

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6345 of 2017

Abdul Salam, Son of Late Munshi Nazir, Resident of Village- Ghorasahan,
P.S. Ghorasahan, District East Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Department of Panchayat Raj, Govt. of Bihar, Patna.
2. The Zila Parishad, East Champaran at Motihari.
3. The District Magistrate, East Champaran.
4. The Circle Officer, Ghorasahan, P.S. Ghorasahan, District- East Champaran.
5. The Bihar State Pollution Control Board through its Chairman, Patna.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 7861 of 2018

Sanjeev Jayasawal, Son of Sri Baidyanath Jaiswal, resident of Village-
Ghorasahan, P.S.- Ghorasahan, District- East Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Department of Panchayati Raj, Government of Bihar, Patna.
2. The Zila Parishad through the Chief Executive Officer, East Champaran at Motihari.
3. The Chief Executive Officer, East Champaran, at Motihari.
4. The District Magistrate, East Champaran.
5. The Circle Officer Ghorasahan, P.S. Ghorasahan, District- East Champaran.
6. The Bihar State Pollution Control Board through its Members, Govt. of Bihar, Patna.



... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 6345 of 2017)

For the Petitioner/s : Mr. Shakti Suman Kumar, Advocate
For the State : Mr. Ajay- G.A-5
Mr. Pratik Kumar Sinha, Advocate
For the B.S.P.C. Board : Mr. Shivendra Kishore, Sr. Advocate
Ms. Binita Singh, Advocate

(In Civil Writ Jurisdiction Case No. 7861 of 2018)

For the Petitioner/s : Mr. Binod Kumar Sinha, Advocate
For the Respondent/s : Mr. Ajay -G.A-5

**CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE DR. JUSTICE RAVI RANJAN
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)**

Date : 30-08-2018

1. Present writ petitions in the nature of Public Interest Litigation have been preferred by the petitioners for an appropriate writ, direction and order restraining the respondents from destroying the village pond situated at Village- Ghorasahan under Grampanchayati Raj Ghorasahan South, District- East Champaran and to restrain them from destroying the pucca boundary wall of the pond. It is also further prayed to direct the respondents to restore the pond by filling up water which has been drained out and take steps for its preservation.

1.1. That a supplementary affidavit is filed on behalf of the petitioners in reply to the counter affidavit filed on behalf



of the Respondent Nos. 2, 3 and 4 in which it has been stated that the Respondent No. 2, in complete violation of the order dated 16.02.2018 passed by this Court, has continued the construction activities and he used water pumps to dry the pond. It has been submitted that 75 per cent of the area of the pond has been occupied by the newly constructed shops. In support of the above, photographs have been produced and relied upon.

1.2. A counter is filed on behalf of the Respondent Nos. 2, 3 and 4. In the counter affidavit filed on behalf of Respondent No. 2 it has been stated that the construction of the shops is being carried out on the bank of the pond and on the barren land. It is stated that this pond is not being disturbed by the Zila Parishad. According to the Respondent No. 2, the shops are being constructed to enhance the income of the Zila Parishad.

1.3. In the counter affidavit filed on behalf of the Respondent Nos. 3 and 4 filed by the Circle Officer, the allegation of the petitioners has been denied. It is stated that the pond is in the use of people in general and the pond has been fenced by brick boundary wall. It is further stated that as per the decision of the Government of Bihar vide Letter No. 655 (6) dated 16th June, 2016 the Rivers, Jhils, Ponds etc. are to be



protected and revived. In the counter it is specifically stated by the Circle Officer that the Zila Parishad is making construction in the pond area and the pillars have been constructed by the Zila Parishad, East Champaran.

1.4. A counter affidavit is filed on behalf of the Bihar State Pollution Control Board-Respondent No. 5 herein. What is stated in the counter filed on behalf of the Pollution Control Board is shocking. On the basis of the inspection of the pond in question carried out by the Board, which was carried out pursuant to the earlier order passed by this Court, it is stated that the construction of the shops are being carried out not only in the periphery of the pond but also extends even in the bed of the pond. It is further stated that the solid waste is being dumped in the pond and sample of water was collected from the pond and the same was sent for laboratory examination and it has been observed that pH of the water is as per the prescribed standards but dissolved oxygen level was well below the prescribed standards. It is specifically stated that the pond has lost its wholesomeness as the pond is full of water hyacinth and not suitable for domestic consumption and not even suitable to support aquatic life.

2. Heard learned counsel for the respective parties at



length. The present writ petitions in the form of Public Interest Litigation have been filed for an appropriate order directing the respondents to protect the pond in question situated at Village-Ghorasahan under Grampanchayati Raj Ghorasahan South, District- East Champaran. Considering the counters filed on behalf of the respective parties, more particularly the counter filed on behalf of the Bihar State Pollution Control Board as well as the Circle Officer and even the photographs produced on record, it appears that the pond in question is virtually destroyed. The shops are being constructed not only surrounding the pond but even in the pond itself. It is the case on behalf of the Zila Parishad that the Zila Parishad is constructing the shops for generating revenue. However, for the aforesaid the pond and/or reservoir cannot be permitted to be destroyed. Even the State Government has also come out with the policy in the form of Letter No. 655(6) dated 16.06.2016. Even there is decision of this Court in C.W.J.C. No. 9692 of 2015 by which the Government has been directed to get the encroachment from the water sources removed. It appears that even after this Court passed a restraint order on 16.02.2018, the construction of the shops in the pond in question has been reported to be continued in defiance of the interim order passed by this Court.



2.1. At this stage, few decisions of the Hon'ble Supreme Court and some High Courts are required to be referred to.

2.2. In the case of **Hinch Lal Tiwari Vs. Kamala Devi and others, reported in (2001) 6 SCC 496** the Hon'ble Supreme Court has observed that the Government including the Revenue Authorities are duty bound to clean and develop the water bodies so that ecological disaster may be prevented and a better environment provided to people at large. In Paragraph 13 the Hon'ble Supreme Court has observed and held as under:-

“The material resources of the community like forests, tanks, ponds, hillock, mountain etc. are nature's bounty. They maintain delicate ecological balance. They need to be protected for a proper and healthy environment which enables people to enjoy a quality life which is the essence of the guaranteed right under Article 21 of the Constitution. The Government, including the Revenue Authorities i.e. Respondents 11 to 13, having noticed that a pond is falling in disuse, should have bestowed their attention on developing the same which would, on one hand, have prevented ecological disaster and on the other provided better environment for the benefit of the public at large. Such vigil is the best protection against knavish attempts to seek allotment of non-abadi sites.”



2.3. In the case of **M.C. Mehta (Badkhal and Surajkund Lakes Matter) Vs. Union of India and others, reported in (1997) 3 SCC 715** in Paragraph 10 Hon'ble Supreme Court has observed and held as under:-

“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.”

In the said decision, the Hon'ble Supreme Court put a ban on the construction activity in the close vicinity of the lakes.

2.4. In the case of **M.K. Balakrishnan (1) and others Vs. Union of India and others, reported in (2009) 5 SCC 507,**



after showing the concern in respect of destroying the reservoirs, water channels, ponds, in Paragraphs 3 to 10 the Hon'ble Supreme Court has observed as under:-

“3. There is acute shortage of water in our country and one of the main reasons for that is that most of the water conservation bodies in our country such as ponds, tanks, small lakes, etc. have been filled up in recent times by some greedy persons and such persons have constructed buildings, shops, etc. on the same.

4. Our ancestors were wise people who realised that because of droughts or some other reasons there may be shortage of water in future and hence they made the provision of a pond near every village, tanks in or near temples, etc. which were the traditional rainwater harvesting methods. The whole idea behind this was that whenever there is a shortage of water due to drought, etc., people may not suffer and they may use the water available in ponds, tanks, etc.

5. Unfortunately, people have forgotten the wisdom of our ancestors and that is why some greedy people for their personal interest and to make money have filled up most of these ponds, tanks, etc. and have constructed buildings thereon with the result that in most parts of India, there is a terrible water shortage and people are suffering terribly, particularly, in the summer season both in rural and urban areas. When water is not available, people come to the



streets and there are chakka jams (road blocks), riots, etc. to awaken the government authorities to take some measures to make available the necessity of life to the general public called water. In many cities, in many colonies, people get water for half an hour in a day and sometimes not even that e.g. in Delhi, Tamil Nadu, Rajasthan, U.P., north-east, etc. In large parts of rural areas there is a shortage of water for irrigation and drinking purpose.

6. Rivers in India are drying up, groundwater is being rapidly depleted and canals are polluted. Yamuna in Delhi looks like a black drain. Several perennial rivers like Ganga and Brahmaputra are rapidly becoming seasonal. Rivers are dying or declining, and aquifers are getting overpumped. Industries, hotels, etc. are pumping out groundwater at an alarming rate, causing sharp decline in the groundwater levels. Farmers are having a hard time finding groundwater for their crops e.g. in Punjab. In many places there are serpentine queues of exhausted housewives waiting for hours to fill their buckets of water. In this connection, John Briscoe has authored a detailed World Bank Report, in which he has mentioned that despite this alarming situation there is widespread complacency on the part of the authorities in India.

7. This Court in *State of Orissa v. Govt. of India*-(2009) 5 SCC 492, in which one of us (Hon'ble Markandey Katju,J.) was a member, while agreeing fully with the reasoning and directions of the other



Hon'ble Judge on the Bench Hon'ble Altamas Kabir, J., has recommended to the Central Government to immediately constitute a body of eminent scientists in the field who should be requested to do scientific research in this area on a war footing to find out scientific ways and means of solving the water shortage problem in the country. It was also recommended that the said body shall be given all the financial, technical and administrative help by the Central and State Governments for this purpose. The help and advice of foreign scientific experts and/or Indian scientists settled abroad who are specialised in this field may also be taken, since the solution to the problem will not only help India but also foreign countries which are facing the same problem, some of which may already have progressed significantly in this area. The present known methods e.g. distillation or reverse osmosis are very expensive. We have to find out cheaper methods and this is possible only by scientific research *on a war footing*.

8. In *State of Orissa case- (2009) 5 SCC 492* the said body of scientists was requested to, inter alia, perform the following tasks:

(i) to find out an inexpensive method or methods of converting saline water into fresh water.

(ii) to find out an inexpensive and practical method of utilising the water, which is in the form of ice, in the Himalayas.



(iii) to find out a viable method of utilising rainwater.

(iv) to utilise the flood water by harnessing the rivers so that the excess water in the floods, may instead of causing damage, be utilised for the people who are short of water, or be stored in reservoirs for use when there is drought.

9. In the said decision State of Orissa- (2009) 5 SCC 492 the Court also observed: (SCC pp. 505-06, paras 62-64)

“62. It is indeed sad that a country like India which solved the problem of town planning 6000 years ago in the Indus Valley Civilisation and which discovered the decimal system in Mathematics and plastic surgery in medicine in ancient times, and is largely managing Silicon Valley in USA today has been unable to solve the problem of water shortage till now. In my opinion there is no dearth of eminent scientists in the field who can solve this problem, but they have not been organised and brought together and not been requested by the Central and State Governments to solve this problem, nor given the facilities for this.

63. In my opinion the right to get water is a part of right to life guaranteed by Article 21 of the Constitution. In this



connection, it has been observed in Delhi Water Supply & Sewage Disposal Undertaking v. State of Haryana-(1996) 2 SCC 572: (SCC p. 573, para 1)

‘1. Water is a gift of nature. Human hand cannot be permitted to convert this bounty into a curse, an oppression. The primary use to which water is put being drinking, it would be mocking nature to force the people who live on the bank of a river to remain thirsty,....’

64. Similarly in *Chameli Singh v. State of U.P.- (1996) 2 SCC 549* this Court observed: (SCC p.555, para 8)

‘8. ... Right to live guaranteed in any civilised society implies the right to food, water, decent environment, education, medical care and shelter. These are basic human rights known to any civilised society. All civil, political, social and cultural rights enshrined in the Universal Declaration of Human Rights and Convention or under the Constitution of India cannot be exercised without these basic human rights.’ ”

10. In *Hinch Lal Tiwari v. Kamala Devi-(2001) 6 SCC 496* this Court observed: (SCC p. 501, paras 13-14)



“13. It is important to notice that the material resources of the community like forests, tanks, ponds, hillock, mountain, etc. are nature’s bounty. They maintain delicate ecological balance. They need to be protected for a proper and healthy environment which enables people to enjoy a quality life which is the essence of the guaranteed right under Article 21 of the Constitution. The Government, including the Revenue Authorities i.e. Respondents 11 to 13, having noticed that a pond is falling in disuse, should have bestowed their attention to develop the same which would, on one hand, have prevented ecological disaster and on the other provided better environment for the benefit of the public at large. Such vigil is the best protection against knavish attempts to seek allotment in non-abadi sites.

14. For the aforementioned reasons, we set aside the order of the High Court, restore the order of the Additional Collector dated 25-2-1999 confirmed by the Commissioner on 12-3-1999. Consequently, Respondents 1 to 10 shall vacate the land, which was allotted to them, within six months from today. They will, however, be permitted to take away the material of the houses which they have constructed on the



said land. If Respondents 1 to 10 do not vacate the land within the said period the official respondents i.e. Respondents 11 to 13 shall demolish the construction and get possession of the said land in accordance with law. The State including Respondents 11 to 13 shall restore the pond, develop and maintain the same as a recreational spot which will undoubtedly be in the best interest of the villagers. Further it will also help in maintaining ecological balance and protecting the environment in regard to which this Court has repeatedly expressed its concern. Such measures must begin at the grassroot level if they were to become the nation's pride.”

2.5. While applying the Public Trust Doctrine to natural resources, such as, rivers, forest, sea-shores etc. for the purpose of protecting the ecosystem in the case of **M.C. Mehta Vs. Kamal Nath and others, reported in (1997) 1 SCC 388** the Hon'ble Supreme Court has observed as under:-

“The notion that the public has a right to expect certain lands and natural areas to retain their natural characteristic is finding its way into the law of the land. The ancient Roman Empire developed a legal theory known as the “Doctrine of the Public Trust”. The Public Trust Doctrine primarily rests on



the principle that certain resources like air, sea, waters and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being a gift of nature, they should be made freely available to everyone irrespective of the status in life. 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 purposes. Though the public trust doctrine under the English common law extended only to certain traditional uses such as navigation, commerce and fishing, the American Courts in recent cases expanded the concept of the public trust doctrine. The observations of the Supreme Court of California in *Mono Lake case* clearly show the judicial concern in protecting all ecologically important lands, for example fresh water, wetlands or riparian forests. The observations therein to the effect that the protection of ecological values is among the purposes of public trust, may give rise to an argument that the ecology and the environment protection is a relevant factor to determine which lands, waters or airs are protected by the public trust doctrine. The Courts in United States are finally beginning to adopt this reasoning and are expanding the public trust to encompass new types of lands and waters. There is no reason why the public trust doctrine should not be expanded to include all ecosystems operating in our natural resources. 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. Thus the Public Trust doctrine is a part of the law of the land.”

2.6. The Division Bench of the Gujarat High Court in the case of **Shailesh R. Shah Versus State of Gujarat and Ors., reported in (2002) 3 GLH 642: 2002 SCC OnLine Guj 164** after considering various decisions of the Hon’ble Supreme Court on the point, in Paragraph Nos. 28, 29, 35, 37, 38, 40, 41, 42, 45 and 46, has observed as under:-

“28. Water is essential to many of the mankind's most basic activities, such as agriculture, forestry, industry, power generation and recreation. Water being an integral, part of the environment, its availability is indispensable to the efficient functioning of the biosphere. Without a safe, reliable and stable water supply, human and economic development would not be possible. Nearly every decision whether about housing, transportation, economic growth or developmental work is linked to the use of the water



resources of the community. Fresh water is as essential to sustainable development as it is to life and water beyond its geographical, chemical, biological functions in the hydrological cycle, has the social, economic and environmental values that are interlinked and mutually supportive. Safe water, adequate sanitation and education about hygiene are basic human rights that protect health, increase the sense of well being and improve productivity. Water-related leisure activities, such as water-sports, contribute to a healthy life style. Human habitation near water resources was essential to the very existence of the human race and the ancient civilizations thrived near the vicinity of fresh water.

29. The citizens have a fundamental right under [Article 15\(2\)\(b\)](#) of the Constitution of not being subjected to any disability, liability, restriction or condition with regard to the use of wells, tanks and bathing ghats, roads and places of public resort maintained out of State funds or dedicated to the use of the general public. The word "tank" also means a pool, pond, reservoir or cistern, especially one for drinking water or irrigation - See Webster's II New Riverside University Dictionary. The State is enjoined with a duty under [Article 48A](#) of the Constitution to protect and improve the environment and to safeguard the forests and wildlife of the country and every citizen has a duty under [Article 51A\(g\)](#), inter alia, to protect and improve the natural environment



including forests, lakes and rivers. The State Legislature has, under Entry 17 of List II of the Seventh Schedule to the Constitution, competence to make laws with regard to water i.e. water supplies, irrigation and canals, drainage and embankments, water storage and water power, subject to the provisions of Entry 56 of the Union List. The Legislature of a State may by law endow the Panchayats with such powers and authority as may be necessary with respect to schemes for economic development and social justice, as may be entrusted to them including those in relation to the matters covered in the Eleventh Schedule right from [Article 243G](#) of the Constitution, namely, "Minor irrigation, water management and watershed development" at Entry 3, and "drinking water" at Entry II. Similarly, the Municipal Corporations and the Municipalities may be entrusted by law the matters enumerated in the Twelfth Schedule, which included "water supply for domestic, industrial and commercial purpose" at Entry 5, "Urban forestry, protection of environment and promotion of ecological aspects" at Entry 8, besides "Urban planning including town planning", at Entry 1, all read with [Article 243W](#) of the Constitution. The State Legislature has exclusive power to legislate with regard to local Government, that is to say, the Constitution and power of Municipal Corporations etc. under Entry 5 of the State List.

35. The Panchayats also have a duty to



make reasonable provision in regard to supply of water for domestic use and cattle, construction and cleaning of ponds, tanks and wells, constructing drinking fountains, tanks, wells, dams and the like under Schedule I read with Section 99 of the Gujarat Panchayats Act, 1993. Under Section 108(1) of that Act, the State Government may vest in a Panchayat property including wells, riverbeds, tanks, streams, lakes, nallas, canals and water courses. The power of the State Government to prepare for the whole State the Five-Year Plan or the Project and programmes relating to water supply and other matters is kept intact by Section 237 of the Gujarat Panchayat Act, 1993.

37. The word "environment" as defined in [Section 2\(a\)](#) of the Environment (Protection) Act, 1986 includes water and; land and inter-relationship which exists among and between water, air and land, human beings, other living creatures, plants, micro-organism and property. For regulating environmental pollution, the Central Government may by notification make rules which may provide, inter alia for standards of quality of water under [Section 6\(2\)\(a\)](#) of the said [Environment \(Protection\) Act](#). Under [Section 16](#) of the Water Act, 1974, the main function of the Central Board is to promote cleanliness of streams, [which includes river, water course, inland water, whether natural or artificial, sub-terrenean waters as defined in Clause (j) of [Section 2](#)], and wells in



different areas of the States and Clause (g) of Sub-Section (2) of [Section 16](#) empowers it to lay down, modify or annul, in consultation with the State Government concerned, the standards for a stream or well and different standards may be laid down for the same stream or well or for different streams or wells, having regard to the quality of water, flow characteristics of the stream or wells, and the nature of the use of the water in such stream or well or streams or wells. Under [Section 17\(1\)\(a\)](#) of the Water Act, the function of the State Board shall be to plan a comprehensive programme for the prevention, control and abatement of pollution of streams and wells in the State and secure the execution thereof. These provisions indicate the anxiety of the legislature to maintain the quality of water for which standards are required to be laid down.

38. The above constitutional and statutory provisions clearly bring to fore the paramount duty of the State Government, Municipal and Panchayat authorities, the Area Development Authorities and other legal authorities, to protect and improve water bodies as a part of environment and to ensure supply of safe water to the public. The State as the trustee of all natural resources meant for public use, including lakes and ponds, is under a legal duty to protect them. This duty is of a positive nature requiring the State including the Area Development Authorities and the Local Bodies not only to protect the people's common heritage of



lakes, ponds, reservoirs and streams but to prevent them from becoming extinct and to rejuvenate and preserve them quantitatively by harvesting rainwater and qualitatively by prescribing and enforcing standards of their water. There is ample legislation to arm these authorities with the power to preserve these natural resources and prevent their abuse. The duty of the State in this regard is clearly spelt out by the Apex Court in [M.C. Mehta v. Kamal Nath](#), reported in (1997) 1 SCC 388 and that of every citizen to protect the natural environment including lakes in [M. C. Mehta v. Union of India](#), reported in (1997) 3 SCC 715. The necessity to limit the construction activities in the close vicinity of the two lakes was recognized by the Supreme Court as noted above. It is rather unfortunate that decades have passed with laws already governing the field being put to disuse by the apathy of the authorities to actively involve themselves in protection and preservation of water bodies. The interim orders made in these petitions have, however, goaded them into some action and the final responses on behalf of the State Government, the Urban Development Authorities and the Municipal Corporation have raised a distinct ray of hope that may in near future glitter on the surface waters of the water bodies that are promised to be reinforced and preserved.

40. The next important aspect is that the water bodies that vest in the State or local bodies should not



be alienated or transferred. It appears that in the past the land covered by the water bodies have been put to other uses under the Town Planning Schemes and then a stand is taken up that the Town Planning Schemes having become part of the Statute, the Court cannot do anything about it, or, if such land is put to some other use allowed under the scheme that it will not be appropriate to dig up the construction to revive a water body. When State is enjoined upon a duty under [Article 48A](#) read with [Article 21](#) of the Constitution to endeavour to protect and improve environment which would include the waterbodies and every citizen is under a duty under [Article 51A\(g\)](#) to protect and improve environment including lakes, which are specifically mentioned therein as a part of environment, and when such material resources need to be protected to enable people to enjoy a quality life which is the essence of the right to life guaranteed by [Article 21](#) as held by the Apex Court in Hinchlal's case (supra), there would virtually be no constitutional option to convert the land under the lakes and ponds to any use that may alter their character as waterbodies in violation of the constitutional mandates to the State and the citizens not only to protect but to improve them. The Supreme Court has made this explicit in [M.C. Mehta v. Kamal Nath](#), reported in (1997) 1 SCC 388 by holding that these natural resources are meant for the public use and cannot be converted into private ownership. Step



in this direction is taken by the State Government by declaring Draft of the State Water Policy (2002). Announcements on Water Resources Planning, Development and Management in Paragraph 4 of the Policy statement include the strategy of making efforts "to protect and use all fresh water/natural resources like lakes, tanks, ponds, talavadis, springs etc. and preservation of existing fresh water-bodies shall be ensured. Traditional water retaining structures shall be protected". The Circular dated 15-3-1999 (a copy of which is annexed with the affidavit-in-reply dated 4-4-2002 of the Under Secretary to the Government, Urban Development & Urban Housing Department) was issued instructing the concerned authorities that while making any original development plan or a revised development plan, the waterbodies such as rivers, lakes, ponds, canals or any other type of waterbodies should be preserved as such water-bodies and should not be included in the proposals for other uses and these waterbodies should not be given any final plot number and their character should be preserved. In order to ensure that the waterbodies in the State which are identified as per the development plans, town planning schemes and the government records and which will be notified in the official gazette, we direct that the State Government, all Area Development Authorities and local Bodies will protect, maintain and preserve all the waterbodies in the State which are identified as



per the development plans, town planning schemes and the government records and which will be notified in the official gazette, as waterbodies and they will not be alienated or transferred or put to any use other than as water-bodies.

41. Water has also a destructive potential if the standards of its quality are not maintained. Misuse of water resources and poor water management practices would result in depleted supplies, falling water tables, shrinking inland lakes, and stream flows diminished to ecologically unsafe levels. Water pollution, originating mostly from human activities, occurs even more frequently and in a widespread manner making the quality of water unsuitable for many uses. The management of water quantity cannot be efficiently done without considering the water quality. Water resources should be managed in conjunction with land resources, and water supply schemes which generate large amount of waste water in consumer areas should be designed and built with the required matching drainage networks and waste water treatment facilities. We would therefore direct the respondents authorities to take steps to get the standards of quality of water of the lakes and ponds prescribed by the concerned authority under the law and devise mechanism for periodic monitoring of the quality of water in these lakes and ponds.

42. Normally, lakes and ponds are expected



to be permanently wet year round. They fall in the discipline of limnology which is a sub-system of hydrology that deals with the scientific study of fresh waters specifically those found in lakes and ponds. By the fallout of dust from the atmosphere and the sediments washed into the lake, the lake will gradually become eutrophic, with relatively poor water quality and will gradually become shallower and may eventually disappear. A lake may come to its end physically through loss of its water or through infilling by sediments and other materials. Lakes and ponds depend for their very existence upon a balance between their main sources of water and the losses that occur, a sort of water budget which may reflect the hydrologic idiosyncrasies of the individual lake. It will usually be difficult to influence the basic natural factors such as precipitation and evaporation that cause the imbalances. When the balance between photosynthesis and decomposition is upset, either too much organic material accumulates without getting decomposed adequately or too many bacteria grow and overabundance of decomposition occurs. Most inland lakes and ponds are eutrophic. Their bottoms get filled up with rich sediments. Eutrophication causes many harmful effects such as deterioration of the scenic value of lakes and ponds due to decrease in transparency or colour changes, water supply problems including the obstruction of filters, unpleasant odours and taste of its water and loss of aquatic life. This emphasizes the need to proper



preservation of lakes and ponds because in addition to supply of water, freshwater bodies also provide a resource for recreational activities such as boating, swimming, fishing and habitats for various aquatic and terrestrial species. Pond waters can have many uses from irrigation to recreational activities. Extensive management plans and programmes have to be established as a part of geographic initiatives to ensure the preservation, protection and restoration of these important environmental resources. The National Water Policy and the State Water Policy, a draft of which is produced, are exhaustive documents containing great vision but now is the time to move beyond policy declarations to concrete action that may produce results by rejuvenating the waterbodies most of which appear to be in a state of "comma".

45. Without removal of encroachments, the waterbodies under encroachment can hardly be rejuvenated. It is, therefore, essential for the State Government, the Urban Development Authorities and the local bodies to exercise their statutory powers to remove the existing, encroachments and take measures to prevent encroachments. These authorities are, therefore, directed to prepare an authenticated record in form of videography, photography and panchnamas of the existing encroachments and take urgent steps to remove them in accordance with law and the rehabilitation policies of the Government. Responsibilities of the officers/staff concerned, should



be fixed in respect of non-removal of encroachments and fresh encroachments. The Water Resources Committee will closely monitor the removal of encroachments by the concerned authorities, and the Area Development Authorities and the local bodies shall furnish, quarterly, particulars of such encroachments and their removal to the Water Resources Committee.

46. There has been opposition expressed on behalf of the State Government and the authorities, as also on behalf of the parties whose construction plans are held up, against the directions contained in paragraph 92 of the interim order dated 18-4-2001 to the effect that the Corporation, Development Authority, Collector and the State Government "shall not permit any construction whatsoever within 500 metres of the lake/pond if the size of the waterbody lake/pond is 5,000 sq. mtrs. or less, and within 1000 metres, if the size of the lake/pond waterbody is larger than 5000 sq. mtrs. save and except for storage of water or making gradient etc." The learned Advocate General argued that a general provision is made in the Regulation 14 of the Revised Draft General Development Control Regulations published in the Gujarat Government Gazette dated 18-5-2002, which is reproduced hereunder :

"14. Distance From Watercourse



No development whatsoever, whether by filing or otherwise shall be carried out within 30 Mts. from the boundary of the bank of the river where there is no river embankment and within 15 Mts. or such distance as may be prescribed under any other general or specific orders of Government and appropriate Authority whichever is more, from river where there is river embankment but in case of kans, nala, canal, talav, lake, water-bodies etc, it shall be 9.00 mts. :

Provided that where a water course passes through a low lying land without any well defined bank, the applicant may be permitted by the competent Authority to restrict or direct the water course to an alignment and cross section determined by the Competent Authority."

That thereafter the Division Bench has issued the following directions in Paragraph 50 as under:-

50. In background of the above averments and statements, we direct that the question of determining the peripheral area surrounding a lake or pond on which construction may be prohibited will be taken up by the concerned authorities for consideration in the context of the development of individual lakes and ponds and the authorities will take decisions thereon having regard to the relevant factors which may have a bearing on the protection, preservation and



improvement of lakes, ponds and other waterbodies and once the peripheral area around a lake or pond, in which there will be no construction allowed is determined the same shall be notified. All the applications for building permissions which may be pending, may be accordingly decided as per the regulations and keeping in view the requirement of individual waterbodies. To sum up, we issue the following directions :

[A] The State Government will notify all the lakes and ponds as may have been shown in the areas covered by the Town Planning Schemes and the Development Plans, as also those in the areas not so covered throughout the State, in short, all the waterbodies in the territory of the State that vest in the State and/or the Area Development Authorities or the local bodies including Panchayats in the official gazette within three months from the date of this order.

[B] The State Government and all Area Development Authorities and local Bodies will protect, maintain and preserve all the waterbodies in the State which are identified as per the development plans, town planning schemes and the government records and which will be notified in the official gazette, as waterbodies and they will not be alienated or transferred or put to any use other than as waterbodies.



- [C] The respondents authorities should take steps to get the standards of quality of water of the lakes and ponds prescribed by the concerned authority under the law and devise mechanism for periodic monitoring of the quality of water in these lakes and ponds.
- [D] The State Government, the Area Development Authorities and the Local Authorities should take urgent measures to rejuvenate the waterbodies which are to be notified in the gazette by undertaking a declared phased programme of desiltation and make adequate provisions for recharging them by appropriate storm water drains and other feasible means and to take measures against pollution of such waterbodies.
- [E] The State Government shall expeditiously take steps to constitute Water Resources Council as contemplated in the Draft Water Policy of the State, headed by the Hon'ble the Chief Minister with other Ministers, including the Ministers in charge of Environment and Urban Development Departments to oversee the programme for protection, preservation and improvement of the waterbodies. The State Government will also constitute the Water Resources Committee headed by the Chief Secretary which may include the Secretaries of Environment, Urban Development and Agriculture Departments, for monitoring the implementation of the programme in a time-bound manner with



periodic review of its success. This Committee shall place the particulars of the targets achieved and the causes of non-fulfilment of the targets periodically before the Water Resources Council for its consideration.

[F] The State Government, the Area Development Authorities and the local bodies are directed to prepare an authenticated record in form of videography, photography and panchnamas of the existing encroachments and take urgent steps to remove them in accordance with law and the rehabilitation policies of the Government. Responsibilities of the officers/staff concerned should be fixed in respect of non-removal of encroachments and fresh encroachments. The Water Resources Committee will closely monitor the removal of encroachments by the concerned authorities and the Area Development Authorities and the Local Bodies shall furnish, quarterly, particulars of such encroachments and their removal to the Water Resources Committee.

[G] The question of determining the peripheral area surrounding a lake or pond on which construction may be prohibited will be taken up by the concerned authorities for consideration in the context of the development of individual lakes and ponds and the authorities will take decisions thereon having regard to the relevant factors which may have a bearing on the protection, preservation and improvement of lakes, ponds and other water-bodies, and once the



peripheral area, around a lake or pond, in which there will be no construction allowed is determined the same shall be notified. All the applications for building permissions which may be pending may accordingly be decided as per the regulations and keeping in view the requirement of individual waterbodies.

Rule is made absolute in all these petitions accordingly with no order as to costs. All the applications filed in these petitions stand disposed of in light of this decision with no order as to costs.”

3. Applying the law laid down by the Hon'ble Supreme Court and the decision of the Gujarat High Court in the case of **Shailesh R. Shah** (supra), to the facts of the case on hand and considering the material on record and as observed above, virtually the pond in question has been destroyed. The same is evident from the photographs placed on record and even the counter filed by the Bihar State Pollution Control Board. The shops are being constructed just on the bank and even in the pond itself. The condition of the pond is worst. It is the duty of every Zila Parishad and even the District Magistrate to maintain the pond/ponds, reservoir, lakes etc. Therefore, in the present case, the petitioners are entitled to reliefs as prayed for in the petitions by directing the concerned respondents including the Zila Parishad, East Champaran at Motihari, District Magistrate,



East Champaran to remove the encroachment/construction made in the pond in question, adjacent to the pond in question and to direct the District Magistrate, East Champaran and the Zila Parishad, East Champaran at Motihari to restore the pond in question.

4. In view of the above and for the reasons stated above, both these writ petitions succeed. The concerned respondents herein including the Zila Parishad, East Champaran at Motihari are hereby restrained from putting up any construction of the shops and are hereby restrained from destroying the village pond in question situated in Village Ghorasahan under Grampanchayati Raj, Ghorasahan South, District- East Champaran. The Zila Parishad, East Champaran at Motihari and the District Magistrate, East Champaran are hereby directed to remove the construction of the shops under construction just around the pond in question. The District Magistrate, East Champaran is hereby directed to remove the same within a period of four weeks from today. All concerned are hereby directed not to use the pumping sets for draining out the water from the pond in question. The District Magistrate, East Champaran is hereby directed to see that the pond is properly maintained and there shall not be any encroachment



and/or construction in the pond in question and even surrounding the pond in question and whatever the construction is there, the same shall be removed by the District Magistrate, East Champaran within a period of four weeks from today.

5. Both these writ petitions are allowed to the aforesaid extent.

(Mukesh R. Shah, CJ)

(Dr. Ravi Ranjan, J)

P.K.P./-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	07.09.2018
Transmission Date	

