

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/MISC. CIVIL APPLICATION (FOR CONTEMPT) NO. 1903 of 2023  
In R/WRIT PETITION (PIL) NO. 144 of 2021**

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**LAKHABHA BHOJABHA MANEK**

Versus

**ASHOK M. SHARMA, DISTRICT COLLECTOR, DEVBHUMI DWARKA &  
ORS.**

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Appearance:

MS VIDHI J BHATT(6155) for the Applicant(s) No. 1

MR HS MUNSHAW(495) for the Opponent(s) No. 2

MR RAJESH K SAVJANI(2225) for the Opponent(s) No. 3

NOTICE SERVED for the Opponent(s) No. 1

MR. SANJAY UDHWANI, AGP

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**CORAM:HONOURABLE MR. JUSTICE A.Y. KOGJE**

and

**HONOURABLE MR. JUSTICE SAMIR J. DAVE**

**Date : 01/08/2024**

**ORAL ORDER**

**(PER : HONOURABLE MR. JUSTICE A.Y. KOGJE)**

1. Mr. Pandya, learned District Collector, Devbhoomi Dwarka, is present before the Court and additional affidavit on behalf of respondent no.1, District Collector, is placed on record. It is contended by the learned AGP that in the photographs which are shown as part of the petition and to which reference has been made in the earlier order, there is no encroachment on the water-body.

2. The earlier affidavit filed by the Taluka Development Officer refers to an order dated 23.01.2023, which is an order allotting land bearing Survey No. 120 to RSPL Welfare Foundation. In view of the aforesaid development, it would be appropriate for the Court to join RSPL Welfare Foundation as party respondent to the present petition and at the same time, direct the Office of the District Collector to place on record all the papers pertaining to the process undertaken by the District Collector for making allotment of this land to the newly added party respondent.

3. Issue **Notice to the newly added party respondent**, returnable on **20-08-2024**.

4. Learned advocate appearing for the petitioner has drawn attention of this Court to Annexure-D, page-139, wherein the list of 10 water-bodies in the respective survey numbers of the Village-Kuranga, Taluka-Dwarka is given. We call upon the petitioner to give a report, including photographs. with regard to the status of these 10 water-bodies. The District Collector is present in the Court today. For the next date, his presence is exempted.

5. When the matter was taken up, attention was drawn to the ***order***

*dated 16-07-2024 passed by the Hon'ble Apex Court in Civil Appeal No.1904 of 2020 in case of Mirza Abid Beg v/s. State of U.P. & Ors.,*

wherein in Para-3, the Hon'ble Apex Court has recorded as under:

*“3. We must record here with a great deal of emphasis that it is the paramount duty of the State not only to protect the ponds/lakes/water bodies in the State but also to ensure that ponds/lakes/water bodies, which have been illegally filled in, are restored. It is the Constitutional duty of the State to do so. The Committee appointed by the Secretary, Ministry of Environment, will make a note of this obligation on the part of the State.”*

6. The Court may thereafter referred to the several directions issued by this Court in the decision of *Shailesh R. Shah v/s. State of Gujarat reported in 2002 (3) GLH 642*, where directions were issued in Para-24, which would read as under:

*“24. To sum up, we issue the following directions :-*

*[A] The State Government will notify all the lakes and ponds as may have been shown in the areas covered by the Town Planning Schemes and the Development Plans, as also those in the areas not so covered throughout the State, in short, all the water-bodies in the territory of the State that vest in the State and/or the Area Development Authorities or the Local Bodies including Panchayats, in the Official Gazette within three months from the date of this order.*

*[B] The State Government and all Area Development Authorities and Local Bodies will protect, maintain and preserve all the water-bodies in the State which are identified as per the development plans, town planning schemes and the Government records and which will be notified in the Official Gazette, as water-bodies and they will not be alienated or transferred or put to any use other than as water-bodies.*

*[C] The respondents-authorities should take steps to get the standards of quality of water of the lakes and ponds prescribed by the concerned authority under the law, and devise mechanism for periodic monitoring of the quality of water in these lakes and ponds.*

*[D] The State Government, the Area Development Authorities and the Local Authorities should take urgent measures to rejuvenate the water-bodies which are to be notified in the Gazette by undertaking a declared phased programme of desiltation and make adequate provisions for recharging them by appropriate storm water drains and other feasible means and to take measures against pollution of such water-bodies.*

*[E] The State Government shall expeditiously take steps to constitute Water Resources Council as contemplated in the Draft Water Policy of-the State, headed by the Hon'ble the Chief Minister with other Ministers, including the Ministers in charge of Environment and Urban Development Departments to oversee the programme for protection, preservation and improvement of the water-bodies. The State Government will also constitute the Water Resources Committee headed by the Chief Secretary which may include the Secretaries of Environment, Urban Development and Agriculture Departments, for monitoring the implementation of the programme in a time-bound manner with periodic review of its success. This Committee shall place the particulars of the targets achieved and the causes of non-fulfilment of the targets periodically before the Water Resources Council, for its consideration.*

*[F] The State Government, the Area Development Authorities and the Local Bodies are directed to prepare an authenticated record in form of videography, photography and panchnamas of the existing encroachments and take urgent steps to remove them in accordance with law and the rehabilitation policies of the Government. Responsibilities of the officers/staff concerned should be fixed in respect of non-removal of encroachments and fresh encroachments. The Water Resources Committee will closely monitor the removal of encroachments by the concerned authorities, and the Area Development Authorities and the Local Bodies shall furnish, quarterly, particulars of such encroachments and their removal to the Water Resources Committee.*

*[G] The question of determining the peripheral area surrounding a lake or pond on which construction may be prohibited will be taken up by the concerned authorities for consideration in the context of the development of individual lakes and ponds and the authorities will take decisions thereon having regard to the relevant factors which may have a bearing on the protection, preservation and improvement of lakes, ponds and other water-bodies, and once the peripheral area, around a lake or pond, in which there will be no construction allowed is determined, the same shall be notified. All the applications for building permissions which may be pending, may accordingly be decided as per the regulations and keeping in view the requirement of individual water-bodies.”*

7. In view of these directions, which are applicable to the entire State, the Court deems fit to call for details as the Ponds, Lakes and Water Bodies are not being protected as per the directions not only that, but indiscriminate land filling of the ponds/lakes/water bodies, not only in the Urban Areas, but also now in the Rural as well as some parts of the Wild Life Sanctuary or in the Buffer Zone. It is found that ponds/lakes/water bodies are being filled up, which has not only affected the eco system in the Local area, but may also be prime reason for water clogging.

8. In view of the aforesaid, the Court deems it fit to call such necessary details from the State specifically to ensure compliance of the directions as mentioned herein above. For the aforesaid, directions are issued to the Office of the Collectors of each Districts to undertake survey

through its office identifying the ponds/lakes/water bodies within their jurisdiction, which are included and identified as ponds/lakes/water bodies in the Revenue record. Over and above, ponds/lakes/water bodies, which are also not identified as ponds/lakes/water bodies in the Revenue record. The Collector shall file separate report for the very purpose in connection with ponds/lakes/water bodies, which are lying within the Commissionerate and Urban Development Authorities Area.

9. Such report should contain Survey No. or any identification, measurement of the ponds/lakes/water bodies with the latest photograph. The direction to undertake this survey is specifically made in view of the Monsoon season, where real ponds/lakes/water bodies would be visible and therefore, the report to contain the photograph and the date in this regard.

10. The Court also deems it fit to issue the direction to the District Forest Officer to identify ponds/lakes/water bodies in their respective Districts, where it falls under the Wild Life Sanctuary, Protected Forest or Buffer Zone and also, report the latest status with photograph and measurement of such existing ponds/lakes/water bodies.

11. The Registry to forthwith provide the copy of this order to Shri G.H. Virk, learned Government Pleader for its onward communication and compliance.

**(A.Y. KOGJE, J)**

**(SAMIR J. DAVE,J)**

PARESH SOMPURA