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WP-15190-2015

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK JAIN

WRIT PETITION No. 15190 of 2015*SMT. ANJU THAKUR AND OTHERS**Versus**GENERAL PUBLIC/STATE OF MADHYA PRADESH*

.....
Appearance:

*Shri Sanjay Ram Tamrakar Senior Advocate with Shri Ankit Chopra and Shri
Abhay Kesharwani Advocates for the petitioners.*

Shri Hitendra Singh Government Advocate for the respondent-State.
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(O R D E R)

(Reserved on : 11/09/2025)
(Pronounced on: 18/11/2025)

By way of this petition challenge is made to order Annexure P/31 dated 24.2.2015 passed by the Board of Revenue whereby the Board of Revenue has rejected the revision of petitioners against the order passed by Commissioner, Narmadapuram Division, Narmadapuram (Hoshangabad). The Commissioner vide order Annexure P/29 had confirmed the order of Additional Collector dated 19.06.2013 (Annexure P/28) whereby the order of Sub-Divisional Officer dated 07.06.2012 (Annexure P/27) had been confirmed. By the original order Annexure P/27, the Sub-Divisional Officer had refused to correct the entries in revenue record and ultimately after repeated rounds of appeals and revision the said order has been confirmed by Annexure P/31 dated 09.07.2015 by the Board of Revenue against which the petitioners are now in the present petition.

2. Even this petition is being heard after somewhat chequered



history, inasmuch as the present petition was earlier dismissed on merits vide order dated 31.10.2017, against which, Review Petition No. 1356/2017 was filed, that was allowed vide order dated 18.1.2018, and in review itself, the writ petition was allowed. Later, the State filed W.A. No. 1310/2022, that was decided vide order dated 20.1.2023, whereby the Division Bench set-aside the order passed in review, and restored the review for fresh hearing. Thereafter, review was heard again and vide order dated 14.7.2023, the review was allowed, to the extent of restoring this writ petition for hearing afresh. Now in this backdrop, the present writ petition is being heard afresh on merits.

3. Counsel for the petitioners has argued that the Board of Revenue has wrongly given the reason that the questioned entry “Fauji Padav” which implies the land being reserved for Indian Army for putting up their camps etc. and since the application before the Sub-Divisional Officer was filed without impleading Ministry of Defence, Government of India, therefore, the orders passed by the subordinate revenue authorities/ courts cannot be interfered with.

4. The counsel for petitioners argued that the petitioners are either the natural successors or the successors-in-title being subsequent purchasers of plaintiffs in Civil Suit No. 55-A/1991, which was decreed vide judgment and decree dated 15.02.1993. The petitioners were held title holders of the questioned land and an order of the Sub Divisional Officer dated 30.08.1991 was declared null and void. The Government of M.P. and its functionaries



were restrained from interfering in possession of the plaintiffs in the suit land. Most importantly the entry of “Fauji Padav” on the questioned land was declared null and void and illegal.

5. It is contended that the said suit was filed against the State of M.P. and Municipal Council, Seoni Malwa, District Hoshangabad. After some time, the State of Madhya Pradesh filed another Civil Suit being No. 44-A/1996 for declaring the judgment and decree Annexure P/1 null and void as against the interest of the State. The said suit has been rejected as abated vide order Annexure P/3 dated 26th October 2005 against which appeal was filed by the State Government before the District Court which was rejected by order Annexure P/4 said order was challenged by the State in W.P. No.3918/2011 which was dismissed on 27.07.2011 granting liberty to the State to file civil revision and when civil revision No. 480 of 2011 was filed by the State the same was withdrawn by the State on 26.03.2011 vide order Annexure P/24 with liberty to file writ petition. However, no writ petition was filed and the State then shelved the matter. Therefore the judgment and decree Annexure P/1 has attained finality and the challenge to the same has also been put to rest.

6. It is further contended that in terms of the aforesaid judgment and decree (Annexure P/1), mutation on various parcels of the land was carried out vide orders Annexure P/5, P/6, P/7 and P/8. However on some remaining parcels of the land, the entry continues to exist and therefore the petitioners filed an application under sections 242 and 234 of MPLRC for



deletion of such entries.

7. The said application continued to remain pending for a long time though the same was filed in the year 2010 and ultimately the said application was rejected by the Sub Divisional Officer vide order Annexure P/26 which has now been confirmed vide Annexure P/31 after some rounds of appeals, etc.

8. The counsel for the petitioner further pointed out that in the intervening period the Government of India had also filed a civil suit against the petitioners as well as the State Govt., which was dismissed on 19.07.2013 and for restoration of the said suit an application under Order 9 Rule 9 CPC was filed by the Union of India, which was also rejected vide order dated 13.07.2015 passed in MJC No. 14/2014 by the 1st Additional Sessions Judge, Hoshangabad. Thereafter, the Union of India did not further agitate the matter before any Court or forum and therefore the rejection of suit of the Union of India having been made and application under Order 9 Rule 9 having been dismissed therefore, fresh suit of Union of India is also not maintainable and issue stands settled against Union of India also, unless the Union of India at any subsequent stage succeeds in restoring the suit. Therefore, it is contended that the judgment and decree Annexure P/1 has attained finality and the suit filed by the State Government for setting aside the said judgment and decree has been rejected and no appeal or revision was filed against the judgment and decree Annexure P/1. Therefore, the reasons assigned by the Board of Revenue in the order Annexure P/31 that the Union



of India seems to have some interest in the matter holds no water, moreso, when the Union of India did not file any objection to the application of the petitioners for deletion of entry of “Fauji Padav” and its suit also having suffered rejection. Therefore it is argued that the writ petition be allowed and the order of Board of Revenue be set-aside.

9. *Per contra*, it is contended by counsel for the State that as per Section 257 (f) of MP Land Revenue Code, the suit having been filed in respect of entries in revenue record which are in favor of the State Government, therefore the omission or deletion or amendment of such entries can only be made by the revenue authorities because exclusive jurisdiction is conferred on revenue courts by Section 257 in respect of certain matters and the present matter is covered under Section 257 (f) therefore the decree Annexure P/1 having been passed in a suit which was entertained beyond its jurisdiction by the civil court, the judgment and decree is nullity. Reliance is placed on judgment of the Hon’ble Supreme Court in the case of *Sarup Singh v. Union of India*, (2011) 11 SCC 198 and *Mohd. Murtiza Khan Vs. State of M.P.*, 1966 MPLJ 933, to contend that the judgment and decree Annexure P/1 is nullity against the State.

10. It is further argued that as per Article 136 of Limitation Act 1963, for execution of any degree and outer limitation period of 12 years has been laid down whereas the present application was filed in the year 2010 before the SDO which was after 17 years of judgment and decree Annexure P/1 and therefore, the SDO could not have entertained the application and Board of Revenue has erred in confirming the said order.



11. Heard rival parties at length.

12. The case of the petitioner is plain and simple, that there is a declaratory decree and decree of perpetual injunction in its favour, therefore, the questioned entry should be deleted from the revenue records. The decree Annexure P-1 is summarised as under :-

- a. Entry of “Fauji Padav” in lands contained in survey No. 24/93,25/1,25/2, situated at Village Burhanpur, Tehsil Seoni Malwa, is null and ineffective.
- b. Plaintiffs are Bhumiswamis and cultivators of land in in survey No. 24/93,25/1,25/2, situated at Village Burhanpur, and the order of Sub-Divisional Officer dated 30.8.1991 is declared null and void.
- c. The defendants being State Government employees, shall not cause any interference in possession of plaintiffs in suit lands.
- d. Defendants shall bear their own costs and costs of the plaintiffs.

13. It is not disputed that the State has already complied with the decree in terms of insertion of names of the plaintiffs/successors in the revenue records, but the entry of “Fauji Padav” in various khasras has not been deleted, though in some, the same has been deleted.

14. So far as the objection of the State in the matter of decree being nullity in terms of Section 257 (f) MPLRC is concerned, whereby the suit is



stated to be barred by law, the relevant provision is as under :-

“257. Exclusive jurisdiction of revenue authorities. –

Except as otherwise provided in this Code, or in any other enactment for the time being in force, no Civil Court shall entertain any suit instituted or application made to obtain a decision or order on any matter which the State Government, the Board, or any Revenue Officer is by this Code, empowered to determine, decide or dispose of, and in particular and without prejudice to the generality of this provision, no Civil Court shall exercise jurisdiction over any of the following matters :-

*(a) to (e) ******

(f) any claim against the State Government to have any entry made in any land records or to have any such entry omitted or amended.”

15. The suit was a suit for declaration and injunction also, and not for mere deletion of entry. The Revenue Courts do not have any jurisdiction to pass a decree for declaration and injunction. In the case of *Ramgopal vs. Chetu*, AIR 1976 MP 160 (FB), Hon’ble full Bench of this Court has held as under:-

“10. Determination of the question of title is the province of the Civil Court and unless there is any express provision to the contrary, exclusion of the jurisdiction of the Civil Court cannot be assumed or implied, AIR 1966 SC 1718.”

16. In the case of *Rohini Prasad & Ors. vs. Kasturchand & Anr.* (2000) 3 SCC 668 and *Hukum Singh (dead) by LRs & Ors. vs. State of MP* (2005) 10 SCC 12; the Hon’ble Supreme Court has after taking into consideration the law laid down by full Bench of this Court in the case of *Ramgopal vs. Chetu (supra)*, held that the suit for declaration of title and permanent injunction or for restoration of possession is maintainable before Civil Court only.

17. In the present case, the suit was maintainable for another reason,



i.e. Section 57 (3) of the M.P. Land Revenue Code. Section 57 is as under :-

57. State ownership in all lands.

(1) All lands belong to the State Government and it is hereby declared that all such lands, including standing and flowing water, mines, quarries, minerals and forests reserved or not, and all rights in the sub-soil of any land are the property of the State Government :

[Provided that nothing in this section shall, save as otherwise provided in this Code, be deemed to affect any rights of any person subsisting at the coming into force of this Code in any such property.]

(2) Where a dispute arises between the State Government and any person in respect of any right under sub-section (1) such dispute shall be decided by the Sub-Divisional Officer.

(3) Any person aggrieved by any order passed under sub-section (2) may institute a civil suit to contest the validity of the order within a period of one year from the date of such order.

(3-a)

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It is pertinent to mention here that Sub-section (2) was amended from time to time and has been deleted in 2018. Subsection (3) has been deleted in 2011. The position above is as was existing in 1991 when suit was filed.

18. As the plaintiffs challenged the order of SDO also whereby he had refused to correct the revenue entries, therefore, the suit was maintainable even in view of section 57(3), as it then stood, even if declaration and injunction had not been sought. Hence, the objection as to maintainability of suit and decree being nullity is over-ruled.

19. So far as the issue of limitation is concerned, the decree was passed on 15.2.1993 and the application for correction was filed in the year 2010. The petitioners have not filed an application for “execution” of decree, but simplicitor application for correction of revenue entry in accordance with



the decree of Civil Court, that the State is bound to comply.

20. There is no limitation prescribed under MPLRC to move an application for mutation or for correction of revenue entry. If two limitations are applicable, then the larger one has to be given effect to. Since MPLRC does not at all have any time limit or limitation for correction of revenue records, then the State cannot raise the plea of Article 136 of the Limitation Act to contend that the application for correction could not be filed beyond 12 years. A decree of title is for perpetuity and any revenue entry that may cloud the title, has to be removed, irrespective of the limitation for execution of decree.

21. Now coming to the position that what order can be passed in the matter.

22. When this Court has dug deeper into the matter, it is found that even there was no abatement at all, and in all these years since 2005 when the suit of the State was rejected as abated, the State did not even care to examine whether its suit had really abated or not.

23. The abatement was ordered by the trial Court on account of death of three defendants, i.e. defendants No. 2-Hanuman, No.3-Jagdish and No.6-Balraj. All these were plaintiffs in the decree that was sought to be declared null and void by the State in its suit. These three were sons of deceased Narayan Prasad, who was projected to be the person from whom they succeeded title as sons. Once other successors of Narayan Prasad i.e. his other son Shambhu Prasad was on record, and wife and sons of another son,



Rajendra were on record, then it is clear that there was co-ownership and the estate of Narayan Prasad, the original owner through whom all had been claiming, was represented.

24. The State was plaintiff and it is settled that limitation under Order 22 Rule-4 shall start from date of intimation given by the defendants/their counsel under order 22 rule 10-A CPC. In *Perumon Bhagvathy Devaswom v. Bhargavi Amma, (2008) 8 SCC 321* the Hon'ble Supreme Court held as under :-

17. The second circumstance is whether the counsel for the deceased respondent or the legal representative of the deceased respondent notified the court about the death and whether the court gave notice of such death to the appellant. Rule 10-A of Order 22 casts a duty on the counsel for the respondent to inform the court about the death of such respondent whenever he comes to know about it. When the death is reported and recorded in the order-sheet/proceedings and the appellant is notified, the appellant has knowledge of the death and there is a duty on the part of the appellant to take steps to bring the legal representative of the deceased on record, in place of the deceased. The need for diligence commences from the date of such knowledge. If the appellant pleads ignorance even after the court notifies him about the death of the respondent that may be an indication of negligence or want of diligence.

25. In a specific case where the State was the contestant and death of private litigant took place, the Hon'ble Supreme Court in *State of M.P. Vs. S.S. Akolkar 1996 (2) SCC 568* held as under :-

7. It is settled law that the consideration for condonation of delay under Section 5 of the Limitation Act and setting aside of the abatement under Order 22 are entirely distinct and different. The court always liberally considers the latter, though in some case, the court may refuse to condone the delay under Section 5 in filing the appeals. After the appeal has been filed and is pending, Government is not expected to keep watch whether the contesting respondent is alive or has passed away. After the matter was brought to the notice of the counsel for the State, steps were taken even thereafter; after due verification belated application came to be filed. It is true that Section 5 of the Limitation Act would be applicable and delay is required to be explained. The delay in official business requires its broach and approach from public justice perspective.



8. Under these circumstances, we are of the opinion that the High Court was not right in refusing to set aside the abatement and to condone the delay in filing of the petition to bring the legal representatives on record.

9. The delay is condoned. The abatement is set aside and the legal representatives are brought on record. The High Court is requested to dispose of the appeal as expeditiously as possible within two months from the date of the receipt of the order as this is a very old appeal.

26. Juxtaposing with aforesaid legal position, the dates of intimation given by counsel for defendants before the Civil Court in State's suit and dates of filing applications under Order 22 Rule 4 are as under :-

	<u>Date of intimation</u>	<u>Date of filing application</u>
Defdt. No.2 (Hanuman)	12.11.2003	04.2.2004
No. 3 (Jagdish)	29.3.2000	31.1.2001
No.6 (Balraj)	25.9.2002	23.10.2002

From the above chart, it is clear that in case of defendants No. 2 and 6, the application under Order 22 Rule-4 was filed within 90 days of intimation, and there was no abatement at all, and the trial Court and Appellate Court have acted with material illegality in treating the suit as abated against these defendants.

27. So far as Defendant No. 3 is concerned, in his case, there was some delay in filing the application. No doubt, if there was abatement, then the State was bound to get it set aside. However, it is to be seen whether there was any abatement even as to Defendant No.3 at all. In the suit filed by the State, prayer was made to declare the judgement and decree annexure P-1 set aside, that was obtained by the defendants in the suit filed by the State, and in that suit filed by the defendants, the deceased defendants No. 2, 3 and



6 were plaintiffs No. 2, 3 and 6, and all had projected that the original predecessor of all of them was their father, Narayan Prasad, who had got interest in the suit land, and they have succeeded in his shoes by law of succession. All sons and widow of Narayan Prasad were plaintiffs therein. The facts of this case are exactly as were in the case of *State of A.P. v. Pratap Karan*, (2016) 2 SCC 82, wherein it was held that once all the legal heirs of a person file a joint suit for rectification of revenue record on the ground that after death of their predecessor they have got right and title being legal heirs, then upon death of one of them, the case will not abate. The Hon'ble Supreme Court held as under :-

“40. In the instant case, the plaintiffs joined together and filed the suit for rectification of the revenue record by incorporating their names as the owners and possessors in respect of the suit land on the ground inter alia that after the death of their predecessor-in-title, who was admittedly the pattadar and khatadar, the plaintiffs succeeded the estate as sharers being the sons of khatadar. Indisputably, therefore, all the plaintiffs had equal shares in the suit property left by their predecessors. Hence, in the event of death of any of the plaintiffs, the estate is fully and substantially represented by the other sharers as owners of the suit property. Therefore, by reason of non-substitution of the legal representative(s) of the deceased plaintiffs, who died during the pendency of the appeal in the High Court, entire appeal shall not stand abated. Remaining sharers, having definite shares in the estate of the deceased, shall be entitled to proceed with the appeal without the appeal having been abated. We, therefore, do not find any reason to agree with the submission made by the learned counsel appearing for the appellants.”

28. Therefore, it is clear that no abatement of the suit of the State ever took place. This is a petition under Article 227 of the Constitution of India. This Court cannot shut its eyes as a supervisory Court towards a material illegality committed by the Trial Court as well as by the Appellate Court in rejecting the suit of the State Government as abated by passing orders Annexure P-3 and P-4. Therefore, exercising suo-motu powers, the said suit



(RCSA 44/1996, in the Court of Civil Judge Class-II, Seoni Malwa, Distt. Narmadapuram) is restored to its file. As there was no abatement of defendants No. 2 and 6, the trial Court shall permit the names of their legal heirs to be incorporated as defendants. In absence to challenge to orders Annexure P-3 and P-4 by the State, this Court cannot interfere to the extent of defendant No.3, against whom application was filed beyond 90 days. However, the effect of the abatement as against defendant No.3 shall be that the said suit shall proceed against remaining sharers/legal heirs of original person-Narayan Prasad. Only to the extent of 1/7 share of defendant No.3, the said suit shall stand abated.

29. It is really a very sorry state of affairs, that in a matter involving valuable land of Burhanpur City, the State has virtually abdicated all its responsibility as State to save the lands on which it claims ownership as against a private person. This is happening when the State has offices of Collectors, Sub-Divisional Officers, Tehsildars, Naib Tehsildars, and a vast cadre of Revenue Inspectors and Patwaris. It appears that there has been a failure of the State as a machinery and its entire system and machinery. The matter was hotly objected by the State Counsel before this Court, knowing fully well that in presence of a decree by the Civil Court, mutation/correction in revenue record is a necessary consequence. It was only a lip-service only to make it believe that the State has contested the matter and lateron to project that since the High Court has directed mutation, therefore, nothing much can be done now. This Court would be the last one to let the unscrupulous State functionaries get away with such type of collusive and



elusive practices.

30. In this particular case it is really unfortunate that initially an ex-parte decree was passed, and then when a suit was filed to set aside the ex-parte decree/to declare it as nullity against the State, firstly, it was allowed to be dismissed as abated. Then an appeal was filed that was rejected by the Additional District Judge on 23.1.2009 vide Annexure P-4. Against that, first a writ petition was filed that was withdrawn by order Annexure P-23 with liberty to file a Revision, and when Revision was filed, it was withdrawn vide order Annexure P-24 with liberty to file a writ petition.

31. It is really surprising that the office of Advocate General did not know whether Civil Revision or Writ Petition was to be filed against order of Appellate Court, and in ignorance of the remedy, the order went unchallenged. It is a serious matter where the Collector of the District, despite lapse of 11 years from 26.3.2014 (when Civil Revision was withdrawn), till date, has not been able to instruct the office of Advocate General to challenge the order in appropriate proceedings. This casts serious doubts over the efficiency and competence of the State to protect the properties, that it projects as its own, vis-à-vis the private persons. Therefore, this Court intends to issue certain general directions in the matter.

32. If it was a lapse of some officer as OIC on behalf of the State, then the first thing that must have been done after getting knowledge of the filing of this petition, was to have challenged the order of Appellate Court in some appropriate proceedings and have taken action against the then OIC.



However, the State has conveniently not challenged the decree of the Civil Court and tried to persuade this Court to hold that mutation cannot be made even in presence of decree of the Civil Court. The action and stand of the State in this matter is an utter joke on the system and on the interests of the State.

33. In an egalitarian society and a State that strives to build and maintain a egalitarian society, the State holds natural resources in public trust. It is a trustee for the general masses, for those who had been deprived of such natural resources, and to ensure their proper distribution and protect the resources from depletion and destruction. The State holds such resources in trust for the deprived masses, and does not hold those to breach the trust and allow the resources to be wasted. Land is a very limited resource, and its availability is limited, restricted and certain. Nothing more requires to be explored or discovered. Therefore, a huge race ensues to grab the land, which is the most scarce resource on Earth, being a part of Earth itself. The State holds lands for the benefit of landless and the voiceless, who have been deprived of land ownership since time immemorial, or for common good of the community and the nation. In either way, it holds land for trust on behalf of common, voiceless and vulnerable citizen(s).

34. In the “Public Trust Doctrine”, the State holds the resources in Trust for the common citizen, and that too, the deprived citizen. The application of the doctrine results in imposition of a check upon governmental authorities who seek to divest State control over such natural resources in favour of private interests. Though the Doctrine is of vintage



origin from Roman Law, and was being applied in modern times in some parts of the World- more particularly in United States, it is only recently that the doctrine has been applied in India. For the first time, it was applied in the case of *M.C. Mehta Vs. Kamal Nath, 1997 (1) SCC 388* in the following manner :-

“24. The ancient Roman Empire developed a legal theory known as the ‘Doctrine of the Public Trust’. It was founded on the ideas that certain common properties such as rivers, seashore, forests and the air were held by Government in trusteeship for the free and unimpeded use of the general public. Our contemporary concern about ‘the environment’ bear a very close conceptual relationship to this legal doctrine. Under the Roman law these resources were either owned by no one (res nullius) or by every one in common (res communis). Under the English common law, however, the Sovereign could own these resources but the ownership was limited in nature, the Crown could not grant these properties to private owners if the effect was to interfere with the public interests in navigation or fishing. Resources that were suitable for these uses were deemed to be held in trust by the Crown for the benefit of the public. Joseph L. Sax, Professor of Law, University of Michigan — proponent of the Modern Public Trust Doctrine — in an erudite article ‘Public Trust Doctrine in Natural Resource Law : Effective Judicial Intervention’, Michigan Law Review, Vol. 68, Part 1 p. 473, has given the historical background of the Public Trust Doctrine as under:

“The source of modern public trust law is found in a concept that received much attention in Roman and English law — the nature of property rights in rivers, the sea, and the seashore. That history has been given considerable attention in the legal literature, need not be repeated in detail here. But two points should be emphasized. First, certain interests, such as navigation and fishing, were sought to be preserved for the benefit of the public; accordingly, property used for those purposes was distinguished from general public property which the sovereign could routinely grant to private owners. Second, while it was understood that in certain common properties — such as the seashore, highways, and running water — ‘perpetual use was dedicated to the public’, it has never been clear whether the public had an enforceable right to prevent infringement of those interests. Although the State apparently did protect public uses, no evidence is available that public rights could be legally asserted against a recalcitrant government.”

25. The Public Trust Doctrine primarily rests on the principle that certain resources like air, sea, waters and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being a gift of nature, they should be made freely available to everyone irrespective of the status in life. 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 purposes. According to Professor Sax the Public Trust Doctrine imposes the following restrictions on governmental authority:

“Three types of restrictions on governmental authority are often thought to be imposed by the public trust : first, the property subject to the trust must not only be used for a public purpose, but it must be held available for use by the general public; second, the property may not be sold, even for a fair cash equivalent; and third the property must be maintained for particular types of uses.”

34. Our legal system — based on English common law — includes the public trust doctrine as part of its jurisprudence. The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the sea-shore, running waters, airs, forests and ecologically fragile lands. The State as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership

35. We are fully aware that the issues presented in this case illustrate the classic struggle between those members of the public who would preserve our rivers, forests, parks and open lands in their pristine purity and those charged with administrative responsibilities who, under the pressures of the changing needs of an increasingly complex society, find it necessary to encroach to some extent upon open lands heretofore considered inviolate to change. The resolution of this conflict in any given case is for the legislature and not the courts. If there is a law made by Parliament or the State Legislatures the courts can serve as an instrument of determining legislative intent in the exercise of its powers of judicial review under the Constitution. But in the absence of any legislation, the executive acting under the doctrine of public trust cannot abdicate the natural resources and convert them into private ownership, or for commercial use. The aesthetic use and the pristine glory of the natural resources, the environment and the ecosystems of our country cannot be permitted to be eroded for private, commercial or any other use unless the courts find it necessary, in good faith, for the public good and in public interest to encroach upon the said resources..”

35. It is no doubt correct that the public trust doctrine under the English common law extended only to certain traditional uses such as navigation, commerce and fishing. But the American Courts in recent cases have expanded the concept of the public trust doctrine. The observations of the Supreme Court of California in **Mono Lake case** [33 Cal 3d 419] clearly show the judicial concern in protecting all ecologically important lands, for



example fresh water, wetlands or riparian forests. The Courts in United States are finally beginning to adopt this reasoning and are expanding the public trust to encompass new types of lands and waters.

36. Our legal system which is based on English common law includes the public trust doctrine as part of its jurisprudence. The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the sea-shore, running waters, airs, forests and ecologically fragile lands. The State as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership.

37. In *M.I. Builders (P) Ltd. v. Radhey Shyam Sahu, (1999) 6 SCC 464*, the Hon'ble Supreme Court further expanded the operation of the doctrine in case of a land of public use being handed over to a builder for construction of shopping complex. The Court held as under :-

51. In the treatise Environmental Law and Policy: Nature, Law, and Society by Plater Abrams Goldfarb (American Casebook Series, 1992) under the Chapter on Fundamental Environmental Rights, in Section 1 (The Modern Rediscovery of the Public Trust Doctrine) it has been noticed that "long ago there developed in the law of the Roman Empire a legal theory known as the 'doctrine of the public trust' ". In America public trust doctrine was applied to public properties, such as shore lands and parks. As to how that doctrine works it was stated:

"The scattered evidence, taken together, suggests that the idea of a public trusteeship rests upon three related principles. First, that certain interests 'like the air and the sea' have such importance to the citizenry as a whole that it would be unwise to make them the subject of private ownership. Second, that they partake so much of the bounty of nature, rather than of individual enterprise, that they should be made freely available to the entire citizenry without regard to economic status. And, finally, that it is the principal purpose of a Government to promote the interests of the general public rather than to redistribute public goods from broad public uses to restricted private benefit...."

With reference to a decision in Illinois Central Railroad Co. v. Illinois [146 US



387 : 36 L Ed 1018 (1892)] it was stated that

“the Court articulated in that case the principle that has become the central substantive thought in public trust litigation. When a State holds a resource which is available for the free use of the general public, a court will look with considerable scepticism upon any governmental conduct which is calculated either to reallocate the resource to more restricted uses or to subject public uses to the self-interest of private parties”.

This public trust doctrine in our country, it would appear, has grown from Article 21 of the Constitution.

52. Thus by allowing construction of underground shopping complex in the park the Mahapalika has violated not only Section 114 of the Act but also the public trust doctrine.

58. To repeat, the agreement is completely one-sided favouring the builder. A land of immense value has been handed over to it to construct an underground shopping complex in violation of the public trust doctrine and the Master Plan for the city of Lucknow. The Mahapalika has no right to step in even if there is any violation by the builder of the terms of the agreement or otherwise. The Mahapalika, though considered to be the owner of the land, is completely ousted and divested of the land for a period which is not definite and which depends wholly on the discretion of the builder.”

38. Most recently, a 3-judge Bench of the Hon’ble Supreme Court again applied the doctrine in the following manner in the case of *T.N. Godavarman Thirumulpad, In re v. Union of India, (2022) 10 SCC 544* in the following manner :

34. This Court has highlighted the public trust doctrine in M.C. Mehta v. Kamal Nath [M.C. Mehta v. Kamal Nath, (1997) 1 SCC 388] and opined that the public trust doctrine is part of the law of land. In para 25 of the said judgment, as reported, this doctrine has been explained with reference to writings of Joseph L. Sax, Professor of Law, University of Michigan, the proponent of Modern Public Trust Doctrine : (SCC pp. 407-408)

“25. The public trust doctrine primarily rests on the principle that certain resources like air, sea, waters and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being a gift of nature, they should be made freely available to everyone irrespective of the status in life. 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 purposes. According to Professor Sax, the public trust doctrine imposes the following restrictions on governmental authority:



‘Three types of restrictions on governmental authority are often thought to be imposed by the public trust : first, the property subject to the trust must not only be used for a public purpose, but it must be held available for use by the general public; second, the property may not be sold, even for a fair cash equivalent; and third the property must be maintained for particular types of uses. ’

39. The said doctrine applies to all resources that are held by the State in trust for the common citizen, and land is one of such resources. The State has been entrusted with that property by the citizens, and it holds it in trust for them. State is not a living being. It acts through its functionaries/public servants, who become the heart and life of the State, and fulfill the obligations of the State for preserving the property held in Trust for the Public. Section 405 IPC, defines Criminal Breach of Trust, while Section 409 contains special provisions of some specified Trustees, including Public Servants. Section 405 is as under :-

405. Criminal breach of trust.—

Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits “criminal breach of trust”.

40. Section 409 contains punishment when offence is committed by some specified persons, including Public Servants, while 406 provided punishment when offence is committed by others, not in specified category under Section 409.

41. Similarly, Section 316 of BNS 2023 has similar provisions by carving out one comprehensive provision encompassing all cases of Criminal Breaches of Trust.



42. It would be a different matter, where the State contests a case involving Government land, and then loses on merits after contest. However, where the State gives a walk-over by remaining *ex-parte* despite service, and then even ignoring to challenge the *ex-parte* decree forever or making challenge after many years, it is certainly a case of breach of Trust, and infact, a criminal breach of Trust. Such instances of State being proceeded *ex-parte* as happened in the present case in the suit filed by the petitioners, is nothing but sheer abdication of its role by the State. The State has a vast Army of Government Pleaders in the Court, and Patwaris, Revenue Inspectors, Naib Tehsildars and Tehsildars, SDOs, Deputy Collectors, Superintendent of Land Records, etc. in the District, and all this staff in the District is headed by the Collector. If only one person is given the task of monitoring the suits involving Government Lands, then valuable lands could be saved, or atleast a timely appeal/any other challenge of *ex-parte* decree would be possible. However, it appears that willfully no monitoring takes place, and no one takes responsibility for such *ex-parte* decrees against the State.

43. The laxity in monitoring is of such a degree, that despite this mammoth staff in every District, the State gets proceeded *ex-parte* in suits involving lands that are recorded as Government lands since prior to enforcement of MPLR Code, or even prior to independence. It is common knowledge that private Banks and finance companies or other corporate entities monitor thousands of their cases by a team of handful employees sitting in a State office, or even a single office in the entire country, and they



are rarely proceeded *ex-parte*. However, the State has not woken up to reality, and with its vast human resources cannot ensure even timely attendance in the Civil Courts, for the valuable land, that is a limited resource, and which the State holds in Trust for the common man, who is voiceless, faceless and powerless. The manner in which lands worth hundreds or thousands of crores are being wasted, requires some remedial action.

44. This gross negligence can be gauged from the very fact that in each Principal District Judge or District Judge's Court who is also vested with powers of Sessions/Additional Sessions Court, there is invariably a Government Pleader or Assistant Government Pleader (GP/AGP) to plead Criminal cases for the State, who is appointed by the Law Department on fixed term. Apart from that, in each Civil Judge's Court vested with Judicial Magistrate's powers, there is an Assistant District Prosecution Officer (ADPO), who is also for Criminal cases, appointed by the Home Department. Despite the Government counsel being available in each Civil Judge's Court and each District Judge's Court throughout the State, the Government is declared *ex-parte* in each Civil case. Despite availability of a counsel in each Court (though for criminal matters), but in nearly all suits involving Government land, some of which may be valued in hundreds or thousands of crores, the Government is being proceeded *ex-parte* despite service. This is nothing, but lack of willingness on part of the State. Not that it lacks resources, it only lacks willingness, and is only too willing to abdicate its duties as a "State", in hands of a handful, to grab and squander valuable



lands.

45. This Court cannot sermonize the State that in what manner, it will ensure that the cases do not get *ex-parte* against the State. One of the ways could be to first prepare a list of suits and to monitor on monthly basis, atleast from the CMIS website of the District Court concerned, if not more. Second option could be to ask the GP/AGP/ADPO posted in each Court to send email directly to the Collector, immediately on a suit being filed in the Court concerned where he is posted, informing him about pendency of such a suit. Thereafter the Collector may take steps for defending the suit. There may be other hundreds of ways. The State is having a mammoth team of technical experts and policy makers to find out the best way. It is high time a policy should be framed fixing criminal liability. The State only lacks willingness and accountability, forcing this Court to step in, to save Government land from being squandered and wasted.

46. Therefore, this Court, by invoking Public Trust Doctrine, directs that the State should frame a specific policy to defend suits involving Government interest in lands, and to put in place a mechanism to challenge final decrees, including *ex-parte* decrees. *This policy should encompass a criminal liability of Breach of Trust for that public servant on whose fault the ex-parte decree was passed and/or remained unchallenged.* Every common citizen shall have a right to complain breach of this policy. Let this policy be framed within six months.

47. Till such a policy is framed, with a view to protect the interest of



common citizen and to save the Government lands being wasted and squandered, it is directed that henceforth, in any case an *ex-parte* decree involving Government Land, passed after date of this order, remains unchallenged in any manner for three months (90 days) from it being passed, then after passing of 90th day from decree, any member of the public shall be at liberty to prosecute u/s 316(5) BNS 2023 (old Section 409 IPC), *after* obtaining sanction for prosecution, the then Collector(s) of the District who was/were posted at the time when such *ex-parte* decree was passed till passing of 90th day, and the concerned Government shall be under obligation to deal with the question of sanction for prosecution of such person within 60 days of such request being received. This will be applicable only to those lands where on the date of institution of the suit, there is revenue entry in name of State, and such entry is sought to be deleted/changed by seeking any declaration against the State, or any declaration against State in matter of ownership of land is sought. However, in those cases where the *lis* is between private parties and State is formal party, the matter would be reported to the Collector, who shall take a decision, whether to defend the suit, or not.

48. Therefore, the present petition is *disposed of* with the following directions :-

- a. The impugned orders are set aside, and the respondents are directed to correct the revenue entries and mutate the names of the decree holders/their successors in the Revenue Record in proper manner, by giving effect to the decree.



b. In the suit of the State that has been brought to life by this order, the parties shall appear before the Trial Court on 08.12.2025. The State shall be at liberty to seek temporary injunction in the said suit.

c. The suit of the State shall stand abated against the defendant No.3 only, but shall continue against other defendants in the manner held by the Hon'ble Apex Court in the case of *Pratap Karan (supra)*.

d. In case the suit of the State is decided in its favour, then the Revenue entries shall be liable to be altered in favour of the State.

49. Invoking Public Trust Doctrine, this Court further directs as under

:-

i. State should frame a policy to defend suits involving Government interest in lands, and to put in place a mechanism to challenge final decrees, including *ex-parte* decrees. *This policy should encompass a criminal liability of Breach of Trust for that public servant for whose fault/default the ex-parte decree was passed and/or remained unchallenged.* Every common citizen shall have a right to complain breach of this policy. Let this policy be framed within six months.

i i . Till this policy is framed, henceforth, in any case an *ex-parte* decree involving Government Land, passed after date of this order, remains unchallenged for an outer limit of 90 days from it being passed, then after passing of 90th day from such *ex-parte* decree, any member of the public shall be at liberty to institute proceedings to prosecute u/s 316(5) BNS 2023 (corresponding to section 409 IPC), *after* obtaining sanction for prosecution, the then Collector(s) of the District who was/were posted at the time when such *ex-parte* decree was passed till passing of 90th day. The concerned Government shall be under obligation to deal with the



question of sanction for prosecution of such person within 60 days of such request being received. Challenge to the *ex-parte* decree for the purpose of this paragraph may be by filing regular appeal, or an application for setting aside *ex-parte* decree under Order 9 Rule 13 CPC.

iii. Paragraph (ii) above would be applicable only to those lands where on the date of institution of the suit, there exists revenue entry in name of State, and such entry is sought to be deleted/changed by seeking any declaration against the State, or any declaration against State in matter of ownership of land is sought.

iv. State is always at liberty to take a decision in every case, whether to make challenge to *ex-parte* decree, or not. This Court cannot interfere in this discretion of the State, and therefore, if the Collector or any other superior authority takes a conscious decision in writing not to challenge the *ex-parte* decree for any reason recorded in writing, then para (ii) above shall not apply.

v. In those cases where the *lis* is between private parties and State is only a formal party, the Collector shall be at liberty to take a decision, whether to defend the suit, or not. If the Collector takes a decision not to defend such suit, then para (ii) above shall not apply even if *ex-parte* decree is passed later.

vi. Paragraph (ii) above shall be applicable only prospectively for the *ex-parte* decrees passed **after** date of delivery of this order. If the State loses the suit after contest, para (ii) above shall **not** be applicable at all.

vii. Upon framing a policy ***incorporating criminal liability***, by the State in terms of para (i) above, para (ii) to (vi) above shall cease to apply. However, the prosecutions that may be initiated under these clauses (ii) to (vi) shall be continued.



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50. No order as to costs.

(VIVEK JAIN)
JUDGE

MISHRA