Item No. 02

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

**Original Application No. 22/2021(CZ)**
**(I.A. No. 68/2021)**

Shailendra Jain — Applicant (s)

Versus

State of Rajasthan & Ors. — Respondent(s)

Date of hearing: **12.11.2021**
Date of uploading: **18.11.2021**

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

For Applicant(s): Mr. Shailendra Jain, in person
For Respondent(s): Mr. Om Shanker Shrivastva, Adv.
Mr. Shoeb Hasan Khan, Adv.
Mr. Dharamvir Sharma, Adv.

**ORDER**

1. The present application has been filed against the respondent no. 2,3,4,5 and 6 for illegal colony developing on their "JAMABANDI" revenue land (PETA TALAB) without taking any prior permission of the revenue officer or SDM or District Collector or any other government department. Developing colony is illegal because the respondent no. 2,3,4,5 and 6 are developing the colony on revenue land (PETA TALAB), submerged and catchment area of water body on revenue land (PETA TALAB) survey no. (Khasra no. 1532, 1533 and 1536) which are the part of Pond water drainage revenue land (PETA TALAB) and have a very big Khal on these revenue lands. Water drained from the revenue land (PETA TALAB) is flowing to the other next pond (called NAYA TALAB) which is situated on Durgpura Road, Jhalawar (Rajasthan), which is said to be in violation

of the Rajasthan Water (Prevention and Control of Pollution) Rules, 1975 published vide Notification No. G.S.R. 48/F. 27(5) PH./75/Gr. 3, dated 27/08/1975. The annexure A4 attached with 2 the application shows that the aforesaid khasra nos. are property of the State recorded as PETA.

2. The matter was taken up by this Tribunal on 27.05.2021 and a Joint Committee was constituted consisting (i) District Collector, Jhalawar, Rajasthan and Rajasthan State Pollution Control Board with directions to visit the place and submit the factual and action taken report.

3. The matter was again taken up on 20.09.2021 after the submission of the report by the Collector and it was observed as follows:

> *3. The Collector Jhalawar has submitted the report and admitted that the land in question is recorded as State land and is in the nature of pond or catchment on the pond. It is admitted fact that there are constructions, encroachments and necessary action under section 19 (a) of Rajasthan Land Revenue Act, 1956 is being initiated and taken by the authorises concerned and the Tehsildar have been directed to do accordingly. It has further been submitted that Commissioner, Municipal Corporation, Jhalawar vide its letter dated. 16.06.2021 has communicated with certain planning with the fact that there is no transfer of land in the name of Municipal Commissioner. In the light of the above facts, we direct the Collector to submit a clear report with revenue records from 1960 onwards, at intervals of 10 years i.e. 1960, 1970, 1980 & 1990 with his report that the land in question is recorded in the name of State of Rajasthan. If there is a transfer of land, the detailed information must be submitted in the report. He shall also submit the nature of land, any order with regard to change of nature of land, any order of transfer of land by the State or any Competent Authority to the private persons within four weeks. The contention of the Commissioner, Municipal Corporation Jhalawar that land was included in the planning raises certain question with the authorities of Municipal Corporation. Being a land recorded in the name of State Government, land in nature of pond, catchment area of pond or water body, the Municipal Corporation has no authority to change the nature of the ownership or the nature of the land.*
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> *4. 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 3 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).*

*5. In the local laws, management of land has been delegated to Municipal Corporation, Management, Protection, Demarcation, Beautification is one thing but construction of commercial and residential building is another thing. Management of the pond area does not mean the construction of commercial and residential building or construction of building and destruction of pond area. The Collector Jhalawar is directed to submit the report on the above points with his specific recommendation with regard to the action taken by the Collector regarding protection of State land.*

4. The version of the applicant is that in the revenue records the Survey Khasara No. 1531 is recorded as Banjar, 1532 and 1533 are recorded as land cast Peta and Khara No. 1534 and 1535 are recorded as Banjar. The Respondents are developing 77 plots and converting the State/Public land into the colony or residential complex in violation of environmental laws. Annexure A-1, A-2 and A-3 attached with the application shows that there are constructions just beside the Pond area and there are map of plotting. The report submitted by the Joint Committee reveals that the land which is recorded as the State Land and was allotted to the persons for agricultural purposes are being used for non-agricultural purposes and that too without any order or permission or conversion of land use from agriculture to residential purposes against the provisions of law. It is further reported that the authorities have been directed to do the

needful according to law. Annexure B-2 and B-3 to B-7 attached with the application and filed by the applicant depicts that these constructions are being done just beside the water body, encroaching the water body and there is every possibility for discharge of sewage water/untreated water into the water bodies.

5. Respondent No.2 Nagar Parishad , Jalawar, Rajasthan has filed the reply as follows:

> *That, the instant petition case pertains to revenue dispute which is already pending before the Revenue Court at Jhalawad (Raj). Moreover, the present OA filed by the petitioner does not involve substantial questions relating to environment because; there is no water body or lake/ Talab which is in existence in the Khasra No. 1531 to L537.In fact, the petitioner intentionally alleged the above revenue land as Peta Talab, whereas as per the Revenue records, it is recorded as Banjad, Peta land etc. It is Khasra No. 1599 which is Gair Mumkin Talab at measuring 8.8894 Flectare, Khasra No. 640/ Old Khata No. 568, entered in Naksha Khasra Jarnabandi, which is far away from the Khasra No. 1531 to 1537 in the instant case. Therefore, the OA is misleading, based on incorrect facts and hence liable to be dismissed.*
>
> *That, in order to understand the controversy between the parties, it is necessary to look into the background of the matter. One Manjeet Singh, who was owner of a land, adjacent to Nagar Parishad land, had constructed more than 30 shops and sold to private individuals. Out of the said shops, the replying respondent No. 2 owned 3 shops. It is pertinent to mention here that the existing shops are not adequate to bear the load of a subsequent floor. The applicant Shailender Jain purchased the part of that terrace and started illegal constructions, of which all existing shop-keepers were annoyed and resentful. It is again important to submit that the replying respondent got elected and became the Chairman of Nagar Parishad recently in the year 2021. The applicant is pressurizing the replying respondent/ Chairman in both ways, as owner of the shops and as well as the Chairman, thereby pressurizing the replying respondent to give permission for construction of shops at the lst Floor. Litigation regarding these controversies is going on between the Nagar Parishad and the applicant in which the applicant has already lost his case and filed appeal pending adjudication.*

6. It is admitted fact that Khasra No. 1599 is Talab measuring 8.8894 hc and Khasra No. 1531 and 1537 are recorded as Banjar in the ownership of the State Government.

7. A copy of the appeal filed in the court of District Judge, Jhalawar, Rajasthan as Civil Appeal No. 05 of 2021 has been filed which shows that civil litigation is also pending with regard to the matter in issue.

8. Respondent No. 3 to 6 has filed their reply as follows:

> *That, the instant petition pertains to revenue dispute which is already pending before the revenue court at Jhalawad (Raj). Moreover, the present OA filed by the petitioner does not involve substantial question related with environment because there is no water body or lake/ Talab which is in existence in the Khasra No. 153 I to 1537.ln fact, the petitioner intentionally alleged the land as Peta Talab, whereas, in the revenue records, it is recorded as Banjad, Peta land etc. It is only Khasra No. 1599 which is Gair Mumkin Talab at measuring 8.8894 Hectare, Khasra No. 640/ Old Khata No. 568 as entered in Naksha Khasra Jamabandi dated 03.08.2021, which is far away from the Khasra Nos.l53l to 1537 raised in the instant case.*
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> *That, it is pertinent to mention here at this stage that the Talab is in Khasra No. 1599. Thereafter, a 5 feet width wall of 20 feet height (old dewar) is constructed since ages. The position of Khasra No.1530 comes after the huge wall which is of width 25-35 Feet. Thereafter there exists a road nearly about 30 feet width along with 2-3 feet Nalli. Only after the road and Nalli, the replying respondents are having their land in possession. That, the Khasra No. 1530 also acts as a 30 feet high parapet/Pal from the Peta and prevents water from over flowing to the land of Respondents 3 to 6. It is pertinent to mention here that there has never been any instance of water-logging etc in the said land and no such scenarios are present at site. The respondent is seeking the correction of these records.*
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> *That, the replying respondents are law abiding citizen and have not done any construction without valid permission by the competent authority. The land in question is recorded as residential in Master Plan 2011-31 Jhalawad- Jhalarapatan as per the report submitted by the Joint Committee dated 30.06.2021. There is a separate drainage approx 15 Feet in width in Khasra no. 1526 recorded in revenue Jamabandi, which is 200 feet away from the respondents land.*
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> *That, the Khasra No. 1532, 1533, 1536 admeasuring 0.2150, 0.1897, 0.5311 Hectares respectively are recorded as peta whereas, Khasra No 1531, 1534, 1535, and 1537 admeasuring 0.0506, 0.0126, 0.0126,*

*0.0759 Hectares' are recorded in revenue record as Banjad [but, not as a TALAB of PETA TALAB] as entered in Jarnabandi (Khewat Khatoni).*

9. The copy of Jamabandi (Khewat Khatoni) prepared under rule 153 (A) shows that the land under question and mentioned in the application is recorded as state land and the nature of the land is Banjad or peta. Khasra Gir Dawri Sambad 2062 – 2065 reveals some agricultural activities and Annexure R-5 depicts the proceedings before the Revenue Court under Section 136 of the Land Revenue Act in the court of SDM, Jhalawad, Rajasthan.

10. Tehsildar, Tehsil, Jhalarapatan vide his reference dated 14.10.2021 reported the facts as follows:

उपरोक्त विषयान्तर्गत निवेदन है कि प्रसंगिक पत्र से वांछित सूचना बिन्दूवार निम्नानुसार सादर प्रस्तुत है :–

1. उक्त तालाब कृषि विज्ञान केन्द्र की खातेदारी ख.न.1599 रकबा 8.8894 है0 भूमि में स्थित है, जिसमें लगभग 1.3516 है0 भूमि में तालाब स्थित है, 0.5504 है0 में कृषि विज्ञान केन्द्र का भवन बना हुआ है तथा शेष भूमि की चारदीवारी हो रही है जिस पर किसी प्रकार का कोई अतिक्रमण नहीं है तथा उक्त समस्त भूमि राज्य सरकार के राजकीय कृषि विभाग की भूमि है तथा इस भूमि पर कृषि विज्ञान केन्द्र ही काबिज़ है। राजस्व रिकार्ड की प्रतियां मय मानचित्र (जलाशय आदि को भिन्न – भिन्न रंगो से प्रदर्शित कर) संलग्न कर प्रस्तुत है।

2. तालाब की डाउन स्ट्रीम में स्थित भूमि वर्तमान रिकार्ड अनुसार ख0न0 1531/0.0759 किस्म बंजड दर्ज रिकार्ड है।

डाउन स्ट्रीम की उक्त भूमि सेटलमेंट से पूर्व जमाबंदी संवत् 2021–24 में खातेदार बादी पुत्र सीताराम तथा काना पुत्र जगन्नाथ के खातेदारी में दर्ज है जिसकी प्रतिलिपियां संलग्न है। तथा मिसल बंदोबस्त सवत् 2030–49 में खातेदारी बीदा पुत्र सीताराम कुम्हार सा0 देह के खाते दर्ज है। खातेदार बीदा पुत्र सीताराम से वर्तमान खातेदारान के खाते में निम्नानुसार नामा0 से हस्तान्तरित होकर दर्ज रिकार्ड है।

| नामा0 स0 | पूर्व खातेदार | ख0नं0 | हस्तान्तरित खातेदार |
|---|---|---|---|
| 223/दि0 06.07.1981 | बीदा पुत्र सीताराम | किता 7 | बशीर मोहम्मद पुत्र अमीर मोहम्मद |
| 520/दि0 03.021996 | बशीर मोहम्मद पुत्र अमीर मोहम्मद | किता 7 | अथर परवेज पुत्र अय्यूब अली |
| 575/दि0 08.05.1999 | अथर परवेज पुत्र अय्यूब अली | किता 7 | नारायण लाल पुत्र फूलचंद पोरवाल |
| 624/दि0 23.11.2001 | नारायण लाल पुत्र फूलचंद पोरवाल | किता 7 | विजय कुमार, कमल कुमार पुत्र नारायण, गायत्री, उमा, इन्द्रा पुत्री नारायण राधाबाई पत्नी नारायण |
| 1492/दि0 22.06.2018 | विजय कुमार, कमल कुमार पुत्र नारायण, गायत्री, उमा, इन्द्रा पुत्री नारायण राधाबाई पत्नी नारायण | किता 7 | वरूण, राहुल पुत्र कमल कुमार, स्वाति पुत्री कमल कुमार, पुष्पा पत्नी कमल कुमार शेष बदस्तूर |
| 1592/दि0 14.02.2020 | वरूण, राहुल पुत्र कमल कुमार, स्वाति पुत्री कमल कुमार, पुष्पा पत्नी कमल कुमार शेष बदस्तूर (विनय पुत्र नारायण को छोड़ कर) | किता 7 | गायत्री मित्तल पत्नी राजीव महाजन हि0 1/6, मंजू मिततल पत्नी दिलीप महाजन हि0 1/6, शफिया पत्नी शाकिर हि0 1/6, संजय शुक्ला पुत्र दिनानन्द ब्राह्मण हि0 1/6 |
| 1598/दि0 29.09.2020 | गायत्री मित्तल पत्नी राजीव महाजन हि0 1/6, मंजू मिततल पत्नी दिलीप महाजन हि0 1/6, शफिया पत्नी शाकिर हि0 1/6, संजय शुक्ला पुत्र दिनानन्द ब्राह्मण हि0 1/6 | किता 7 | गायत्री मित्तल पत्नी राजीव महाजन हि0 1/3, मंजू मिततल पत्नी दिलीप महाजन हि0 1/6, शफिया पत्नी शाकिर हि0 1/6, संजय शुक्ला पुत्र दिनानन्द ब्राह्मण हि0 1/6, देवेश खंडेलवाल जगदीश मिततल हि0 1/6 |

3. उक्त भूमियां वर्तमान में नगरीय क्षेत्र में आ जाने से इस पर अकृषि प्रयोजनार्थ संपरिवर्तन करने, बिना संपरिवर्तन के निर्माण करने पर कार्यवाही करने का अधिकार नगरीय निकाय अर्थात नगर परिषद झालवाड को है। भूमि का बिना रूपान्तरण करवाये ही कृषि से अकृषि उपयोग कर आवासीय कॉलोनी विकस्ति किये जाने पर राजस्थान टीनेन्सी एक्ट 1955 की धारा 177–178 के तहत न्यायालय उपखण्ड अधिकारी झालावाड़ में वाद प्रकरण संख्या 816/21 विचाराधीन है। जिसमें न्यायायिक प्रक्रिया के अनुसार निर्णय किया जावेगा।

4. कृषि विज्ञान केन्द्र के खसरा नम्बर 1599 में स्थित तालाब की पाल ख0न0 1530 गै0मु0 पाल रकबा 0. 3162 है0 खारा सरकार दर्ज है जिस पर अतिक्रमण कर बनाये गये कमरों को लैण्ड रेवेन्य एक्ट की धारा

91 के अंतर्गत कार्यवाही करतेहुए दिनांक 17.06.2021 को अतिक्रमण ध्वस्त बेदखल कर दिया गया है। वर्तमान में इस भूमि पर किसी का कब्ज़ा नहीं है।

11. Admittedly, the Khasra No. 1599 is recorded as Talab and the area as recorded is 8.8894 Hc.

12. Learned counsel appearing for the applicant has argued that Hon'ble the Supreme Court of India in so many decisions had directed that the heart of the public trust is that it imposes limits and obligations upon Government agencies and their administrators on behalf of all the people and especially future generations. All the property which is vested in the state are indirectly managed by the local administration on the Principle of Public Trust. It does not mean that the local administration is at liberty or at the discretion to use it in own way. We have two things, sovereignty of the State and the doctrine of public trust. We have to make a balance between the two though the State has every authority to utilize the land but Public Trust Doctrine says that the property of the public should be utilized for the public purposes and not for the private purposes. The water bodies, lake, air and land all these are the public properties and should be made available to all for maintaining the health and environment. This Doctrine of public trust and precautionary measures was discussed in public interest litigation no. 87/ 2006; Bombay Environmental Action Group Vs. State of Maharashtra 2018 SCC online bombay 2680.2019(1) Bombay CRI and it was held as follows:-

> Apex Court observed thus: —
>
> *2. The Indian society has, for many centuries, been aware and conscious of the necessity of protecting environment and ecology. Sages and saints of India lived in forests. Their preaching's 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 seashore, running waters, airs, forests and ecologically fragile lands. The State as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership.*

*35. We are fully aware that the issues presented in this case illustrate the classic struggle between those members of the public who would preserve our rivers, forests, parks and open lands in their pristine purity and those charged with administrative responsibilities who, under the pressures of the changing needs of an increasingly complex society, find it necessary to encroach to some extent upon open lands heretofore considered inviolate to change. The resolution of this conflict in any given case is for the legislature and not the courts. If there is a law made by Parliament or the State Legislatures the courts can serve as an instrument of determining legislative intent in the exercise of its powers of judicial review under the Constitution. But in the absence of any legislation, the executive acting under the doctrine of public trust cannot abdicate the natural resources and convert them into private ownership, or for commercial use. The aesthetic use and the pristine glory of the natural resources, the environment and the ecosystems of our country cannot be permitted to be eroded for private, commercial or any other use unless the courts find it necessary, in good faith, for the public good and in public interest to encroach upon the said resources.*

*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 19 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."*

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

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

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

***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 32 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 33 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 34 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."*

14. The matter of encroachment on the water bodies was taken up by the Principal Bench of this Tribunal 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."*

15. 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."*

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

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

*147 From commencement to completion, the process of construction by developers is regulated within the framework of law. The regulatory framework encompasses all stages of construction, including allocation of land, sanctioning of the plan for construction, regulation of the structural integrity of the structures under construction, obtaining clearances from different departments (fire, garden, sewage, etc.), and the issuance of occupation and completion certificates. While the availability of housing stock, especially in metropolitan cities, is necessary to accommodate the constant influx of people, it has to be balanced with two crucial considerations – the protection of the environment and the well-being and safety of those who occupy these constructions. The regulation of the entire process is intended to ensure*

*that constructions which will have a severe negative environmental impact are not sanctioned. Hence, when these regulations are brazenly violated by developers, more often than not with the connivance of regulatory authorities, it strikes at the very core of urban planning, thereby directly resulting in an increased harm to the environment and a dilution of safety standards. Hence, illegal construction has to be dealt with strictly to ensure compliance with the rule of law.*

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

*149 In K. Ramadas Shenoy v. Chief Officer, Town Municipal Council, Chief Justice AN Ray speaking for a two judge Bench of this Court observed that the municipality functions for public benefit and when it —acts in excess of the powers conferred by the Act or abuses those powers then in those cases it is not exercising its jurisdiction irregularly or wrongly but it is usurping powers which it does not possess. This Court also held:*

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

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

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

> *10. Before parting, we have an observation to make. The same is that a feeling is gathering ground that where unauthorised constructions are demolished on the force of the order of courts, the illegality is not taken care of fully inasmuch as the officers of the statutory body who had allowed the unauthorised construction to be made or make illegal allotments go scot free. This should not, however, have happened for two reasons. First, it is the illegal action/order of the officer which lies at the root of the unlawful act of the citizen concerned, because of which the officer is more to be blamed than the recipient of the illegal benefit. It is thus imperative, according to us, that while undoing the mischief which would require the demolition of the unauthorised construction, the delinquent officer has also to be punished in accordance with law. This, however, seldom happens. Secondly, to take care of the injustice completely, the officer who had misused his power has also to be properly punished. Otherwise, what happens is that the officer, who made the hay when the sun shined (sic), retains the hay, which tempts others to do the same. This really gives fillip to the commission of tainted acts, whereas the aim should be opposite*

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

> *24. Structural and lot area regulations authorise the municipal authorities to regulate and restrict the height, number of storeys and other structures; the percentage of a plot that may be occupied; the size of yards, courts and open spaces; the density of population; and the location and use of buildings and structures. All these have in our view and do achieve the larger purpose of the public health, safety or general welfare. So are front setback provisions, average alignments and structural alterations. Any violation of zoning and regulation laws takes*

*the toll in terms of public welfare and convenience being sacrificed apart from the risk, inconvenience and hardship which is posed to the occupants of the building.*

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

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

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

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

*The Court lamented that the earlier decisions on the subject had not resulted in enhancing compliance by developers with building regulations. Further, the Court noted that if unauthorized constructions were allowed to stand or are ―given a seal of approval by Court‖ , it was bound to affect the public at large. It also noted that the jurisdiction and power of Courts to indemnify citizens who are affected by an unauthorized construction erected by a developer could be utilized to compensate ordinary citizens.*

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

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

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

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

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

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

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

17. Learned Counsel appearing for the applicant had submitted that the area of Khasra No. 1599 which is recorded as a Pond and there is no dispute with regard to the nature of the land and as admitted by the respondents in the reply and the report of the collector must be protected and the authorities may be directed to ensure that there shall not be any encroachment. If there are encroachment, the encroachment must be removed according to law and respondents are duty bound to ensure that there should not be any discharge of any untreated/ sewage water into the water bodies. For rest of the Khasra no. where the land is recorded as peta there is a controversy as to whether this is a catchment area of the water body or the Banjad Bhoomi which is recorded in the name of the State property. Since the matter is pending before the Revenue Court, thus, we are of the view that the decisions on the rest of the Khasra numbers must be taken by the revenue authorities as early as possible and it should be ensured that there should not be any encroachment on any state land.

18. Accordingly, we summarize our directions as follows:

i. Khasra no. 1599 is admittedly recorded as Talab, Pond water body and it must be protected and demarcated and there should not be any encroachment on the water bodies and authorities/collector Jhalabad is directed that if there is any encroachment on the area 1599 (total area) the encroachment must be removed in accordance with law within a period of 03 months, failing which the applicant is at liberty to file an Execution Application according to law.

ii. Rest of the survey nos. as mentioned in the applications which are recorded as a peta are under litigation before the revenue authorities or the Civil Court and the matter shall be dealt with in accordance with

decision taken by the revenue authorities or by the competent Civil Court.

The Original Application is **finally disposed** of accordingly. In view of the above **I.A. No. 68/2021 stands disposed of**.

**Sheo Kumar Singh, JM**

**Arun Kumar Verma, EM**

November, 18th 2021
O.A. No. 22/2021(CZ)
PU