



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH, NAGPUR**

**Public Interest Litigation No.4 of 2023**

Swacch Association, Nagpur ... **Petitioner**

Versus

The State of Maharashtra and others ... **Respondents**

Shri S.A. Rajeshirke with Shri Amogh Parlikar and Shri K.S. Narwade,  
Counsel for Petitioner.

Shri S.K. Mishra, Senior Advocate, assisted by Shri A.S. Fulzele,  
Additional Government Pleader for Respondent Nos.1, 2 and 9.

Shri S.K. Mishra, Senior Advocate, assisted by Shri J.B. Kasat, Counsel  
for Respondent No.3.

Shri Anand Parchure, Counsel for Respondent No.4.

Shri S.M. Puranik, Counsel for Respondent No.5.

Shri A.R. Patil, Counsel for Respondent Nos.6 and 7.

Shri N.S. Deshpande, Deputy Solicitor General of India for  
Respondent No.8.

**CORAM : A.S. CHANDURKAR & MRS. VRUSHALI V. JOSHI, JJ.**

Date when arguments were heard : 11<sup>th</sup> October, 2023.

Date when the judgment was pronounced : 30<sup>th</sup> November, 2023.

**JUDGMENT (PER A.S. CHANDURKAR, J.) :**

1. The present proceedings have been filed in public interest by Swacch Association, a Society registered under the Societies Registration Act, 1860 as well as under the Maharashtra Public Trusts Act, 1950. It seeks to raise the issue with regard to impermissibility of installation of musical fountain and associated machinery inside the body of Futala Tank. It also seeks to object to the construction of the viewer's gallery on the bank of Futala Tank and prays that the Tank be

restored to its original state after demolishing the viewer's gallery. The prayer for interim relief was made by the petitioner during the pendency of the present proceedings and by the order dated 5-7-2023, the interim relief as prayed for was not granted. However, directions were issued to the respondents to ensure that the spirit behind imposing restrictions under Rule 4 of the Wetlands (Conservation and Management) Rules, 2017 ('the Rules of 2017') is strictly observed and no construction of a permanent nature within Futala Lake is undertaken. In the aforesaid backdrop, the present proceedings are being considered.

2. According to the respondents, the order dated 5-7-2023 takes into consideration all the apprehensions expressed by the petitioner. They submit that as Futala Lake is not a 'wetland' as defined under Rule 2(1)(g) of the Rules of 2017, the interim order dated 5-7-2023 be made absolute and the parties be directed to act in accordance with the directions issued therein. The petitioner however contends otherwise to urge that the prohibition, as contemplated by Rule 4 of the Rules of 2017 to undertake any activity of a permanent nature in a wetland be implemented insofar as Futala Lake is concerned.

3. Shri S.A. Rajeshirke, learned counsel for the petitioner, submitted that Futala Lake, though not declared as a 'wetland' in terms of Rule 2(1)(g) of the Rules of 2017, was an identified wetland and the same found mention in the National Wetland Inventory and Assessment (NWIA). The said inventory having been taken in the year

2006-07 and Futala Lake having been identified as a wetland, the provisions of the Rules of 2017 ought to be applied with full rigor. Referring to the very same decisions that were pressed into service when the prayer for interim relief was considered, the learned counsel submitted that no construction of any nature whatsoever was permissible in such water body. Referring to Rule 4(2) of the Rules of 2017, it was urged that the activities undertaken by the respondents were prohibited for being so undertaken at a wetland. Such activities amounted to committing an encroachment on a water body. Referring to the provisions of the Unified Development Control and Promotion Regulations for the State of Maharashtra, it was submitted that even for a construction of a temporary nature, permission of the Planning Authority was necessary. Such permission was not taken, thus resulting in breach of the said Regulations as well as violation of Rule 4 of the Rules of 2017. A similar contention was raised insofar as construction of viewer's gallery on the bank of Futala Lake was concerned. Though the said area fell within the green zone, commercial activities were sought to be undertaken therein. This construction was within 50 metres of the water body and there was no power whatsoever with the Planning Authority to relax such criteria. The parking plaza being constructed across the road also fell within the green zone wherein construction was not permissible. Giving a go by to the Regulations and without changing the user of such land, the construction had been undertaken which required interference at

the hands of the Court. The learned counsel then referred to the Environment Status Report of the City of Nagpur that was prepared by the National Environmental Engineering Research Institute, Nagpur to submit that the quality of the Lake water would deteriorate with the user of the Lake for such activities. Huge amounts were likely to be spent on the said venture which was highly arbitrary. Commercial interests of the respondents could not be given precedence over environmental concerns of the general public. Reference was made to the provisions of Section 63 of the Maharashtra Municipal Corporations Act, 1949 to indicate the nature of duties and responsibilities of the Municipal Corporation in that regard.

4. To substantiate the stand of the petitioner, the learned counsel referred to the Public Trust Doctrine as envisaged in the decisions in *M.C. Mehta Versus Kamal Nath and others [(1997) 1 SCC 388]*, and *Hinch Lal Tiwari Versus Kamala Devi and others [(2001) 6 SCC 496]* that had been referred to in *Navi Mumbai Environment Preservation Society and another Versus Ministry of Environment through its Secretary, Department of Environment and others [2018 SCC OnLine Bom 4074]*. The learned counsel also referred to the decision in *Jitendra Singh Versus Ministry of Environment and others [(2020) 20 SCC 581]* in that regard. Attention was also invited to the Precautionary Principle that stands accepted by the Hon'ble Supreme Court in its decisions and it was submitted that the activities undertaken by the respondents ought to

be discontinued. The said venture itself could be shifted to a place otherwise than a green belt so as to protect Futala Lake. On this premise, it was prayed that this Court may pass appropriate directions in public interest.

5. Shri S.K. Mishra, learned Senior Advocate for the respondent Nos.1, 2 and 9 which included the State Wetland Authority, opposed aforesaid submissions. He reiterated the stand taken by the said respondents while opposing the prayer for interim relief. He submitted that though the activities in question had commenced in 2019, the present proceedings had been filed in December 2022 and thereafter by amending the prayers in June 2023, the petitioner had sought to raise a belated challenge to such activities. There was no explanation whatsoever furnished by the petitioner for the delay in approaching the Court in the present proceedings. The construction activities that had commenced after obtaining due sanction were on the verge of completion. Reference was made to the sanction orders dated 18-10-2019 and 1-9-2022 issued by the Competent Authorities. It was pointed out that these orders of sanction had not been challenged by the petitioner nor was a prayer made that the sanctions granted were illegal. As long as the orders of sanction operated, there was no question of demolishing the construction that was undertaken on that basis.

It was submitted that as a Wetland Authority constituted by the Ministry of Environment of the State Government, it had taken a

specific stand that Futala Lake was not a ‘wetland’ under Rule 2(1)(g) of the Rules of 2017. The contents of the affidavit filed on behalf of the Wetland Authority were neither disputed nor controverted. Since Futala Lake was a man-made water body, it did not answer the definition of a ‘wetland’ under Rule 2(1)(g) of the Rules of 2017. While the petitioner sought to support its stand by contending that Futala Lake was an identified wetland, the Wetland Authority had specifically asserted that it was not a declared ‘wetland’ under the Rules of 2017. There was no reason whatsoever to disregard the opinion of the Competent Authority that was placed on record. It was then submitted that after obtaining all due permissions and without disturbing the ecology, the activities in question had been undertaken. Due permission of the Heritage Committee had also been obtained which had not been challenged by the petitioner. The requisite plans were sanctioned by the Planning Authority under the relevant regulations which again were not subjected to challenge. Since all activities were being undertaken in accordance with the sanctioned plans, there was no illegality in the same. The learned Senior Advocate submitted that the State was conscious of the responsibilities envisaged by Articles 48-A and 51-A of the Constitution of India. Since it was clear that the provisions of Rule 4(2) had not been violated, no relief whatsoever be granted to the petitioner. The directions issued in the interim order dated 5-7-2023 were being complied with by the respondents.

6. Shri Anand Parchure, learned counsel appearing for the respondent No.4- Maharashtra Metro Rail Corporation Limited (MMRCL), submitted that the said respondent was merely an executing agency of the plans that had been duly sanctioned by the Competent Authority. He referred to the affidavits filed on behalf of the said respondent dated 14-6-2023 and 25-8-2023. It was reiterated that no permanent structure was being constructed in the water body. The artificial banyan tree was in fact a projection on a screen and the same was not to be constructed. The plans as well as the drawings undertaken under the guidance of Visvesvaraya National Institute of Technology, Nagpur were also referred to. It was further submitted that various activities had been undertaken to restore the precincts of the Futala Lake at the instance of the Heritage Committee. The activities in the Lake would result in agitating the surface of the water which would ultimately result in maintaining its quality. There was no threat to aqua life in that regard. The respondent No.4-MMRCL would ensure that none of the activities undertaken would result in causing any damage to the Tank. It was reiterated that the directions issued in the interim order would be obeyed by the said respondent. Since no permanent structure was being constructed, the apprehensions expressed by the petitioner were misconceived.

7. Shri S.M. Puranik, learned counsel appearing for the respondent No.5- Nagpur Metropolitan Regional Development Authority reiterated the stand that was taken earlier. He too

questioned the delay on the part of the petitioner in approaching the Court and submitted that after obtaining all due permissions, the work in question had been undertaken.

Shri A.R. Patil, learned counsel for the respondent No.6- Dr. Punjabrao Deshmukh Krishi Vidyapeeth, Nagpur referred to the resolution dated 9-6-2020 that was passed by the respondent No.6 permitting use of the land for construction of the parking plaza. Since the said land was not of much use to the respondent No.6, the same was permitted to be used as parking plaza. The ownership of the said land continued with the respondent No.6 while permitting such user. Reference was also made to the sanction granted in that regard along with the permission for change of user dated 6-2-2023 issued by the Urban Development Department of the State of Maharashtra. It was thus submitted that no further directions ought to be issued in the present proceedings.

8. We have given due consideration to the respective submissions and we have also perused the documentary material on record. At the outset, we may state that most of the contentions now urged were also urged when the prayer for interim relief was considered. The said contentions find mention in the order dated 5-7-2023 and hence with a view to avoid repetition, a separate reference to the same is not being made herein. Suffice it to observe that the order dated 5-7-2023 was not subjected to any further challenge and the same continues to operate. On the basis of the material on record, a finding has been



recorded based on the affidavit filed by the Director, Environment and Climate Change Department of the State Government/Principal Secretary to the State Wetland Authority that Futalaka Lake being a man-made water body, it does not fall within the definition of the term 'wetland' under Rule 2(1)(g) of the Rules of 2017. There is no additional material placed on record thereafter for this Court to re-consider the said issue afresh. It may be noted that the learned counsel for the petitioner reiterated that the petitioner was relying on the fact that Futala Lake was an identified wetland as per the NWIA 2006-07 while the respondents urged that the said Lake being a man-made water body is not a declared wetland. Since the field is covered by the Rules of 2017 and Futala Lake does not answer the definition of the term 'wetland', we hold that being a man-made water body, Futala Lake is not a 'wetland' under Rule 2(1)(g) of the Rules of 2017.

9. Notwithstanding the aforesaid position on record, we may refer to the Office Memorandum dated 8-3-2022 issued by the Ministry of Environment, Forests and Climate Change of the Government of India. In the light of the order passed by the Hon'ble Supreme Court on 4-10-2017 in Writ Petition (Civil) No.230 of 2001 [*M.K. Balakrishnan and others Versus Union of India and others*], it was clarified/reiterated by the said Office Memorandum that the wetlands identified as per NWIA 2011 should be protected as per Rule 4 of the Rules of 2017.

Thus even if Futala Lake is not a declared wetland by the State Wetland Authority, the restrictions imposed vide Office Memorandum dated 8-3-2022 ought to apply to the said Lake. It is in this backdrop that the respondents had been directed to ensure that the spirit behind enacting the Rules of 2017 is not violated by undertaking any construction of a permanent nature within Futala Lake. We are inclined to continue this direction with a view to protect and preserve Futala Lake from any construction of permanent nature being undertaken therein. At this stage, we may refer to the affidavit dated 25-8-2023 filed on behalf of the respondent No.4-MMRCL. In Paragraph 13 of the said affidavit, it has been stated as under :

*“13. ... It is submitted that the Respondent No.4 assures this Hon’ble Court that none of the above activities would be carried out without appropriate sanctions and permission of which are already obtained and it would be ensured that not only the guiding provisions and rules are adhered to but even the cleanliness, hygiene and associated items as contemplated under the Swacch Bharat Mission would be implemented. It is further ensured that any of the activities undertaken would not result in causing any damage to the tank. It is further ensured that during the construction by this Respondent, the water body where the floating banquet hall, floating restaurant as well as Artificial Banyan Tree are proposed is kept clean and is properly maintained by taking all necessary precautions/steps in this regard.”*

10. Notwithstanding the fact that Futala Lake is not a declared wetland, we cannot be oblivious of the expectations envisaged in Part IV and Part IV-A of the Constitution of India. Article 48-A requires the State to protect and improve the environment and to safeguard the forest and wildlife of the country. Article 51-A(g) recognizes the duty of every citizen of India to protect and improve the natural environment including lakes. Thus even if Futala Lake is not a declared wetland, the duties and responsibilities imposed by the aforesaid provisions would have to be adhered to in true letter and spirit. The learned counsel for the petitioner is justified in invoking the Public Trust Doctrine that has been recognized by the Hon'ble Supreme Court in its various decisions including the decision in *Animal and Environment Legal Defence Fund Versus Union of India and others [(1997) 3 SCC 549]*. In *M.C. Mehta* (supra), it has been observed that the Public Trust Doctrine primarily rests on the principle that certain resources like air, sea, waters and the forests have 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 one's status in life. The said 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.

The Precautionary Principle has also been recognized by the Hon'ble Supreme Court in its various decisions including the decision in *A.P. Pollution Control Board Versus M.V. Nayudu [(1999) 2 SCC 718]*. According to the said principle, it is better to err on the side of caution and prevent environmental harm that could be irreversible in future. It would be better to anticipate environmental harm and take measures to avoid it or to choose the least environmentally harmful activity. The said principle has been thereafter consistently applied by the Courts in larger public interest. A Co-ordinate Bench in *Navi Mumbai Environment Preservation Society* (supra) has applied both the aforesaid principles while considering measures to be taken to safeguard lakes and water bodies in Navi Mumbai. We are of the view that an approach based on a fusion of the Public Trust Doctrine as well as the Precautionary Principle would be required to be adopted in the present case so as to preserve Futala Lake which is a man-made water body.

11. We may state that the efforts taken by the petitioner in highlighting the present issue deserve to be recognized as the present proceedings have been initiated in public interest and they are not adversarial in nature. Preservation of Futala Lake is of paramount importance and the respondents are duty bound to act responsibly in a manner consistent with Articles 48-A and 51-A(g) of the Constitution of India. It is for this reason that the aspect of unexplained delay and laches on the part of the petitioner, as urged by the respondents, is not

considered a formidable reason for not entertaining the present proceedings in public interest.

12. It is not in dispute that the activities of construction of the viewer's gallery and parking plaza are preceded by various requisite permissions and sanctions granted by the concerned authorities. The documents on record indicating the same supported by affidavits of the concerned authorities have not been specifically challenged by the petitioner. In effect, therefore, the sanctions granted including the sanctions dated 18-10-2019 and 1-9-2022 continue to operate. Similarly, the permissions granted by the Heritage Committee on 30-6-2022 as well as 6-2-2023 granted by the Urban Development Department permitting change of user continue to operate. In absence of any challenge to the same, a total prohibition on such activities as sought by the petitioner cannot be imposed. At the same time, it would be necessary to ensure that in accordance with the spirit of the Rules of 2017, no permanent construction would be undertaken at the man-made water body- Futala Lake.

13. Thus, by applying the Public Trust Doctrine as well as the Precautionary Principle, it is directed that the respondents shall ensure that the spirit behind the Rules of 2017 and especially Rule 4(2)(vi) thereof is not violated by undertaking any construction of a permanent nature within Futala Lake. The respondent No.4-MMRCL alongwith the respondent No.3- Nagpur Municipal Corporation are directed to ensure that the activities undertaken by them do not result in causing

any damage to the Lake. They shall also ensure that the water body where the floating banquet hall, floating restaurant as well as the artificial banyan tree are proposed is kept clean and is properly maintained by taking all necessary precautions/steps in that regard. In addition, the statements made in the affidavit dated 25-8-2023 filed on behalf of MMRCL that have been reproduced hereinabove would also be binding on the said respondent.

It is expected that the respondents would also be alive to the need for preserving the man-made water body- Futala Lake to enable the future generations also to be able to witness the Lake in its present form. It would therefore be necessary for the respective respondents to ensure that their activities do not result in causing any ecological damage to the water body and that the quality of aqua life is not adversely affected. Though the present proceedings are being disposed of with a hope that the respondents would abide by the expectations referred to hereinabove, it is made clear that it would be open for any public-spirited citizen to bring to the notice of the Court any acts that could result in causing damage to the water body in future.

14. The Public Interest Litigation is disposed of in aforesaid terms leaving the parties to bear their own costs.

(MRS. VRUSHALI V. JOSHI, J.)

(A.S. CHANDURKAR, J.)