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

ORIGINAL APPLICATION NO. 46/2021 (CZ)

IN THE MATTER OF :

Shailendra Jain Applicant(s)

Versus

State of Rajasthan & Ors. Respondent (s)

COUNSEL OF APPLICANT :

Mr. Shailendra Jain (In-Person)

COUNSEL OF RESPONDENTS :

Mr. Shoeb Hasan Khan, Adv.
Mr. Dharamveer Sharma, Adv.

PRESENT :

HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER

HON'BLE DR. ARUN KUMAR VERMA, EXPERT MEMBER

Reserved on : 17.09.2021
Pronounced & Uploaded on : 22.09.2021

JUDGEMENT

1. Issue of encroachment of water body known as Dhanwada Talab/Maharaj Kalyana Sagar situated in District Jhalawar City of Rajasthan has been raised in this application. It is alleged that without taking any due permission from the Competent Authority, in the area of the water body and catchment area recorded as revenue land, as Survey No. (Khasra Nos.) 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828 and 829, there are constructions without land conversion and respondents are facilitating in construction of

road, light pole, water supply connections in the catchment area of water body without adopting due process of law.

2. The matter was taken up by this Tribunal on 16.07.2021 and a committee consisting District Collector, Jhalawar, Municipal Commissioner, Jhalawar and one representative of Rajasthan State Pollution Control Board was constituted with a direction to submit factual and action taken report.

3. In compliance thereof, the Collector, Jhalawar vide his letter communicated the report of the joint committee which is as follows :-

"माननीय न्यायालय नेषनल ग्रीन ट्रिब्यूनल प्रिंसीपल बेन्च भोपाल से प्राप्त प्रार्थना पत्र संख्या 46/2021 उनवान षेलेन्द्र जैन बनाम राजस्थान सरकार में दिनांक 16.07.2021 को पारित आदेष के संबंध में मौका निरीक्षण एवं तथ्यात्मक रिपोर्ट

श्रीमान जिला कलक्टर महोदय, झालवाड़ के आदेष कमांक एफ2 (9) राजस्व/2021/1340 दिनांक 22.07.2021 से गठित कमेटी एंव संषोधित आदेष विधी/2021/585–588 दिनांक 23.07.2021 के क्रम में माननीय न्यायालय नेषनल ग्रीन ट्रिब्यूनल प्रिंसीपल बेन्च भोपाल से प्राप्त प्रार्थना पत्र संख्या 46/2021 उनवान षेलेन्द्र जैन बनाम राजस्थान सरकार वगे में दिनांक 16.07.2021 को पारित आदेष के अनुक्रम में उपखण्ड अधिकारी झालावाड़, आयुक्त नगर परिशद झालावाड़ व क्षेत्रीय अधिकारी राजस्थान प्रदूशण नियंत्रण मंडल कोटा के साथ संयुक्त रूप से मौका निरीक्षण किया गया। राजस्व रिकार्ड एवं मौका स्थिति अनुसार तथ्यात्मक रिपोर्ट निम्न प्रकार प्रेशित है–

1. यह कि ग्राम झालावाड़ की जमाबंदी सम्वत2030–39 के खाता संख्या 28 में खसरा नं0 818 रकबा 1.00 बीघा किस्म पेटा 819 रकबा 1.04 बीघा किस्म पेटा, 820 रकबा 0.13 बीघा किस्म पेटा, 821 रकबा 0.05 बीघा किस्म पेटा खसरा नं0 822 रकबा 1.05 बीघा किस्म पेटा, 823 रकबा 0.16 बीघा किस्म पेटा, 824 रकबा 0.19 बीघा किस्म पेटा, 825 रकबा 1.00 बीघा किस्म पेटा, 826 रकबा 0.17 बीघा किस्म पेटा, 827 रकबा 2.03 बीघा किस्म पेटा, 813 रकबा 5.19 बीघा किस्म बारानी सोयम, 816 रकबा 0.04 बीघा किस्म बारानी प्रथम, 828 रकबा 1.09 बीघा किस्म माल तृतीय, 829 रकबा 0.06 बीघा किस्म बंजड़ दर्ज हैं।

2. यह कि उक्त भूमि ग्राम झालावाड़ की जमाबंदी सम्वत 2074–77 के खाता संख्या 518 में खसरा न0 818 रकबा 0.2529 हे0 किस्म पेटा 819 रकबा 0.3035 हे0 बीघा किस्म पेटा, 820 रकबा 0.1644 हे0 बीघा किस्म पेटा, 821 रकबा 0.0632 हे0 किस्म पेटा खसरा न0 822 रकबा 0.3161 हे0 किस्म पेटा, 823 रकबा 0.2023 हे0 किस्म पेटा, 824 रकबा 0.2403 हे0 किस्म पेटा, 825 रकबा 0.2529 हे0 किस्म पेटा, 826 रकबा 0.2150 हे0 किस्म पेटा, 827 रकबा 0.5437 हे0 किस्म पेटा, 828 रकबा 0.3667 हे0 किस्म माल सोयम, 829 रकबा 0.0759 हे0 किस्म बंजड़ खातेदार उमेष पाण्डेय पुत्र हीरानंद पाण्डेय हिस्सा 31/168 जाति ब्राहमण निवासी झालावाड़, बलवीर पुत्र राजेष्वर हिस्सा

1/21 जाति कुम्हार साकिन झालरापाटन भंवरसिंह पुत्र कान्हासिंह हिस्सा 1/3 जाति राजपूत साकिन झालारापाटन, विषाल पारेता पुत्र गोपाललाल पारेत हिस्सा 1/12 जाति कलाल साकिन झालावाड़, संजयकुमार पुत्र ताराचंद हिस्सा 15/56 जाति महाजन साकिन झालावाड़, सुरेषचन्द प्रभूलाल हिस्सा 1/12 जाति महाजन साकिन झालावाड़ के नाम दर्ज हैं जमाबंदी प्रतिलिपी संलग्न है।

3. यह कि मौके की स्थिति के अनुसार उक्त खसरा नम्बरान को एक किया जाकर आवासीय प्लानिंग करके इस भूमि पर मकान बने हुये हैं। आवासीय कालोनी बनने से घरेलू ठोस कचरा आदि से तालाब में प्रदूशण की संभावना से इंकार नहीं किया जा सकता।

4. यह कि उक्त भूमि का भू उपयोग परिवर्तन (रूपान्तरण) नही हुआ है।

5. यह कि उक्त भूमि का कार्यालय नगर परिशद झालावाड़ द्वारा स्टेषन सर्वे कराकर सर्वे अनुसार खसरो का सुपर इम्पोज कर भवन निर्माण सर्वे कराया गया, सर्वेक्षण अनुसार संबंधित सखरों पर बने मकानों का विवरण निम्न प्रकार है–

क्र0स0	खसरा नम्बर	निर्मित मकान
1	818	8
2	819	20
3	820	5
4	821	1
5	822	4
6	823	6
7	824	1
8	825	3
9	826	10
10	827	32
11	828	12
12	829	2
कुल निर्मित भवन		104

मौका निरीक्षण अनुसार खसरो के क्षेत्रफल लगभग 35 प्रतिषत मकान निर्मित है। इस संबंध में नगर परिशद द्वारा संबंधित व्यक्तियों को नोटिस जारी किये गये एवं अन्य मकान निर्माण की प्रक्रिया को रोकने हेतु उक्त भूमि पर साइन बोर्ड लगाये गये ळें

6. यह कि प्रष्नगत आराजी जिसका उपयोग अकृशि प्रयोजन हेतु किया गया है के क्रम में तहसीलदार झालरापाटन को राजस्थान भू राजस्व अधिनियम 1956 की धारा 90 ए अर्न्तगत कार्यवाही करने तथा आयुक्त नगर परिशद झालावाड़ को बिना रूपान्तरण के अकृशि उपयोग में लेने पर निर्माण व आगे कार्यवाही पर राक लगाने के निर्देष दिये गये हैं।

4. The copy of the Khewat/Khatoni prepared under form P-26 (C) under Rule 153A has been attached with this report which reveals as follows :

"जमाबन्दी (खेवट/खतोनी) (प्रतिलिपि)

प्रपत्र पी–26 (सी) (देखिये नियम 153 ए)

ग्राम का नाम	:–	झालावाड़			अंतिम चोसला आधार सम्वत :– 2074–2077 जमाबंदी 2076 (वर्श 2019) से स्थायी
पटवार हल्का	:–	झालावाड़	भूमि धारक का नाम	:–	राज. सरकार
भू. अभि. नि.	:–	झालावाड़	क्षेत्रफल की ईकाई	:–	हैक्टेयर
तहसील	:–		खाता संख्या नया	:–	518
जिला	:–	झालावाड़	खाता संख्या पुराना	:–	112

काष्तकार का नामः–

1. उमेष पाण्डेय पुत्र हीरानन्द पाण्डेय हिस्सा – 31/168 जाति–ब्राह्मण सा. झालावाड़ खातेदार
2. बलवीर पुत्र राजेष्वर हिस्सा –1/21 जाति–कुम्हार सा. झा. पाटन खातेदार
3. भॅवरसिंह पुत्र कान्हासिंह हिस्सा –1/3 जाति–राजपूत सा. झा. पाटन खातेदार अ. विव.–नामा.न. 1051,1081,1087,1149,1166
4. विषाल पारेत पुत्र गोपाललाल पारेत हिस्सा–1/12 जाति–कलाल सा. झालावाड खातेदार
5. संजयकुमार पुत्र ताराचन्द हिस्सा – 15/56 जाति–महाजन सा. झालावाड. खातेदार
6. सुरेषचंन्द पुत्र प्रभूलाल हिस्सा –1/12 जाति–महाजन सा. झालावाड़ खातेदार,

खसरा संख्या	क्षेत्रफल	भूमि वर्गीकरण	क्रशक द्वारा संदत्त लगान	सिंचाई के साधन	अन्तरण के क्रम में प्रमाणित नामान्तरण व दिनांक	टिप्पणी
818	0.2529 पेटा	0.2529	1.21			
819	0.3035 पेटा	0.3035	1.46			
820	0.1644 पेटा	0.1644	0.79			
821	0.0632 पेटा	0.0632	0.30			
822	0.3161 पेटा	0.3161	1.52			
823	0.2023 पेटा	0.2023	0.97			
824	0.2403 पेटा	0.2403	1.15			
825	0.2529 पेटा	0.2529	1.21			
826	0.2150 पेटा	0.2150	1.03			
827	0.5437 पेटा	0.5437	0.61			
828	0.3667 माल सोयम	0.3667	0.83			
829	0.0759 बंजड़	0.0759	0.05			
कुल खसरे 12	2.9969	2.9969	13.1300"			

5. The perusal of the entries in Khatoni reveals that the ownership of the land is recorded in the name of State and some part of the land was given on lease for agriculture purposes but the purpose for which the land was allotted, was misused by making permanent construction for which the Statutory Authority has not given any permission or the person who has constructed the house have not taken any permission from the Competent Authority. The nature of the land can be converted only after the order by the Competent Authority in accordance with law. The ownership of the land shall always

vests in the State and if it is the nature of the waterbody/pond the same cannot be transferred, except in accordance with the law.

6. The matter of identification, and protection of ponds/waterbodies was taken up by this Tribunal in Original Application No. 128/ 2017 decided on 07.09.2021, the relevant portion is quoted as under:-

> *"11. Learned counsel appearing for the applicant has argued that Hon'ble the Supreme Court of India in so many decisions had directed that the heart of the public trust is that it imposes limits and obligations upon Government agencies and their administrators on behalf of all the people and especially future generations. All the property which is vested in the state are indirectly managed by the local administration on the Principal of Public Trust. It does not mean that the local administration is at liberty or at the discretion to use it in own way. We have two things, sovereignty of the State and the doctrine of public trust. We have to make a balance between the two though the State has every authority to utilize the land but Public Trust Doctrine says that the property of the public should be utilized for the public purposes and not for the private purposes. The water bodies, lake, air and land all these are the public properties and should be made available to all for maintaining the health and environment. This Doctrine of public trust and precautionary measures was discussed in public interest litigation no. 87/ 2006; Bombay Environmental Action Group Vs. State of Maharashtra 2018 SCC online bombay 2680.2019(1) Bombay CRI and it was held as follows:-*
>
> > *"Apex Court observed thus:*
> >
> > *"2. The Indian society has, for many centuries, been aware and conscious of the necessity of protecting environment and ecology. Sages and saints of India lived in forests. Their preachings contained in vedas, upanishads, smritis, etc. are ample evidence of the society's respect for plants, trees, earth, sky, air, water and every form of life. The main motto of social life is to live in harmony with nature. It was regarded as a sacred duty of everyone to protect them. In those days, people worshipped trees, rivers and sea which were treated as belonging to all living creatures. The children were educated by elders of the society about the necessity of keeping the environment clean and protecting earth, rivers, sea, forests, trees, flora, fauna and every*

species of life."

> *"The ancient Roman Empire developed a legal theory known as the "doctrine of the public trust". It was founded on the premise that certain common properties such as air, sea, water and forests are of immense importance to the people in general and they must be held by the Government as a trustee for the free and unimpeded use by the general public and it would be wholly unjustified to make them a subject of private ownership. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial exploitation to satisfy the greed of a few."*

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

> *"34. Our legal system - based on English common law - includes the public trust doctrine as part of its jurisprudence. The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the sea-shore, running waters, airs, forests and ecologically fragile lands. The State as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership.*
>
> *35. We are fully aware that the issues presented in this case illustrate the classic struggle between those members of the public who would preserve our rivers, forests, parks and open lands in their pristine purity and those charged with administrative responsibilities who, under the pressures of the changing needs of an increasingly complex society, find it necessary to encroach to some extent upon open lands heretofore considered inviolate to change. The resolution of this conflict in any given case is for the legislature and not the courts. If there is a law made by Parliament or the State Legislatures the courts can serve as an instrument of determining legislative intent in the exercise of its powers of judicial review under the Constitution. But in the absence of any legislation, the executive acting under the*

doctrine of public trust cannot abdicate the natural resources and convert them into private ownership, or for commercial use. The aesthetic use and the pristine glory of the natural resources, the environment and the ecosystems of our country cannot be permitted to be eroded for private, commercial or any other use unless the courts find it necessary, in good faith, for the public good and in public interest to encroach upon the said resources."

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

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

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

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

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

(emphasis added)

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

PRECAUTIONARY PRINCIPLE

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

10. In M.C. Mehta v. Union of India [(1987) 4 SCC 463]

this Court held as under:

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

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

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.

21. 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.*

22. 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 gave 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 of 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."

7. 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 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***:*

"23. 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.

24. 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)*

15. That further, this Hon'ble 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.

7. 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.

9. 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. Several directions have been issued by the Hon'ble Supreme Court in M.K. Balakrishnan and Ors. v. UOI & Ors.

10. 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.

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

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

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

...

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

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

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

18. That furthermore, the Hon'ble Supreme Court in Mantri

Techzone Pvt. Ltd. v. Forward Foundation reported in 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."

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

9. The action and construction is not only disregard to the law but it is negation of the authority of the State by the public official doing the act and expending the budget in accordance with their wishes. An action specifically punitive action does lie for doing what the legislature has authorized if it is done negligently carelessly and in violation of the law. Under our Constitution sovereignty vests in the people. Every limb of the constitutional machinery is obliged to be people oriented. No functionary in exercise of statutory power can claim immunity, except to the extent protected by the statute itself. Public authorities acting in violation of constitutional or statutory provisions oppressively are accountable for their behaviour before authorities created under the statute like the commission or the courts entrusted with responsibility of maintaining the rule of law. Each hierarchy in the Act is empowered to entertain a complaint by the consumer for value of the goods or services and compensation. Any act by any officer in violation of the rules is abuse of power, deliberate maladministration, and perhaps also other unlawful acts causing injury. The servants of the government are also the servants of the people and the use of their power must always be subordinate to their duty of service. A public functionary if he acts maliciously or oppressively and the exercise of power results in harassment and agony then it is not an exercise of power but its abuse. No law provides protection against it. He who is responsible for it must suffer it. Compensation or damage as explained earlier may

arise even when the officer discharges his duty mala-fidely and not in accordance with the guidelines, when it arises due to arbitrary or capricious behavior then it loses its individual character and assumes social significance. Harassment of a common man by public authorities is socially abhorring and legally impermissible. It may harm him personally but the injury to society is far more grievous. Crime and corruption thrive and prosper in the society due to lack of public resistance. Nothing is more damaging than the feeling of helplessness. An ordinary citizen instead of complaining and fighting succumbs to the pressure of undesirable functioning in offices instead of standing against it. Therefore the award of compensation for harassment by public authorities not only compensates the individual, satisfies him personally but helps in curing social evil. It may result in improving the work culture and help in changing the outlook."

10. Absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within clearly defined limits. The Rule of Law means that the decisions should be made by the application of known principles and rules, such decisions should be predictable and the citizens should know where he is. If decision is taken without any principle or without any rule, it is unpredictable and such decision is the anti-thesis of a decision taken in accordance with the Rule of Law. Even where there is no ministerial duty as above, and even where no recognised tort such as trespass, nuisance, or negligence is committed, public authorities or officers may be liable in damages for malicious, deliberate or injurious wrong-doing. There is thus a tort which has been called misfeasance in public office, and which includes malicious abuse of power, deliberate maladministration, and perhaps also other unlawful acts causing injury."

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

12. The matter of protection of identification, production and restoration of waterbodies was taken up by the Principal Bench of this Tribunal in

Original Application No. 325 of 2015 and vide order dated 18.11.2020, the Tribunal observed as follows :-

> *"7.* ***Next order of the Tribunal is dated 1.6.2020 on consideration of the report dated 22.05.2020 filed by the CPCB giving information received from some of the States and seeking time on account of COVID situation. The Tribunal extended the time for completion of the action in terms of order dated 25.2.2020 by four months i.e. upto 31.07.2020, instead of 31.3.2020. It was further directed that capacity of the water bodies be increased to utilise surplus rain water and rain water harvesting structures be set up in the sub-watersheds utilizing the MGNREGA funds, involving the community at large including the panchayats which action may be coordinated by the District Magistrates, Department of Irrigation and Flood Control, Department of Rural Development/Urban Development/Local Bodies/ Forests/ Revenue etc. On both these aspects, the Tribunal sought report from the CPCB. The operative part of the order dated 1.6.2020 is reproduced below:***
>
> *" … …. ….*
>
> *5. Having regard to the fact situation noted above, we extend the time for the States to complete action in terms of order dated 25.02.2020 till 31.07.2020. The CPCB may thereafter file its report by 31.10.2020 by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/ OCR Support PDF and not in the* form of Image PDF.
>
> *6. However, we wish to add a further direction having bearing on the subject. We have already noted the significance of protection and restoration of water bodies for the environment. The protection of water bodies not only add to availability of water for different purposes, it also contributes to recharge of ground and maintaining e-flow in the rivers, is congenial to micro climate in sub-watersheds as well as enhancing the natural aesthetics. While the rain water harvesting is certainly important,* ***harvesting surplus water during excessive rains from any areas of catchment needs to be optimized by enhancing the capacity of the existing ponds/water bodies, creation of water harvesting structures in the sub- watersheds to the extent possible, apart from setting up of additional water bodies/water harvesting structures wherever viable, utilizing available funds including under MGNREGA and involving the community at large at every level.*** *Gram Panchayats can certainly play a significant role in the matter. Once adequate capacity enhancement of waterbodies takes place, excess flood/rain water can be channelized by using appropriate water harvesting techniques. This action needs to be coordinated by the District Magistrates in coordination with the Department of Irrigation and Flood Control or other concerned Departments such as Department of Rural Development / Urban Development / Local Bodies / Forests / Revenue etc. The District Magistrate may as far as possible hold a meeting of all the stakeholders for the purpose as per the District Environment Plan or Watershed Plan within one month from today. The District Magistrates may also ensure that as far as possible atleast one pond/water body*

must be restored in every village, apart from creation of any new pond/water body."

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

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

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

13. 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 Adhiniyam, trying to justify the resolution and***

construction of shops at the pond whereas Government's stand is that said provisions do not confer any such licence to Gram Sabha to construct the shops at the pond. *This interesting conundrum can be best defined in the words of Justice K.K. Mathew*:

> "*The major problem of human society is to combine that degree of liberty without which law is tyranny with that degree of law without which liberty become licence; and the difficulty has been to discover the practical means of achieving this grand objective and to find the opportunity for applying these means in the ever shifting tangle of human affairs."*

[see- 'Legends in Law', Page 372, Universal Publication]

15. Before dealing with rival contentions, it is apposite to refer the relevant portion of Sections-5-A and 7 of the Adhiniyam:

Section-5-A. Constitution and incorporation of Gram Sabha.- There shall be a Gram Sabha for every village. The Gram Sabha shall be a body corporate by the name specified therefor having perpetual succession and a common seal and shall by the said name sue and be sued and shall subject to the provisions of this Act and the rules made there under have power to acquire, hold and dispose of any property movable or immovable, to enter into contract and to do all other things necessary for the purpose of this Act."

Writ Petition No.1377 of 2016.

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

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

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

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

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

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

[Emphasis supplied]

16. As noticed, the constitutional provision and Sections-5-A and 7 of the Adhiniyam in no uncertain terms makes it clear that powers and functions of Gram Sabha are not absolute in nature. Such powers and functions are subject to the provisions of local laws and general instructions/orders issued by the Government. The State legislature introduced Madhya Pradesh Gram Panchayat (Registration of Coloniser Terms & Conditions) Rules, 1999 (hereinafter called as 'Rules of 1999'). Rule 2(i) describes 'Competent Authority' which means such Sub Divisional Officer who has jurisdiction over Gram Panchayat concerned. Rule 2(d) defines 'Coloniser'. This definition is wide enough to include the activity of converting any land including agricultural land into plots and action to transfer such plots to the persons desirous to construct residential or non-residential or group housing etc. The Rules of 1999 further provide the methodology for the purpose of registration etc. As per these rules, the Government has made attempt to ensure that even land situated in a Panchayat is regulated by way of statutory rules. Section-57 of Madhya Pradesh Land Revenue Code reads as under:

*"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 sub-section (1) such dispute shall be decided by the [State Government].

[Emphasis supplied]

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

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

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

18. A careful reading of this provision shows that if a public tank is being used for the purpose of nistar etc. by general public, permission for its diversion can be granted only for the purpose of

agriculture. Thus, the Government has taken pains to ensure that pond/water bodies are properly preserved.

Writ Petition No.1377 of 2016.

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****.*

Writ Petition No.1377 of 2016.

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

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

> *"10. In this view of the matter, this petition is disposed of with the following directions:-*
>
> *(1)* ***That, in each divisional level a Committee be constituted under the chairmanship of Revenue Commissioner of the division to monitor the effective implementation of the water conservation schemes introduced by the Government for the aforesaid purpose.***
>
> *(2)* ***The Committee shall also ensure that there should not be any encroachment over the land of ponds, tanks and lakes, and if, there is any encroachment that be removed immediately.***
>
> *(3)* ***The State Government shall take effective steps in regard to water harvesting and ground water level management so the problem of reducing the level of ground water could be tackled.***

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

[Emphasis supplied]

Writ Petition No.1377 of 2016.

23. In 2006 (1) SCC 1 [T.N. Godavaraman Thirumulpad Vs. Union of India & others] the Apex Court poignantly held as under:

"Natural, resources are the assets of the entire nation. It is the obligation of all concerned, including the Union Government and State Governments to conserve and not waste these resources. Article 48-A of the Constitution requires that the State shall endeavour to protect and improve the environment and to safeguard the forest and wildlife of the country. Under Article 51-A, it is the duty of every citizen to protect and improve the natural environment including forest, lakes, rivers and wildlife and to have compassion for living creatures."

[Emphasis supplied]

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

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

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

[Emphasis supplied]

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

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

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

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

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

Meaning thereby:

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

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

29. ***In the considered opinion of this Court, neither Constitution nor the Adhiniyam gives any unbridled/unfettered power and discretion to Gram Sabha to raise construction at or on the periphery (esM-) of the pond****. Thus, argument of petitioners in this regard must fail. The judgments of Rajendra Shankar Shukla and S.N. Chandrashekhar (supra) have*

no application in the facts and circumstances of this case. Any autonomy 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.

Writ Petition No.1377 of 2016.

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 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."

14. 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 a Sixteen days and it shall be the duty of respondent to restore water pond to its original shape and condition and preserve it as for the Constitution mandate. In view of the Constitution Provisions, Adhiniyam and the Rules and Governments Orders issued under the Adhinyam and Land Revenue Code, the Municipal Corporation is not justified in taking the decision to construct the commercial shops on the periphery of the pond. In view of settled legal position this Tribunal has scintilla of doubt that the corporation has exceeded its authority while passing such resolution. The action of Corporation runs contrary to public trust doctrine. It is to be noted that any autonomy given by the Constitution or by Adhiniyam needs to be tested on anvil of enabling provisions. When impugned action was tested on the anvil of such enabling provisions, the said action was not found to be inconsonance with the enabling provisions nor such action can be said to be in a larger public interest.

15. The Doctrine of Public Trust provides that Every authority which holds the property for the public or which has been assigned the duty of grant of largesse etc., acts as a trustee and, therefore, has to act fairly and reasonably.

In Ramana Dayaram Shetty Vs. International Airport Authority of India & Ors., AIR 1979 SC 1628, the Hon'ble Supreme Court held as under:-

"To-day the Government, in a welfare State is the regulator and dispenser of special services and provider of a large number of benefits, including jobs contracts, licences, quotas, mineral rights etc. The Government pours forth wealth, money, benefits, services, contracts, quotas and licences. The valuables dispensed by Government take many forms, but they all share one characteristic. They are steadily taking the place of traditional forms of wealth. These valuables which derive from relationships to Government are of many kinds. They comprise social security benefits, cash grants for political sufferers and the whole scheme

of State and local welfare. Then again, thousands of people are employed in the State and the Central Government and local authorities. Licences are required before one can engage in many kinds of businesses or work. The power of giving licences means power to withhold them and this gives control to the Government or to the agents of Government on the lives of many people.....

.....But ordinarily where a corporation is established by statute, it is autonomous in its working, subject only to a provision, often times made, that it shall be bound by any directions that may be issued from time to time by Government in respect of policy matters. So also a corporation incorporated under law is managed by a board of directors or committee of management in accordance with the provisions of the statute under which it is incorporated.....

Now, obviously where a corporation is an instrumentality or agency of Government, it would, in the exercise of its power or discretion, be subject to the same constitutional or public law limitations as Government. The rule inhibiting arbitrary action by Government which we have discussed above must apply equally where such corporation is dealing with the public, whether by way of giving jobs or entering into contracts or otherwise, and it cannot act arbitrarily and enter into relationship with any person it likes at its sweet will, but its action must be in conformity with some principle which meets the test of reason and relevance.

16. *In Kumari Shrilekha Vidyarthi etc. Vs. State of U.P. & Ors., AIR 1991 SC 537,* the Hon'ble Supreme Court held as under:-

"20. Even apart from the premise that the office' or 'post' of D.G.Cs. has a public element which alone is sufficient to attract the power of 'judicial review for testing validity of the impugned circular on the anvil of Art. 14, we are also clearly of the view that this power is available even without that element on the premise that after the initial appointment, the matter is purely contractual. Applicability of Art. 14 to all executive actions of the State being settled and for the same reason its applicability at the threshold to the making of a contract in exercise of the executive power being beyond dispute, can it be said that the State can thereafter cast off its personality and exercise unbridled power unfettered by the requirements of Article 14 in the sphere of contractual matters and claim to be governed therein only by private law principles applicable to private individuals whose rights flow only from the terms of the

contract without anything more? We have no hesitation in saying that the personality of the State, requiring regulation of its conduct in all spheres by requirements of Article 14, does not undergo such a radical change after the contractual rights accrue to the other C party in addition. It is not as if the requirements of Art. 14 and contractual obligations are alien concepts, which cannot co-exist.

17. The Preamble of the Constitution of India resolves to secure to all its citizens Justice, social, economic and political; and equality of status and opportunity. Every State action must be aimed at achieving this goal. Part IV of the Constitution contains 'Directive Principles of State Policy' which are fundamental in the governance of the country and are aimed at securing social and economic freedoms by appropriate State action which is complementary to individual fundamental rights guaranteed in Part III for protection against excesses of State action, to realise the vision in the Preamble. This being the philosophy of the Constitution, can it be said that it contemplates exclusion of Art. 14 - non-arbitrariness which is basic to rule of law - from State actions in contractual field when all actions of the State are meant for public good and expected to be fair and just? We have no doubt that the Constitution does not envisage or permit unfairness or unreasonableness in State actions in any sphere of its activity contrary to the professed ideals in the Preamble. In our opinion, it would be alien to the Constitutional Scheme to accept the argument of exclusion of Art. 14 in contractual matters. The scope and permissible grounds of judicial review in such matters and the relief which may be available are different matters but that does not justify the view of its total exclusion. This is more so when the modern trend is also to examine the unreasonableness of a term in such contracts where the bargaining power is unequal so that these are not negotiated contracts but standard form contracts between unequals.

18. There is an obvious difference in the contracts between private parties and contracts to which the State is a party. Private parties are concerned only with their personal interest whereas the State while exercising its powers and discharging its functions, acts indubitably, as is expected of it, for public good and in public interest. The impact of every State action is also on public interest. This factor alone is sufficient to import at least the minimal requirements of public law obligations and impress with this character the contracts made by the State or its instrumentality. It

is a different matter that the scope of judicial review in respect of disputes falling within the domain of contractual obligations may be more limited and in doubtful cases the parties may be relegated to adjudication of their rights by resort to remedies provided for adjudication of purely contractual disputes. However, to the extent, challenge is made on the ground of violation of Art. 14 by alleging that the impugned act is arbitrary, unfair or unreasonable, the fact that the dispute also falls within the domain of contractual obligations would not relieve the State of its obligation to comply with the basic requirements of Art. 14. To this extent, the obligation is of a public character invariably in every case irrespective of there being any other right or obligation in addition thereto. An additional contractual obligation cannot divest the claimant of the guarantee under Art. 14 of non-arbitrariness at the hands of the State in any of its actions.

19. Thus, in a case like the present, if it is shown that the impugned State action is arbitrary and, therefore, violative of Art. 14 of the Constitution, there can be no impediment in striking down the impugned act irrespective of the question whether an additional right, contractual or statutory, if any, is also available to the aggrieved persons.

20. Unlike a private party whose acts uninformed by reason and influenced by personal predilections in contractual matters may result in adverse consequences to it alone without affecting the public interest, any such act of the State or a public body even in this field would adversely affect the public interest. Every holder of a public office by virtue of which he acts on behalf of the State or public body is ultimately accountable to the people in whom the sovereignty vests. As such, all powers so vested in him are meant to be exercised for public good and promoting the public interest. This is equally true of all actions even in the field of contract. Thus, every holder of a public office is a trustee whose highest duty is to the people of the country and, therefore, every act of the holder of a public office, irrespective of the label classifying that act, is in discharge of public duty meant ultimately for public good. With the diversification of State activity in a Welfare State requiring the State to discharge its wide-ranging functions even through its several instrumentalities, which requires entering into contracts also, it would be unreal and not pragmatic, apart from being unjustified to exclude contractual matters from the sphere of State

actions required to be non-arbitrary and justified on the touchstone of Article 14.

21. In Ram Rattan Vs. State of U.P, AIR 1977 SC 619, the Hon'ble Supreme Court held that an owner of the property has every right to dispossess or throw-out a trespasser while he is in the act of or process of trespassing, but this right is not available to the true owner if the trespasser has been successful in accomplishing his possession to the knowledge of the true owner. In such a circumstance, the law requires that the true owner should dispossess the trespasser by taking recourse to the remedies provided under the law. Similar view has been taken in Lallu Yeshwant Singh Vs. Rao Jagdish Singh, AIR 1968 SC 620; State of U.P. & Ors. Vs. Maharaja Dharmander Prasad Singh & Ors. AIR 1989 SC 997; and Krishna Ram Mahale Vs. Mrs. Shobha Venkat Rao, AIR 1989 SC 2097, wherein the Apex Court considered and approved the law laid down by the Privy Council in Midnapur Zamindary Co. Ltd. Vs. Naresh Narayan Roy, AIR 1924 PC 144.

In Nagar Palika, Jind Vs. Jagat Singh, AIR 1995 SC 1377, the Hon'ble Apex Court has observed that "Section 6 of the Specific Relief Act, 1963, is based on the principle that even a trespasser is entitled to protect his possession except against the true owner and purports to protect a person in possession from being dispossessed except in due process of law."

Only when the person in possession raises "bona fide dispute about his right to remain in occupation over the land", i.e., claims the right, title and interest in land in dispute. (Vide Government of Andhra Pradesh Vs. Thummala Krishna Rao, AIR 1982 SC 1081; State of Rajasthan Vs. Padmavati Devi, 1995 Suppl. (2) SCC 290; and Ram Gowda Vs. M Varadappa Naidu, (2004) 1 SCC 769).

In Municipal Corporation of Delhi Vs. Gurnam Kaur, AIR 1989 SC 38, the Hon'ble Supreme Court has observed that the provision of S. 322 of the Delhi Municipal Corporation Act, confers sufficient power on the Commissioner "to cause the removal of any structure which constitutes encroachment on a public place, even without notice to the trespasser. Though, undoubtedly, the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 were also attracted/applicable in respect of such place. The Constitution Bench of the Hon'ble Supreme Court in Olga Tellis & Ors. Vs. Bombay Municipal Corporation & Ors., AIR 1986 SC 180, upheld the validity of

the provisions of S. 314 of the Bombay Municipal Corporation Act, 1888, which provide for eviction of pavement dwellers without notice, though held that normally opportunity of hearing should be accorded to the trespasser on the public land for the reason that the "appearance of injustice is the denial of justice. It is the dialogue with the person likely to be affected by the proposed action which meets the requirement of procedural safeguards."

Be that as it may, we fail to understand as what is the right of appellant-petitioner to choose a particular procedure for his eviction.

Petitioners cannot be permitted to dictate the terms of the remedy to be chosen by the respondents for evicting them. They cannot explain their desire as Bhism Pitamah had explained to Arjuna that he would die only if Shikhandi comes as a chariot companion. There the choice was divine, but the present case is governed by the man made laws, which do not extend any such benevolence.

22. In Noorduddin Vs. Dr. K.L. Anand (1995) 1 SCC 242, the Hon'ble Supreme Court observed as under:

> *"The object of law is to meet-out justice. Right to the right, title or interest of a party in the immovable property is a substantial right.* ***But the right of an adjudication of the dispute in that behalf is the procedural right to which no one has a vested right.*** *The faith of the people in the efficacy on law is the saviour and succour for the subsistence of the Rules of law. In awakening like in the judicial process would rip apart the edifice of justice or create a feeling of disillusionment in the mind of the people of from law and Court.* ***The rule of procedure have been devised as a channel or a means to render substantive or at best substantial justice which is the highest interest of man and almamater for the mankind.*** *It is the foundation for the orderly human relations. Equally,* ***the judicial process should never become an instrument of appreciation or abuse or a means in the process of the Court to subvert justice".***
>
> ***(Emphasis added.)***

23. Similarly, in Ramniklal N. Bhutta Vs. State of Maharashtra, AIR 1997 SC 1236, the Apex Court observed as under:

> *"The power under Art. 226 is discretionary. It will be exercised only in furtherance of justice and not merely on the making out of a legal point. .....**the interest of justice and public interest coalesce. They are very often one and the same.** .....The Courts have to weigh the public interest vis-à-vis the private interest while exercising the power under Art.226.....indeed any of their discretionary powers.* ***(Emphasis added)"***

The aforesaid judgments of the Hon'ble Supreme Court are complete answer to the controversy involved in this case and negate all submissions made by Sri Asthana, for the reason that petitioners are no one to choose a particular procedure for his eviction as the aforesaid judgments provide sufficient guidelines for not entertaining such a plea, as the procedural right to adjudicate a dispute is not a vested right. Resultantly, in such a case, the equity Court should not give any indulgence to the trespassers at all.

24. *The learned counsel for the applicant has raised the question of legitimate expectations that the public at large residing in the area are in its expectation that there is a State Government to protect life and property especially the property of the State. A person can have a* ***legitimate expectation*** *only in consonance with the statute and the rules framed thereunder and not in contravention of the same. This doctrine cannot be invoked for doing something contrary to law. The legal maxim "salus populi est suprema lex" (regard for public welfare is the highest law) comes to an aid. The doctrine can be pressed if a person satisfies the Court that he has been deprived of some benefit or advantage which earlier he had in the past been permitted by the decision-maker to enjoy or he has received the assurance from the decision-maker that such benefit shall not be withdrawn without giving him an opportunity of advancing reasons for contending that it should not be withdrawn. (Vide A. Mahudeswaran & Ors. Vs. Govt. of T.N. & Ors., (1996) 8 SCC 617; Mrs. Dr. Meera Massey & Ors. Vs. Dr. S.R. Mehrotra & Ors. (1998) 3 SCC 88; National Buildings Construction Corporation Vs. S. Raghunathan & Ors., (1998) 7 SCC 66; State of West Bengal & Ors. Vs. Niranjan Singha, (2001) 2 SCC 326; State of Bihar Vs. S.A. Hasan & Anr., (2002) 3 SCC 566;*

Dr. Chanchal Goyal (Mrs.) Vs. State of Rajasthan, (2003) 3 SCC 485; J.P. Bansal Vs. State of Rajasthan & Anr., (2003) 5 SCC 134; Hira Tikkoo Vs. Union Territory, Chandigarh, AIR 2004 SC 3649; Ram Pravesh Singh Vs. State of Bihar & Ors., (2006) 8 SCC 381; Confederation of Ex-Servicemen Association Vs. Union of India & Ors., AIR 2006 SC 2945; and Secy, State of Karnataka & Ors. Vs. Uma Devi & Ors., AIR 2006 SC 1806).

24. *In Union of India & Ors. Vs. Hindustan Development Corporation & Ors, AIR 1994 SC 988 the Supreme Court held as follows:-*

> *"On examination of some of these important decisions it is generally agreed that legitimate expectation gives the applicant sufficient locus standi for judicial review and that the doctrine of legitimate expectation is to be confined mostly to right of a fair hearing before a decision which results in negativing a promise or withdrawing of an undertaking is taken.* ***The doctrine does not give scope to claim relief straight way from the administrative authorities as no crystallized right as such is involved. The protection of such legitimate expectation does not require the fulfilment of the expectation where an overriding public interest requires otherwise.*** *In other words where a person's legitimate expectation is not fulfilled by taking a particular decision then decision-maker should justify the denial of such expectation by showing some overriding public interest." (Emphasis added).*

In Punjab Communications Ltd Vs. Union of India & Ors., AIR 1999 SC 1801, the Supreme Court held as follows:-

> *".....t****he doctrine of legitimate expectation in the substantive sense has been accepted as part of our law*** *and that the decision-maker can normally be compelled to give effect to his representation in regard to the expectation based on previous practice or past conduct unless some overriding public interest comes in the way..... reliance must have been placed on the said representation and the representee must have thereby suffered detriment.....The more important aspect, in our opinion, is whether the decision-maker can sustain the change in policy by resort to Wednesbury principles of rationality or whether the court can go into the question whether the decision-maker has properly*

balanced the legitimate expectation as against the need for a change. In the latter case the court would obviously be able to go into the proportionality of the change in the policy.....The choice of the policy is for the decision-maker and not for the Court.....The protection for substantive legitimate expectation was based on Wednesbury unreasonableness. In sum, this means that the judgment whether public interest overrides the substantive legitimate expectation of individuals will be for the decision-maker who has made the change in the policy and the courts will intervene in that decision only if they are satisfied that the decision is irrational or perverse."

While deciding the said case, reliance was placed by the Apex Court on its earlier judgments in M.P. Oil Extraction Vs. State of Madhya Pradesh, (1997) 7 SCC 592; and National Buildings Construction Corporation Vs. S. Raghunathan, (1998) 7 SCC 66.

25. *The doctrine of legitimate expectation has a meaning that the statements of policy or intention of the Government or its Department in administering its affairs should be without abuse or discretion. The policy statement could not be disregarded unfairly or applied selectively for the reason that unfairness in the form of unreasonableness is akin of violation of natural justice. It means that said actions have to be in conformity of Article 14 of the Constitution, of which non arbitrariness is a second facet. Public Authority cannot claim to have unfettered discretion in public law as the authority is conferred with power only to use them for public good. Generally legitimate expectation has essentially procedural in character as it gives assurance of fair play in administrative action but it may in a given case be enforced as a substantive right. But a person claiming it has to satisfy the Court that his rights had been altered by enforcing a right in private law or he has been deprived of some benefit or advantage which he was having in the past and which he could legitimately expect to be permitted to continue unless it is withdrawn on some rational ground or he has received assurance from the decision making Authority which is not fulfilled, i.e., the kind of promissory estoppel.*

Change of policy should not violate the substantive legitimate expectation and if it does so it must be as the change of policy which is

necessary and such a change is not irrational or perverse. This doctrine being an aspect of Article 14 of the Constitution by itself does not give rise to enforceable right but it provides a reasonable test to determine as to whether action taken by the Government or authority is arbitrary or otherwise, rational and in accordance with law.

In Kuldeep Singh Vs. Government of NCT of Delhi, AIR 2006 SC 2652, the issue of legitimate was considered observing that the State actions must be fair and reasonable. Non-arbitrariness on its part is significant in the field of governance. The discretion should not be exercised by the State instrumentality whimsically or capriciously but a change in policy decision, if found to be valid in law, any action taken pursuant thereto or in furtherance thereof should not be invalidated.

26. Similarly in *Ashok Smokeless Coal India (P) Ltd. & Ors. Vs. Union of India & Ors., (2007) 2 SCC 640*, the Court held as under:-

"Principles of natural justice will apply in cases where there is some right which is likely to be affected by an act of administration. Good administration, however, demands observance of doctrine of reasonableness in other situations also where the citizens may legitimately expect to be treated fairly. Doctrine of legitimate expectation has been developed in the context of principles of natural justice."

It is also settled law that government having taken a decision in accordance with law should not be permitted to challenge the same solely with a view to resile from the consequences of its earlier decision or order. [Vide Commissioner of Police Vs. Govardhan Das, AIR 1952 SC 16; and State of Assam Vs. Raghava Gopalachari, (1972) SLR 44 (SC)].

27. It is further argued that the authorities of Municipal Corporation acted without any application of mind in the name of or in the garb of application of pond they have made a proposal of construction of commercial or residential building there.

In Commissioner of Police, Bombay Vs. Gordhandas Bhanji, AIR 1952 SC 16, the Hon'ble Apex Court held as under :-

"Public Authority cannot play fast and loose with the powers vested in them, and persons to whose detriment orders are made are entitled to know with exactness and precision what they are expected to do or forbear from

doing and exactly what authority is making the order."

While deciding the said case, the Apex Court placed reliance upon the judgment of the House of Lords in Julius Vs. Lord Bishop of Oxford, (1880) 5 AC 214 , wherein it has been observed as under :-

> *"There may be something in the nature of thing empowered to be done, something in the object for which it is to be done, something in the conditions under which it is to be done, something in the title of the person or persons for whose benefit the power is to be exercised , which may couple the power with a duty, and make it the duty of the person in whom the power is reposed, to exercise that power when called upon to do so."*

The Apex Court further observed that the power coupled with a duty cannot be shirked or shelved nor it be evaded, performance of it can be compelled.

In Andhra Pradesh State Road Transport Corporation Vs. State Transport Appellate Tribunal & ors., (1998) 7 SCC 353 , the Hon'ble Supreme Court , explaining the exercise of discretionary power, held as under :-

> *"The power ..... cannot be arbitrarily or indiscriminatorily exercised .....The power is coupled with a duty .... The authority must genuinely address itself to the matter before it .... It must act in good faith must have regard to all relevant considerations and must not be shirked by irrelevant consideration, must not shriek to promote alien to the letter and spirit of the legislation that gives it power to act and must not act arbitrarily or capriciously."*

Similar view has been reiterated by the Hon'ble Supreme Court in Comptroller and Auditor General of India Vs. K. S. Jagannathan & Anr., (1986) 2 SCC 679.

In Dai -Ichi Karkaria Ltd. Vs. Union of India & ors., (2000) 4 SCC 57, the Apex Court held that the embargo of arbitrariness is embodied in Article 14 of the Constitution. The Authority which has been given a very wide power must consider all relevant aspects governing the questions and issues before it. It must form the opinion on the basis of material before it by application of mind.

In Consumers Action Group & Anr. Vs. State of Tamil Nadu & ors., (2000)

7 SCC 425, the Apex Court held that whenever any Statute confers any power on any authority , "howsoever wide the discretion may be, the same has to be exercised reasonably within the sphere that Statute confers and such exercise of power must stand the test of judicial scrutiny. The judicial scrutiny is one of the basic features of our Constitution. The reason recorded to it discloses the justifiability of exercise of such power."

28 .Similarly, in Praveen Singh Vs. State of Punjab & ors., (2000) 8 SCC 633, the Hon'ble Supreme Court held as under :-

> *"Arbitrariness being opposed to reasonableness is an antithesis of law. There cannot, however, be any exact definition of arbitrariness; neither there can be a State-jacket formula evolved therefore, since the same is dependent on varying facts and circumstances of each case."*

Application of mind to the facts and circumstances of the case by the Authority concerned is a mandatory requirement of law. State must act " for good reasons and after application of mind to all the relevant factors, such a decision of the State must be specific and cannot be left to be inferred from surrounding circumstances. Nor such a decision be based on irrelevant materials", otherwise "the same has to be held to be bad in law for non – application of mind. "(Vide C. Navaneaswara Reddy Vs. Government of Andhra Pradesh & ors., AIR 1998 SC 939; Commissioner of Police Delhi & Another Vs. Dhaval Singh, (1999) 1 SCC 246; State of Maharashtra & Others Vs. Ku. Tanuja, AIR 1999 SC 791; and Rajat Baran Roy Vs. State of West Bengal, AIR 1999 SC 1661."

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."***

29. *The philosophy of the judgment as laid-down and quoted above are very much clear that 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.*

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

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

30. 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.

31. 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.

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.

32. 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..

33. *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.

34. 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.

35. 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.

36. *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."

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

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

293. Importance of water no one can deny.

294. It cannot be doubted that water though cover three-fourth of earth, still drinking and potable water is in great scarcity. Manmade

ventures are the basic cause for this situation. Protection of wetland assumed international importance at very late stage. However, serious concern at global level is writ large from the fact that in 1991, Convention in Ramsar was held only to discuss protection of wetland. Some important wetlands across the world were identified therein. Signatory countries vowed to protect wetland by taking all necessary measures including stringent actions.

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

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

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

298. Various statutory authorities which were constituted to serve as a watchdog for protection of these places, rich in natural flora and fauna, are not very sincere and serious in protection but working only technically. They are liberal in allowing these activities instead of adopting strict and stringent measures necessary for protection. We can see destruction of Aravalli Hills in National Capital Delhi itself,

and disappearance of several small chains of hills in many States. When we come to the garden city of Bengaluru itself, the facts have already been noted that in the past there were hundreds of lakes in the city which are now reduced to just two figures. Most of the lakes have been reclaimed, encroached or otherwise usurped by the so called development activities.

299. The concept of wetlands, as we already said, is not a mere water contained water body but its interface and surrounding i.e., the catchment area/buffer zone/zone of influence etc., which, if allowed to be used for purposes other than wetland connected activities, may erode/damage or extinct the entire wetland itself. Whenever, commercial and other activities i.e., other than what can be termed as activities for protection and preservation of wetlands and its surroundings, are allowed to be taken near or abutting wetland, it has to be ensured that certain area from the periphery of wetland is reserved and no commercial or development activities should be allowed thereon otherwise wetland/water bodies will suffer adversely. How much area should be reserved or be declared non-development area around a wetland/ water body has to be determined looking to various aspects relating to concerned wetland/water bodies. A universal determination may not be proper. It is true that provisions may be made declaring certain minimum area within which no development activities can be allowed so as to protect wetlands/water bodies but this minimum area is not the maximum and restriction over further area, if any required, will depend upon the nature of wetland/water bodies, its vegetation, flora, fauna and other activities connected therewith which may be found necessary for its protection and preservation. With that view of the matter, in Wetlands (Conservation and Management) Rules, 2010 and 2017, instead of using the term —Buffer Zone, the term —Zone of Influence has been used which is obviously a wider term then —Buffer Zone.

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

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

affected and deteriorated quality and contents significantly.

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

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

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

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

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

"320. Before parting, we also intend to place on record that torch bearer for protection of environment in the last about 40 years is only judiciary. Executives primarily have responsibility to preserve, protect and maintain environment as clean and green but unfortunately, treat

as enemy to their own notion of development. A lot of seminars, lectures and debates are held in the name of protection of environment by Executives, political and otherwise but on the ground level substantial work is wanting. The Executives feel satisfied sometimes by framing some laws without being serious to the execution and implementation thereof. Statutory Authorities/Regulators who are made responsible for protection of environment and heavily managed by Executives lack will to do, intention to perform and desire to achieve the ultimate goal of protection of environment. Even when orders are passed on judicial side, the real problem comes with regard to implementation and execution of the orders. All excuses and pretext are put forth more to demonstrate difficulties in execution instead of showing any genuine effort towards compliance. Even the concerned departments are not honest to discharge functions in a manner which will promote preservation and protection of environment and ecology. On the other hand, it appears to be taken as a burden and obstruction in development. This approach is neither conducive nor coherent to the concept of sustainable development. Sooner is the better that the Executives understand and show more responsibility and accountability towards nature and ecology before it is too late rendering the things improbable and impossible to be reversed."

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

"56. 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**[1], Chief Justice AN Ray speaking for a two judge Bench of this Court observed that the municipality functions for public benefit and when it "acts in excess of the powers conferred by the Act or abuses those powers then in those cases it is not exercising its jurisdiction irregularly or wrongly but it is usurping powers which it does not possess". This Court also held:*

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

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

*"150 These principles were re-affirmed by a two judge Bench in **Dr. G.N. Khajuria v. Delhi Development Authority**[2] 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,*

[1] (1974) 2 SCC 506
[2] (1995) 5 SCC 762

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***[3]*, 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:

[3] (2004) 8 SCC 733

"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[4],*** *Justice Deepak Verma, speaking for a two judge Bench, observed:*

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

The Court lamented that the earlier decisions on the subject had not resulted in enhancing compliance by developers with building regulations. Further, the Court noted that if unauthorized constructions were allowed to stand or are "given a seal of approval by 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."

[4] (2010) 2 SCC 27

*"153 In **Esha Ekta Apartments Coop. Housing Society Ltd. v. Municipal Corpn. of Mumbai**[5], 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:

[5] (2013) 5 SCC 357

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

"154 These concerns have been reiterated in the more recent decisions of this Court in ***Kerala State Coastal Zone Management Authority v. State of Kerala[6], Kerala State Coastal Zone Management Authority v. Maradu Municipality, Maradu[7] and Bikram Chatterji v. Union of India[8].***"

38. On the basis of the above submissions and pronouncements of Hon'ble Supreme Court and the Principal Bench of this Tribunal and on the basis of the report submitted by the Joint Committee, it is clear that the land as aforementioned is recorded as catchment area and pond and within the ownership of the State. It is a legal duty of the authorities and the local administration to protect the public land and to protect the waterbodies. Accordingly, the conclusions are as follows :-

1. The area and the land as mentioned in the application from Sr. No. 818 to 829 situated in Patwari Halka, Jhalawar, Tehsil-Jhalapatan is recorded as a pond/catchment area of the pond within the ownership of State Government.
2. As per report submitted by the Joint Committee and recommended by the Collector, Jhalawar, this is subject of encroachment by various persons against whom notices have been issued and necessary action according to the law under Rajasthan Land Revenue Act, 1956 are being taken under Section 19(A) by the Commissioner, Municipal Corporation, Jhalawar. The report is accepted and Collector, Jhalawar is directed to take necessary action against the encroachment

[6] (2019) 7 SCC 248
[7] 2018 SCC OnLine SC 3352
[8] (2019) 19 SCC 161

according to law and also directed that there shall not be any discharge of untreated water / sewage water into the waterbody/pond and that there shall not be any further encroachment on the area. Any encroachment found against the provision of law, shall be dealt strictly according to law and Collector, Jhalawar is directed to take necessary action for removal of encroachment according to law.

The **Original Application No. 46/2021** stands **disposed of** accordingly.

Sheo Kumar Singh, JM

Arun Kumar Verma, EM

September 22nd , 2021
O.A. No. 46/2021(CZ)
PN