
(2012) 10 OHC CK 0003

In the Orissa High Court

Case No : Writ Petition (C) No. 8797 of 2004 and OJC. No. 6721 of 1999

Tapan Kumar Das

APPELLANT

Vs

Commissioner, Cuttack Municipal Corporation and Others

RESPONDENT

Date of Decision : 11-10-2012

Acts Referred:

Constitution of India, 1950 — Article 21, 47, 48A, 51A
Orissa Land Reforms Act, 1960 — Section 8A

Citation : (2013) 115 CLT 407 : (2013) 3 EFLT 250

Hon'ble Judges : M.M. Das, J;B.P. Das, J

Bench : Division Bench

Advocate : G.A.R. Dora, Smt. G. Rani Dora and Mr. J.K. Lenka and Mr. P.R. Dash, Amicus Curiae, for the Appellant; Sisir Das, Addl, Govt. Advocate, Shri Pradipta Mohanty Shri Dayananda Mohapatra, Shri J. Patnaik, Shri B. Mohanty and Shri P.K. Rath, for the Respondent

Judgement

B.P. Das, J.—Petitioner-Tapan Kumar Das, since dead, claiming himself to be the Secretary of Kazibazar Adipitha Puja Committee, and a public spirited citizen and concerned with the welfare of the locality, filed W.P.(C) No. 8797 of 2004 in the nature of public interest litigation for a direction to Cuttack Municipal Corporation to stop release of foul smelling septic tank and drainage water to the street. His main allegation was that water logging and release of foul smelling septic tank and drainage water to the street are causing pollution hazards in the locality mainly due to filling up of a portion of a big tank located behind the Amala Club at Kazibazar on Hal Plot No. 537 under Hal. Khata No. 195 in Cuttack Town, Unit No, 14, with an area of Ac. 3.182, by a builder, who has purchased the same and has carved out housing plots with a view to sell the same to different persons. According to the Petitioner, generally rain-water as well as the domestic waste water from the houses in the surrounding area is discharged to the aforesaid tank. Because of filling up of the said tank, the" entire area has been flooded with filthy water from drains and septic tanks causing health hazards and the residents of that area are neither able to move out from their houses nor remain

inside due to the foul smell emitted from such stagnated filthy water. That apart, the students of the schools located in and around that area are facing immense difficulties during rainy season to attend their schools due to water logging. It has also been alleged that the State Govt. and the Cuttack Municipal Corporation (CMC) have illegally granted permission to fill up the aforesaid water body and have not made any arrangement for the due discharge of such water. Therefore, a prayer has been made to direct the authorities of the State Govt. as well as the CMC to ensure that the domestic waste water discharged from the surrounding houses does not flow to the street and alternative arrangement is made for discharge of such water.

This Court by its Order Dated 15.10.2004 allowed impletion of the Tahasildar, Sadar, Cuttack, and certain private individuals as Opp. Parties and issued notice to the said parties. On going through the copy of the report of the Municipal Commissioner of the CMC submitted to the Registrar, Orissa Human Rights Commission, on the self-same grievance, which was produced by the Learned Counsel for the CMC. for perusal of the Court, and considering the facts and circumstances of the case, this Court while requiring the Collector and the Tahasildar. to produce the relevant records pertaining to the aforesaid tank directed maintenance of status quo in respect of the tank in question. That apart, the Cuttack Development Authority (CDA) was directed not to grant any permission for construction of house on the aforesaid plot without leave of the Court and to publish a notice to that effect in the newspapers. The authorities of the CMC and the CDA were also directed to take appropriate steps against the persons responsible for causing nuisance in the locality by initiating criminal proceedings in accordance with law. Direction was also given not to fill up the tank on the aforesaid plot by sand or otherwise either by Opp. Parties 3, 6 and 7 or any other person or agencies. The CMC was also directed to take effective steps and ensure that hygienic condition is maintained in the locality to prevent epidemic which was apprehended by the local residents.

During pendency of the writ application, the Petitioner died and this being a public interest litigation, Shri P.R. Dash, a member of this Bar. Was allowed to pursue the writ application. When the aforesaid W.P.(C) No. 879/2004 was pending, on 84.2005 this Court considering the submission made at the Bar in the on going public interest litigation relating to Cuttack City i.e. OJC No. 6721/1999, that during last five years big tanks in the city, which were recorded as Jalasaya/tanks in the Records of Rights, were rapidly being filled up and converted to homestead without effecting any change in the classification of the lands in the revenue records and without obtaining permission from the competent authority, and that the CDA without following the provisions of the building regulations and properly examining the matters has been permitting constructions on such lands for some obvious reason, passed order for maintenance of status quo as existed on that date in respect of the tanks recorded as such in the RORs. and called upon the Collector, Cuttack, to furnish list of tanks recorded as such in the RORs and available in Cuttack City, the

number of such tanks in existence and the number of tanks filled up. He was also directed to indicate whether for change of classification of the lands from tanks to homestead, any permission is required and, if so, whether such-permission has been accorded. The District Administration including the Police Administration was directed to ensure compliance of the order of status quo. Thereafter by Order Dated 15.4.2005 the Tahasildar, Sadar, Cuttack, was directed to furnish a report to the Superintendent of Police, Cuttack, indicating if the work of filling up of Jalasayas/Tanks is being done and/or any construction is being made thereon.

2. Since the grievance ventilated by the Learned members at the Bar in the on-going public interest litigation, i.e. OJC No, 6721/1999, regarding illegal filling up of large number of water bodies/tanks in the city and construction of buildings thereon for human settlements without changing the classification of the lands to homestead and the allegation made in W.P.(C) No. 8797/2004 regarding filling up of the tank in Kazibazar were common, both the writ applications were heard together to examine the question whether the filling up of the water bodies/tanks classified as "Jalasayas" in the revenue records without changing the classification to homestead, i.e. legal and justified and whether the water bodies/tanks, which are the natural water storage resources in the city, are required to be preserved, protected and maintained for the purpose of recharging of water and for improving the underground water level and also for providing drainage during high rain falls in order to save the city from water-logging and with a view to maintain ecological balance keeping in view the rapid increase in the density of population day by-day so also the pressure on lands for human habitation.

3. So far as tanks are concerned, the age-old method of irrigation by tanks, as prevailed in ancient India, continued as a predominant mode of irrigation almost till our independence. Every village had at least one community tank, Zamindars possessed privately-owned tanks. No temple was concerned without a tank. Private milks and tanks belonging to temples were zealously guarded. But in post-independence days such disciplined use and maintenance of community tanks have disappeared totally and the tanks got neglected and finally became unusable and ultimately got converted into virtual swamps. Tanks are useful for recharging of wells and for providing drainage during high, rain falls. Cuttack, the premier town of Orissa, today gets seriously water-logged even with 5-6 cm of rain because almost all the ponds and most of the low-lying areas, have been reclaimed for habitation, This is the observation made in the Report on State of Environment in Orissa-I (Water Resources) prepared by Dr. R.C. Das, Chairman of then State (Prevention & Control of Pollution) Board, now State Pollution Control Board, Orissa.

4. Before examining the aforesaid question, it would be appropriate to indicate herein the topography of Cuttack City, which is situated between-two rivers, namely, Mahanadi and its tributary Kathajodi. In this regard we think it proper to quote hereinbelow the observations made about Cuttack City in the book titled "Memoirs of a Bengal Civilian" written by John Beames, who was the Magistrate

and Collector of Cuttack and was also the Commissioner of the Orissa Division comprising Balasore, Cuttack and Puri from 1873 to 1875:

This great city of Cuttack, the capital of a large and isolated province, was a curious study. So many little worlds lived side by side, understanding each other very imperfectly, disliking each other often very heartily, and yet all dwelling peaceably on the whole under the strong hand of British law and order. Its situation was peculiar and, in many respect; inconvenient. The Mahanadi, an immense river more than two miles broad, issues from the hills and divides into two great streams, which in their turn divide lower down into several others, so that all this part of Central Orissa is, in fact, the delta of the Mahanadi. a triangle, each of whose sides is about a hundred miles in length. At the apex of this triangle, which points to the west, lies the city. The site was in fact chosen for purposes of defence by the King of Orissa in the sixteenth century when his country was invaded by the Mohommedans. He left his former Capital Choudwar (Choudwar = four gates), the ruins of which are still visible on the northern bank of the river, and pitched his "camp" (in Sanskrit and Oriya, Kataka) between the two sheltering arms of the mighty river. Here he built a great fortress called Barobati which still stands, though in ruins, and the rest of the apex was occupied by the houses of the town people.

Cuttack is one of the oldest cities in the country. Established in 989 AD, Cuttack was the seat of Government of Orissa for close to a thousand years before its burgeoning size forced the creation of a new capital at Bhubaneswar in 1948. The city is now popularly called as "Millennium City". Being a very old city, it has very little scope for expansion and off late it became the victim of unauthorized encroachers and mushroom growth of unauthorized religious institutions on public roads/public places so also unauthorized encroachment of public roads by adjacent land owners. Even the lands along with the banks of Mahanadi and Kathajodi rivers, which belong to the State Govt. as well as the lands earmarked for different developmental projects including housing projects of the C.D.A., have not been spared from encroachment. The existing drainage system in the city, which runs in a serpentine manner through its lanes and by-lanes, has served the city for more than 150 years but there was no improvement to the same excepting bare maintenance and distillation by the civic body because of large scale encroachment of Govt. lands made on both sides of the main storm water channels which was ultimately removed in 1999 with the intervention of this Court to facilitate proper distillation and improvement. The mushroom growth of encroachments, which remain as before, are possible due to lack of vigil on the part of the revenue authorities and with the connivance of such authorities, who have allowed encroachments of Govt. lands on both sides of the main storm water channels, which were also made encroachment-free. Rapid growth of population in the city and rise in the demand for land and construction of multi-storied buildings have led to disappearance of tanks, which were being used as the means to accommodate the excess rain water in the city and to lessen the pressure from the existing dilapidated and old drains. That apart,

Cuttack city being a traditional town, the tanks/water bodies were being used as bathing places and some times as the places for recreation and refreshment until the unscrupulous builders lust for land targeted the water bodies and started filling up of the same with the connivance of certain revenue authorities, who have no love and lust for the future development of the city and its citizen except their personal benefits.

5. Learned Counsel for the Petitioners alleged that Cuttack, which is the premier city of Orissa, very often gets seriously water-logged and drainage problems crops up even during small rain-falls because large number of big water bodies/tanks, which were used as storage of rain-water and were otherwise providing drainage during high rain-falls and were also used for re-charge of ground water, have been reclaimed and converted by private individuals into residential areas for human habitation as well as builders for commercial use. It was also alleged that due to water logging, the capacity of the main storm water channels being not adequate for discharge of the accumulated water, the people of the city are made to face numerous problems arising therefrom including health hazards, like water-born diseases. The existing old drainage system in the city has not been improved and there is very little scope for improvement of such system.

6. It may be stated at the cost of repetition that this Court by its Order Dated 8.4.2005 passed in OJC No. 6721/1999 called upon the Collector, Cuttack, to furnish a list of tanks recorded as such in the RORs and as to how many of such tanks are in existence and how many of them have been filled up. The Collector was also required to indicate whether for change of classification of the land recorded as Jalasaya to homestead, any permission is required and if so whether such permission has been accorded. This Court also directed for maintenance of status quo as on that date in respect of the tanks recorded as Jalasayas in the RORs. The District Administration including the Police Administration was directed to ensure compliance of the order of status quo. From the Order Dated 29.4.2005 it appears that this Court took a serious note of the fact that the Tahasildar applying Section 8A of the Orissa Land Reforms Act had permitted conversion of tanks to homestead in the city area. As the same was a matter of grave concern for the State and the public at large, this Court called upon the Secretary to Govt. in Revenue Department to appear in Court in person along with the Tahasildar for clarification. On 18.5.2005 the Secretary. Revenue Department, appearing before this Court along with the A.D.M. and the Tahasildar, Sadar, Cuttack, disclosed that some private tanks in the city, which had no utility, have been filled up and converted to homestead lands, He, however, stated that Section 8A of the OLR Act is not applicable for change of classification of the lands for which necessary clarification in this regard has already been issued by the Revenue Department to the Tahasildars in the State. He further stated that there are certain tanks in the city which are being used by the general public and those tanks are necessary to be maintained for public use, Considering the aforesaid facts, the Secretary, Revenue Department, was directed to inform this Court after consulting the Housing and Urban

Development Department the number of tanks/Jalasayas existing in the city, be it public or private, and are actually required for public use and necessary to be maintained as such. In terms of the aforesaid order, the Revenue Department in consultation with the H & U.D. Department formulated a scheme for protection and proper utilization of 73 tanks out of which 26 belonged to Govt. and rest 47 belonged to private persons and the High Power Committee constituted under the chairmanship of the Principal Secretary, Revenue Department, with the Director of Municipal Administration, Commissioner, CMC, Vice-Chairman, CDA, Collector, Cuttack, Tahasildar, Sadar, Cuttack and certain other officials as members, decided as follows:

- (i) The Collector, Cuttack in consultation with CMC and CDA will formulate scheme in respect of each used tank and submit report to Govt.
- (ii) Govt. tanks should be handed over to CMC as well as CDA for use and proper maintenance.
- (iii) The CMC shall insist the owners for proper maintenance of private tanks.
- (iv) In case the private tanks or Govt. tanks lost its characteristics, action should be initiated by the Tahasildar for change of classification of the Tank/Jalasayas under Rule 34(e) of Orissa Survey and Settlement Rules. The private land owners shall be asked to submit the proposal to Tahasildar accordingly.

Despite the aforesaid order, during pendency of this proceedings, certain persons in connivance with some subordinate revenue authorities tried to fill up their tanks violating the order of status quo for which this Court by its Order Dated 18.4.2007 directed the Committee constituted under the Chairmanship of the R.D.C. (CD) for the purpose of eviction and demolition to look into the aforesaid aspect and submit a report as to the procedure and method that would be adopted for maximum utilization of private and Govt. tanks and also to inform whether the tanks which are useful in nature and have been filled up can be retrieved by the Govt. In terms of the aforesaid direction, the ROC convened a meeting of the Committee constituted under his Chairmanship on 30.4.2007 wherein the following decisions were taken:

- (i) The Collector, Cuttack is instructed to obtain a comparative report based on satellite picture between 1990 and 2006 so as to find out the water-bodies which has been filled up in the meantime. Thereafter, a detailed field check will be made to find out if such filling has been done with permission of competent authority and with proper building plan.
- (ii) The CDA authority is instructed to report within 7 days as to how many unauthorized buildings/structures are constructed over Jalasayas Kism of land without obtaining approval of CDA.
- (iii) Action would be initiated against unauthorized buildings/structures constructed over Jalasayas kism of land without approval of building plan.

(iv) The Collector, Cuttack is instructed to expedite handing over the possession of remaining tanks to the CMC, Cuttack as per Government decision.

(v) The CMC authority is instructed to submit plan for proper maintenance of Jalasayas handed over to them by Revenue Department.

(vi) The CMC authority is also instructed to issue notice to private tank owners as per provisions of the Municipal Act for proper upkeep of the tanks.

(vii) The CDA and CMC authorities will issue public advertisement immediately on non-approval of building plan of Jalasayas Kisam of land and warn general public on this, so that they do not purchase or sell such land for homestead purpose.

Thereafter in terms of the Order Dated 18.4.2007 passed in OJC No. 6721/1999, the R.D.C. (CD.), Cuttack by letter No. 1246/General and Judl. dated 31.8.2007/1.9.2007 furnished report on verification of Tanks/Jalasayas on the basis of satellite maps of the years 1990 and 2006 obtained from the Orissa Remote Sensing Application Centre (O RSAC) and the subsequent field verification. It would be appropriate to quote hereinbelow the aforesaid report of the R.D.C.

In compliance to the order of the Hon"ble High Court dated 18.4.2007 in OJC No 6721/1999, the Committee constituted under Chairmanship of Revenue Divisional Commissioner, Central Division, for the purpose of eviction and demolition was asked to report on the following;

- (i) Details of tanks/Water-bodies existing as on date in Cuttack City;
- (ii) Details of tanks/water-bodies filled up in the recent past;
- (iii) Whether such tanks are required to be maintained;
- (iv) Whether the tanks already filled up and are lying fallow can be retrieved.

In pursuance to the order of the Hon"ble High Court, the Committee met several times and modalities were finalized to comply order of the Hon"ble High Court. It was decided to get information on tanks by using satellite map from Orissa. Remote Sensing Application Centre for the year 1990 and 2006. Further, it was decided to verify all the tanks in the field by using Revenue field staff to get accurate picture on the issue.

As per the report of the ORSAC for the year 1990, there were 424 tanks, ponds etc. and 146 water logged and swampy areas in Cuttack City. The satellite map is enclosed as Annexure-1. This list does not include very small water-bodies. In the satellite picture of 2006, it is reported that there are 245 numbers of tanks/water bodies and 66 waterlogged swampy areas in Cuttack City. The map is enclosed as Annexure-2. This list also does not include very small water-bodies, which are difficult to locate from the satellite picture.

The Tahasildar, Cuttack was requested to make 100% field verification to find out the present position along with ownership, area and classification of such water-

bodies which existed in 1990 and also water-bodies existed in 2006 as per His satellite picture maps and also to find out additional water-bodies if any in the field which has escaped ORSAC report.

Against a list of 245 tanks/water bodies as reported from the satellite picture of 2006, the Tahasildar has located 65 additional tanks/Water-bodies during field verification. Total number of tanks existing as on the date is 310. The detailed break up of 478 tanks/water-bodies obtained on superimposition of 1990 and 2006 maps are given below:

A detailed report on all 478 number of tanks as submitted by Tahasildar, Cuttack Sadar is enclosed as Annexure-3. A map of super imposition between 1990 and 2006 satellite pictures submitted by Tahasildar, Cuttack is enclosed as Annexure-4. The present position in respect of 310 tanks out of 478 verified is shown as Jalasayas/water-bodies as per field verification reflected in Col. 8 of Annexure-3.

The Committee felt that all the tanks/water-bodies, available physically in Cuttack City should be preserved for future use irrespective of their classification as the water bodies act as rainwater storage during heavy rainfall. They also help in recharging ground water on which entire Cuttack City depends for drinking water purpose. The swampy water logged areas available at present as per 2006 satellite report are under detailed verification by the Tahasildar, Cuttack. The swampy water logged areas also act as storage for rainwater and also help in recharging ground water. Hence, these areas should also be protected for future irrespective of their classification.

The tanks which have already been filled up, but construction activity, has not been taken up, should be kept as such so that it can be used for water see page and for improving subsoil water level. It will be practically difficult to retrieve those filled up tanks and excavate ponds again. As reported, the Cuttack Development Authority is not approving any building plan over Jalasaya kissam of land since 2001, Tahasildar is also not allowing conversion of Jalasaya kissam of land in obedience to the Hon'ble High Court's status quo Order passed in 2005. 310 numbers of Tanks/Jalasayas physically available in Cuttack City as identified by the Tahasildar, Cuttack and through satellite picture may be preserved as such. If there is any other land having Jalasaya kiss am which have lost its characteristic in Cuttack City, the Tahasildar, Cuttack may be allowed to change the classification after detailed field enquiry.

It has been reported by the Cuttack Development Authority that 482 cases of unauthorized construction over Jalasaya kissam of land have been detected by them and 165 number of unauthorized construction cases have been booked. The C.D.A. has been advised to go ahead with demolition work of unauthorized construction cases without approval of plan on filled up tank/pond areas."

Thereafter the Commissioner-cum-Secretary, H & U.D. Department, filed an affidavit explaining the steps taken for maintenance of private water bodies by

the Govt. along with the minutes of the meeting held on 3.7.2008 and the decisions taken in the said meeting, as indicated in paragraphs 3, 4 and 5 of the minutes, are extracted hereunder:

(3) a team comprising representatives of the Revenue Department & the Cuttack Municipal Corporation would identify the Private Water Bodies being used by the community which are feasible to be acquired and maintained by the CMC.

(4) The public of the Cuttack City have been made aware by the CMC to retrain from converting the lands characterized as Water Bodies to other purposes in compliance with the orders of the Hon''ble High Court. The matter would be taken up for enforcement by the Cuttack Development Authority and Cuttack Municipal Corporation,

(5) The Revenue Authority would intimate the approximate value of the area under the major private tanks to the H & UD Department so as to take Government orders and financial concurrence on acquiring the land in compliance of the orders of the Hon''ble High Court.

By Order Dated 9.7.2008 this Court directed compliance of the decisions taken in the aforesaid meeting, more specifically the decision indicated in paragraph 5, as quoted above. On behalf of the Commissioner-cum-Secretary, H & UD Department, the Under Secretary of the Department filed an affidavit dated 11.12.2008 indicating that in compliance of the direction of this Court dated 9.7.2008 the Department had convened a meeting of all concerned and instructed the CMC and the Revenue Authorities to assess the requirement of acquisition of ponds in the city and accordingly the Collector, and District Magistrate, Cuttack, by letter No. 805 Res. dated 7.8.2008 addressed to the Commissioner-cum-Secretary, H & UD Department furnished a list of 66 big tanks (Jalasayas) with an area of Ac. 46.200 as per satellite map. The approximate'' value of the aforesaid tanks was indicated to be Rs. 52,86,71,250/- as per the benchmark valuation of the scheduled land. In paragraphs 6 and 7 of the aforesaid affidavit it was further disclosed thus:

6. That it is humbly submitted that the Planning & Co-ordination Department after careful consideration of proposal, have observed that mere acquisition of Jalasayas is not enough. There should be proper use of these water bodies. The H & UD Department should draw up a scheme in consultation with experts to develop and maintain these Jalasayas. The concern of the Hon''ble High Court is to protect the ecology of Cuttack City."

7. That, for kind appreciation of the Hon''ble Court, it is humbly submitted that the Housing & Urban Development Department, as per the views of the Government in Planning & Coordination Department, would take up steps for study and consultation of an expert agency for this purpose, like National Environmental Engineering Research Institute (NEERI), Nagpur and on receipt of a study report, the requisite action would be followed up in compliance to the orders of the Hon''ble Court,

Thereafter the Principal Secretary, H & UD Department, in compliance of the order of this Court dated 5.5.2010 filed affidavit dated 18.5.2010 regarding acquisition of private Jalasayas and maintenance of Govt. ponds in Cuttack City. It would be appropriate to extract hereunder the statements made in paragraphs 1 to 6 of the said affidavit:

1 That the Hon"ble High Court vide their Order Dated 05.05.2010 have directed the Principal Secretary, Housing and Urban Development Department to file an affidavit stating the details of acquisition of private Jalasayas in Cuttack City and maintenance of Govt. ponds for retention of underground water.

2. That it is humbly submitted that on receipt of communication dated 06.05.2010 from the State Counsel, Govt. in Housing & Urban Development Department requested the Municipal Commissioner, Cuttack Municipal Corporation in letter No. 10453/HUD dt. 06.05.2010 to furnish the list of private Jalasayas to be acquired on the basis of the report of the "Advocates. Committee" along with the estimate of the fund for acquisition and preservation of such water bodies.

3. That it is respectfully submitted that in response to the aforesaid communication Cuttack Municipal Corporation furnished the proposal on the basis of the "Advocates" Committee Report for acquisition of water bodies with tentative estimate for their renovation and maintenance. Copy of the aforesaid proposals along with Advocates" Committee Report is annexed here as ANNEXURE-E/1.

4. That for the appreciation of the Hon"ble High Court, it is humbly submitted that Govt. order have already been obtained for acquisition of 4 (four) numbers of "Jalasayas" in Cuttack City, spreading over an area of Ac. 2.741 dec. at different locations as recommended by the Advocates" Committee.

5. That it is humbly submitted that since the tentative cost of such acquisition of land would be about Rs. 404.00 lakh and estimated cost for preservation and renovation of such tanks would be Rs. 34.98 lakh, accordingly, for making necessary provision of funds in the current year Budget Estimate, 2010-11, the file was moved to the Planning and Coordination Deptt. for their concurrence. In the meantime, P & C. Deptt. have concurred the proposal in principle. Now steps are being taken by the Housing & Urban Development Department for obtaining approval of Finance Deptt. for provisions of the required funds for such acquisition and conservation.

6. That as regards maintenance of ponds over Govt. land, it is humbly submitted that conservation of eight (8) numbers of Jalasayas in Govt. land have been taken up by the Cuttack Municipal Corporation under UIDSSMT Scheme. Rs. 533.66 lakh have been sanctioned under the scheme and Cuttack Municipal Corporation have so far utilized Rs. 278.944 lakh for the purpose as reported by the Municipal Commissioner, Cuttack Municipal Corporation. Besides that during the year 2009-10, Govt. have sanctioned Rs. 40.00 lakh for protection and

conservation of water bodies/Jalasayas existing over Govt. land.

7. From the aforesaid affidavit it clearly appears that the State Govt. has agreed to acquire 4 private Jalasayas in the city for which the Planning & Co-ordination Department has concurred the proposal and H & UD Department has taken step for obtaining approval of the Finance Department for provision of required funds for acquisition and conservation of such tanks. As to maintenance of Govt. tanks, proposal for conservation of 8 Jalasayas had been taken up by the CMC under the UIDSSMT scheme and Rs. 533.66 lakhs have been sanctioned under the said scheme and the CMC has utilized about Rs. 278 lakhs for the purpose till that date. That apart, the State Govt. had also sanctioned Rs. 40.00 lakhs for protection and conservation of water bodies/Jalasayas existing over Govt. land.

It also appears that no study report of the NEERI has been produced by the H & UD Department as indicated in the affidavit dated 11.12.2008.

8. The Committee headed by the R.D.C. in the report dated 31.8.2007 has clearly opined that all the tanks/water-bodies available physically in Cuttack City should be preserved for future use irrespective of their classification as the water-bodies act as rain-water storage during heavy rain-fall and also help in recharging ground water on which entire Cuttack City depends for drinking water purpose.

9. A tendency has now developed, and in the coming days there will be a competition, to draw ground water which will bound to collapse the water based ecological system leading to depletion of ground water level, which is going down every year. The way we are destroying the natural water resources not only in Cuttack City with which we are presently concerned but throughout the country there will certainly be scarcity of water in future. We must remember the fundamental truth that we are the only species in the vast web of life that no animal or plant in nature depends on for its survival-yet we depend on this whole web of life for our survival. We must remember that nature does not depend upon human beings for its survival but human beings depend upon nature for their survival. The world renowned author, Thomas L. Friedman, who has won the Pulitzer Prize thrice being the author of the No. 1 international best seller. "The World is Flat", in his book titled "Hot, Flat and Crowded", while dealing with the subjects why the world needs a green revolution and how we Can renew our global future, as page 153 has expressed thus:

Mindlessly degrading the natural world the way we have been is no different than a bird degrading its own nest, a fox degrading its own den, a beaver degrading its own dam. We can't keep doing that and assume that it is just happening "over there"....

Nature's bounty seemed infinite and all the threats to it either limited or reversible, in the Energy Climate Era, given the accelerating rates of extinction and development, "later" is going to be removed from the dictionary. Later is no longer when you get to do all those things in nature you did as a kid on your

time schedule, Later is when they're gone when you won't get to do any of them ever again. Later is too late, so whatever we are going to save we'd better start saving now.

It would not be out of place to except the speech of a twelve-year old girl of Canada named Seven Suzuki delivered in the plenary session of the 1992 Earth Summit held in Rio de Janeiro of Brazil, which was attended by the Environment Ministers from all over the world, who were listening to her every word with rapt attention. According to Thomas L. Friedman, Suzuki's speech is one of the most eloquent statements he has Ewer heard about both the strategic and the moral purpose of a real green revolution at the dawn of the Energy-Climate Era from anyone of any age.

Hello. I am Severn Suzuki, speaking for ECO-the Environmental Children's Organization. We are a group of twelve and thirteen-year-old trying to make a difference: Vanessa Suttle, Morgan Geisler, Michelle Quigg and me. We raised all the money to come here five thousand miles to tell you adults you must change your ways. Coming up here today, I have no hidden agenda. I am fighting for my future. Losing my future is not like losing an election or a few points on the stock market. I am here to speak for all generations to come. I am here to speak on behalf of the starving children around the world whose cries go unheard. I am here to speak for the countless animals dying across this planet because they have nowhere left to go. I am afraid to go out in the sun now because of the holes in the ozone. I am afraid to breathe the air because I don't know what chemicals are in it. I used to go fishing in Vancouver, my home, with my dad until just a few years ago we found the fish full of cancers. And now we hear of animals and plants going extinct every day-vanishing for ever. In my life, I have dreamt of seeing the great herds of wild animals, jungles and rain forests full of birds and butterflies, but now I wonder if they will even exist for my children to see. Did you have to worry about these things when you were my age? All this is happening before our eyes and yet we act as if we have all the time we want and all the solutions. I am only a child and I don't have all the solutions, but I want you to realize, neither do you...You don't know how to briny, the salmon back up a dead stream. You do not know how to bring back an animal now extinct. And you can't bring back the forests that once grew where there is now desert. If you don't know how to fix it, please stop breaking it.

(See pages 395-396).

10. In this regard let us notice certain judicial pronouncements made by various High Courts all well as the Supreme Court.

The Supreme Court unanimously held in Animal and Environment Legal Defence Fund Vs. Union of India and others, : M.C. Mehta (Badkhal and Surajkund Lakes Matter) v. Union of India, (1997) 3 see 715, and Intellectuals Forum, Tirupathi Vs. State of A.P. and Others, , that the water bodies are required to be retained and such requirement is envisaged not only in view of the fact" that the right to

water as also quality life are envisaged under Article 21 of the Constitution of India, but also in view of the fact that the same has been recognised in Articles 47 and 48-A thereof. Article 51-A of the Constitution furthermore makes a fundamental duty of every citizen to protect and improve the natural environment including forests, lakes, rivers and wildlife.. In *L. Krishnan Vs. State of Tamil Nadu and Others*, , a Division Bench of Madras-High Court had been dealing with the natural resources providing for water storage facility and in that view of the matter the State was directed to take all possible steps both preventive as also removal of unlawful encroachments so as to maintain the ecological balance.

11. We are, therefore, of the view that there should be sustainable development which means development that meets the needs of the present generations without compromising the ability of the future generations to meet their own needs. We are fully conscious of the necessity of development but the same should not be made or done at the cost of elimination of the water bodies thereby creating serious water-logging problem in the city during rainy season and pushing the future generations to a situation of scarcity of water due to decrease in the ground water level in the absence of harvesting of rain water in a city like Cuttack to absorb the rain water/recharge of water resources/natural water resources, such as ponds, tanks, water bodies so as to maintain ecological balance. Therefore, the State Govt. cannot absolve its responsibility to protect and maintain the water bodies even belonging to private individuals. There are also big tanks which belong to various deities and private individuals in the city and the State Govt. should come forward to protect and maintain the same also.

12. On going through the affidavit dated 18.5.2010 filed by the Principal Secretary, H & U.D. Department, indicating the steps taken for providing funds for acquisition, renovation and maintenance of 4 numbers of private Jalasayas and 8 numbers of Jalasayas on Govt. lands in Cuttack City in the first phase as well as the report of the Committee headed by the R.D.C. dated 31.8.2007, we are of the view that the water-bodies/Jalasayas existing in the city need to be preserved and protected and should not be allowed to be converted into homesteads. The affidavit filed by the Secretary, H & U.D. Department, also shows that the State Govt. is very much alive to the situation regarding filling up of tanks/water-bodies and change of classification of the same to homestead and they are concerned for conservation of such tanks/water-bodies. We hope and trust that the State Govt. would come forward to acquire more and more water-bodies in the city in the next phases.

13. Considering the facts and circumstances of the case, for preservation and conservation of tanks/water-bodies in Cuttack City, and to deal with such tanks/water-bodies, we direct as follows:

(1) The State Govt. shall act upon the report dated 31.8.2007 submitted by the R.D.C. (C. D.), Cuttack, and the affidavit dated 18.5.2010 filed by the Principal Secretary to Govt. H & U.D. Department, and shall ensure that the steps

indicated therein are taken within a period of two years from today.

(2) The R.D.C. (C. D.), Cuttack, under his chairmanship shall form a Committee not exceeding seven members including the Vice Chairman, C.D.A., Municipal Commissioner, CMC, Cuttack, and an Environmentalist of the State Pollution Control Board, Orissa. Needless to say, the other members of the Committee shall be nominated by the R.D.C. The Committee shall deal with the protection, preservation and conservation of water-bodies in the city and shall take decisions accordingly.

(3) The applications for change of classification/kissam of lands from Jalasaya to homestead shall be processed through the Tahasildar, Sadar, Cuttack, to the Collector for appropriate orders. The decisions of the Collector shall be placed before the Committee as constituted above for approval. Only after approval of the Committee, change of classification/kissam of the land shall be allowed. The Committee shall record the reasons for allowing change of classification/kissam of such lands. However, if the Committee is of the opinion that the lands, which have lost their character as Jalasaya, and those, which are actually not Jalasayas or swampy lands but have been recorded as Jalasaya, change of classification of such lands may be allowed. This shall be effective from the date of the Judgment,

(4) The Committee shall also make enquiry, if it is so necessary, to find out whether classification of the lands recorded as Jalasaya has been changed by orders of the Tahasildar during operation of the order of status quo passed by this Court on 8.4.2005 in O.J.C. No. 6721/1999. In case it is found that the classification has been changed during continuance of the order of status quo, the same shall be treated as non est in the eye of law.

14. For the aforesaid purpose, Cuttack City shall be construed to be the old Cuttack City comprising the areas shown in the satellite maps of the ORSAC of 1990 and 2006 which have been annexed to the Report of the R.D.C. dated 31.8.2007. It will be open to the State Govt. to adopt the directions given in respect of Cuttack City in the foregoing paragraph for other cities in the State.

15. W.P.(C) No. 8797 of 2004 is disposed of with the directions and observations made above. The grievance ventilated by the members of the Bar regarding protection and preservation of Jalasayas in Cuttack City in OJC No, 6721/1999 is set at rest with the foregoing directions and observations but the said Writ Petition shall continue so far as other grievances are concerned. Before parting with the records, we place on record our appreciation for the able assistance rendered by Shri T.K. Mishra, former Chief Secretary, and his successor Shri B.K. Patnaik, Shri Suresh Chandra Mohapatra and Shri P.K. Mohapatra, former R.D.Cs. (CD.), Cuttack, Shri A.K. Panda, former Secretary H & U.D. Department, Shri B.K. Sharma, former Commissioner of Police, Bhubaneswar-Cuttack, Shri Girish S.N., Collector and District Magistrate, Cuttack, and Shri R. N". Nanda former Vice-Chairman, CDA and former Municipal Commissioner, C.M.C., for the noble cause involved in the litigation agitated in 2004. We also place on record our

appreciation for the assistance rendered by the members of the Bar especially Shri G.P. Mohanty and Shri K.N. Jena, Members of the Advocates Committee, Shri P.R. Dash, Amicus Curiae, Shri S.K. Nayak, Senior-Advocate,. for the C.M.C., Shri Sisir Das, Addl. Govt. Advocate, and Shri Dayananda Mohapatra for the C.D.A.

M.M. Das, J.

I agree.