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HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR
सत्यमेव जयते

IN RE:

SAVE THE RIVERS, LAKES & WATER BODIES FROM ILLEGAL CONSTRUCTIONS AND ENCROACHMENTS.

JUSTICE ANOOP KUMAR DHAND

ORDER

24.10.2024

REPORTABLE

By the Court:

1. Water is an invaluable and precious natural resource essential for the survival of all living beings. We cannot imagine life without water. Let it be animals, plants, they require water to complete their daily metabolic activity. Plants require water to synthesis their food from the process of photosynthesis. A living being can live without food for some days but cannot even imagine surviving without water, even plants became dry and shed their leaves without water.

2. Water is one of the natural resources, which is found in an adequate amount. It is an essential source for the existence of life on the planet earth. It is widely used for various purposes such as drinking, washing, bathing, cleaning, cooking, irrigation and other industrial and domestic uses.

3. The sources of water are diverse, including rainwater, groundwater—found in wells and springs—and surface water, which encompasses reservoirs, streams, ponds, lakes, tanks, and rivers. Although approximately 97% of the Earth's surface is covered in water, only about 2-3% is safe and suitable for drinking. The majority of the remaining water is saline, while two-



thirds of the planet's freshwater is trapped in glaciers, making it largely inaccessible for human use. This underscores the urgent need for everyone to reduce water wastage and conserve this precious resource for future generations.

4. Rivers and water bodies, which grace our planet, play a vital role in shaping and sustaining life as we know it. From ancient civilizations to modern society, humanity has depended on these majestic waterways for survival, development, and prosperity. The significance of rivers and water bodies in our lives is immense, influencing everything from climate regulation and food production to trade and transportation. These vast water bodies are fundamental to the existence of animals, plants, and humans alike, forming the very backbone of life on Earth.

5. While rivers constitute only a small portion of the earth's total water volume, they are distributed in harmony with different geographical features and climates across the world. Rivers are vital sources of irrigation, agriculture, drinking water and energy production.

6. Rivers also have any environmental regulatory function. Rivers near cities and agricultural areas play a role in regulating local climates through their water-carrying capacity and flood prevention effects. Additionally, surface water evaporation from rivers can influence local humidity and precipitation levels.

7. Rivers contribute to food production by providing irrigation water to the surrounding agricultural lands. Agriculture plays a vital role in feeding the world's population, and river banks often support fertile soil for agricultural purposes.

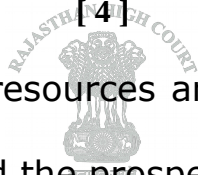


8. Water bodies and rivers are vital water resources as the heart of our lives. These vast water bodies play critical roles in climate regulation, food production, transportation and cultural. However, environmental threats and human activities pose challenges to these essential water sources. Thus, sustainable water resource management and conservation are of utmost importance for the well-being of our planet and future generations. While rivers comprise only a small fraction of the Earth's total water volume, they are intricately woven into the fabric of diverse geographical features and climates worldwide. These waterways serve as vital sources for irrigation, agriculture, drinking water, and energy production.

9. Moreover, rivers play a crucial role in environmental regulation. Those located near urban areas and agricultural lands help modulate local climates through their capacity to manage water flow and mitigate flooding. The evaporation of surface water from rivers also contributes to local humidity and precipitation patterns, further influencing the environment.

10. Rivers significantly enhance food production by supplying irrigation water to adjacent agricultural fields. As agriculture is essential for feeding the global population, riverbanks often boast fertile soils that support bountiful crops.

11. In essence, water bodies and rivers are the lifeblood of our existence, critical to climate regulation, food production, transportation, and cultural heritage. However, environmental threats and human activities present significant challenges to these vital resources. Therefore, sustainable management and



conservation of our water resources are paramount to ensure the well-being of our planet and the prosperity of future generations.

12. Rivers serve as vital habitats for fish, plants, and wildlife, playing an essential role in the survival of numerous species. However, the relentless encroachment on rivers and adjacent water bodies poses a significant threat to all forms of life, including aquatic species.

13. Article 21 of the Constitution of India protects not only the human rights but also casts an obligation on human beings to protect and preserve a specie becoming extinct, conservation and protection of environment is an inseparable part of right to life. In **M.C.Mehta V. Kamal Nath and Others (1997) 1 SCC 388**, the Court enunciated the doctrine of "public trust", the thrust of that theory is that certain common properties such as rivers, seashores, forests and the air are held by the Government in trusteeship for the free and unimpeded use of the general public. The resources like air, sea, waters and the forests have such a great importance to the people as a whole, that it would be totally unjustified to make them a subject of private ownership. The State, as a custodian of the natural resources, has a duty to maintain them not merely for the benefit of the public, but for the best interest of flora and fauna, wildlife and so on.

14. The Hon'ble Supreme Court of India in its various decisions had directed that the heart of the public trust is that it imposes limits and obligations upon Government agencies and their administrators on behalf of all the people and especially future generations. All the property which is vested in the state is indirectly managed by the local administration on the Principle of



Public Trust. It does not mean that the local administration is at liberty or at the discretion to use it in own way. We have two things, sovereignty of the State and the doctrine of public trust. We have to make a balance between the two though the State has every authority to utilize the land but Public Trust Doctrine says that the property of the public should be utilized for the public purposes and not for the private purposes. The water bodies, lake, air and land all these are the public properties and should be made available to all for maintaining the health and environment. This Doctrine of public trust and precautionary measures was discussed in public interest litigation no. 87/2006; Bombay Environmental Action Group Vs. State of Maharashtra 2018 SCC online Bombay 2680.2019(1) Bombay CRI and it was held as follows:-

—Apex Court observed thus: — "2. The Indian society has, for many centuries, been aware and conscious of the necessity of protecting environment and ecology.

Sages and saints of India lived in forests. Their preachings contained in vedas, upanishads, smritis, etc. are ample evidence of the society respect for plants, trees, earth, sky, air, water and every form of life. The main motto of social life is to live in harmony with nature. It was regarded as a sacred duty of everyone to protect them. In those days, people worshipped trees, rivers and sea which were treated as belonging to all living creatures. The children were educated by elders of the society about the necessity of keeping the environment clean and protecting earth, rivers, sea, forests, trees, flora, fauna and every species of life.—The ancient Roman Empire developed a legal theory known as the —doctrine of the public trust. It was founded

on the premise that certain common properties such as air, sea, water and forests are of immense importance to the people in general and they must be held by the Government as a trustee for the free and unimpeded use by the general public and it would be wholly unjustified to make them a subject of private ownership. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial exploitation to satisfy the greed of a few.

15. Realizing the seriousness of the problem confronting waterbodies, the Centre had launched the Repair, Renovation and Restoration of Water Bodies' scheme in 2005 with the objectives of comprehensive improvement and restoration of traditional water bodies. These included increasing tank storage capacity, ground water recharge, increased availability of drinking water, improvement of catchment areas of tank commands and others. However, in this regard, not much has been seen on the ground.

16. Entire country is facing a tremendous scarcity of drinking and potable water almost everywhere and, in fact, it is a global phenomenon. It is this reason which required Regulators/Statutory Authorities to act responsibly for protection of environment and ecology and in particular, wetland/water bodies. They are expected to function in a more responsible and accountable manner and deeper study ought to have been made, before allowing any construction activities in vicinity of a wetland/water body, more so when project site is abutting the wetland itself. Importance of water no one can deny.

17. Various statutory authorities which were constituted to serve as a watchdog for protection of these places, rich in natural flora and fauna, are not very sincere and serious in protection but working only technically. They are liberal in allowing these activities instead of adopting strict and stringent measures necessary for protection.

18. Problem of environment today is a Global phenomenon. The irresponsible and unmindful development has proved an enemy to environment. It has increased pollution everywhere compelling Global leaders to take recourse for protection of environment, if necessary, by framing strict and stringent provisions, but fact remains, that condition of environment today is extremely alarming.

19. A recent news article in the "*Rajasthan Patrika*", dated 18.10.2024, highlights ongoing encroachments affecting several ponds and lakes. Despite numerous directives issued by the courts and the National Green Tribunal (NGT), the audacity of encroachers seems to grow with each passing day. They continue to invade these precious water bodies relentlessly, while the government administration remains largely inactive, resembling a silent spectator. Several rivers along with various other water bodies across the state, are facing severe encroachment, jeopardizing the well-being of all living organisms and the environment. This unchecked exploitation threatens not only biodiversity but also the very health of our ecosystems. The following news item was published and the same is read as under:-

चाहिए जीवनदान : हाईकोर्ट-एनजीटी के आदेशों के बावजूद सुरक्षित नहीं जलस्रोत

नदियों के किनारे कब्जा किनका... सिकुड़ती नदियां और जलीय जीव पूछ रहे

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जयपुर . तालाब-झील और नालों के बाद अब नदियों के किनारे अतिक्रमणों की बाढ़ से नहीं बच पा रहे। इस समस्या से न चंबल नदी बच पाई है और न ही जयपुर जिले की तालाब बाणगंगा तथा बालोतरा की लूणी नदी। उदयपुर की आयड़ नदी को भी संरक्षण की दरकार है। कई बार प्रभावशाली लोगों के कब्जे या मिलीभगत के आरोप लगे। जिम्मेदारों की शह या अनदेखी के कारण इन पर कार्रवाई के हाईकोर्ट के आदेश भी बेअसर रहे।

हाईकोर्ट ने अब्दुल रहमान, रामगढ़ बांध सहित कई मामलों में नदियों सहित सभी जलस्रोतों के संरक्षण और उन्हें 1955 की स्थिति में लाने का आदेश दिया। अतिक्रमण से जलस्रोतों का दम घुटने के मामले नेशनल ग्रीन ट्रिब्यूनल (एनजीटी) व सुप्रीम कोर्ट में लंबित हैं। रामगढ़ बांध का भी मामला सामने है।

पढ़ें नदियों @ पेज 10

प्रदेश की नदियों में दिख रही अतिक्रमण की बाढ़



प्रशासन मौन... कोटा . चंबल नदी के किनारे किशोपुरा में अतिक्रमण कर किए जा रहे निर्माण कार्य (गोले में)।

नदियां जूझ रही अतिक्रमण से हम बता रहे हैं कुछ का हाल

■ **जयपुर**: द्रव्यवती नदी के 47 किमी क्षेत्र में सौंदर्यीकरण कार्य से पहले काफी अतिक्रमण थे। हाईकोर्ट ने बहाव क्षेत्र में निर्माणाधीन इमारत विस्फोटक से उड़वाई, लेकिन मलबा अब भी है। हसनपुरा के पास 80 मीटर क्षेत्र में और पानीपेव के पास अतिक्रमण हैं। ईआरसीपी से जोड़ें तो बेहतर विकास होगा।

■ **कोटा**: चंबल रिवर फ्रंट के पास अतिक्रमण रुक गया, लेकिन नयापुरा पुलिया के आगे बरितियां हैं। नयापुरा से केशवरायपाटन तक नदी किनारे घड़ियाल व मगरमच्छ के प्रजनन स्थल माने जाते हैं, यहां जलीय जीवन सिमट रहा है। कोटा-बूंदी में अवैध खनन से घड़ियाल प्रजनन स्थल नष्ट हो गए।

■ **बालोतरा**: हाईकोर्ट के 2022 के आदेश के बाद लूणी नदी के किनारे अतिक्रमण हटाए गए लेकिन बालोतरा, जसोल, बिंदूजा में अतिक्रमी फिर आ गए।

■ **उदयपुर**: एनजीटी में अधिकारियों ने आयड़ नदी के संरक्षण का भरोसा दिलाया। अब मामला सुप्रीम कोर्ट में है।

अतिक्रमण तो है

हम मानते हैं अतिक्रमण हैं। नदी-तालाब बचने ही चाहिए, नहीं तो पानी कहाँ से आएगा। इनके भराव क्षेत्र को नो कंस्ट्रक्शन जोन बनाएंगे। इनको बचाने के लिए ड्रोन सर्वे करा रहे हैं। इससे अतिक्रमण का पता चल सकेगा। इस कार्य के लिए 550 करोड़ रुपए का बजट दिया है। इस पर चरणबद्ध तरीके से काम किया जा रहा है।

सुरेश सिंह रावत,
जल संसाधन मंत्री

पानी का जीडीपी पर भी प्रभाव

6 प्रतिशत जीडीपी पर पानी का प्रभाव है। केन्द्र सरकार मान चुकी कि सुरक्षित जल नहीं मिलने से देश में हर साल दो लाख मौत हो रही हैं। ऐसे में मास्टर प्लान की सख्ती से पालना आवश्यक है और हर जिले में नदियों का सेटेलाइट सर्विलांस व मैपिंग किए जाएं।

आकाश वशिष्ठ,
अधिवक्ता, सुप्रीम कोर्ट

20. Day in, day out such news are published in electronic and print media which indicates serious failure of the Central as well as the State Government particularly Ministry of Environment, Forest and Climate Change (MoEFCC) and Ministry of Jal Shakti to protect the rivers from illegal constructions and encroachments. The Government has not taken necessary actions under the Environment (Protection) Act, 1986 (for short 'the Act of 1986'), to safeguard the river ecosystem.

21. The River Conservation Zone (Regulation of Harmful Activities) Rules were drafted in 2012, followed by notifications regarding the "River Conservation Zone" and "River Regulation Zone" in 2015. However, despite the passage of significant time, these notifications, including the first Draft River Zone issued in 2011, remain unimplemented to this day. These government-initiated notifications must be enforced in both letter and spirit, rather than simply existing as dormant records. Their execution is

crucial to conserving and protecting our rivers and water bodies, not only for the well-being of all living creatures but also for the survival of aquatic ecosystems.

22. Many rivers across the state are critically endangered and teeter on the edge of disappearance due to unchecked illegal constructions and encroachments along their riverbeds, floodplains, and catchment areas. These actions not only pollute the water but also hinder groundwater recharge, disrupt essential ecological flows, and devastate river line biodiversity. Urgent intervention is required to safeguard these vital ecosystems before they are irreparably damaged.

23. Illegal encroachments on rivers and water bodies have resulted in severe water scarcity, jeopardizing the nation's water security and threatening the survival of future generations.

24. A 2018 report from Niti Aayog and various government departments highlights that our nation is grappling with its worst water crisis in history.

25. Our forefathers saw water in rivers and water bodies. We have seen water in taps. If the situation remains like the current one and if we fail to take urgent action to safeguard our water resources for future generations, then the next generation will see the water in bottles. If no serious action is taken now, then the future generation would see water in capsules. This is the right and high time to act now to save our precious water resources, otherwise, the day would not be far that one day or some day the civil war or the third World War would be fought owing to scarcity of water.

26. *Now is the time to act decisively so that our descendants do not blame us for inaction. If we do not implement strict measures immediately, we would risk losing the opportunity for future generations to thrive. If we fail to take strict action now, we would lose the chance to see our future generation flourish.*

27. *It is the responsibility of each and everyone of us, Governments and all stakeholders to be aware of the value of water and to act to preserve this vital resource.*

28. *We must unite for this common cause. The combined efforts of individuals and government authorities are essential to initiate a movement to protect our rivers and water bodies. Saving water and preserving these vital ecosystems is a collective responsibility we all share. This is the right moment to take action in the interest of all living beings and ensure a sustainable future.*

29. Illegal constructions and encroachments on riverbeds, floodplains, and the catchments of rivers and their tributaries directly violate Section 24(1)(b) of the Water (Prevention and Control of Pollution) Act of 1974. This crucial legislation is designed to prevent and control water pollution, making such encroachments not only an environmental concern but also a serious legal offense. The integrity of our water bodies is paramount, and adherence to this Act is essential for safeguarding our precious water resources.

30. Taking a serious note of the situation, a *suo motu* cognizance is taken to find out the effective and quick step, to stop the unauthorised construction and encroachments over the rivers and water bodies and for saving the water and species. Let this petition be registered as:

Suo Motu : In the matter of Save the Rivers, Lakes & Water Bodies from Illegal Constructions and encroachments.

VERSUS

1. Union of India through its Secretary, Ministry of Jal Shakti, New Delhi.
2. Union of India through its Secretary, Ministry of Environment, Forest and Climate Change, New Delhi.
3. State of Rajasthan, through Chief Secretary, Secretariat, Jaipur.
4. Additional Chief Secretary, Home Department, Government of Rajasthan, Jaipur.
5. Additional Chief Secretary, Department of Public Health Engineering, Government of Rajasthan, Jaipur.

31. Issue show cause notice to the respondents that why the following directions be not issued:-

(I) For constituting a State Level Committee under the Chairmanship of the Chief Secretary, Government of Rajasthan with all Senior IAS and RAS Officers of the concerned departments to monitor the effective implementation of Water Conservation Scheme introduced by the Government.

(II) For issuing directions for constituting divisional level and district level committees including Divisional Commissioner and District Collectors of each district to ensure that there should not be any encroachment over the rivers, lands of lakes, ponds and water bodies and if, any encroachment is found, effective steps be taken immediately to remove the same.

(III) For demolishing all illegal and unauthorized constructions and encroachment on the rivers, flood plains and catchment areas of all the rivers, water bodies, water courses and water channels and restore the same to their original shape;

(IV) For issuing directions to grant legal protection to the rivers, water courses and water channels etc.;

(V) For issuing direction to the respondents to notify the River Conservation Zone (RCZ) Regulations, 2015 forthwith without any delay.

(VI) For issuing directions to the respondents for taking immediate steps under Sections 3 & 5 of the Environment (Protection) Act, 1986 for not allowing any further illegal and unauthorized constructions and encroachment over the rivers, water bodies and catchment areas of all rivers, water courses and water channels.

(VII) For issuing directions to the respondents to launch satellite, drone and other aerial surveillance, online monitoring mechanism with dedicated control rooms and redressal mechanism for preventing and checking the illegal and unauthorized constructions and encroachments over the rivers, water bodies and catchment area.

(VIII) For issuing directions to the Central and State Government and concerned Department to set up a website that will be responsible for creating awareness about complaint mechanism functioning and responsibilities of the concerned authority. The website will have a contact details of the Responsible Officer concerned and a toll free number as well.

(IX) For issuing any other direction in the interest of justice.

32. Let a report be summoned from the Chief Secretary, State of Rajasthan and Secretary; the Secretary of Ministry of Jal Shakti about the effective steps taken by the Central as well as State Governments for preventing encroachment and illegal, unauthorized constructions over and near the lands of Rivers and

water bodies and the initiative taken for proper implementation of the Laws, Rules and Regulations made in this regard.

33. This Court requests Mr. Shailesh Prakash Sharma, Mr. Siddharth Bapna and Mr. Ayush Singh, Advocates; Mr. R.D. Rastogi, Additional Solicitor General as well as Mr. Rajendra Prasad, Advocate General to assist the Court on the issue involved in this petition. Names of the respective counsels and their associates be reflected in the cause-list.

34. Office is directed to list this matter before the appropriate Bench on 18.11.2024.

35. Let a copy of this order be sent in the office of the Chief Secretary of the State and Ministry of Jal Shakti and respective counsels for their intimation and necessary compliance of this order.

(ANOOP KUMAR DHAND),J

Karan/