

**HIGH COURT OF MADHYA PRADESH JABALPUR**

**WRIT PETITION NO. 1377 of 2016**

*Sukhchain and others.*

*Vs.*

*The State of Madhya Pradesh and others.*

For Petitioner : Mr. Aseem Trivedi, Advocate.  
For Respondent/State : Mr. Ankit Agrawal, Govt. Advocate.  
Mr. S.P. Singh, Advocate

Order posted for: **20.09.2017.**

**(SUJOY PAUL)**  
**JUDGE**

**HIGH COURT OF MADHYA PRADESH, PRINCIPAL SEAT AT  
JABALPUR**

<b>Case No &amp; Parties Name</b>	<b><u>Writ Petition No.1377/2016</u></b> Sukhchain and others Vs. The State of Madhya Pradesh and others.
<b>Date of Judgment</b>	<b>20.09.2017</b>
<b>Bench Constituted</b>	Single Bench
<b>Judgment delivered by</b>	<b>Justice Sujoy Paul</b>
<b>Whether approved for reporting</b>	Yes
<b>Name of counsels for parties</b>	<b>Petitioners</b> : Shri Aseem Trivedi,Adv. <b>Respondents</b> : Shri Ankit Agrawal, Government Advocate. Shri S.P. Singh, Adv. (respondent No.6)
<b>Law laid down</b>	(1) Articles 21, 47, 48-A, 51-A (g) of the Constitution-precautionary principle is accepted as a part of law land. The said articles of Constitution give a clear mandate to the State and citizens to protect and improve environment, safeguard, forest and wildlife. It is the duty of citizens to protect and improve natural environment including forest, lakes, rivers and wildlife etc. (2) Sections 5 & 7(A) of the MP Panchayat Raj and Gram Swaraj Adhinyam, 1993- these provisions don't give any unfettered power to Gram Sabha/Panchayat to construct shops at the water body/pond. These provisions are subject to local laws and law of the land. (3) Availability of alternative remedy – no bar when the resolution and action is without authority of law and is in breach of public trust doctrine. (4) Interpretation text and context both are important for the purpose of interpreting a provision.
<b>Significant paragraph numbers</b>	<b>35</b>

**ORDER**  
**(20.09.2017)**

1. This petition filed under Article 226 of the Constitution takes exception to the order passed by the Collector (respondent No.2) dated 21.12.2015 (Annexure P-14) whereby the Collector directed the petitioners to remove the encroachment and disapproved the decision of Gram Sabha to construct the shops on the water body of Village Bhajiya, Tehsil Badwara, District Katni.

2. Briefly stated, the facts narrated by the petitioners are that the Gram Sabha of Gram Panchayat Bhajiya passed a unanimous resolution on 14.04.2013 (Annexure P-2) to permit the construction of shops at the water body is situated within the territory of Gram Panchayat. This decision was taken in order to ensure that the water body is properly protected, and no further soil erosion takes place. The decision was taken with a view to generate employment also.

3. Learned counsel for the petitioners contended that said decision of Gram Panchayat was taken in consonance with Article 243(A) of the Constitution read with Section-7(1)(j-ii) of M.P. Panchayat Raj Evam Gram Swaraj Adhiniyam, 1993 (in short 'Adhiniyam'). By taking this Court to the said provision, learned counsel for the petitioners submits that 'Gram Sabha' which is a body corporate as per Section-5(A) of the Adhiniyam was competent to take decision to construct shops within the area of village in accordance with provision of the Constitution.

4. Shri Trivedi, learned counsel for the petitioners has taken pains to contend that certain villagers were not happy with the decision taken by the Gram Sabha and they preferred complaints before the Tehsildar. It is urged that if anybody is aggrieved by the decision of Gram Sabha, the said decision can be called in question by preferring appeal as per Section-7(H) of the Adhiniyam. The said persons preferred complaint/appeal before incompetent Authority i.e Tehsildar and the Tehsildar erroneously

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entertained the said complaint. He relied on **2008 (3) MPLJ 617 [Prathmik Om Sai Gramin Mahila Bahuddeshiya Sahkari Samiti Maryadit Vs. Sub Divisional Officer, Baihar & others]**. Shri Trivedi contended that Tehsildar without affording opportunity of hearing to the present petitioners to whom shops were already allotted, passed the order dated 13.12.2014 (Annexure P-7). It is submitted that the said order is bad in law in view of the demarcation report dated 08.07.2015 (Annexure P-13). It is argued that as per the demarcation report (Annexure P-13), the construction of shops were made on the boundary (सेड.) of the water body and, therefore, no fault can be found in the action of the Gram Sabha.

5. Shri Trivedi, learned counsel for the petitioners submits that although in a Public Interest Litigation filed by respondent No.6 (Writ Petition No.3094/2015) this Court directed on 12.03.2015 that the Collector must examine the grievance of the petitioners and proceed in accordance with law, such direction, by no stretch of imagination, can bestow jurisdiction to the Collector which he otherwise does not have. Putting it differently, Shri Trivedi contended that neither order passed in Writ Petition No.3094/2015 nor order passed in Review Petition No.373/2015 can be read to give jurisdiction to the Collector by a judicial order. This Court while deciding the Review Petition No.373/2015 made it clear that the Collector has to take the decision 'in accordance with law'. Thus, in absence of any enabling provision, the Collector had no authority, jurisdiction and competence to pass the impugned order.

6. Learned counsel for the petitioners submits that in view of insertion of Article 243(A) in the Constitution, the Gram Panchayat must be treated as a small republic. Reliance is placed on **2015 (10) SCC 400 [Rajendra Shankar Shukla & others vs. State of Chhattisgarh & others]**. By taking assistance from 73<sup>rd</sup> and 74<sup>th</sup> amendment of the Constitution, it is contended that full autonomy was given to the Gram Sabha/Gram Panchayat for the purpose of taking care of the natural resources, land and other things falling within the area of said Gram Panchayat. For same purpose, he placed

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reliance on **2015 (8) SCC 1 [Vipulbhai M. Chaudhary vs. Gujarat Cooperative Milk Marketing Federation Limited & others]**.

7. *Per contra*, Shri Ankit Agrawal, learned Government Advocate supported the impugned order. He submits that a careful reading of Section-7 of the Adhiniyam makes it clear that it does not give any authority to the Gram Sabha to encroach a water body and construct the shops over it. He placed heavy reliance on the language employed in clause (j-ii). It is the stand of the Government that this clause nowhere permits the Gram Panchayat/Sabha to permit construction of shops on or around a water body. Shri Agrawal submits that resolution passed by Gram Sabha runs contrary to the powers conferred on it under Section-7, the said resolution is passed without authority of law and such order need not be challenged by preferring appeal under Section-7(H) of the Act.

8. Learned Government Advocate and Shri S.P. Singh, learned counsel for respondent No.6 placed reliance on Section-57 of the Madhya Pradesh Land Revenue Code (in short 'Code'). It is urged that as per this provision, the entire land, water bodies, minerals etc. are the property of the State Government. The State Government is the owner of the land including water bodies. Thus, it cannot be said that Gram Sabha was competent to take a decision to construct shops on or around the said water body.

9. Shri Agrawal further contends that the action taken by the Tehsildar was based on the report of the Patwari (page No.39) wherein a specific finding was given that certain persons have encroached the water body and 15% of the construction has been made by encroaching the water body. By taking this Court to the order of the Tehsildar, it is submitted that notices were issued to all the encroachers which is evident from the order of the Tehsildar dated 13.12.2014. After following the principles of natural justice, the Tehsildar passed the order (Annexure P-7).

10. Shri Agrawal further submits that the Collector has passed the order in consonance with the directions issued by this Court in the Public Interest

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Litigation and in the aforesaid Review Petition. The order of the Collector cannot be said to be illegal or without jurisdiction. Learned Government Advocate placed reliance on the relevant revenue entry/record to show that pond is shown in the revenue record which shows that it belongs to the Government.

11. Shri S.P. Singh, learned counsel for the respondent No.6 borrowed the said arguments of the learned Government Counsel.

12. The parties confined their arguments to the extent indicated hereinabove.

13. No other point is pressed by learned counsel for the parties.

I have heard the parties at length and perused the record.

14. This is a case where Gram Sabha and petitioners on the strength of Article 243(A) and Sections-5(A) and 7 of the Adhiniyam, trying to justify the resolution and construction of shops at the pond whereas Government's stand is that said provisions do not confer any such licence to Gram Sabha to construct the shops at the pond. This interesting conundrum can be best defined in the words of Justice K.K. Mathew:

*“The major problem of human society is to combine that degree of liberty without which law is tyranny with that degree of law without which liberty become licence; and the difficulty has been to discover the practical means of achieving this grand objective and to find the opportunity for applying these means in the ever shifting tangle of human affairs.”*

[see- 'Legends in Law', Page 372, Universal Publication ]

15. Before dealing with rival contentions, it is apposite to refer the relevant portion of Sections-5-A and 7 of the Adhiniyam:

***Section-5-A. Constitution and incorporation of Gram Sabha.-*** *There shall be a Gram Sabha for every village. The Gram Sabha shall be a body corporate by the name specified therefor having perpetual succession and a common seal and shall by the said name sue and be sued and shall subject to the provisions of this Act and the rules made thereunder have power to acquire, hold and dispose of any property movable or immovable, to enter into contract and to do all other things necessary for the purpose of this Act.*

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***[Section-7. Powers and functions and Annual meeting of Gram Sabha. - (1) Subject to the rules, which the State Government may make in this behalf, and subject to the general or special orders, as may be issued by the State Government from time to time, the Gram Sabha shall have the following powers and functions, namely,-***

***(j-ii) to manage natural resources including land, water, forests within the area of the village in accordance with provisions of the Constitution and other relevant laws for the lime being in force;***

***(j-iii) to advise the Gram Panchayat in the regulation and use of minor water bodies;***

***(l) construction, repair and maintenance of public wells, ponds and tanks and supply of water for domestic use;***

***(m) construction and maintenance of sources of water for bathing and washing and supply of water for domestic animal;***

***(o) construction, maintenance and clearing of public streets, latrines, drains, tanks, wells and other public places;***

***(p) filling in of disused wells, unsanitary ponds, Pools ditches and pits and conversion of step wells into sanitary wells;***

**[Emphasis supplied]**

16. As noticed, the constitutional provision and Sections-5-A and 7 of the Adhiniyam in no uncertain terms makes it clear that powers and functions of Gram Sabha are not absolute in nature. Such powers and functions are subject to the provisions of local laws and general instructions/orders issued by the Government. The State legislature introduced Madhya Pradesh Gram Panchayat (Registration of Coloniser Terms & Conditions) Rules, 1999 (hereinafter called as 'Rules of 1999'). Rule 2(i) describes 'Competent Authority' which means such Sub Divisional Officer who has jurisdiction over Gram Panchayat concerned. Rule 2(d) defines 'Coloniser'. This definition is wide enough to include the activity of converting any land including agricultural land into plots and action to transfer such plots to the persons desirous to construct residential or non-residential or group housing etc. The Rules of 1999 further provide the methodology for the purpose of registration etc. As per these rules, the Government has made attempt to ensure that even land situated in a Panchayat is regulated by way of statutory rules. Section-57 of Madhya Pradesh Land Revenue Code reads as under:

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**“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 [State Government].*

[Emphasis supplied]

17. As per this provision, the legislature has declared that not only the lands but all such things including –(a) standing and flowing water, (b) mines, (c) quarries, (d) minerals, (e) forest reserved or not and (f) all rights in the sub-soil of any land, shall be the property of the State Government. In exercise of power under Section-172 of the said Code, rules regarding diversion of land for building purposes were notified by notification No.1183-(VIII)-63, 03.05.1963. Rules 7 of these rules reads as under:

*“ 7. If any portion of the land included in a holding is occupied by a public road or **public tank** for irrigation or any nistar purposes or is being used by the general public for any kind of nistar, permission to divert it to any other purpose except agriculture shall not be granted, unless the road or tank thereon has ceased to exist or to meet the convenience of the public, or the land is no longer required for a public purpose. Permission to divert the remaining portion of the holding may be granted, subject to the condition that such diversion shall not adversely affect the use and utility of the excluded portion as above.*

**Explanation.-** *For the purpose of this rule “Public tank” shall not include a tank which is used only for irrigation of land in the sole occupation of the Bhoomiswami in whose holding the tank lies.”*

18. A careful reading of this provision shows that if a public tank is being used for the purpose of *nistar* etc. by general public, permission for its diversion can be granted only for the purpose of agriculture. Thus, the Government has taken pains to ensure that pond/water bodies are properly preserved.



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19. Reverting back to Section-7 of the Adhiniyam, on which great emphasis was laid by Shri Trivedi, it is apposite to mention that clause (j-ii) provides that in order to *manage* natural resources, the necessary powers can be exercised. Interestingly, we '*manage*' something which is precious to us. We manage our family, finance, property, resources etc. Thus, the word 'manage' in the context it is used, shows an endeavour to keep, preserve and protect the natural resources including the pond. In Black's Law Dictionary the word 'manage' is defined as 'to control and direct', 'to administer', 'to take charge of' etc. Almost similar meaning is given to this word in Webster's Comprehensive Dictionary and P. Ramanatha Aiyar's Law Lexicon. This is golden rule of interpretation that 'interpretation must depend on the text and the context'. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statue is best interpreted when we know why it was enacted. (See **1987 (1) SCC 424** [*Reserve Bank of India Vs. Peerless General Finance and Investment Company Limited & others*]). It is equally well settled that adopting the principle of literal construction of the statue alone, in all circumstances without examining the context and scheme of the statue, may not subserve the purpose of the statue. In the words of V.R.Krishna Iyer, J., such an approach would be '*to see the skin and miss the soul*'. Whereas, '*the judicial key to construction is the composite perception of deha and dehi of the provision*'. (See **1977 (2) SCC 256** [*The Chairman, Board of Mining Vs. Ramjee*] followed in **2013 (3) SCC 489** [*Ajay Maken Vs. Adesh Kumar Gupta and another*]).

20. Thus, in my view, the word '*manage*' cannot be read in the manner suggested by the petitioners. A combined reading of aforesaid reproduced clauses of Section-7 shows that the legislative intention behind it is to preserve and protect the water bodies/tanks. I am unable to hold that Gram Sabha has any unfettered/unbridled power to '*manage*' its water bodies in the manner it likes. The preservation of water bodies is the constitutional mandate and the statutory duty of the Gram Sabha.

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21. On more than one occasion, the Courts have expressed their concern for preservation of water bodies. In **2001 (6) SCC 496 [Hinch Lal Tiwari Vs Kamla Devi]**, the Apex Court considered Section-117 of U.P. Zamindari Abolition and Land Reforms Act, 1950. As per said provision, certain powers were given to the Gaon Sabhas and other local Authorities. While interpreting the said provision, it was held that it is difficult to sustain the order of the High Court. There exists a concurrent finding that a pond exists and the area covered by it varies in the rainy season. In such a case, no part of it could have been allotted to anybody for construction of house building or any allied purposes.

22. The judgment of Hinchlal Tiwari (supra) was again considered in **2011 (11) SCC 396 [Jagpal Singh Vs State of Punjab]**. In addition, the judgment of Madras High Court reported in **2005 (4) CTC 1 (MAD) [L. Krishnan Vs State of T.N.]** was considered and it was held that the Court will pass a similar order as it was passed in Hinchlal Tiwari and L. Krishnan (supra). A Division Bench of this Court also expressed its concern about conservation of water and natural resources in **2011 (2) MPLJ 618 [Rinkesh Goyal Vs State of Madhya Pradesh]**. Pertinently, it was a PIL in which necessary directions as under were issued.

*“10. In this view of the matter, this petition is disposed of with the following directions:-*

*(1) That, in each divisional level a Committee be constituted under the chairmanship of Revenue Commissioner of the division to monitor the effective implementation of the water conservation schemes introduced by the Government for the aforesaid purpose.*

*(2) The Committee shall also ensure that there should not be any encroachment over the land of ponds, tanks and lakes, and if, there is any encroachment that be removed immediately.*

*(3) The State Government shall take effective steps in regard to water harvesting and ground water level management so the problem of reducing the level of ground water could be tackled.*

*(4) A copy of this order be sent to the Chief Secretary of the State and also the Secretary, Revenue Department of the State.”*

[Emphasis supplied]

23. In **2006 (1) SCC 1 [T.N. Godavaraman Thirumulpad Vs. Union of India & others]** the Apex Court poignantly held as under:

*“Natural, resources are the assets of the entire nation. It is the obligation of all concerned, including the Union Government and State Governments to conserve and not waste these resources. Article 48-A of the Constitution requires that the State shall endeavour to protect and improve the environment and to safeguard the forest and wildlife of the country. Under Article 51-A, it is the duty of every citizen to protect and improve the natural environment including forest, lakes, rivers and wildlife and to have compassion for living creatures.”*

[Emphasis supplied]

24. In the same judgment, the Supreme Court held that we are trustees of natural resources which belong to all including the future generation as well. The public trust doctrine has to be used to protect the right of this as also the future generation.

25. Similarly, a Division Bench of Madras High Court presided over by Markandey Katju, CJ and F.M. Ibrahim Kalifulla, J. (as their Lordships’ then were) in **2005 SCC Online Mad 438 [L. Krishnan Vs. State of T.N]** considered the need of protecting water bodies. After considering Articles 21, 47, 48-A and 51-A (g) of Constitution, it was held that the State has to protect and improve the environment. It has to safeguard the forest, lakes, rivers and wildlife. The ‘precautionary principles’ makes it mandatory for the State Government to anticipate, prevent and attack all of environmental degeneration. The Madras High Court followed the judgment reported in **1997 (3) SCC 715 [M.C. Mehta Vs Union of India]** and came to hold that we have no hesitation in holding that in order to protect the two lakes from environmental degradation, *it is necessary to limit the construction activity in close vicinity of lakes.* This finding is based on para-10 of the judgment of Supreme Court in the case of M.C. Mehta (supra). In **2015 SCC Online Utt 1829 [Tahseen Vs. State of Uttarakhand and others]** Alok Singh, J. held as under:-

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*“What we have witnessed since Independence, however, is that in large parts of the country this common village land has been grabbed by unscrupulous person using muscle power, money power or political clout, and in many States now there is not an inch of such land left for the common use of the people of the village, though it may exist on paper. People with power and pelf operating in villages all over India systematically encroached upon communal lands and put them to uses totally inconsistent with their original character, for personal aggrandizement at the cost of the village community. This was done with active connivance of the State authorities and local powerful vested interests and goondas. This appeal is a glaring example of this lamentable state of affairs.*

[Emphasis supplied]

At the cost of repetition, it is apposite to remember that the Apex Court, in no uncertain terms, clarified that construction activity even in the close vicinity of the lakes; is impermissible. Resultantly, the High Court directed the Authorities to remove encroachments and restore the water body in its original form.

26. In **2013 SCC Online P&H 10564 [Jagdev Singh Vs. State of Punjab & Haryana and others]**, the High Court followed the *ratio decidendi* of Hinchlal Tiwari (supra) and opined that the Gram Panchayat which has a statutory obligation to ensure that water bodies are not diverted for any other use and further to ensure that these water bodies are protected, cleaned and recharged, it cannot be allowed to use a part of it for installation of a statue of a resident of the village. A Division Bench of Calcutta High Court in **2013 SCC Online Cal 1060 [Sandhya Barik & others Vs. State of West Bengal & others]** expressed its view that this is bounden duty of panchayat and other authorities to prohibit such

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construction and said property cannot be alienated or permitted to be destroyed in any manner. No construction can be permitted over such water body. Construction, if any, which have been made by any person, the respondent cannot claim equity. Even if any sanction is granted with regard to construction over the canal, the same is illegal and void. It was further directed that if there exists any encroachment on water body, appropriate action must be taken for clearing the encroachment made over the canal. The public trust doctrine expounded by Supreme Court in M.C. Mehta was followed by Calcutta High Court in Sandhya Barik (supra).

27. Indisputably, in the instant case, the Gram Sabha took a decision to construct shops on the periphery (मेड.) of the pond. In view of constitutional scheme, public trust doctrine and object engrained in Section-7 of the Adhiniyam, Gram Sabha cannot take any decision or pass resolution to raise construction either by disturbing the water body or on the periphery(मेड.) of the water tank. In M.C. Mehta (supra), such action was clearly disapproved by Supreme Court. The common string in the judgments referred hereinabove is that herculean efforts should to be made to protect the water bodies. Such bodies are required to be protected from greedy politicians and persons. Ancient poet *Rahim* said:

रहिमन पानी राखिये, बिन पानी सब सून।  
पानी गये न उबरे मोती, मानुष, चून।।

Meaning thereby:

**Water is most important. As without water, there is no wealth (pearls), life or earth.**

28. Interestingly, in Jagpal Singh (supra), the Apex Court with pains recorded that 'our ancestors were not fools'. They knew that in certain years, there may be droughts or water shortages for some other reasons, and water was also required for cattle to drink and bathe in etc. Hence they built a pond attached to every village, a tank attached to every temple etc. These were their traditional rain water harvesting methods, which, served them for thousands of years. With great concern, Apex Court emphasized that the ponds are now a day's auctioned of at throw away prices to businessmen

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for fisheries in collusion with Authorities/ Gram Panchayat Officials, and even this money collected from these so called auctions are not used for the common benefit of the villagers but misappropriated by certain individuals. The time has come when these malpractices must stop.

29. In the considered opinion of this Court, neither Constitution nor the Adhinyam gives any unbridled/unfettered power and discretion to Gram Sabha to raise construction at or on the periphery (मेड.) of the pond. Thus, argument of petitioners in this regard must fail. The judgments of **Rajendra Shankar Shukla and S.N. Chandrashekhar** (supra) have no application in the facts and circumstances of this case. Any autonomy given by the Constitution or by the Adhinyam needs to be tested on the anvil of enabling provision. When impugned action was tested on the anvil of such enabling provision, the said action was not found to be in consonance with the enabling provisions nor such action can be said to be in larger public interest. At this stage, it is apt to remember the words of Douglas, J. (in United States Vs. Winderlince [1996 L. Ed. 113:342 US 98 (1951)]) 'Law has reached its finest moments when it has freed man from the unlimited discretion of some ruler..... where discretion is absolute, man has always suffered'. The Apex Court followed this principle in 2012 (10) SCC 1[Natural Resources Allocation In Re, Special Reference No.1 of 2012] and expressed that it is in this sense that the rule of law may be said to be the sworn enemy of caprice. Discretion, as Lord Mansfield stated it in classic terms in Wilkes, (ER p. 334): Burr at p.2539 means sound discretion guided by law. It must be governed by rule, not by humour: it must not be arbitrary, vague and fanciful.

Article 343-A read with Section-7 of the Adhinyam makes it clear like noon day that law makers have taken care of this aspect and ensured that unfettered and uncanalized discretion or power is not given to Gram Sabha in the matter of exercise of their power and functions. The powers and functions are subject to the provisions of law and its interpretation by the Courts.

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30. The reliance was placed by petitioners on the case of **2008 (3) MPLJ 617 [Prathmik Om Sai Gramin Mahila Bahuddeshiya Sehkari Samitie Maryadit Vs. Sub Divisional Officer, Baihar and other]**. This judgment was relied upon to bolster the submission that if the complainants/private respondent was aggrieved by decision of Gram Sabha, the proper course was to assail the said resolution as per the procedure laid down in Section-7(H) of the Adhinyam. In view of relevant provision of the Consitution, Adhinyam and Rules made under the Adhinyam and Land Revenue Code, the Gram Sabha was not justified in taking the decision to construct shops on the periphery (मेड.) of the pond. In view of settled legal position, this Court has no scintilla of doubt that the Gram Sabha has exceeded its authority while passing such resolution. In that case, it is not necessary to relegate the complainant/party to avail alternative remedy as per Section 7(H) of the Adhinyam. Since resolution is passed by exceeding jurisdiction/authority, it will not be proper to compel the complainant to go through the procedural technicalities of law. The action of Gram Sabha also runs contrary to public trust doctrine. Thus, such resolution and further action based there upon cannot be permitted to stand.

31. As noticed, in the present case, the learned Collector has taken decision on the basis of directions issued by this Court in a Public Interest Litigation. It is important to note here that Punjab & Haryana, Madras and Calcutta High Courts have entertained Public Interest Litigation and issued necessary directions for preservation of water bodies. M.P. High Court in Rinkesh Goyal (supra) also entertained a PIL and issued necessary directions.

Since the impugned order is passed as per the directions issued in PIL, it cannot be said that said order is without jurisdiction or without authority of law.

32. So far the contention of the petitioners regarding two different reports of Revenue Authorities regarding (report of partwari and demarcation report) encroachment on the pond is concerned, I do not find much

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substance in the said argument. True it is that the order of Tehsildar is based on the report of Patwari and as per Patwari's report, the shops are being constructed by making encroachment in the pond whereas Revenue Inspector gave a different report stating that the construction has been made on the periphery (मेड.) of the water body. In view of clear principles laid down in M.C. Mehta, permission of construction even in the close vicinity of water bodies is impermissible. In the present case, as per the petitioners own claim, the shops are being constructed on the periphery (मेड.) of the lake. Thus, it is clearly done in the close vicinity of the lake. Thus, contradiction (if any) in the report of Patwari and Revenue Inspector is of no help to the petitioners.

33. In view of foregoing analysis, the resolution of Gram Sabha regarding construction of shops in the periphery (मेड.) of pond cannot be countenanced. The said action runs contrary to the relevant provisions and law laid down by the Courts. Thus, no fault can be found in the impugned order of the Collector.

34. Before parting with the matter, I deem it apposite to direct the State Government and the concerned Collector to ensure that all such constructions/encroachments are removed. The official respondents shall remove such constructions and encroachments and file a compliance report before this Court within 60 days. It shall be the duty of respondents to restore water pond to its original shape and condition and preserve it as per the constitutional mandate.

35. With the aforesaid directions, **petition stands dismissed**. No costs.

**(Sujoy Paul)**  
**Judge**