

**Municipal Corporation of Greater Mumbai & Ors.**

v.

**Pankaj Babulal Kotecha & Ors.**

(Civil Appeal No. 7272 of 2025)

30 May 2025

**[Surya Kant\* and Nongmeikapam Kotiswar Singh, JJ.]**

#### **Issue for Consideration**

Whether a recreational park developed on an alleged historical water body ought to be demolished and the water body restored or alternatively, whether the development warrants preservation given its current utility and the inexorable passage of time.

#### **Headnotes<sup>†</sup>**

**Environmental Matters – Environmental conservation and development for public welfare – Balance between – Redevelopment of a theme park on the subject property by Municipal Corporation of Greater Mumbai (MCGM) – Writ petition filed alleging that the said redevelopment resulted in the obliteration of the 100 years old Khajuria lake which existed there; demolition of the park and restoration of the lake sought – Allowed by High Court – Interference with:**

**Held:** Though, the material shows the historical existence of a water body at the subject property, there is nothing to show that it remained a functional pond at the relevant time – Presently, the park is a well-maintained urban oasis with numerous mature trees and recreational facilities actively utilized by the community – Its demolition would necessitate the removal of trees causing environmental degradation requiring decades to remediate with substantial public expenditure required for the proposed restoration – Moreover, there was a considerable delay in seeking judicial intervention as the writ petition was filed before the High Court nearly five years after the project's commencement, which delay has created an irreversible *fait accompli* – Impugned judgment set aside – MCGM to maintain and preserve the existing park in perpetuity as a green space exclusively for public use without any predominant commercial activity – Expert Committee to be constituted within three months to explore the feasibility of

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developing an alternative water body in nearby areas to compensate for the ecological functions of the original water body – Further directions issued. [Paras 14, 15, 17, 19]

**Environmental Matters – Judicial intervention – Delay – Effect – Redevelopment of a recreational park on the subject property allegedly resulted in the obliteration of a 100 years old lake – Writ petition filed nearly five years after the project's commencement seeking demolition of the park and restoration of the lake, allowed by High Court:**

**Held:** Environmental grievances must be raised promptly when alleged violations commence, not after transformative changes have materialized and become entrenched – The considerable delay in the present case has created an irreversible *fait accompli* wherein substantial public resources have been expended, and a thriving recreational facility has become integral to community life – No public purpose would be served by undoing what time and usage have legitimized through community acceptance and reliance. [Para 19]

**Environmental Law – Public trust doctrine – Operation – Discussed.** [Para 12]

### List of Keywords

Khajuria Lake; Municipal Corporation of Greater Mumbai (MCGM); Recreational park; Redevelopment of a theme park; Water body; Alleged historical water body; Restoration of water body; Lake; Pond; Restoration of lake; Restoration of Pond; 100 years old lake; Century-old water body; Demolition of the park; Functional pond; Recreational facilities; Environmental degradation; Green space; Beautification work; Public interest; *Post-facto* sanction; Environmental conservation; Development for public welfare; Public trust doctrine; Environmental jurisprudence; Sustainable development; Change in land use; Delay in seeking judicial intervention; Ecological balance; *Fait accompli*.

### Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 7272 of 2025

From the Judgment and Order dated 03.08.2018 of the High Court of Judicature at Bombay in PIL No. 6 of 2013

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**Appearances for Parties**

*Advs. for the Appellants:*

Dhruv Mehta, Sr. Adv., Sudarsh Menon, Ms. Nishi Sangtani, Mrs. Nimisha S Menon.

*Advs. for the Respondents:*

Kunal Cheema, Shubham Chandankhede, Raghav Deshpande, Ms. Kirti, Ms. Saloni Shukla, Varad Kilar, Siddharth Dharmadhikari, Aaditya Aniruddha Pande.

**Judgment / Order of the Supreme Court**

**Judgment**

**Surya Kant, J.**

Leave granted.

2. The fulcrum of the present controversy centres around the redevelopment of a theme park undertaken by the Municipal Corporation of Greater Mumbai (**MCGM**) on a plot bearing CTS No. 417, situated at Khajuria Tank Road, Kandivali (West), Mumbai (**Subject Property**). This redevelopment allegedly resulted in the obliteration of a lake that had existed at the premises for approximately 100 years.
3. This issue was assailed before the High Court of Bombay (**High Court**) *vide* a Writ Petition instituted in public interest, wherein by way of its judgement dated 03.08.2018, the High Court allowed the same and directed Respondent Nos. 2-8 herein (**State Government**) to assume possession of the Subject Property, demolish the construction in question and restore the lake claimed to have existed prior to the subject development (**Impugned Judgement**).

**A. Facts**

4. In order to shed light on the circumstances leading up to the passing of the Impugned Judgement, we deem it appropriate to briefly set out the factual narration herewith:
  - 4.1. A water body known as the Khajuria Lake used to be situated in the same vicinity as the Subject Property. This water body, which had existed for over 100 years, allegedly also served

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as a site for Ganesh idol immersion during festivals. As per the revenue record, the Subject Property was enlisted as belonging to the State Government through the Collector, Mumbai Suburban District.

- 4.2. It appears that in 2008, as part of a directive from the Additional Municipal Commissioner (City) to develop Theme Gardens in various wards within the city of Mumbai and other ancillary areas, MCGM selected the Subject Property for development. MCGM claimed that the lake was in an unused and bad condition, so much so that it was treated as a garbage disposal area, thereby prompting it to be identified for beautification and conversion into a recreational space.
- 4.3. MCGM in furtherance of this objective, floated a tender on 08.02.2008 for the development and maintenance of gardens, recreation grounds, and other municipal plots. Following the tender process, M/s. Techno Trade Impex India Pvt. Ltd. was appointed as the contractor on 10.04.2008. The project thereafter received formal approval from the Standing Committee of MCGM *vide* SCR No. 729, for the execution of beautification work upon the Subject Property, on 24.08.2009.
- 4.4. Subsequently, MCGM appointed an architect to prepare detailed plans and estimates for the proposed beautification of the Subject Property. Accordingly, a budget of Rs. 5 crores came to be allocated by MCGM in the fiscal year of 2008-09.
- 4.5. However, as already observed, given that the Subject Property belonged to the Collector and not MCGM, the latter submitted an application for a No Objection Certificate to the Collector on 30.06.2009 seeking permission for the project. Notwithstanding the pendency of these requests, the beautification work proceeded, and the transformed recreational space comprising the planned green cover, musical water fountain, and recreational amenities was completed and inaugurated for public use in December 2011. On 23.05.2012, MCGM sent another letter to the Collector for transfer of the property, which remained unanswered.
- 4.6. Thereafter, the publication of a news report in the Times of India daily newspaper on 06.09.2012 concerning the alleged filling up of Khajuria Lake spurred action in Respondent No. 1, who

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being a public-spirited individual, filed a Writ Petition before the High Court on 29.11.2012. The petition sought demolition of the construction undertaken by MCGM and restoration of the lake to its pristine condition, highlighting that this century-old water body served as a habitat for various types of rare fish and tortoises, attracted different types of birds, and was surrounded by mangroves—all of which were decimated during the development of the project.

- 4.7. Significantly, during the pendency of the petition, the Collector issued *post facto* sanction dated 10.02.2014 approving the project, *viz.* the beautification of Khajuria pond, and transferring the Subject Property to MCGM.
- 4.8. As already elucidated, the High Court, *vide* the Impugned Judgment dated 03.08.2018, allowed the Writ Petition. Being aggrieved, MCGM has preferred the instant appeal.
- 4.9. Notably, during the pendency of the instant appeal, this Court, *vide* order dated 16.11.2018, directed *status quo*, thereby staying the implementation of the Impugned Judgment. Consequently, the recreational park continues to exist and function in its present form.

**B. CONTENTIONS ON BEHALF OF THE APPELLANTS**

5. Mr. Dhruv Mehta, Learned Senior Counsel appearing for MCGM, vehemently contested the High Court's characterization of the Subject Property as a lake requiring restoration. He submitted that the Impugned Judgment fundamentally misapprehended the nature of the land by disregarding that the Subject Property was already reserved as Recreation Ground or 'R.G.' in the sanctioned Development Plan of 1991. It was urged that this reservation was made following due statutory process, including inviting public objections and suggestions through the Gazette Notification dated 13.04.1984, and no objections were ever raised by any party, including the Respondent. It was further emphasized that such 'R.G.' designation, read in conjunction with MCGM's statutory mandate to develop recreational spaces, provided sufficient legal foundation for the beautification initiative sought to be undertaken, which has resulted in the creation of substantial green cover at the Subject Property.

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6. Additionally, our attention was drawn to the documented usage pattern of the Subject Property, highlighting that it had consistently hosted community events, including Ganesh festival celebrations with proper administrative permissions—circumstances incompatible with the existence of a natural lake as alleged by Respondent No. 1. It was detailed as to how MCGM had transformed what was formerly a degraded area used as a garbage dumping ground, into a beneficial public amenity featuring approximately 200 trees, a musical fountain, and recreational facilities, presently serving the local community without charge. He insisted that, far from constituting illegal construction, the project represents a responsible exercise of MCGM to enhance urban recreational infrastructure, thereby promoting rather than diminishing public welfare in accordance with the Subject Property's designated purpose.

**C. CONTENTIONS ON BEHALF OF RESPONDENT No.1**

7. *Per contra*, Mr. Kunal Cheema, Learned Counsel for Respondent No. 1, strenuously opposed the appeal on multiple grounds. He commenced his submissions by challenging the very premise of the development, asserting that the documentary evidence overwhelmingly established the existence of a functional water body at the Subject Property. Relying on MCGM's own correspondence, particularly its letter dated 30.06.2009 seeking permission to convert the 'Khajuria Talao to that of a municipal garden', it was contended that such language constituted an unequivocal admission that negated any subsequent attempt to deny the lake's existence. It was further argued that the beautification project represented nothing short of ecological destruction, resulting in the obliteration of a century-old lake that supported various aquatic species and attracted diverse birdlife to its surrounding mangroves.
8. On the aspect of *post facto* sanction of 2014, the Learned Counsel characterized it as a legally impermissible attempt to retrospectively legitimize an unauthorized act. It was assailed that this sanction, granted during the pendency of litigation and years after the construction's completion, suffered from inherent contradictions—purporting to approve beautification while simultaneously prohibiting the very change in land use that had already been effected. In conclusion, Learned Counsel submitted that the principles of

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environmental protection and the public trust doctrine mandated the restoration of the natural water body, as rightly held by the High Court.

**D. ANALYSIS**

9. Having heard learned counsels for the parties and after perusal of the material on record, we are of the considered view that the primary question in the instant appeal pertains to whether a recreational park developed on an alleged historical water body ought to be demolished and the water body restored or alternatively, whether the development warrants preservation given its current utility and the inexorable passage of time. More specifically, the question of achieving a judicious balance between environmental conservation and development for public welfare constitutes the primary issue before us. That being said, at the very outset, we deem it pertinent to delineate the reasoning that informed the High Court's determination in the matter.
10. Upon perusal of the Impugned Judgement, it becomes patently clear that the High Court's reasoning rested primarily on the public trust doctrine, whereby it held that the State could not permit the destruction of natural water bodies under any circumstances. Furthermore, it found the *post facto* sanction legally ineffective, as it attempted to retrospectively validate an unauthorized act while simultaneously prohibiting the very land use change that had already occurred. Consequently, invoking Articles 48A and 51A(g) of the Constitution, the High Court concluded that the preservation of water bodies constitutes an absolute constitutional mandate that invariably supersedes developmental considerations or temporal factors.
11. In this light, we must acknowledge that albeit the High Court's views were well-intentioned and *prima facie* the correct interpretation of settled notions such as the public trust doctrine, they nonetheless warrant reconsideration through the prism of practical realities and evolved ground conditions. This Court has consistently propounded that environmental jurisprudence must evolve contextually, taking into account both ecological imperatives and developmental exigencies. Indeed, there cannot be a simplistic binary choice between a park or a pond, as each serves distinct ecological and social functions contingent upon specific circumstances, geographical location, and evolving usage patterns.

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12. To put it simplistically, the public trust doctrine establishes that certain environmental resources are held in trust by the State for the unimpeded enjoyment of the public and for posterity. Although the doctrine imposes a legal obligation upon governmental authorities to protect these resources for public benefit and ecological sustainability, extending to public lands, parks, forests, water bodies, wetlands, and other areas acquired by the State, its application must necessarily be calibrated according to the factual matrix and contemporary public needs. The doctrine, thus, does not operate in isolation but must be harmonized with the objectives of sustainable development and evolving public welfare priorities.
13. When juxtaposed with the facts at hand, the instant case presents a unique situation where one public amenity has been transformed into another that continues to serve the community unconditionally. Unlike scenarios involving the diversion of public resources for exclusive private benefit, we must examine whether this particular transformation necessarily violates the trust obligation, considering three critical factors: (*i*) the prior condition of the water body; (*ii*) the current ecological value of the park; and (*iii*) the feasibility of remedial measures.
14. With respect to the first factor, while the material on record acknowledges the historical existence of a water body at the Subject Property, it does not conclusively establish that this water body remained a functional pond by the relevant time. The affidavits filed by officials of MCGM categorically aver that when work for the project commenced in 2009, the Subject Property existed in an abandoned and dilapidated state, having deteriorated into a garbage dumping ground that had completely lost its original character as a water body. Pertinently, nothing has been pleaded or placed on record to demonstrate that the Subject Property was ever a functional pond with significant water content, possessed any natural catchment area to draw fresh water, or performed meaningful ecological functions beyond occasional ceremonial usage, thereby raising fundamental questions about its viability as a sustainable aquatic ecosystem capable of supporting flora and fauna.
15. As regards the current ecological value, the photographic evidence placed before us vividly illustrates the Subject Property as a verdant, well-maintained urban oasis replete with numerous mature trees and recreational facilities actively utilized by the community across all demographic segments. It bears particular emphasis that we

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are adjudicating this appeal in 2025, nearly fifteen years after the park became functional. During this extended temporal span, an entire generation of children has grown up with this green space as an integral component of their daily existence, whilst the trees planted during the initial beautification have themselves matured into substantial specimens that now contribute significantly to the local ecosystem. The park serves as a vital recreational nucleus for children, offering safe spaces for play and physical activity; for senior citizens, providing dedicated areas for walking and social interaction; and for families, creating opportunities for community engagement and leisure.

16. The recreational park presently delivers substantial public benefits that cannot be overlooked. It provides an essential green space in an increasingly concretized urban environment, with trees and other foliage contributing significantly to oxygen generation, air purification, and microclimate regulation. The ornamental water features, such as the fountain, though admittedly not equivalent to a natural water body, nonetheless contribute to biodiversity.
17. Be that as it may, the implementation of the High Court's direction at this juncture would engender consequences that contravene the very environmental principles it seeks to uphold. The demolition would necessitate the removal of numerous trees, causing immediate environmental degradation requiring decades to remediate. Additionally, the expenditure of approximately Rs. 5 crores of public funds would be rendered nugatory, with further substantial public expenditure required for the proposed restoration. Such an outcome would create a paradox wherein environmental restoration results in greater ecological harm than the original transformation—a classic case of counterproductive remedial intervention. Most importantly, given the absence of any natural catchment area as aforesigned, we are constrained to observe that even if a pond were to be recreated, its sustainability and maintenance would remain highly questionable, with the distinct possibility of such stagnant water body becoming health hazards for the local populace, particularly during the monsoon seasons when such properties are prone to becoming breeding grounds for disease-carrying vectors.
18. Beyond these substantive aspects, the Collector's *post facto* sanction of 2014 merits separate consideration. The High Court found this sanction to be procedurally deficient and contradictory—attempting to

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validate an unauthorized construction yet simultaneously prohibiting the very land use change that had occurred. In this specific context, we observe that the larger question for adjudication before us transcends the validity of this belated approval. Even assuming the sanction's invalidity, the fundamental issue remains whether restoration is feasible or desirable, given the passage of considerable time and the establishment of a functioning public amenity. The legal status of the 2014 sanction, therefore, though relevant to the question of initial authorization, cannot be determinative of the appropriate remedy at this stage. More significantly, even if there existed some irregularity or perceived illegality in the *post facto* sanction, such concerns have been reasonably addressed and balanced by the specific rider imposed therein restricting any change in land use. The sanction, as it stands, thus ensures that the Subject Property shall remain dedicated exclusively to recreational purposes in perpetuity. This rider provides the necessary legal safeguard and permanency to guarantee that the land may not be diverted for any other purpose, commercial or otherwise.

19. As a final consideration, the delay in seeking judicial intervention significantly undermines the foundation of the High Court's impugned decision. The beautification project commenced in 2008 and reached completion by 2011, with the park becoming fully operational for public use. However, the petition was instituted before the High Court towards the tail end of 2012—nearly five years after the project's commencement and well after its completion. It is well-settled that environmental grievances must be raised promptly when alleged violations commence, not after transformative changes have materialized and become entrenched. This considerable delay has created an irreversible *fait accompli* wherein substantial public resources have been expended, and a thriving recreational facility has become integral to community life. No public purpose, therefore, would be served by undoing what time and usage have legitimized through community acceptance and reliance.
20. For the foregoing reasons, we are constrained to hold that the High Court's direction to restore the Subject Property to its original condition as a pond, though made with laudable intentions, fails to account for the transformed reality and the substantial public benefit derived from the current recreational space.

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***E. CONCLUSION AND DIRECTIONS***

21. In view thereof, we allow the instant appeal and set aside the Impugned Judgment passed by the High Court. Consequently, to ensure ecological balance within the larger urban ecosystem and preserve the existing park, we direct MCGM to:
  - i. Maintain and preserve the existing park in perpetuity as a green space exclusively for public use without any predominant commercial activity;
  - ii. Constitute an Expert Committee within three months to explore the feasibility of developing an alternative water body in nearby areas to compensate for the ecological functions of the original water body;
  - iii. Undertake comprehensive ecological restoration of deteriorated water bodies within the municipal jurisdiction within a period of twelve months; and
  - iv. File a compliance report before the High Court every six months for a period of three years. We request the High Court to see that the directions issued hereinabove are complied with in true letter and spirit.
22. The Government, being entrusted with the welfare of public spaces and environmental resources, bears the inherent responsibility to pursue sustainable urban development practices that balance infrastructural needs with ecological preservation. We thus clarify that this order shall not preclude the State Government from implementing any other additional measures for the overall improvement of environmental quality in the Navi Mumbai area in harmony with the directions issued hereinabove.
23. Ordered accordingly, Pending applications, if any, also stand disposed of in the above terms.

*Result of the case:* Appeal allowed.

<sup>†</sup>Headnotes prepared by: Divya Pandey