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JITENDRA SINGH

v.

MINISTRY OF ENVIRONMENT & ORS.

(Civil Appeal No. 5109 of 2019)

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NOVEMBER 25, 2019

**[ARUN MISHRA AND SURYA KANT, JJ.]**

*Environmental Law:*

- Environment protection – Allotment of local ponds – To private industrialists – By Industrial Development Authority – Challenged before Green Tribunal – Challenge dismissed on the basis of affidavit by the Authority claiming to develop bigger alternative water-bodies – Appeal to Supreme Court – Plea of Authority that Government order dated 3.6.16 permitted destruction of existing ponds and allotment thereof to third-parties in extra-ordinary circumstances and that the land was not a ‘Pokhar’ Pond – Held: Allotment having been made in 2012, order passed in 2016 would not operate retrospectively – Moreover, no extra-ordinary circumstances made out in favour of the allottee – Revenue records show that the land was a ‘Pokhar’ – Protection of such village commons is essential to safeguard the right u/Art. 21 of the Constitution – It is also constitutional obligation of the respondents to ensure protection and integrity of the environment as enshrined u/Arts. 48-A and 51-A(g) – The scheme which extinguish local water bodies albeit with alternatives are violative of constitutional principles and hence liable to be struck down – Constitution of India – Arts. 48-A and 51-A(g),*

**Allowing the appeal, the Court**

- HELD : 1. The respondents have not been able to demonstrate how the 2016 Government Order can be made applicable retrospectively, the possession having been given to the Company in 2012. Notwithstanding this, no case of the present instance being an extraordinary circumstance (hence permitting recourse to the exceptional provisions of the Government Order) has been made before the Court either. Photographs show that**

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there is substantial water in the pond, which has not been controverted. Further, revenue records maintained by the Revenue Department themselves show that the land was 'pokhar'. It is hence not open for the authorities to contradict and plead against the record without any scientific or empirical support, for such categorisation had been made by them in the past. Further, it was conceded by respondent-authorities during arguments that Khasra No. 490 was also recorded as 'pokhar' in revenue records and that it too had been integrated in the industrial development project. [Para 12] [226-G-H; 227-A-B]

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2. Repeal of the UP Zamindari Abolition and Land Reforms Act, 1950 and vesting of such ponds and local areas in the State by Section 57 of the UP Revenue Code, 2006 would not by itself either change the nature of land contrary to revenue record nor will defeat the long-established rights of the local people on commons. [Para 13] [227-C-D]

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3. Industrial activities without any rationale classification, unlike the narrow class exempted under the Government Order dated 3.6.16 do not serve a social public purpose or benefit the local people, and thus will be hit by the inalienability bar. [Para 17] [229-A]

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4. Even otherwise, the action of the respondent-authorities contravenes their Constitutional obligations. Article 48-A of the Constitution casts a duty on the State to "*endeavour to protect and improve the environment and to safeguard the forests and wild life of the country*", and Article 51-A(g) expects every citizen to perform his fundamental duty to "*protect and improve the natural environment*". A perusal of the Constitutional scheme and judicial development of environmental law further shows that all persons have a right to a healthy environment. The State is nothing but a collective embodiment of citizens, and hence collective duties of citizens can constructively be imposed on the State. Therefore, it is the responsibility of the respondents to ensure the protection and integrity of the environment, especially one which is a source for livelihood for rural population and life for local flora and fauna. [Paras 18 and 19] [229-B-C; 230-A]

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- A        5. Protection of such village-commons is essential to safeguard the fundamental right guaranteed by Article 21 of the Constitution. These common areas are the lifeline of village communities, and often sustain various chores and provide resources necessary for life. Waterbodies, specifically, are an important source of fishery and much needed potable water. Many areas of the country perennially face a water crisis and access to drinking water is woefully inadequate for most Indians. Allowing such invaluable community resources to be taken over by a few is hence grossly illegal. [Para 20] [230-B-C]
- B        6. The respondents' scheme of allowing destruction of existing water bodies and providing for replacements, exhibits a mechanical application of environmental protection. Although it might be possible to superficially replicate a waterbody elsewhere, however, there is no guarantee that the adverse effect of destroying the earlier one would be offset. The respondents' reduction of the complex and cascading effects of extinguishing natural water-bodies into mere numbers and their attempt to justify the same through replacement by geographically larger artificial water-bodies, fails to capture the spirit of the Constitutional scheme and is, therefore, impermissible. Hence, it is clear that schemes which extinguish local waterbodies albeit with alternatives, as provided in the 2016 Government Order by the State of UP, are violative of Constitutional principles and are liable to be struck down. [Paras 21 and 22] [230-D-H]

F        *Chigurupati Venkata Subbayya v. Palaguda Anjayya* (1972) 1 SCC 521 : [1972] 3 SCR 172 ; *Hinch Lal Tiwari v. Kamala Devi* (2001) 6 SCC 496 : [2001] 1 Suppl. SCR 23 ; *Jagpal Singh v. State of Punjab* (2011) 11 SCC 396 : [2011] 2 SCR 250 ; *MC Mehta v. Union of India* (1988) 1 SCC 471 : [1988] 2 SCR 530 – relied on.

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Case Law Reference

<b>[1972] 3 SCR 172</b>	<b>relied on</b>	<b>Para 13</b>
<b>[2001] 1 Suppl. SCR 23</b>	<b>relied on</b>	<b>Para 15</b>

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[2011] 2 SCR 250

relied on

Para 16

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[1988] 2 SCR 530

relied on

Para 18

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5109 of 2019.

From the Judgment and Order dated 06.03.2019 of the National Green Tribunal, Principal Bench, New Delhi in O.A. No. 161 of 2017.

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A. N. S. Nadkarni, ASG, V. K. Shukla, Sr. Adv., S. S. Rebello, Bharat Singh, Ms. Arzu Paul, M. P. Gupta, Neeleshwar Pavani, Ms. Shrivikka Agarwal, Ms. Riya Soni, G. S. Makker, Sanjeev Kumar Dubey, Rajmangal Kumar, Hitendra Nath Rath, Sanjay Dubey, Vishal Kaushik, Shiv Kumar, Vikash Sinha, Shiv Shankar, Rana Sudershan Biswas, Jai Singh, Uttam Singh Negi, Avijit Roy, Pradeep Misra, Suraj Singh, Ravindra Kumar, Advs. for the appearing parties.

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The Judgment of the Court was delivered by

**SURYA KANT, J.**

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1. The instant statutory appeal has been preferred under Section 22 of the National Green Tribunal Act, 2010 (hereinafter “NGT Act”) against the order dated 06.03.2019 of the Principal Bench of the National Green Tribunal (“NGT”), whereby appellant’s grievance against allotment of local ponds to private industrialists has been dismissed summarily without any adjudication of the *lis* or merits, but merely on the basis of an affidavit filed by Respondent No. 5 (Greater Noida Industrial Development Authority – hereinafter “GNIDA”) claiming that it was developing bigger alternative water-bodies.

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#### **FACTUAL BACKGROUND**

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2. The appellant is a permanent resident of village Saini, tehsil Dadri, of district Gautam Budh Nagar, which falls in the National Capital Region. He claims to be a socially-active lawyer dedicated to bettering the lives of his co-villagers and alleges that the Original Application before the NGT was triggered when around 18.01.2017 the agents of a private entity (Respondent No. 6 - M/s Sharp Enterprises Pvt. Ltd. - hereinafter “Sharp”) using excavators and other heavy machinery attempted to forcibly take over possession of a ‘common-pond’, which had been in use by local villagers for a century. This was objected to by the villagers,

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- A and the appellant subsequently made a complaint on 25.01.2017 to various authorities including the District Collector. Pointing out revenue records which elucidate the commons-status of the ponds, he sought directions to restrain Sharp and its agents. However, there was no action on his representation for more than 10 days, leading to another attempt by Sharp at dispossession, compelling the appellant to seek police help. A few days later, he submitted another representation to the Collector, but to no avail. Aggrieved, he was left with no recourse but to approach the NGT by way of an Original Application under Section 14 (read with Sections 15 and 18) of the NGT Act for adjudication of these environmental issues.
- B
- C 3. Before the Tribunal, appellant contended that large tracts of his village (but not the impugned water-bodies) had been acquired under the Land Acquisition Act, 1894 ostensibly for industrial development by GNIDA. Subsequently, these acquired lands (including some local ponds) had been leased to private industrialists, including Sharp in 2012. Using
- D revenue records obtained under the UP Consolidation of Holdings Act, appellant showed that Khasra Nos. 552 (1140 sq meters) and 490 (8470 sq meters) were 'pokhar' (pond) and Khasra Nos. 522 (1620 sq meters) and 676 (9804 sq metres) were 'rajwaha' (canal). Highlighting that the water bodies were vested in the Gram Sabhas per Section 117 of the UP Zamindari Abolition and Land Reforms Act, 1950, he contended that such land had neither been acquired, nor resumed and hence there was no power with GNIDA to transfer the same to Sharp. He further claimed to have discovered other similar illegal allotments of water bodies by GNIDA to other third-parties.
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- F 4. The appellant urged that neither the mandatory environmental clearances under the Environmental (Protection) Act, 1984 had been obtained by the industrialists nor the statutory authorities applied their mind that the project would negatively impact the environment and human health. Laying support on the Ramsar Convention and Rule 4 of the Wetland (Conservation and Management) Rules, 2010 which prohibited
- G reclamation of wetlands, setting up or expansion of industries, permanent construction or any other activity with potentially adverse effects on ecosystem, he sought cancellation of such illegal allotments and protection of water-bodies.
- H 5. During pendency of the proceedings, GNIDA's representatives started filing up certain ponds and started developing an alternate area

(1.25 times bigger) as a new waterbody to save the allotment made in favour of Sharp (as admitted in an additional affidavit filed before the NGT on 15.01.2019 by GNIDA). A

6. Over the course of proceedings, the appellant was permitted to amend his prayers in the Original Application to enable challenge to all illegalities concerning village commons. No rejoinder or additional affidavit was filed by any respondent against the amended Original Application. B

7. The NGT vide its brief impugned order dated 06.03.2019 took note of this representation of constructing alternate pond and abruptly concluded that appellant's substantial grievance had been redressed. It accordingly dismissed his application, without venturing into the merits or the *lis* of the dispute. C

#### **CONTENTIONS OF PARTIES**

8. This summary dismissal by the NGT has been challenged before us. Appellant raises grievance against the manner in which the NGT, without even looking at the sweep of his prayers, disposed off the matter before it, merely on the strength of a proposed affidavit (which was actually filed only on 12.03.2019, post adjudication of the application by the NGT and without any advance copy to the appellant). He further protests the haste with which his application was disposed of and how the reluctance by the NGT to conduct even a proper enquiry has resulted in conferrment of illegal benefits to third-parties, at the cost to the environment and local residents. D E

9. The appellant contends that the disputed pond is situated near the Aravali hills which are in an arid zone with a low-water table. He demonstrated how the existing sparse flora and fauna in the region was hence unlikely to survive elsewhere. Highlighting the unchecked urbanisation and construction of concrete jungles in the ecologically sensitive area, the appellant alleged that Respondent-authorities were in active connivance with industrialists and real estate companies, were negligently discharging their duties. This, he contended, violated public trust and consequently the right to a wholesome environment guaranteed under Article 21 of the Constitution. Interpreting Article 48A and Article 51-A(g) to place a duty on the State to protect the environment, including lakes and water-bodies, the appellant has sought intervention of this Court to save and restore the local ponds. F G

- A 10. Per contra, learned Counsel for GNIDA (Respondent No. 5) placed reliance on a Government Order dated 03.06.2016, which he claimed permitted destruction of existing ponds and allotment of filled-up land to third-parties in certain extraordinary circumstances, with the stipulation that 25%-larger alternate water-bodies be developed elsewhere. Further, he questioned recording of Khasra Nos. 552 and 490 as 'pokhar' in revenue record, contending that it was merely 'slightly low lying land' over which some water would get accumulated during rainy season. There was statedly no water on the pond-land since the past year, showing that it was merely ordinary in nature. Even if 'pokhar', Khasra Nos. 552 was only 1140 sq. meters in size, which constituted a minuscule portion (only 1.4%) of the total allotted plot of 80,900 sq. meters. It was also explained that no other 'pokhar' had been included and Khasra No. 490 had not been allotted to Sharp. GNIDA also put forth a contrary allegation that the appellant was, in fact, aggrieved by non-disbursement of compensation and had set up the entire dispute as a ruse to stall development of the area so that he could instead use it for his private purpose of cattle grazing.

- B 11. Sharp (Respondent No. 6) has averred that the disputed land was no longer vested in the Gram Sabha as the UP Zamindari Abolition and Land Reforms Act, 1950 had been repealed by the UP Revenue Code, 2006. This new Code specified that title of all lands including lakes, ponds, tanks, streams and nallas vest in the State Government. Through Section 59 of the Code, the land was merely entrusted to the Gram Panchayat, and the State retained power to alter such entrustment at any time. It claimed to have paid Rs 25 crores as sale consideration for leasehold rights over acquired areas and is allegedly suffering as a result of litigation-induced delays.

#### **ANALYSIS & FINDINGS**

- C 12. At the outset, we must note, that the respondents have been unable to demonstrate how the 2016 Government Order can be made applicable retrospectively, the possession having been given to Sharp in 2012. Notwithstanding this, no case of the present instance being an extraordinary circumstance (hence permitting recourse to the exceptional provisions of the Government Order) has been made before us either. Further, argument that Khasra No. 552 is a 'slightly-sloped seasonal rainfall-catchment area' and not a 'pond', is creative but without merit.

Photographs have been placed on record by the appellant showing that there is substantial water in the pond, which has not been controverted. Further, revenue records maintained by the Revenue Department themselves show that the land was 'pokhar'. It is hence not open for the authorities to contradict and plead against the record without any scientific or empirical support, for such categorisation had been made by them in the past. Further, it was conceded by respondent-authorities during arguments that Khasra No. 490 was also recorded as 'pokhar' in revenue records and that it too had been integrated in the industrial development project.

13. Additionally, it is clear that repeal of the UP Zamindari Abolition and Land Reforms Act, 1950 and vesting of such ponds and local areas in the State by Section 57 of the UP Revenue Code, 2006 would not by itself either change the nature of land contrary to revenue record nor will defeat the long-established rights of the local people on commons. Such a proposition had unequivocally been laid down in *Chigurupati Venkata Subbaya v. Palaguda Anjayya*<sup>1</sup>, where this Court negatived a contention that communal rights in the suit-land stood abolished per Section 3 of the Estates Abolition Act, 1948 for it provided that estates, including communal lands, would stand transferred to the Government free from any encumbrance. Further, it was held that even explicit destruction of all rights and interests created by the principal or landholders, would not apply to community rights as such rights originated elsewhere.

14. Given that Section 22 of the NGT Act, 2010 specifies that the nature of the appeal shall be akin to a second appeal as specified under Section 100 of the Code of Civil Procedure, 1908, we would restrict our deliberation to a singular substantive question of law. That is, whether it is permissible for the State to alienate common water-bodies for industrial activities, under the guise of providing alternatives?

15. In *Hinch Lal Tiwari v. Kamala Devi*<sup>2</sup>, this Court settled that 'ponds' were a public utility meant for common use and held that they could not be allotted or commercialised. It had refused to give any weight to similar arguments of the pond having become levelled, with merely some portion getting covered during rainy season by water. Importantly, it emphasised that:

<sup>1</sup> (1972) 1 SCC 521.

<sup>2</sup> (2001) 6 SCC 496.

- A      “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.”

- D      16. This Court reiterated in *Jagpal Singh v. State of Punjab*<sup>3</sup> and noted that since time immemorial, certain common lands had vested in village communities for collective benefit. Except in exceptional circumstances when used exclusively for the downtrodden, these lands were inalienable. It was observed that such protections, however, remained on paper, and since Independence powerful people and a corrupt system had appropriated these lands for personal aggrandisement. Pointing out the harms in allowing such misappropriation, the Court noted an urgent public interest in stopping such misdeeds. Further, various directions were issued for eviction of illegal occupants and restoration of the common land to villagers. It was explicitly specified that “*long duration of such illegal occupation or huge expenditure in making constructions thereon*” cannot be a “*justification for condoning this illegal act or for regularising the illegal possession*”.

- G      17. It is uncontested, in the present case, that the Government Order dated 03.06.2016 was a consequence of the afore-cited judgment in *Jagpal Singh*. Curiously, however, Clause 5 of the Government Order carves an exception of “*huge projects/works*” (albeit in extraordinary circumstances) to *Jagpal Singh*’s strict principle of non-alienation of common water-bodies. It is clear that such ground of exception doesn’t fall under the limited class of grants to “*landless labourers or members of the Scheduled Castes/Scheduled Tribes, or where there is already a school, dispensary or other public utility on the land*”. Such

H      <sup>3</sup>(2011) 11 SCC 396.

industrial activities without any rationale classification, unlike the narrow class exempted, do not serve a social public purpose or benefit the local people, and thus will be hit by the inalienability bar. A

18. Even otherwise, the action of the respondent-authorities contravenes their Constitutional obligations. Article 48-A of the Constitution casts a duty on the State to “endeavour to protect and improve the environment and to safeguard the forests and wild life of the country”, and Article 51-A(g) expects every citizen to perform his fundamental duty to “protect and improve the natural environment”. A perusal of our Constitutional scheme and judicial development of environmental law further shows that all persons have a right to a healthy environment. It would be gainsaid that the State is nothing but a collective embodiment of citizens, and hence collective duties of citizens can constructively be imposed on the State. Such an interpretation of the Constitution has also been adopted in *MC Mehta v. Union of India*<sup>4</sup> wherein this Court mandated the State to ensure mandatory environmental education to all school students in pursuance of the fundamental duties enshrined in Article 51-A(g): B

“24. Having regard to the grave consequences of the pollution of water and air and the need for protecting and improving the natural environment which is considered to be one of the fundamental duties under the Constitution (vide Clause (g) of Article 51A of the Constitution) we are of the view that it is the duty of the Central Government to direct all the educational institutions throughout India to teach atleast for one hour in a week lessons relating to the protection and the improvement of the natural environment including forests, lakes, rivers and wildlife in the first ten classes. The Central Government shall get text books written for the said purpose and distribute them to the educational institutions free of cost. Children should be taught about the need for maintaining cleanliness commencing with the cleanliness of the house both inside and outside, and of the streets in which they live. Clean surroundings lead to healthy body and healthy mind. Training of teachers who teach this subject by the introduction of short term courses for such training shall also be considered. This should be done throughout India.” C

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<sup>4</sup> (1988) 1 SCC 471. D

A 19. There remains therefore no doubt that it is the responsibility of the respondents to ensure the protection and integrity of the environment, especially one which is a source for livelihood for rural population and life for local flora and fauna.

B 20. Protection of such village-commons is essential to safeguard the fundamental right guaranteed by Article 21 of our Constitution. These common areas are the lifeline of village communities, and often sustain various chores and provide resources necessary for life. Waterbodies, specifically, are an important source of fishery and much needed potable water. Many areas of this country perennially face a water crisis and access to drinking water is woefully inadequate for most Indians. Allowing such invaluable community resources to be taken over by a few is hence grossly illegal.

C 21. The respondents' scheme of allowing destruction of existing water bodies and providing for replacements, exhibits a mechanical application of environmental protection. Although it might be possible to superficially replicate a waterbody elsewhere, however, there is no guarantee that the adverse effect of destroying the earlier one would be offset. Destroying the lake at Khasra Nos. 552 and 490, for example, would kill the vegetation around it and would prevent seepage of groundwater which would affect the already low water-table in the area.

D E The people living around the lake would be compelled to travel all the way to the alternative site, in this case allegedly almost 3 kms away. Many animals and marine organisms present in the earlier site would perish, and wouldn't resuscitate by merely filling a hole with water elsewhere. Further, the soil quality and other factors at the alternate site might not be conducive to growth of the same flora, and the local environment would be altered permanently. The respondents' reduction of the complex and cascading effects of extinguishing natural waterbodies into mere numbers and their attempt to justify the same through replacement by geographically larger artificial water-bodies, fails to capture the spirit of the Constitutional scheme and is, therefore, G impermissible.

F 22. Hence, it is clear that schemes which extinguish local waterbodies albeit with alternatives, as provided in the 2016 Government Order by the State of UP, are violative of Constitutional principles and are liable to be struck down.

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23. For the reasons stated above, we allow the appeal and set aside the impugned order passed by the NGT. The allotment of all water bodies (both ponds and canals), including Khasra Nos. 552 and 490 to Respondent No. 6, or any other similar third party in village Saini, tehsil Dadari, district Gautam Budh Nagar is held to be illegal and the same is hereby quashed. Since this Court has on 15.07.2019 already directed the parties to maintain status quo, Respondent Nos. 1 to 5 shall restore, maintain and protect the subject-water bodies in village Saini. Respondents are further directed to remove all obstructions from the catchment area through which natural water accumulates in the village ponds, all within a period of three months.

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Kalpana K. Tripathy

Appeal allowed.