

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPPIL No. 70 of 2016

- Manjeet Singh Thakur S/o Late Shri Rajendra Singh Thakur, Aged About 42 Years R/o Shitalpara Kanker, Tahsil And District Kanker Chhattisgarh

---- **Petitioner**

Versus

1. State Of Chhattisgarh Through The Principal Secretary, Department Of Town & Country Planning Mantralaya, Mahandi Bhawan, New Raipur District Raipur Chhattisgarh.
2. Collector, Kanker, District Kanker Chhattisgarh.
3. Chief Municipal Officer, Nagar Palika Parishad Kanker, District Kanker Chhattisgarh.
4. Sub Divisional Officer, (Revenue) Kanker, District Kanker Chhattisgarh.
5. Prashant Kumar Kalihari Contractor, Durg, At Present C/o Nagar Palika Parishad Kanker District Kanker Chhattisgarh.

---- **Respondent**

For Petitioner : Shri Mukesh Shrivastava, Advocate.
For Respondent/State : Shri A.S. Kachhawaha, Addl. A.G.

Hon'ble The Acting Chief Justice
Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

16/03/2017

01. The petitioner herein has filed this writ petition alleging that Dadiya tank situated at Plot No.25, Mahurbandh Para, Street No.11A at main road, Kanker, around 40,995 sq.m., is being changed by the respondents by making fencing in the name of its beautification, which would result in encroachment and water pollution, and therefore, the respondents be restrained from doing so.

02. The respondent/State has filed its return stating, *inter alia*, that with

the object of removing encroachment, deepening, beautifying and to develop a place where people can spend their time, the State has issued certain guidelines for beautification of the pond in question under “Rajya Parvartit Navin Sarovar Dharohar Yojna” and the said scheme has been framed for preserving the water bodies, promoting their beauty and to provide pollution free environment for the local residents. It is further stated that if the pond is in a dilapidated condition, then the authority under whose jurisdiction such pond is situated, is required to reconstruct and beautify the same. Under the said scheme, Municipal Council, Kanker is undertaking the beautification work to protect and conserve the pond, erection of retaining walls to secure the pond, the bund and to maintain water level in the pond throughout the year. Erection of retaining wall would also prevent unauthorized and illegal constructions over the immediate vicinity and dumping of waste material in the pond. Therefore, no interference is required in this matter.

03. Shri Mukesh Shrivastava, learned counsel for the PIL petitioner would submit that the alleged work in the name of beautification of pond will convert the nature of work and thereby it will affect the entire environment around the pond, therefore, the respondent-Municipal Council be restrained from undertaking further work of beautification in the impugned tank.

04. On the other hand, learned counsel for the State and Municipal Council would support the impugned action.

05. We have considered the rival submissions made herein by the parties and gone through the record with utmost circumspection.

06. The State Government has floated a scheme named “Rajya Parvartit Navin Sarovar Dharohar Yojna” for preservation of water bodies including tanks. The petitioner's apprehension is that in the name of beautification of the pond, shops and *choupati* will be constructed around the pond/tank, resulting in encroachment on the banks of the pond and water pollution due to dumping of waster material in the pond. However, detailed guidelines have been issued by

the State on 4.2.2016 pertaining to the scheme “Rajya Parvartit Navin Sarovar Dharohar Yojna”. “Special instructions” attached to the said scheme state as under:

विशिष्ट निर्देश :-

1. तालाब परिसर में वृहद वृक्षारोपण किया जावेगा एवं टी गार्ड के माध्यम से उसका संरक्षण किया जावेगा।
2. जल की सफाई (ऐरियेशन) हेतु साधारण फव्वारों का प्रावधान किया जावेगा।
3. कम से कम एक महिला घाट का प्रावधान किया जाना अनिवार्य होगा।
4. अनावश्यक महंगी एवं डेकोरेटिव लाईट्स की व्यवस्था प्रतिबंधित रहेगी।
5. योजना अंतर्गत स्वीकृत तालाबों में मत्स्य पालन का ठेका प्रतिबंधित रहेगा।
6. तालाब परिसर में दुकानें एवं चौपाटी निर्माण भी प्रतिबंधित रहेगा।
7. मूर्तियां एवं अन्य सामग्री (प्लास्टिक, बैग्स आदि) का विसर्जन पूर्णता प्रतिबंधित रहेगा।
8. तालाब परिसर पूर्णतया स्वच्छ रखा जावेगा। इस हेतु पर्याप्त मात्रा में कचरा पेटी को प्रावधान रखा जावेगा। खुले में शौच पर पूर्णता प्रतिबंध रहेगा। इसका व्यापक प्रचार-प्रसार किया जावेगा।
9. यह योजना नगर में विद्यमान तालाबों के लिए है। अतः योजना के अंतर्गत नवीन तालाब का प्रस्ताव स्वीकार्य नहीं होगा।

The above instructions clearly show that there shall be no construction of shops or choupati in the pond premises and that idols and other articles including plastic bags etc. shall not be allowed to be discharged in it. Thus, the petitioner's apprehension appears to be ill-founded as the beautification works including erection of retaining walls for maintaining water level throughout the year, removing and preventing encroachment around the pond, seems to have been undertaken to preserve and conserve the nature of the pond.

07. The Supreme Court in the matter of **Susetha Vs. State of T.N. and others**¹ has observed in paras 14, 15 & 16 as under:

“14. the water bodies are required to be retained. Such requirement is envisaged not only in view of the fact that the right to water as also quality life are envisaged under [Article 21](#) of the Constitution of India, but also in

¹ (2006) 6 SCC 543

view of the fact that the same has been recognized in Articles 47 and 48-A of the Constitution of India. [Article 51-A](#) of the Constitution of India furthermore makes a fundamental duty of every citizen to protect and improve the natural environment including forests, lakes, rivers and wild life. [[See Animal and Environment Legal Defence Fund v. Union of India and Ors.](#), AIR (1997) SC 1071; [M.C. Mehta \(Badkhal and Surajkund Lakes Matter v. Union of India and Ors.](#), [1997] 3 SCC 715 and [Intellectuals Forum v. State of A.P.](#), [2006] 3 SCC 549.

15. Maintenance of wetlands was highlighted by the Calcutta High Court in [People United for Better Living in Calcutta v. State of West Bengal](#), AIR (1993) Cal. 215, observing that the wetland acts as a benefactor to the society.

16. Recently, in [T.N. Godavaram Thirumulpad \(99\) v. Union of India](#), [2006] 5 SCC 47, this Court again highlighted the importance of preservation of natural lakes and in particular those which are protected under the [Wild Life \(Protection\) Act, 1972.](#)”

08. In the case in hand, considering the nature of work undertaken by the State in relation to the pond/tank in question, the detailed guidelines issued therefor and the legal position governing the field, we are of the view that the present petition filed as public interest litigation has no substance, the apprehension of the petitioner is ill-founded as all such works have been undertaken to preserve and conserve the nature of the pond in question. Therefore, the petition is liable to be dismissed. It is, accordingly, dismissed. The State Government and all concerned are directed to ensure strict compliance of the above-stated guidelines and judgment rendered in *Susetha Vs. State of T.N.* (supra).

Sd/
(Pritinker Diwaker)
Ag. Chief Justice

Sd/
(Sanjay K. Agrawal)
Judge

HIGH COURT OF CHHATTISGARH, BILASPUR

WPPIL No. 70 of 2016

Manjeet Singh Thakur ---- **Petitioner**

Versus

State Of Chhattisgarh and others ---- **Respondents**

Head Note

Every citizen has a fundamental duty to preserve and conserve the water bodies.

प्रत्येक नागरिक का यह मौलिक कर्तव्य है कि वह जलनिकायों का रक्षण एवं संरक्षण करें।

