

**HIGH COURT OF CHHATTISGARH, BILASPUR****WPC No. 2682 of 2011**

- Dr. Purna Prakash Jha, S/o Shri Neelmani Jha, aged about 47 years, Corporator, Shivaji Ward No.7-, Khamtarai, Municipal Corporation, Raipur & Member of District Planning Committee, Raipur, resident of Jha Hospital, Khamtarai, Raipur (C.G.)

**---- Petitioner****Versus**

1. State of Chhattisgarh, Through Secretary, Ministry of Town & Country Development, DKS Bhawan, Mantralaya, Raipur (C.G.)
2. The Municipal Corporation, Raipur through the Commissioner, Malviya Road, Raipur.
3. Shri Rajesh Munat, Cabinet Minister, Ministry of Public Works Department, DKS Bhawan, Mantralaya, Raipur (C.G.)

**---- Respondents**

For Petitioner	:	Shri B.P. Sharma, Advocate
For Respondents/State	:	Shri Alok Bakshi, Addl. A.G. with Shri Avinash Singh and Shri Ashish Surana, Panel Lawyers
For Respondent-Municipal Corporation	:	Shri H.B. Agrawal, Sr. Adv. With Shri Pankaj Agrawal, Advocate

**WPC No. 6750 of 2011**

1. Rakesh Diwar S/o Shankar Diwar, aged about 26 years, Occupation Fisher Man R/o Mathpara Tikrapara Raipur (CG)
2. Purusottam Kumar Diwar S/o Govind Ram Diwar, aged about 28 years, Occupation Fisher Man R/o Mathpara Tikrapara Raipur (CG)

**---- Petitioners****Versus**

1. State of Chhattisgarh, Through the Secretary, Deptt. Of Urban Administration & Development, DKS Bhawan, Mantralaya, Raipur (CG)



2. Secretary, Department of Rural Engineering Services, DKS Bhawan, Mantralaya, Raipur (CG)
3. Collector, Raipur (CG)
4. Municipal Corporation, Raipur, through its Commissioner, Municipal Corporation, Raipur (CG)
5. Sub Divisional Officer, Rural Engineering Services, Raipur, Sub Division, Raipur (CG)

---- Respondents

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For Petitioners	:	Shri B.D. Guru
For Respondents/State	:	Shri Alok Bakshi, Addl. A.G. with Shri Avinash Singh and Shri Ashish Surana, Panel Lawyers
For Respondent-Municipal Corporation	:	Shri H.B. Agrawal, Sr. Adv. With Shri Pankaj Agrawal, Advocate

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**Hon'ble Shri Justice Goutam Bhaduri**

**Order On Board**

**01/05/2019**

1. Heard.

2. In both these writ petitions the common question of facts & law are involved therefore, they are being heard and decided together by this common order.

**WPC No.2682 of 2011**

3. WPC No.2682/2011 is filed by Dr. Purn Prakash Jha. It is contended that the petitioner is the corporator of Veer Shivaji Ward No.7, Khamtarai, Raipur (C.G.). It is further contended that the State authorities have started a program in the name of upgradation of tank under the scheme "Humare Sarovar Humare Dharohar". It is stated that such scheme was implemented in respect of one



pond named as Chathva Talab, Raipur, but instead of improving the condition of pond, the construction was started to reduce area of the pond by filling it. It is further contended that such construction/raising of superstructure by filling up of the pond is completely illegal and contrary to the law laid down by the Supreme Court in the case of ***Jagpal Singh & ors. Vs. State of Punjab & ors. (2011) 11 SCC 396***. It is contended on behalf of the petitioner that though the slogan was for the improvement of the pond was highlighted but to the contrary the construction was carried out to destroy the pond. Therefore, the prayer is made that the construction of any superstructure on the bank of *Chathva Talab* to reduce its area would be illegal as it would amount to destroy the pond.

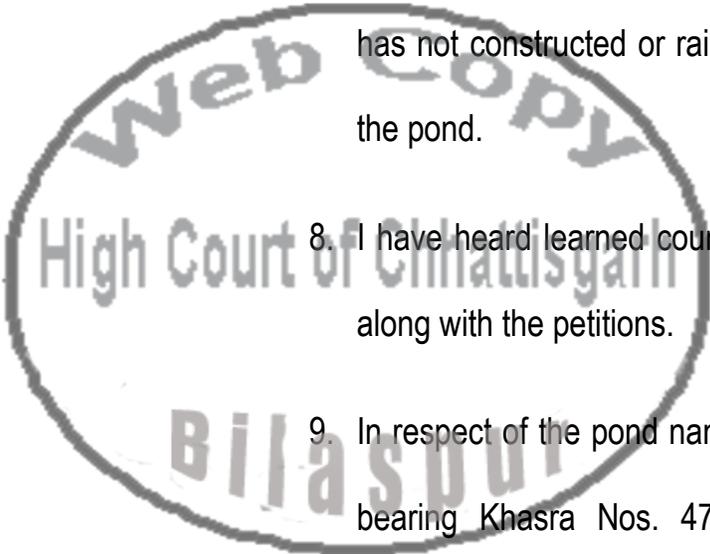
**WPC No.6750 of 2011**

4. Likewise in WPC No.6750 of 2011, filed by Rakesh Diwar with the averments that one pond named as Sarju Bandha Talab is situated at Tikrapara, Patwari Halka No.114, the pond was being used by the residents of the area for the time immemorial. The Khasra number of the land over which the pond exists is bearing Khasra No.125 and has been demarcated as Nistar talab. It is stated that in the embankment of the said pond, the construction was made which tentamounts to reduction of area of pond and will eventually diminish the pond. It is stated that such an act is contrary to the ratio laid down by the Supreme Court to destroy the water body. The prayer is made that the construction made over the area of the pond may be demolished and the pond be restored to its original area which was existing in the revenue records earlier.
5. Shri B.P. Sharma and Shri B.D. Guru, learned counsel for the respective petitioners would submit that the prayer is in conformity with the policy



introduced by the State Government styled as "नरवा, गरवा, घुस्वा एवं बारी" which speaks for restoration of the water bodies and much emphasis has been given to make availability of water, as such the ponds may be restored to its original area.

6. Shri Alok Bakshi, learned additional advocate general submits that the State is bound to follow its policy so as to restore the water bodies according to the policy of the government.
7. Shri H.B. Agrawal, Sr. Adv. With Shri Pankaj Agrawal, learned counsel for the respondent Municipal Corporation would submit that the Municipal Corporation has not constructed or raised any superstructure so as to diminish the area of the pond.
8. I have heard learned counsel for the parties and perused the documents filed along with the petitions.
9. In respect of the pond named as "Chhathva Talab", which is situated over land bearing Khasra Nos. 472 & 475 according to the revenue records of respondent Municipal Corporation, the area is 6.15 acres, which is used by the general public. The Municipal Corporation has relied on order the Tehsildar and stated that it is the stand of the municipal corporation that they would save the pond/water bodies comprised within its municipal limitation. The records show the existence of Chhathva Talab and is situated at Khamtarai, Ward No.7. According to the order-sheet of the Tehsildar dated 23.03.2011 filed in the case would show that , the said pond is reserved for the use of the general public. Petitioner has filed certain photographs which show that certain plinths have been excavated at the bank of the said pond to raise constructions. This Court

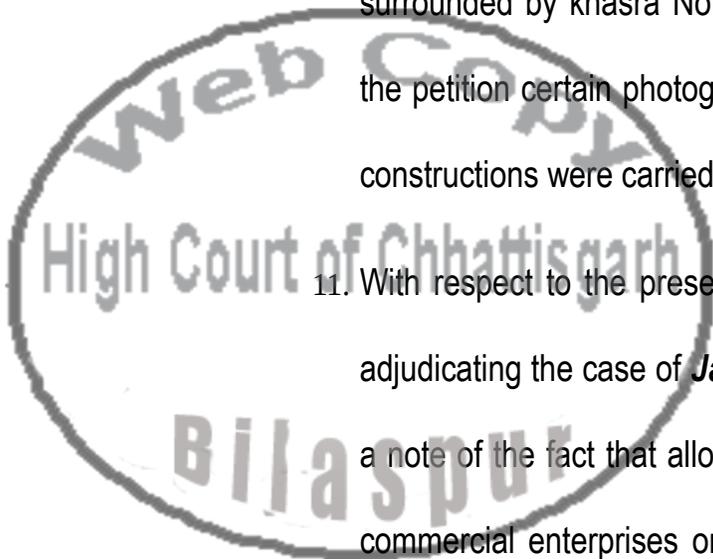




initially by an interim order dated 13.05.2011 had stopped any construction to be carried out over or at the bank of said public tank.

10. Likewise WPC No.6750 of 2011 pertains to one pond named as Sarju Bandha Talab. According to Khasra Panchshala of Mauja Boriyakhurd. The land records filed in the case shows that the land bearing Khasra No.125 has been shown to be pond and is shown under the water. The total area of the pond is shown as 32.78 acres. The revenue records are not disputed by any of the parties to both the petitions. The map of the land shows that pond situates over Khasra No.125. The said demarked pond shows that the pond is surrounded by khasra No.129 and part of Khasra No.127 & 123. Along with the petition certain photographs have also been filed, which shows that certain constructions were carried out at the bank of pond.

11. With respect to the preservation of the water body, the Supreme Court while adjudicating the case of **Jagpal Singh (supra)** has laid down the ratio and took a note of the fact that allotment of land of water bodies to private persons and commercial enterprises on payment of some money is illegal, and should be ignored. The Supreme Court further reiterated the law laid down in the case of 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) 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 further ordered that if the land is illegally occupied, the same shall be vacated. The Supreme Court further went to observe that our ancestors were not fools as they knew that in certain years there may be droughts or water shortages for some or other reason, and water would also be required for cattle to drink and





bathe in etc. Therefore, they built a pond attached to every village, a tank attached to every temple, etc. These were their traditional rain water harvesting methods, which served them for thousands of years. It was also observed that 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, therefore, this has contributed to the water shortages in the country. Further it was held that many ponds are auctioned off at throw away prices to businessmen for fisheries in collusion with authorities/Gram Panchayat officials, and even this money collected from these so called auctions are not used for the common benefit of the villagers but misappropriated. A direction therefore, was given to the State Government that they should prepare schemes for eviction of illegal/unauthorized occupants from the ponds.

12. The relevant part of observation made in the matter of **Jagpal Singh & ors. Vs. State of Punjab & ors. {AIR 2011 SC 1123}** and similar principle as laid down in the matter of **Meghwal Samaj Shiksha Samiti Vs. Lakh Singh & ors. {2011 AIR (SCW) 3769}** are reproduced herein below. In **Jagpal Singh (supra)** it is held thus in paragraphs 16, 17, 18, 19 & 22, which are reproduced hereunder:-

“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) 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.

17. In this connection we wish to say that our ancestors were not fools. They knew that in certain years there may be droughts or water shortages for some other reason, and water was also



required for cattle to drink and bathe in etc. Hence they built a pond attached to every village, a tank attached to every temple, etc. These were their traditional rain water harvesting methods, which served them for thousands of years.

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.

19. Also, many ponds are auctioned off at throw away prices to businessmen for fisheries in collusion with authorities/Gram Panchayat officials, and even this money collected from these so called auctions are not used for the common benefit of the villagers but misappropriated by certain individuals. The time has come when these malpractices must stop.

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.”

13. Likewise in 2011 AIR SCW 3769 the Supreme Court reiterated the observation made in 2001 (6) SCC 496, which is reproduced as under:-

“4. This court, in [Hinch Lal Tiwari vs. Kamala Devi](#) [2001 (6) SCC 496] observed thus :

"There is concurrent finding that a pond exists and the area covered by it varies in the rainy season. In such a case no part of it could have been allotted to anybody for construction of house building or any allied purposes.

It is important to notice that the material resources of the community like forests, tanks, ponds, hillock, mountain etc.



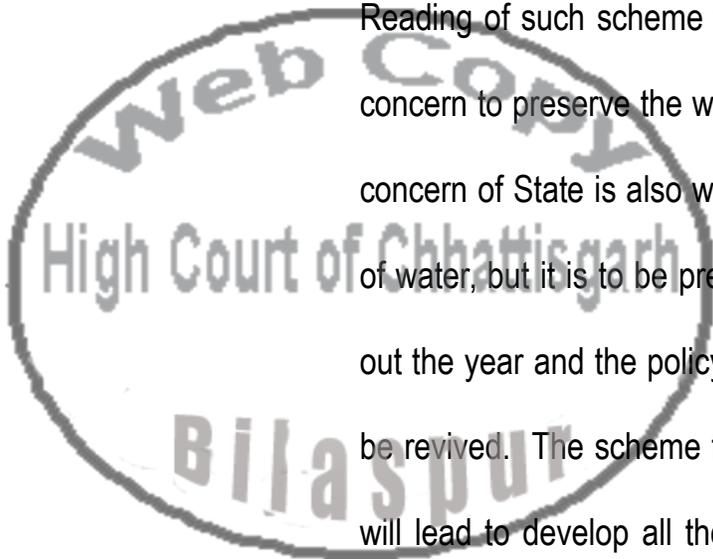
are nature's bounty. They maintain delicate ecological balance. They need to be protected for a proper and healthy environment which enables people to enjoy a quality life which is the essence of the guaranteed right under [Article 21](#) of the Constitution. The Government, including the Revenue Authorities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

14. One of the copy of policy framed by the State was placed during the course of arguments. The existence of such policy is not disputed by any one. The policy is named & styled as नरवा, गरवा, घुर्वा एवं बारी for benefit of the people.

Reading of such scheme would show that the government also has shown its concern to preserve the water bodies and make availability of water to all. The concern of State is also writ large. It is stated that though there is no shortage of water, but it is to be preserved so that the water would be available through out the year and the policy and it is decided that the small rivers and canals to be revived. The scheme further shows that if the water bodies are restored, it will lead to develop all the villages and allowing the cattle to drink water etc.

The said policy of the State is in consonance with the above guidelines of the Supreme Court and it is expected that the government will carry out its scheme to restore the water bodies all over the State.

15. Therefore, taking into account the direction issued by the Supreme Court and the policy as framed by the State Government only irresistible conclusion comes to fore that water bodies are to be saved. What does implementation of policy depend on. The implementation of policy also depends on threat of enforceability. In a given situation when there is acute scarcity to hold the underground level of water, the preservation of water bodies all over the State



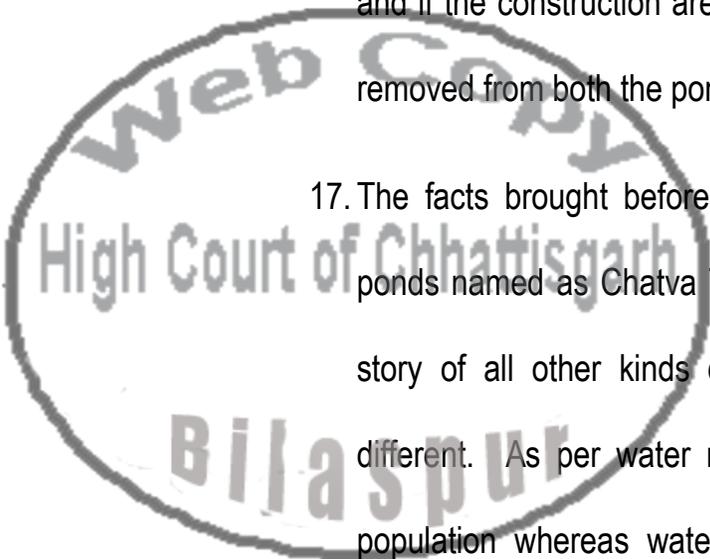


would be of utmost importance and civilization cannot be allowed to sit at the fence by scratching its head to find out plausible means.

16. Consequently, it is ordered that in respect of the water body named as Chhatva Talab, situated at Khasra No.472 & 475 (as per Annexure P-15) wherein the total area of the Talab is shown as 6.15 acres shall be restored to its original area. Likewise the pond named & styled as Sarju Bandha Talab situated at Khasra No.125 measuring 32.78 acres at Mauja Boriyakhurd shall also be restored to its original area. It is further directed that in case the Tehsildar along with the revenue authorities shall carry out the demarcation of the said ponds and if the construction is found over such area barring old temple, it shall be removed from both the ponds within a period of 6 months.

17. The facts brought before this High Court by these petitions pertain to the ponds named as Chatva Talab, Raipur and Sarju Bandha Talab Tikrapara but story of all other kinds of reservoirs in the State of Chhattisgarh are not different. As per water resource vision, 2045, India has 16% of the world population whereas water resources are only 4%. As such India is facing alarming problem of water resources. The water is basic human need for life and health and demand of water is increasing day by day. To take drastic steps is order of the day to meet the requirement of ever increasing population and for catering to the demands of human being and livestock as well.

18. In view of the above, amidst lack of clarity of other water bodies, all the District Collectors of the State of Chhattisgarh are directed to form a body comprising of Collector with the participation of two eminent social workers who may be academician or person concerned with environment and other officials as the





case may be to prepare and place the exhaustive report as to status of all reservoirs situated in the State as on 01-11-2000 and on 01-04-2019. The report must contain the catchment area of reservoirs and encroachment thereon, if any. The reports have to be submitted before the learned Advocate General of the State within four months from the date of this order, who in turn, place the report in the form of paper book before this High Court within one month thereafter.

The Registry is directed to register and place the report before the Hon'ble Bench of this High Court as per prevailing Rules.

Accordingly, both the petitions are allowed.



Sd/-

Goutam Bhaduri  
Judge