

THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JAI PUR BENCH JAI PUR

1. D. B. Civil Writ (PIL) Petition No. 6039/2011
Prof. K. P. Sharma V/s State of Rajasthan & ors.

2. D. B. Civil Writ Petition (PIL) No. 5039/2010
Dharohar Bachao Samiti V/s State of Rajasthan
Rajasthan & ors.

Reportable 3. D. B. Civil Writ Petition (PIL) No. 4860/2010
Heritage Preservation Society V/s State of Raj.
Rajasthan & anr. & ors.

Date when the Order was reserved :: - 1. 5. 2012

Date of pronouncement of Order :: - 17. 5. 2012

PRESENT

HON' BLE THE CHIEF JUSTICE MR. ARUN MISHRA
HON' BLE MR. JUSTICE MAHESH BHAGWATI

Mr. Aruneshwar Gupta)
Mr. Rajendra Prasad) -for petitioners.
Mr. A. K. Jain)

Mr. G. S. Bapna, Sr. Advocate)
Advocate General with Mr. S. Jain)

Mr. R. N. Mathur, Sr. Advocate)
with Mr. Sanchit Tamra)

Mr. K. K. Sharma, Sr. Advocate)
with Ms. Alankrita Sharma) -for respondents.

Mr. A. K. Sharma, Sr. Advocate)
with Mr. Anurag Sharma)

Mr. S. N. Kumawat, Addl. Advocate General)
Mr. Akhil Simlote)
Mr. S. S. Hora)

ORDER

BY THE COURT (Per Hon' ble Arun Mishra, CJ)

The writ petitions have been filed in the public interest to quash *Jal Mahal Tourism Project* and cancel *Mansagar Lake Precinct Lease Agreement* dated 22nd November, 2005 giving 100 acres of land on lease for a period of 99 years to respondent no.7-Jal Mahal Resorts Private Limited and *Jal Mahal Leave & License Agreement* dated 22nd November, 2005. In Writ Petition No.6039/2011, prayers have also been made to quash the approvals and clearances contained in the orders dated 16.9.2009 and 22.9.2009 and to direct the respondent no.7-Jal Mahal Resorts Pvt. Ltd. to restore the original position of 100 acres of land by removing the soil filled-in by it at its own cost and to hand over the possession to the Municipal Corporation, Jaipur; to immediately remove all sedimentation and settling tanks from the Mansagar Lake basin at its own costs; to restore position of Nagtalai and Brahampuri Nalah (Drains) to their original position as realigned by RUIDP under Mansagar Lake Restoration Plan. Prayer has also been made to direct the respondents-authorities to monitor and maintain the Mansagar Lake in its full original length, breadth and depth and to take appropriate action against all those responsible for execution of the contract for transfer of 100 acre land in favour of RTDC as well as the respondent no.7-Jal Mahal Resorts Pvt. Ltd. and for permitting the respondent no.7 to excavate the soil of the Mansagar Lake, construct sedimentation and settling tanks in the lake basin and filling in and compacting of 100 acres land area of the lake basin and realignment of the drainage of Nagtalai and Brahampuri Nalah. Prayer has also been made that compensatory fine as determined by

this Court may be imposed for causing damage to the Mansagar Lake area and environment. In Writ Petition NO.5039/2010, prayers have also been made to remove all encroachments made in the catchment area of Mansagar Lake; discharge of sewage in the Mansagar Lake be stopped; people be allowed to go to their religious places Bhairav Mandir, Mazar etc. situated near Jal Mahal without any obstruction.

Facts are being narrated from Writ Petition No. 6039/2011 Prof. K. P. Sharma V/s State of Rajasthan & ors. It is averred that the petitioner is involved in the research with regard to Mansagar Lake and has published a paper which was read in the 12th World Lake Conference (TAAL 2007) and the same has been filed as Annex.1 to the petition and another research paper Annex.3 has also been filed. It is submitted that Mansagar Lake is a large lake on the northern fringe of Jaipur City. The maximum level of the lake is at 99.0m contour at which volume of water is 3136569.75 MCM. The lake glory as a pristine water body lasted until the former rulers had their control over the city and unpleasant history of lake began when new administration of Jaipur diverted walled city sewage in 1962 through two main waste water drains namely, Brahampuri and Nagtalai. The most notorious aquatic weed water hyacinth (*Eichhornia crassipes*) entered in the lake in 1975. During studies made by the petitioner and his colleagues, 10 zooplankton species, arthropods, fishes and 92 species of birds were observed at Mansagar Lake and out of 92, 41 are aquatic and 51 were forest dwellers. The water fowl population included 16 resident and 25 migratory species. The

Mansagar Lake and the monument therein were declared protected monuments, however, they were deleted from protected monuments in the year 1971.

It is further averred that the Ministry of Environment and Forest (for short "the MOEF"), Government of India prepared National Lake Conservation Plan (for short "NLCP") for restoration, conservation and maintenance of urban lakes. The Government of Rajasthan has submitted project for restoration of Mansagar Lake to the Central Government. The total cost of the project was estimated to be Rs. 24.72 crores, out of which, 70% was to be provided by the Government of India while the rest was to be borne by the State Government. The administrative approval and expenditure sanction was granted by the MOEF vide order Annex.5 dated 5.9.2002 and the order was revised by the MOEF vide Annex.6 dated 23.12.2002. The JDA implemented the lake restoration plan under which Sewage Treatment Plant (STP) near Brahampuri has been revamped from which treated water is being diverted to lake for compensating evaporation losses during dry weather. A two step Tertiary Treatment Plant has also been developed. Lake has been cleared from hyacinth plants completely by the JDA. The JDA has also invested in development of lake front promenade on Jaipur-Amer Road and constructed road etc. along the lake on north side which has formed a new water body of about 5 hac. in size for storing hill run off during rainy season for wild life which includes Hanuman Langur (*Semnopithecus entellus*), Blackaped Hare (*Lepus nigricollis*), Indian Porcupines (*Hystrix indica*), Blue bull (*Boselaphus tragocamelus*), Sambhar (*Cervus unicolor*), Common

Mongoose (*Herpestes edwardsii*), Jackals (*Canis aureus*), Striped Hyaena (*Hyaena hyaena*) and panther (*Panthera leo*). The JDA has also funded Rs.10 million to the State Forest Department for improving lake catchments area falling in the Nahargarh hill area (Arawali Range) which is the only natural watershed. The lake is surrounded almost from three sides by Arawali Hill Ranges. The hills are either part of Nahargarh Wildlife Sanctuary or Reserved Forest Ranges known as Amer Block 54 and Amargarh Block 92. Map of Nahargarh Wildlife Sanctuary has been filed as Annex.7 to the petition. The petitioner and his team was working in executing a JDA sponsored project on bank stabilization of the lake since May, 2005. 35 species of tree and 28 of shrubs were planted. Besides improving landscape, the plant species provide shelter and food to the local fauna. Migratory birds may also be benefited. Similar plantation was also done on three islands.

It is further averred that Jal Mahal Tourism Infrastructure Project was conceived and approval was given by the ***Standing Committee on Infrastructure Development*** (for short "SCID") in its 3rd meeting held on 21.12.1999. Resolution Annex.10 has been filed in which it was stated that Jaipur Municipal Corporation must own the project. The bids were invited in the year 2000-01 without identification of the land to be used and without studies with regard to environment impact assessment. The bid process was scrapped and JDA was made sponsoring department for the lake side development component in the meeting of ***Board of Infrastructure Development and Investment Promotion***

(for short "the BIDI") held on 23.8.2002 and 3.9.2002.

The petitioner has emphasized that MOEF granted administrative approval and expenditure sanction only for the lake restoration components and there was absolutely no consideration by the MOEF to the lake side development component of the so called Jal Mahal Tourism Project. As a matter of fact, the National Lake Conservation Plan did not contemplate any such commercial venture upon the lakes to be restored under the plan, which according to PDCOR contemplated the following components: -

- Task 1 Restoration of Mansagar Lake.
- Task 2 Restoration and Reuse of Jal Mahal Monument.
- Task 3 Development of Tourism/Recreational components at the Lake precincts.

The petitioner has further submitted that in the meeting of BIDI held on 5.8.2003, it was decided that nodal agency for the Jal Mahal Tourism Project will be Tourism Department of Government of Rajasthan instead of JDA. Thereafter, the Tourism Department assigned the responsibility to the ***Rajasthan Tourism Development Corporation*** (for short "the RTDC") vide order Annex.14 dated 6.9.2003. Though bidding was started, but no survey of the actual site and demarcation of 100 acres area on the map was made and even environment impact assessment was not carried out before planning the project. In the advertisement, the last date for submission of bid was 5th September, 2003. It was necessary under the terms of the bid that only Private Limited Company or Public Limited Company could have

submitted tender. It was necessary that Lead Manager should be Private or Public Limited Company. The offer was submitted by KGK Enterprises, partnership firm and its HUF Manager, thus, it was not fulfilling eligibility qualification provided under the terms inviting tender. However, later on decision was taken to include KGK Enterprises though it was lacking eligibility condition. Jal Mahal Resorts Pvt. Ltd. Company has been incorporated on 10th November, 2004. The decision was also taken to give exemption of stamp duty etc. During the bidding, it was made clear that no commercial activity would be permitted within the precincts of Jal Mahal Complex, but even before agreements were executed, the successful bidder not only sought exemption for commercial activity within the precincts of Jal Mahal Complex but also sought revision of the project proposal and for maintenance of lake water level at the cost of the Government vide letter dated 13.7.2004 Annex.25 to the petition. The petitioner has also submitted that out of 100 acres land, 14.15 acres of land was submerged in water, which has also been leased out. The Mansagar Lake Precincts Lease Agreement dated 22.11.2005 has been filed as Annex.29 to the petition and Jal Mahal Leave and License Agreement dated 22.11.2005 is Appendix-14 of Lease Agreement Annex.29.

It is further averred in the petition that master plan of Jaipur-2011 did not permit such activities at the site. 100 acres of land was part of the lake bed itself, out of which 14.15 acres of land was submerged in the water. The area was sensitive for eco system and thus, environment impact assessment was required to

be carried out before any such project was prepared, but the same was not done. There was no 100 acres of land beyond the spread of lake bed itself available on the site. It is further submitted that wall of sufficient height has been constructed for setting apart the proposed 100 acres land from the lake bed and the soil from the lake bed itself was actually used for this purpose. The respondent no.7 Jal Mahal Resorts Pvt.Ltd. has also started preparing high walls of mud and soil in the eastern part of the lake bed near sluice gates and a large area around it for the purpose of preparing sedimentation tanks in the lake bed itself. The project people visit land most frequently disturbing birds on the island and the connection of island with mainland has also led to entry of dogs on the island which feed on the eggs of birds and thus, basic objective of island to provide habitat/breeding ground for resident and migratory birds is forfeited.

It is further submitted by the petitioner that one third of the lake was converted into a series of sedimentation tanks made in the down stream of the lake by respondent no.7. Now all dirt with floating objects enters into sedimentation tanks made in the lake bed. Thus, the entire lake has been converted into a series of small tanks followed by a large tank i.e. lake. This has adversely affected aesthetic value of the Mansagar Lake. Prior to construction of storm water management plan, lake water also used to be released for irrigation. Now, water will be released through sluice gates into downstream directly without flowing through the lake basin and there will be no flushing out of salts from the lake. The build up of salts will convert

fresh water lake into a saline lake which will alter its flora and fauna. It is further submitted by the petitioner that the respondent no.7 was not at all concerned with the construction of storm water management plan that too in the lake bed itself. It has been carried out without any requisite sanction and study by any of the concerned authority otherwise such a large area of the lake could not have been allowed to be sacrificed for such purpose. As per the monitoring done by the petitioner, the chloride content in the Mansagar Lake has been increased and salt in water has gone high, details of which have been given in the petition. The sudden increase in the chloride content of the lake is attributed to direct human interference by way of altering lake basin character. This increase in salinity will definitely affect the lake bio diversity and both the native and migratory birds and species diversity will significantly be dropped. The report of actual reduction in number of birds has been published in Dainik Bhaskar dated 2.2.2010, which has been filed as Annex.34 to the petition. The unique to the area is an endemic species, namely, Plum Headed Parakeet found in the protected forest in Arawali. The project would be dangerous to the species. Due to settling/sedimentation tanks in the lake bed itself, silt/filth, which was to be avoided after restoration of the lake, is willfully invited and drained in the lake itself, which has increased salinity of the water also. The petitioner has further submitted that revision has destroyed the very substratum of the project which was earlier conceived. The whole project after completion was to be put in use by 2010, however,

the respondent no.7 has not done anything except filling and compacting the 100 acres land in the lake bed itself by excavating the soil from the lake basin. Though only 13% of the land was to be used for construction activities of the private sector developer and would be of restricted entry and rest 87% was to remain in the form of open spaces, parks, gardens and unrestricted public entry spaces, but in the name of commercial viability and loosely drafted clauses of the bid documents and contracts, complete revision of the plan has been sought by the respondent no.7 after declaration as successful bidder. The Committee under the Chairmanship of the Chief Secretary of the Government of Rajasthan considered the revised master plan and rejected the changes on 10.10.2007. However, another representation was submitted by the respondent no.7 and on 10.9.2009 sanction was granted by the Committee as is evident from Annex.44 to the petition.

The petitioner has submitted that Environment Impact Assessment (EIA) was not carried out before finalization of the project or execution of the lease agreement and even environment clearance from MOEF, Central Government was not obtained as required under EIA notification dated 27.1.1994. The Central Government has issued a fresh notification (Annex.46 to the petition) on 14.9.2006 in exercise of power conferred under section 3 of the *Environment (Protection) Act, 1986* (hereinafter referred to as "the Act of 1986") and rules framed thereunder for environment clearance before implementation of the projects mentioned therein. The project in question is covered by item 8(a) as well as 8(b) of the said

notification and therefore, project cannot be implemented without obtaining environment clearance from the Central Government under the aforesaid notification. Since no environment impact assessment was carried out nor any environment clearance has been obtained before finalizing the project, all actions taken by the respondents are absolutely illegal and void.

The petitioner has further submitted that respondents are deliberately and willfully acting in collusion with the private entrepreneur in violation of the provisions of the *Water (Prevention and Control of Pollution) Act, 1974* (hereinafter referred to as "the Water Act"). The petitioner has come to know that the Pollution Control Board has also been misled by representing that the Tourism Project has clearance of MOEF though no such clearance was obtained for the said Project from MOEF. The environment clearance as required under notification dated 14.9.2006 has not been obtained nor any compliance of *Wetlands (Conservation and Management) Rules, 2010* (hereinafter referred to as "the Wetlands Rules") has been made so far.

It is further averred that Ramgarh dam which used to fulfil the requirement of water in the walled city of Jaipur has been totally dried up. Thus, there is necessity to maintain and improve the existing water bodies in their original shape including Mansagar Lake. The JDA has invested huge amount approximately Rs.25 crores for restoration of Mansagar Lake.

The petitioner has further submitted that it is a case of siphoning of valuable public property. The

value of 100 acres of land is not less than Rs. 3500/- crores. The DLC rates for commercial land in question is Rs. 79,063/- per square mtr. Lease for 99 years amounts to sale and as per rules, it was necessary for the respondents to realize the sale price and additionally, the lessee was required to pay annual lease money also. The market price used to be much higher than DLC rates, especially when location being picturesque and ecologically rich. If such land is sold for five star hotels, resorts, luxury villas etc., such land carries invaluable importance. The value of such land cannot be said to be less than 3500 crores. The State Government has handed over valuable natural resource of water surrounded by natural beauty of hills and forests, full of wildlife and other natural resources maintaining environmental and ecological balance of the city to a private entrepreneur solely for economic exploitation at the cost of public. The revision of the master plan completely converts the tourism project into privately owned township upon 100 acres of land which has been let out for a paltry sum by the Government.

In *Writ Petition No. 5039/10 Dharohar Bachao Samiti V/s State of Rajasthan & ors.*, it has been mentioned that the project area which has been leased out to Jal Mahal Resorts Pvt. Ltd. vide Mansagar Lake Precinct Lease Agreement dated 22nd November, 2005 and Jal Mahal Leave & License Agreement dated 22nd November, 2005 is as follows: -

<i>Total Project Area</i>	<i>432</i>	<i>Acres</i>
<i>Mansagar Lake</i>	<i>310</i>	<i>Acres</i>
<i>Wetland Area</i>	<i>12.0</i>	<i>Acres</i>
<i>Lake front promenade</i>	<i>10</i>	<i>Acres</i>
<i>Project Area (for PSD)</i>	<i>100</i>	<i>Acres</i>

It is further submitted that project assets defined in the agreement means all tangible and intangible assets relating to the facilities including rights over the demised premises in the form of lease, sub lease, license, right of way or otherwise; tangible assets such as the facilities, foundation, embankments, buildings, structures, pavement and walkways, drainage facilities, sign boards, milestone, electrical works for lighting, telephone and other communication equipment at the demised premises etc. Jal Mahal Resorts Private Limited has also been given right to sub lease, grant license and determine, demand, collect, retain and appropriate the sub lease rentals and license fees. It is further averred that as per the provisions of Section 16 of the *Rajasthan Tenancy Act* (for short 'the Tenancy Act') *Gairmumkin* land cannot be transferred to any person. Jal Mahal Resorts Pvt.Ltd. has constructed a wall and almost stopped the flow of water to the lake from one side. No one has a right to obstruct catchment area and supply of water. However, the respondents-authorities have permitted Jal Mahal Resorts Pvt.Ltd. to construct 400 rooms in the hotel in the catchment area and part of the lake.

It is further averred that in the year 1968, as per Section 3 of the *Rajasthan Monuments, Archaeological Site and Antiquities Act, 1961* (hereinafter referred to as "the Act of 1961"), Jal Mahal was declared as protected monument. However, in the year 1971, without any rhyme or reason, notification was withdrawn. Merely because a monument was declared as non-protected monument, it does not take away the character of ancient monument as defined

in Section 2(i) of the Act of 1961. There is a need to preserve the monument and its historical significance.

In Writ Petition No. 4860/2010 Heritage Preservation Society, Rajasthan & anr. V/s State of Rajasthan & ors., it is submitted that Jal Mahal has been used for holding 'dungals' on 'Makar Sankranti' i.e. January 14th of every year. On 23.9.1965, Peer Baba Ki Mazaar situated at Jal Mahal was declared as Wakf Property and on 10.3.2004, the Public Works Department granted lease of Peer Baba Ki Mazar to Waqf for 99 years. By developing seven star hotel in 100 acres of land, area of Mansagar Lake would be reduced by almost 1/3rd, which is in contravention of the judgment of this Court dated 2.8.2004 in Abdul Rahman V/s State of Rajasthan (2004 (4) WLC (Raj.) 435) and in violation of the mandate of Articles 48A and 49 of the Constitution. Mansagar Lake would be scarred and defaced by Seven Star hotel etc.

The main grounds to assail the transaction in question are non-clearance of the Tourism Project by the MOEF; contravention of notification issued by MOEF; violation of public trust doctrine; action is against public interest; fraud upon Constitution and public; action is violative of Section 16 of the Rajasthan Tenancy Act; 100 acres of land in question is part of bed of Mansagar Lake and it was not transferable; Section 92 of the Rajasthan Municipalities Act, 1959 (hereinafter referred to as "the Municipalities Act") has been violated as all tanks, reservoir, wells and water works etc. vest in the Municipal Board and be under its direction, management and control and shall be held as per Municipalities Act for the purpose;

action is in contravention of the judgment of this Court passed in the case of Abdul Rehman (supra); there is no valid transfer of the land owned by JDA, Municipalities and PWD in favour of RTDC and when there is no proper and valid transfer of the land in question in favour of RTDC, further transaction by RTDC in favour of Jal Mahal Resorts Pvt.Ltd. is illegal, without jurisdiction and void ab initio; Section 54 of the *Jai pur Development Authority Act, 1982* (hereinafter referred to as "the JDA Act") governs the manner of disposal of land vested in JDA and similarly, Sections 80 and 92 of the Municipalities Act govern the disposal of land by Municipalities. The State Government has framed the *Rajasthan Municipalities (Disposal of Urban Land) Rules, 1974* (hereinafter referred to as "the Rules of 1974") and the action is in violation of the aforesaid provisions of the Acts and Rules; lease deed has been executed by the Government of Rajasthan on behalf of the Governor of Rajasthan through Rakesh Saini, Director, RTDC under authorization granted vide order dated 14.11.2005, however, in the recital it has been mentioned that the RTDC owns the demised premises and in that case, Government of Rajasthan cannot be party to the lease; 100 acres of land did not belong to the Government of Rajasthan or RTDC; land belonging to Municipal Corporation could not have been divested except in accordance with the provisions of the Municipalities Act and the Rules; there is misrepresentation with regard to size of the lake; the original size of the lake is much more than 432.8 acres and area of Mansagar Lake was never limited to 310 acres and this artificial size has been projected with

a malafide intention to carve out 100 acres project area out of the bed of the lake; in the master development plan 2011 of Jaipur Region, the land use of the area near lake has been specified for recreational purposes and the same is surrounded by a large ecological zone; the project in question is located within 10 kms of Nahargarh Wildlife Sanctuary and thus, same would fall in category-A, otherwise it would have been of category-B, but since it is within 10 kms from the boundary of Nahargarh Wildlife Sanctuary, the same would fall in category-A and thus, the only authority to give environment clearance is Central Government MOEF and no such clearance has been obtained from MOEF; misrepresenting of administrative approval and sanction of expenditure for restoration of Mansagar Lake as environment clearance of MOEF is fraudulent action on the part of the respondents; as per Section 15 of the Act of 1986, the contravention of order is an offence punishable with imprisonment extending to five years; under the *Environment Protection Rules, 1986* also, the environment has to be protected considering biological diversity, environmental capability and the proximity of the area to the protected area of sanctuary notified under *Wildlife (Protection) Act, 1972* (hereinafter referred to as "the Act of 1972"). The project will have adverse effect on reserve forest, wildlife sanctuary, forest dwelling and migratory wildlife in large number with extensive bio diversity of important animals, birds and fishes including endemic birds. It is also contended that Wetlands Rules cover drainage area or catchment region of the lake within the definition of "wetland" under the Wetlands Rules and

and therefore, all activities of reclamation are prohibited. Under Rule 4(4) of the Wetlands Rules, the Government is obliged to carry out detailed EIA as per procedure specified in the notification dated 14.9.2006. No wetland shall be converted into non-wetland use unless the Central Government is satisfied on the recommendation of CWRA that it is expedient in the public interest to do so. The State Government under Rule 6(2) of the Wetlands Rules is under obligation to prepare brief document within a period of one year to identify and classify the wetlands under Rule 3 and submit the same to the Central Wetlands Regulatory Authority. As the Wetlands Rules have already come into operation, the respondent-State and other authorities are under obligation to complete the aforesaid exercise and thereafter, to go with the project. The action is violative of Articles 14, 21, 48A and 51-A(g) of the Constitution of India. Ground has also been raised that it is a case of fraudulent siphoning of valuable public property. The value of the land in question was not less than Rs. 3500 crores and annual lease money at the rate of 5% would come to Rs. 175 crores per annum, but the respondents-authorities have only realized annual lease rentals of Rs. 2.52 crores and thus, the transaction in question is against public interest and public largesses have been frittered away to a private sector developer. Successful bidder had no experience of executing a single such type of project; successful bidder was not even qualified; the company which was created after acceptance of the bid was nothing but fraudulent creation of a limited liability private company of

father and son only whose total paid up capital share on the date of its incorporation was Rs. one lac only and total authorized capital of the company itself was merely Rs. 50 lacs. Such a private company could not have been given the land worth Rs. 3500 crores. More than 100 acres of land has been handed over to private person and out of 100 acres of land, there is further right of selling it at the best possible market price available to the licensee to mortgage the property to raise the loan etc. It is also contended that respondents- authorities are not at all benefitted as they are bound to provide various facilities to the lessee for 99 years at their own costs.

Thus, transaction is not at all beneficial to the lessor. Construction of Hotel is not permissible in the area in question. Maximum commercial benefit has been permitted of the loosely drafted contract. Revised plan is bad in law as all elements of open public spaces have almost been wiped out. There are Dargah and temples also and thus, area in question could not have been leased out to a private person. The construction will affect holding of *dungals* on *Makar Sankranti* on 14th January of every year.

Stand of State and authorities

In the return filed by the respondents-State and its functionaries/authorities, it was submitted that Master Development Plan 1976-91 of Jaipur City contained provision of various facilities on south and west side of Jal Mahal Lake in 200 acres. It was permissible to have five star hotel, tourist bungalows,

holiday cottages and other tourist facilities. In the Master Development Plan 2011, similar provision was retained. Erstwhile Urban Improvement Trust, Jaipur proposed a scheme in respect of 520 acres of land which was published in the Gazette on 31.7.1975. The Jaipur Development Authority Act, 1982 came into force and UIT was replaced by JDA. A notification under section 39 of the JDA Act was issued by the JDA on 30th June, 1987, however, development of Jal Mahal area could not materialize. The JDA then decided to undertake the exercise for development of integrated tourism infrastructure development for Jal Mahal and required *Project Development Company of Rajasthan* (for short "the PDCOR") to prepare project on commercial format for private public participation. The preliminary approval was given by the Standing Committee on Infrastructure Development (for short "the SCID") in December, 1999. The bids were invited in the year 2000, but no entrepreneur came forward in the bidding process and thus, the tender process was scrapped. Thereafter, JDA was appointed as Nodel Agency to undertake the bidding process. Global tenders were invited on 25.4.2003 and in pursuance thereof, 9 entrepreneurs shown interest. It was mentioned in the advertisement that 100 acres of land would be leased out for 99 years. A pre bid meeting was held on 14.8.2003 for removal of doubts. The Department of Tourism on 6.9.2003 transferred the development of Jal Mahal to RTDC vide letter Annex.R-1/12. On 15.9.2003, pre-qualification bids were opened; 4 entrepreneurs submitted bids; rejection of one bid was recommended on account of inadequate information on evaluation. It was

further pointed out that respondent-M/s KGK Enterprises was a partnership concern whereas the criteria for bidder was that it has to be private/public limited company and thus, final view of the Government was sought in respect of qualification/disqualification of M/s KGK Enterprises for the next phase of evaluation. Two other firms were found fit in pre-qualification bid. Later, on 14th November, 2004, KGK Enterprises formed Private Limited Company in the name and style "Jal Mahal Resorts Private Limited". The PDCOR suggested retention of KGK Enterprises as its presence will increase competitiveness. The State Government permitted the consideration of bid of KGK Enterprises on 17.10.2003 to enlarge the scope of competitiveness. Thereafter, technical bid was opened on 21.10.2003 and financial bid was opened on 3.12.2003. The RTDC recommended the award of project to the highest bidder, namely, KGK Enterprises and accordingly, the Commissioner, Tourism vide noting dated 19.2.2004 put up the matter before the State Government for issuing of letter of intent and signing the lease agreement in favour of successful bidder. This was forwarded by Secretary, Tourism to Minister Incharge of Tourism (Chief Minister), who approved the minutes of the Empowered Committee on Infrastructure Development and directed to put up draft lease agreement early. On 9.5.2005, the Collector intimated that 100 acres of land has been mutated in favour of RTDC. The approval of lease agreement and license agreement and authorization of Managing Director of RTDC to sign the agreement was granted finally by the Chief Minister on 27.10.2005. On 29th October, 2005, the RTDC authorized

the Managing Director to sign Jal Mahal Lease Agreement on behalf of Government of Rajasthan with Jal Mahal Resorts Private Limited and accordingly, lease agreement was executed on 22nd November, 2005. The Central Government MOEF has appreciated the project vide letters dated 13th September, 2002 and 1st December, 2009. It was further contended in the return that it is incorrect to say that size of the lake has been reduced on account of leasing out 100 acres of land. The action is as per Master Development Plan. The State Government has submitted the project to the Central Government MOEF for restoration of Mansagar Lake at the estimated cost of Rs. 24.72 crores. The Central Government agreed to provide 70% of the cost. The PDCOR in the project report prepared in October, 2001 included the following facilities: -

- " (1) Restaurant
- (2) Traditional technological park.
- (3) Club Resort
- (4) Amusement park.
- (5) Heritage village
- (6) Light and sound show.
- (7) Recreational Centre."

There will be no damage to the wildlife or reserve forest or birds. It is for the respondent no.7 Jal Mahal Resorts Pvt.Ltd. to obtain clearances as per requirement of law. The sedimentation tank covers "5% of the area of lake". Wetlands Rules are not applicable and they are made applicable to Sambhar Lake and to Keola Deo Lake in Rajasthan. The land leased out

does not fall within the definition of Section 2(1)(g) and Section 3. The consent has been given under the Water Act by the Rajasthan Pollution Control Board on 20th May, 2010. For the last three decades, the State Government has been making efforts for restoration of Jal Mahal, Mansagar Lake and the area around lake. Desilting has not caused any ecological damage.

Stand of Jaipur Development Authority

Jaipur Development Authority in its return has submitted that for development of Jal Mahal Tourism Project, land of private unit was acquired; certain land was sawai chak (government) land and land of Public Works Department; land of three villages, namely, Vijay Mahal, Bansbadanpura and Kasba Amer was included; 178 bigha 9 biswa was in private tenancy; 475 bigha 9 biswa was sawai chak (Government land), 25 bigha 4 biswa was of PWD; 133 bigha 15 biswa was of Municipal Council; 19 bigha 10 biswa was of Forest Department total 832 bigha 01 biswa as mentioned in the letter dated 7.6.1982 written by UIT to the Deputy Secretary, UDH. When JDA was formed, the area of Jal Mahal Project stood transferred to the JDA by virtue of JDA Act. The JDA vide letter dated 5.10.1983 requested the Government to acquire land admeasuring 832 bigh 4 biswa which was in the tenancy of private persons; JDA sent a proposal on 25.2.1988 to the UDH for publication under section 4 of the Land Acquisition Act; report under section 5(A) was submitted by the Land Acquisition Officer to the Government for acquisition of land for Jal mahal

Reclamation Project and the same was accepted and award was passed on 17.4.1996. However, a part of the land falling in the area known as 'Karbala' measuring 46 bigha was decided not to be acquired. On 31.3.1999, BIDI was formed to take decisions for accelerating growth of investment and industrial development in the State of Rajasthan. Thereafter, decisions were taken, details of which, have been given in the return. On 10.9.2009, approval of revised layout plan was granted by the Committee chaired by Chief Secretary. Lease amount has to be enhanced by 10% every time after a period of three years. Thus, considering the nature of investment, lease of 99 years is justified. It was admitted that out of 100 acres leased area, 13 bigha 17 biswa land is recorded as Gairmumkin Talab in khasra no.67/317.

Reply of Lessee

The respondents no.7 and 8 Jal Mahal Resorts Pvt.Ltd. and KGK Consortium in their return to Writ Petition No.6039/2011 have submitted that the State Government promoted the concept of Private Public Partnership to save the burden on the exchequer; decision has been taken by the expert body at the highest level, which is not amenable to interference by this Court; MOEF has granted approval on 5.9.2002; on 23.12.2002, administrative approval and expenditure sanction was issued by the Government of India for conservation and management of Mansagar Lake; the bid submitted by M/s KGK Enterprises in 2003 was found highest and the then Chief Minister has approved the decision of giving project to highest bidder KGK

Enterprises on 27.2.2004 and thereafter, letter of intent was issued on 30.9.2004 and then, lease agreement was executed on 22.11.2005 and by now, total amount of Rs.70 crores have been spent by them. The petitions cannot be said to be in public interest and bonafide, rather amounted to abuse of the process of the court; they have been filed with delay and laches; In Writ Petition NO.4860/2010, the petitioner- Dr.Ved Prakash Sharma appears to have obtained registration on 19.3.2010 only for the purpose of approaching this Court in PIL; Prof.K.P.Sharma-petitioner in Writ Petition No.6039/2011 is not recognized authority or lake conservationist or expert in lake management, irrigation, environmental protection; there has been orchestrated campaign through vernacular newspaper for reasons best known to the correspondent and the newspaper itself; the said newspaper runs the Janmangal Trust which maintains the Mansagar Dam on behalf of the Irrigation Department and the said Trust also carries out commercial activities to generate revenue for upkeep of the dam; in 1992, the newspaper group wanted to utilize the Jal Mahal complex and the land which is part of Jal Mahal Tourism Project for its own benefit and commercial use at free of cost/paltry sum and having failed to grab the land, hostile campaign has been started against the project and more than 200 misleading articles have been published in the newspaper attempting to hold a media trial in the matter. Petitioner- Prof.K.P.Sharma has not come with clean hand and concealed the material fact that on the complaint filed by him before PIL Cell of the Supreme Court, no cognizance was taken and file was closed;

writ petitions are barred by *res judicata*, inasmuch as, Writ Petition No.1008/2011 ***Ram Prasad Sharma V/s State of Rajasthan*** was dismissed by this Court as withdrawn vide order dated 15.2.2011 without liberty to file a fresh writ petition; interference in contractual matter is not permissible; Jal Mahal Tourism Project is in larger public interest; it has to undertake restoration of Mansagar Lake; there was encroachment of about 50-60 acres of land; decision has been taken by the expert body; bids were invited by global tender; they were found highest bidder and their bid was rightly considered; lease agreement and leave and license agreement are valid; possession of the project land was handed over to them; nursery has been set up over leased land which has numerous varieties of plants; they have also introduced several varieties of aquatic vegetation in the Mansagar lake to attract migratory birds; beautification of Jaipur-Amer Road divider has also been taken up and work of phase-I has been completed; allegation of environmental damage is baseless; State Government after environment impact assessment has granted permission and consent has also been granted by the Rajasthan Pollution Control Board in 2009-10; capacity of water in the lake has not been reduced; sedimentation basin has been constructed as per expert advice; they have spent about Rs.15 crores on lake restoration which was not their responsibility under lease agreement and they have also spent Rs.10 crores on restoration of Jal mahal monument voluntarily though obligation was limited to Rs.1.5 crores; there cannot be any interference by this Court with the opinion of the expert; Jal Mahal monument is not a

place of worship for both Hindu or Muslim or either of them; there is no document showing that it has been permitted to be used as a place of worship; Jal Mahal monument was a pleasure pavilion used for hunting ducks and other similar pleasure activities by the kings; opinion of legal consultant of JDA was not correct; issue of identity of Director/Owner of the company constituting the consortium is not relevant in any manner whatsoever to the project for restoration of Mansagar Lake, Jal Mahal monument and development of precinct area; bid was submitted by KGK Consortium comprising of six pvt.ltd. companies, one HUF and one partnership firm namely M/s KGK Enterprises, who was the lead bidder of the KGK Consortium; it is mandatory under the tender document that in case of consortium bid, successful bidder has to form Special Purpose Vehicle (Limited Company) and lease would be executed with such SPV; in the pre-qualification round, the bidder should have satisfied any two out of following three eligibility criteria for meeting financial capability: -

“(i) Tangible net worth of not less than Rs.100 Million (US \$ 2 Million) as per the latest audited financial statement;

(ii) Annual turnover less than Rs.300 Million (US\$ 6 Million) as per the latest audited financial statement.

(iii) Net Cash Accruals not of less than Rs.50 Million (US \$ 1 Million) as per the latest audited financial statement.”

M/s KGK Consortium satisfied all the aforesaid technical financial criteria, however its “lead member”

M/s KGK Enterprises was a "partnership firm". As the KGK Enterprises met all the requirements in respect of technical, financial, share holding and lock in periods as given in RPF, deviation from the RPF, which mandated that the lead firm must be a public/private company, was permitted and KGK Enterprises was allowed to compete so as to ensure adequate competition; KGK Enterprises secured 83 marks while the next highest 82 marks were secured by M/s J.M. Projects Pvt.Ltd. and both were considered eligible for opening of their financial bids and bid of KGK Enterprises being highest was accepted. Under the lease agreement, Jal Mahal Resorts Pvt.Ltd. has a right of development of 100 acres of project land and no proprietary right over the monument has been given; license for the restoration of Jal Mahal monument does not confer any right on Jal Mahal Resorts Pvt.Ltd. except to ferry passengers for a minor charge and it has not been authorized to use the Jal Mahal monument commercially and the monument remains within the possession and use of the State Government. Out of 100 acres of land, 87% area is to be maintained as a green area and in PIL, terms and conditions of the contract cannot be questioned after several years. In restoration of Mansagar lake, Rs.15 crores have been invested; catchment area is not being disturbed in any manner; report of Prof. K.P. Sharma is merely an opinion based on personal interpretation; there was temporary road constructed by the licensee for easy access for the purpose of restoration of Jal Mahal monument which is situated otherwise in Mansagar Lake surrounded by water and the said road has been dismantled and no material

is left to compromise the filling capacity of lake; JDA has approved the detailed building plans for the project on 13.7.2010; Jal Mahal Resorts Pvt.Ltd. diverted the sewage nullahs away from the Mansagar Lake with the approval of the State Government; lake has been cleansed substantially; BOD of the water in Mansagar Lake has been reduced substantially after commencement of the work; creation of sedimentation basin has not decreased the water capacity of Mansagar Lake and the use of soil of lake itself has not damaged the ecology or environment of the lake; sedimentation basin is a part of the lake and created only by moving the soil of lake from one place to another and it is wholly temporary reversible in nature and the soil can be levelled when arrangements are in place to ensure that the storm water drains do not discharge silt and organic load into the lake during monsoon; land in question is not covered under the provisions of the Tenancy Act; lake is with the State Government and continues to be so; responsibility of lake maintenance is purely of the JDA; Jal Mahal monument has been de-notified in 1971 from the protected monuments under the provisions of the Act of 1961; changes in the Jal Mahal monument have been brought with the consent of the Empowered Committee; petitions have no merit and there is a right to start phase-II of the project.

Stand of MOEF

The Ministry of Environment and Forests, Government of India in its return has clarified that it has only sanctioned the project for conservation and management of Mansagar Lake in Jaipur in December,

2002. Thus, the averment made in the petition that no sanction for Jal Mahal Tourism Project was obtained from MOEF is not disputed in the return filed by MOEF. Project for conservation and management of Mansagar Lake in Jaipur was sanctioned as per the mandate of the National Lake Conservation Plan. It is also contended in the return that project for conservation and management of lake in Jaipur was sanctioned in December, 2002 at the cost of Rs. 24.72 crore under the NLCP on 70:30 cost sharing basis between Government of India and the State Government of Rajasthan and the sanction order Annex.R-10/1 to its return was issued which contained break up of cost estimates. The different components which were approved further include re-alignment of drains, de-silting, in-situ bioremediation, sewage treatment plant (STP) and wetland construction, check dams, afforestation, nesting islands etc. The JDA was the nodal implementing agency for the project. MOEF Central Government has released entire share of the Central contribution amounting to Rs. 17.30 crores. One STP of 18 MLD capacity and a waterland for tertiary treatment was amongst the core components sanctioned at the cost of Rs. 4.50 crores. During implementation of the project, the State Government decided to rehabilitate existing 27 MLD capacity STP instead of setting up the proposed new STP of 18 MLD. Later, constructed waterlands were created to provide tertiary treatment to sewage before discharging into the lake. Subsequent to the upgradation of existing STP, the State Government requested the MOEF for approval of deviation in the scope of work and also gave commitment to bear

the additional funds from its own resources. On being asked to clarify regarding tackling of all the sewage discharging into the lake, the State Government informed that in addition to the sewerage works under NLCP scheme, other projects were also being taken up under Jawaharlal Nehru National Urban Renewal Mission (JNNURM) Scheme and thereby ensuring that all sewage generated in the lake catchment area is being taken care of. It is further contended that under the Act of 1986 read with Rules of 1986 and in supersession of the Notification dated 27.1.1994, the MOEF had issued Notification No.S0 1533 (E) dated 14.9.2006 (Annex.R-10/2) and thereafter, notification was amended in December, 2009. Accordingly, the required construction of new projects or activities except for securing the land listed in the schedule appended to the notification, shall be undertaken only after the prior environmental clearance from the Central Government or as the case may be, by the ***State Level Environment Impact Assessment Authority*** (SEIAA) duly constituted by the Central Government. The built up area between 20,000-1,50,000 sqm. falls in the category B and will require prior environmental clearance from the SEIAA. Wetlands Rules were notified on 4th December, 2010 and as per the said Rules, there are certain activities which are prohibited and also cannot be undertaken within the wetlands without the prior approval of the State Government.

Submissions

Mr. Aruneshwar Gupta , Mr. Rajendra Prasad and Mr. A. K. Jain, learned counsel appearing on behalf of the

petitioners have submitted that lease agreement for 100 acres of prime and valuable land belonging to the State Government, Municipal Corporation and JDA held by them in public trust for no payment to them and payment of annual license fee of Rs.1/- per year to the State and Rs.2.52 crores to RTDC with obligations to maintain lake and various other kinds of obligations, is unreasonable and fraud on economics of the State and public exchequer. The Municipal Board and JDA have got no lease amount for the assets held by them in public trust. The minimum value of the land as per DLC rate is Rs.2500 crores, which could fetch a minimum return at 6% amounting to Rs.150 crores per annum. Market price is 3500 crores. They have further submitted that out of 100 acres of land leased out to Jal Mahal Resorts Pvt. Ltd., more than 13 bigha of land is recorded as *Gairmumkin Talab*, which is in the lakebed itself and as apparent from the possession report, more than 14 acres of land was submerged at the time of handing the possession. It was not permissible to lease out the lake. Thus, the lease agreement and leave and license agreement are illegal and void. The entire area of 100 acres of land is in the bed of lake; area of the lake has been reduced in order to carve out 100 acres to be given for commercial activities to Jal Mahal Resorts Pvt.Ltd. for construction of seven star hotel, craft bazar, multiplex etc.; there is no clearance from the Central Government MOEF; 99 years lease is by way of sale of lease hold rights; 100 acres of valuable land could not have been given on lease for 99 years and even leave and license could not have been given with respect to other project area including Jal Mahal

monument that too at the annual rate of Rs.1/-; wetland could not have been given for the purpose it has been given to Jal Mahal Resorts Pvt.Ltd.; as per Wetlands Rules, 100 acres of land is part of the lake and even catchment area cannot be given considering the ancient monument Jal Mahal and only Lake Mansagar, which is left in Jaipur after Ramgarh dam has dried up. It was further submitted that KGK Enterprises was not fulfilling the eligibility condition of private/public limited company; considering the various clauses of the agreement, right has been given to the lessee to sub lease or alien or mortgage the property to obtain loan that too for a period of 99 years, transaction is fraud on public exchequer; huge investment has been made by MOEF Central Government for conservation and management of Mansagar lake and it has sanctioned a sum of Rs.17.30 crores as 70% of its share and rest by JDA; offer has been revised substantially making it more commercial; even State Government has earlier objected to the revised offer on 10.10.2007 as being in contravention of the master plan, but later on, for the reasons best known to them, revised plan was sanctioned on 10.9.2009; there is violation of the decision of the Division Bench of this Court in the case of Abdul Rehman (supra); as per clause 5.6 of the lease and license agreement, Jal Mahal Resorts Pvt.Ltd. was authorized to levy any amount of user charges on the public and restrict the visitors failing to pay the specified user charges and such levy of fees and charges on the public after paying just Rs.1/- per year to the State Government is contrary and in violation of the principles of transparency, accountability, public

financing and smacks of highhandedness, corruption and nepotism by people in authority/power and clearly contravenes the doctrine of public trust. Jal Mahal Resorts Pvt.Ltd. was incorporated having no nexus with the activities to be undertaken under the leave and license agreement, which are in the nature of conservation, restoration and reuse of Jal Mahal as a monument and not as a hotel or resort; the license agreement and the work of conservation, restoration and reuse of Jal Mahal has been used as a mere mask for giving on lease 100 acres of wetland in the prime location of the city of Jaipur. The lease agreement and leave and license agreement are in violation of the *Ramsar Convention 1982* and Rule 4 of the Wetlands Rules. It was also submitted that PPP model projected by Jal Mahal Resorts Pvt.Ltd. is under a serious cloud because IL and FS with whom RTDC has formed PDCOR has a serious case study against them and are also the consultants of Jal Mahal Resorts Pvt.Ltd.; it is apparent that umpire is acting as advisor in the whole process. There is no delay in filing the writ petitions as plan has been revised in 2009 and some of the clearances have been obtained on 19.7.2010 and so far no clearance is obtained of MOEF. Reliance has also been placed on Section 16 of the Rajasthan Tenancy Act; it was also submitted that land in question is surrounded by Nahargarh Wildlife Sanctuary on one side and admittedly there is reserved forest on other two sides within 1 km and in case kind of given project falls within 10 kms from wildlife sanctuary, it has to be treated as Class A project and permission of Central Government MOEF is necessary, which has not

been obtained. There will be damage to the migratory birds, flora and fauna of the area; ecology of the area will be disturbed; commercial exploitation of the huge area could not have been permitted; wall has been erected on eastern side of the lake; there is violation of the provisions of the Municipalities Act and Rules framed thereunder; lease of 99 years could not have been given without fixing the reserve price on the basis of market value of the property as lease of 99 years amounts to sale; it was necessary to realize reserve price as well as annual rental value which has not been done; such land vests as per Municipalities Act in the Jaipur Municipal Corporation; there is no valid transfer of land by Jaipur Municipal Corporation, JDA and Government to RTDC and thus, execution of lease agreement for 100 acres of land by RTDC as owner is illegal and void; Special Purpose Vehicle has been incorporated after bidding process with Rs. 50 lacs capital; land worth of Rs. 3500 crores could not have been given to Jal Mahal Resorts Pvt.Ltd.; there is violation of Rules of 1974, Rajasthan Tourism, Disposal of Lands and Properties by DOT/RTDC Rules, 1997 (hereinafter referred to as "the Rules of 1997") and Municipalities Act; there is also violation of the Central Government MOEF notification issued on 14.9.2006.

Shri G. S. Bapna, Learned Senior Counsel and Advocate General appearing on behalf of the State and its functionaries has admitted that out of 100 acres of land leased out to Jal Mahal Resort Pvt.Ltd, 13 bigha 17 biswa land of survey no.67/317 is recorded as Gairmumkin Talab and the same is part of bed of

Mansagar Lake. It was also not disputed that on one side of the project area, there is Nahargarh Wildlife Sanctuary and on other side, there is reserve forest within the vicinity of 1 km. However, it is submitted that in the master development plan 1976, 200 acres of area was reserved for tourism project on Jal Mahal; JDA has spent Rs.24 crores for restoration of the lake; Wetlands Rules came into force in 2010, therefore, they are not applicable; decision has been taken by the empowered committee; transaction is proper; no case is made out to interfere in the matter; condition of eligibility was rightly relaxed; this Court can pass order regarding 13 bigha 17 biswa land which is part of lake bed. PPP is now being promoted in such ventures. In contractual matters, Court cannot interfere.

Shri A.K.Sharma, Learned Senior Counsel appearing on behalf of Jal Mahal Resorts Pvt.Ltd. and KGK Enterprises has submitted that the writ petitions cannot be said to be maintainable having been filed with delay and laches; credential of the petitioners have been doubted; they were not having any interest in the preservation and restoration of Mansagar Lake and Jal Mahal monument; writ petitions are not bonafide, rather amounted to abuse of the process of the court; there is campaign of vernacular newspaper which resulted into filing of the writ petitions; for maintenance of Mansagar Dam, Janmangal Trust was carrying out commercial activities to generate revenue for upkeep of the dam and a particular newspaper group wanted to utilize the Jal mahal complex and the land which is now part of Jal mahal Tourism Project and having failed to grab the land, now when the whole area

is cleaned, lake and monument have been restored, hostile campaign against the project has been initiated and more than 200 misleading articles have been published attempting to hold a media trial in the matter. It was also submitted that the present matter is barred by res-judicata as D.B.Civil Writ Petition (PIL) No.1008/2011 was dismissed by this Court on 15.2.2011 as withdrawn without liberty to file a fresh petition and same issues have been agitated in the present matter; in contractual matters, interference by this Court is not permissible; contract has been given to highest bidder; allegation of environmental damage is baseless; biological oxygen demand (BOD) of the water in Mansagar has been reduced; Jal Mahal Resorts Pvt.Ltd. will develop only 100 acres with minimal FAR of 0.13 with height restrictions of only ground floor and first floor; a sum of Rs.15 crores has been spent in the restoration of Mansagar lake though it was not obliged under the lease agreement; Mansagar lake is manmade water body and does not partake the character of natural resource; it is not a gift of the nature; de-silting has been rightly done; project has been awarded by open bidding process by inviting global tender; there is no intention to reduce the lake area; capacity of Mansagar lake has been enhanced; two nullahs discharging into the lake have been realigned and diverted away from the Mansagar Lake; Court cannot interfere with the opinion of the expert; permission for the restoration of Jal Mahal has been granted by the empowered committee consisting of Principal Secretary, Art and Culture, Tourism, Director General, Jawahar Kala Kendra, Commissioner, Department of

Tourism, Commissioner JDA, Managing Director, RTDC etc.; policy decision of the State Government to lease out 100 acres of area for 99 years on the terms and conditions fixed by it cannot be interfered with by this Court; it was for the State to decide how a particular largesse is to be distributed as per Section 102 of the Rajasthan Land Revenue Act. Prior to year 1579, the entire catchment and filling area of about 695 bighas or 434.4 acres which now constitutes the Mansagar Jheel was used to provide irrigation and recharging the ground water. The entire catchment area of the Mansagar Lake is 2350 hectares and construction of seven star hotel on part of 100 acres of land is not going to violate the directions of this Court in Abdul Rehman's case (supra); Jal mahal was never used as Hindu Temple or Peer Baba Ki Mazzar. Jal mahal is not protected monument after entry has been deleted in the year 1971; new pleas based on new facts cannot be permitted to be raised by the petitioners in the rejoinder; the lease rent of Rs. 2.52 crores shall be first used for maintenance of the lake and the remaining, if any, for appropriation by RTDC or JMC or Government of Rajasthan; lease rent is not Rs. 1 as alleged but lease rent is Rs. 2.52 crores per annum with an escalation of 10% in every three years; the auction notice has not been questioned; it was mandatory under tender document that in case of consortium bid, successful bidder has to form Special Purpose Vehicle (Limited Company) and lease will be executed with such SPV, as such, Jal Mahal Resort Pvt. Ltd. was formed and it has incurred Rs. 10 crores in restoration of Jal mahal Monument and further, it has incurred total expenditure

of more than Rs.70 crores without taking any loan; there is no contravention of Articles 48A, 49 and 51A (g) of the Constitution. He has relied upon various decisions of the Apex Court.

Shri K.K.Sharma, Learned Senior Counsel appearing on behalf of RTDC has submitted that RTDC being nodal agency had the competence to execute the lease and leave and license agreement as per authority granted for and on behalf of the State Government. In fact, 13 bighas of land, though recorded as Gairmumkin Talab, was not forming the part of lake at present; as huge investment has to be made, 99 years lease was justified. No case is made out for interference by this Court in writ jurisdiction.

Shri S.S.Hora, Learned counsel appearing on behalf of PDCOR while supporting the aforesaid submissions, has also submitted that project was conceptualized in the year 1999 and the SCID approved PPP format for tourism project at Jalmahal on 21.12.1999; on 7.5.2001 NIT was issued and since no bids were received till November, 2001, the entire bidding process was scrapped; in the first round, the period of lease was 30 years with a provision of extension by another 30 years i.e. total 60 years; BIDI headed by Chief Minister approved restructuring and re-bidding of the project in the meeting held on 10.1.2001, MOEF has also approved the project and released the amount. Contract has been rightly awarded to KGK Consortium for a period of 99 years to attract private participation as earlier no bids were received; Minimum annual rent of Rs.1.0 crore was determined on the basis of providing rate of return from the project to the private sector

developer of 20-22% per annum. Selection of KGK Enterprises was appropriate; deviation in eligibility condition from Public/Private Limited Company was rightly made; KGK Enterprises also volunteered to restore the Jal Mahal monument at their own cost, which was an option component in the RFP. 13 bighas land mentioned as Gairmumkin Talab was not actually part of the water body, but was part of land mass of area over 100 acres, which at full tank level of 99 MLR is available for development. 14.15 acres of land was not part of the lake bed but because of silting in the lake bed, the water had spread over to adjoining area of land comprising of 14.15 acres.

Historical background

It is not disputed that Mansagar Lake is the lake on the northern fringe of Jaipur City. Maharaja Man Singh in 1610 constructed a dam across the Darbhawati River between Khilagarh hills and hilly areas of Nahargarh which created lake. Jal Mahal had been constructed in the said Mansagar lake which is the place of international tourism and attracts foreign tourists to Jaipur.

Jal Mahal is a pleasure palace which is perched amidst Mansagar lake surrounded by Nahargarh hills and reserve forest area. The Palace is famous for its sophisticated design and grand architecture. The Palace was developed as a pleasure spot and was used for the royal duck shooting parties. A causeway leads to Jal Mahal Palace situated in the middle of Mansagar lake, opposite the cenotaphs. The first four floors of the building is under water, only the top floor remains

outside. Wonderful view of the lake and palace is visible from Nahargarh Fort built in 1799. In 18th Century, the palace and the lake around it were renovated by Maharaja Jai Singh II of Amber and the Palace has got an eye-popping make over. There are wooden boats made by traditional boat makers from Vrindavan; drains were diverted; toxic silt was dredged from the bottom; a water treatment system was developed. Lake is based on vastu and is vital for Jaipur. Lake was created by constructing a dam across the Darbhawati River between Khilagarh hills and hilly areas of Nahargarh in the 16th Century; catchment area is 23.5 square km.; when there was severe famine in 1596 AD, the ruler of Amber was motivated to built a dam to store water to overcome the severe hardship caused by the famine to the people inhabiting the region. A dam was constructed across the eastern valley between Amer hills and Amagarh hills and the dam was later on converted into a stone masonry structure in 17th century and now the dam is about 300 meters long and 28.5-34.5 meters in width. It is provided with three sluice gates for release of water for irrigation of agricultural land in the down stream area. Since then the dam, lake and palace have undergone several rounds of restoration under various rulers of Rajasthan and final restoration in 18th century is credited to Jai Singh-II of Amer and during that period, Amer Fort, Jaigarh Fort, Nahargarh Fort, Khilangarh Fort, Kanak Vrindavan Valley were also built in the vicinity of the lake.

Jal Mahal is an ancient monument is not in dispute. Earlier it was declared to be protected

monument, but it was deleted in the year 1971 from protected monument. However, the fact is that it is an ancient monument of international importance attracting large number of tourists to Jaipur. Considering the importance of Mansagar Lake and Jal Mahal Monument, the MOEF Central Government has sanctioned 70% of cost of Rs. 24.72 amounting to Rs. 17.30 crores for conservation and management of Mansagar Lake and the remaining 30% was to be borne by the State Government and the work has been done by JDA. The project also include realignment of drains, de-silting, in-situ bioremediation, sewage treatment plant (STP) and wetland construction, check dams, afforestation, nesting island etc. Thus, huge investment has been made by the Central Government and JDA.

Lake is being used for drinking water by wildlife animal, local migratory birds inhabit area. Lake draws a large number of birds species during winter especially from Sept. to March-April, they are largely migratory, they feed upon the aquatic vegetation, which is in abundance in the lake, as is evident from para 2.5 of the DPR, which is quoted below: -

"2.5 Flora and Fauna

The hill area in the north and eastern side of the project area is delineated as reserved forest and contain several wildlife species including deer. It is Subsidiary Edaphic type of dry tropical forests. The main predominant floral specie is Dhauk (Anogeissus pendula). Due to thin tree cover, lean foliage, lack of law vegetation cover and steep gradient a substantial amount of eroded material reaches into the lake. On the wester side, beyond the

urbanised area, the Nahargarh hills are also bereft of vegetation resulting in decline in moisture retaining capacity.

As part of the preliminary survey of biodiversity of Nahargarh Wildlife Sanctuary, Jaipur, conducted by Dr. Satish Kumar Sharma in 1999, Man Sagar Lake area was also covered. The survey results suggest that predominant species in the foothills surrounding the project area are jungle cat, striped hyena, India Fox and India wild boar. Also according to the people residing in the Kanak Vrindavan valley leopards were also seen in the forest area. All the above observations establish that there exists a predominantly significant wildlife in the area and this wildlife in the northern hills visit Man Sagar Lake for drinking water.

Man Sagar Lake draws a large number bird species during winters especially from September to March-April (Annex. 6). They are largely migratory. They feed upon the aquatic vegetation, which is in abundance in the lake."

Scope of project handed over to Jal Mahal Resorts Pvt. Ltd.

A lease in 100 acres of area, which according to the petitioners, is part of Mansagar Lake, has been given to Jal Mahal Resorts Pvt. Ltd. vide Man Sagar Lake Precinct Lease Agreement dated 22.11.2005 for a period of 99 years. On the same day, another agreement called as "Jal Mahal Leave and License Agreement" has been entered into for conserving, restoring and reusing the monument for a period co-terminous with the Lease Agreement. The premises have been given to the licensee on the terms and conditions mentioned in the agreement. The Jal Mahal Leave and License Agreement is Appendix-14 to the main lease agreement "Man Sagar Lake

Precinct Lease Agreement”.

As already stated above, as mentioned in Appendix-2, the following area was allotted for the project: -

1. Total Project Area	432.8 Acres
2. Mansagar Lake	310 acres
3. Wetland Area	12.0 acres
4. Lake front promenade	10 acres
5. Project Area (for PSD)	100 acres

The Mansagar Lake Precinct Lease Agreement was executed on 22nd November, 2005 and on the same day, Jal Mahal Leave and License Agreement (Appendix-14 to the main lease agreement) was executed. As per lease agreement, demised premises means the lands and the rights in relation thereto. Jal Mahal monument means the monument in the mansagar lake more particularly described in Appendix I and shown in the map attached thereto. Mansagar lake means the mansagar lake in Jaipur in which the monument is situated, more particularly described in Appendix I and depicted in the map attached therein. The consideration for lease is mentioned in Section 2.4 of the lease agreement which provides that lessee shall pay to the lessor (i) a lease rental of rupee one for the period from the compliance date till August 19, 2007 which shall be paid as an advance lease rental on the compliance date and thereafter (ii) effective from August 20, 2007, an annual lease rental as per the payment schedule based on the lessee's accepted proposal, set out in Appendix 8, which shall be enhanced by 10% (ten per cent) every three years. As further consideration, the lessee shall pay the lessor the project development fee as per the

payment schedule set out in Appendix 8 i.e. 2.52 crores as annual lease rentals. The term of the lease is 99 years. The licensee shall be entitled to be in peaceful possession and the use of the demised premises. As per clause (a) of Article 7 covenants of lessee, the licensee shall develop, establish, implement, operate and maintain the project at its cost and expense by itself or through sub contracting arrangements in accordance with the terms and conditions of the agreement and complete the project Phase I within the time period specified therein. As per clause (g), prior to any assignment, mortgage, sub lease or transfer of the demised premises the lessee shall obtain from the lessor or its duly authorized representative in this behalf prior written approval for such assignment, mortgage, sub lease or transfer and to the terms of such assignment etc. and ensure that all such assignees, mortgagees, sub-leases or transferees and their successors and assigns and the successors of the lessee are bound by all the covenants and conditions herein contained and be liable in all respect in this behalf. The lessee shall further ensure that such assignees, mortgagees, sub lessees or transferees execute a supplementary lease/undertaking/necessary documents in the form and manner specified by the lesser to abide by the terms of this agreement and such other conditions as may be specified by the lessor in writing. Clause (g) of Article 7 is quoted below: -

"(g), prior to any assignment, mortgage, sub-lease or transfer of the demised premises the lessee shall obtain from the lessor or its duly authorized representative in this behalf prior

written approval for such assignment, mortgage, sub lease or transfer and to the terms of such assignment etc. and ensure that all such assignees, mortgagees, sub-leases or transferees and their successors and assigns and the successors of the lessee are bound by all the covenants and conditions herein contained and be liable in all respect in this behalf. The lessee shall further ensure that such assignees, mortgagees, sub lessees or transferees execute a supplementary lease/undertaking/necessary documents in the form and manner specified by the lesser to abide by the terms of this agreement and such other conditions as may be specified by the lessor in writing."

The lessor is bound as per clause (k) of Article 8 "Covenant of lessor" that it shall complete or cause completion of the restoration of the lake as per the Mansagar Lake Management Plan by December 31, 2005 and maintain or cause the maintenance of the lake by itself or through sub contracting arrangements in terms of the Mansagar Lake Management Plan under the oversight of Lake Monitoring Committee, which shall be instituted by RTDC and of which the RTDC shall be a constituent and as per clause (i), it shall ensure that through out the year atleast 7 MLD of water is discharged into the lake from the sewage treatment plant. It shall ensure that irrigation demand would be serviced from the STP and would be only 20 MLD for the period from November to March and in the remaining months, the surplus from the lake could be diverted for downstream irrigation. Other obligations have also been undertaken by the lessor of clearances etc. Article 11 relating to financing authorizes that the lessee may, for the purpose of enabling financing for the project,

assign or charge or encumber all its rights, benefits and interest under this agreement in the form of lease, sub-lease etc. in favour of its lenders for securing the repayment of the monies which may become payable by the lessee to its lenders.

Commercial/Tourism Functions which have been permitted

The following commercial/tourism functions have been permitted in project area as mentioned in Appendix 2 to the lease agreement: -

- (i) Hotel/Resort/Heritage Village
- (ii) Convention Centre
- (iii) Sports & Sailing and other Club activities
- (iv) Boating and Sailing
- (v) Light & Sound Shows
- (vi) Art Galleries
- (vii) Restaurants/Food Court
- (viii) Limited Shopping Mall (craft bazaar)
- (ix) Family Entertainment Centre/multiplex
- (x) Recreation activities on the lake (only non motorized boats would be allowed other than 2 or 3 rescue boats which can be motorized)

<u>Tourism & Recreational</u>	<u>Total Land area</u>
<u>Products</u>	<u>in acre</u>
1. Resort	30.0
2. Craft village	5.0
3. Chowki Dhani Type	7.0
4. Restaurant + Bar	1.0
5. Food Court	1.0
6. Ent. Centre	0.5
7. Multiplex	2.0
8. Go Karting	3.0
9. Boat House	2.0
10. Amusement Park	30.0
11. Convention Centre	8.0
<i>Total :-</i>	89.5
<u>Common Facilities</u>	
2 Public Garden/ Square /Fountain	10.5
<i>Total :-</i>	100.0

It is also mentioned here that successful bidder shall design, develop, finance, implement, operate and maintain the area of 100 acres of land on the lake precinct. The bidder may use 89.5 acres of land for tourism and recreational products and 10.5 acres of land for common facilities.

Appendix 8 relates to development fee/annual rentals payment mechanism and it provides that the lessee shall pay an annual lease rentals of Rs.2.52 crore to RTDC and annual lease rentals would be escalated by 10% after every three year.

Jal Mahal Leave and License Agreement, which is Appendix 14 to the lease agreement, was entered into on 22.11.2005 for the purpose of conserving, restoring and reusing the monument for a period co terminous with the lease agreement. Jal Mahal Monument means the monument including two pavilions or structures located in the Mansagar Lake, more particularly described in Annexure I. Licensed premises means the Jal Mahal Monument together with full and free right and liberty of way and passage and other rights in relation thereto. Under section 2.4 (c) of the lease agreement, the lessee shall restore and reuse the Jal Mahal Monument in accordance with the terms and conditions of the agreement. As per clause 2.7 of the leave and license agreement, licensor acknowledges that the monument being situated in the Mansagar Lake, the access to the monument has to be through the mansagar lake. The licensor shall provide and procure access to ingress to and egress from the licensed premises to the licensee, its employees, sub

contractors, agents, other authorized personnel and all persons visiting the monument for work, leisure, recreation and tourism or otherwise during the term of the agreement. As per clause 3.1 of leave and license agreement, the licensee shall pay to the licensor an annual license fee of Rs. 1.00 (Rupee one only). Clause 3.1 is quoted below: -

"3.1 The licensee shall pay unto the licensor an annual license fee of Rs. 1.00 (Rupee One only), which amount shall be paid as an advance license fees in single lump sum payment of rupees 100.00 (One Hundred only) on or prior to the date upon which this Agreement is executed."

As per clause 5.6 of the leave and license agreement, the licensee shall levy, demand, collect, retain, appropriate and revise user charges for the reuse of the monument specified in the plan (visit to monument by non-motorised boat). Clause 5.6 is quoted below: -

"5.6 The licensee shall levy, demand, collect, retain, appropriate and revise user charges for the reuse of the Monument specified in the Plan (visit to monument by non-motorized boat) by Persons visiting the Monument at the rates set out in Annexure 3, which shall be rounded to the nearest rupee. For the avoidance of doubt, the Licensor acknowledges the right of the licensee to restrict visitors failing to pay the specified user charges from entering the Monument, provided that this condition shall not apply to duly authorised personnel of the licensor and competent authorities visiting the Monument for discharging official duties under the applicable laws."

It is also apparent from clause 2.2(c) that the entry fee to the monument will be Rs.25/- per visitor with escalation 10% per year. This goes to show that leave and license agreement is also for commercial gain given at Rs.1/- per annum for 99 years.

A revised proposal was submitted by Jal Mahal Resorts Pvt.Ltd. on 26th June, 2006 increasing the number of rooms in the hotel from 200 to 435, increase in the built up area under the sub head of resort hotel from 11,500 sq.m. to 32, 185 sq.m. The Department of Tourism of Government of Rajasthan discussed the matter in the meeting held on 10.10.2007 and it had been decided that master plan could not be changed and the company was informed accordingly. However, decision dated 10.10.2007 was changed and revised master plan was sanctioned in the meeting held on 10.9.2009 and letter was issued to the company on 22.9.2009.

It is also not in dispute that seven star hotel and other commercial structure are proposed to be built on 100 acres of land.

It is apparent that in the project, commercial exploitations have been permitted on a large area of 100 acres. It was also not disputed in return that as per prevailing DLC rate, value of the land at the relevant time was more than Rs.2500/- crores. Lessee has been given right to alien or sub-lease or mortgage the property to raise the finances for a period of 99 years. Leave and License Agreement is Appendix 14 to the main lease agreement. Total 432.8 acres project area as mentioned in Appendix 2 to the lease agreement has been given to Jal Mahal Resort Pvt.Ltd. The investment which was proposed was also running in

hundreds of crores. As per lease and license agreement, the licensee shall pay to the licensor an annual license fee of Rs.1.00 whereas as per Appendix 8 to the lease agreement, lessee shall pay annual lease rentals of Rs.2.52 crores to RTDC. Out of rentals, various obligations have to be fulfilled including to maintain lake water, STP, irrigation etc. remainder if any goes to JDA, JMC or State.

In the backdrop of historical background and project, we have to consider the various submissions raised by the learned counsel appearing for the parties.

Effect of project on ecology of the area

There is no specific definition of natural resources. As already stated above, Mansagar Lake is situated on the northern fringe of Jaipur City. Maharaja Man Singh in 1610 constructed a dam across the Darbhawati River between Khilagarh hills and hilly areas of Nahargah which created lake. It has to be treated as gift of the nature. In Centre for Public Interest Litigation and ors. V/s Union of India & ors. (JT 2012 (2) SC 154), the Apex Court observed that there is no universally accepted definition of natural resources, they are generally understood as elements having intrinsic utility to mankind. Natural resources belong to the people but the State legally owns them on behalf of its people and from that point of view natural resources are considered as national assets, more so because the State benefits immensely from their value. The State is empowered to distribute natural resources. However, as they constitute public

property/national asset, while distributing natural resources, the State is bound to act in consonance with the principles of equality and public trust and ensure that no action is taken which may be detrimental to public interest. The Government is bound to protect environment, forest, air, water, coastal zones etc. The State Government is bound to act as guardian and trustee in relation to catchment area of the pond, lake or river. People are owner of the natural resources. The Courts in India, considering Article 48, 48A, 51A (g) of the Constitution of India have issued directions from time to time with respect to natural resources, process of distribution to private persons, doctrine of public trust was evolved as part of Indian Jurisprudence, polluter-pay-principle was developed in M. C. Mehta V/s Kamal Nath (1997(1) SCC 388) and has been followed in Jamshed Hormusji Wadia V/s Board of Trustee (2002(3) SCC 214). The Apex court in the case of Centre for Public Interest Litigation (supra) referred to the decision in Fomento Resorts and Hotels Limited v. Minguel Martins (2009) 3 SCC 571 and has laid down that the the public trust 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. It has also been observed that public has special interest in public land water etc. It is the duty of the State not to impair such resources. The Apex Court emphasized that there is obligation to use such resources in such a manner as not to impair or diminish the people's rights and the people's long-term interest in that property or resource, including down slope

lands, waters and resources. The Apex Court in *Fomento Resorts and Hotels Limited v. Minguel Martins* (supra) has laid down thus: -

"53. The public trust 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. This doctrine puts an implicit embargo on the right of the State to transfer public properties to private party if such transfer affects public interest, mandates affirmative State action for effective management of natural resources and empowers the citizens to question ineffective management thereof.

54. The heart of the public trust doctrine is that it imposes limits and obligations upon government agencies and their administrators on behalf of all the people and especially future generations. For example, renewable and non-renewable resources, associated uses, ecological values or objects in which the public has a special interest (i.e. public lands, waters, etc.) are held subject to the duty of the State not to impair such resources, uses or values, even if private interests are involved. The same obligations apply to managers of forests, monuments, parks, the public domain and other public assets. Professor Joseph L. Sax in his classic article, "The Public Trust Doctrine in Natural Resources Law: Effective Judicial Intervention" (1970), indicates that the public trust doctrine, of all concepts known to law, constitutes the best practical and philosophical premise and legal tool for protecting public rights and for protecting and managing resources, ecological values or objects held in trust.

55. The public trust doctrine is a tool for exerting long-established public rights over

short-term public rights and private gain. Today every person exercising his or her right to use the air, water, or land and associated natural ecosystems has the obligation to secure for the rest of us the right to live or otherwise use that same resource or property for the long-term and enjoyment by future generations. To say it another way, a landowner or lessee and a water right holder has an obligation to use such resources in a manner as not to impair or diminish the people's rights and the people's long-term interest in that property or resource, including down slope lands, waters and resources."

In M.C.Mehta Vs. Kamal Nath & Ors, (1997) 1 SCC 388, the Apex Court has laid down that the river is a public property. It cannot be given for private use. 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. The public trust doctrine is a part of law at present. Even in absence of 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. Large area of the bank of River Beas which is part of protected forest has been given on a lease purely for commercial purposes to the Motels. The area being ecologically fragile and full of scenic beauty should not have been permitted to be converted into private ownership and for commercial gains. The Apex Court held that the Government of Himachal Pradesh has committed patent breach of public trust by leasing the

ecologically fragile land to the Motel management. The lease transactions are in patent breach of the trust held by the State Government. Therefore, the Motel shall pay compensation by way of cost for the restitution of the environment and ecology of the area. The Apex Court has laid down thus: -

"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 them- 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.

33. 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 clearly show the judicial concern in protecting all ecologically important lands, for example fresh water, wetlands or riparian forests. The observations of the Court in Mono Lake case to the effect that the protection of ecological values is

among the purposes of public trust, may give rise to an argument that the ecology and the environment protection is a relevant factor to determine which lands, waters or airs are protected by the public trust doctrine. 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. In Phillips Petroleum co. v. Mississippi 108 S. C. C. 791, the United States Supreme Court upheld Mississippi's extension of public trust doctrine to lands underlying no navigable tidal areas. The majority judgment adopted ecological concepts to determine which land can be considered tide lands. Phillips Petroleum case assumes importance because the Supreme Court expanded the public trust doctrine to identify the tide lands not on commercial considerations but on ecological concepts. We see no reason why the public trust doctrine should not be expanded to include all eco-systems operating in our natural resources.

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 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 increasing complex society, find it necessary to encroach to some extent open lands heretofore considered in-

violate 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 Legislature 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 esthetic use and the pres time glory of the natural resources, the environment and the eco-systems 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.

36. Coming to the facts of the present case, large area of the bank of river Beas which is part of protected forest has been given on a lease purely for commercial purposes to the Motels. We have no hesitation in holding that the Himachal Pradesh Government committed patent breach of public trust by leasing the ecologically fragile land to the Motel management. Both the lease - transactions are in patent breach of the trust held by the State Government. The second lease granted in the year 1994 was virtually of the land which is a part of river-bed. Even the board in its report has recommended delousing of the said area."

(emphasis added by us)

The case of Kamal Nath (supra) is squarely applicable to the facts of the instant case as it is more or less similar.

In Intellectuals Forum, Tirupathi Vs. State of A.P. & Ors. (AIR 2006 SC 1352), the Apex Court has laid

down that the government is bound to protect historical tanks qua concept of 'sustainable development' and 'public trust doctrine'. Destruction of local ecological resources is not permissible. Property subject to trust must not only be used for a public purpose, but it must be held available for use by general public. Property must be maintained for particular types of use (i) either traditional uses, or (ii) some uses particular to that form of resources. Principle of 'Inter-Generational Equity' also to be applied for protecting natural resources has also been taken into consideration by their Lordships of the Apex Court. The Apex Court has held that the "tank is a communal property" and State authorities are "trustees" to hold and manage such properties for benefits of community. State cannot be allowed to commit any act or omission which will infringe right of community and alienate property to any other person or body. Fact that the party has spent money on developing land is immaterial. The Apex Court has laid down thus: -

"67. The responsibility of the state to protect the environment is now a well-accepted notion in all countries. It is this notion that, in international law, gave rise to the principle of "state responsibility" for pollution emanating within one's own territories [Corfu Channel Case, ICJ Reports (1949) 4]. This responsibility is clearly enunciated in the United Nations Conference on the Human Environment, Stockholm 1972 (Stockholm Convention), to which India was a party. The relevant Clause of this Declaration in the present context is Paragraph 2, which states:

The natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations through careful planning or management, as

appropriate.

Thus, there is no doubt about the fact that there is a responsibility bestowed upon the Government to protect and preserve the tanks, which are an important part of the environment of the area.

Sustainable Development

68. The respondents, however, have taken the plea that the actions taken by the Government were in pursuance of urgent needs of development. The debate between the developmental and economic needs and that of the environment is an enduring one, since if environment is destroyed for any purpose without a compelling developmental cause, it will most probably run foul of the executive and judicial safeguards. However, this Court has often faced situations where the needs of environmental protection have been pitched against the demands of economic development. In response to this difficulty, policy makers and judicial bodies across the world have produced the concept of "sustainable development". This concept, as defined in the 1987 report of the World Commission on Environment and Development (Brundtland Report) defines it as "Development that meets the needs of the present without compromising the ability of the future generations to meet their own needs". Returning to the Stockholm Convention, a support of such a notion can be found in Paragraph 13, which states:

In order to achieve a more rational management of resources and thus to improve the environment, States should adopt an integrated and coordinated approach to their development planning so as to ensure that development is compatible with the need to protect and improve environment for the benefit of their population.

69. Subsequently the Rio Declaration on Environment and Development, passed during the Earth Summit at 1992, to which also India is a party, adopts the notion of sustainable development. Principle 4 of the declaration

states:

In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it.

73. *In light of the above discussions, it seems fit to hold that merely asserting an intention for development will not be enough to sanction the destruction of local ecological resources. What this Court should follow is a principle of sustainable development and find a balance between the developmental needs which the respondents assert, and the environmental degradation, that the appellants allege.*

Public Trust Doctrine

74. *Another legal doctrine that is relevant to this matter is the Doctrine of Public Trust. This doctrine, though in existence from Roman times, was enunciated in its modern form by the US Supreme Court in **Illinois Central Railroad Company v. People of the State of Illinois** (1892) 146 US 537 where the Court held:*

The bed or soil of navigable waters is held by the people of the State in their character as sovereign, in trust for public uses for which they are adapted.

[...] the state holds the title to the bed of navigable waters upon a public trust, and no alienation or disposition of such property by the State, which does not recognize and is not in execution of this trust is permissible.

What this doctrine says therefore is that natural resources, which includes lakes, are held by the State as a "trustee" of the public, and can be disposed of only in a manner that is consistent with the nature of such a trust. Though this doctrine existed in the Roman and English Law, it related to specific types of resources. The US Courts have expanded and given the doctrine its contemporary shape whereby it encompasses the entire spectrum of the environment.

75. The doctrine, in its present form, was incorporated as a part of Indian law by this Court in the case of *M. C. Mehta v. Kamal Nath* (supra) and also in *M. I. Builders v. :Radhey Shyam Sahu* [1999]3SCR1066 . In *M. C. Mehta, Kuldip Singh J.*, writing for the majority held:

[our legal system] 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. [...] The state as a trustee is under the legal duty to protect the natural resources.

76. The Supreme Court of California, in the case of *National Audubon Society v. Superior Court of Alpine Country* 33 Cal.419 also known as the Mono Lake case summed up the substance of the doctrine. The Court said:

"Thus the public trust is more than an affirmation of state power to use public property for public purposes. It is an affirmation of the duty of the State to protect the people's common heritage of streams, lakes, marshlands and tidelands., surrendering the right only in those rare cases when the abandonment of the right is consistent with the purposes of the trust."

This is an articulation of the doctrine from the angle of the affirmative duties of the State with regard to public trust. Formulated from a negatory angle, the doctrine does not exactly prohibit the alienation of the property held as a public trust. However, when the state holds a resource that is freely available for the use of the public, it provides for a high degree of judicial scrutiny upon any action of the Government, no matter how consistent with the existing legislations, that attempts to restrict such free use. To properly scrutinize such actions of the Government, the Courts must make a distinction between the government's general obligation to act for the public benefit, and the special, more demanding obligation which it may have as a trustee of certain public resources, [Joseph L. Sax "The public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention", Michigan Law

Review, Vol. 68 No. 3 (Jan. 1970) PP 471- 566)]. According to Prof. Sax, whose article on this subject is considered to be an authority, three types of restrictions on governmental authority are often thought to imposed by the public trust doctrine [i bid]:

1. 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;

2. the property may not be sold, even for fair cash equivalent

3. the property must be maintained for particular types of use. (i) either traditional uses, or (ii) some uses particular to that form of resources.

77. In the instant case, it seems, that the Government Orders, as they stand now, are violative of principles 1 and 3, even if we overlook principle 2 on the basis of the fact that the Government is itself developing it rather than transferring it to a third party for value.

79. Further the principle of "Inter-Generational Equity" has also been adopted while determining cases involving environmental issues. This Court in the case of A. P. Pollution Control Board v. : Prof. M. V. Nayudu and Ors. [1999]1SCR235 held as under:

The principle of inter-generational equity is of recent origin. The 1972 Stockholm Declaration refers to it in principles 1 and 2. In this context, the environment is viewed more as a resource basis for the survival of the present and future generations.

Principle 1 - Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for the present and future generations....

Principle 2 - The natural resources of the earth, including the air, water, lands, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the

benefit of the present and future generations through careful planning or management, as appropriate.

89. The set of facts in the present case relates to the preservation of and restoration of status quo ante of two tanks, historical in nature being in existence since the time of Srikrishnadevaraya, The Great, 1500 A.D., where the cry of socially spirited citizens calling for judicial remedy was not considered in the right perspective by the Division bench of the High Court of Andhra Pradesh despite there being overwhelming evidence of the tanks being in existence and were being put to use not only for irrigation purpose but also as lakes which were furthering percolation to improve the ground water table, thus serving the needs of the people in and around these tanks. The Division Bench of the High Court, in the impugned order, has given precedence to the economic growth by completely ignoring the importance and primacy attached to the protection of environment and protection of valuable and most cherished fresh water resources.

91. It is true that the tank is a communal property and the State authorities are trustees to hold and manage such properties for the benefits of the community and they cannot be allowed to commit any act or omission which will infringe the right of the Community and alienate the property to any other person or body. “

(emphasis added)

In *Akhil Bharatiya Upbhokta Congress v. State of M.P.* (2011) 5 SCC 29, the Apex Court examined the legality of the action taken by the Government of Madhya Pradesh to allot 20 acres land to an institute established in the name of Kushabhau Thakre on the basis of an application made by the Trust. One of the

grounds on which the Appellant challenged the allotment of land was that the State Government had not adopted any rational method consistent with the doctrine of equality. The High Court negatived the Appellant's challenge. Before the Apex Court, it was argued that the Court cannot exercise the power of judicial review to nullify the policy framed by the State Government to allot Nazul land without advertisement and the Apex Court rejected the said argument. Public interest is supreme in such matter.

The Apex Court in Jagpal Singh and ors. V/s State of Punjab and ors. (Civil Appeal No 1132/2011 decided on 28.1.2011) has held in the context of village "pond" which was being used for the common purposes by villagers that if appellants have built houses on the land in question, they must be ordered to remove their constructions and possession of the land in question must be handed back to the Gram Panchayat and regularizing such illegalities must not be permitted because it is a gram sabha land which must be kept for the common use of the villagers of the village. Reliance was placed upon the decision in M. I. Builders (P) Ltd. V/s Radhey Shyam Sahu (1999(6) SCC 464) in which Apex Court ordered restoration of a park after demolition of shopping complex constructed at the cost of over Rs.100 crores. In Friends Colony Development Committee V/s State of Orissa (2004(8) SCC 733), the Apex Court held that even where the law permits compounding of unsanctioned constructions, such compounding should only be by way of an exception. This principle applies with greater force in cases of encroachment of village common land. The Apex Court

noted that in many States, the Government orders have been issued permitting allotment of gram sabha land to private persons and commercial enterprises on payment of some money and such government orders are held to be illegal and should be ignored. In *Hinch Lal Tiwari V/s Kamala Devi* (AIR 2001 SC 3215) the Apex Court held that land recorded as a "pond" must not be allowed to be allotted to anybody for construction of a house or any allied purpose. The Court ordered the respondents to vacate the land which they occupied illegally after taking away the material of the house. The Apex Court has also noted that over the last few decades, most of these ponds in our country have been filled with earth and built upon by greedy people thus destroying their original character and this has contributed to the water shortages in the country. Many ponds are auctioned off at throw away prices to businessmen for fisheries in collusion with authorities/Gram Panchayat officials and even such money collected from these so called auctions are not used for the common benefit of the villagers, but misappropriated by certain individuals. The Apex Court in Jagpal Singh's case (supra) has laid down thus: -

"14. In M. L. Builders (P) Ltd. V/s Radhey Shyam Sahu (1999(6) SCC 464) the Supreme Court ordered restoration of a park after demolition of a shopping complex constructed at the cost of over Rs. 100 crores. In Friends Colony Development Committee V/s State of Orissa 2004(8) SCC 733, this Court held that even where the law permits compounding of unsanctioned constructions, such compounding should only be by way of an exception. In our opinion, this decision will apply with greater force in cases of encroachment of village

common land. Ordinarily, compounding in such cases should only be allowed where the land has been leased to landless labourers or members of Scheduled Castes/Scheduled Tribes, or the land is actually being used for a public purpose of the village e.g. running a school for the villagers or a dispensary for them.

15. In many States Government orders have been issued by the State Government permitting allotment of gram sabha land to private persons and commercial enterprises on payment of some money. In our opinion all such government orders are illegal and should be ignored.

16. The present is a case of land recorded as a village pond. This Court in Hinch Lal Tiwari V/s Kamala Devi AIR 2001 SC 3215 (followed by the Madras High Court in L. Krishnan V/s State of Tamil Nadu 2005(4) CTC 1 Madras) held that land recorded as a pond must not be allowed to be allotted to anybody for construction of a house or any allied purpose. The Court ordered the respondents to vacate the land they had illegally occupied, after taking away the material of the house. We pass a similar order in this case.

18. Over the last few decades, however, most of these ponds in our country have been filled with earth and built upon by greedy people, thus destroying their original character. This has contributed to the water shortages in the country.

19. Also, many ponds are auctioned off at throw away prices to businessmen 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."

The Apex Court in the case of Jagpal Singh (supra) has further held that long duration of such illegal occupation or huge expenditure in making constructions thereon or political connections must not be treated as a justification for condoning this illegal act or for regularizing the illegal possession.

In M. C. Mehta (Badkhal and Surajkund Lakes Matter) Vs. Union of India & Ors., (1997) 3 SCC 715, the Apex Court has laid down that it is the duty of the State to protect and improve the environment and to safeguard the forests and wild life of the country. It is the duty of every citizen to protect and improve natural environment including forests, lakes, rivers and wildlife. The 'Precautionary Principle' makes it mandatory for the State to anticipate, prevent and attack the causes of environment degradation. In order to protect two lakes i.e. Badkhal and Surajkund, the Apex Court ordered that it was necessary to limit the construction activity in the close vicinity of the lakes. The Apex Court has laid down thus: -

"6. The functioning of eco-systems and the status of environment cannot be the same in the country. Preventive measures have to be taken keeping in view the carrying capacity of the eco-systems operating in the environmental surroundings under consideration. Badkhal and Surajkund Lakes are popular tourist resorts almost next door to the capital city of Delhi. We have on record the Inspection Report in respect of these lakes by the National Environmental Engineering Research Institute (NEERI) dated April 20, 1996 indicating the surroundings, geological features, land use and soil types and archaeological significance of the areas surrounding the lakes. According to the report Surajkund lake impounds water from rain and natural springs. Badkhal lake

is an impoundment formed due to the construction of an earthen dam. The catchment areas of these lakes are shown in a figure attached with the report. The land use and soil types as explained in the report show that the Badkhal lake and Surajkund are monsoon-fed water bodies. The natural drainage pattern of the surrounding hill areas feed these water bodies during rainy season. Large scale construction in the vicinity of these tourist resorts may disturb the rain water drains which in turn may badly affect the water level as well as the water quality of these water bodies. It may also cause disturbance to the aquifers which are the source of ground water. The hydrology of the area may also be disturbed.

7. The two expert opinions on the record - by the Central Pollution Control Board and by the NEERI - leave no doubt on our mind that the large scale construction activity in the close vicinity of the two lakes is bound to cause adverse impact on the local ecology. NEERI has recommended greenbelt at one KM radius all around the two lakes. Annexures A and B, however, show that the area within the greenbelt is much lesser than one KM radius as suggested by the NEERI."

Reliance has been placed by the learned counsel appearing for the respondent no.7 on the decision of the Apex Court in Susetha V/s State of T.N. & ors. (2006(6) SCC 543) in which the Apex Court observed that natural water storage resources are not only required to be protected but also steps are required to be taken for restoring the same if it has fallen in disuse. The Apex Court has also observed that the same principle cannot be applied in relation to artificial tanks. In the instant case, as already stated above, even if it is a man made lake, but it has to be treated as gift of

nature. Jal Mahal is also an ancient monument, that could not be given for upkeep to a private sector person for 99 years in the method and manner which has been done. The decision is of no help to the respondent no.7. The Apex Court has also held in that case that alienation of property held as a public trust is necessarily prohibited. The doctrine of sustainable development although is not an empty slogan, it is required to be implemented taking a pragmatic view and not on ipse dixit of the court. The Apex Court in the case of *Susetha* (supra) held thus: -

“...The matter has also been considered at some details by this Court in Intellectuals Forum, Tirupathi (supra), wherein again while dealing with natural resources, it was opined:.....

This Courts have not, in the aforesaid decisions, laid down a law that alienation of the property held as a public trust is necessarily prohibited. What was emphasized was a higher degree of judicial scrutiny. The doctrine of sustainable development although is not an empty slogan, it is required to be implemented taking a pragmatic view and not on ipse dixit of the court.

In Bombay Dyeing & Mfg. Co. Ltd. v/s. Bombay Environmental Action Group and Ors. (AIR2006SC1489), referring to a large number of decisions, it was stated that whereas need to protect the environment is a priority, it is also necessary to promote development stating:

...The harmonization of the two needs has led to the concept of sustainable development, so much so that it has become the most significant and focal point of environmental legislation and judicial decisions relating to the same. Sustainable development, simply put, is a process in which development can be sustained over generations. Brundtland Report defines 'sustainable development' as development that meets the needs of the present generations

without compromising the ability of the future generations to meet their own needs. Making the concept of sustainable development operational for public policies raises important challenges that involve complex synergies and trade offs.

Treating the principle of sustainable development as a fundamental concept of Indian law, it was opined:

The development of the doctrine of sustainable development indeed is a welcome feature but while emphasizing the need of ecological impact, a delicate balance between it and the necessity for development must be struck. Whereas it is not possible to ignore inter-generational interest, it is also not possible to ignore the dire need which the society urgently requires. "

The Division Bench of this Court in Rajendra Kumar Razdan Vs. State of Rajasthan (D. B. Civil Writ Petition No. 4271/1999 decided on 6.2.2007), has also ordered that the conversion and construction permission in and around the lakes and in their respective catchment areas is completely banned except the rarest of rare exceptional cases keeping in view the earlier orders of this Court.

In the instant case, on facts it is rightly admitted by Advocate General that out of 100 acres land leased out to Jal Mahal Resorts Pvt. Ltd., 13 bigha 17 biswa land comprising khasra no. 67/317 is part of the lake bed and he has fairly conceded that it was not permissible to lease out the aforesaid area which is recorded as Gairmumkin Talab. Thus, lease deed could not have been executed with respect to the lake bed area. Hence, lease deed is illegal and void. The State and its functionaries have utterly failed to observe the doctrine of public trust reposed in them. The

possession report (Annex.26 to petition no.5039/2010) also indicates that much more area is part of the lake bed and the area of "14.15 acres of land was submerged" at the time when the possession was handed over. It has been specifically mentioned in the possession report Annex.26 that out of 100 acres of land leased to Jal Mahal Resorts Pvt.Ltd., land measuring 14.15 acre was submerged as per map which the lessee is hereby authorized to reclaim at its own expense. The relevant portion of possession report is quoted below: -

"POSSESSION REPORT

On dated 4th April, 2006 the Rajasthan Tourism Development Corporation (Lessor in term of Mansagar Lake Precinct Lease Agreement dated 22-112005 with Jal Mahal Resorts Pvt. Ltd.), on issuance of certificate of compliance on 20-02-06 an effective from the compliance date hands over the possession of the Demised Premises on site as per the lease agreement to Jal Mahal Resort Private Limited having its registered Office : 102-A, Queens Diamond, M.P. Marg, Opera House, Mumbai - 400 004,. The Demised premises includes 100 Acres of land of Khasra no.97/313 (1.11 Acre), 69 (3.70 Acre), 71/314 (0.44 Acre), 126/315 (0.37 Acre), 72/316 (11.12 Acre), 67/317 (8.65 Acre), 67/318 (8.88 Acre), 68/319 (13.22 Acre), 100/320 (0.69 Acre), 68/321 (40.71 Acre), 101 (0.72 Acre), 102/322 (0.12 Acre), 103 (0.03 Acre), 104/323 (0.04 Acre), 105/324 (0.49 Acre), 106/325 (0.61 Acre), 107 (0.06 Acre), 108/326 (0.27 Acre), 70/327 (8.77 Acre) in village Vijay Mahal, Tehsil - Jaipur as per map annexed to lease agreement. Out of this land measuring 14.15 acre is submerged as per map, which the lessee (Jal Mahal Resorts Pvt. Ltd.) is hereby authorized to re-

claim at its own expense in presence of the following.....

Sd/-"
(emphasis added)

It was also submitted by respondents that land which was in submergence was not part of the area of lake. As the area of lake had not been ascertained by the concerned authorities with the help of old map etc., it could not be said that the area which was in submergence was not part of area of lake. When possession of the land in question was given, 14.15 acres land was in submergence, therefore, it was part of the area of lake, which could not have been reclaimed by respondent no.7. Such exercise is wholly impermissible. The area of the lake could not have been leased out and by doing so, lake is being damaged by proposing construction in it. The area of lake has been reduced, which is also illegal, arbitrary, without jurisdiction and void. When the possession was handed over, 14.15 acres of land was found in submergence and since it was submerged, obviously it has to be treated as part of the lake. Thus, the submission of respondent no.7 that 14.15 acres of land which was in submergence was not part of lake, is liable to be rejected.

It is shocking and surprising that area which was under submergence of 14.15 acres and obviously formed part of the lake was permitted to be reclaimed by Jal Mahal Resorts Pvt.Ltd. There was no authority with the State Government or RTDC or JDA or JMC to permit reclaiming of the area which was in submergence in lake and it was in fact part of lake. The petitioners have submitted that in fact much more area out of 100 acres

land came into lake bed. Whatever that may be, admittedly area of 13 bigha 17 biswa is recorded as Gairmumkin Talab and area of 14.15 acre was in submergence, which was also included in 100 acres of land leased out for 99 years to the company, which was not permissible. There was no authority under the law to alienate the land of lake bed. Whole transaction is based on flagrant violation of principle of public trust. The respondents-State and its functionaries were trustees of the land and they were holding it for the benefit of people. Such lake/land is of people and the State, JDA and JMC are merely custodian of the same. It is appalling and astonishing that respondents-authorities have failed to act in objective manner and they have violated the principles enshrined in Article 48A, 49 and 51A(g) of the Constitution, they provide:

"48A. Protection and improvement of environment and safeguarding of forests and wild life. - The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.

49. Protection of monuments and places and objects of national importance. -It shall be the obligation of the State to protect every monument or place or object of artistic or historic interest, [declared by or under law made by Parliament] to be of national importance, from spoliation, disfigurement, destruction, removal, disposal or export, as the case may be.

*51A(g). Fundamental duties. -It shall be the duty of every citizen of India-
(g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures. "*

Under section 92 of the Rajasthan Municipalities Act, which was prevailing at the relevant time, all property specified in that section is vested in the Board and shall be held by it as trustee. All public streams, tanks, reservoir, tanks etc. shall be held by it as trustee as provided in Section 92(2)(b).

It is also clear that permission of Central Government MOEF was necessary to be obtained as per the notification dated 14th September, 2006 issued by MOEF in exercise of the powers conferred by sub-section (1) and clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986 read with clause (d) of sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986 and in supersession of the notification number S.O.60(E) dated the 27th January, 1994 wherein the Central Government directed that on and from the date of its publication the required construction of new projects or activities or the expansion or modernization of existing projects or activities listed in the schedule to this notification entailing capacity addition with change in process and or technology shall be undertaken in any part of India only after the prior environmental clearance from the Central Government or as the case may be, by the State Level Environment Impact Assessment Authority, duly constituted by the Central Government under sub-section (3) of section 3 of the said Act, in accordance with the procedure specified hereinafter in this notification. As per note appended to the notification, any project or activities specified in category-B be treated as category A if located within 10 kms from boundary of protected area. Admittedly the

Nahargarh Wildlife Sanctuary is nearby and within the periphery of 1 km. from the project area and thus, the project area is within 10 km. from the protected wildlife sanctuary and hence, project has to be treated in Category-A for which as per General Condition of the Notification dated 14.9.2006, the competent authority to give environment clearance is Central Government MOEF and no such environment clearance has been obtained from MOEF. Relevant portion of the Notification dated 14th September, 2006 is quoted below: -

"2. Requirements of prior Environmental Clearance (EC): - The following projects or activities shall require prior environmental clearance from the concerned regulatory authority which shall hereinafter referred to be as the Central Government in the Ministry of Environment and Forests for matter falling under Category "A" in the Schedule and at State level the State Environment Impact Assessment Authority (SEIAA) for matters falling under Category 'B' in the said Schedule, before any construction work, or preparation of land by the project management except for securing the land, is started on the project or activity:

(i) All new projects or activities listed in the Schedule to this notification;

Schedule

(See paragraph 2 and 7)

LIST OF PROJECTS OR ACTIVITIES REQUIRING PRIOR ENVIRONMENTAL CLERANCE

Project or Activity	Category with Threshold limit		Conditions if any
	A	B	
8. Building/Construction project/Area Development projects and Townships			
.....			
8(b) Townships And Area Development Projects.	Covering an area \geq 50 ha and or built up area \geq 150,000 Sq. mtrs.	++	All Projects under item 8(b) shall be appraised as Category B1.

Note: -**General Condition (GC)**

Any project or activity specified in Category 'B' will be treated as Category A, if located in whole or in part within 10 km from the boundary of (i) Protected Areas notified under the Wild Life (Protection) Act, 1972 (ii) Critically Polluted area as notified by the Central Pollution Control Board from time to time (iii) Notified Eco-sensitive areas (iv) inter-State boundaries and international boundaries."

(emphasis added)

The MOEF Central Government in its return has clearly clarified that MOEF had sanctioned 70% of the cost of the project to the tune of Rs. 17.30 crores for conservation and management of Mansagar Lake in Jaipur and with respect to item 8(a) again it is reiterated in the return that any building/ construction project whose built up area is between 20,000-1,50,000 sqm. falls in the category-B and will require prior environment clearance from SEIAA and with respect to item 8(b), it was submitted that neither any communication nor any document was received from the State Government of Rajasthan or the project proponents seeking permission from Central Wetland Regulatory Authority. Thus, it has not been disputed by MOEF that no permission for the project over 100 acres of land or

on the other project area has been granted. For what purpose, it has granted the sanction has been clearly specified in the return. Relevant portion of the reply of MOEF is quoted below: -

"17. That the contents of para 7 of the petition are replied in terms that the respondent had received a representation from the petitioner which was referred to the State Government of Rajasthan MOEF had given sanction only for the project conservation and management of Mansagar Lake in Jaipur.

18. That with respect to the contents of paras 8A to H of the writ petition, it is submitted that the project for conservation and management of Mansagar Lake in Jaipur was sanctioned for improvement of Mansagar Lake, as per the mandate of the National Lake Conservation Plan.

20. That so far as the contents of paras 8N to Q of the writ petition are concerned, it is submitted that neither any communication nor any document has been received from the State Government of Rajasthan or the project proponents seeking permission from Central Wetland Regulatory Authority. "

Thus, it is apparent that the sanction which was granted on 5.9.2002 has nothing to do with the project spreading over 432.8 acres of the land which has been granted to Jal Mahal Resorts Pvt.Ltd. There is misrepresentation made by the various respondents-State/JDA/JMC and lessee in their return as to the nature of sanction granted on 5.9.2002. Thus, it is considered appropriate to quote the sanction granted by MOEF on 5.9.2002 for setting at rest any doubt as to what has been sanctioned: -

"No. J-16011/3/2001-NRCD

*Govt. Of India
Ministry of Environment & Forests
National River Conservation Directorate*

*Paryavaran Bhawan
CGO Complex, Lodi Road
New Delhi -110003
Dated: 05/09/2002*

To,

*The Secretary
Govt. of Rajasthan
Urban Development Department
Jaipur.*

Sub: Administrative approval and expenditure sanction for conservation and management of Mansagar Lake at Jaipur (Rajasthan) under NLCP at an estimated cost of Rs.22.89 crore (Rs. Twenty two crore eighty nine lakhs only) out of which Government of India share would be 70% or Rs.16.02 crore (Sixteen Crores and two lakhs only).

Sir,

I am directed to convey the sanction of the President to the grant of Administrative approval and expenditure sanction for conservation and management of Mansagar Lake in Jaipur (Rajasthan) under NLCP at an estimated cost of Rs.22.89 crore (Rs. Twenty two crore eighty nine lakhs only) out of which Government of India share would be 70% or Rs. 16.02 crore (Sixteen Crores and two lakhs only), subject to the condition that the scheme should be implemented within the sanctioned cost.

2. The details of items sanctioned under the scheme are furnished in general abstract of cost (Annexure-I)

3. The following points should be noted: -

(a) 70% cost is to be borne by Govt. of India. Cost of land, if any, shall be borne by state Govt. Cost Escalation if any shall be met by the state Govt.

(b) The scheme is to be completed within one and half year of its initiation, which should be strictly followed, and any increase due to time or cost over run or any other reasons shall be borne by the state Govt.

(c) Annual operation and maintenance expenses shall be borne by state Govt. fully.

(d) Approval is subject to compliance of commitment by the state Govt. with regard to O & M costs.

(e) The State Govt. will ensure that no untreated

sewage is discharged into the Mansagar Lake after the implementation of the lake conservation project. The Mansagar lake project would be monitored by Ministry of Env. & Forests/Planning Commission. For which necessary local arrangements shall be made by the implementing agency/state Govt.

(f) Release of fund for this scheme will be further linked to: -

(i) Fulfillment of legal and physical requirements by the state Govt. to enable local bodies to augment their resources for operation and maintenance of the assets created under the National Lake Conservation Plan.

(ii) Full proof arrangements being made by the state Govt. to tackle non-point sources of pollution.

(iii) Constitution of citizen monitoring committee under Divisional commissioner which should meet and monitor the progress regularly.

(iv) Compliance of PERT chart for implementation of the scheme. Be done.

5. The funds for expenditure on the scheme would be debitable to the Major Head 3435, 04, 101, 05, 00, 31 -Grants-in-Aid - National Lake Conservation Plan under Demand No. 24 - Ministry of Env. & Forests for the financial year 2002-03 (Plan).

6. This issue under the powers delegated to the M/o Env. & Forests and with the approval of the IFD vide their Dy. No. 2487/DIF(F)/02 dated 23. 8. 02.

Yours faithfully
-sd-

(Asha Makhijani)
Under Secretary to the Govt of India

The revised sanction was issued by MOEF vide letter 23rd December, 2002. The said letter and details of budget estimate for Mansagar Lake Conservation Project under NLCP are quoted below: -

"No. J-16011/3/2001-NRCD-II
Government Of India
Ministry of Environment & Forests
National River Conservation Directorate

Paryavaran Bhawan
CGO Complex, Lodi Road
New Delhi - 110003
Dated: 23rd December, 02

To,

The Secretary
Government of Rajasthan
Urban Development Departt.
Jaipur.

Sub: Administrative approval and expenditure sanction for conservation and management of Mansagar Lake at Jaipur (Rajasthan) under NLCP at an estimated cost of Rs. 24.72 crore (Rupees Twenty four crore seventy two lakhs only) out of which Government of India share would be 70% or Rs. 17.03 crore (Rupees Seventee crore and thirty lakhs only).

Sir,

In partial modification to this Ministry's sanction of even number dated 5.9.02 on the aforesaid subject, I am directed to convey the sanction of the President to the grant of Administrative approval and expenditure sanction for conservation and management of Mansagar Lake at Jaipur (Rajasthan) under National Lake Conservation Plan (NLCP) at a revised estimated cost of Rs. 24.72 crore (Rs. Twenty two four crore and seventy two lakhs only) with 8% centages. The Government of India share in the project would be 70% i.e. 17.30 crore and that of State Govt. as Rs. 7.42 crore.

2. The break-up of the revised project cost is given at Annexure-I.

3. All other conditions as stated in the earlier sanction order shall remain the same.

4. The funds for expenditure on the scheme would be debitable to the Major Head '3435', 04, 101, 05, 00, 31 -Grants-in-Aid - National Lake Conservation Plan (NLCP) under Demand No. 24 - Ministry of Environment & Forests for the financial year 2002-03 (Plan).

5. This issue under the powers delegated to the Ministry of Environment & Forests and with the approval of the IFD vide their Dy. No. 2016/JS & FA/2002 dated 20.12.2002.

Yours faithfully

-sd-

(Asha Makhijani)

Under Secretary to the Govt of India

**DETAILS OF BUDGET ESTIMATE FOR MANSAGAR LAKE
CONSERVATION PROJECT UNDER NLCP**

S. No	ACTIVITIES	COST ESTIMATE (Rs. IN CRORE)
1.	<i>Realignment of Drains</i>	<i>2.54</i>
2.	<i>Desilting of Lake</i>	<i>7.01</i>
3.	<i>In situ Bioremediation</i>	<i>3.00</i>
4.	<i>STP & Wetland construction</i>	<i>4.50</i>
5.	<i>Settling Tank near Amer Road & Pumping Arrangement</i>	<i>0.10</i>
6.	<i>Analysis of Water Quality and Sludge/sediment</i>	<i>0.14</i>
7.	<i>Aforestation of the Lake</i>	<i>1.00</i>
8.	<i>Lake Front Promenade</i>	<i>0.72</i>
9.	<i>Water Supply & Sewerage</i>	<i>0.99</i>
10.	<i>Electric Supply</i>	<i>1.38</i>
11.	<i>Nesting Island</i>	<i>0.70</i>
12.	<i>Checkdam</i>	<i>0.80</i>
	<i>Total</i>	<i>Rs. 22.89 crore</i>
	<i>Centages @ 8%</i>	<i>Rs. 1.83 crore</i>
	<i>Total estimated cost</i>	<i>Rs. 24.72 crore</i>

Total estimated cost= Rs. 24.72 crore
GOI share = Rs. 17.30 crore
State share = Rs. 7.42. "

What has been sanctioned is clearly culled out in the aforesaid estimate/sanction. It is nowhere mentioned that project of 432.8 acres has been sanctioned or that of 100 acres given on lease under project.

It is shocking and surprising that various respondents in their return have tried to mislead this Court that the tourism project has clearance of Central Government MOEF, as it is apparent from the return of the MOEF that no such permission has ever been asked.

The permission which has been granted on 29th April, 2010 by the State Level Environment Impact Assessment Authority has no value in the instant case as the said authority was authorized for the matters falling under Category B and not under category-A

project and as the project in question is admittedly within 10 kms from the boundary of Nahargarh Wildlife Sanctuary, which is protected area notified under the Act of 1972, of which notification is on record therefore, prior permission of Central Government MOEF was necessary for the project in question as mandated in the Notification dated 14.9.2006 and the same has not been obtained and in absence thereof, the entire action taken by the respondent no.7 Jal Mahal Resorts Pvt.Ltd. and other respondents is unauthorized, illegal and void. Permission obtained from SEIAA for the tourism project treating it as category-B as per item 8(a) is illegal and void. The said Authority was not competent as per para 2 of the Notification of MOEF dated 14th September, 2006 to grant permission for the project in question.

In Writ Petition NO. 4860/2010, it has been averred that State Government did not carry out any environmental impact study before entering the lease and license and acted in violation of the Government of India Notifications dated 27.1.1994 and 4.5.1994. Requirement and procedure for seeking environmental clearance of projects have been indicated in para no.2 of the aforesaid notification. The list of projects requiring environmental clearance from Central Government has been specified in schedule I. Composition of the expert committees for Environment Impact Assessment has been indicated in Schedule III. No environment clearance as required under the notification dated 27.1.1994 from the Central Government MOEF as project in question was falling in Schedule-I, was obtained. The permission obtained from

the State Level Environment Impact Assessment Authority, Rajasthan has no value because that authority was competent to grant sanction only for the matters falling under category B and not for the matters falling under category-A and since the project in question is admittedly within 10 kms. of the boundary of the Nahargarh Wildlife Sanctuary, which is notified reserved forest under the Wildlife Protection Act, 1972, therefore, it was incumbent upon the respondents to have obtained environment clearance from the Central Government MOEF, which has not been obtained.

It was also incumbent upon the respondents to have obtained environment clearance of Central Government MOEF in view of notification dated 14th September, 2006 issued under the Environment Protection Act as the project in question was within 10 kms from the boundary of protected area, but no such clearance has been obtained. The Central Government MOEF has only granted sanction for conservation and management of Mansagar Lake in 2002, but that sanction has got nothing to do with the project in question.

It was also incumbent upon the respondents-State and its functionaries to consider the effect on ecology, flora, fauna, wildlife birds sanctuary considering the importance of the area, which has not been done. Water level of lake could not have been fixed in the manner done so as to carve out area for project.

Permission has also been obtained from the Rajasthan Pollution Control Board on the pretext that MOEF has granted clearance to the project and as such,

permission granted under Water Act and Air Act by the Rajasthan Pollution Control Board is also of no avail to Jal Mahal Resorts Pvt.Ltd. in the absence of clearance from Central Government MOEF as per notification issued under Environment Protection Act.

It was submitted by Shri Rajendra Prasad, Learned counsel appearing on behalf of the petitioners that Tourism Component of the lake restoration plan has been conceived, prepared and is being sought to be implemented on the lake basin itself which is absolutely illegal and unconstitutional; as a matter of fact the tourism project upon 100 acres of land is being implemented by using the soil excavated from the lake basin for raising the southern area of lake spread to reclaim 100 acres of land for implementation of the said tourism project; from the documents and materials available on record, it is evident that the entire 100 acres of land handed over to respondent No.7-Jal Mahal Resorts Pvt.Ltd. was submerged in water and the northern area towards the hills was lying dried which clearly shows that the lake basin towards south was low lying and was submerged in water being part of lake basin, which has been filled and compacted to raise its level from soil of lake itself for carving out this area of land in the lake basin to be used for tourism activities.

The respondents are claiming that the area of Man Sagar Lake is 302.8 acres and the 100 acres of land leased out in favour of respondent No.7-Jal Mahal Resorts Pvt.Ltd. is on the southern lake precinct.

So far as DPR is concerned, it does not disclose any basis for stating that the area of lake is 130 ha

in its full spread. Rather the contents of the project report clearly demonstrate that the area has been carved out under a plan of artificially restricting the spread of lake to 300 acres for gaining the project area of 100 acres out of the actual lake spread. The report clearly shows that the area of 100 acres was to be prepared by filling soil received in the process of desiltation of lake basin.

At page 12 and 13 of DPR, it is stated as under: -

"(b) Outputs of Surveys:

(i) It is observed that the lake is at its maximum spread just after the monsoons and shrinks gradually to its least spread just before the monsoon. The contour map shows the water spreads in accordance with various contour levels. It may be noted that the full tank level is the 99.0 contour RL and the level of the Amber - Delhi Road is 100.0 contour RL in comparison".

At page 36 of DPR it is stated as under:

"2.7. Spread and Volume of Lake water:

(a)

(b) At the higher contour level there is constant threat of the lake waters spilling over on to the Amber Road, surrounding settlements and Projects Area. Hence, there is a need to establish a particular spread and volume of the water that ensures round the year sustenance of the lake."

At page 51 to 54 of DPR, it is stated as under: -

"3.0 ALTERNATIVE SCENARIOS CONSIDERED FOR DECIDING LEVEL OF LAKE.

While developing the lake management and restoration plan, it has been envisaged that the lake precinct area after restoration will be used for tourism and recreation facilities. Hence while assessing different scenarios for deciding the lake level, the extent of lake precinct area to be released, has also been taken into consideration.

With reference to the year-round sustainable quantum of water to be maintained in the lake and an acceptable lake profile three scenarios were considered.

3.1 Scenario 1: Maintaining Water Level at 100 contour level (if the current maximum spread of the lake is respected)

(a) at 100 m RL, land available for lake precinct, to be utilized for development of tourist activities, would be 26.6 acre, which is not adequate for such facilities.

.....

- * Land available for Development 26.6 acre
- * Water spread of the Lake 400 acres
- * Capacity of the Lake 4.24 MCM

(b)

3.2. Scenario:

3.3 Scenario: Maintaining Water Level at modified 98 Contour Level (If lake is restored to 98 m RL or 412.085 m above MSL)

This scenario is based on keeping water level below the ground floor of Jal Mahal. With modifications in the actual spread of the 98 m RL

the water volume and the spread of the lake are found to be sustainable. This contour is the most appropriate level at which the lake can be maintained throughout the year in terms of the water volume. Besides, maintaining the water at this level provides a sufficiently large area on the lake edge for the development of tourism related activities. Furthermore, this level of water frees the lower storey of Jal Mahal for reuse and would be less damaging to the structure.

(emphasis added)

* Land available for development	152.2 acre
* Water spread of the Lake	280.6 acre
* Capacity of the Lake	2.42 MCM

3.4 Selection of Suitable Scenario

*The suitability of the alternative scenarios has been weighed against several parameters, which have been presented in matrix form in Tables 2.13 and 2.14. The detailed hydrological model for the sustainability of the lake has been worked out for this level. **This is the final selected option for the sustainability of the lake and therefore becomes the final option for land development as well as the water based recreational activities.***

At page 62 of DPR it is stated as under:

"4.4

(a) Desiltation – Concept

(i).....The silt is mainly sandy soil although rich in nutrients and the volume to be removed is 700,000 m³. The desiltation will be above the 96.0m RL and upto the 98.0m RL..... . The silt will be used in land formation along the Amer-Jaipur Road, in surface spreading in the southern

project areas, in check dam in the Forest Valley, in island formation and in other engineering works to the extent of 700,000 m³. This Will result in a new spread and volume of the lake as follows:

Spread: 1. 11 sq. Km. (111 ha)

Volumetric 2. 42 MCM"

(b)

*(vii) Land formation for tourism facilities could be easily achieved through this dredging process. This process could be started immediately on being given the go ahead for the project and could be achieved in a far quicker time frame than through conventional methods of desilting and filling.....
.... "*

At page 98 of DPR it is mentioned as under:

" 6. 3 Mansagar Lake Precinct

(a) Land available for Development

The land availability option chosen is based on restoring lake water to maximum of 98 m level (412.085 in above MSL) Level. This scheme provides an area of 61.62 ha of land for the Tourism and Recreation activities..... . "

In our opinion, it is crystal clear from paras 3.3 and 3.4 of DPR that lake level has been reduced to carve out 100 acres land for lease, same is wholly impermissible act.

The map no.2.6 in DPR the State Government has clearly shown that the area where tourism project is being implemented is shown as dried lake bed. The

details of land handed over to Jal Mahal Resorts Pvt.Ltd. clearly show that the land pertaining to khasra no.67/317 is actually recorded as Gairmumkin talab with measurement of 13.17 bigha which also clearly shows that the tourism project area is part of lake basin itself. Not only this much the queries raised by the respondent No.8 vide Annexure 20 at page 208 of writ petition on submission of technical bid and presentation it is stated as under: -

"1. Issue: Entire lake precinct area of 100 acres filled and compacted shall be made available by lessor to lessee with Jal Mahal monument free from all encumbrances".

Thus, it is manifestly clear that the area was to be raised above the lakebed by filling and compaction of soil for lakebed itself and was not otherwise available for the so-called tourism project. It has now been created by reducing level of lake water and doing filling and compaction.

Clause 2.1(c) of the lease agreement itself clearly provides that "14.15 acre of demised premises shall be reclaimed by the lessee at his cost and expense from the lakebed". This reflects that so much of land out of 100 acre was actually submerged in water at the time of agreement. The respondent No.5-PDCOR in para 19 of its reply admits this fact by stating as under: -

"Regarding contents of sub para (iii) it is submitted that the 14.15 acres of land though was submerged in water did not make

it part of Lake bed. It was not entered as Gair Mumkin Talab..... the 14.15 acres of land thus remained under submergence in water."

The report of PDCOR prepared in 2008 Annexure-43 to the petition clearly mentions as under: _

" De-silting of lake (completed)

- * De-silting of lake bed done upto reduced level of 96m.
- * Silt use to develop lake promenade, check dam, nesting island & 100 acre land for private sector developer (PSD)."

Thus, from the materials available on record, particularly DPR itself the basis of entire project where it is stated that the current maximum water spread of the lake being 400 acres, there remains no manner of doubt about the fact that the respondent authorities have sold/leased out 25% of lake basin itself for the purpose of preparing 100 acres of land to be used for their so called tourism project which is absolutely illegal and unconstitutional and therefore void ab initio. It was not open to tamper with lake water level to create 100 acre land for lease for hotels etc.

Desilting and construction of wall was also done in an illegal manner in lakebed.

There are allegations made by the petitioners that in the process of drying and excavating the lake bed, most of the trees and shrubs which were planted during

the lake restoration plan were completely destroyed. There is substance in the said submission. What had happened to the planted trees and shrubs, if they have not been destroyed during the aforesaid process, is not properly explained by the respondents.

Size of Lake

It was submitted by the petitioners that originally the lake was much larger in size and spread which was reduced due to several causes and after the respondents carved out a platform of 100 acres of land by use of silt excavated from the lake in the year 2006-07, its area remained about 130 hectares. Original size of lake is much more than 432.8 acres. Though this fact has been disputed by the respondent no.7 Jal Mahal Resorts Pvt.Ltd., it was submitted that total area of lake was 310 acres approx.; PDCOR in the month of Oct.2001 has found that full spread of the Mansagar lake was approx.130 hectares with a catchment area of 23.50 kms; 40% of total catchment area is urban catchment and rest of the catchment area is in the form of denuded Aravali hills. We need not go into the exact area as there are disputed claims. It is for the respondents-State, JMC and JDA to fix the precise area of the lake with the help of map etc. However, respondent-JDA in its reply to Civil Writ Petition (PIL) No.5039/2010 has mentioned that, "The actual size of water body i.e.Mansagar Lake was 1842 mtrs. in length in the year 1960". However at present the length has been reduced; now the area is 0.79 kms as per the information of Executive Engineer, PWD under the RTI Act on which the petitioner has relied upon in which it

has been mentioned that prior to the independence the area of the lake was 1.154 sq.kms which has now been reduced to 0.79 sq.kms. No boundary wall has been put up on the boundaries. Thus, it appears that the area of lake is being substantially reduced by the act of respondents. Furthermore, substantial part of area of the lake at present itself has been leased out which was not permissible and other area was also adjacent on which construction was also not permissible; even catchment area has to be treated as wetland as provided in the Wetlands Rules of 2010.

In the case of Abdul Rehman (supra), the Division Bench of this Court has laid down that no right can be given to use nadi land or other water body; there cannot be any activity which affects water body. In the instant case, the Government has included the land of lake in the project area of 100 acres leased out to Jal Mahal Resorts Pvt.Ltd. and apart from this, submerged 14.15 acres area has been given which is part of lake. Even 13 bigha 17 biswa land recorded as "Gaimumkin Talab" part of lake has been leased out, other area is also carved out by reducing water level of lake. Thus, lease deed in question is illegal, void and in violation of the directions issued by the Division Bench of this Court in the case of Abdul Rehman (supra) and principles enunciated by the Apex Court in various decisions.

No transfer of any part of lake bed was permissible, much less construction on it. Property belongs to JDA, Municipal Corporation and part of it held by the State Government in public trust.

Violation of statutory provisions
(A) Violation of Environment (Protection) Act 1986

As already stated above, the State Government did not carry out any environmental impact study before entering lease and license and no environment clearance has been obtained from the Central Government MOEF as required under the Notifications dated 27.1.1994 and 14.9.2006 issued under the provisions of the Act of 1986. Thus, there is violation of the notification issued under section 3 of the Act of 1986 and the Environment (Protection) Rules framed thereunder which is punishable under section 15 of the Act of 1986 for a term which may extend to five years, as no requisite permission from the Central Government MOEF was obtained, as evident from the reply of the Central Government MOEF.

The submission based on letter of Central Government MOEF dated 13.9.2002 that it approved PPP does not advance case of respondent no.7; firstly it is not sanction of project as conceived as apparent from return of MOEF; secondly, no sanction has been applied for to Central Government MOEF, which is necessary; thirdly PPP cannot be for such a venture in lakebed itself, which is unalienable public property held in trust; no such project with Private Public Partnership can ever be conceived much less sanctioned. The submission that Central Government MOEF has sanctioned project made on the basis of said letter is misleading based on distortion of facts amounts to deliberate misrepresentation of facts as apparent from reply of MOEF itself that it has not sanctioned the project in question given to respondent no.7. It has sanctioned

70% of the estimated cost to the tune of Rs.17.30 crores for restoration of lake, STP etc. as per details given in the communication dated 5.9.2002 and revised sanction dated 23.12.2002 and details of revised estimate sanctioned by it is quoted above.

(B) Violation of the Rajasthan Tourism, Disposal of Lands and Properties by DOT/RTDC Rules, 1997

The State Government has framed the Rajasthan Tourism, Disposal of Lands and Properties by DOT/RTDC Rules, 1997 and these Rules have been framed by the State Government in order to carry out smooth disposal of land/property including nazul properties under the control of Department of Tourism/RTDC for establishment of tourism units. The term 'land' has been defined in Section 2(i) to mean any land or property including nazul properties, which may have originally belonged to any Department of the State Government or any local body and which has been placed under the control of Department of Tourism/RTDC or any other land/property which may have been acquired or purchased by the Department of Tourism/RTDC and shall also include land/property vesting with the RTDC. The definition of 'land' contained in Rule 2(i) is quoted below: -

"2. Definitions. -(i) The term "land" shall mean any land or property including nazul properties, which may have originally belonged to any Department of the State Government or any local body and which has been placed under the control of Department of Tourism/RTDC or any other land/property which may have been acquired or purchased by the Department of Tourism/RTDC and shall also include land/property vesting with the RTDC. "

The disposal of the property is through Committee, constitution of which is provided in Rule 3. Rule 14 provides that the committee referred to Rule 3 may decide to dispose of any land or property including nazul properties on lease agreement for a period to be determined by the committee provided that the maximum lease period shall not exceed 30 years. Significantly Rule 15 provides that the Committee will determine the "value of the property" which shall form the basis for determining minimum lump sum down payment and also "minimum annual lease rent" and increase thereon. Rule 14 and 15 of the Rules of 1997 are quoted below: -

"14. The committee referred to Rule 3 may decide to dispose off any land or property including nazool properties on lease agreement for a period to be determined by the committee

Provided that the maximum lease period shall not exceed 30 years.

15. The Committee will determine the value of the property which shall form the basis for determining minimum lump sum down payment and also minimum annual lease rent and increase thereon."

(Emphasis added)

Rule 22 of the Rules of 1997 provides that DOT/RTDC may dispose of any land or property through two stage bidding process on terms and conditions to be determined by the committee, for a lease period of 99 years. Rule 23 provides that when the land/property is disposed of under Rule 22, the purchaser shall, other than the "cost of land" to be paid before the delivery of the possession, pay such urban assessment or "annual

lease" as is determined by the committee, constituted under Rule 3. Thus, it is necessary as per Rule 23 that "when any land is disposed of for a lease period of 99 years i.e. by way of sale", purchaser shall have to pay cost of the land. We find that cost of land has not been determined at any point of time by the Department of Tourism or RTDC. Thus, the action of virtually selling away of property by way of lease for 99 years is in contravention of Rules 22 and 23 of the Rules of 1997. Even if the property is put on the disposal of RTDC, it is bound to act in accordance with law and when Rules are in existence, there is nothing to give go bye to the Rules and property could not have been disposed of in contravention of Rule 22 and 23 without working out the cost of the property and getting it deposited. It was necessary for lessee as per Rule 23 in addition to pay such urban assessment or "annual lease" as determined by the Committee constituted under Rule 3. There is no rhyme or reason to make departure from the aforesaid Rules with respect to such a valuable property and under the guise of policy decision. Flagrant violation of the Rules cannot be permitted. However, in what manner, the decision was taken giving go-bye to the Rules is not understandable. Counsel appearing on behalf of the respondents were unable to point out any good or valid reason for making departure from the Rules. Thus, the lease deed being in violation of the Rules of 1997 cannot be permitted to subsist and the same is liable to be cancelled.

(C) Violation of Rajasthan Municipalities Act, 1959 and Rajasthan Municipalities (Disposal of Urban Land) Rules, 1974

When we consider the provisions of the Municipalities Act as the property belongs to Municipal Corporation also to the extent of approx. 52%, Section 80 comes into play which deals with transfer of property and contracts. As per Section 80(i), the Board has right to lease or otherwise transfer any movable or immovable property belonging to it including municipal land as also any government land and so far as is not inconsistent with the provisions and purposes of this Act and the rules made thereunder, to enter into and perform all such contracts as it may consider necessary or expedient in order to carry into effect the said provisions and purposes. Section 92 deals with power to acquire and hold property and as per Section 92 (2)(b), all public streams, tanks, reservoirs, cisterns, wells, springs, aqueducts, conduits, tunnels, pipes, pumps and water works, and all bridges, buildings, engines, works, materials and things connected therewith or appertaining thereto and also any adjacent land, not being private property, appertaining to any public tank or well, shall vest and belong to the Municipal Board and the Municipal Board shall hold them as "trustee". Section 92(2)(b) is quoted below:-

"92. Power to acquire and hold Property. -(2) All property of the nature hereinafter in this section specified and not being specially reserved by the State Government shall vest in and belong to the board, and shall together with all other property of whatsoever nature or kind not being specially reserved by the State Government, which may become vested in the board, be under its direction, management and control, and shall be held and applied by it as trustee subject to the provisions and for the purposes of this Act, that is to say-

(b) all public streams, tanks, reservoirs, cisterns, wells, springs, aqueducts, conduits, tunnels, pipes, pumps and water works, and all bridges, buildings, engines, works, materials and things connected therewith or appertaining thereto and also any adjacent land, not being private property, appertaining to any public tank or well.

(emphasis added)

The property being held by Municipal Corporation in public trust, it was not open to it to hand over to RTDC or to Jal Mahal Resorts Pvt.Ltd. as that is also in contravention of the provisions of the Municipalities Act and the Rajasthan Municipalities (Disposal of Urban Land) Rules, 1974. Rule 2(10) provides that sale or disposal of land means transfer of lease hold rights only. Rule 2(10) is quoted below: -

"2 Definitions: -

(10) 'Sale or disposal of land' means transfer of lease hold rights only."

Rule 4 deals with tenure of lease and "sale" of lease hold rights . Rule 4 is quoted below: -

"4. Tenure of lease. -Sale of lease hold rights in land shall be for a period of 99 years. "

Rule 6 of the Rules of 1974 deals with determination of premium, which provides that the premium (Nazrana) shall ordinarily be determined by public auction but the amount of reserve or the minimum premium shall be the reserve price which shall be decided by the Committee referred to in rule 12 of these rules. Explanation to Rule 6 provides that the minimum reserve price or fixed price shall be worked

out after adding (1) cost of undeveloped land; (2) cost of developed land; and (3) 20% of the item No. (2) to cover administrative and establishment charges subject to the conditions (a) minimum of Rs. 500 per sq. metre where underground sewerage is provided (b) minimum of Rs. 3.25 per sq. metre in all other cases. Rule 6 of the Rules of 1974 is quoted below: -

"6, Determination of premium: -The premium (Nazrana) shall ordinarily be determined by public auction but the amount of reserve or the minimum premium shall be the reserve price which shall be decided by the Committee referred to in rule 12 of these rules.

Explanation: - The minimum reserve price or fixed price shall be worked out after adding the following items: -

- (1) cost of undeveloped land;*
- (2) cost of developed land; and*
- (3) 20% of the item No. (2) to cover administrative and establishment charges*

Subject to the following conditions

- (a) minimum of Rs. 500 per sq. metre where underground sewerage is provided*
- (b) minimum of Rs. 3.25 per sq. metre in all other cases. "*

Rule 12 of the Rules of 1974 deals with fixing of minimum premium (reserve price or fixed price). Rule 12 is quoted below:

"12. Fixing of minimum premium (Reserve price or fixed price)

- (1). Sanction of Scheme and reserve price by Committee. The scheme approved by Chief Town Planner together with a Statement of development cost etc., determining the reserve price (minimum*

premium) at which plots of land are proposed to be disposed of shall be submitted by the Board for the sanction of the State Government in the prescribed proforma and such proposal shall be examined by a Committee consisting of the following members: -

(a) In case of Cities and municipalities at District head Quarters. -

- | | |
|---|------------------------------|
| <i>1. Collector of the District</i> | <i>Chairman</i> |
| <i>2. Senior Town Planner
or Deputy Town Planner
having jurisdiction</i> | <i>Member</i> |
| <i>3. Executive Engineer, Public
Works Department (Buildings
and Roads) having jurisdiction</i> | <i>Member</i> |
| <i>4. Treasury Officer having
jurisdiction</i> | <i>Member</i> |
| <i>5. Administrator/Chairman of
the Board</i> | <i>Member</i> |
| <i>6. Executive Officer of the
Board</i> | <i>Member-
Secretary</i> |

(b) In case of other towns-

- | | |
|--|------------------------------|
| <i>1. Sub-Divisional Officer
concerned</i> | <i>Chairman</i> |
| <i>2. Assistant Engineer, Public
Department (Buildings and
Roads)having jurisdiction</i> | <i>Member</i> |
| <i>3. Incharge, State Treasury/
Sub-Treasury concerned</i> | <i>Member</i> |
| <i>4. Administrator/Chairman of
Board</i> | <i>Member</i> |
| <i>5. Executive Officer of the
Board</i> | <i>Member-
Secretary</i> |

1A. Any three members including the Chairman of the Committee shall constitute the quorum.

1B. In case of a municipality where Sub-Divisional Officer is Administrator, Chairman of the Committee shall be such officer as may be nominated by

the Collector not below the rank of Additional Collector.

- (2). The Committee shall meet as and when required to consider the proposals.*
- (3). The Committee may sanction the proposals with or without any modification or may return them to the Board concerned together with such suggestions and modifications which the Committee may deem fit and expedite in the implementation of the scheme according to which the Board shall modify and resubmit the scheme for the scrutiny of the Committee.*
- (4). The reserve price (minimum premium) finally approved by the Committee for disposal of land shall be sanctioned reserved price or the scheme price (minimum premium) for that scheme at which the lands shall be disposed of by the Board.*
- (5). The reserve price fixed, shall be valid for a period not exceeding three years and no sale or allotment of land shall be done after the expiry of 3 years unless the reserve price has been refixed by the Committee. The Board concerned shall before expiry of three years take action to get the reserved refixed.*
- (6). A copy of the proceeding of the Committee shall be sent to the [xxx] Director Local Bodies, Rajasthan.*
- (7). For the disposal of land, not covered by any scheme, both for allotment at fixed price and by auction; the reserve price of such land shall also be determined by the Committee as aforesaid on the proposals received from the Board. The reserve price shall be worked out as per provisions contained under Rule 6.*

Explanation. -For the purpose of this Rule, the Committee, may, if it thinks so necessary, determine the reserve price according to the importance of particular sites, viz. business centres, commercial complexes, industrial areas or locality, Ward or Mohalla wise.]

It was also incumbent upon Jaipur Municipal Corporation to follow Rule 15(15) before handing over land to the Department of Tourism/RTDC and to realize commercial reserve price. Rule 15(15) is quoted below: -

"15. Allotment and sale of non-residential Land. -

(15) The land required by Tourism Department/Rajasthan Tourism Development Corporation for establishment of a Tourism Unit may be allotted to the Department or the said Corporation on following terms and conditions:

(i) The Department of Tourism/Rajasthan Tourism Development Corporation shall at least pay for the land at the commercial reserve price.

(ii) This payment shall be made in 10 six monthly instalments provided that the first instalment shall be paid before the transfer of the said land.

(iii) The land allotted to the Tourism Department or the Rajasthan Tourism Development Corporation could be further transferred for a Tourism Unit to a private individual or company corporate under the procedure which has been approved for this purpose by the Department/Corporation.

(iv) If the Tourism Department or the Rajasthan Tourism Development Corporation sells the land on a price which is higher than the commercial reserve price, then the entire proceeds after deducting 15% administrative charges would be transferred to the Board within 15 days of the receipt of the purchase price. However if the

Land is disposed of by the Department of Tourism/Rajasthan Tourism Development Corporation within this period then the balance instalments would be paid at once after receipt of the purchase price.

The Tourism Department/Rajasthan Tourism Development Corporation would be liable to assess and recover urban assessment @ 5% of the reserve price from the ultimate allottee and if the area has been developed by the Board then pay the same every year to the Board after deducting administrative charges @ 15%.

[Notification No. F. 8(Gr.) Rules/DLB/97/802. GSR 144, dated 4th March, 1997 Published in Raj. Gaz. Ex. Ordi. 4(Ga)(I)-Dt. 13. 3. 97 Page 267. "

(emphasis added)

As per mandate of Rule 6 it was necessary to work out the reserve price on the basis of cost of undeveloped land; cost of developed land; and 20% of the developed land to cover administrative and establishment charges. In the instant case, no efforts have been made so as to fix the reserve price as provided under Rule 6. When the Municipal property is being sold away as contemplated under Rule 2(10) for 99 years, it has to be on the cost as provided in Rule 6 and fixing of reserve price was necessary, which has not been done. As per Rule 15(15), Municipal Corporation can transfer the land to Department of Tourism or RTDC but it is as per commercial price for a tourism project and then if an auction price fetched is more it has to be disbursed as per Rule 15(15) of the Rules of 1974 to Municipal Corporation.

The Municipal Corporation has failed to act in objective manner. Being custodian of the property, it was not open to the Municipal Corporation to transfer

the land in a manner and the method which has been done to Department of Tourism or RTDC.

Rule 12 provides for fixing of minimum premium and the reserve price, is required to be sanctioned by the Committee. The land cannot be sold by way of lease for 99 years without realizing its commercial price. Thus, the action of RTDC for disposing of the land of Municipal Board is not only in violation of the Rules of 1997 but also in contravention of the Rules of 1974.

(D) Violation of Jaipur Development Authority Act, 1982

The property was also held by the JDA and thus, Section 54 of the JDA Act also comes into play, which provides for land to vest in the Authority and its disposal. Section 54 of the JDA Act is quoted below:

"54. Land to vest in the Authority and its disposal. (1) Notwithstanding anything contained in the Rajasthan Land Revenue Act, 1956 (Rajasthan Act No. 15 of 1956), the land as defined in section 103 of that Act, excluding land referred to in sub-clause (ii) of clause (a) of the said section and nazul land placed at the disposal of a local authority under section 102A of that Act in Jaipur Region shall, immediately after establishment of the Authority under section 3 of this Act, be deemed to have been placed at the disposal of and vested in the Authority which shall take over such land for and on behalf of the State Government and may use the same for the purposes of this Act and may dispose of the same [by way of allotment, regularization or auction] subject to such conditions and restrictions as the State Government may, from time to time, lay down and in such manner, as it may, from time to time,

prescribe:

Provided that the Authority may dispose of any such land-

(a) without undertaking or carrying out any development thereon; or

(b) after undertaking or carrying out such development as it thinks fit, to such person, in such manner and subject to such covenants and conditions, as it may consider expedient to impose for securing development according to plan.

(2) No development of any land shall be undertaken or carried out except by or under the control and supervision of the Authority.

(3) If any land vested in the Authority is required at any time by the Nagar Nigam, Jaipur for carrying out its functions, or by the State Government for any other purpose, the State Government may, by notification in the Official Gazette, place such land at the disposal of the Nagar Nigam, Jaipur or any Department of the State Government on such terms and conditions, as may be deemed fit.

(4) All land acquired by the Authority, or by the State Government and transferred to the Authority, shall be disposed of by the Authority in the same manner as may be prescribed for land in sub-section (1)."

Considering the aforesaid provisions of Section 54 of the JDA Act, it was not open to JDA to fritter away the valuable land without imposing proper terms and conditions.

Master Plan

It was also submitted that in the master development plan, 2011 of Jaipur, use of land in question was for recreational purposes. Tourist facilities etc. The purpose for which the lease has been given cannot be said to be strictly in accordance

with the recreational purpose, but the project has been sanctioned for commercial exploitations, which is the main objective not the development of tourist facilities. The tourist facilities have been rendered secondary. Even if assuming that the commercial activities are permissible, in that event also, it could not have been done, considering the area in question is part of lake and land was given without following the procedures prescribed under various Acts and Rules and even environment clearance of Central Government MOEF was not obtained. Hence, the contract cannot be said to be sustainable.

Ramsar Convention

India is signatory to Ramsar Convention providing protection to Wetlands Rules.

Article 1 of the Ramsar Convention provides that for the purpose of convention wetlands are areas of marsh, fen, peatland or water, whether natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water the depth of which at low tide does not exceed six meters. Article 1 is quoted below: -

“Article 1

1. For the purpose of this convention wetlands are areas of marsh, fen, peatland or water, whether natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water the depth of which at low tide does not exceed six meters.

2. For the purpose of this Convention waterfowl are birds ecologically dependent on wetlands.”

Considering the importance of wetlands, it has been also provided in Article 2 that each contracting party shall designate suitable wetlands within its territory for inclusion in the List of Wetlands of International Importance. Article 4 provides that each contracting party shall promote the conservation of wetlands and waterfowl by establishing nature reserves on wetlands. Article 6(1) provides that contracting parties shall ensure that those responsible at all levels for wetlands management shall be informed of and take into consideration, recommendations of such conferences concerning the conservation, management and wise use of wetlands and their flora and fauna. List of contracting parties to the Ramsar Convention on wetlands has been annexed with Annex.PR/4 in which name of India has also been mentioned.

Articles 3, 4 and 6(1) of the Ramsar Convention are quoted below: -

“Article 3

1. The Contracting Parties shall formulate and implement their planning so as to promote the conservation of the wetlands included in the List, and as far as possible the wise use of wetlands in their territory.

2. Each Contracting Party shall arrange to be informed at the earliest possible time if the ecological character of any wetland in its territory and included in the List has changed, is changing or is likely to change as the result of technological developments, pollution or other human interference. Information on such changes shall be passed without delay to the organization or government responsible for the continuing bureau duties specified in Article 8.

Article 4

1. *Each Contracting Party shall promote the conservation of wetlands and waterfowl by establishing nature reserves on wetlands, whether they are included in the List or not, and provide adequately for their wardening.*

2. *Where a Contracting Party in its urgent national interest, deletes or restricts the boundaries of a wetland included in the List, it should as far as possible compensate for any loss of wetland resources, and in particular it should create additional nature reserves for waterfowl and for the protection, either in the same area or elsewhere, of an adequate portion of the original habitat.*

3. *The Contracting Parties shall encourage research and the exchange of data and publications regarding wetlands and their flora and fauna.*

4. *The Contracting Parties shall endeavour through management to increase waterfowl populations on appropriate wetlands.*

5. *The Contracting Parties shall promote the training of personnel competent in the fields of wetland research, management and wardening.*

Article 6

3. *The Contracting Parties shall ensure that those responsible at all levels for wetlands management shall be informed of, and take into consideration, recommendations of such Conferences concerning the conservation, management and wise use of wetlands and their flora and fauna."*

Wetlands Rules

In exercise of the powers conferred by Section 25 read with sub section (1) and clause (v) of sub

section (2) and sub section (3) of Section 3 of the Environment (Protection) Act, 1986, the Central Government has made the Wetlands (Conservation and Management) Rules, 2010 for conservation and management of wetlands. In the objectives, it was mentioned that Wetlands Rules have been framed for conservation and wise use of wetlands, which includes in its ambit a wide variety of habitats, such as rivers and lakes, coastal lagoons, mangroves, peatlands, coral reefs, and numerous man made wetlands such as ponds, farm ponds, irrigated agricultural lands, sacred groves, salt pans, reservoirs, gravel pits, sewage farms and canals; It has also been mentioned in the objectives that whereas the Central government has identified certain wetlands for conservation and management under its conservation programme and provides financial and technical assistance to the State Governments and Union territory Administration for various conservation activities through approval of the Management Action Plan.

'Wetland' has been defined in Rule 2(1)(g) of the Wetlands Rules, 2010 which reads as follows: -

“(g) 'Wetland' means an area or of marsh, fen, peatland or water; natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including area of marine water, the depth of which at low tide does not exceed six meters and inches all inland waters such as Lakes, reservoir, tanks, backwaters, lagoon, creeks, estuaries and manmade wetland and the zone of direct influence on wetlands that is to say the drainage area or catchment region of the wetlands as determined by the authority but does not include main river channels, paddy fields and the coastal wetland covered under the notification of the Central Government of India in the Ministry of

Environment and Forest, S.O.number 114(E) dated the 19th February, 1991 published in the Gazette of India, Extraordinary, Part II, Section 3 Sub-section (ii) of dated the 20th February, 1991"
(emphasis added)

From the above definition, it is clear that drainage area or catchment region of the wetland is also included in the wetland.

Rule 2(e) provides that 'Ramsar Convention' means the Convention on Wetlands signed at Ramsar, Iran in 1971.

Protected wetlands are defined in Rule 3 and the same is based on the significance of the functions performed by the wetlands for overall well being of the people. Rule 3(i) provides that wetlands categorized as Ramsar Wetlands of International Importance under the Ramsar Convention as specified in the schedule. Rule 3 is quoted below: -

"3. Protected Wetlands: -

Based on the significance of the functions performed by the wetlands for overall well being of the people and for determining the extent and level of regulation, the following wetlands shall be regulated under these rules, namely: -

(i) wetlands categorized as Ramsar Wetlands of International Importance under the Ramsar Convention as specified in the Schedule.

(ii) wetlands in areas that are ecologically sensitive and important, such as, national parks, marine parks, sanctuaries, reserved forests, wildlife habitats, mangroves, corals, coral reefs, areas of outstanding natural beauty or historical or heritage areas and the areas rich in genetic diversity;

(iii) wetlands recognized as or lying within a UNESCO World Heritage Site;

(iv) high altitude wetlands or high altitude wetland complexes at or above an elevation of two thousand five hundred metres with an area equal to or greater than five hectares;

(v) wetlands or wetland complexes below an elevation of two thousand five hundred meters with an area equal to or greater than five hundred hectares.

(vi) any other wetland as to identified by the Authority and thereafter notified by the Central Government under the provisions of the Act for the purposes of these rules.

(emphasis added)

Thus, it is apparent from reading of Rule 3 that submission that these Rules apply only to Sambhar Lake and Keola Deo Lake cannot be accepted. Other wetland as provided and specified in Rule 3(vi) are also wetland to be identified under the Wetlands Rules. There are certain restrictions on activities within wetlands as provided in Rule 4, which reads as follows: -

"4. Restrictions on activities within wetlands: -

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

(i) reclamation of wetlands;

(ii) setting up of new industries and expansion of existing industries;

(iii) manufacture or handling or storage or disposal of hazardous substances covered under the Manufacture, Storage and Import of Hazardous Chemical Rules, 1989 notified vide S.O. number 966 (E) dated the 27th November, 1989 or the Rules for Manufacture, Use, Import, Export and Storage of Hazardous Micro-organisms/Genetically engineered

Organisms or cells notified vide GSR number 1037 (E) dated the 5th December, 1989 or the Hazardous Wastes (Management, Handling and Transboundary Movement) Rules, 2008 notified vide S.O. number 2265 (E), dated the 24th September, 2008;

(iv) solid waste dumping; provided that the existing practices, if any, existing before the commencement of these rules shall be phased out within a period not exceeding six months from the date of commencement of these rules;

(v) discharge of untreated wastes and effluents from industries, cities or towns and other human settlements; provided that the practices, if any, existing before the commencement of these rules shall be phased out within a period not exceeding one year from the date of commencement of these rules;

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

(vii) any other activity likely to have an adverse impact on the ecosystem of the wetland to be specified in writing by the Authority constituted in accordance with these rules.

(2) The following activities shall not be undertaken without the prior approval of the State Government within the wetlands, namely: -

(i) withdrawal of water or the impoundment, diversion or interruption of water sources within the local catchment area of the wetland ecosystem;

(ii) harvesting of living and non living resources;

(iii) grazing to the level that the basic nature and character of the biotic community is not adversely affected;

(iv) treated effluent discharges from industries, cities or towns, human settlements and agricultural fields falling within the limits laid down by the Central Pollution Control Board or the State Pollution Control Committee, as the case may be;

(v) playing of motorized boat, if it is not detrimental to the nature and character of the biotic community;

(vi) dredging, only if the wetland is impacted by siltation;

(vii) construction of boat jetties;

(viii) activities within the zone of influence, as per the definition of wetlands, that may directly affect the ecological character of the wetland;

(ix) facilities required for temporary use, such as pontoon bridges, that do not affect the ecological character of the wetland;

(x) aquaculture, agriculture and horticulture activities within the wetland;

(xi) repair of existing buildings or infrastructure including reconstruction activities;

(xii) any other activity to be identified by the Authority. "

(emphasis added)

Under Rule 4(i) of the Wetlands Rules, 2010 reclamation of wetlands is totally prohibited; under

rule 4(vi) any construction of a permanent nature except for boat jetties within 50 meters from the mean high flood level observed in the past ten years calculated from the date of commencement of these Rules is prohibited and under Rule 4(vii) any other activity likely to have an adverse impact on the ecosystem of the wetland to be specified in writing by the Authority constituted in accordance with these rules, is prohibited.

Rule 6 of the Wetlands Rules, 2010 provides process for identification of wetlands under different categories and non-inclusion in schedule will not take the land out of the category of wetland as per Ramsar Convention to which India is signatory.

Wetlands Rules 2010 have been framed and no application has been filed so far by the State Government or Jal Mahal Resorts Pvt.Ltd. to obtain clearance under the Wetlands Rules 2010 as stated by MOEF in its return. Assuming that the lake in question is not included in the schedule, yet the purpose for which the Wetlands Rules have been framed, cannot be ignored by the State Government or any other respondents.

Thus, project in question, is in flagrant violation of Rule 4 of the Wetlands Rules. As the project Phase II has not yet been taken up under the lease agreement and whatever has been done is only some part under the appendix-14 with respect to restoration of monument. In terms of Wetlands Rules, 2010, since lake bed has been given including catchment area for permanent construction, such acts are not permissible within 50 meters and project will have the adverse

effect on ecology of area, has not been taken into consideration and forbidden activities have been permitted. It is incumbent upon the State Government to identify the wetland under different categories. The project includes submerged land itself to the extent of 14.15 acres and other area is also catchment area which is also part of the wet land. Part of lake in area 13.17 Bighas has been leased out. Thus, lease is in contravention of Wetlands Rules and project, cannot be given effect to being in contravention of the Rules and if given effect to it would violate the provisions of Wetland Rules, 2010 and Ramsar Convention also.

Illegal siphoning of the valuable property

The project involves construction of more than 200 shops in craft bazar; more than 435 rooms in the hotel; plaza Festive Square Amphi Theater; Art gallery; Convention Hall Complex; the traditional craft bazar; the craft village; garden of paradise; the Mall (modern craft bazar), multiplex, convention centre, wedding court (10,200 sq.mtr.) and various other structures, details of area in which they are proposed is 90 acres and approximately 10 acres reserved for public utility services, that too for commercial benefits. All these activities have been permitted without clearance of Central Government MOEF. The entire activities are wholly illegal and unauthorized.

It was submitted that as per the DLC rate of the area in question, the value of the land in question was Rs.2500/- crores, whereas, as per market rate, its value was Rs.3500/- crores and such a valuable land has been given to Jal Mahal Resorts Pvt.Ltd. on lease for a

period of 99 years on annual license fee of Rs. 1.00 and annual lease rentals of Rs. 2.52 crore to RTDC, who is required to carry out the work of restoration, maintenance, irrigation etc. Such transaction is wholly unreasonable and not in public interest. Out of 100 acres land leased out to Jal Mahal Resorts Pvt. Ltd., the land belonging to State, JDA and Jaipur Municipal Corporation is as follows: -

1. State Government	5.62 acres
2. JDA	41.87 acres
3. JMC	52.51 acres

Total :: - 100.00 acres

Though the land also belonged to the JDA and JMC, but no amount has been paid to them and amount has been made payable to RTDC who is not holder of the land held in public trust and thus, execution of lease and leave and license agreement by RTDC in favour of Jal Mahal Resorts Pvt. Ltd. is without jurisdiction, illegal and void, it was necessary to work out the "reserve price" as mandated under the Municipalities Act, Rules of 1974 and the Rules of 1997, same has not been done. It was also necessary that land should be leased out at the actual cost of the land and annual premium as provided under the Rules of 1974 and 1997. However, without considering the aforesaid Rules, land was leased out to Jal Mahal Resorts Pvt. Ltd. for a period of 99 years at a throw away price. There was no rhyme or reason to make departure from the aforesaid Rules. For the reasons best known to them, pecuniary interest

has been completely given go-bye. Such arbitrary and irrational distribution of largesses, which was held by respondents-State, JMC and JDA in public trust, is not permissible. Such valuable property could not have been given frittered away in the manner in which it has been done in the instant case. It is shocking the conscience of the Court how such a project could have been conceived at a throw away price particularly when there is sale of leasehold rights for 99 years. It is virtually a sale of the property as provided under the Rules of 1974 and 1997. Even if in the area in question it was permissible for commercial activities, the transaction in question is wholly void and in contravention of doctrine of public trust considering the fact that land in question was leased out for 99 years at the annual license of Rs.1/- and annual rentals of Rs.2.52 crores to RTDC, whereas the market value of the land was between Rs.2500/- crores to Rs.3500/- crores. Apart from this, further right has been given to Jal Mahal Resorts Pvt.Ltd. to alien or sub-lease or mortgage the property. The respondents-authorities were aware as to what was the cost, but failed to take care of the value of the property and thus it is a case of fraudulent siphoning of valuable public property as rightly submitted by the petitioners. Merely because the decision has been taken by the higher authorities, it does not mean that this Court cannot interfere. In such matter, Court can interfere as held by the Apex Court in the case of Centre for Public Interest Litigation (supra). In Rajeev Mankotia V/s Secretary to the President of India and ors. (1997(10) SCC 441), it has been held: -

"14. It is mentioned at page 123 that "Much of that old Simla was already gone by the time Louis Mountbaten arrived in early May 1947. Now an India could even walk down the Mall - provided he was not wearing the national dress of his country". Earlier, Indians were prohibited from going there. "Simla changed with an easily foreseen rapidity after independence. The Indians, because of its connotations, abandoned it as their summer capital. The only thing which remains of the old Simla, 'M. S. Oberoi, owner of the Cecil's Hotel and Chairman of Oberoi's Hotels Ltd., laminated in 1973, 'is the claimate'. The Viceregal Lodge also was used as a part of the Legislative Wing for the summer session of Parliament and it, therefore, has the taste of transacting legislative business with the Indian legislators partly composed with the British Administrators. Lord Mountbaten had finalised the plan in Simla to divided India into three countries, namely, Bengal, composed of East and West Bengal, Pakistan and India, apart from retention of the respective areas had by named rules. A graphic account was given as to how Lord Mountbaten had his plan secretly disclosed, by inviting Pandit Jawaharlal Nehru, the first Prime Minister, who was a very close friend of Lord Mountbaten and an important spokesman on behalf of the Congress Party, to Simla. Lord Mountbaten had shown his plan of division of India. The violent reaction of Panditji was noted as mentioned at page 126 as under :

The British had run India for three centuries with the byword 'Divide and Rule'. They proposed to leave it on a new one; 'Fragment and Quit'. White-faced, shaking with rage, Nehru stalked into the bedroom of the confidant Krishna Menon who'd accompanied him to Simla. With a furious gesture, he hurled the plan on to his bed. 'It's all over!' he shouted.

17. This Court was not satisfied with the counter-affidavit filed on behalf of the Government of India. Therefore, it gave directions on

November 24, 1995 to have the matter reconsidered by the Cabinet Sub-Committee. Accordingly, a counter-affidavit was again filed on January 22, 1996 stating that "in August 1982, the Union Cabinet took a decision that the Indian Institute of Advanced Studies which is housed in the Rashtrapati Nivas building should be shifted to some other building in Shimla". It was further stated that "At a subsequent Cabinet Committee meeting held on 8th May, 1990, it was decided that the entire campus earlier known as Viceregal Lodge may be transferred to the Ministry of Tourism for being developed as a major tourist resort by the ITDC with the stipulation that the main building will not be used for tourist purposes. It was also decided that the Institute of Advanced Studies which is housed in the campus of the Rashtrapati Nivas Estate may be shifted to an alternative site offered by the Government of Himachal Pradesh." "In February, 1992 the matter was further discussed by the Committee of Secretaries and the earlier decision was amplified to the effect that the main Viceregal Lodge with a part of the appurtenant land should be preserved and maintained as a national museum and the surrounding land may be handed over the Ministry of Tourism for development of a tourist resort." Therefore, it was stated that "it would be unnecessary for the matter to be taken to the Cabinet once again for a decision about the preservation of the main building and the appurtenant land as heritage property". It was also stated that there were "no plans for the development of any part of the Rashtrapati Nivas estate into a five-star hotel complex. No plan for any such purpose has been discussed or finalised nor has any budgetary allocation been made for the said purpose in the Eighth Five Year Plan". The last para itself is a manifest of the intention of the Government that its use in future as a tourist resort had not been ruled out. As a consequence, by Order dated February 27, 1996, this Court stated thus :

... the Chief Engineer of the CPWD, In-charge of the maintenance of Vice Regal Lodge has brought to the Court echo logy album of the entire area. It was stated that around the building, as at present, there is not proposal for construction of tourism hotels, as originally proposed, but there is a direction of the Division Bench of the Shimla High Court directing the Secretary, Human Resources Development and Urban Development should decide as to what is the extent of appurtenant land around the building beyond which the CPWD intends to construct quarters and office building for the employees transferred and stationed there or which is part of the property leased out to the Institute of Advance Studies.

18. This Court observed that since the Government of India had admitted in the counter-affidavit that the building part of the appurtenant land would be preserved as National Monuments by the Archaeological Department, the question that had arisen was what would be the appurtenant land. The Court was informed the around 65 acres was the land near the main building at the observatory hill and 25 acres of the land was situated elsewhere at prospect hill. This Court indicated to the learned senior counsel for the respondents that the appurtenant land which was kept vacant, as was admitted in their counter-affidavit, should be 25 acres surrounding the entire building. The Court directed that if the said land is used for any other public purpose, like establishment of tourist hotels or office buildings, which was originally proposed and resolved by the Cabinet Resolution, the same should be beyond that area and that too without contravention of the Forest Act and other relevant laws. The counsel sought and was granted time for producing tentative plan proposed by them without touching the appurtenant land. When the matter had come up for next hearing on April 3, 1996 counsel was not present and, therefore, the matter was adjourned indicating that in case

of non-appearance, appropriate orders would be passed. "

It is not understandable that even seven star hotel is to be constructed including other commercial venture on annual rental of Rs.2.52 crores, amount is shocking & paltry. Besides, it was necessary to recover the commercial price of land also as per market value of the land in addition to that annual lease premium was also required to be realized. Virtually land has been gifted free of cost and authorities have bound themselves for maintaining water lake, water resources for the benefit of the private sector developer. Following obligations inter-alia have been taken by the lessor: -

- " (1) Time bound completion of lake restoration plan with the investment of about Rs.25 crores;*
- (2) Maintenance of sewerage plant with a capacity of providing atleast 7 mld of quality water throughout the year;*
- (3) Provision of 90,000 sewerage connections so that the STP gets sufficient water for supply to the lake involving expenditure of about Rs. 35 crores.*
- (4) Restriction upon supply of the treated water for irrigation purposes to maintain the level of water in the lake throughout the year.*
- (5) Maintenance of the lake environment so restored with prescribed level of standard quality water and other facilities for 99 years to come.*

(6) Granting or causing to be granted all approves and clearances by the Government of Rajasthan and its departments for the project.

(7) Providing assistance to the PSD in getting all clearances required for infrastructure facilities like water, power, transportation etc. for the project area."

The annual lease amount reserved may not even be sufficient to carry out aforesaid obligations of lessor. Besides, huge amount has been invested by the Central Government MOEF and JDA of more than Rs.24.72 crores sanctioned in 2002, benefit of same is also going to be derived by the private sector developer as entire project area to the extent of 432.8 acre has been given.

Lessee has been given right to alien or sub-lease or mortgage the property for 99 years on market value. It passes comprehension that when such right has been given to lessee, then what prevented the authorities from auctioning the land on market value as provided in case of grant of lease for 99 years and further with obligation to realize annual rental. However, pecuniary interest and public trust concept have been totally ignored and private sector developer has been given benefit at cost of exchequer and ecology.

Yet another aspect of the matter is that under the agreement, lessee/licensee has been given right to realize amount of Rs.25/- per person as entry fee which could be escalated by 10% every year; even for entering in the garden, Jal Mahal Resorts Pvt.Ltd. was authorized to levy an amount of user charges on the

public and restrict the visitors failing to pay the specified user charges and such levy of fees and charges on the public after paying just Rs. 1/- per year under lease and license to the State Government is arbitrary, contrary and in violation of the principles of transparency, accountability, public financing and smacks of highhandedness.

Illegal grant of contract/waiver of eligibility condition: -

It was a necessary condition of eligibility that lead manager had to be a private/public Ltd. Company. Respondent K.G.K. Enterprises was a partnership firm, it was admittedly not fulfilling the eligibility criteria. Relaxation of eligibility condition of being private/public limited company was also bad in law. It was not open to waive the condition. Once terms and conditions were fixed, eligibility condition is required to be observed. Since KGK Enterprises was a partnership firm, it was not fulfilling the eligibility condition. For the reasons best known to the respondents-State/authorities, the eligibility criteria was relaxed; the financial bid of KGK Enterprises could not have been opened and Jal Mahal Resorts Pvt.Ltd. was incorporated in 2004; the decision which was taken to permit the opening of financial bid and issue of letter of intent was wholly unreasonable and arbitrary as conditions were not complied with. Rules of game could not have been changed once it had started. Thus, there was no option with the respondents-authorities except to reject the bid of KGK Enterprises as lead manager was not private or public limited company.

The State or its tendering authority is bound to give effect to the essential condition of eligibility stated in the tender document and was not entitled to waive such conditions, as held by the Apex Court in *Shimnit Utsch India Private Limited & anr. V/s West Bengal Transport Infrastructure Development Corporation Limited & ors.* ((2010) 6 SSCC 93). In that case, the Apex Court has further held: -

"64. It is true that the State or its tendering authority is bound to give effect to essential conditions of eligibility stated in a tender document and is not entitled to waive such conditions but that does not take away its administrative discretion to cancel the entire tender process in public interest provided such action is not actuated with ulterior motive or is otherwise not vitiated by any vice of arbitrariness or irrationality or in violation of some statutory provisions. It is always open to the State to give effect to new policy which it wished to pursue keeping in view "overriding public interest" and subject to principles of Wednesbury reasonableness."

In view of the aforesaid decision, the State and its authorities were not justified in making deviation from condition of tender document. Even some part of the area of lake was leased out, which cannot be permitted. Furthermore, land of 13 bigha 17 biswa recorded as gairmumkin talab was also leased out, which is not permissible. 100 acres of valuable property has been leased out at a throw away price ignoring statutory provisions; public interest; pecuniary interest; damage to ecology etc. Thus, action of State and its authorities suffers from the vice of arbitrariness and is in breach of public trust

doctrine.

In *Monarch Infrastructure (P) Ltd. V/s Corporation & ors.* ((2000) 5 SCC 287), where one of the conditions of eligibility was deleted after the expiry of the time limit for submission of tenders but before opening thereof, it was held by the Apex Court that award of contract to a tenderer who at the time of submission of tender did not satisfy the said condition was rightly set aside by the High Court being arbitrary. Court's interference is called for where government action is arbitrary or discriminatory. In the instant case, deviation from eligibility condition of tender document was made without any rhyme or reason and thereafter, the method and manner in which the land was leased out to respondent no.7 clearly shows arbitrariness on the part of the State and its authorities.

In *Tata Cellular V/s UOI* (AIR 1996 SC 11), the Apex Court held that principles of judicial review applies to exercise of contractual power by Government bodies in order to prevent arbitrariness or favouritism; there are inherent limitation in exercise of power judicial review; Government is guardian of finances of State; Government is expected to protect financial interest of State; right to refuse lowest or any other tender is always available to Government while accepting or refusing tender; principles laid down in Article 14 to be kept in view; when Government tries to get best person or best quotation there can be no question of infringement of Article 14; right to choose cannot be considered as arbitrary power. The Apex Court further held that the Government must have

freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness but must be free from, arbitrariness not affected by bias or actuated by mala fides.

In the instant case, since KGK Enterprises was not fulfilling the eligibility condition, its bid ought to have been rejected, but condition was relaxed and its bid was accepted. Thus, action cannot be said to be based on bonafide reasons. It was wholly unreasonable and impermissible. It was not open to waive condition, though it was open to scrap entire process as laid by Apex Court in *Shimnit Utsch India Private Limited & anr. V/s West Bengal Transport Infrastructure Development Corporation Limited & ors. (supra)*.

It was also submitted by Shri Rajendra Prasad, learned counsel appearing on behalf of the petitioner that KGK Enterprises was not having experience also of such tourism project which was necessary. There appears to be some force in the submission. Since KGK Enterprises was not fulfilling the condition, it should not have been permitted to participate in the bidding process at the subsequent stages. Thus financial bid could not have been opened, propriety required that in such matter, decision ought to have been taken in a well considered manner.

It was also submitted by Shri Rajendra Prasad Sharma, learned counsel appearing on behalf of the petitioners that there was fraudulent creation of Jal

Mahal Resorts Pvt.Ltd. of father and son, whose total paid up share capital on the date of its incorporation was s.1.00 lacs only and even the total authorized capital of the company itself was merely Rs.50.00 lacs only. Thus, such company could not have been given land worth Rs.3500/- crores.

Revision of Project :-

It is also shocking and surprising that without clearance from the Central Government MOEF, the project was given to Jal Mahal Resorts Pvt.Ltd.; inspite of refusal to revise the plan on 10.10.2007 on the ground that Master Plan could not be changed, revision in the plan was accepted on 10.9.2009 without requisite clearance and approval from MOEF; respondent no.7 was asked to get requisite clearances; it was incumbent upon the concerned Committee to ensure that what it was approving has statutory clearances of Central Government MOEF; there was no due application of mind to all these aspects while revising project. This shows that the authorities were bent upon to totally ignore the interest of the public and they have grossly violated the public trust doctrine and failed to act in its mandate; even revised plan could not have been cleared without "prior" sanction; action relating to tourism project appears to be on extraneous consideration, favouratism and against the public trust doctrine and violative of Articles 14, 21, 48A, 49 and 51A(g) of the Constitution of India.

Sedimentation/settling tank and damage to lake

With regard to construction of sedimentation/settling tanks, it was submitted by the

petitioners that one third of the lake was converted into a series of sedimentation/settling tanks made in the downstream of the lake by the respondent no.7. It was also submitted that the respondent no.7 also started preparing high walls of mud and soil in the eastern part of the lake bed near sluice gates and a large area around it for the purpose of preparing sedimentation tanks in the lake bed itself. Construction of storm water management plan in the lake bed itself carried out without requisite sanction. The stand of the respondent no.7 Jal Mahal Resorts Pvt.Ltd. is that the purpose of construction of sedimentation tanks was to trap silt and organic contents of storm water drains coming directly into the lake. Inability was shown by JDA and State authorities to incur the expenditure. The respondent no.7 was asked to undertake the construction of sedimentation tank at its own expense. It was also submitted by Shri A.K.Sharma that the petitioner cannot be permitted to raise the issue of settling tanks as a meeting of Jal Mahal Monitoring Committee under the Chairmanship of A.K.Pande, Addl.Chief Secretary was held on 27.7.2007 in which Dr.Brij Gopal was present and made certain suggestions which were not practicable and in the meeting it was decided to utilize the settling zone created by respondent no.7, consequently, no grievance can be allowed to be raised with regard to tanks.

In our opinion, it is clear that no requisite clearance was obtained from the competent authority; the decision of the Committee could not be final so as to construct sedimentation/settling tanks. Dr.Brij Gopal objected to the decision and the same was placed

before the Committee. Sedimentation tanks could not have been constructed without due clearance. It was wholly impermissible to construct tanks in lake bed. Requisite clearance from Central Government MOEF was required, which has not been obtained. Even if sedimentation tanks are temporary, substantial area of lake could not have been used for construction of sedimentation tanks. As per stand of respondents, 5% of the lake area has been used for creation of temporary sedimentation tanks and 7% of consecutive natural wet lands, which could not have been used at all and particularly without clearance from the competent authority. Thus, we have no hesitation in holding that construction of sedimentation/settling tanks was an illegal act at the cost of lake bed itself, it has damaged the lake and has reduced its area.

Maintainability of writ-Delay

It was submitted by Shri A.K.Sharma, Learned Senior Counsel appearing on behalf of Jal Mahal Resorts Pvt.Ltd. that the writ petitions are not maintainable in contractual matters. It has been further submitted that the Project was conceived in the year 1999; DPR was approved in 2000; advertisement was issued on 25.4.2003; on 9.2.2004, it was decided that the project be handed over to KGK Enterprises; on 13.9.2004, letter of intent was issued and thereafter, lease agreement and leave and license agreement were executed on 22.11.2005 and the possession of the land in question was handed over on 4.4.2006. No steps were taken by the petitioners to file writ petitions and the writ petitions have been filed belatedly and on

ground of delay and laches, the petitions are liable to be dismissed.

We are not at all impressed by the submissions of Shri A.K.Sharma, Senior Counsel considering the facts of the case that the project has been given in the area of 100 acres, substantial part of which forms part of the lake; no activity is permissible in the lake, which has also been leased out to Jal Mahal Resorts Pvt.Ltd.; second phase of the project with respect to construction activity has not yet been started; lease has been given for a period of 99 years, period of lease is also material aspect to consider delay; requisite clearance from Central Government MOEF has not been obtained so far, which is necessary as the project is found to be of category-A being within 10 kms from the protected reserved Nahargarh Wildlife Sanctuary. Thus, in our opinion, in absence of requisite clearance from Central Government MOEF, project itself cannot come up; prior consent was necessary. Hence, it cannot be urged that this Court should not interference in contractual matters on ground of delay and laches.

The clearance from the State Level Environment Impact Assessment Authority, which has been obtained on 29th April, 2010, is of no avail to Jal Mahal Resorts Pvt.Ltd. as environment clearance from the Central Government MOEF is required. Most of the consents of State Level appears to have been obtained by misrepresenting that Central Government MOEF has given the clearance to the project in the year 2002. As a matter of fact, the clearance of Central Government MOEF was for the project relating to conservation and

management of Mansagar Lake. The clearance from the Rajasthan State Pollution Control Board has also been taken on the basis of misrepresentation that clearance has been obtained from Central Government MOEF in 2002. Thus, requisite clearances for the project in question are not available with Jal Mahal Resorts Pvt.Ltd. The consent, under Environment Protection Act notification issued by MOEF which has been obtained from SEIAA is illegal and unauthorized as the said Authority was not competent to give clearance to the project in question being of category-A as it was within the boundary of 10 kms from the protected area of Nahargarh Wildlife Sanctuary. Thus, it does not lie in the mouth of the respondent no.7 Jal Mahal Resorts Pvt.Ltd. to contend that the petitions have been filed with delay and the same are liable to be dismissed on the ground of delay and laches. There are decisions that if such wrong has been committed and even construction of building has been raised in illegal manner by spending 100 crores, demolition can be ordered by the Court even after completion of project, as laid down by the Apex Court in M.L. Builders (P) Ltd. V/s Radhey Shyam Sahu (supra) where the Apex Court ordered restoration of a park after demolition of a shopping complex constructed at the cost of over Rs.100 crores. We find that Lake is bound to be restored.

The decision in Ramana Dayaram Shetty V/s The International Airport Authority of India and ors. (AIR 1979 SC 1628) does not advance the cause of the respondent no.7 particularly when in the instant case area leased out includes the lake bed and prime and valuable property has been given at a throw away price,

which cannot be permitted. Delay has to be considered in the facts and circumstances of each case and the nature of the rights involved/violated.

In Delhi Development Authority V/s Rajendra Singh and ors. ((2009) 8 SCC 582) relied upon by the learned counsel for the respondent no.7, the question arose whether Yamuna riverbed was used for the construction of commonwealth games village, it was found by the National Environmental Engineering Research Institute that the site concerned was not a part of river bed, in that context delay was considered and the PIL filed in 2007 to question the notification dated 26.6.1997 was held to be belated one and liable to be dismissed on ground of delay and laches. The facts are totally different in the instant case and considering the nature of the project and the area leased out forms part of the lake bed and the prime and valuable land has been given at a throw away price and second phase of the project has not started and clearance of the Central Government MOEF has not been obtained, it cannot be said that the delay in the instant case is material. Hence, the aforesaid ruling is of no help to the respondent no.7.

Reliance has also been placed by the learned counsel for the respondent no.7 on the decision of the Apex Court in Chairman and M.D., B.P.L. Ltd. V/s S.P. Gururaja and Ors. (AIR 2003 SC 4536) where it was found that the Board and the State had not committed any illegality which could have been a subject matter of judicial review and thus, the High Court committed a manifest error insofar as it failed to take into consideration that the delay in that case

had defeated equity. The allotment was made in the year 1995. The writ application was filed after one year. By that time the Company had not only took possession of the land but also made sufficient investment. The Apex Court held that delay of this nature should have been considered by the High Court to be of vital importance. In the instant case, the respondents-State and authorities have committed gross illegality and the land recorded as gairmumkin talab was also given and even the requisite clearance of Central Government MOEF was not obtained for the project in question and the material phase of project has not yet been started. Thus, the aforesaid decision is of no avail to the respondent no. 7.

Reliance has also been placed by the learned counsel for the respondent no. 7 on the decision of this Court *in Damodar Ropeways and Construction Company Pvt. Ltd. Vs. State of Raj. and Ors.* (2007(4) RLW 3261) where the Single Bench of this Court held that petition suffered from serious delay and laches and liable to be dismissed on account of petitioner's submitting wrong facts; petitioner deliberately did not place on record notice issued under Section 9 of the Act of 1966, whereby competent authority published the proposed licence to authorise construction of Ropeway by Respondent No. 3, which was issued about 20 months ago from date of filing of the writ petition. In the instant case, as already stated above, delay has to be considered on the facts of each case and considering the nature of project and the area leased out on a paltry sum for 99 years; revised plan was sanctioned in 2010 without requisite statutory clearance and thus,

the aforesaid decision has no application to the facts of the present case. Besides, the same is subject to appeal, which is said to be pending. In any view of the matter, the decision is distinguishable on facts.

In *R & M Trust V/s Koramangala Residents Vigilance Group and ors.* ((2005) 3 SCC 91) where granting of permission for raising of multi storeyed building on the site was not prohibited and in that context, it was held that delay in filing PIL challenging grant of building license to builder for construction of multi storeyed building was fatal. In the instant case, ecological /environmental aspects are involved; area leased out is part of area of lake bed itself and leasing out the same is wholly unauthorized; there is breach of public trust. Hence, aforesaid decision is of no help to the respondent no.7 as it is distinguishable on fact.

In *Narmada Bachao Andolan V/s Union of India* (2000 (10) SCC 664), the Apex Court has held that any delay in the execution of the project means overrun in costs and the decision to undertake a project, if challenged after its execution has commenced, should be thrown out at the very threshold on the ground of laches. In the instant case, the aforesaid decision is of no help. The second phase of the project has not yet been started and the construction has yet to come up; requisite clearance from Central Government MOEF has not been obtained so far.

It was also submitted that the project is in larger public interest as Jal Mahal monument has been restored to its original glory by the respondent no.7 voluntarily by spending huge amount. We doubt that

voluntary restoration of Jal Mahal monument by respondent no.7 can give any right to virtually usurp 100 acres of land on paltry amount; it is property which is not alienable being part of lake bed. Under the guise of lease agreement, which is found to be illegal and void, voluntary restoration of Jal Mahal monument by respondent no.7 cannot be permitted. It is not in the public interest, but rather defeats it and the concerned authorities have failed to act with circumspection and probity and they have sold lease hold right for 99 years of prime and valuable property to respondent no.7 at a throw away price in an illegal manner.

Whether PIL bonafide

The letter of petitioner-Prof. K. P. Sharma was not treated as PIL by the Supreme Court PIL Cell, as such, it cannot be said that he is precluded from filing writ petition before this Court. When Prof. K. P. Sharma has filed the writ petition before this Court, other two writ applications were already pending filed in the year 2010, all are being decided by common order. We are not at all impressed by the submission that Prof. K. P. Sharma has concealed the material fact and he has not filed the petition in public interest. It appears that Prof. K. P. Sharma is interested in the protection of lake as he has done yeoman research work on this water body and published a paper which was read in the 12th World Lake Conference (TAAL). Hence, it cannot be said that the petitioner Prof. K. P. Sharma has not come with clean hands.

Shri A.K. Sharma, Learned Senior Counsel appearing on behalf of the respondent no.7 has also relied upon the decision of the Apex Court in Sanjay Musale V/s State of MF (1998(6) SCC 616) where there was concealment of material fact and on that ground, the PIL was dismissed. In the instant case, we find that there is no concealment of any material fact, on the other hand, the petitioner has himself placed on record letter addressed to the Hon'ble Chief Justice of India. Merely because PIL Cell of the Supreme Court has not treated the letter of petitioner-Prof.K.P.Sharma as PIL, it cannot be said that he was precluded from filing petition before this Court. It is not a case of dismissal of SLP by the Apex Court. It is a case of non-registration of letter of Prof.K.P.Sharma as PIL by the PIL Cell of the Supreme Court. The petitioner has been taking steps regularly and was not sleeping over the matter. Having failed to obtain requisite clearance so far from Central Government MOEF, it does not lie in the mouth of the respondent no.7 to raise the aforesaid submission.

Reliance has also been placed by the respondent no.7 on the decision of the Apex Court on Kalyaneshwari V/s Union of India (2011 (3) SCC 287) in which it has been laid down that one who approaches the court owes a duty to approach the court with clean hands. In the instant case, we find no material on the basis of which it can be said that Prof.K.P.Sharma has not come with clean hands. It also cannot be said that he was not having any interest in protecting the lake and motivated by others for extraneous consideration. The ratio laid down in the aforesaid decision is not

attracted to the facts of the present case.

In *K. R. Srinivas V/s RM Prem Chana* (1994 (6) SCC 620) relied upon by the learned counsel for the respondent no.7, it has been laid down by the Apex Court that petitioner who comes to the court for relief in public interest must come not only with clean hand but also with clean heart, clean mind and clean objective. In that case, the dispute was with respect to answer books, which were destroyed within six months and it was held that petitioner had no locus to move the High Court in public interest. In the instant case, the facts are wholly different and thus, the ratio of the above decision is inapplicable.

It was also submitted by Shri A.K. Sharma, learned Senior Counsel appearing on behalf of the respondent no.7 that the petitioner Prof. K.P. Sharma has concealed the material fact of pendency of similar writ petitions before this Court being No.5039/10 and 4860/10. Mere pendency of these writ applications is not sufficient enough to contend that he has deliberately suppressed the matter. He has done research work on the subject as apparent from the material placed on record. Pendency of similar writ applications, which were entertained and notices were issued, cannot come in the way of the petitioner Prof. K.P. Sharma to maintain writ petition filed by him in public interest. All petitions are being decided by the common order.

Reliance has also been placed by the respondent no.7 on the decision of the Apex Court in *K. D. Sharma Vs Steel Authority of India* (2008 (12) SCC 481) in which the Apex Court has laid down in the context of fraud or abuse of the process of the court that it is not a case

where fraud on the court is being played but fraudulent transaction has been entered into in flagrant violation of law while compromising ecological involvement without requisite clearance of project. The Apex Court further held that on merits also no case was made out. In the instant case, the facts are converse. The aforesaid decision is distinguishable on facts.

It was also submitted by Shri A.K. Sharma that the writ petition filed by the petitioner Prof. K. P. Sharma cannot be said to be bonafide as he alongwith Dr. Brij Gopal approached the respondent no.7 in 2007 to offer their services, which were not taken up as the respondent no.7 did not require the services of the petitioner and Dr. Brij Gopal and this petition has been filed. We are not at all impressed by the said submission. It was also submitted by Shri A. K. Sharma that Dr. Brij Gopal is the Secretary of National Institute of Ecology and offered the project to respondent no.7 for catchment treatment along Nagtalai drain. The petitioner was well aware of these facts. There is no impact to maintain the petition in case any project was offered for Nag Talai Drain by Dr. Brij Gopal. Writing of letter Annex.R/7/17 cannot come in the way of the petitioner to maintain the petition. Letter Annex.R/7/17 was written by petitioner Prof. K. P. Sharma to the Commissioner, JDA, Jaipur in which it was mentioned that since the work is funded by the Ministry of Environment and Forest, New Delhi via JDA, Jal Mahal Resorts Pvt.Ltd. may be provided report on the cost basis in consultation with MOEF, New Delhi. The aforesaid letter was written by the petitioner to JDA to provide report to respondent no.7 on the cost

basis in consultation with MOEF, New Delhi, no fault can be found in the letter and such communication cannot be said to be a way of extorting money. The respondent no.7 has misconstrued the contents of the letter and made unwarranted allegations of extorting money on the basis of said letter. The submission is wholly devoid of substance and has no legs to stand.

It was also submitted that in any case the petition is filed to gain publicity. We are also not impressed by the said submission considering serious breach of public trust involved. The petitioners cannot be said to be motivated by newspapers. We have not to decide on the basis of newspaper reports but wholly ignoring such reports; even if newspaper carries news article in the matter of such great public importance, it cannot be said to be vendatta; take bed lease is not permissible; even if some one else has tried to take over project it could not clothe right upon Jal Mahal Resorts Pvt.Ltd. Or KGK Enterprises to usurp it in violation of Constitution imperative of Articles 48A, 49, 51A(g), 14 and 21 and in breach of public trust.

Reliance has also been placed by Shri A. K. Sharma on the decision of the Apex Court in *Ashok Kumar Pandey V/s State of West Bengal* (2004(3) SCC 349) in which the Apex Court observed that the petition under the name and style 'public interest litigation' was nothing but a camouflage to foster personal disputes and the said petition liable to be thrown out. The ratio of the above decision is not attracted to the facts of the present case.

Reliance has also been placed on the decision of the Apex Court in *Printers (Mysore) Ltd. V/s*

M. A. Rasheed and ors. ((2004) 4 SCC 540) wherein the Apex Court held that in PIL, the plea of respondent challenging bonafides of writ petitioner is required to be determined by the court. The question of power of the authority being restricted, conditioned or limited in selling or otherwise transferring the property would not arise. Furthermore, since the writ petition was filed after three years of making of the allotment and execution of the sale deed, it should not have been entertained. In the instant case, we have found that the petitioners are bonafide; there is breach of public trust doctrine; property is inalienable.

Maintainability of writ petition-

It was also submitted by Shri A.K. Sharma that the case is barred by res judicata as similar Writ Petition No.1008/2011 Ram Prasad Sharma V/s State was dismissed by this Court as withdrawn vide order dated 15.2.2011 without granting liberty to file fresh writ application. The order passed by this Court in Writ Petition No.1008/2011 cannot come in the way of maintainability of the writ application on behalf of the petitioner Prof. K. P. Sharma in any manner; other two writ applications were already pending when Writ Petition No.1008/2011 was permitted to be withdrawn. Withdrawal of writ precluded Ram Prasad, not other persons from filing writ application.

Reliance has also been placed by Shri A.K. Sharma on the judgment in *Shri Krishan Kukkar V/s State of Rajasthan* (D. B. Civil Writ Petition (PIL) No.6308/2011 decided on 11.5.2011) where this Court considering the averments made in the petition did not find any case so

as to direct CBI investigation against the Chief Minister. In the said judgment, this Court has never examined the process of tender as the facts were not mentioned in the said writ application in detail about the grant of lease deed in question and this Court had examined whether it was appropriate to direct CBI investigation into the various allegations leveled against the Chief Minister. Thus, the decision in the case of Shri Krishan Kukkar (supra) is of no avail. The question was open to be decided in other writ applications with respect to legality of the lease deed etc. Such question was never gone into or raised or pondered or considered or decided by this Court in the case of Shri Krishan Kukkar (supra). Hence, the decision cannot preclude this Court to consider validity of transaction in question.

It was also submitted by Shri A.K.Sharma that suit has been filed before the District Judge, Jaipur City, Jaipur by Raj Kumar Sharma and Brahm Kumar Kumawat, Advocates, which is pending consideration and that suit was filed against Municipal Corporation for transferring the land without following due process of law. Mere pendency of such suit cannot come in the way to maintain writ applications filed in public interest. The said suit has also been filed in 2010. Filing of civil suit cannot affect the maintainability of the writ petitions considering question of public interest/public trust involved in the instant case.

Reliance has also been placed on the decision of the Apex Court in Joydeep Mukharjee V/.s State of West Bengal and ors. ((2011) 2 SCC 706), where issue was adjudicated upon in earlier proceedings in High Court

and Supreme Court; doubts were expressed regarding allotments, but allotments were not set aside and considering the maxim "*interest rei publicae ut sit finis litium*", it was held that jurisdiction of the the Apex Court in a PIL cannot be pressed into service where matters have already been completely and effectively adjudicated upon not only in individual petitions but even in writ petitions raising the larger question. In the instant case, there is no earlier adjudication of the matters involved in the present petitions. Dismissal of earlier petition filed by someone else as withdrawn without liberty to file a fresh petition could not come in the maintainability of the present petitions.

Expendi ture by Lessee

It was also submitted by Shri A.K. Sharma that more than 70 crores have been spent by respondent no.7; 10 crores have been spent voluntarily on restoration of Jal Mahal monument though obligation was limited to Rs.1.5 crores only; Rs.15 crores were also spent "voluntarily" for restoration of lake without any obligation to do so; the respondent no.7 will pay over Rs.1600 crores as lease rent during the term of lease of 99 years. In our opinion, the question is not of spending money. In case the petitioner has voluntarily spent some money without any obligation under the lease and leave license, he cannot claim any right to hold lease of inalienable property held in public trust. As a matter of fact, valuable property has been given to him on lease for 99 years on annual license of Rs.1/- and annual rentals of Rs.2.52 crores payable to RTDC

with obligations to maintain water, STP, irrigation etc., whereas the market value of the land was about Rs. 3500/- crores. Apart from this, further right has been given to him to alien or sub-lease or mortgage the property. The respondents-State and authorities were aware as to what was the cost, but failed to take care of the value of the property and given the same ignoring public interest and leased out part of lake unauthorisedly and thus, acted in an illegal and arbitrary manner and violated the doctrine of public trust as rightly urged by the petitioners.

Apart from this, details of expenditure of 70 crores have not been furnished by the respondent no. 7. It is submitted that Rs. 15 crores have been spent voluntarily for restoration of lake and Rs. 10 crores has been spent for diversion of nalahs. However, for diversion of nalahs permission was required to be obtained. Rs. 3 crores have been spent as project development fee and Rs. 2.52 crores have been spent as annual rental fee. In fact, spending of these amount cannot come to rescue to respondent no. 7. It appears that as a matter of fact he has done much damage in the lake by creating sedimentation/settling tanks, filling and compaction of 100 acres land from soil of lake bed, construction of wall to cordon 100 acre land in lakebed etc., which was wholly impermissible thereby causing damage to the lake, reduced the water level of lake, adverse impact on ecology, flora, fauna etc.

*Scope of Judicial Review
in contract*

It was also submitted by Shri A.K.Sharma that no interference is required to be made by this Court with the policy decision of the State Government. It is for the State Government to decide as to how a particular largesse is to be distributed, in the present case, by virtue of Section 102 of the Rajasthan Land Revenue Act. We are not at all impressed with the submission. The land did not exclusively belong to the State Government. It is open to the Court to see whether the action is fair and free from the vice of arbitrariness. Since the action of the State and its authorities suffers from the vice of arbitrariness and they have acted in breach of public trust doctrine and in flagrant violation of the provisions of the Various Acts and Rules, they have given area of lake and land of gairmumkin talab on lease to respondent no.7 for 99 years for commercial exploitation/activities, that too for a paltry sum, with further right to sub-lease, alien or mortgage the property for 99 years, therefore, decision of the State and its functionaries was wholly illegal and unjustified. Merely because process of bid was through global tender, it cannot be said that this Court cannot interfere, especially when deviation from the eligibility condition was made to accommodate KGK Enterprises which could not have been waived and so far requisite environment clearance has not been obtained from Central Government MOEF. It cannot be said that the decision was fair or free from unreasonableness and arbitrariness. Such policy decisions are amenable to judicial review. If the decision is tested by applying

Wednesbury principle of reasonableness, it cannot be said that the decision is free from arbitrariness or not affected by bias or not actuated by mala fide.

The learned counsel for the State has placed reliance on the decision of the Apex Court in *Netai Bag and ors. V/s State of W.B. & ors.* ((2000) 8 SCC 262) wherein it has been held that mere violation of statutory provisions would not render State's action arbitrary at all. In the peculiar facts and circumstances of the case leasing out the land to a private company without floating tenders or holding public auction was held to be not illegal or arbitrary or mala fide. In the instant case, tender process was adopted, but waiver was made of condition of eligibility and 100 acres of valuable land has been given/sold on lease for 99 years at a paltry sum, which included area of lake, land of gairmumkin talab and submerged area and while leasing out the land, statutory provisions, public interest and pecuniary interest have been given go-bye and thus, action is wholly unsustainable and has no protective umbrella.

It was also submitted by Shri A.K. Sharma that the petitioners are not expert in lake management, irrigation and other fields related to environmental protection. As already stated above, no environment clearance has been obtained for the project from MOEF Central Government and though the petitioners are not expert nor the Court can claim expertise, but it is apparent that requisite clearance was necessary to be obtained from MOEF Central Government considering that the project is of category-A being within 10 kms from the boundary of protected area of Nahargarh Wildlife

Sanctuary, which has not been obtained so far. Thus, it does not lie in the mouth of respondent no.7 to contend that it is a matter of experts of subject where this Court should not interfere.

Shri A.K.Sharma has also relied upon the decision of the Apex Court in Essar Oil Ltd. V/s Halar Utkarsh Sami ti (2004 (2) SCC 392) in which it was observed that once the State Government has taken all precautions to ensure that the impact on the environment is transient and minimal, the court will not substitute its own assessment in place of the opinion of persons who are specialists and who may have decided the question with objectivity and ability. The courts cannot be asked to assess the environmental impact of the pipelines on the wildlife but can at least over see that those with established credentials and who have the requisite expertise have been consulted and that their recommendations have been abided by the State Government. The aforesaid decision is not at all applicable to the facts of the present case as the lake area itself has been leased out as admitted by Shri G.S.Bapna, Advocate General and substantial area (14.15 acre) was submerged when the possession was handed over to respondent no.7. Other area has been made available by reducing water level of lake in an illegal manner.

Reliance has also been placed on the decision of the Apex Court in In DDA V/s Rajendra Singh (2009(8) SCC 582) in which it was observed that for ecological integrity of the river, concept of riverbed, flood plain and river zone were duly considered and the expert bodies like NEERI and CWPRS were duly consulted

and based on their expert opinion, the land under pocket III alone was reclassified and Master Plan Delhi, 2001 was also suitably amended. In the instant case, admittedly, the land has not been reclassified and about 13 bigha 17 biswa land was admittedly in the part of the lake bed and 14.15 acres land was in the submergence which could not have been given on lease, remaining part out of 100 acres given for the purpose of construction activities, has been made available by reducing water level of lake. Besides, there were other glaring illegalities as found by us. Hence, the above decision is of no help to the respondent no.7.

In *Federation of Railway Officers Association V/s Union of India* (2003(4) SCC 289) relied upon by the learned counsel for the respondent no.7, the Apex Court has held that wholesome rule in regard to judicial interference in administrative decisions is that if the government takes into consideration all relevant factors, eschew from considering irrelevant factors and act reasonably within the parameters of the law, court would keep off the same. The ratio of the aforesaid decision is not attracted in the instant case as the State and authorities have acted in an illegal and arbitrary manner, in breach of public trust doctrine and juxtaposed to ratio of the said decision.

Reliance has also been placed on the decision of the Apex Court in *Tehri Bandh Virodhi Sangharsh Samiti V/s State of UP* (1992 (Suppl.1) SCC 44), the Apex Court found that the Union of India considered the question of safety of the project in various details more than one and opinion of the expert and thus, it could not be said that Union has not applied its mind or has not

considered the relevant aspects of safety of dam. In the instant case, requisite clearances were not obtained prior to finalization of project and area of lake itself could not be given in the project as has been done in the instant case. Environment clearance from Central Government MOEF has not yet been obtained. Hence, the above ruling is of no help to the respondent no.7, rather counters submission raised on its behalf.

Reliance has been placed on the decision of the Apex Court in Greater Kailash Part II Welfare Assn. & ors. V/s DLF Universal Ltd. & ors. ((2007) 6 SCC 448) where the Apex Court held that owner of plot of land is entitled to use and utilize the same for any lawful purpose, to erect any construction thereupon in accordance with existing rules and so long as such owner does not contravene any of the provisions which restrict his use of the plot in any manner, he cannot be prevented from utilizing the same in accordance with law; the sanction for change in land use & conversion of single cinema hall into multiplex does not require interference as decision was based on opinion of experts, which should be respected. In the present case, no clearance of Central Government MOEF has been obtained; area of lake has been leased out which is wholly impermissible; various statutory provisions of the Acts and Rules have been violated; the action is arbitrary, illegal, without jurisdiction and in violation of public trust doctrine. Hence, the above ratio is of no help to the respondent no.7.

Reliance has also been placed on the decision of the Apex Court in Balco Employees' Union (Regd.) V/s

Union of India & ors. ((2002) 2 SCC 333) in which it has been laid down in the matter of policy decision/economic decision that unless decision is contrary to any statutory provision or the Constitution, court cannot interfere with it. In the instant case, we have found that decision is arbitrary, illegal, contrary to the various statutory provisions of the Acts and Rules and in breach of public trust. Thus, the above decision rather counters the submission raised on behalf of respondent no.7.

Reliance has also been placed on the decision of the Apex Court in Kihoto Hollohan V/s Zachillhu and ors. (1992 Supp (2) SCC 651), where the Apex Court has laid down that the doctrine of severability can be applied in cases of challenge to the validity of an amendment on the ground of disregard of the substantive limitations on the amending power, namely, alteration of the basic structure. But only the offending part of the amendment which had the effect of altering the basic structure was struck down. Reliance has also been placed by the respondent no.7 on the decision of Apex Court in LIC of India and anr. V/s Consumer Education & Research Centre & ors. ((1995) 5 SCC 482) wherein only offending clause was held to be unconstitutional. In the instant case, we found the entire transaction to be wholly impermissible and in serious breach of public trust doctrine and hence, the same cannot be severed and permitted to prevail.

Reliance has also been placed on the decision of the Apex Court in M.S.M. Sharma V/s Shri Krishna Sinha and ors. (AIR 1959 SC 395) particularly on para 33 where in the matter of freedom of press, it was

pleaded that Committee of Privileges was proceeding against the petitioner malafide with a view to victimise and muzzle him as he has through his newspaper unsparingly criticizing the administration in the State of Bihar of which opposite party no.1 was the Chief Minister, it was observed that allegation of bad faith cannot be readily accepted; the case of bias of the Chief Minister has not been made anywhere in the petition and thus, it would not be right to permit the petitioner to raise this question, for it depends on facts. In the present case, we are not examining biasness of any individual, but the question of permissibility of leasing out of property in breach of public trust. Hence, the above decision is of no help to respondent no.7.

Reliance has also been placed on the decision of the Division Bench of this Court in *Poonam Chand Bhandari V/s State of Rajasthan & ors.* (2008(1) RLW 885) where on the direction of the State Government, allotment of huge land was made by the JDA for establishment of World Trade Park in Jaipur, it was held that Section 90 of JDA Act permits the State Government to direct the JDA to exercise its powers and perform its duty in accordance with the policy framed in conformity with Article 14 of the Constitution of India. For exercise of power under Rule 15B existence of definite guidelines and policy for allotment of land for the purpose of infrastructure projects is necessary. This Court did not interfere because of dismissal of previous writ petitions, substantial completion of the project and allotment was made after extensive consultation and having found no extraneous

reason in allotment. The above decision is of no help to the respondent no.7 in different set of facts.

Reliance has also been placed on the decision of the Apex Court in Association of Registration Plates V/s Union of India & ors. ((2005) 1 SCC 679) wherein it was held that a long term contract if thought viable and feasible, cannot be faulted by the court. If there are two alternatives available, of giving a short term or a long term contract, it is not for the court to suggest that the short term contract should be given. It was further held that Article 14 prohibits the Government from arbitrarily choosing a contractor at its will and pleasure. In the instant case, we have found that the action of the State and its authorities is wholly arbitrary and illegal; condition of eligibility could not have been waived; the action is violative of Article 14 of the Constitution of India.

It was also submitted by Shri A.K.Sharma that tourism activities in Jal Mahal area were contemplated several decades ago; a gazette notification was published by JDA on 31.7.1975 for Jal mahal Reclamation Project; in 1977 UIT decided not to proceed with the project; in 1982 UIT sent letter for acquisition of land to develop Jal mahal lake; on 30.6.1987 notification under section 39(3) of the JDA Act was issued to develop Jal mahal Project as tourist spot. As a matter of fact, land had been acquired by spending huge amount. Merely by the fact that project has been conceived, lakebed could not have been leased out; prime and valuable land has been leased out at a throw away price without due consideration of ecological effect. The state and its authorities have acted in an

illegal and arbitrary manner and in utter disregard of public trust doctrine.

Reliance has been placed by respondent no.7 on the decision of the Apex Court in *Sachi danand Pandey V/s State of W.B.* (1987(2)SCC 295) in which the Apex Court observed that Taj Group Hotels gave all assurances necessary to preserve Zoo and its inmates; they were willing to afford all requisite safeguards in place of a dilapidated hospital, operation theatre; they agreed to build not usual skyscraper hotel, but a garden hotel, height of which would not go beyond 75 feet; this was done to keep free route of flight of birds; they agreed to subdued light in hotel, again in interest of bird; they agreed to keep the surroundings of hotel and flora well maintained and thus, order of Division Bench was neither unreasonable nor arbitrary and that taking away of four acres of land from Zoo was not detrimental to public interest. In the instant case, the ratio of above decision is of no help to the respondent no.7. The requisite environment clearance has not been obtained from the Central Government MOEF. The case does not qualify standards of no interference laid down by the Apex Court.

Reliance has been placed by Shri A.K.Sharma on the decision of the Apex Court in *Jayant Achyut Sathe V/s Joseph Bain D'Souza* (AIR 2008 SC (Supp.) 502) wherein it was observed that Court cannot usurp or abdicate and the parameters of judicial review must be defined and in case action is fair, court cannot act as super auditor. Court function is to test whether the administrative action has been fair and free from taint of unreasonableness. When we examine the facts of the

present case in the light of the ratio laid down in the above case, we find that action of the respondents-authorities is not fair and free from the taint of unreasonableness.

Reliance has also been placed by respondent no.7 on the decision of the Apex Court in *Krishnan Kakkanath V/s State of Kerala* (1997(9) SCC 495) in which it has been held that to ascertain unreasonableness and arbitrariness in the context of Article 14 of the Constitution, it is not necessary to enter upon any exercise for finding out the wisdom in the policy decision of the State Government. In the instant case, we have found that lease was illegal, without jurisdiction and void and the action is also arbitrary and in violation of the Acts and Rules and doctrine of public trust. We are not embarking upon on chartered ocean of public policy. Thus, the above decision is not helpful to the respondent no.7.

Reliance has also been decision on the decision of the Apex Court in *State of HP V/s Padam Dev* (2002 (4) SCC 510) in which it was observed that decision to make a special concession for Gopal Sahayaks in the matter of additional training as Veterinary Pharmacists was admittedly policy decision. The framing of administrative policy is within the exclusive realm of the executive and its freedom to do so is, as a general rule, not interfered with by courts unless the policy decision is demonstrably capricious or arbitrary and not informed by any reason whatsoever or it suffers from the vice of discrimination or infringes any statute or provisions of the Constitution. The decision rather runs counter to the submission raised

on behalf of the respondent no.7 as the action is not only arbitrary, capricious but contrary to the Act and Rules as held by us.

Reliance has also been placed on the decision of the Apex Court in *State of UP V/s Choudhary Ram Beer Singh* (2008(5) SCC 550) in which it has been laid down that in the matter of policy decision, the scope of interference is extremely limited. No doubt about it. In the instant case, policy decision suffers from the vice of arbitrariness and unreasonableness and in breach of doctrine of public trust. A valuable property of several thousand crores has been leased out for a period of 99 years at a paltry annual lease amount ignoring the interest of the public and even right to further sub-lease or alien or mortgage the property has been given and the leased out land also contain area of lake, gairmumkin talab and submerged area. Hence, the above decision is of no help to the respondent no.7.

Reliance has also been placed on the decision of the Apex Court in *Nagar Nigam V/s Al Faheen Meat Exports* (2006(13) SCC 382) wherein it has been held that jurisdiction of the High Court to entertain PIL is well known but it is also trite that court should exercise its jurisdiction only when it is essential to do so. Ordinarily, the High Court would not interfere in an administrative action of the State unless it is found to be contrary to legislative policy or arbitrary attracting the wrath of Article 14 of the Constitution. In the instant case, even arbitrary exemption from stamp duty was granted and the action of the State and authorities is illegal, arbitrary, void and in breach of public trust and we are constrained to interfere on

principle laid down by the Apex Court in the aforesaid decision. Hence, the above ruling is of no help to the respondent no. 7.

It was also submitted that in the contractual matter, interference by this Court is not permissible. Reliance has been placed on the decision of the Apex Court in Orissa State Financial V/s Narsingh Ch. Nayak (2003 (10) SCC 261). Reliance has also been placed on the decision of the Apex Court in Asia Foundation & Construction V/s Trafalgar House Construction (1997 (1) SCC 738) in which question arose whether there is any power of making any correction to the bid documents after a specified period, the High Court on construing certain clauses of the bid documents came to the conclusion that such a correction was permissible and therefore, the Bank could not have insisted upon granting the contract in favour of the appellant. The Apex Court held that it was not within the permissible limits of interference for a court of law, particularly when there was no allegation of malice or ulterior motive or favouritism in the grant of contract. In that case, reliance was placed on the decision in the case of Tata Cellular (supra) where it was held thus: -

"The duty of the court is to confine itself to the question of legality. Its concern should be: -

- 1. Whether a decision-making authority exceeded its powers*
- 2. Committed an error of law*
- 3. Committed a breach of the rules or natural justice*
- 4. Reached a decision which no reasonable tribunal would have reached or*
- 5. abused its powers. "*

If the facts of the present case are examined in the light of the above, it is very much clear that the authorities have exceeded their powers as they have leased out some part of the area of the lake and some land of gairmumkin talab; they have acted against the statutory provisions of the Act and Rules; they have committed the breach of public trust; they have reached a decision which no reasonable person would have reached; they have abused the powers. Thus, the Court is bound to interfere in such matter as laid down in the case of Tata Cellular (supra).

Relying upon the decision of Punjab and Haryana High Court in Raj Kumar & anr. V/s State of Punjab ((2011) 161 PLR 814) (Civil Writ Petition No. 15645/2007 decided on 25.11.2010), it was submitted on behalf of the State that private participation for restoration of state level sites of public/historic importance is prevalent in the country and even the Archeological Survey of India has permitted the same. The Punjab and Haryana High Court has referred that the following heritage buildings/Forts have been resurrected/restored/maintained by virtue of private public partnership:

- (i) Gardens of Emperor Humayun's Tomb
- (ii) Jal Mahal, Jaipur
- (iii) Jaisalmer Fort, Rajasthan
- (iv) Isa Khan's Complex, New Delhi
- (v) Sunda Chun Monastery, Ladakh
- (vi) Dalhousie Square, Kolkata
- (vii) Paradesi Synagogue, Cochin
- (viii) Bhau Daji Lad Museum

In the case of Raj Kumar (supra), the Punjab and Haryana High Court has held that private participation for restoration is prevalent in the country and even the Archaeological Survey of India has permitted it in case of Humayun's Tomb and thus, partnership is not only permissible but keeping in mind the scarcity of resources of the country even desirable if we are to save our ancient monuments from complete degeneration. It would be absolutely shortsighted to insist that such sites should not be handed over to private bodies even if they fall into complete ruins. The only safeguard to be kept in mind is that any such private person fulfills its commitment of preserving and maintaining such sites in an appropriate manner and that "it should not result in any commercial benefit to such body". The aforesaid decision of the Punjab & Haryana High Court is of no avail. In the instant case, an area of lake has been leased out, which cannot be permitted; damage to lakebed and ecology also cannot be permitted; no environment clearance has been obtained from the competent authority (Central Government MOEF); 100 acres of valuable land been given on lease for 99 years at a throw away price; under the garb of restoration, conservation and maintenance, respondent no.7-Jal Mahal Resorts Pvt. Ltd. is given liberty for enjoying commercial benefits; the respondent no.7 is required to pay annual license fee of Rs.1/- to the State and at the same time, the respondent no.7 was authorized to levy any amount of user charges on the public and restrict the visitors failing to pay the specified user charges and as per clause 2.2(c), the

entry fee to the monument would be minimum of Rs.25/- per visitor at current prices and the entry could be escalated by 10% every year and this goes to show that entire transaction was resulting in commercial benefit to respondent no.7. Hence, the aforesaid decision of the Punjab and Haryana High Court is of no help to the respondent-State especially when in that case it was observed that preservation and maintenance should not result in any commercial benefit to such body while in the present case transaction provides commercial benefits to respondent no.7.

Point as to stamp duty

It was submitted by the petitioners that bidding process was completed without even deciding as to who would pay stamp duty with regard to transfer of land. Ultimately decision was taken to exempt stamp duty on lease agreement under self created compulsions as licensee was required to bear the stamp duty. There was no rhyme or reason to even exempt payment of stamp duty. The decision appears to have been taken in order to benefit the licensee and it is against the provisions of Section 29(c) of the Stamp Act and 55(1) (d) of the Transfer of Property Act.

Employment opportunity etc.

It was also submitted by the respondent no.7 that implementation of the project would yield employment for 3000 persons. The project when implemented will have a craft bazaar of 200 shops; it will generate revenue for tour operators also and hence it is in public interest. The question is not of providing employment opportunity in the illegal method and manner

in which it has been done at the cost of lake and ecology. The land has been given on lease on a paltry sum that too for 99 years ignoring the public interest and ecology. Even the area of lake and gairmumkin wet land has been leased out, which is not permissible. It is definitely a case of illegal siphoning of valuable public property.

It was submitted by the respondent no.7 that development of the lake was proposed to be made to ensure availability of funds to maintain the lake. In fact the paltry sum which is being offered cannot be said to be adequate for maintenance of lake, considering the huge investment which has been made by the Central Government MOEF to the tune of Rs.17.30 (70% of the estimated cost) for restoration of the lake and remaining 30% by the JDA total approximately Rs.25 crores and that amount itself in-fact is to be utilized for its commercial gain under the project in question of 432.8 acres by private sector entrepreneur.

It was further submitted that the State has not considered that some part of the area in question was being used for holding 'dungals' on 'Markar Sankaranti' i.e. January 14th of every year; Dargah and temples are situated there and if commercial activities are permitted, it would affect the religious places. It appears that mind has not been applied to all aspects.

In view of the discussion made above, we inter-alia find: -

- (1) That admittedly area of 13 bigha 17 biswa is recorded as Gairmumkin Talab and area of 14.15 acre was in submergence, which was also included in 100

acres of land leased out for 99 years to the company, which was not permissible. There was no authority under the law to alienate the land of lake bed. Whole transaction is based on flagrant violation of principle of public trust. The respondents-State and its functionaries were trustees of the land and they were holding it for the benefit of people. Such lake/land is of people and the State, JDA and JMC are merely custodian of the same. It is shocking and surprising that respondents-authorities have failed to act in objective manner and they have violated the principles enshrined in Article 48A, 49 and 51A(g) of the Constitution.

(2) That it is shocking and surprising that area which was under submergence of 14.15 acres and obviously formed part of the lake was permitted to be reclaimed by Jal Mahal Resorts Pvt.Ltd. There was no authority with the State Government or RTDC or JDA or JMC to allow or permit reclaiming of the area which was in submergence in lake and it was in fact part of lake.

(3) That it is apparent from para 3.4 of DPR that lake level has been reduced to carve out 100 acres land for lease.

(4) That the area of 100 acres leased out was to be raised above the lakebed by filling and compaction and was not otherwise available for the so-called tourism project. It has now been created by reducing level of lake water.

(5) That from the materials available on record, particularly DPR itself the basis of entire project where it is stated that the current maximum water spread of the lake being 400 acres, there remains no manner of doubt about the fact that the respondent authorities have sold/leased out 25% of lake basin itself for the purpose of preparing 100 acres of land to be used for their so called tourism project which is absolutely illegal and unconstitutional and therefore void ab initio. It was not open to tamper with lake water level to create 100 acre land for lease for hotels etc.

(6) That in several cases, Hon'ble Supreme Court and this Court has laid down that no right can be given to use nadi land or other water body; there cannot be any activity which affects water body; nadi cannot be used for construction. In the instant case, the Government has included the land of lake in the project area of 100 acres leased out to Jal Mahal Resorts Pvt.Ltd. and apart from this, submerged 14.15 acres area has been given which is part of lake. Even 13 bigha 17 biswa land recorded as "Gaimumkin Talab" part of lake has been leased out, other area is also carved out by reducing water level of lake. Thus, lease deed in question is illegal, void and in violation of the directions issued by the Division Bench of this Court in the case of Abdul Rehman (supra) and principles enunciated by the Apex Court in various decisions.

(7) That no transfer of lake bed or any part thereof was permissible much less construction on

it. Property belongs to JDA, Municipal Corporation and part of it held by the State Government in public trust.

(8) That the project has adverse effect on ecology, flora, fauna, wildlife birds sanctuary considering the importance of the area. Water level of lake could not have been fixed in the manner done so as to carve out 100 acres area for project, it will affect adversely the ecological balance of area.

(9) That for the project in question, permission/clearance of Central Government MOEF was necessary to be obtained as per the notification dated 14th September, 2006 issued by the Central Government MOEF under the provisions of Environment Protection Act, 1986. As per note appended to the notification, any project or activities specified in category-B be treated as category A if located within 10 kms from boundary of protected area. Admittedly the Nahargarh Wildlife Sanctuary is nearby and within the periphery of 1 km. from the project area and thus, the project area is within 10 km. from the protected Nahargarh Wildlife Sanctuary under the Act of 1972 and hence, project has to be treated in Category-A for which as per General Condition of the Notification dated 14.9.2006, the competent authority to give environment clearance is Central Government MOEF, no such approval much less prior approval which is necessary has been obtained.

(10) That the sanction granted by Central Government MOEF vide letter dated 5.9.2002 and 23.12.2002 is for Mansagar Lake Conservation Project under NLCP and it has nothing do with the project in question.

(11) That in the light of notifications dated 27.1.1994 and 14.9.2006 issued under the Environment Protection Act, 1986, the respondents were required to carry out environmental impact study and obtain environment clearance from the Central Government MOEF, which they did not do.

(12) The permission which has been granted on 29th April, 2010 by the State Level Environment Impact Assessment Authority has no value in the instant case as the said authority was competent for the matters falling under Category B and not for the matters falling under category-A project and as the project in question is admittedly within 10 kms from the boundary of Nahargarh Wildlife Sanctuary, which is protected area notified under the Act of 1972, of which notification is on record, therefore, prior permission of Central Government MOEF was necessary for the project in question as mandated in the Notification dated 14.9.2006 and the same has not been obtained and in absence thereof, the entire action taken by the respondent no.7 Jal Mahal Resorts Pvt.Ltd. and other respondents is unauthorized, illegal and void. Permission obtained from SEIAA for the tourism project treating it as category-B as per item 8(a)

is illegal and void. The said Authority was not authorized as per para 2 of the Notification of MOEF dated 14th September, 2006 to grant permission for the project in question.

(13) That the permission has also been obtained from the Rajasthan Pollution Control Board on the pretext that MOEF has granted clearance to the project and as such, permission granted under Water Act and Air Act by the Rajasthan Pollution Control Board is also of no avail to Jal Mahal Resorts Pvt. Ltd. in the absence of clearance by the Central Government MOEF under Environment Protection Act.

(14) That as per Rule 23 of the Rajasthan Tourism, Disposal of Lands and Properties by DOT/RTDC Rules, 1997, it was essential that when any land is disposed of for a lease period of 99 years i.e. by way of sale, purchaser shall have to pay cost of the land. In the instant case, cost of land has not been determined at any point of time by the Department of Tourism or RTDC. Thus, the action of virtually selling away of property by way of lease for 99 years is in contravention of Rules 22 and 23 of the Rules of 1997. Even if the property is put on the disposal of RTDC for lease, it is bound to act in accordance with law and when Rules are in existence, there is nothing to give go bye to the Rules and property could not have been disposed of on lease for 99 years in contravention of Rules 22 and 23 without working out the cost of the property and getting it deposited. It was necessary for

lessee as per Rule 23 in addition to value of property to pay such urban assessment or "annual lease" as determined by the Committee constituted under Rule 3. There is no rhyme or reason to make departure from the aforesaid Rules with respect to such a valuable property under the guise of policy decision. Flagrant violation of the Rules cannot be permitted. However, in what manner, the decision was taken giving go-bye to the Rules is not understandable. Thus, the lease deed being in violation of the Rules of 1997 cannot be permitted to subsist and the same is liable to be cancelled.

(15) That as per Rule 6 of the Rajasthan Municipalities (Disposal of Urban Land) Rules of 1974, it was necessary to work out the reserve price on the basis of cost of undeveloped land; cost of developed land; and 20% of the developed land to cover administrative and establishment charges. However, no efforts have been made so as to fix the reserve price as provided under Rule 6. When the Municipal property is being sold away on lease as contemplated under Rule 2(10) for 99 years, it has to be on the cost as provided in Rule 6 and fixing of reserve price was necessary, which has not been done. As per Rule 15(15), Municipal Corporation can transfer the land to Department of Tourism or RTDC but it is as per commercial price for a tourism project and then if an auction price fetched is more it has to be disbursed as per Rule 15(15) of the Rules of 1974 to Municipal Corporation. The Municipal

Corporation has failed to act in objective manner. Being custodian of the property, it was not open to the Municipal Corporation to transfer the land in the method and manner which has been done to Department of Tourism or RTDC in violation of Municipalities Act and the Rules of 1974.

(16) That in view of the provisions of Section 54 of the JDA Act, it was not open to JDA to fritter away the valuable land without imposing proper terms and conditions.

(17) That purpose for which the lease has been given cannot be said to be strictly in accordance with the recreational purpose, but the project has been sanctioned for commercial exploitations, which is the main objective not the development of tourist facilities. The tourist facilities have been rendered secondary. Even if assuming that the commercial activities are permissible, in that event also, it could not have been done, considering the area in question is part of lake and land was given without following the due procedures prescribed under various Acts and Rules and even environment clearance of Central Government MOEF was not obtained. Hence, the contract cannot be said to be sustainable.

(18) That India being signatory to Ramsar Convention, State is bound to act in accordance with its mandate and for the purpose, Wetlands Rules 2010 have been framed and no application has

been filed so far by the State Government or Jal Mahal Resorts Pvt.Ltd. to obtain clearance under the Wetlands Rules 2010 as stated by MOEF in its return. Even if the lake in question is not included in the schedule, even than purpose for which the Wetlands Rules,2010 have been framed cannot be ignored by the State Government or any other respondents. Thus, project in question is in flagrant violation of Rule 4 of the Wetlands Rules, 2010. As the project Phase II has not yet been taken up under the lease agreement and whatever has been done is only some part under the appendix-14 with respect to restoration of monument, in terms of Wetlands Rules, 2010, since lake bed has been given including catchment area for permanent construction, such acts are not permissible within 50 meters and project will have the adverse effect on ecology of area, has not been taken into consideration and forbidden activities have been permitted, it is incumbent upon the State Government to identify the wetland under different categories. The project includes submerged land itself to the extent of 14.15 acres and catchment area is also part of the wetland as per rules. Admittedly, part of lakebed in area 13.17 Bighas has been leased out. Other area is also carved out by reducing water lake. Thus, lease is in contravention of Wetlands Rules and project cannot be given effect to being in contravention of the Wetlands Rules and if given effect to, it would violate the provisions of Wetlands Rules, 2010 and Ramsar Convention also.

(19) That since the action of the State and authorities is wholly arbitrary, illegal, without jurisdiction, violative of statutory provisions of the Acts and Rules mentioned above and in blatant violation of the public trust doctrine, therefore, to say that this Court cannot interfere in contractual matters or policy decision cannot be accepted. Though there is no delay as requisite sanctions have not been obtained so far for the project, in such cases, even delay and latches does not come in the way of interference by this Court.

(20) That grant of lease for 99 years amounts to sale and the same is against the provisions of the Municipalities Act, Rules of 1974, Rules of 1997, JDA Act and in breach of public trust doctrine.

(21) That it is a case of illegal siphoning of the valuable property of several thousand crores for paltry sum of annual lease with obligation on lessor to maintain lake etc.

(22) That under the agreement, lessee/licensee has been given right to realize amount of Rs.25/- per person as entry fee which could be escalated by 10% every year; even for entering in the garden, Jal Mahal Resorts Pvt.Ltd. was authorized to levy an amount of user charges on the public and restrict the visitors failing to pay the specified user charges and such levy of fees and charges on the public after paying just Rs.1/- per year under leave and license agreement, Appendix 14 to lease

agreement, to the State Government is arbitrary, contrary and in violation of the principles of transparency, accountability, public financing and smacks of highhandedness.

(23) That the State or its tendering authority is bound to give effect to the essential condition of eligibility stated in the tender document and was not entitled to waive such conditions. Since KGK Enterprises was not fulfilling the eligibility condition, its offer ought to have been rejected at threshold, but condition was relaxed and its bid was accepted. Thus, action cannot be said to be based on bonafide reasons. It was wholly unreasonable and impermissible. It was not open to waive condition, though it was open to scrap entire process as laid by Apex Court in Shimnit Utsch India Private Limited & anr. V/s West Bengal Transport Infrastructure Development Corporation Limited & ors. (supra).

(24) That even revised plan could not have been cleared without prior sanction of MOEF; action relating to tourism project appears to be on extraneous consideration, favouritism and against the public trust doctrine and violative of Articles 14, 21, 48A, 49 and 51A(g) of the Constitution of India. The decision dated 10.10.2007 was illegally reviewed on 10.9.2009.

(25) That construction of sedimentation/settling tanks and erection of wall, filling and compaction

was an illegal act at the cost of lake bed itself and it has damaged the lake and has reduced its area. Such activity was not permissible without clearance from the Central Government MOEF.

(26) That the respondent no.7 Jal Mahal Resorts Pvt.Ltd. has done illegal acts, filling and compaction of 100 acres from soil of lakebed, construction of wall etc., which was wholly impermissible thereby causing damage to the lake, reduced the water level of lake and affected the ecology, flora, fauna etc.

(27) That desilting and construction of wall was also done in an illegal manner in lakebed.

(28) That the State has not considered that Dargah and temple are situated there and effect on the religious places.

(29) That the PIL is bonafide and in public interest. There is no concealment of material facts on the part of the writ petitioners. The petitioners cannot be said to be motivated by newspapers.

(30) That the order passed by this Court in Writ Petition No.1008/2011 cannot come in the way of maintainability of the writ application on behalf of the petitioner Prof.K.P.Sharma in any manner; other two writ applications were already pending

when Writ Petition No.1008/2011 was permitted to be withdrawn. Withdrawal of writ precluded Ram Prasad, not other persons from filing writ application.

(31) That there was no rhyme or reason to even exempt payment of stamp duty. The decision appears to have been taken in order to benefit the licensee.

Resultantly, we pass the following orders: -

(1) That Mansagar Lake Precinct Lease Agreement dated 22nd November, 2005 giving 100 acres of land on lease for a period of 99 years to respondent no.7-Jal Mahal Resorts Private Limited is declared illegal and void;

(2) That similarly, Jal Mahal Leave & License Agreement dated 22nd November, 2005, appendix 14 to Mansagar Lake Precinct Lease Agreement is also declared illegal and void.

(3) That Jal Mahal Resorts Pvt. Ltd. is directed to bear costs to be incurred in restoration of the original position of 100 acres of land in removing the soil filled-in by it and to restore back the possession to the RTDC who shall in turn give it to Jaipur Development Authority, Jaipur Municipal Corporation and State.

(4) That respondents are further directed to immediately remove all sedimentation and settling

tanks from the Mansagar Lake basin and to realize costs from Jal Mahal Resorts Pvt.Ltd. and to examine restoring position of Nagtalai and Brahampuri Nalah (Drains) to their original position as realigned by RUIDP under Mansagar Lake Restoration Plan, in consultation with Central Government MOEF.

(5) That respondents-authorities are further directed to monitor, maintain and re-fix boundaries of the Mansagar Lake in its full original length, breadth and depth in consultation with Central Government MOEF and not to reduce normal water level.

(6) That all encroachments made in the catchment area of Mansagar Lake be removed immediately;

(7) That wall erected by Jal Mahal Resorts Pvt.Ltd. in the lake is ordered to be dismantled and cost be realized from Jal Mahal Resorts Pvt.Ltd.

With the aforesaid observations/directions/orders, all the three writ petitions stand disposed of accordingly. No costs.

(MAHESH BHAGWATI), J.

(ARUN MISHRA), C. J.

Parmar

Certificate - "All the corrections made in the order have been incorporated in the order being e-mailed."

(Narendra Kumar Parmar), PS