



**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO. _____ OF 2025
(@Special Leave Petition (C) No.1420 OF 2024)**

SWACCH ASSOCIATION, NAGPUR

...APPELLANT(S)

VERSUS

**THE STATE OF MAHARASHTRA
& ORS.**

...RESPONDENT(S)

J U D G M E N T

N.V. ANJARIA, J.

Leave granted.

1.1 Heard learned Senior Advocate Mr. Gopal Sankaranarayanan for the appellant, learned Solicitor General Mr. Tushar Mehta for respondent Nos.1, 2 and 8, learned Additional Solicitor General Ms. Aishwarya Bhati for

respondent Nos.8 and 9, learned Senior Advocate Mr. Shekhar Naphade for respondent No.3, learned Senior Advocate Mr. S.K. Mishra for respondent No.4, learned Senior Advocate Mr. Dama Seshadri Naidu for respondent No.5, learned Senior Advocate Mr. Rohit Anil Rathi for respondent No.6, learned Senior Advocate Mr. Neeraj Kishan Kaul for the intervenor, along with the respective assisting learned advocates, at length.

2. The appellant-original petitioner addresses challenge to the judgement and order dated 30.11.2023 passed by the Division Bench of the High Court of Bombay¹, whereby the High Court disposed of the Public Interest Litigation No.4 of 2023 with certain observations and directions, declining to grant prayers made in the petition.

2.1 The petition before the High Court was filed by the appellant-Swacch Association-an organisation registered under the Societies Registration Act, 1860 as also under the Bombay Public Trusts Act, 1950, claiming to be a body engaged in the green practices and for promoting a healthy environment, in which a grievance was raised in respect of certain constructions and recreational activities set up in and around the Futala Lake² in Nagpur City, Maharashtra. The case put forward by the appellant was that the said Futala

¹ Hereinafter, "High Court".

² Hereinafter, "Futala Tank"

Lake was a 'wetland' and it ought to be protected for its environmental value and that the constructions which were made thereat were of permanent nature.

2.2 What was prayed was to declare that the installation of Musical Fountain and machinery thereof inside the body of the Futala Lake was illegal and against the public trust principle. It was further prayed to declare that the construction of the Viewer's Gallery on the bank of the Futala Tank was also illegal. The third prayer was for issuance of direction against respondent No.5-Nagpur Metropolitan Regional Development Authority to remove the Musical Fountain and the related set-up installed inside the body of the Futala Tank and to restore the Tank to its original state.

2.3 The fourth prayer was advanced for directing respondent No.3-Municipal Corporation Nagpur and respondent No.4- Maharashtra Metro Rail Corporation to demolish the viewer's gallery. Yet another prayer was made to declare that the construction of the Parking Plaza on the land bearing *Khasra* No.13/3 at *Mauje Futala* was contrary to the zone shown in the sanctioned development plan for Nagpur. Also, a direction was sought against respondent Nos.3 and 4 to demolish the building which was under construction on the said land.

2.4 Interim prayers were made seeking a restraint order against respondent No.4 from carrying out further construction of the Parking Plaza as also against respondent No.5 from holding of Musical Fountain Show, Laser Show and Multimedia Show at the Futala Tank.

3. The case of the appellant before the High Court and further emphasised before this Court was *inter alia* that in the guise of beautification and in the name of recreational activities for the people, the respondent authorities had proceeded to construct and erect the Viewer's Gallery on the bank of the Futala Tank and had installed Musical Fountain in the body of the Tank. It was the grievance of the appellant that the construction of nine storeyed building near the Futala Tank was proposed for parking, food court, etc. and that erected there was a Floating Restaurant, artificial Banyan Tree and a Musical Fountain inside the body of the lake.

3.1 It was contended that the Futala Lake was identified as 'wetland' in the map of Wetland Atlas of Maharashtra which was part of National Wetland Atlas. It was further claimed that the Lake is a 'wetland' within the meaning of Rule 2(1)(g) of the Wetlands (Conservation & Management) Rules, 2017³, therefore the restrictions contained in Rule 4(2) (vi) of the 2017 Rules would apply, more particularly in the

³ Hereinafter, "2017 Rules".

present case the prohibition contained in Rule 4(1)(iv) would operate.

3.2 It was stated that in the National Wetland Inventory as carried out by Space Application Centre, Ahmedabad under the project “National Wetland Inventory and Assessment (“NWIA)” funded by the Ministry of Environment, Forest and Climate Change, Government of India, the Futala Tank was mentioned amongst 2,01,503 wetlands in the inventory list. The definition of wetland provided in Rule 2(1)(g) of the 2017 Rules has been wrongly construed by the High Court.

3.3 It was the case of the appellant that not only those prohibitions were given a go-by in creating recreational and beautification projects at the lake site, but the Construction Rules and the norm of minimum Fifteen meters’ distance for any construction from a waterbody were also violated. It was further contended that in the sanctioned development project of Nagpur City, the proposed construction between the Futala Tank and eighteen metres road was permissible, however the construction was found to be on the *Pali* (boundary wall) of the Futala Tank.

3.4 It was next contended that the setting up of artificial Banyan Tree was a permanent construction inside the waterbody which was not only in breach of the prohibitory

rules, but also it has a damaging effect to the Lake. It was the case that a waterbody of Futala Tank- a 'wetland', was exploited for commercial purposes without caring for adverse ecological effect.

3.5 It was pleaded that under Article 21 of the Constitution, right to life has been given an expanded interpretation by this Court to include the right to clean air, clear water, clean environment, hygienic atmosphere and ecological balance. Article 48-A of the Constitution lays down the duty of the State to protect, safeguard and improve the environment and safeguard forest and wildlife, in addition to Article 51-A (g) of the Constitution which casts a duty on every citizen to protect the natural environment including lakes and rivers.

3.6 The appellant then referred to the principle of public trust enunciated by this Court in **M.C. Mehta vs. Kamal Nath & Ors.**⁴ It was submitted that the construction of Viewer's Gallery on the Futala Tank would change the nature of the waterbody as well as its use, to take away its environmental value. It was submitted that the activities permitted in and around the tank run contrary to the doctrine of public trust.

4 (1997) 1 SCC 388

3.7 It may be mentioned that the High Court by a reasoned order dated 05.07.2023 refused to grant any interim relief to the appellant. The *prima facie* finding was recorded in the interim order that the Futala Lake does not fall within the purview of Rule 2(1)(g) of the 2017 Rules. However, the High Court observed that since the lake was mentioned as 'wetland' in the National Wetland Inventory and Assessment (NWIA), prohibition in Rule 4(2)(vi) of 2017 Rules deserves to be treated as relevant to protect the lake.

4. Respondent No.3-Municipal Corporation Nagpur, respondent No.4-Maharashtra Metro Rail Corporation and respondent No.5- Nagpur Metropolitan Regional Development Authority filed their replies and placed materials before this Court also in the present proceedings to refute the case and allegations of the appellant.

5. The following facts which are not disputed, go to show that the competent authorities granted various permissions for the projects and recreational facilities at Futala Lake, which were in accordance with the Rules and the norms.

(a) For Viewer's Gallery, plans were submitted on 29.08.2019 which were sanctioned by the Municipal Corporation Nagpur on 18.10.2019. The Heritage Committee granted sanction on 29.09.2018 and the

revised plan was sanctioned on 15.06.2021, in accordance with which the work was executed.

(b) The Parking Plaza plan was sanctioned by the Town Planning Department, Nagpur Municipal Corporation on 01.09.2022. The Heritage Committee also approved the parking plaza construction. It was thereafter that the Environmental Management Plan and the Dam Stability reports were submitted. The Heritage Committee again sanctioned the proposal on 30.06.2022.

(c) The Floating Stage-cum-Floating Banquet was permitted as per the No Objection Certificate (NOC) received on the different occasions on 07.03.2022, 21.03.2022 and 08.04.2022 from the Public Works Department. Similarly, NOCs were received from Group Captain, Commanding Officer, HQ Maintenance Command (Unit) on 22.09.2022, from District Deputy Commissioner of Animal Husbandry, Nagpur on 28.04.2022, from Assistant Commissioner, Fisheries Department, Nagpur on 23.05.2022, from the authority of the Heritage Conservation Committee, Nagpur on 20.07.2022, from Nagpur Municipal Commissioner, Nagpur on 10.05.2022 and also from the City Police Commissioner, Nagpur on 03.12.2022. Thus, the competent authorities have sanctioned the project.

(d) The artificial Banyan Tree is a part of Multimedia Show for which also admittedly, NOC was obtained from the authorities mentioned above, including the local authority.

(e) In respect of alleged utilization of land bearing Number 13/3 Mauje Futala, the Forest Department through Office of the Deputy Conservation Officer, Nagpur by communication dated 01.03.2024, stated that the said land was not a forest land. It was occupied by Dr. Panjabrao Deshmukh Agricultural University which used to grow saplings thereon.

(f) The Parking Plaza is not set up in the agricultural zone. It was given out that as per the applicable Regulation, the development of parking plaza upto 0.2 FSI of the gross plot area is permissible and that the competent authority has sanctioned the building plan accordingly in compliance with the norm.

(g) By Notification dated 15.10.2003, the State Government sanctioned the 'Regulations for conservation of building, artefacts, structures, areas and precincts of historic and cultural significance'. The Futala Tank is mentioned at serial number 132 in the Schedule of these Regulations which is treated as Grade I heritage structure.

In that view, the necessary sanction of the Heritage Conservation Committee was obtained before securing the permission for development of Futala Tank and Parking Plaza etc. which was granted by the Heritage Committee after obtaining a compliance report.

5.1 It is to be stated that the abovementioned permissions and No Objection Certificates granted by the competent authorities concerned, for the recreational facilities and beautification project set up at the place of the Lake, have not been challenged by the public interest litigant-appellant at any stage of the proceedings.

5.1.1 The respondents, including respondent No.4 have stated that in order to ensure the protection of ecological balance, compensatory afforestation was carried out in respect of the trees which were required to be removed for executing the directions at certain places. The trees which were removed were compensated by planting other trees at the location given by the Municipal Corporation. It was claimed that the Floating Musical Fountain Show resulted into improvement of quality of water in the Futala Tank and its aquatic life is enhanced. It was further stated that the Viewer's Gallery and the Parking Plaza are in the dry zone. The Viewer's Gallery has worked as protection against dumping of waste and encroachment.

5.2 Now, before proceeding further, it is warranting for the court to conclude on the kind and nature of the constructions in and around the Futala Tank, which are subject matter of grievance. The work of Viewer's Gallery has been executed as per the approved plan and that it was shown that the same is constructed on the Bund road adjacent to the precinct of the Futala Tank, which does not disturb the existing precinct. It is at a height of 4 metres above the dam level, which is permissible under the guidelines. The Gallery does not touch the embarkment structure. It could not be demonstrated that the Viewer's Galley in its existence has any adverse ecological effect.

5.2.1 No constructions are carried out in the catchment area of the Lake. The construction of the floating restaurant, banquet and the platform could not be categorized as permanent construction. It was given out that platform design was reviewed and vetted by IIT, Mumbai.

5.2.2 What was harped in particular on behalf of the appellant is that the Banyan Tree artificially created for recreational purpose is put up inside the Futala Lake and that it is a permanent structure causing serious harm to the waterbody. It was also claimed that 7000 tonnes of concrete stones were dumped inside the tank for constructing the screen of the Banyan Tree.

5.2.3 As per the factual details placed by the respondents, the said allegation was erroneous and exaggerated, merely based on the newspaper clipping. It was stated that since the Banyan Tree is to be used as the screen for the 3D show, it is accordingly erected using the Kerb stones weighing 350 tonnes in the total area placed inside the structure so that there is no lateral movement and the wind load is countered.

5.2.4 The Banyan Tree size is 25m x 10=250 square meters which is just 0.51% of the total area of the tank. Importantly, the structure of Banyan Tree is not secured by any permanent foundation. Nor it is affixed on the bed of the tank. Therefore, the structure of banyan tree cannot be termed as permanent structure. The working of the said Banyan Tree structure was executed as per the design proof-checked by Visvesvaraya National Institute of Technology, Nagpur.

5.2.5 When the Banyan Tree is not embedded on the bed of the lake and when there is no foundational support laid for it inside the tank and when it is removable at any time, this Court is inclined to accept and hold that the erection of Banyan Tree could not be regarded as a permanent structure. The structure possesses all the characteristics of a temporary structure on account of its very nature of built and removability, the existence thereof cannot be viewed as perpetual.

5.3 Next examining the central issue as to whether the Futala Tank classifies within the meaning and definition of Section 2(1)(g) of the 2017 Rules, the Futala Tank, also known as Telangkhedi Tank, a waterbody situated on the Western side of Nagpur City, was constructed in the year 1799 by Shri Gyanoji Bhosale. The lake covers, along with its catchment to be about 200 hectares. It was not a natural water reservoir, but constructed by the then Ruler, to cater to the irrigational needs. Undoubtedly, the lake is a man-made lake for the city of Nagpur.

5.3.1 When the definition of 'wetland' in Rule 2(1)(g) of the 2017 Rules is looked at, the Futala Lake is not classifiable within the statutory definition. The 2017 Rules are framed by the Parliament in exercise of powers conferred by Section 25 read with Sub-Section (1) and clause (v) of Sub-Section (2) and Sub-Section (3) of Section 3 and Section 23 of the Environment (Protection) Act, 1986, in supersession of Wetlands (Conservation and Management) Rules, 2010.

5.3.2 Rule 2 (1)(g) of the Rules contained the definition of 'Wetland' which is as under,

“ 2(1) ...

(g) 'wetland' means an area of marsh, fen peatland, or water; whether natural or artificial, permanent or

temporary, with water that is static or flowing, fresh, brackish or last, including areas of marine water the depth of which at low tide does not exceed six meters, but does not include river channels, paddy fields, human-made water bodies/tanks specifically constructed for drinking water purposes and structures specifically constructed for aquaculture, salt production, recreation and irrigation purposes.”

5.3.3 It could be seen from the aforesaid definition of ‘wetland’ that the statutory concept of wetland does not include river channels, water body and tanks which are specifically constructed for drinking water purposes and the structural construction is for aquaculture, salt production, recreation and irrigation purposes. Such exclusions stand outside the corners of the definition. Section 2(1)(i) is the definition of “wise use of wetlands” to mean the maintenance of the ecological character, achieved through implementation of eco-system approach within the context of sustainable development.

5.3.4 The historical facts given out in the reply of respondent No.4 filed in the present proceedings, goes to show clearly that the lake is a man-made waterbody constructed for drinking water and for irrigation purpose. It is

stated that as per the available record of Futala Tank at the Nagpur Museum of Archaeological Department of Nagpur popularly known as Ajab bungalow, *'Originally the reservoir was constructed to create a source of water in the Telankhedi precinct, which was recreational garden for the bhonsale's and site for their prestigious guest house for dignitaries. This catchment lake was formed by damming the Futala stream which collects water from the slope of seminary hills and starky hillock. Retaining wall forms the eastern edge of the lake, and it was a broad low parapet and circular bastions. Futala stream which is one of the important tributaries of Nag River in the City, became significant due to holding of water in the Futala Tank.'*

5.3.5 The Futala Tank is thus an arrangement in the lower promenade in the centre. There is a well in which water is collected through weep holes inside the stone masonry. The water is supplied by gravity force through pipes. It was stated that there is a valve for operation. These aspects go to show that the Futala Lake was made for irrigational purpose. It was stated that the area of the Punjabrao Deshmukh Krishi Vidyapeeth which is for agricultural and research purpose falls on the Eastern side, that is, on other side of the road.

5.4 In view of this Court, the Futala Lake is a man-made waterbody and it does not fall within the meaning of the

statutory definition and is not a 'wetland' as defined in Rule 2(1)(g) of the 2017 Rules. The definition excludes human-made waterbodies and those constructed *inter alia* for irrigation purposes. The High Court was justified in recording finding in the interim order dated 05.07.2023 and confirming the same while passing the impugned final judgment and order.

5.5 It is to be noted that Rule 4 of the 2017 Rules which provides for the restrictions of activity in the 'wetland' would not apply *stricto sensu* to Futala Tank as the Lake falls outside the statutory definition. The said Rule is extracted hereinbelow,

“4. Restrictions of activities in wetlands.—(1) The wetlands shall be conserved and managed in accordance with the principle of 'wise use' as determined by the Wetlands Authority.

(2) The following activities shall be prohibited within the wetlands, namely,-

(i) conversion for non-wetland uses including encroachment of any kind;

(ii) setting up of any industry and expansion of existing industries;

(iii) manufacture or handling or storage or disposal of construction and demolition waste covered under the

Construction and Demolition Waste Management Rules, 2016; hazardous substances covered under the Manufacture, Storage and Import of Hazardous Chemical Rules, 1989 or the Rules for Manufacture, Use, Import, Export and Storage of Hazardous Micro-organisms Genetically engineered organisms or cells, 1989 or the Hazardous Wastes (Management, Handling and Transboundary Movement) Rules, 2008; electronic waste covered under the E-Waste (Management) Rules, 2016;

(iv) solid waste dumping;

(v) discharge of untreated wastes and effluents from industries, cities, towns, villages and other human settlements;

(vi) any construction of a permanent nature except for boat jetties within fifty metres from the mean high flood level observed in the past ten years calculated from the date of commencement of these rules; and,

(vii) poaching.”

(Emphasis supplied)

5.6 It is to be noticed however, that one of the prohibited activities in Rule 4 (2)(vi) of the 2017 Rules is construction of permanent nature. In **M.K. Balakrishnan vs. Union of India** which was Writ Petition (Civil) No.230 of 2001 by order dated 08.02.2017, this Court dealt with the subject matter of ‘wetland’ identification and directed as under,

“We direct the application of the principles of Rule 4 of the Wetlands (Conservation and Management) Rules, 2010 to these 2,01,503 wetlands that have been mapped by the Union of India. The Union of India will identify and inventorize all these 2,01,503 wetlands with the assistance of the State Governments and will also communicate our order to the State Governments which will also bind the State Governments to the effect that these identified 2,01,503 wetlands are subject to the principles of Rule 4 of the Wetlands (Conservation and Management) Rules, 2010”

5.6.1 In the subsequent order dated 04.10.2017, the aforesaid direction was reiterated stating that in terms of the previous orders dated 08.02.2017, a total of 2,01,503 wetlands that have been mapped by the Union of India should continue to remain protected on the same principle as were formulated in Rule 4 of the Wetlands (Conservation and Management) Rules, 2010.

5.6.2 In view of above, the High Court in its impugned judgment correctly observed in paragraph 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.”

5.6.3 The following further pertinent observations made by the High Court in the same paragraph,

“.....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.”

5.7 It is to be appreciated that the High Court gave certain directions including that the respondent shall ensure that the spirit of Rule 4(2)(vi) of the 2017 Rules will be respected and structure of any permanent nature within the lake would not be undertaken. The High Court further directed the respondents including the Municipal Corporation Nagpur to ensure that the activities nearby the Futala Lake does not lead to any damage to the Lake and further that the entire

waterbed along with its recreational and beautification structures are kept clean and properly maintained.

5.8 It is only proper that this pristine waterbody in the city of Nagpur continues to exist with twin objectives, namely to bring public good for the citizens of the city of Nagpur and also contribute to maintain environment friendliness without causing any ecological damage, both to the waterbody itself as well as to the quality of aqua life. This Court reiterates the directions as well as hope expressed by the High Court.

5.9 Applying the restrictions and rigours of Rule 4 of 2017 Rules and in ensuring its relevance to the waterbodies or wetlands, even if they are not covered within the statutory definition, there is a recognition of precautionary principle and doctrine of public trust, which is a judicial foresight and a salutary approach. The various directions issued by the High Court as referred to above, in the impugned judgment, are only an extension of such foresighted thought acted upon.

6. The judicial wisdom has evolved the doctrine of public trust. This doctrine has the intake of Articles 48-A and 51-A (g) of the Constitution, which in its ultimate analysis aims to preserve and conserve the natural resources like air, water, objects of nature to be applied for public good and collective societal interest and the natural bodies of various kinds on the earth. The concept is that the public has a right

to expect certain natural things including waterbodies, wetlands and natural lands like forests to retain their natural ingredients, and further that the idea of maintenance of their original characteristics finds way into the law of the land.

6.1 Propounded in **M.C. Mehta** (supra) and several subsequent decisions of this Court, the public trust doctrine is a salutary principle. The Supreme Court observed in **M.C. Mehta** (supra) that,

“The notion that the public has a right to expect certain lands and natural areas to retain their natural characteristic is finding its way into the law of the land. The ancient Roman Empire developed a legal theory known as the "Doctrine of the Public Trust". 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.....”

(Para 23)

6.2 In the following observation, there lies a dictum that upholding of the public trust principle is the duty of the governmental authorities dealing with the natural resources,

“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.

(Para 25)

6.2.1 It was then stated,

“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.”

(Para 25)

7. The public trust doctrine need not be limited to the natural bodies such as waterbodies, wetlands, lakes, rivers which are nature’s gifts, but holds true also with respect to the man-made or artificially created waterbodies as well as the things and the objects from nature in order to promote ecology and environment. All those man-made or artificial bodies created from natural resources which contribute to the environment and are eco-friendly in their existence, have to be subject to the doctrine of public trust.

8. The human activities which are in tune with the nature and ecology or which are designed for creating healthy environment have to be guided and protected by legal measures. It calls for the responsibility not only on the part of the citizens, but the authorities also are equally enjoined to ensure that the doctrine of public trust in this sphere is applied and furthered.

9. The public trust doctrine would thus extend in respect of even man-made or artificially created natural objects, waterbodies, lakes, wetlands, etc. which are drawn and created from the nature or natural resources. It would in ultimate analysis pave way to extend to ensure the availment of right of healthy environment and ecological balance recognized for the citizens under Article 21 of the Constitution. At the same time promoting sustainable development for public good is not alien to it.

10. The judgment and order of the High Court and the directions issued therein are a balancing exercise. It is eminently proper and legal, booking no error.

11. The present appeal is hereby dismissed.

In view of the dismissal of the Appeal, all interlocutory applications, as may be pending would not survive and stand disposed of accordingly.

.....,CJI.
[B.R. GAVAI]

.....,J.
[K. VINOD CHANDRAN]

.....,J.
[N.V. ANJARIA]

**NEW DELHI;
OCTOBER 07, 2025.**

(VK)