rights and for protecting and managing resources, ecological values or objects held in trust.

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

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

- Public at large has a right to enjoy and have a benefit of our forests including mangroves forest. The pristine glory of such forests must be protected by the State. The mangroves protect our environment. Therefore, apart from the provisions of various statutes, the doctrine of

public trust which is very much applicable in India makes it obligatory duty of the State to protect and preserve mangroves.‖

PRECAUTIONARY PRINCIPLE

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

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

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

17. India is endowed with extraordinarily diverse and distinctive traditional water bodies found in different parts of the country, commonly known as ponds, tanks, lakes, vayalgam, ahars, bawdis, talabs and others. They play an important role in maintaining and restoring the ecological balance. They act as sources of drinking water, recharge groundwater, control floods, support biodiversity, and provide livelihood

opportunities to a large number of people. Currently, a major water crisis is being faced by India, where 100 million people are on the frontlines of a nationwide water crisis and many major cities facing an acute water shortage. The situation will worsen as United Nations and Niti Ayog reports say that the demand for water will reach twice the available supply, and 40 per cent of India's population will not have access to clean drinking water by 2030. One of the reasons is our increasing negligence and lack of conservation of waterbodies. Since independence, the government has taken control over the waterbodies and water supply. With a colonial mindset, authorities move further and further away in the quest of water supply, emphasing more on networks, infrastructure and construction of dams. This, over time, has led to the neglect of waterbodies and catchments areas. As a result, we have started valuing land more than water. In the last few decades, waterbodies have been under continuous and unrelenting stress, caused primarily by rapid urbanisation and unplanned growth. Encroachment of waterbodies has been identified as a major cause of flash floods in Mumbai (2005), Uttrakhand (2013), Jammu and Kashmir (2014) and Chennai (2015). Further, waterbodies are being polluted by untreated effluents and sewage that are continuously being dumped into them. Across the country, 86 waterbodies are critically polluted, having a chemical oxygen demand or COD concentration of more than 250 mg/l, which is the discharge standard for a polluting source such as sewage treatment plants and industrial effluent treatment plants. In urban India, the number of waterbodies is declining rapidly. For example, in the 1960s Bangalore had 262 lakes. Now, only 10 hold water.

Similarly, in 2001, 137 lakes were listed in Ahmedabad. However, by 2012, 65 were already destroyed and built upon. Hyderabad is another example. In the last 12 years, it has lost 3,245 hectares of its wetlands. The decline in both the quality and quantity of these waterbodies is to the extent that their

potential to render various economic and environmental services has reduced drastically. Although there are sufficient polices and acts for protection and restoration of waterbodies, they remain insufficient and ineffective.

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

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

Action needs to be taken towards:

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

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

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

4. Traditionally, water was seen as a responsibility of citizens and the community collectively took the responsibility of not only building but also of maintaining the water bodies. This needs to be brought back into the system.

5. Thus, an integrated approach taking into account the long-term sustainability, starting from the planning stage where looking at every waterbody along with its catchment, is required.

16. 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.

17. 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.

18. 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.

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

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

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

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

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

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

Further, the directions given by the High Court in directing demolition of illegal construction effected during the currency of CRZ Notifications 1991 and 2011 are perfectly in tune with the decision of this Court in Piedade Filomena Gonsalves v. State of Goa and Others (2004) 3 SCC 445, wherein this Court has held that such notifications have been issued in the interest of protecting environment and ecology in the coastal area and the construction raised in violation of such regulations cannot be lightly condoned." (emphasis supplied)

That further, this Tribunal in a recent order dated 27.08.2020 passed in O.A. No. 351/2019 titled Raja Muzaffar Bhat v. State of Jammu and Kashmir & Ors. has also held that there is an inadequacy of monitoring of action of

restoration of wetlands which is necessary to be executed for public health and strengthening the environment rule of law.

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

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

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

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

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

...
(vi) any construction of a permanent nature except for boat jetties within fifty meters from the mean high flood level observed in the past ten years calculated from the date of commencement of these Rules. Thus, the present construction took place in 2015-2016 and will be covered by this decision and must be removed.

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

Hon'ble Supreme Court in Mantri Techzone Pvt. Ltd. v. Forward Foundation reportedin 2019 (18) SCC 494while directing for the demolition of illegal constructions within wetlands, had ordered for the restoration of the area to its original condition. The Hon'ble Supreme Court has held that this Hon'ble Tribunal is has wide powers of restoration and all orders must be 237 governed by the principles in Section 20 for taking restorative measures for the environment: —42. The Tribunal also has jurisdiction under Section 15(1)(a) of the Act to provide relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in Schedule I. Further, under Section 15(1)(b) and 15(1)(c) the Tribunal can provide for restitution of property damaged and for restitution of the environment for such area or areas as the Tribunal may think fit. It is noteworthy that Section 15(1)(b) & (c) have not been made relatable to Schedule I enactments of the Act. Rightly so, this grants a glimpse into the wide range of powers that the Tribunal has been cloaked with respect to restoration of the environment. 43. Section 15(1)(c) of the Act is an entire island of power and jurisdiction read with Section 20 of the Act. The principles of sustainable development, precautionary principle and polluter pays, propounded by this Court by way of multiple judicial pronouncements, have now been embedded as a bedrock of environmental jurisprudence under the NGT Act. Therefore, wherever the environment and ecology are being compromised and jeopardized, the Tribunal can apply Section 20 for taking restorative measures in the interest of the environment. 44. The NGT Act being a beneficial legislation, the power bestowed upon the Tribunal would not be read narrowly. An interpretation which furthers the interests of environment must be given a broader reading. (See Kishsore Lal v. Chairman, Employees' State Insurance Corpn. (2007) 4 SCC 579, para 17). The existence of the Tribunal without its broad restorative powers under Section 15(1)(c) read with Section 20 of the Act, would render it ineffective and toothless, and shall betray the legislative intent in setting up a specialized Tribunal specifically to address environmental concerns. The Tribunal, specially constituted with Judicial Members as well as with Experts in the field of environment, has a legal obligation to provide for

preventive and restorative measures in the interest of the environment. … 60…All the offending constructions raised by Respondents Nos. 9 and 10 of any kind including boundary wall shall be demolished which falls within such areas. Wherever necessary dredging operations are required, the same should be carried out to restore the original capacity of the water spread area and/or wetlands. Not only the existing construction would be removed but also none of these Respondents - Project Proponent would be permitted to raise any construction in this zone.

21. 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."*

22. Learned Counsel for the applicant has argued that in view of the provision as contained in Section 57 Madhya Pradesh Land Revenue Code the entire land of water body, minerals etc. are the property of the State Government. The State Government is the owner of the land including water bodies and the Municipal Corporation was not competent to take any decision to construct commercial shops or residential buildings on and around the said water body. He has also taken reliance on the judgement of the Hon'ble the Madhya Pradesh High Court in Sukchain vs. the State of Madhya Pradesh decided on 20.09.2017 (High Court of Madhya Pradesh at Jabalpur in Writ Petition No. 1377/2016). The relevant portions are quoted as below:

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

There shall be a Gram Sabha for every village. The Gram Sabha shall be a body corporate by the name specified therefor having perpetual succession and a common seal and shall by the said name sue and be sued and shall subject to the provisions of this Act and the rules made there under have power to acquire, hold and dispose of any property movable or immovable, to enter into contract and to do all other things necessary for the purpose of this Act."

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

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

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

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

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

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

16. As noticed, the constitutional provision and Sections-5-A and 7 of the Adhiniyam in no uncertain terms makes it clear that powers and functions of Gram Sabha are not absolute in nature. Such powers and functions are subject to the

provisions of local laws and general instructions/orders issued by the Government. The State legislature introduced Madhya Pradesh Gram Panchayat (Registration of Coloniser Terms & Conditions) Rules, 1999 (hereinafter called as 'Rules of 1999'). Rule 2(i) describes 'Competent Authority' which means such Sub Divisional Officer who has jurisdiction over Gram Panchayat concerned. Rule 2(d) defines 'Coloniser'. This definition is wide enough to include the activity of converting any land including agricultural land into plots and action to transfer such plots to the persons desirous to construct residential or non-residential or group housing etc. The Rules of 1999 further provide the methodology for the purpose of registration etc. As per these rules, the Government has made attempt to ensure that even land situated in a Panchayat is regulated by way of statutory rules. Section-57 of Madhya Pradesh Land Revenue Code reads as under:

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

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

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

In exercise of power under Section-172 of the said Code, rules regarding diversion of land for building purposes were notified by notification No.1183-(VIII)-63, 03.05.1963. Rules 7 of these rules reads as under:

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

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

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19. Reverting back to Section-7 of the Adhiniyam, on which great emphasis was laid by Shri Trivedi, it is apposite to mention that clause (j-ii) provides that in order to manage natural resources, the necessary powers can be exercised.

Interestingly, we 'manage' something which is precious to us. We manage our family, finance, property, resources etc. ***Thus, the word 'manage' in the context it is used, shows an endeavour to keep, preserve and protect the natural resources including the pond.*** *In Black's Law Dictionary the word 'manage' is defined as 'to control and direct', 'to administer', 'to take charge of' etc. Almost similar meaning is given to this word in Webster's Comprehensive Dictionary and P. Ramanatha Aiyar's Law Lexicon. This is golden rule of interpretation that 'interpretation must depend on the text and the context'. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statue is best interpreted when we know why it was enacted. (See 1987 (1) SCC 424 [Reserve Bank of India Vs. Peerless General Finance and Investment Company Limited & others]). It is equally well settled that adopting the principle of literal construction of the statue alone, in all circumstances without examining the context and scheme of the statue, may not subserve the purpose of the statue. In the words of V.R.Krishna Iyer, J., such an approach would be 'to see the skin and miss the soul'. Whereas, 'the judicial key to construction is the composite perception of deha and dehi of theprovision'. (See 1977 (2) SCC 256 [The Chairman, Board of Mining Vs. Ramjee] followed in 2013 (3) SCC 489 [Ajay Maken Vs. Adesh Kumar Gupta and another]).*

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

constitutional mandate and the statutory duty of the Gram Sabha.

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21. On more than one occasion, the Courts have expressed their concern for preservation of water bodies. In 2001 (6) SCC 496 [Hinch Lal Tiwari Vs Kamla Devi], the Apex Court considered Section-117 of U.P. Zamindari Abolition and Land Reforms Act, 1950. As per said provision, certain powers were given to the Gaon Sabhas and other local Authorities. While interpreting the said provision, it was held that it is difficult to sustain the order of the High Court. There exists a concurrent finding that a pond exists and the area covered by it varies in the rainy season. In such a case, no part of it could have been allotted to anybody for construction of house building or any allied purposes.

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

> *"10. In this view of the matter, this petition is disposed of with the following directions:-*
>
> ***(1) That, in each divisional level a Committee be constituted under the chairmanship of Revenue Commissioner of the division to monitor the effective***

implementation of the water conservation schemes introduced by the Government for the aforesaid purpose.

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

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

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

[Emphasis supplied]

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

24. In the same judgment, the Supreme Court held that we are trustees of natural resources which belong to all including the

future generation as well. The public trust doctrine has to be used to protect the right of this as also the future generation.

25. Similarly, a Division Bench of Madras High Court presided over by Markandey Katju, CJ and F.M. Ibrahim Kalifulla, J. (as their Lordships' then were) in 2005 SCC Online Mad 438 [L. Krishnan Vs. State of T.N] considered the need of protecting water bodies. After considering Articles 21, 47, 48-A and 51-A (g) of Constitution, it was held that the State has to protect and improve the environment. It has to safeguard the forest, lakes, rivers and wildlife. The 'precautionary principles' makes it mandatory for the State Government to anticipate, prevent and attack all of environmental degeneration. The Madras High Court followed the judgment reported in 1997 (3) SCC 715 [M.C.Mehta Vs Union of India] and came to hold that we have no hesitation in holding that in order to protect the two lakes from environmental degradation, it is necessary to limit the construction activity in close vicinity of lakes. This finding is based on para-10 of the judgment of Supreme Court in the case of M.C. Mehta (supra). In 2015 SCC Online Utt 1829 [Tahseen Vs. State of Uttarakhand and others] Alok Singh, J. held as under:-

> *"What we have witnessed since Independence, however, is that in large parts of the country this common village land has been grabbed by unscrupulous person using muscle power, money power or political clout, and in many States now there is not an inch of such land left for the common use of the people of the village, though it may exist on paper. People with power and pelf operating in villages all over India systematically encroached upon communal lands and put them to uses totally inconsistent with their original character, for personal aggrandizement*

at the cost of the village community. This was done with active connivance of the State authorities and local powerful vested interests and goondas. This appeal is a glaring example of this lamentable state of affairs.

[Emphasis supplied]

At the cost of repetition, it is apposite to remember ***that the Apex Court, in no uncertain terms, clarified that construction activity even in the close vicinity of the lakes; is impermissible. Resultantly, the High Court directed the Authorities to remove encroachments and restore the water body in its original form****.*

26. In 2013 SCC Online P&H 10564 [Jagdev Singh Vs. State of Punjab & Haryana and others], the High Court followed the ratio decidendi of Hinchlal Tiwari (supra) and opined that the Gram Panchayat which has a statutory obligation to ensure that water bodies are not diverted for any other use and further to ensure that these water bodies are protected, cleaned and recharged, it cannot be allowed to use a part of it for installation of a statue of a resident of the village. A Division Bench of Calcutta High Court in 2013 SCC Online Cal 1060 [Sandhya Barik & others Vs. State of West Bengal & others] expressed its view that this is bounden duty of panchayat and other authorities to prohibit such construction and said property cannot be alienated or permitted to be destroyed in any manner. No construction can be permitted over such water body. Construction, if any, which have been made by any person, the respondent cannot claim equity. Even if any sanction is granted with regard to construction over the canal, the same is illegal and void. It was further directed that if there exists any encroachment on water body, appropriate action must be taken for clearing the

encroachment made over the canal. The public trust doctrine expounded by Supreme Court in M.C. Mehta was followed by Calcutta High Court in Sandhya Barik (supra).

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

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

Meaning thereby:

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

28. Interestingly, in Jagpal Singh (supra), the Apex Court with pains recorded that 'our ancestors were not fools'. They knew that in certain years, there may be droughts or water shortages for some other reasons, and water was also required for cattle to drink and bathe in etc. Hence they built a pond attached to every village, a tank attached to every temple etc. These were their traditional rain water harvesting methods, which, served them for thousands of years. With great concern, Apex Court emphasized that the ponds are now a day's auctioned of at throw away prices to businessmen for fisheries in collusion with Authorities/ Gram Panchayat Officials, and even this money collected from these so called

auctions are not used for the common benefit of the villagers but misappropriated by certain individuals. The time has come when these malpractices must stop.

29. In the considered opinion of this Court, neither Constitution nor the Adhiniyam gives any unbridled/unfettered power and discretion to Gram Sabha to raise construction at or on the periphery (esM-) of the pond. Thus, argument of petitioners in this regard must fail. The judgments of Rajendra Shankar Shukla and S.N. Chandrashekhar (supra) have no application in the facts and circumstances of this case. Any autonomy 49 given by the Constitution or by the Adhiniyam needs to be tested on the anvil of enabling provision. When impugned action was tested on the anvil of such enabling provision, the said action was not found to be in consonance with the enabling provisions nor such action can be said to be in larger public interest. At this stage, it is apt to remember the words of Douglas, J. (in United States Vs. Winderlince [1996 L. Ed. 113:342 US 98 (1951)]) 'Law has reached its finest moments when it has freed man from the unlimited discretion of some ruler.....where discretion is absolute, man has always suffered'. The Apex Court followed this principle in 2012 (10) SCC 1[Natural Resources Allocation In Re, Special Reference No.1 of 2012] and expressed that it is in this sense that the rule of law may be said to be the sworn enemy of caprice. Discretion, as Lord Mansfield stated it in classic terms in Wilkes, (ER p. 334): Burr at p.2539 means sound discretion guided by law. It must be governed by rule, not by humour: it must not be arbitrary, vague and fanciful.

Article 343-A read with Section-7 of the Adhiniyam makes it clear like noon day that law makers have taken care of this aspect and ensured that unfettered

and uncanalized discretion or power is not given to Gram Sabha in the matter of exercise of their power and functions. The powers and functions are subject to the provisions of law and its interpretation by the Courts.

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

31. As noticed, in the present case, the learned Collector has taken decision on the basis of directions issued by this Court

in a Public Interest Litigation. It is important to note here that Punjab & Haryana, Madras and Calcutta High Courts have entertained Public Interest Litigation and issued necessary directions for preservation of water bodies. M.P. High Court in Rinkesh Goyal (supra) also entertained a PIL and issued necessary directions.

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

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

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

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

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

24. The reliance has been placed by the learned counsel on Susetha vs. State of Tamilnadu decided on 08.08.2006 by Hon'ble Supreme

Court of India, Appeal (Civil) No. 3418 of 2006 (AIR 2006 SC 2893). The relevant portion are quoted below :

> "*Drawing our attention to a decision of the Division Bench of the Madras High Court in L. Krishnan v. State of Tamil Nadu, AIR (2005) Madras 311,* ***it was argued that the State Government was enjoined with a duty to preserve the tank by taking all possible steps both by way of preventive measures as well as removal of unlawful encroachments and not to use the same for commercial purpose."***
>
> *"Concededly, the water bodies are required to be retained. Such requirement is envisaged not only in view of the fact that the right to water as also quality life are envisaged under Article 21 of the Constitution of India, but also in view of the fact that the same has been recognized in Articles 47 and 48-A of the Constitution of India. Article 51-A of the Constitution of India furthermore makes a fundamental duty of every citizen to protect and improve the natural environment including forests, lakes, rivers and wild life. [See Animal and Environment Legal Defence Fund v. Union of India and Ors., AIR (1997) SC 1071; M.C. Mehta (Badkhal and Surajkund Lakes Matter v. Union of India and Ors., [1997] 3 SCC 715 and Intellectuals Forum, Tirupathi v. State of A.P. and Ors., [2006] 3 SCC 549.*
>
> *Maintenance of wetlands was highlighted by the Calcutta High Court in People united for better living in Calcutta - Public and Anr. v. State of West Bengal and Ors., AIR (1993) Cal. 215, observing that the wetland acts as a benefactor to the society.*
>
> *Recently, in T.N. Godavaraman Thirumulpad (99) v. Union of India and Ors., [2006] 5 SCC 47, this Court*

again highlighted the importance of preservation of natural lakes and in particular those which are protected under the Wild Life (Protection) Act, 1972.

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

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

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

"This is an articulation of the doctrine from the angle of the affirmative duties of the State with regard to public trust, Formulated from a negatory angle, the doctrine does not exactly prohibit the alienation of the property held as a public trust. However, when the state holds a resource that is freely available for the use of the public, it provides for a high degree of judicial scrutiny on any action of the Government, no matter how consistent with the existing legislations, that attempts to restrict such free use. To properly scrutinize such actions of the Government, the Courts must make a distinction between the government's general

obligation to act for the public benefit, and the special, more demanding obligation which it may have as a trustee of certain public resources." [Emphasis supplied] This Courts have not, in the aforesaid decisions, laid down a law that alienation of the property held as a public trust is necessarily prohibited. What was emphasized was a higher degree of judicial scrutiny. The doctrine of sustainable development although is not an empty slogan, it is required to be implemented taking a pragmatic view and not on ipse dixit of the court.

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

> *"The harmonization of the two needs has led to the concept of sustainable development, so such that it has become the most significant and focal point of environmental legislation and judicial decisions relating to the same. Sustainable development, simply put, is a process in which development can be sustained over generations. Brundtland Report defines `sustainable development' as development that meets the needs of the present generations without compromising the ability of the future generations to meet their own needs. Making the concept of sustainable development operational for public policies raises important challenges that involve complex synergies and trade offs."*

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

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

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

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

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

26. In a constitutional framework which is intended to create, foster and protect a democracy committed to liberal values, the Rule of Law provides the corner stone. The Rule of Law is to be distinguished from rule by the law. The farmer comprehence the setting up of a legal regime with clearly define the rules and principles of even application, a regime of law which maintains the

fundamental postulates of liberty, equality and due process. The rule of law postulates a law which is answerable to constitutional norms. The law in that sense is accountable as much as it is culpable of exacting compliance. Rule by the law on other hand can mean rule by a despotic law. It is to maintain the just quality the law and its observance of reason that Rule of Law precepts in constitutional democracy rest on constitutional foundation.

27. 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.

28. On the cost of repetition we may further quote the decisions of Hon'ble Supreme Court in case of N.D. Jayal & Anr. Vs. Union of India & Ors. reported in (2004) 9 SCC 362 dealing with the matter of Tehri Dam observed as follows:

> "*22. Before adverting to other issues, certain aspects pertaining to the preservation of ecology and development have to be noticed. In Vellore Citizens Welfare Forum v. Union of India, and in M C Mehta v.*

Union of India, it was observed that the balance between environmental protection and developmental activities could only be maintained by strictly following the principle of' sustainable development.' This is a development strategy that caters the needs of the present without negotiating the ability of upcoming generations to satisfy their needs. The strict observance of sustainable development will put us on a path that ensures development while protecting the environment, a path that works for all peoples and for all generations. It is a guarantee to the present and a bequeath to the future. All environmental related developmental activities should benefit more people while maintaining the environmental balance. This could be ensured only by the strict adherence of sustainable development without which life of coming generations will be in jeopardy.

23. In a catena of cases we have reiterated that right to clean environment is a guaranteed fundamental right. May be in different context, the right to development is also declared as a component of Article 21 in cases like Samata v. State of Andhra Pradesh and in Madhu Kishore v. State of Bihar.

24. The right to development cannot be treated as a mere right to economic betterment or cannot be limited to as a misnomer to simple construction activities. The right to development encompasses much more than economic well being, and includes within its definition the guarantee of fundamental human rights. The 'development' is not related only to the growth of GNP. In the classic work – _Development As Freedom‘ the Nobel prize winner Amartya Sen pointed out that the issue of development cannot be separated from the conceptual framework of human right‘. This idea is also part of the UN Declaration on the Right to Development. The right to development includes the whole spectrum of civil, cultural, economic, political and social process, for the improvement of peoples‘ well being and realization of their full potential. It is an integral part of human right. Of course, construction of a dam or a mega project is definitely an attempt to

achieve the goal of wholesome development. Such works could very well be treated as integral component for development..

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

26. To ensure sustainable development is one of the goals of Environmental Protection Act, 1986 (for short 'the Act') and this is quiet necessary to guarantee 'right to life' under Article 21. If the Act is not armed with the powers to ensure sustainable development, it will become a barren shell. In other words, sustainable development is one of the means to achieve the object and purpose of the Act as well as the protection of 'life' under Article 21. Acknowledgment of this principle will breath new life into our environmental jurisprudence and constitutional resolve. Sustainable development could be achieved only by strict compliance of the directions under the Act. The object and purpose of the Act - "to provide for the protection and improvement of environment" could only be achieved by ensuring the strict compliance of its directions. The concerned authorities by exercising its powers under the Act will have to ensure the acquiescence of sustainable development. Therefore, the directions or conditions put forward by the Act need to be strictly complied with. Thus the power under the Act cannot be treated as a power simpliciter, but it is a power coupled with duty. It is the

duty of the State to make sure the fulfillment of conditions or direction under the Act. Without strict compliance, right to environment under Article 21 could not be guaranteed and the purpose of the Act will also be defeated. The commitment to the conditions thereof is an obligation both under Article 21 and under the Act. The conditions glued to the environmental clearance for the Tehri Dam Project given by the Ministry of Environment vide its Order dated July 19, 1990 has to be viewed from this perspective.

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

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

> *"45. The natural sources of air, water and soil cannot be utilized if the utilization results in irreversible damage to environments. There has been accelerated degradation of environment primarily on account of lack of effective enforcement of environmental laws and non-compliance of the statutory norms. This Court has repeatedly said that the right to live is a fundamental right under Article 21 of the Constitution and it includes the right to enjoyment of pollution- free water and air for full enjoyment of life. (See Subhash Kumar v. State of Bihar)*
>
> *46. Further, by 42nd Constitutional Amendment, Article 48- A was inserted in the Constitution in Part IV stipulating that the State shall endeavour to protect and improve the environment and to safeguard the forest and wildlife of the country. Article 51A, inter alia, provides that it shall be the duty of every citizen of India to protect and improve the natural environment including forest, lakes, rivers and wildlife and to have compassion for living creatures. Article 47 which provides that it shall be the duty of the State to raise the level of nutrition and the standard of living and to improve public health is also relevant in this connection. The most vital necessities, namely, air, water and soil, having regard to right of life under Article 21 cannot be permitted to be misused and polluted so as to reduce the quality of life of others. Having regard to the right of the community at large it is permissible to encourage the participation of Amicus Curiae, the appointment of experts and the appointments of monitory committees. The*

approach of the Court has to be liberal towards ensuring social justice and protection of human rights. In M.C. Mehta v. Union of India, this Court held that life, public health and ecology has priority over unemployment and loss of revenue. The definition of 'sustainable development' which Brundtland gave more than 3 decades back still holds good. The phrase covers the development that meets the needs of the present without compromising the ability of the future generation to meet their own needs. In Narmada Bachao Andolan v. Union of India & Ors., this Court observed that sustainable development means the type or extent of development that can take place and which can be sustained by nature/ecology with or without mitigation. In these matters, the required standard now is that the risk of harm to the environment or to human health is to be decided in public interest, according to a "reasonable person's " test. [See Chairman Barton : The Status of the Precautionary Principle in Australia : (Vol. 22) (1998) (Harv. Envtt. Law Review, p. 509 at p.549-A) as referred to in para 28 in AP Pollution Control Board vs. Prof. M.V. Nayuder.

29. 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.

30. 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 outskirt or near such cities where they can enjoy proximity with nature. This attempt or desire is nothing but costing heavy to nature. It is a concerted effort by greedy elite class to cause destruction of nature in un-probed areas, which have remained untouched till date, but now are being frequently occupied by them.

31. 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.

32. 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.

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

minimum area is not the maximum and restriction over further area, if any required, will depend upon the nature of wetland/water bodies, its vegetation, flora, fauna and other activities connected therewith which may be found necessary for its protection and preservation. With that view of the matter, in Wetlands (Conservation and Management) Rules, 2010 and 2017, instead of using the term ―Buffer Zone, the term ―Zone of Influence has been used which is obviously a wider term then ―Buffer Zone.

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

35. 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.

36. Therefore, protection of wetlands in all seriousness is a matter of great concern. It cannot be done in a technical or formal manner but require sincere, wholesome and comprehensive effort to protect not only territorial boundary of water or periphery of wetland but the entire surrounding of wetland necessary for its preservation.

37. 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.

38. While dealing the matter of protection and restoration of water bodies in O.A. No. 325 of 2015 (vide order dated 18.11.2020), the following facts were suggested by the Expert body:

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

39. As per report submitted by the CPCB, the status of ponds, lakes/water bodies in Madhya Pradesh as reported are 66,438 and in Rajasthan it is reported to be 12,127. The chart does not disclose the number of water bodies presently under restoration or number of water bodies restored so far. 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:**

....

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

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

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

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

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

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

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

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

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

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

—…

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

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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:

"

....

34. One of the serious challenges is solid and liquid waste management, apart from encroachments. There are binding directions of the Hon"ble Supreme Court in Almitra H. Patel Vs. Union of India & Ors1. and Paryavaran Suraksha vs. Union of India2 on the subject of scientific management of solid waste and sewage/effluents in accordance with the statutory provisions of the Water (Prevention and Control of Pollution) Act, 1974, („Water Act") Air (Prevention and Control of Pollution) Act, 1981, („Air Act) and waste management rules framed under the Environment (Protection) Act, 1986 („EP Act"). There is large scale non-compliance of the said statutory provisions which has led this Tribunal to consider the issue of river pollution in OA No. 673/2018, News item published in "The Hindu" authored by Shri Jacob Koshy Titled "More river stretches are now critically polluted: CPCB" in view of acknowledged data of 351 polluted river stretches in the country. Apart from the said issue, large scale failure has been found in the matter of solid waste management as repeatedly recorded in O.A. No. 606/2018. The Chief Secretaries of all the States/UTs were required to remain present in person before this Tribunal for interaction and further planning. In O.A. No. 325/2015, Lt. Col. Sarvadaman Singh Oberoi v. UOI & Ors., the Tribunal has considered the issue of restoration of water bodies. In Original Application No. 593/2017, Paryavaran Suraksha Samiti & Anr. v. UOI & Ors., the issue of untreated sewage or effluent being discharged in water bodies have been taken up for consideration. There are several other matters dealing with the such issues, including coastal pollution, pollution of industrial clusters etc.

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

18. We also note that the Ministry of Urban Development, Government of India, Central Public Health and Environmental Engineering Organization (CPHEEO) has issued an advisory on ***"Conservation and Restoration of Water Bodies in Urban Areas"5*** *in August, 2013 which need to be followed. The matter*

was also considered by the Standing Committee on Water Resources (2015-16), Sixteenth Lok Sabha. Its Tenth Report has been published by the Ministry of Water Resources, River Development and Ganga Rejuvenation under the heading **"Repair, Renovation and Restoration of Water Bodies-Encroachment on Water Bodies and Steps Required to Remove the Encroachment and Restore the Water Bodies"6** in August, 2016. Further, the **"Guidelines for the Scheme on Repair, Renovation and Restoration (RRR) of Water Bodies under PMKSY (HKKP)"7** have been published by the Ministry of Water Resources, River Development and Ganga Rejuvenation, Govt. of India in June, 2017. The said report also provides useful material to be looked into by the enforcement agencies.

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

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

Directions

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

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

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

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

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

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

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

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

"146 *The rampant increase in unauthorized constructions across urban areas, particularly in metropolitan cities where soaring values of land place a premium on dubious dealings has been noticed in several decisions of this Court. This state of affairs has often come to pass in no small a measure because of the collusion between developers and planning authorities."*

"147 From commencement to completion, the process of construction by developers is regulated within the framework of law. The regulatory framework encompasses all stages of construction, including allocation of land, sanctioning of the plan for construction, regulation of the structural integrity of

the structures under construction, obtaining clearances from different departments (fire, garden, sewage, etc.), and the issuance of occupation and completion certificates. While the availability of housing stock, especially in metropolitan cities, is necessary to accommodate the constant influx of people, it has to be balanced with two crucial considerations – the protection of the environment and the well-being and safety of those who occupy these constructions. The regulation of the entire process is intended to ensure that constructions which will have a severe negative environmental impact are not sanctioned. Hence, when these regulations are brazenly violated by developers, more often than not with the connivance of regulatory authorities, it strikes at the very core of urban planning, thereby directly resulting in an increased harm to the environment and a dilution of safety standards.

Hence, illegal construction has to be dealt with strictly to ensure compliance with the rule of law."

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

"149 In ***K. Ramadas Shenoy v. Chief Officer, Town Municipal Council,*** *Chief Justice AN Ray speaking for a two judge Bench of this Court observed that the municipality*

functions for public benefit and when it —acts in excess of the powers conferred by the Act or abuses those powers then in those cases it is not exercising its jurisdiction irregularly or wrongly but it is usurping powers which it does not possess". This Court also held:

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

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

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

> *10. Before parting, we have an observation to make. The same is that a feeling is gathering ground that where unauthorised constructions are demolished on the force of the order of courts, the illegality is not taken care of fully inasmuch as the officers of the statutory body who had allowed the unauthorised construction to be made or make illegal allotments go scot free. This should not, however, have happened for two reasons. First, it is the illegal action/order of the officer which*

lies at the root of the unlawful act of the citizen concerned, because of which the officer is more to be blamed than the recipient of the illegal benefit. It is thus imperative, according to us, that while undoing the mischief which would require the demolition of the unauthorised construction, the delinquent officer has also to be punished in accordance with law. This, however, seldom happens. Secondly, to take care of the injustice completely, the officer who had misused his power has also to be properly punished. Otherwise, what happens is that the officer, who made the hay when the sun shined (sic), retains the hay, which tempts others to do the same. This really gives fillip to the commission of tainted acts, whereas the aim should be opposite."

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

"24. Structural and lot area regulations authorise the municipal authorities to regulate and restrict the height, number of storeys and other structures; the percentage of a plot that may be occupied; the size of yards, courts and open spaces; the density of population; and the location and use of buildings and structures. All these have in our view and do achieve the larger purpose of the public health, safety or general welfare. So are front setback provisions, average alignments and structural alterations. Any violation of zoning and regulation laws takes the toll in terms of public welfare and convenience being sacrificed apart from the risk, inconvenience and hardship which is posed to the occupants of the building."

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

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

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

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

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

who are affected by an unauthorized construction erected by a developer could be utilized to compensate ordinary citizens.

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

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

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

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

against arbitrary regularisation of illegal constructions by way of compounding and otherwise."

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

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

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

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

42. The learned Collector and the Municipal Commissioner, Ujjain has made a request to grant some time so that the further action taken report may be filed. Accordingly, we direct as follows:

1. The Collector is directed to remove the encroachment from the ponds, water bodies in accordance with law.

2. 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.

3. 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.

4. 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.

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

7. A copy of the order be sent to the Secretary (Environment), State of Madhya Pradesh who shall monitor or may constitute a

committee or direct the authorities concerned to comply the order and remove the encroachment on the State land/water bodies which was found unauthorized and illegal. He shall monitor periodically and ensure the removal of encroachment at the earliest in due process of law.

8. The Member Secretary, Madhya Pradesh Pollution Control Board is directed to constitute a Committee of three Regional Officers including the Regional Officer of Ujjain 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.

43. Further Action Taken Report and remedial measures taken by the Collector, Ujjain be submitted by the Joint Committee in two (02) months.

List it on 16th August, 2022

Sheo Kumar Singh, JM

Dr. Arun Kumar Verma, EM

5th May, 2022
O.A. No. 11/2022(CZ)
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