

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (PIL) No. 41 of 2017**

- Rajesh Nirmalkar, S/o Shayamlal Nirmalkar, age 48 years, occupation-Mechanics, R/o Ward No. 2, Near Pond, Ameri, Bilaspur, Distt. Bilaspur Chhattisgarh

---- Petitioner**Versus**

1. State of Chhattisgarh, Through : The Chief Secretary, Mahanadi Bhawan, Mantralaya, Raipur (C.G.)
2. Secretary, Urban Development Department, Mahanadi Bhawan, Mantralaya, Raipur (C.G.)
3. Collector, Bilaspur, District Bilaspur (C.G.)
4. Gram Panchayat, Ushlapur, Through – it's Sarpanch, Gram Panchayat Bhawan, Ushlapur, Tahsil – Takhatpur, Distt. - Bilaspur (C.G.)

---- Respondents

For Petitioner	:	Shri Amit Sharma, Advocate
For Respondents 1 to 3/State	:	Shri Y.S. Thakur, Additional Advocate General
For Respondent No.4	:	Shri Raghvendra Pradhan, Advocate

Hon'ble Thottathil B. Radhakrishnan, Chief Justice**Hon'ble Shri Justice Sharad Kumar Gupta****Order on Board****Per Thottathil B. Radhakrishnan, Chief Justice****21.07.2017**

1. We have heard the learned counsel for the Petitioner, the learned Additional Advocate General and the learned counsel for the contesting private Respondent.
2. This writ petition is filed seeking a direction to the official respondents to initiate action to stop the illegal filling up the Chetan Talab (pond) situated in Gram Panchayat Ushlapur, District Bilaspur and further direct the official respondents to restore the Chetan Talab in its original situations. It is also pleaded that there should be an inquiry into any support given by the official respondents to carry out the illegal filling up of the pond.
3. The Petitioner has instituted this matter in public interest. The learned counsel for

the private respondent submits that the Petitioner has attempted to buy this property and when that was refused, he has instituted this writ petition. The private respondents asserts the title of the property in question.

4. On 06.04.2017, an order was minuted by this Court issuing certain directions as well. The relevant portion of that order reads as follows :

“The Sub Divisional Officer Kota, District Bilaspur and the Superintendent of Police, Bilaspur (CG) are impleaded as additional Respondents suo motu.

We have heard the learned counsel for the petitioner and the learned Additional Advocate General on the different aspects of this litigation.

The matter relates to Chetan Talab (Baniya Talab) within the area of operation of 4th Respondent, Gram Panchayat, Ushlapur, Bilaspur.

Issue notice to the 4th Respondent.

The learned Additional Advocate General submits on behalf of respondents 1 to 3 that the Sub Divisional Officer, Kota has issued notices to the persons who are shown to be encroachers of portions of Chetan Talab (Baniya Talab) and has called for objection against further proposal to evict encroachments. We record that submission.

Talab is a water point. It is an ecological and environmental point of importance in any part of earth. Portable water and also water for other use has become precious materials of critical need, not only for the human beings, but also the flora and fauna. It is hence necessary to maintain the environmental and ecological equilibrium in the sustainable management and maintenance of earth. It is not in dispute anywhere in the world that water has become precious commodity and civil societies everywhere are trying to reach out for means to sustain water resources. In this view of the matter, there can be no dispute on the issue that every Talab has to be preserved for the utility of the human, the flora and fauna and the atmosphere itself, as part of critical ecological management.

In the aforesaid view of the matter, we see that the pleaded facts include the statement that Chetan Talab (Baniya Talab) had initially an extent of around three acres and that unauthorized intrusions motivated by private interest, including commercial, have resulted in depleting the area of the said water point to what is now less than one acre. This is a critical situation which requires intensive, effective and prompt intervention by those in administration in the larger public interest.

Under the afore noted circumstances, the 3rd Respondent Collector, Bilaspur, the 4th Respondent Gram Panchayat, Ushlapur, the Sub Divisional Officer, Kota and the

Superintendent of Police, Bilaspur are hereby directed to ensure that there is no further encroachment or putting on any part of Chetan Talab (Baniya Talab) situated in Gram Panchayat Ushlapur to any purpose other than utilization of the water held in that Talab and that use of the said Talab shall be only in a manner which is conducive to the protection and preservation of the said water point. The Superintendent of Police, Bilaspur is hereby directed to issue requisite instructions to all Police Officers under his command, having control over the area in question, to strictly enforce the interdiction imposed as part of this order. The Collector, Bilaspur and the Sub Divisional Officer, Kota are also directed to ensure that the restrictions and other directions herein are strictly complied with, in letter and spirit.

Let all Officers under the command of the State Govt. stand advised that any deficiency in obeying the directions contained in this order may tend to visit them with personal penalties in terms of service law, as also resultant orders for compensatory and restitutionary measures as against dereliction of duty in public domain. The Sarpanch of the Gram Panchayat, Ushlapur is directed to place his statement on record disclosing the state of affairs of Chetan Talab (Baniya Talab) for further proceedings in the case in hand. The Sub Divisional Officer, Kota is also directed to file a statement in the form of an affidavit as regards the present available extent of Chetan Talab (Baniya Talab) as a water point and the action taken as well as the action that will be pursued to ensure that encroachments are removed in a time bound manner following the due process of law.

The learned Additional Advocate General is requested to instruct the Official respondents regarding the immediate need to enforce the directions contained in this order and also to communicate copy of this order to the Official respondents for immediate compliance.

The Registry will carry out the impleadments as directed above.”

5. Thereafter, another order was minuted, whereby impleadment was also permitted.

The relevant portion of that order dated 28.04.2017 reads as follows :

“I.A. No. 7/2017 has been filed seeking intervention. Read order dated 06.04.2017 issued in WPPIL No.41/2017. The directions therein have to be scrupulously followed. However, due process has to be adhered to as has been indicated in that order. For further consideration of the submission that may be made on behalf of the Revenue and the State Government, we direct this case to be listed on 02.05.2017. Until then, let no person be dispossessed on any ground referable to the order dated 06.04.2017. However, the State Government official

including the Police authorities shall ensure that preventive action which is directed through that order dated 06.04.2017 as against any further encroachment shall be strictly adhered to.”

The aforequoted interim order dated 06.04.2017 was to continue.

6. Today, the learned Additional Advocate General submits that the encroachments have been removed and the question of unauthorised occupation may be an issue for decision by also taking into consideration the plea regarding whether the property in question is private land or public land.
7. In the light of the aforesaid submission, this writ petition is ordered directing that the 3rd Respondent - Collector, Bilaspur will carry out such exercise as may be found required to remove any encroachment/illegal occupation on any portion of the land in question. This will also provide opportunity for any person claiming to be in lawful occupation to raise such contention before the Collector, Bilaspur District. Requisite action shall be taken at that end. If it is found that orders from the higher authorities are required, steps shall be taken by the District Collector towards that. The pursuit of removing the illegal encroachment and maintaining the pond in question shall be carried forward by the District Administration, also by involvement of the Gram Panchayat, Ushlapur to the extent that may be required for such purpose.
8. The writ petition is ordered accordingly without expressing anything on merits to the claim of the intervenor.

Sd/-
(Thottathil B. Radhakrishnan)
Chief Justice

Sd/-
(Sharad Kumar Gupta)
Judge