

**A.F.R.**

**Court No. - 21**

**Case :- PUBLIC INTEREST LITIGATION (PIL) No. - 1474 of 2019**

**Petitioner :- Support India Welfare Society**

**Respondent :- State Of U P And 7 Others**

**Counsel for Petitioner :- Shree Prakash Giri**

**Counsel for Respondent :- C.S.C., Shyam Mani Shukla, Suresh C. Dwivedi**

**Hon'ble Pradeep Kumar Singh Baghel, J.**

**Hon'ble Piyush Agrawal, J.**

This Public Interest Litigation (PIL) has been instituted by the petitioner, who claims to be the Chairman of the Legal Cell of the registered Society, "Support India Welfare Society". One of the objects of the Society is to take up the cause of public importance for its redressal for the marginal sections of the society.

The grievance raised in this Public Interest Litigation is in respect of illegal encroachments over pond over Plot Nos. 253 & 254 situated at Village – Rajpur, Tehsil & District – Agra by the land *mafias* in collusion with the local officials. The said plots are intended to be used for the construction of multi-storey building by the powerful and influential persons of the city. It is stated that in the District – Agra, the land *mafias* are indulged in encroachments of the public utility land, particularly, ponds/water bodies. The petitioner has brought on the record a copy of the revenue record to demonstrate that Plot Nos. 253 & 254 are recorded as pond (*Pokhar*).

It is stated that the petitioner had made several representations to the concerned authorities and when no action was taken, the petitioner filed Public Interest Litigation No. 4502 of 2018, which was disposed of by this Court vide order dated 4<sup>th</sup> October, 2018, directing the District Magistrate, Agra to take appropriate action, in accordance with law.

Pursuant to the order of this Court, the petitioner submitted a

detailed representation on 22/27<sup>th</sup> October, 2018 before the District Magistrate, Agra. The District Magistrate, Agra directed to conduct an inquiry and it was found that Plot Nos. 253 area 0.1150 hectare has been encroached upon by the RCL Public School and a direction was issued to the Nagar Nigam, Agra for the removal of the encroachment and to restore the pond. It is stated that in spite of the order of the District Magistrate, Agra dated 6<sup>th</sup> May, 2019, no effective step has been taken for the removal of the encroachment. The petitioner has brought on the record some of the documents to indicate that the encroachment still exist.

We have heard learned counsel for the petitioner and learned standing counsel for the State.

The learned counsel for the petitioner submits that the Supreme Court, in a large number of judgements, has issued directions to all the Chief Secretaries of the States for removal of the encroachments from the water bodies. Learned counsel for the petitioner has placed reliance on the judgment in the case of **Hinch Lal Tiwari Vs. Kamala Devi & Others<sup>1</sup>**, **Jagpal Singh & Ors. Vs. State of Punjab & Ors.<sup>2</sup>**, **Jagat Narain And Others Vs. State of U.P. And Others<sup>3</sup>**, and **P.S. Shisodia Vs. Board of Revenue Alld.<sup>4</sup>**

This Court also, following the judgements of the Supreme Court, has issued directions to the authorities for the compliance of the judgements of the Supreme Court.

It is apposite at this stage to set out the relevant statutory provisions contained in Uttar Pradesh Zamindari Abolition & Land Reforms Act, 1950 and the executive orders, which deals with the Ponds/water bodies in this state.

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<sup>1</sup> (2001) 6 SCC 496

<sup>2</sup> AIR 2011 SC 1123

<sup>3</sup> 2015 (3) ADJ 466 (DB)

<sup>4</sup> 2008 (1) R.D. 15.

*“Section 4: Vesting of estates in the State:- (1) As soon as may be after the commencement of this Act the State Government may, by notification, declare that as from a date to be specified, all estates situate in Uttar Pradesh shall vest in the State and, as from the beginning of the date so specified (hereinafter called the date of vesting), all such estates shall stand transferred to and vest, except as hereinafter provided, in the State free from all encumbrances.*

*(2) It shall be lawful for the State Government, if it so considers necessary, to issue, from time to time, the notification referred to in sub-section (1) in respect only of such area or areas as may be specified and all the provisions of sub-section (1) shall be applicable to and in the case of every such notification.*

***117. Vesting of certain lands, etc. in Gaon Sabhas and other local authorities.-***

*1) At any time after the publication of the notification referred to in Section 4, the State Government may, [by general or special order to be published in the manner prescribed,] declare that as from a date to be specified in this behalf, all or any of the following things, namely-*

*(i) lands, whether cultivable or otherwise, except lands for the time being comprised in any holding or grove,*

*(ii) forests,*

*(iii) trees, other than trees in a holding on the boundary of a holding or in a grove or abadi,*

*(iv) fisheries,*

*(v) hats, bazars and melas, except hats, bazars and melas held on lands to which the provisions of clauses (a) to (c) of sub-section (1) of Section 18 apply or on sites and areas referred to in Section 9, and*

*(vi) tanks, ponds, private ferries, water channels, pathways and abadi sites,-*

*which had vested in the State under this Act shall vest in a Gaon Sabha or any other local authority established for the whole or part of the village in which the said things are situate, or partly in one such local authority (including a Gaon Sabha) and partly in another:*

*Provided that it shall be lawful for the State Government to make the declaration aforesaid subject to such exceptions and conditions as may be [specified in such order].*

*(2) Notwithstanding anything contained in this Act or in any other law for the time being in force, the State Government may, 4[by general or special order to be published in the manner prescribed,] declare that as from a date to be specified in this behalf, all or any of the things specified in clauses (i) to (vi) of sub-section (1) which after their vesting in the State under this Act had been vested in a Gaon Sabha or any other local authority, either under this Act or under Section 126 of the Uttar Pradesh*

*Nagar Mahapalika Adhiniyam, 1959, shall vest in any other local authority (including a Gaon Sabha) established for the whole or part of the village in which the said things are situate.*

*(3) Where any declaration has been made under sub-section (1) or sub-section (2) vesting any of the things specified in clauses (i) to (vi) of sub-section (1) in any Gaon Sabha, and the village or the part of the village in which that thing is situate lies outside the circle of the Gaon Sabha, such Gaon Sabha or its Land Management Committee shall in respect of that thing perform, discharge and exercise the functions, duties and powers assigned, imposed or conferred by or under this Act or the U.P. Panchayat Raj Act, 1947, on a Gaon Sabha or a Land Management Committee, as the case may be, as if that village or part of village also lay within that circle.*

*(4) Where a declaration has been made under sub-section (1) or sub-section (2) vesting any of the things specified in clauses (i) to (vi) of sub-section (1) in a local authority other than a Gaon Sabha and the village or the part of village in which the thing is situate is outside the limits of such local authority, or where after any declaration is made under sub-section (1) or sub-section (2), the thing vests or, as the case may be, had vested in a Nagar Mahapalika under Section 126 of the Uttar Pradesh Nagar Mahapalika Adhiniyam, 1959, such local authority shall in respect of that thing perform, discharge and exercise the functions, duties and powers assigned, imposed or conferred by or under this Act or the U.P. Panchayat Raj Act, 1947, on a Gaon Sabha or Land Management Committee:*

*Provided that the local authority shall in the performance, discharge and exercise of its functions, duties and powers under this sub-section follow such procedure as may be prescribed.*

*(5) Where any of the things specified in clauses (i) to (vi) of sub-section (1) is vested in a local authority other than a Gaon Sabha the provisions of Sections 126 and 127 shall, subject to such exceptions and modifications, if any, as the State Government may specify in this behalf [by general or special order to be published in the manner prescribed] apply, mutatis mutandis, to such local authority.*

*(6) The State Government may at any time, [by general or special order to be published in the manner prescribed], amend or cancel any [declaration, notification or order] made in respect of any of the things aforesaid, whether generally or in the case of any Gaon Sabha or other local authority, and resume such thing, and whenever the State Government so resumes any such things, the Gaon Sabha or other local authority, as the case may be, shall be entitled to receive and be paid compensation on account only of the development, if any, effected by it in or over that things:*

*Provided that the State Government may after such resumption make a fresh declaration under sub-section (1) or sub-section (2) vesting the thing resumed in the same or any other local authority including a Gaon Sabha), and the provisions of sub-sections (3), (4) and (5), as the case may be, shall mutatis mutandis, apply to such declaration.”*

Regard being had to the fact that the Commissioner – cum – Secretary of Board of Revenue, U.P. has issued a circular dated 4<sup>th</sup>

October, 2012. In compliance of the Judgements of the supreme Court and with reference to of this court in

The relevant part of the circular reads as under:

"इस सम्बन्ध में मुझे यह कहने का निदेश हुआ है, कि ग्राम सभाओं की भूमि पर तालाब/पोखर/चारागाह एवं कब्रिस्तान पर अवैध कब्जा/ अतिक्रमण को हटवाने के सम्बन्ध में प्रमुख सचिव, राजस्व विभाग, उत्तर प्रदेश शासन की अध्यक्षता में बहुसदस्यीय समिति का गठन किया गया है (छाया प्रति संलग्न)। अतः अनुरोध है कि उक्त गठित समिति का प्रचार प्रसार अपने क्षेत्र के दैनिक समाचार पत्रों/केबल चैनलों पर नियमित आधार पर कराना सुनिश्चित करें, तथा अपने अपने मण्डल / जनपद के समस्त ग्राम सभाओं के सदस्यों से अवैध कब्जा / अतिक्रमण की शिकायतें प्राप्त कर समयबद्ध रूप से जाँच की कार्यवाही सुनिश्चित कर कृत कार्यवाही की प्रगति से अपने मण्डलायुक्त के माध्यम से परिषद को पाक्षिक रूप से उपलब्ध कराना सुनिश्चित करें"

As can be seen from the above statutory provisions, it is legislative intent to protect the water bodies as they are necessary to maintain the environmental balance.

The growing population and unrestricted water extraction has resulted serious consequences for human life. The Central and the State Governments have floated several schemes for ground water recharge.

A survey of the law on their subject would be necessary and can be started with- **Hinch Lal Tiwari** (supra). This case arose from a judgement of this Court. The Supreme Court elaborately considered the relevant provisions of the Uttar Pradesh Zaimindari Abolition & Land Reforms Act, 1950 and held as under:-

*"8. A perusal of the provision extracted above makes it clear that tanks, ponds, private ferries, water channels, pathways and abadi sites which had vested in the State under Section 4 of the Act shall vest in the Gaon Sabha or any other local authority established for the whole or any part of the village in which the said things are situate, or partly in one such local authority and partly in another, from the date specified in the notification issued by the Government in this behalf. Section 122-C authorises the Assistant Collector, in charge of the sub-division to earmark the classes of land noted hereunder either on his own motion or on the resolution of the Land Management Committee, for the members of the Scheduled Castes and the Scheduled Tribes and agricultural labourers and village artisans. It would be apt to refer to clause (a) of*

sub-section (1) of Section 122-C which reads as follows :

*"122-C. Allotment of land for housing site for members of Scheduled Castes, agricultural labourers etc. - (1) The Assistant Collector in charge of the sub-division of his own motion or on the resolution of the Land Management Committee, may earmark any of the following classes of land for the provision of abadi sites for the members of the Scheduled Castes and the Scheduled Tribes and agricultural labourers and village artisans -*

*(a) lands referred to in clause (i) of sub-section (1) of Section 117 and vested in the Gaon Sabha under that section;"*

And the said clause (i) runs as follows :

*" 117. (1)(i) lands, whether cultivable or otherwise, except lands for the time being comprised in any holding or grove,"*

9. The term "land" is defined in Section 3, sub-section (14) to mean land held or occupied for purposes connected with agriculture, horticulture or animal husbandry which includes pisciculture and poultry farming. The definition excludes land dealt with in Sections 109, 143, 144 and Chapter 7. We may note that we are not concerned with the excepted categories. From a combined reading of the provisions aforementioned, it is plain that the subject-matter of allotment of house sites is lands referred to in clause (i) of sub-section (1) and not tanks, ponds, private ferries, water channels, pathways referred to in clause (vi) of sub-section (1) of Section 117 of the Act. It appears to us that due to inappropriate drafting the expression "and abadi sites" is wrongly placed in clause (vi).

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."

In ***State of Orissa Vs. Government of India***<sup>5</sup>, considering the importance of water, it has been observed that "the right to get water is a part of right to life guaranteed by Article 21 of the Constitution.

In ***Meghwal Samaj Shiksha Samiti Vs. Lakh Singh***<sup>6</sup>, a village pond land was allotted to an educational institute. The High Court set aside the allotment order and held that pond land can not be allotted for

<sup>5</sup> (2009) 5 SCC 492

<sup>6</sup> (2011) 11 SCC 800

any other purpose. The matter was carried to the Supreme Court. The Court, following the decision of **Hinch Lal Tiwari** (supra), rejected the plea that land was allotted for other public purpose, to build a Hostel for students of backward class.

In **Jagpal Singh** (supra), the Supreme Court has taken a judicial notice that since independence, in large part of the country, unscrupulous persons using muscle powers, money power and political influence, they have systematically encroached on the public utility lands. The Court has also observed that this has been done with the active connivance with the State – authorities and local power vested interests and *Gundas*. The Court, following its earlier judgement in **Hinch Lal Tiwari** (supra), which has also been followed by the Madras High Court in **L. Krishnan Vs. State of Tamil Nadu**<sup>7</sup>, has further observed that most of the ponds in the country have been filled with earth and their original character has been destroyed. The relevant part of the judgement reads as under:-

*“16. The present is a case of land recorded as a village pond. This Court in Hinch Lal Tiwari vs. Kamala Devi, AIR 2001 SC 3215 (followed by the Madras High Court in L. Krishnan vs. State of Tamil Nadu, 2005(4) 9 CTC 1 Madras) held that land recorded as a pond must not be allowed to be allotted to anybody for construction of a house or any allied purpose. The Court ordered the respondents to vacate the land they had illegally occupied, after taking away the material of the house. We pass a similar order in this case.*

*18. Over the last few decades, however, most of these ponds in our country have been filled with earth and built upon by greedy people, thus destroying their original character. This has contributed to the water shortages in the country.*

*20. In Uttar Pradesh the U.P. Consolidation of Holdings Act, 1954 was widely misused to usurp Gram Sabha lands either with connivance of the Consolidation Authorities, or by forging orders purported to have been passed by Consolidation Officers in the long past so that they may not be compared with the original revenue record showing the land as Gram Sabha land, as these revenue records had been weeded out. Similar may have been the practice in other States. The time has now come to review all these orders by which the common village land has been grabbed by such fraudulent practices.*

*21. For the reasons given above there is no merit in this appeal and it is*

<sup>7</sup> 2005 (4) CTC 1 (Madras)

*dismissed.*

The Court has issued directions to all the State Governments in the country for the eviction of the illegal/unauthorized occupants of the Gram Sabha's land. The directions issued by the Supreme Court read as under:-

*22. Before parting with this case we give directions to all the State Governments in the country that they should prepare schemes for eviction of illegal/ unauthorized occupants of Gram Sabha/Gram Panchayat/Poramboke/Shamlat land and these must be restored to the Gram Sabha/Gram Panchayat for the common use of villagers of the village. For this purpose the Chief Secretaries of all State Governments/Union Territories in India are directed to do the needful, taking the help of other senior officers of the Governments. The said scheme should provide for the speedy eviction of such illegal occupant, after giving him a show cause notice and a brief hearing. Long duration of such illegal occupation or huge expenditure in making constructions thereon or political connections must not be treated as a justification for condoning this illegal act or for regularizing the illegal possession. Regularization should only be permitted in exceptional cases e.g. where lease has been granted under some Government notification to landless labourers or members of Scheduled Castes/Scheduled Tribes, or where there is already a school, dispensary or other public utility on the land."*

This Court also, in a large number of cases, has considered the matter relating to ponds. In ***Ram Kumar Vs. Zila Adhikari/District Deputy Director of Cosolidation***<sup>8</sup>, this Court has held as under:-

*"22. However, while allotting the land of Gaon Sabha, it has to be kept in mind that the land of Gaon Sabha is basically for public purpose, public in general and the society has interest in the public land. Public land should not be allotted only to serve individual interest, protection of ponds, tanks, mountains have been held to be necessary for environment protection and pollution control. Thus, the consolidation authorities while allotting the Gaon Sabha land should normally desist from allotting ponds, tanks, mountains, land in nature of forest"*

In ***Shardadeen Vs. State of U.P.***<sup>9</sup>, this Court has held as under:-

*"8. Ponds are lifelines of villages. One of the reasons of alarming decrease in water level of the underground water particularly during recent years is drying up of the ponds. The ponds have become dry either due to disuse or by active efforts of interested persons by filling the same with earth. There are some authorities of this Court which have held that no person can mature his right through adverse possession over Gaon*

<sup>8</sup> 2002 (2) AWC 1577

<sup>9</sup> (2005 1 AWC 919

*Sabha land as under U.P.Z.A. & L.R. Act and the Rules there is no limitation prescribed for filing suit by Gaon Sabha for ejection of trespasser. In view of this if a person is in unauthorized occupation of a plot entered in revenue record as pond or any part thereof, he cannot mature his title by prescription however long his possession may be. In view of the aforesaid Hinch Lal Tewary authority of Supreme Court plot entered as pond in the revenue records even if it has ceased to be a pond or any portion thereof cannot be allotted to any person. No authority can pass order permitting or recording change of user of pond. In view of this even if a plot which was entered as pond after Zamindari Abolition and vested in State/Gaon Sabha or any portion thereof has been allotted to any person then the said allotment is void and liable to be ignored. There is therefore, no legal bar in cancelling the entry in revenue record of such plot or any part thereof in favour of a person after hearing him.*

*9. It is expected that the authorities particularly Collectors and Deputy Collectors will initiate special drive to get such plots completely vacated which were entered as ponds belonging to State/Gaon Sabha just after Zamindari Abolition and restore the same to their original position. Let a copy of this order be given to Shri S.P.Mishra, learned standing counsel for communication to authorities concerned.”*

**In *Iqbal Ahmad and others Vs. Deputy Director of Consolidation, Deoria and others.***<sup>10</sup>, this Court has held as under:-

*“14. In these circumstances, the direction of the Apex Court in Hinch Lal Tiwari v. Kamla Devi (supra) to maintain Ponds, Water Channels, Pokhras, Garhi (land covered by water) etc. recorded in the revenue records on the date of vesting as covered by under section 132 of the U.P.Z.A. And L.R. Act be complied forthwith and land covered by water be restored and maintained in the interest of the public in order to maintain ecological balance and protecting environment. For this purpose special measures needs to be taken???* the grass route level so that directions??? the Apex Court be complied with Accordingly, State Government is directed to make a thorough investigation of each village of each District throughout State of Uttar Pradesh in respect of Forests, Tanks, Ponds and Garhi, Water Channel and Riverbed etc. on the basis of the revenue records of the date of vesting, i.e., 1st July, 1952 by constituting a Special Investigation Team consisting of revenue authorities and other concerned officials and Environmentalists and take appropriate steps for compliance for the Apex Court's directions in Hinchlal Tiwari v. Kamla Devi (supra). The State Government of Uttar Pradesh is also directed to make compliance of this order within one year from the date of service of this order to Standing Counsel/Chief Secretary of Government of Uttar Pradesh to be circulated to all the District Magistrates and Consolidation Authorities of the State of Uttar Pradesh.”

**In *Ram Naumee Vs. State of U.P. & Others***<sup>11</sup>, this Court held thus:-

*“18. It is apt to consider the judgment of the Apex Court in Jagpal Singh v. State of Punjab, JT 2011 (1) SC 617: (2011) 11 SCC 396: AIR 2011 SC 1123. This was a case with respect of a Village Pond. In that*

<sup>10</sup> (2005) 98 RD 580

<sup>11</sup> (2011) 5 All LJ 721

connection, the Apex Court has made certain observations which are relevant for the present purposes. The Apex Court has deprecated the action of the State Authorities either in allotting the public utility land in favour of a person or in permitting an encroacher to occupy such public utility land. It has relied upon its earlier decision *M.I. Builders (P) Ltd. v. Radhey Shyam Sahu*, JT 1999 (5) SC 42; where the Supreme Court ordered restoration of a park after demolition of a shopping complex constructed at the cost of over Rs. 100 crores. It has been observed that the principle laid down in the said decision of *M.I. Builders (P) Ltd. v. Radhey Shyam Sahu*, JT 1999 (5) SC 42: will apply with even greater force in cases of encroachment of village common land. In para 15 of the report, the settlement of such Gaon Sabha land to private persons and commercial enterprises on payment of some money has not been approved and it has been provided that even if there is general order in favour of such settlement, the same should be ignored.”

A Division Bench of this Court in ***Prem Singh Vs. The State of U.P. and others***<sup>12</sup>, taking note of the direction issued to the Principal Secretary (Revenue), Government of Uttar Pradesh, has issued a fresh direction to the State Government in the following terms:-

“4. In view of direction noticed in the aforesaid circular, we are of the considered view that if complaints regarding unauthorized occupation over the public ponds or other similar public lands are received by the District Magistrate of a District, he should take all the required actions in view of law already settled in the case of *Jagpal Singh and others*.

5. In case, the District Magistrate finds some good reasons to seek guidance from the Members Committee indicated in Para-2 of the aforesaid circular, then he may refer the matter and seek guidance in appropriate cases.

6. So far as the present writ petition is concerned, we grant liberty to the petitioner to approach respondents no. 2 and 3 again with a certified copy of this order. The concerned respondents shall get appropriate inquiry made and take required action to protect public ponds as per law laid down by the Apex Court, expeditiously.

7. Let a copy of this order be furnished to the learned Standing Counsel for the State for communication to the Principal Secretary, Revenue, Government of Uttar Pradesh, who shall circulate a copy of this order to all the Divisional Commissioners as well as the District Magistrates so that number of such types of cases coming to this Court may be checked. The petition is, accordingly, disposed of. ”

In ***Prem Singh*** (supra) case, the Division Bench has specifically issued a direction to the Principal Secretary (Revenue), Government of U.P., Lucknow to issue necessary circular to all the Commissioners and District Magistrates in the State to ensure compliance of the directions

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<sup>12</sup> (2012) 11 ADJ 404 (DB)

issued by the Supreme Court in ***Hinch Lal Tiwari*** (supra) and ***Jagpal Singh*** (supra).

Our experience shows that a large number of Public Interest Litigation is filed in this Court raising grievance regarding the illegal encroachments over the water bodies. In the instant case also, earlier, the petitioner had approached this Court for a direction to the District Magistrate. The number of Public Interest Litigations, themselves, go to show that in spite of the judgement of the Supreme Court in ***Hinch Lal Tiwari*** (supra), which was delivered way back in the year 2001, no effective steps have been taken by the State and its functionaries to restore the ponds in their earlier status and shape.

Supreme Court's directions mentioned above have not received their due attention by the State functionaries. The judgement of ***Hinch Lal Tiwari*** (supra) was delivered more than 18 years back in ***Jagpal Singh*** (supra). The Supreme Court has issued positive directions to all Chief Secretaries for restoration of ponds. It is trite that law declared by the Supreme Court is binding upon all the authorities under Article 141 of the Constitution.

We are constrained to observe that the decision of the Supreme Court has not been implemented in the State. The casual approach adopted by the State functionaries cannot be appreciated. It is very disturbing state of affairs. The local authorities chose to by-pass not only statutory provisions, but also the directions issued by the Supreme Court and this Court.

Relevant, it would be to mention that rule of law is essence of a democratic society. In this context, the observations of the Supreme Court in the cases mentioned below are apposite.

In ***Karnataka Housing Board v. C. Muddaiah***<sup>13</sup>, it has been held thus:

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<sup>13</sup>(2007) 7 SCC 689

“32. We are of the considered opinion that once a direction is issued by a competent court, it has to be obeyed and implemented without any reservation. If an order passed by a court of law is not complied with or is ignored, there will be an end of the rule of law. If a party against whom such order is made has grievance, the only remedy available to him is to challenge the order by taking appropriate proceedings known to law. But it cannot be made ineffective by not complying with the directions on a specious plea that no such directions could have been issued by the court. In our judgment, upholding of such argument would result in chaos and confusion and would seriously affect and impair administration of justice. The argument of the Board, therefore, has no force and must be rejected.”

In **M.C. Mehta v. Union of India**<sup>14</sup>, it has been held thus:

“If this Court finds that the authorities had not taken action required of them by law and that their inaction is jeopardising the right to life of the citizens of this country or any section thereof, it is the duty of this Court to intervene. If it is found that the respondents are flouting the provisions of law and the directions and orders issued by the lawful authorities, this Court can certainly make appropriate directions to ensure compliance with law and lawful directions made thereunder.”

In **N. Kannadasan v. Ajoy Khose**<sup>15</sup>, it has been held thus:

“46. In *Supreme Court Advocates-on-Record Assn.*<sup>2</sup> this Court laid down the qualities of a Judge: (SCC pp. 601-02, para 273):

“273. ... Under our constitutional scheme, the judiciary has been assigned the onerous task of safeguarding the fundamental rights of our citizens and of upholding the rule of law. Since the Courts are entrusted the duty to uphold the Constitution and the laws, it very often comes in conflict with the State when it tries to enforce its orders by exacting obedience from recalcitrant or indifferent State agencies”

51. In our constitutional scheme, the judge-made law becomes a part of the Constitution. It has been so held in *M. Nagaraj v. Union of India* in the following terms: (SCC p. 238, para 9).

“9. ... The Constitution, according to the respondents, is not merely what it says. It is what the last interpretation of the relevant provision of the Constitution given by the Supreme Court which prevails as a law. The interpretation placed on the Constitution by the Court becomes part of the Constitution and, therefore, it is open to amendment under Article 368. An interpretation placed by the Court on any provision of the Constitution gets inbuilt in the provisions interpreted. Such articles are capable of amendment under Article 368.”

The Supreme Court in the long line of decisions has settled that a person has fundamental right under Article 21 for a decent life and not

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<sup>14</sup>(2006) 3 SCC 399

<sup>15</sup>(2009) 3 SCC (Civ) 1

an animal existence. The decent life has very wide connotation. It includes pollution free environment, clean air and clean water. In this regard it is apposite to mention the Article 48-A of the Constitution which reads as under:

**“48A. Protection and improvement of environment and safeguarding of forests and wild life.—** *The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.”*

Article 51A of the Constitution deals with the legal duty of a citizen.

In the light of the aforesaid two Articles the Supreme Court has adopted the “Doctrine of the Public Trust”. The basic principle of the “Doctrine of the Public Trust” is 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 doctrine of the public trust has its origin from the ancient Roman Empire. It was founded on the ideas that certain common properties such as rivers, seashore, forests and the air were held by Government in trusteeship for the free and unimpeded use of the general public. The recent attention paid to the environment by the higher judiciary in the country bears a very close conceptual relationship to this legal doctrine. The Roman Law provides that the natural resources were either owned by no one (*res nullius*) or by everyone in common (*res communis*). The said Roman law has also been adopted by the English common law where the sovereign has power to own the natural resources. But it does not has power to grant these properties to private owners if the effect was to interfere with the public interest.

The Supreme Court recently in the case of ***Lal Bahadur Vs. State of U.P.***<sup>16</sup> has considered the violation of Master Plan on land reserved for green belt was changed to residential use. The matter arose from this State. The Court also considered other environmental issues and Modern Public Trust Doctrine and has quoted with approval Joseph

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<sup>16</sup> (2018) 15 SCC 407

L.Sax, Professor of Law, University of Michigan-proponent of the Modern Public Trust Doctrine-in an erudite article “Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention”.

*“22. In M.C. Mehta Vs. Kamal Nath, it was held that any disturbance to the basic environment, air or water, and soil which are necessary for life, would be hazardous to life within the meaning of Article 21 of the Constitution. In such cases “polluter pays principle” can also be invoked to restore the environment and to control it. It held: (SCC pp.219-20, paras 8-10):*

*“8. Apart from the above statutes and the rules made thereunder, Article 48-A of the Constitution provides that the State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country. One of the fundamental duties of every citizen as set out in Article 51-A(g) is to protect and improve the natural environment, including forests, lakes, rivers and wildlife and to have compassion for living creatures. These two articles have to be considered in the light of Article 21 of the Constitution which provides that no person shall be deprived of his life and liberty except in accordance with the procedure established by law. Any disturbance of the basic environment elements, namely air, water and soil, which are necessary for “life”, would be hazardous to “life” within the meaning of Article 21 of the Constitution.*

*9. In the matter of enforcement of rights under Article 21 of the Constitution, this Court, besides enforcing the provisions of the Acts referred to above, has also given effect to fundamental rights under Articles 14 and 21 of the Constitution and has held that if those rights are violated by disturbing the environment, it can award damages not only for the restoration of the ecological balance, but also for the victims who have suffered due to that disturbance. In order to protect “life”, in order to protect “environment” and in order to protect “air, water and soil” from pollution, this Court through its various judgments has given effect to the rights available, to the citizens and persons alike, under Article 21 of the Constitution. The judgment for removal of hazardous and obnoxious industries from the residential areas, the directions for closure of certain hazardous industries, the directions for closure of slaughterhouse and its relocation, the various directions issued for the protection of the Ridge area in Delhi, the directions for setting up effluent treatment plants to the industries located in Delhi, the directions to tanneries etc., are all judgments which seek to protect the environment.”*

Coming to the case at hand, we find that no action had been taken by the Authorities for the demolition of the illegal structure, which was raised on the land of the pond. Only after filing of this Public Interest Litigation, a demolition has been carried out on 26th August, 2019.

This act only goes to show that the authority concerned has not paid proper attention to the judgements of the Supreme Court, mentioned above.

In view of the above discussion, we find that in the light of the directions issued by the Supreme Court as well as the Division Bench judgements of this Court, following directions are necessary to be issued for the strict compliance of the law:-

- (i)** *The Chief Secretary of the State of Uttar Pradesh shall constitute a Committee in consultation with the Chairman, Board of Revenue, which shall monitor the compliance of the judgements of the Supreme Court and this Court. The said Committee shall also invite Justice Ram Surat Ram (Maurya) (Former Judge of this Court) as a special invitee in its meeting. Justice Maurya shall be paid Rs. 10,000/- (Rupees Ten Thousand) remuneration for attending each such meeting in addition to his conveyance and other charges;*
- (ii)** *the Collectors of each District of the State shall entrust the the Additional District Magistrate (Finance & Revenue) to make a list of ponds which are recorded in the revenue records in the year 1951-52. He shall also prepare a list of the ponds which are under the encroachment or in respect of which the lease has been granted;*
- (iii)** *we charge the Additional District Magistrates (Finance & Revenue) of each District of the State to comply these directions;*
- (iv)** *the Collectors shall proceed to cancel the lease of the ponds and restore the ponds in accordance with law and directions issued by the Supreme Court. The Collectors shall send a progress report in every six month to the Committee constituted by the Chief Secretary;*
- (v)** *the Committee shall hold its meeting, at least, after every three to four months and monitor the progress of restoration of ponds in the State. In case any legal impediment arises, the Collector shall apprise the monitoring Committee, which shall issue appropriate guidance to the Collector concerned in accordance with law; and*

*(vi) the other Committees, which were constituted earlier at State level and District level, shall also send their report to the Monitoring Committee.*

We make it clear that any negligence in compliance of the orders of the Supreme Court and this order shall be treated as a negligence of duty and appropriate action shall be taken against the concerned Officer(s) under the relevant Service Rules.

We are constrained to issue these directions having regard to the fact that after lapse of 18 years, the State functionaries have not complied with the directions of the Supreme Court as well as this Court.

Coming back to this case, we find that the demolition has been made on 26th August, 2019, in which five rooms, one Office and one wash-room is mentioned, but no further information has been furnished to this Court whether the pond has been restored to its original shape and present status of the matter.

The District Magistrate, Agra is directed to issue the necessary directions for the restoration of the pond to its original shape and a compliance report be filed to the Registrar General within three months. The Registrar General shall place it on the record.

This Public Interest Litigation is disposed of in the above terms.

**Order Date :- 16.9.2019**  
*Amit Mishra*