REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELALTE JURISDICTION

CIVIL APPEAL NO.4912 OF 2014
(Arising out of SLP (Civil) 17701/2012)

Jal Mahal Resorts P. Ltd. ..Appellant

Versus

K.P. Sharma & Ors. ..Respondents

With

CIVIL APPEAL NO.4913 OF 2014
(Arising out of SLP (Civil) 19239/2012)

AND

CIVIL APPEAL NO.4914 OF 2014
(Arising out of SLP (Civil) 19240/2012)

J U D G M E N T

GYAN SUDHA MISRA, J.

1. Leave granted.

2. These appeals by way of special leave have been preferred against the common judgment and final order dated 17.5.2012 passed by the High Court of Judicature for Rajasthan at Jaipur Bench, Jaipur in three public interest

litigation petitions filed by the petitioners K.P. Sharma, Dharohar Bachao Samiti, Rajasthan and Heritage Preservation Society respectively against the State of Rajasthan and the beneficiary of the project who was respondent No.7 in the High Court and is now the petitioner/appellant in Civil Appeal (arising out of SLP(c) No.17701/2012. The three petitions were D.B. Civil Writ (PIL) Petition No.6039/2011, D.B. Civil Writ (PIL) Petition No.5039/2010 and D.B. Civil Writ (PIL) Petition No.4860 of 2010 whereby the Division Bench of the High Court was pleased to cancel an Environment and Monument Improvement/Preservation and Tourism Development Project at Jaipur by declaring it as illegal which was awarded to the petitioner/appellant Jal Mahal Resorts Private Limited via global tender floated in 2003 and finally granted in 2005 after all requisite approvals as per the petitioner/appellant under the Environmental Law including Environment Impact Assessment under the Environment Protection Act and the Notifications issued thereunder of the Rajasthan Pollution Control Board. However, in view of the cancellation of the

project, the High Court has directed immediate dismantling

and removal of the entire project and diversion of the two drains which was done to purify waters of a man made artificial water body and detritus.

3. Other three Special Leave Petition bearing SLP (Civil) Nos.22467/2012, 22820/2012 and 24341/2012 had also been preferred by the State of Rajasthan challenging the impugned judgment and order of the High Court referred to hereinbefore. But after the arguments were finally advanced by the learned Attorney General and the same also stood concluded, permission of this Court was sought by the senior counsel Sri Jaydeep Gupta to withdraw these special leave petitions filed by the State of Rajasthan which were permitted by this Court vide order dated 05.02.2014. The petitions preferred by the State of Rajasthan assailing the impugned judgment and order thus stand dismissed as withdrawn. However, Sri Gupta

submitted that he can still address the Court on merit in the connected special leave petitions bearing SLP (Civil) Nos.17701 of 2012, 19239/2012 and 19240/2012 preferred by the petitioner/appellant Jal Mahal Resorts Pvt. Ltd. & Ors. against the PIL petitioners before the High Court since the State of Rajasthan is still a party respondent in these matters and hence it can support or oppose the impugned judgment of the High Court in spite of withdrawal of the special leave petition filed by the State assailing the judgment and order of the High Court. However, at this juncture we refrain from expressing further on its implication and would deal with the same, if necessary, at the appropriate stage.

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4. In so far as the appeals preferred by the appellant-M/s. Jal Mahal Resorts Private Limited is concerned, we have noticed that the appeal has been preferred against the common judgment and order of the High Court under challenge herein whereby the writ petitions which were filed by the respondents as public interest

litigation bearing DB (CWP) No.6039/2011 entitled Prof. K.P. Sharma vs. State of Rajasthan and Ors as also DB (CWP) PIL No. 5039/2010 entitled Dharohar Bachao Samiti Rajasthan vs. State of Rajasthan and Ors. as also the 3rd writ petition bearing DB (CWP) PIL No. 4860/2010 entitled Heritage Preservation Society Rajasthan and Anr. vs. State of Rajasthan and Ors. have been allowed by the Division Bench of the High Court and resultantly the Mansagar Lake Precincts Lease Agreement dated 22.11.2005 awarding 100 acres of land on lease for a period of 99 years to the respondent No.7/the appellant herein/ M/s. Jal Mahal Resorts Private Limited was declared illegal and void. As a consequence of the same, the appellant Jal Mahal Resorts Private Limited has been 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 of land to the Rajasthan Tourism Development Corporation ('RTDC' for short) which in turn will hand over the land to Jaipur Development Authority ('JDA' for short), Jaipur Municipal Corporation ('JMC' for

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short) and the State of Rajasthan. The appellant has further been directed to immediately remove all sedimentation and settling tanks from the Mansagar Lake Basin and to realize costs from M/s. Jal Mahal Resorts Private Limited and to examine restoring position of Nagtalai and Brahampuri Nala (drains) to their original position as redesigned by RUIDP under Mansagar Lake Restoration Plan in consultation with the Ministry of Environment and Forests ('MoEF' for short) of the Central Government. The respondent authorities of the State of Rajasthan have been further directed to monitor, maintain and refix boundaries of the Mansagar Lake in its full original length, breadth and depth in consultation with the MoEF of Central Government and not to reduce normal water level. All encroachments made in the attachment area of the Mansagar Lake have been ordered to be removed immediately and the control erected by appellant M/s. Jal Mahal Resorts Private Limited into the lake is ordered to be dismantled and costs have been ordered to be realized from the appellant M/s. Jal

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Mahal Resorts Private Limited. All the three writ petitions were thus disposed of by the High Court.

5. Before we deal with the respective case and counter case of the contesting parties, it may be relevant and appropriate to state the background of the matter giving rise to these appeals. The writ petitions which have been dealt with by the High Court had been filed in public interest to quash Jal Mahal Tourism Project and cancel Mansagar Lake Precincts Lease Agreement dated 22.11.2005 giving 100 acres of land on lease for a period of 99 years to the respondent No.7. **(**appellant herein M/s. Jal Mahal Resorts Private Limited and Jal Mahal Lease and License Agreement dated 22.11.2005). In Writ Petition No. 6039/2011 which was filed by Prof. K.P. Sharma prayer had been made to quash approvals and clearances contained in the orders dated 16.9.2009 and 22.9.2009 and to direct the respondent No.7/appellant herein M/s. Jal Mahal Resorts Private Limited to restore the original position of 100 acres of land by removing the soil filled in by it at its own costs.

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6. The appellant M/s. Jal Mahal Resorts Private Limited has assailed the judgment and order of the High Court on several grounds to be related hereinafter. But before doing so it has related the factual and historical background of the matter giving rise to these appeals. In this context, it has been stated that the Mansagar Lake was a man-made lake on the northern fringe of Jaipur city. Within the lake a pleasure pavilion called Jal Mahal was constructed by the erstwhile rulers of Jaipur in the 18th century and this structure is still existing in the midst of the lake. Tracing out the historical background, it has been stated that in 1962, the two main sewerage drains of the walled city of Jaipur Nagtalai and Brahmapuri were diverted to empty into the water body which led to its degeneration, siltation and settled deposits and contaminations to such an extent that it could not support aquatic life nor support flora and fauna in the surrounding areas. The water body was covered with floating hycinth and its aquatic life and there were large scale death of fish that had earlier survived and led to a drastic reduction in the fauna including the

migratory birds that used to flock in the vicinity of the lake was on the verge of extinction. About 40% of the catchment area which covered approximately 23.5 Sq.Kms was dense urban population. Towards the south side of the lake, large amounts of unintended developments and encroachments had taken place thereby drastically increasing the quantity of effluents discharged into the lake and also put other pressures by unconditional grazing of cattle and urban development. Jal Mahal had also very substantially deteriorated over a period of time not only because of natural process of degeneration but also because of maintenance. The monument was in a dilapidated state and required massive restoration works.

7. The deteriorating condition of the Lake and the Monument compelled the Government to find ways and means to restore the two components to their original glory. Over a period of 30 years attempts were made by various government agencies and departments to restore the ecological and environment condition of the lake and its adjoining area. However, none of these attempts yielded

very positive results because of paucity of resources to take up and sustain the restoration.

8. The Government of Rajasthan, therefore, decided to adopt an incentivized approach to restore the Lake and the Monument and develop the precinct area on a public private partnership format. To improve the condition of the lake, the State of Rajasthan, in consultation with experts and after detailed surveys and analysis, developed a holistic approach involving three components namely (i) restoration of Mansagar Lake, (ii) restoration of Jal Mahal and (iii) development of tourism/recreational components at the lake precincts. Thus, the third component visualized development of the precincts area of the lake which comprised of about 100 acres of land towards the south on a sustainable development model. It was, therefore, required that the lake and Jal Mahal be restored and the lake precinct be developed for limited eco friendly tourism facilities which would also provide funds for O & M of the lake on a continuous basis. The benefits of this project was that it would result in the restoration of the Mansagar Lake

and the Jal Mahal monument and there would be consequent development of eco friendly tourism destinations with large open green spaces in the vicinity of the lake which would improve the environment and resultantly, the aesthetics and visual quality of the area.

9. The Government, therefore, adopted the approach of public-private partnership to the restoration and development of the precincts in an environmentally conscious way. For this purpose, project conceptualization was chalked out and the project structure was conceptualized after detailed studies over a number of years. In the year 1999 a Detailed Feasibility Report ("DFR") was prepared. The DFR covered architectural conservation and reuse of Jal Mahal; Ecological Restoration of the Lake along with Development of surrounding areas for integrated tourism development and recreational facilities. Approval to the DFR was accorded by Jaipur Municipal Corporation in November 2000.

10. As a consequence of the aforesaid conceptualization, process for bidding started which has

been described as First Bid Process by the appellant which started after publication of the advertisement. Request for Qualification ("RFQ") was released in December, 2000. 6 firms responded and made submissions for qualification. In the meantime, Request for Proposal ("RFP") document was prepared by the Project Development Corporation Limited (PDCOR) which is a joint venture company of Government of Rajasthan and IL&FS and approvals were given by the Government of Rajasthan. Request for proposal was released and Board of Infrastructure Development & Investment (BIDI), a high powered committee of the Government headed by the Chief Minister with an objective to accelerate private investment in industry and related infrastructure, formed a sub-committee to decide on fiscal concessions necessary for the project. The Jaipur Municipal Corporation was made the nodal agency for project purposes. However, the first bid process failed as despite applying for qualification no bidder ultimately participated in the bid.

11. The aforesaid failure led to the appraisal and approval of the project report by the Ministry of Environment and Forests. The Government of Rajasthan, through Department of Urban Development, sent proposals to Ministry of Environment and Forest (MoEF), Government of India, on 17.08.2001 seeking funds for Lake Restoration of the said project under National Lake Conservation Programme ('NLCP"). MoEF responded by requesting that details regarding fund requirement, O&M agency, source of funding for O&M along with Detailed Project Report (DPR) comprising of bankable proposal be submitted. Hence, On 8th & 9th December, 2001 and thereafter on 26th & 27th January, 2002, the Project Site was studied by the representatives of MoEF.

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12. On 22.1.2002, a letter was written by MoEF wanting break up of estimated costs as also commitment of State Government to bear 30% of the cost sharing as well as identifying agency for carrying out O&M. The State Government was also to ensure that no untreated sewage should be discharged into Mansagar Lake which could be

achieved inter alia by diverting the two nallahs that discharged waste in the lake.

13. Based on experts recommendation after complete technical surveys and environmental studies of the lake, the area for the project was identified and recommended by renowned consultants LASA (Lea Associates South Asia Private Limited) as being ecologically viable. The DPR itself mentioned that the ecological restoration of the lake would be carried out on the basis of which it can be sustainable and bankable as required by MOEF through a Public Private Partnership model.

14. On the basis of commitment of State Government to meet 30% expenditure on restoration of Mansagar Lake, MoEF, Government of India, approved the DPR in October, 2001 under the NLCP with 70% amount as grant in aid. MoEF also conveyed its appreciation on DPR and observed as follows:

> "the project document and structure as developed by PDCOR Limited has served as a benchmark for developing sustainable Lake restoration projects on a Public Private Partnership (PPP) model. You

> will be pleased to know that we are recommending a similar approach to other states for Lake Conservation projects".

15. This gave rise to the new bidding process which may be termed as 'Second Bid Process' for which decision was taken in its 9th meeting held on 10.1.2002, approved further fiscal concessions necessary for the project and approved a fresh round of bidding. The nodal agency for the project was changed to Jaipur Development Authority ("JDA") from earlier agency, Jaipur Municipal Corporation. The bid documents were duly approved and an advertisement inviting Expression of Interest ("EoI") was issued for selection of Private Sector Developer ("PSD") in April, 2003 after the key commercial terms of the project and even the draft of the advertisement was approved by JDA. The Empowered Committee of Infrastructure Development ("ECID"), a high powered committee headed by Chief Secretary, formerly known as SCID, directed Secretary, UDH to finalize key commercial terms for selection of PSD. During the first round of bidding the proposed lease was 60 years in

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the aggregate. As that period was considered unviable, in the second round of bidding the period of lease was proposed as 99 years. Moreover, restoration of Jal Mahal by the PSD was made optional and not mandatory.

16. In pursuance to the aforesaid steps, detailed RFP were issued to interested private parties which was approved by JDA and released in July, 2003. The advertisement inviting RFP for selection of Private Sector Developers ("PSD") was published in leading newspapers (Rajasthan Patrika and Economic Times). In addition, PDCOR developed strategy for marketing and wide publicity of the project by apprising potential entrepreneurs across the globe about the features of the project with a view to encourage them to come forward to participate in the bid process. As the tourism project was to generate funds for sustained O&M measures, the Department of Tourism ("DOT") and later Rajasthan Tourism Development Corporation ("RTDC") was made the nodal agency for the project. Four competitive bids including from the Petitioner were received which were evaluated and PDCOR submitted its report to Government of

Rajasthan for its approval. The Technical Evaluation Committee constituted for evaluation of bids comprised of eminent experts like Padamashree Dr. B.V. Doshi, Architect, Mr. Mohd. Shaheer, Landscape Architect and Mr. Hemant Murdia, Chief Town Planner, Government of Rajasthan.

17. The petitioner/appellant got the highest marks in technical evaluation of its bid and when financial bids were opened the Petitioner's bid was found to be the highest. Consequently, ECID in its meeting held on 9.2.2004 headed under the Chairmanship of Chief Secretary decided to grant the project to the Petitioner. The letter of intent was issued to the Petitioner on 30.9.2004. On 22.11.2005 after approval from the Government of Rajasthan the Lease in respect of the project land and the License for restoration and reuse of Jal Mahal were executed.

18. In terms of the project an area of 100 acres of land towards the south of Mansagar Lake was to be leased out for a period of 99 years for development of eco-friendly tourism components as set out in the RFP. The entire development, at the end of 99 years, was to be transferred

back to the State Government without any compensation payable to the Private Sector Developer. In terms of the RFP, it was optional for the Private Sector Developer to undertake the restoration and reuse of the Jal Mahal Monument. The Petitioner while making the bid also exercised the option for restoration and reuse of the Jalmahal monument. The Petitioner in terms of the license agreement set out to restore the monument. The RFP estimated the cost of restoration of Jal Mahal at approximately Rs.1.50 crores. In reality the cost of restoration of Jal Mahal worked out to Rs.10 crores. The State Government had also constituted an Empowered Committee to oversee the time bound restoration of Mansagar Lake and Jal Mahal Monument.

19. The Petitioner's/appellant's in pursuance to the lease appointed consultants who did extensive research plan which was got approved from the Empowered Committee. Ultimately the monument was fully restored under the supervision of Empowered Committee upon advice

of renowned conservation architect Dr. Kulbhusan Jain and other consultants.

20. The Petitioner/appellant, who had been given the lease of 100 acres of land on the southern shore of Mansagar Lake, after obtaining all necessary approvals, had completed Phase-1 of the Project. But the project suffered a grave set back and knee jerk obstruction as by this time i.e. in the year 2010 public interest petitions were filed in the High Court although the petitioner had already started executing the project and had already spent an amount of Rs.38 crores besides paying more than 14 crores as project development fees and lease rent to RTDC as per the petitioner/appellant's case in terms of the lease deed. In pursuance to the same, the restoration of the Mansagar Lake under the DPR prepared by PDCOR was to be undertaken by the State Government. The O&M work was to be carried out from lease rentals received from Private Sector Developer i.e. the Petitioner. The total amount sanctioned for restoration of the lake by the Central Government and the State Government was Rs.24.72 crores. This amount proved

to be inadequate and the Government due to further resource crunch was not in a position to spend any further amount. Resultantly, the restoration of the lake, which was the cornerstone of the project, was in danger. The Petitioner spent over Rs.15 crores on restoration of the lake with the approval of the Empowered Committee.

21. As a measure of restoration and development of the project, the entire project implementation had to be done so as to achieve sustainable eco preservation and development. The Petitioner, therefore, acted under the advise and on the recommendation of experts. These activities were further monitored by the Government of Rajasthan and its agencies. The petitioner/appellant stated that for the purpose of restoration, the Petitioner engaged a number of nationally and internationally renowned consultants including Mr. Soli J. Arceivala, Ex. Director of NEERI, Dr. Shyam R. Asolekar from IIT Mumbai, Dr. G.C. Mishra from IIT Roorkee, Mr. Jal R. Kapadia Environment Consultant, Mumbai and Mr. Herald Craft, renowned lake expert from Germany. Some of these experts had also

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worked for restoration of the Hussain Sagar Lake in Hyderabad. The State Government had also constituted an Empowered Committee to oversee the time bound restoration of Lake. The work involved realignment of the Nagtalai and Brahmpuri drains so that domestic sewage and waste including run-off and detritus during the monsoons no longer emptied into the cleansed waters as also desilting of the water body which were essential components of DPR as approved by MoEF under NLCP. In order to ensure that the ongoing discharge of drainage did not once again pollute the water, Mr. Herald Craft the German Lake Conservation expert prepared a report which suggested preparing temporary sedimentation/settling tanks near the mouth / discharge point of the re-aligned drains. The purpose of constructing of sedimentation tank was to trap the silt and organic content of the storm water so that the quality of water in the whole of water body is not adversely affected. The sedimentation process were also reviewed by a team of experts from MoEF which found the system as a viable and proper solution. It has been further brought to the notice of

this Court that the project fell within item 8(a) of Environmental notification dated 14.09.2006 and was also confirmed by MoEF in its Affidavit in Reply filed to the writ petition and a detailed Environmental Impact Assessment ("EIA") was carried out by State Level Environment Impact Assessment Authority ("SEIAA") constituted by MoEF. It is, therefore, stated that all requisite environmental approvals were obtained.

22. The project thereafter was started and the land leased to the Petitioner, according to the appellant, was not a part of the water body in the first Master Plan 1971-1991 for Jaipur and an area of 200 acres around the south side of Jal Mahal was demarcated and reserved for tourist facilities. The land leased to the Petitioner was a part of this land area reserved for tourist facilities. The said land continued to be retained for tourism and recreational activities in the subsequent city master plans including the master plan of 2011 and 2025.

23. The appellant has further stated that the Man Sagar Lake on its western side is bound by Jaipur-Amer road.

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The level of the road is at a contour level of 100 MRL. The ground floor of the Jal Mahal monument within the lake is at the contour level of 98.2 MRL. PDCOR, based on intensive studies, found this level as the most appropriate level taking into account the fact that the lake was not freshened by natural acquifers but was dependent on surface runoff during the monsoons, and to ensure that ground floor of Jal Mahal was not submerged.

24. However, the contesting respondents herein who were the PIL petitioners before the High Court, averred that the PIL petitioner Prof. K.P. Sharma is involved in the research with regard to Man Sagar Lake and has published a paper which was read out in the 12th World Lake Forests TAAL 2007. It was submitted by learned counsel Mr. Aruneshwar Gupta on behalf of the PIL petitioner/one of the three contesting respondents herein that the Man Sagar Lake and the management thereunder were declared protected monuments but were deleted from the list of protected monuments in the year 1971. The contesting respondents have also related the history of the lake glory and have recorded that Man Sagar Lake is a large lake on

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the northern fringe of Jaipur city and the glory of the lake 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 Brahmapuri and Nagtalai. The most notorious aquatic weed water hyacinth (Eichhornia crassipes) entered into lake in 1975. The petitioner/contesting respondent herein stated that during the studies made by the contesting respondent 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. It is in this context that it was submitted that the Man Sagar Lake and the monument therein were declared protected monuments but they were deleted from the list of protected monument in the year 1971.

25. It was further averred by the PIL petitioner in the High Court/contesting respondent herein that the Ministry of

Environment and Forests (for short 'MoEF'), Government of India prepared National Lake Conservation Plan (for short 'NLCP') for restoration, conservation and maintenance of urban lakes. The Government of Rajasthan submitted project for restoration of Man Sagar 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 rest was to be borne by the State Government. The administrative approval and expenditure was granted by the MoEF vide order dated 5.9.2002 and the order was revised by the MoEF vide dated 23.12.2002. The JDA implemented the lake restoration plan under which Sewage Treatment Plant (STP) near Brahmapuri 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 and 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 along the lake on

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northern side which has formed a new water body of about 5 hectares in size for storing hill run off during rainy season for wild life which includes Hanuman langur (Semnopithecus entellus), Black aped Hare (Lepus nigricollos), Indian Porcupines (Hystrix Indica), Blue bull (Boselalphus tragocamelus), Sambhara (Cervus unicolor), Common Mangoose (Herpestes edwardsii), Jackals (Canis aureus), Striped Hyaena (Hyaena hyciena) 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 Nagargarh 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. The petitioner/respondent herein 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 varieties of shrubs were planted. Besides improving landscape, the plant species provide shelter and food to the

local fauna and migratory birds may also be benefited. Similar plantation was also done on three islands.

26. The PIL petitioner/respondent herein had 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 has also been filed in which it was stated that Jaipur Municipal Corporation must own the project. The bids were invited in the year 2001-01 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.

27. It was contended on behalf of the petitioner that MoEF granted administrative approval and expenditure sanctioned 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. It was submitted that 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 the PDCOR contemplated the following three components as already referred to hereinbefore but for facility of reference it may be reiterated that three components were as follows:-

(1) Restoration of Mansagar Lake;

(2) Restoration and re-use of Jal Mahal Monument;

(3) Development of Tourism/Recreational components at the lake precincts.

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28. It was further submitted by the petitioner/contesting respondent herein 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 'RTDC') vide order dated 6.9.2003. It has been submitted that although biding was started, no survey of the actual site and demarcation of 100 acres area on the lake was made and even environment impact assessment was not carried out before planning the project. It was further submitted that in the advertisement last date for submission of the bid was 5.9.2003 and 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 was not fulfilling eligibility qualification provided under the terms notifying tender.

29. However, the petitioner/contesting respondent himself has added and clarified that later on decision was taken to include KGK Enterprises which according to the petitioner /contesting respondent lack eligibility condition and Jal Mahal Resorts Private Ltd. Company has been

incorporated on 10.11.2004. The decision was also taken to give exemption of stamp duty etc.

30. The contesting respondent No.7 who was the PIL petitioner has further stated that 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 from 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. The contesting respondent/PIL petitioner had also submitted that out of 100 acres of land, 14.15 acres of land was submerged in water which has also been leased out.

31. Mr. Aruneshwar Gupta on behalf of the PIL petitioner/contesting respondent No.7 further averred that Master Plan of Jaipur 2011 did not permit such activities at the site. It was also stated that 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. It was still further stated that 100 acres of land beyond the spread of lakebed was not available on the site and it was further submitted that wall of sufficient height has been constructed for setting apart the proposed 100 acres of land from the lakebed and the soil from the lake bed itself was actually used for this purpose. It was alleged by the PIL petitioner that the appellant herein Jal Mahal Resorts Private Limited started constructing 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 habit/breeding ground for resident and migratory birds is forfeited.

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32. It was further contended by the petitioner before the High Court 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 and now all dirt with floating objects enter 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 the construction of storm water management plan, lake water also used to be released for irrigation. Now water will be released through sluice gates into down stream directly without flowing through the lake basin and there will be no flushing out of salts from the lake. The build of salts will convert fresh water lake into a saline lake which will alter its flora and fauna. It was further submitted before the High Court that the appellant herein was not at all concerned with the construction of storm water management plant that too in the lake bed itself and it has been carried out without any requisites 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 PIL petitioner/contesting respondent, the chloride content in the Mansagar Lake has been increased and salt in water has gone high. 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 PIL petitioner further submitted that the unique feature of the area is an endemic species, namely, Plum Headed Parakeet found in the protected forest in Arawali and 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 into the lake itself which has increased salinity of the water also. The PIL petitioner had further submitted before the High Court that the revision had destroyed the very substratum of the project which was

earlier conceived . The whole project after completion was to be put in use by 2010, but the appellant has not done anything except filling and compacting the 100 acres of 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 space, 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 appellant after declaration as successful bidder. It was further submitted that 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 appellant herein/respondent No.7 in the High Court and on 10.9.2009 sanction was granted by the Committee.

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33. The PIL petitioner also raised a grievance that Environment Impact Assessment was not carried out by the 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 had issued a fresh Notification on 14.9.2006 in exercise of power conferred under Section 3 of the Environment Protection Act, 1986 (shortly referred to as 'the act of 1986') and rules framed thereunder for environment clearance before implementation of the projects mentioned therein. It was further contended that the project cannot be implemented without obtaining environment clearance from the Central Government under the aforesaid notification and no Environment Impact Assessment was carried out nor any environmental clearance has been obtained before finalizing the project & all actions taken by the respondent are absolutely illegal and void. The PIL petitioner further contended that the environment clearance as required under notification dated 14.9.2006

had not been obtained nor any compliance of Wetlands (Conservation and Management) Rules 2010 had been made so far. The PIL petitioner had raised a grievance that it is a case of siphoning off valuable public property as the value of 100 acres of land is not less than 3,500/- crores. The DLC rates for commercial land in question is Rs.79,063/- per sq. mtrs. and lease for 99 years amounts to sale, although as per rules it was necessary for the respondent-authorities to realize the sale price and additionally lessee was required to pay annual lease money also. The market price used to be much higher than DLC rates, especially due to location being picturesque and ecologically rich. If such land is sold for commercial purposes for constructing five star hotels, resorts, luxury villas etc. such land carries invaluable importance. According to the PIL petitioner/contesting respondent herein the value of such land cannot be said to be less than 3,500/- crores. It was, therefore, submitted that the State Government had handed over valuable natural resources 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 society for economic exploitation at the cost of the 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 petty sum by the Government.

34. In so far as writ petition no. 5039/2010 Dharohar Bachao Samiti vs. State of Rajasthan and Ors. and writ petition No. 4860/2010 Heritage Preservation Society Rajasthan and Anr. vs. State of Rajasthan & Ors. are concerned, have also substantially urged the sacrifice of public interest on account of the lease granted in favour of the appellant and as such to establish sacrifice of public interest as per their perspective which have been related in the impugned judgment and order.

35. Contesting the PIL petition before the High Court, the respondent State of Rajasthan and its functionaries/authorities had submitted that Master Development Plan 1976 to 1991 of Jaipur city contained

provisions of various facilities on south and west side of Jal Mahal Lake on 200 acres. It was submitted that the erstwhile Urban Improvement Trust Jaipur had proposed a scheme in respect of 520 acres land which was published in the gazette on 31.7.1975. The Jaipur Development Authority Act 1982 (for short 'JDA Act 1982') came into force and Urban Improvement Trust was replaced by the JDA. A notification under Section 39 of the JDA Act was issued by the JDA on 30.6.1987. 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 (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 ' SCID') in December 1999. It was stated that the bids were notified in the year 2000 but no entrepreneur came forward in the bidding process and thus the tender process was scrapped. Thereafter, the JDA was

appointed as nodal agency to undertake the bidding process. Global tenders are invited on 25.4.2003 and in pursuance thereof 9 entrepreneur showed 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 24.8.2003 for removal of doubts. The Department of Tourism on 6.9.2003 transferred the development of Jal Mahal to RTDC vide letter R-1/12. On 15.9.2003, pre-qualification bids were opened in response to which four entrepreneurs submitted bids. Rejection of one bid was recommended on account on inadequate information on evaluation. It was pointed out that the 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 in the next phase of evaluation bid. Later on, 14.11.2004, KGK Enterprises formed private limited company in the name and style of "Jal Mahal Resorts Pvt. 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, the 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 the matter before the State Government for issuing a letter of intent and signing the lease agreement in favour of the successful bidder. This was forwarded by Secretary, Tourism to Minister Incharge Tourism (Chief Minister), who approved the minutes of the Empowered Committee on Infrastructure Development (ECID) and directed to put up the draft lease agreement early. On 9.5.2005 the Collector intimated that 100 acres of land has been mutated in favuor of RTDC. The approval of lease agreement and license agreement and authorizing of Managing Director of RTDC to sign the agreement was granted finally by the Chief Minister on 27.10.2005. On 29.10.2005, the RTDC

authorized the Managing Director to sign Jal Mahal Lease Agreement on behalf of Government of Rajasthan with Jal Mahal Resorts Pvt. Ltd. and accordingly lease agreement was executed on 22.11.2005. The Central Government , MoEF recorded its appreciation for the project vide letter dated 13.9.2002 and 1.12.2009.

36. It was further contended on behalf of respondent State that it is incorrect to say that the size of the lake has been reduced on account of leasing out 100 acres of land. It was averred that the action is as per Master Development Plan. The State Government has submitted the project to the Central Government MoEF for restoration of Man Sagar Lake at the estimated cost of Rs.24.72 crores and the Central Government agreed to provide 70% of the cost. PDCOR in the project report prepared in October 2001 included the following facilities:

1. Restaurant;

2. Traditional Technological Park

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3. Club Resort

4. Amusement Park

5. Heritage Village

6. Light and Sound Show land

7. Recreational Centre.

It was further stated by the respondent State of Rajasthan before the High Court that there will be no damage to the wild life or reserve forest or birds and it is for the respondent No.7 Jal Mahal Resorts Pvt. Ltd./appellant herein to obtain clearance as per requirement of law. The sedimentation tank covers 5% of the area of lake. It was also stated that the Wetland Rules are not applicable and they are made applicable to Sambhar Lake and Keola Deo Lake in Rajasthan. It was still further added that the land leased out does not fall within the definition of Section 2(1)(g) and Section 3. The consent had been given under the Water Act by the Rajasthan Pollution Control Board on 20.5.2010. It was further added that for the last 3 decades ,

the State Government had been making efforts for restoration of Jal Mahal, Man Sagar Lake and the Area around lake and desilting has not caused any ecological damage.

37. In so far as the stand of Jaipur Development Authority is concerned, on its turn submitted that for development of Jal Mahal Tourism Project land of private unit was acquired, certain land was sawaichak (government land) and land of public works department, land of three villages namely , Vijay Mahal, Bansbadanpura and Kasba Amer was included, 178 bighas 9 biswas was in private tenancy, 475 bighas 9 biswas was sawaichuk (government land) , 25 bighas 4 biswas was of PWD, 133 bighas 15 biswas was of Municipal Council , 19 bighas 10 biswas was of forest department. Thus in total 832 bighas 01 biswas was 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 and the JDA vide letter dated 5.10.1983 requested the Government to acquire land admeasuring 832 bighas 4

biswas which was in the tenancy of private persons. The JDA sent a proposal on 25.2.21988 to the UDH for publication under Section 4 of the Land Acquisition Act, the report under Section 5A was submitted by the Land Acquisition Officer to the Government for acquisition of land for Jal Mahal Reclamation Project ands the same was accepted and land award was passed on 17.4.1996. It was further explained that a part of land however 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 to accelerate growth of investment and industrial development in the State of Rajasthan. Thereafter, the decisions were taken details of which have been given in the return. On 10.0.2009, approval of revised layout plan was granted by the Committee chaired by the Chief Secretary. Lease amount had to be enhanced by 10% every time after a period of 3 years. It was therefore submitted that JDA having considering the nature of investment, lease of 99 years was justified. It was also admitted that out of

100 acres of leased area 13 bighas 17 biswas of land is recorded as '*gairmumkin talab'* in khasra No.67/317.

38. In so far as the reply of the lessee/respondent No.7 and 8/appellants herein/Jal Mahal Resorts Pvt. Ltd. and KGK Consortium is concerned, it had submitted in their reply to the writ petition before the High Court that the State Government promoted the concept of private public partnership to save the burden on the exchequer and the decision had been taken by the expert body at the highest level which is not amenable to interference by this Court. MoEF granted approval of 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 to be the highest and hence the then Chief Minister had approved the decision of giving project to the highest bidder KGK Enterprises on 27.2.2004 and thereafter letter of intent was issued on 30.9.2004 after which lease agreement was executed on 22.11.2005 on which the appellant has already spent

amount of Rs.70 crores while executing part I of the project.

39. The appellant herein had also submitted that the public interest petition was not bona fide rather amounted to abuse of the process of the court and they have been filed with gross delay and laches.

40. Responding to writ petition No. 4860/2010 which PIL was filed by Dr. Ved Prakash Sharma in the High Court also, was contested by the appellant herein and it was submitted that Dr. V.P. Sharma appears to have obtained registration on 19.3.2010 mainly for the purpose of approaching this Court in PIL. It was also urged that Prof. K.P. Sharma in W.P. No. 6039/2011 is not a recognized authority or lake functionaries or expert in lake management, irrigation, environment protection and 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 on behalf of the Irrigation Department and

the said trust also carries out commercial activities to generate revenue for upkeep of the dam. It was further added that in 1992 the newspaper group wanted to utilizes the Jal Mahal Complex and the land which is part of Jal Mahal Tourism Project for its own benefit and commercial use free of cost/at a paltry sum and having failed to grab the land , hostile campaign had been started against the project and more than 200 misleading articles had been published in the newspaper attempting to hold a media trial in the matter. The appellant herein further stated that the PIL petitioner Prof. K.P. Sharma respondent No.6 in the appeal has not come up with clean hands and concealed the material facts that on the complaint filed by him before PIL cell of the Supreme Court, no cognizance was taken and the file was closed. The writ petitions which were filed were barred by *res judicata* inasmuch as writ petition No. 1008/11 Ram Prasad Sharma vs. State of Rajasthan was dismissed by the High Court as withdrawn by order dated 15.2.2011 without liberty to file a fresh writ petition. It was also submitted that the interference in contractual matter is

not permissible specially when Jal Mahal Tourism Project is in larger public interest as it has to undertake restoration of Mansagar Lake. It was still further added that there was encroachment of about 50-60 acres of land, decision had been taken by the expert body, bids were invited by global tender and the appellant having been found the highest bidder was rightly considered, lease agreement and leave and license agreement are valid, possession of the land was rightly handed over to them; nursery has been set up over this land which has numerous varieties of plants and 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 and allegation of environment damage is baseless as the State Government after environment impact assessment 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. The

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appellant further had stated that they had spent about Rs. 15 crores on lake restoration which was not their responsibilities 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 only. Hence, there cannot be any interference by this Court with the opinion of the expert.

41. It was still further added that Jal Mahal monument is not a place of worship for both Hindu or Muslim or either of them and there is no document showing that it has been permitted to be used as a place of worship. It was stated that 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 private limited companies, one HUF and partnership firm namely,

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M/s. KGK Enterprises who was lead bidder of the KGK Consortium. It was stated that 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 of the three eligibility criteria for meeting the financial capability :

1. Tangible net worth of not less than Rs.100 million (US $ 2 million) as per the latest audited financial statement;
2. Annual turn over than Rs.300 million (US $ 6 million) as per the latest audited financial statement.
3. Net cash accruals not less than Rs .50 million (US $ 1 million) as per the latest audited financial statement.

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Relying on these credentials, it was stated that M/s. KGK Consortium satisfied the aforesaid technical financial criteria. However, its leads member M/s. KGK Enterprises was a partnership firm and as the KGK Enterprises met all the requirements in respect of technical, financial , shareholding 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. Factual details are further added stating that KGK Enterprises acquired 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, bid of KGK Enterprises being highest was accepted. Under the lease agreement , the Jal Mahal Resorts Pvt. Ltd. has a right of development of 100 acres of project land and no proprietary right over the management has been given. License for the restoration of the Jal Mahal monument does not confer any right on Jal Mahal Resorts Pvt. Ltd. except to ferry passengers for a minor charge <u>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.</u> Out of 100 acres of land, 87% area is to be maintained as green area and in PIL terms and conditions of the contract cannot be questioned after several years. The appellant further stated that on restoration of Mansagar Lake Rs. 15 crores have already

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 detailed building plans for the project on 13.7.2010. The Jal Mahal Resorts Pvt. Ltd. diverted the sewage nallahs away from the Mansagar Lake with the approval of the State Govermment , 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 use of soil of lake itself has not damaged the ecology or environment or the lake. Sedimentation basin is a part of the lake and created only by moving the soil of the lake from one place to another and it is wholly temporary reversible in nature

and the soil can be leveled 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 provision of the tenancy act and the lake is with the State Government , which will continue to remain so. It has however been added the responsibility of lake maintenance is purely of the JDA and Jal Mahal monument has been denotified in 1971 from the protected monuments under the provisions of the Act of 1961. Changes in the Jal Mahal monument has been brought with the consent of the Empowered Committee, these PIL petitions were clearly devoid of merit and the appellants herein had a right to start phase II of the project.

42. In so far as the MoEF , Government of India is concerned, it 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 the MoEG. It was stated that project for

conservation and management of Mansagar Lake in Jaipur was sanctioned as per the mandate of the National Lake Conservation Plan. It was further contended that project for conservation and management of lake in Jaipur was sanctioned in December 2002 at the cost of Rs.24.72 crores under the NLCP on 70:30 cost sharing basis between Government of India and the State Government of Rajsthan and the sanctioned order was issued which contained break up of cost estimated. The different components which were approved further included realignment of drains , desilting , insitu bioremediation , sewage treatment plant and wetland construction, check dams, aforestation, nesting islands etc. It has been accepted by the MoEF that the JDA was the nodal implementing agency for the project and MoEF Central Government has released entire share of the Central Government amounting to Rs.17.30 crores. Other details had also been recorded on behalf of the MoEF regarding the cost of upgradation and it was stated that the State Government was committed to bear the additional fund towards the development from its own

resource. The State Government had informed that in addition to the sewerage work under NLCP scheme , other projects are also being taken up thereby ensuring that all sewage generated in the lake catchment area is being taken care of. The learned Judges of the Division Bench on a scrutiny of facts and on hearing the counsel for the contesting parties however were pleased to hold that the PIL was bona fide and in public interest. Resultantly, the High Court was pleased to declare that the 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 Pvt. Ltd. was illegal and void. The appellant Jal Mahal Resorts Pvt. Ltd. was therefore, directed to restore the possession of the land to the RTDC who in turn was directed to give back the land to Jaipur Development Authority, Jaipur Municipal Corporation and the State. As already stated in the introductory paragraph, certain other directions like removal of sedimentation and settling tanks from the Mansagar Lake

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basin was also issued by the High Court and cost also had to be realised from the appellant.

43. The appellant lessee/Jal Mahal Resorts Pvt. Ltd. felt seriously aggrieved and affected by the impugned judgment and order of the High Court and therefore preferred this appeal along with the other connected appeals which are being heard and decided analogously.

44. In order to test the merits and demerits/strength of the case of the contesting parties , we deem it appropriate to take note of the historical background giving rise to this matter whereby certain factual aspects and the background may be traced out from 1962 when admittedly the two sewerage drains of the walled city of Jaipur Nagtalai and Brahmapuri were diverted to empty into the water body which led to its degeneration, siltation and settled deposits and contamination to such an extent that it could not support the aquatic life nor support flora and fauna in the surrounding areas. It is also an admitted position that the condition of Mansagar Lake and the Jal Mahal also started

substantially deteriorating over a period of time not only because of natural process of degeneration but also because of ill maintenance and monument reduced to such a dilapidated state that it required massive restoration work. It is also borne out from the historical background and the sequence of events related by the contesting parties that the deteriorating condition of the lake and the monument compelled the State Government to find ways and means to restore the monuments to their original glory. We have noted from the averments of contesting parties that over a period of 30 years attempts were made by Government agencies and departments to restore ecological and environment condition of the lake and its adjoining area but none of the attempts yielded any positive result because of paucity of resources to take up and sustain their restoration. The Government of Rajasthan therefore had taken a decision to adopt an incentivized approach to restore the lake and monument and declare the precinct area on a public/private partnership format. In order to improve the condition of the lake the State of

Rajasthan in consultation with the experts and after detailed surveys and analysis adopted an approach of development covering three components which are:

1. Restoration of Mansagar Lake;

2. Restoration of Jal Mahal and

3. Development of tourism/recreational components at the lake precincts.

While restoration of Mansagar Lake was approved as per the averment of the MoEF confined to the development of lake area, restoration of Jal Mahal which lie within the precinct of the lake, development of lake and the adjoining area to the lake fell within the domain of the Government of Rajasthan which related to development of tourism/recreational components at the lake precincts.

45. On a scrutiny of the extensive factual details and the submissions advanced by the contesting parties , we have noted that the entire dispute is essentially confined to the Lease Deed which has been granted in favour of the appellant for development of 100 acres land adjoining the

lake area for a period of 99 years. The PIL petitioners although have urged that the land for which lease deed had been executed were wetland, it could not establish from any material on record that except an area of 14.15 acres equivalent to 22 bighas and 10 biswas and another area comprising 8.65 acres equivalent to 13 bighas and 17 biswas are in fact the contentious area on the basis of which PIL petition has been filed engulfing the entire area of the lease deed. In this respect it cannot be overlooked that the project which was visualized and given effect to, was with a view to sustainable conservation and preservation approach stipulated in consultation with the experts in pursuance to which a global tender was floated and implemented under extra supervision with all approvals in place from the concerned authorities.

46. Learned counsel for the petitioner/appellant, Dr. Abhishek Singhvi assailed the impugned judgment and order of the High Court and urged that the High Court has proceeded on a patently erroneous, illegal and factually incorrect basis when it *inter alia* held as follows:

a. That the public-trust doctrine has been breached because land measuring 13 Bighas 7 Biswas submerged area of lake has been leased to the petitioner and resultantly lease deed dated 22.11.2005 is void in law.

b. That 14.15 acres equivalent to 22 Bighas and 10 Biswas of land submerged forming part of the Lakebed and could not have been leased out.

c. The State Government has leased 25 percent of the Lake basin itself to the petitioner/appellant for preparing 100 acres of land and the lake level has been reduced to carve out 100 acres of land for the lease.

d. The Environment Clearance given by State Level Environment Impact Assessment Authority (SEIAA) to the petitioner on 29.04.2010 is void in law.

e. That the Project is in violation of Rule 4 of the Wetland Rules of 2010 and the Ramsar Convention. Thus, the lease deed is in

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contravention of the Wetland Rules and cannot be given effect to.

f. That the sedimentation tanks are illegal as they could not be built without clearance from the Ministry of Environment and Forests.

g. That the No Objection given by the Rajasthan Pollution Control Board to the petitioner's project is of no avail in the absence of clearance by MOEF under the Environment Protection Act, 1986.

h. That the lease has been executed in violation of Rajasthan Tourism Disposal of Land Rules, 1997 (RTDC Rules), Rajasthan Municipalities (Disposal of Urban Land) Rules 1974, The Rajasthan Municipality Act, 1959 and the Jaipur Development Act, 1982 is liable to be cancelled.

i. That the State was bound to give effect to the essential conditions of eligibility stated in the tender document and was not entitled to waive such a condition. Thus, action of respondent No.2 was not for bonafide reasons.

47. Learned senior counsel for the appellant Dr. Abhishek M. Singhvi at the outset submitted that the writ petitions before the High Court by way of Public Interest Litigation ought to have been held barred by delay, latches as also on the ground that they were not bonafide and filed with ulterior motive. It was explained that three purported PIL came to be filed by the writ petitioners/respondents herein in 2010 and 2011 after expiry of 5 years from the date of execution of the lease deed and licence agreement dated 22.11.2005. In this respect, it was submitted giving out the sequence of events that the Detailed Project Report ('DPR' for short) in regard to the Project was prepared way back in 2001 which was the underlying basis for the Project. The tender process commenced in 2003 and the fish shaped leasehold area comprising 100 acres was part of the Expression of Interest dated 25.04.2003 published in various public media. Notice Inviting Tenders for the Project was published in various public media on 30.07.2003. The pre-qualification bids were opened on 15.07.2003, the technical bids were opened on 21.10.2003 and the financial bids were

opened on 03.12.2003. Thereafter, decision making process was undertaken at several stages upto the level of the Chief Minister in order to determine the award of the Project to the respondent-lessee KGK Consortium which are indicated in the order 09.02.2004, 27.02.2004, 30.09.2004 and 27.10.2005. Thereafter, finally on 22.11.2005, the Lease and Licence Agreements were executed between the State Government and the petitioner-appellant. It was submitted that all the above steps were taken in public domain and in fact one of the PIL-petitioner/respondent herein K.P. Sharma was aware of the developments as far back as in February 2005 that the project was to come up. Yet he chose to sit by and do nothing until 2011 and during these intervening 8 years, the State Government and the petitioner/appellant substantially altered their positions by spending huge sums of money in implementing the Project. It was therefore submitted that the motive of respondent No.1/PIL petitioner is questionable because he has sought to disrupt a Project much after the public money came to be spent even though he could have approached the High Court earlier.

48. Learned counsel for the petitioner further submitted that one of the factors that the Court should look into before entertaining a PIL is to ensure whether the PIL has been filed promptly and in utmost good faith. It ought to further consider whether by allowing a grossly delayed PIL, the parties who have acted bonafide would be prejudiced and suffer. In the present case, the petitioner/appellant has spent gratuitously on the belief that it had the right to develop 100 acres of land leased and it spent Rs.10 crores on restoring the Jal Mahal Monument which is now fully restored and ready to be opened for the public. It has paid more than 22 crores on lease rent alone and has built a 1.75 KM long public promenade over its leased land, substantively and the petitioner during this period completed the whole phase -1 under the agreement. In support of this submission, the petitioner/appellant relied upon the ratio of the decision delivered in **R.D. Shetty Vs. Airports Authority of India**, 1979 (3) SCC 489, where the Court despite holding that the State had violated Article 14 of the Constitution permitted the contract to continue. The Court in its conclusions overlooked the rights and liabilities of the successful party on the one hand and the conduct including delay and motive of the PIL/petitioner on the other and finally upheld the right to continue contract under challenge as it was of the view that the Court may refuse relief to the

party challenging the award of contract if the equities are in favour of the party holding the contract. In the instant case, it is not even the plea of the PIL/Petitioner that he himself has been deprived of his rights. Even in the case of **State of M.P. Vs. Nandlal Jaiswal**, 1986 (4) SCC 566, this Hon'ble Court took the view that the writ petition suffered from latches and thus considered it fit to dismiss it.

49. It was added that in fact the PIL/petitioner in the High Court Mr. K.P. Sharma is guilty of suppression of facts from the High Court as he had sent a complaint letter dated 12.06.2007 to the Supreme Court and the SC Registry was directed to submit a report dealing with all the allegation raised by PIL/petitioner. The SC Registry took the report on record and closed the matter on 20.12.2007. The petitioner K.P. Sharma thereafter did not move forward and suddenly after 4 years in April 2011, filed a writ petition by way of PIL in the High Court without even disclosing that complaint had been enquired by the Registry of the Supreme Court and the matter was closed. However, the PIL/petitioner made a further application to the Supreme Court in the year 2011 but the Additional Registrar of the Supreme Court vide letter

dated 11.10.2011 informed the PIL/petitioner that pursuant to GOR Report, the file had been closed and the file was weeded out on 14.04.2011. Thus, the PIL/petitioner was clearly aware of the factual report of the GOR to the effect that the SC Registry had closed the matter based upon that report, yet the PIL/petitioner K.P. Sharma failed to disclose this vital fact to the High Court. Thus, the PIL/petitioner deliberately tried to mislead the Court and has not come to the Court with clean hands. It was therefore contended that it cannot be overlooked that the complaint of the PIL/petitioner to the SC Registry and its rejection thereafter based upon a factual report submitted by GOR is a vital and material fact that ought to have been disclosed to the High Court specially since the allegations in the complaint and the PIL substantially overlap.

50. It was next contended that the PIL by the petitioner K.P. Sharma lacks the bonafide to prefer the PIL/petition because his conduct is malicious and vindictive. Elaborating on this, it was stated that PIL/petitioner K.P. Sharma with Dr. Brij Gopal had approached the appellant in

the year 2007 purporting to offer their services for monetary reward. Since the appellant had already engaged a lead panel of conversationist and environmentalist, the services of the PIL/petitioner were not required. Thereafter, the PIL was filed only as a way to vent his pique and frustration at the SLP petitioner/appellant herein. It was submitted that these vital background facts ought to have been disclosed to the Court at the time of preferring the PIL and since these facts were suppressed and not disclosed, it is apparent that the PIL petition had not been filed bona fide and had been preferred for own vexatious reasons.

51. It was further contended that the High Court vide the impugned order has proceeded on a patently erroneous, illegal and factually incorrect basis when it held that the public trust has been breached because land admeasuring 13 Bighas 7 Biswas forming part of Lakebed which has been leased to the petitioner/appellant vide lease deed dated 22.05.2005 is void in law. It was explained in this regard that 13 Bighas 17 Biswas of land equivalent to 8.65 acres of land from the very inception has been reflected and treated

as part of the land that was proposed to be leased. This land was described in the original Detailed Project Report which was prepared much earlier in the year 2001 when this land was formed part of the fish shaped land. It is highlighted that during the first attempt to initiate the Project Jal Mahal and preparation of the Detailed Project Report ('DPR' for short), the petitioner/appellant was nowhere in the picture. In this regard, it had been contended by the respondent PIL petitioner that the area admeasuring 13 Bighas 17 Biswa bearing Khasra No.67/316 (8.65 acres approx.) is part of the lake area as per revenue record which is recorded as *"gairmumkin talab"* and therefore could not have been leased to the petitioner. Contesting this plea, it was submitted by the petitioner/appellant that Khasra No.67/317 does not form part of the submerged area and is in fact a part of landmass which is outside water. The survey reports placed on record leave no doubt on this score. It was submitted that the consistent and specific case of respondent No.6/Project Development Corporation of Rajasthan ('PDCOR' for short), this land does not constitute

part of submerged land. However, revenue record reflects this land as *gairmumkintalab* and the State has entrusted the preparation of the Jal Mahal Tourism Project that includes ecological restoration of Mansagar Lake Restoration of the Jal Mahal Monument and the Lakeside Development on the land leased to the petitioner. However, the petitioner/appellant has also added that it has no desire or intention to construct or in any manner commercially utilise this land and should be open to the public. As a matter of fact, respondent No.2/the State of Rajasthan had specifically informed the High Court that no construction shall be allowed to be raised on the said area and hence this can hardly be a ground for quashing the award of the entire Project. It has been submitted that this Court can uphold the award of the Project despite the alleged illegality by keeping the area open in green and the same cannot be a reason to entail a consequence of cancellation of the entire Project resulting into huge loss of Project to larger public interest. Cancellation of the Lease and Licence Agreement in such circumstance would be patently erroneous and in conflict

with settled law. Learned counsel for the petitioner has relied upon the ratio of **Century Spinning and Manufacturer Company Limited Vs. Nagar Municipal Corporation**, 1970 (1) SCC 582. Finally, on this point, it was urged that the High Court at the most could have severed reference to the said 13 Bighas 7 Biswa of land but should have upheld the lease pertaining to the rest of the land as the Lease Agreement expressly permits such severance vide Clause 18.4 of the Lease Deed.

52. Learned Attorney General on behalf of State of Rajasthan had contended that on spot inspection by Jaipur Development Authority('JDA' for short) showed that no lake existed in 13 Bighas 17 Biswas of land and that this land was a landmass. The reason for including this area in the lease deed was to maintain the shape of the allotment. It was further argued that Court may direct this area to be kept open as no construction zone and may be kept open excluding the area which has been consumed in public promenade.

53. The High Court however had held that 14.15 acres of land submerged formed part of the Lakebed and could not have been leased out. Assailing this view taken by the High Court, it was contended that this Court would have to adopt an objective test to determine which land is classified as Lakebed and for this purpose reliance has been placed on the ratio of the decision delivered in the matter of **Noida Memorial Complex Judgment**, 2011 (1) SCC 74. It was submitted that reference to the revenue record with respect to 100 acres lease shows that even though land admeasuring 14.15 acres is submerged in water, historically and contemporaneously this land has been classified as 'barren' land and not as part of the Lakebed and also for that reason is not a wetland. It was further elaborated that the PDCOR, the body that prepared the Detailed Project Report had carried out land surveys, prepared topographical surveys, output surveys, water quality tests and received secondary data from Survey of India etc. which has been incorporated in the counter affidavit before this Court and before the High Court explaining the reasons for

submergence. PDCOR has stated in its affidavit that the said 14.15 acres of land was submerged due to huge silt deposits that had caused the depth of the lake to reduce and as a result the water had spilt out into adjacent land being the concerned 14.15 acres of land. Thus, the said land was never part of the Lakebed and for this reason, is not a wetland. Factually, out of the 14.15 acres permitted to be reclaimed by the petitioner under the lease deed dated 22.11.2005 the petitioner has only reclaimed approximately 11 acres out of which approximately 6-7 acres has been consumed for creating a public promenade open to the public.

54. In fact, the learned Attorney General on behalf of the State had also argued that this land of 14.15 acres was never part of the Lakebed as per revenue records. The Attorney General also stated further that the approach of the High Court is completely contradictory. While on the one hand, in respect of the 13 Bighas 17 Biswas area, the revenue records are relied upon, in respect of the area of 14.15 acres, the revenue records which clearly show that

this area is not a part of lake, is disregarded. Based on the revenue records referred and shown to this Court, the inevitable and indisputable conclusion that appears is that the entire 100 acres land leased to the petitioner is not a part of the Lakebed except 13 Bighas 17 Biswas bearing Khasra No.67/317 (8.65 acres). It would thus follow that this land cannot form part of the Lakebed under any circumstance.

55. Besides the above, it was urged that over the years, huge amount of silt had been deposited onto the Lakebed by the Nagtalai and Brahmpuri Nala as a result of which the depth of the land has reduced which resulted in spilling of the water from the lake into adjacent areas including the land adjacent to it.

56. On the premise of the aforesaid facts, it was urged that there is no violation of the public trust doctrine as public trust doctrine cannot be applied to defeat public interest.The Project as approved and when implemented would in fact create an unprecedented Lake water front ambience and would be the only large water body in Jaipur that had been

subjected to massive destruction over the years. In fact, the Project would *inter alia* create approximately 1.5 km long walkway (promenade) along the lake which has been constructed by the petitioner/appellant on the leased land that is open for use by the public. Importantly, another 3.5 km promenade has been built by the JDA along the Lake. A perennially filled Lake admeasuring 310 acres (approx.) with a depth between 3 to 5 metres and a complete renovation and restoration of Jal Mahal Monument with a pleasure pavilion built in the mid 18th century, the restoration includes artistic paintings depicting Rajasthani culture. The Project includes access to the restored monument by the public on paying a nominal charge of Rs.25/- per person essentially a cost towards being carried by boat to the Monument, a crafts village to promote handicrafts and other world famous heritage products of Rajasthan, an amusement park for the public, a restaurant positioned with adequate setback from the Lake, for the public to enjoy clean surroundings, a heritage resort, a convention and Exhibition center to serve multipurpose functions. It was submitted that these highly

pro public elements cannot be negated and destroyed by erroneous contentions raised in the PIL. Indeed, the aforesaid enormous improvement to the environment involving air, water and land, is itself in high public interest and this Hon'ble Court should countenance no dilution in that.

57. It was next submitted that the conclusion in the impugned order that the Lake has been artificially reduced to get more land and lake water level and its spread had been reduced is completely erroneous, unsustainable because it is the petitioner and the State who have together restored 310 acres (approx.) of the Lake that has resulted in ensuring the Lake remains filled with water around the year having the depth of around 3 to 5 meters, whereas earlier it was nothing but a cesspool of filth, sewage and silt etc.

58. The factual context of this issue has been summarized by the petitioner in order to demonstrate the grave and patent error of the impugned order and it has been stated as follows:

i The level of Jaipur-Amer road is 100 m RL, and the full tank level of the lake is 99 m RL.

ii The plinth level of the Jal Mahal Monument is however only 98.12 RL i.e. almost 2 metres below the Jaipur-Amer road level.

iii. It is obvious that a water level equal to the Jaipur-Amer road level would not only create problem for surrounding areas but would seriously damage and impair the Jal Mahal Monument by entering it and eroding its structure.

iv. Consequently, from the creation of the DPR in 2001 which was not known to the petitioner, the Government has recognised that the water level of the lake should not be kept above 98 m RL.

59. It is stated that DPR is not only a final document but in its final form has been approved without objection or protest by the Ministry of Environment and Forest ('MOEF' for short) under the National Lake Conservation Plan (NLCP) Guidelines and in particular the clause dealing with

maintenance of water level at 98 m RL which has been considered and approved by the MOEF. In any event, without prejudice to the foregoing, it was submitted that the impugned order is patently erroneous in that it purports to act as a MOEF, Pollution Control Board, State Environment Regulatory Authority, Independent and International Experts and Consultant all rolled into one. It is impermissible under established judicial review parameter to admit the role of second-guess expert body. It is equally impermissible for a Court to substitute its review in respect of highly complex factual technological and scientific issue. The Court cannot sit either an expert or arbitrate or as an appellate body nor can it allow a PIL petition to convert it into a super regulator. To reinforce the submission, reliance was placed on the ratio and observations made in the matter of **Tata Cellular Vs. Union of India**, 1994 (6) SCC 680. It was submitted that unfortunately the impugned order has committed precisely the aforesaid errors repeatedly, *inter alia* in respect of size of lake and water level of the lake.

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60. It was pointed out that prior to the petitioner/appellant taking up the Project, the Lake was virtually empty except with dirt, sewage and silt. The very use of the word 'reducing of the water level' is highly misleading and inappropriate. It is the petitioner alongwith the State who has ensured the availability of clean water around the year rather than reducing the level of the Lake. It was still further added that since Mansagar Lake is a manmade lake, the principle source of water during and after the restoration work has been treated sewage/effluence coupled with some replenishment during monsoon. Consequently, in view of the release of post treated sewerage water into the Lake, the regulation of the water level at 98 m RL has always been an intrinsic part of the Government's regulation of the entire area.

61. It was submitted that it is axiomatic in law and in fact that the award of a tender must necessarily be judged by the terms of the tender, subject to permissible variations. It is most significant to note that the RFP on the basis of which everyone was invited to tender prescribes, specifies

and stipulates the clear water level at 98 m RL. It is common ground that neither the PIL petitioner nor any bidder or anyone else has challenged the *per se* stipulation of the water level at 98 m RL. Therefore, the allegation of the PIL petitioner is absolutely baseless. Consequently, it was contended that the respondents contention that the petitioner/appellant is guilty of reducing Lake water level is highly misleading and distorted submission which has been accepted in the impugned order contrary to the factual position.

62. It was further urged that the PIL petitioners'/ respondents' herein penchant for false, distorted and misleading submissions alleging reduction of the size of the lake and the spread of the lake alleging that this was done by keeping the water level at 98 m RL thereby giving enhanced area of land to the petitioner/appellant herein and correspondingly, diminishing the spread of the lake is equally fraudulent and deliberately distorted for the following reasons:

i It is vital to note that the Detailed Project Report (DPR) made in 2001 at least two years before even the Expression of Interest was issued for the present Project and the SLP petitioner herein/appellant was nowhere in the picture categorically gives the landmass area available at each of the three different levels of 100 m RL, 99 m RL and 98 m RL of the lake and then goes on to specifically declare that the best and the only feasible solution to prevent damage to the Jal Mahal Monument is to keep the water level at 98 m RL, neither higher nor lower vide DPR. Consequently, the SLP petitioner herein/appellant had nothing whatsoever to do with a decision to maintain the water level at 98 m RL. It is therefore deliberately misleading for the PIL petitioner / respondent herein to suggest that because the water level is kept at 98 m RL, the SLP petitioner has been given a greater land area. Thus, it is submitted that it is patently false for the

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simple reason that irrespective of the water level, the land actually given in the RFP is the necessary controlling tender document is no more than 100 acres and even if 99 m RL which is full tank level had been fixed as the lake level even then the land available for the successful bidder would be 100 acres. This underscores the point that 98 m RL level was not the guiding factor while granting 100 acres to the petitioner.

63. It was further contended that the High Court has erroneously relied on a PWD document that states the area of the lake has reduced to 0.79 sq. km after independence whereas prior to independence according to the High Court it was 1.154 sq. km. However, the High Court does not appreciate and consider that the DPR was prepared in 2001 after carrying out extensive surveys and preparing topographical maps, after doing all such research and based upon all such material it was determined by the DPR that the size of the lake was 130 hectares more than what it purportedly was prior to independence. It was therefore

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submitted that the High Court's finding on this aspect suffers from lack of application of mind to the material on record and it was submitted that if anything, the size of the lake from independence has only increased. Consequently, it was submitted that the two vital and unchangeable parameters show the falsity of the PIL petitioner contention viz.

(a) A decision fixed and taken more than two years before the tender in 2001 to get the lake level at 98 m RL.

(b) A decision taken in the RFP to lease out no more than 100 acres, once these two polar points are fixed, assuming everything against the petitioner/appellant herein or the State Government that can be no prejudice or detriment of any kind to public interest.

64. It was next contended that the High Court conclusion on de-silting is patently erroneous and unsustainable because de-silting was a sanctioned activity

under NLCP and MOEF had sanctioned funds for the said purpose. The DPR had provided for de-silting as a measure to increase the depth of the lake so as to enhance the water holding capacity thus de-silting had a scientific basis to it. In fact, in the meeting dated 03.04.2006 which was held to review the lake restoration under the Chairmanship of Principal Secretary, Urban Development and Housing, permission was granted to the petitioner/appellant to de-silt the lake to achieve 2 meters depth at its own cost. Therefore, the petitioner had valid permission from the State Government to carry out de-silting and there was nothing illegal in the manner rather than minutes of the meeting show that it was a well considered decision of the Committee and was in line with the DPR.

65. The petitioner/appellant submitted that the High Court's finding is patently erroneous and unsustainable as except for the revenue entries showing 13 Bigha and 7 Biswa of land as *gairmumkin talab* no other parcel of land that was leased to the petitioner was part of the Lakebed as per the revenue entries. Only because silt was dumped on

the land leased to the petitioner, cannot make land that was not part of the Lakebed, as is evident from the revenue record and is now suddenly being asserted as part of the Lakebed. It is being stated that it is always advisable that Lakeside development should be at higher level than the water level.

66. On a consideration of the rival submissions urged on behalf of the contesting parties, in the light of the factual matrix and the materials which were produced before the High Court, it clearly emerges that the PIL petitioner/ respondent NO.1 herein K.P. Sharma had contended that the lease executed and granted to the appellant for development of 100 acres land was illegal, arbitrary disturbing the natural resource of lake which was fit to be struck down as invalid as the 100 acres land was carved out from the lake area and thus the breadth and height of the lake was reduced.

67. However, on a scrutiny of materials on record which included the revenue record of the land in question, it is sufficiently clear that the man made Mansagar lake

comprised of an area of only 3 hundred acres towards the lake area. Counsel for the respondents/PIL petitioners, however, at the outset and as the first and foremost point sought to make good the submission that the lake area was reduced by 100 acres which was leased out to the appellant/lessee by reducing the lake area. But the counsel in spite of his best efforts could not establish the same except the fact that 8.65 acres and 14.15 acres were submerged area of the lake and lakebed respectively which was carved out as land area so as to make it a part of the 100 acre land area. In fact, even on perusal of the impugned judgment and order of the High Court it could not be established even remotely that the entire 100 acres land which comprises the area of lease deed is a part of the lake or lakebed in any manner. In fact, all the contentions which had been raised before the High Court as also before this Court in general terms urged that the lake area has been reduced to 310 acres and 100 acres have been carved out of 400 acres of lake area which was reduced to 310 acres. But in clear, specific or precise terms, it could not go beyond

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urging that 8.65 acres which was submerged and hence a portion of the Lake area, could not have been made a part of the leased area. In this context, it was further urged that this area being a wet land, could not have been included in the leased portion of the land for which the development was permitted by executing a lease deed.

68. When this plea was scrutinised in the light of the revenue record, it could be noted that this area has been recorded in the revenue record as *'gair mumkin talab'*. Based on this entry, it was submitted by the PIL petitioner/ respondent herein that *'gair mumkin talab'* area could not have been allowed to be developed by raising construction as that would be clearly contrary to the Wet Land Rules which was enacted for the first time in the year 2010. In other words, the contention of the PIL petitioner/ respondent No.1 herein is that since 8.65 acres of land which forms part of 100 acres leased area granted to the appellant is submerged under water which area according to the PIL petitioner/ respondent would also form part of the lake, the State Government could not

have included this land in the leasehold area to be granted to the petitioner/appellant.

69. The appellant/lessee on his part confronting this submission argued that this Court would have to adopt an objective test to determine which land claimed as Lake Bed and wet land is fit to be accepted and for this purpose placed reliance on the ratio of the decision delivered in the matter of **Noida Memorial Complex** (2011) SCC 744 paras 24 and 25 which held as follows:

> "24. In support of the applicants' case that there used to be a forest at the project site he relies upon the report of the CCF based on site inspection and the Google image and most heavily on the FSI Report based on satellite imagery and analysed by GSI application. A satellite image may not always reveal the complete story. Let us for a moment come down from the satellite to the earth and see what picture emerges from the government records and how things appear on the ground. In the revenue records, none of the khasras (plots) falling in the project area was ever shown as jungle or forest. According to the settlement year 1359 Fasli (1952 AD) all the khasras are recorded as agricultural land, banjar (uncultivable) or parti (uncultivated).
>
> 25. NOIDA was set up in 1976 and the lands of the project area were acquired under the Land Acquisition Act mostly between the years 1980 to 1983 (two or three plots were notified under Sections 4/6 of the Act in 1979 and one or two plots as late as in the year 1991). But the

possession of a very large part of the lands under acquisition (that now form the project site) was taken over in the year 1983. From the details of the acquisition proceedings furnished in a tabular form (Annexure 9 to the counter-affidavit on behalf of Respondents 2 and 3) it would appear that though on most of the plots there were properties of one kind or the other, there was not a single tree on any of the plots under acquisition. The records of the land acquisition proceedings, thus, complement the revenue record of 1952 in which the lands were shown as agricultural and not as jungle or forest. There is no reason not to give due credence to these records since they pertain to a time when the impugned project was not even in anyone's imagination and its proponents were nowhere on the scene."

Placing reliance on the aforesaid categorical view taken by this Court, it was submitted that a reference to the revenue records with respect to the 100 acres lease shows that even though the land admeasuring 8.65 acres might have been submerged under water, historically and contemporaneously, 14.15 acres has been classified as '*barren land*' and not as part of the Lake Bed. It, therefore, must follow as per the submission of the counsel for the appellant placing reliance on the revenue records that the 14.15 acres forming part of 100 acres leased to the

appellant is not a part of the Lake Bed and also for that reason is not a Wet Land.

70. It was further urged that the Project Development Corporation (PD COR) of the State of Rajasthan, the body that prepared the Detailed Project Report in the year 2001, when the petitioner/appellant was not in the picture in any manner carried out land surveys, prepared topographical surveys , output surveys, water quality tests and received secondary data from Survey of India etc. as in the counter affidavit before this Court and before the High Court explained the reasons for emergence of this area of 14.15 acres of land. It was further pointed out that the PDCOR has stated in its affidavit that the said 14.15 acres land emerged due to huge silt deposits that had caused the depth of the lake to reduce and as a result, the water had spilt out into adjacent land being the concerned 14.15 acres of land. Based on this project report prepared at the instance of PDCOR, it was argued that the said land was never part of the Lake Bed and is not for this reason a Wet Land . It was further added that factually out

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of the 14.15 acres permitted to be reclaimed by the appellant under the Lease Deed dated 22.11.2005, the appellant has only claimed approximately 11 acres out of which approximately 6-7 acres has been consumed by the appellant for creating a public promenade open to the public.

71. The appellant sought to add additional weight to this argument by placing reliance on the submission of the learned Attorney General on behalf of the State who had argued that this land of 14.15 acres was never part of the Lake Bed as per the revenue records. The counsel further pointed out that the Attorney General had further submitted that the approach of the High Court was completely contradictory in this regard. While on the one hand in respect of the 13 bighas 17 biswas area equivalent to 8.65 acres, the revenue records had been relied upon, the same was not taken care of and relied upon in respect of the area of 14.15 acres although, the revenue records clearly show that this area is not a part of the lake and yet it was disregarded by the High Court.

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72. On the aforesaid aspect, it was further urged that based on the revenue records referred and shown to this Hon'ble Court , the inevitable and indisputable conclusion that appears is that the entire 100 acres land leased to the appellant is not a part of the Lake Bed including 13 bighas 17 biswas bearing Khasra No.67/317 corresponding to 8.65 acres. It was submitted that from this it ought to follow that this land could not have been held to be forming a part of the Lake Bed under any circumstance.

73. The PIL petitioner/respondent No.1 herein had further argued that the project is illegal because no sanction for this project had been received under the Wet Land Rules 2010 and, therefore, the respondents have sought for a declaration of the Lease Deed being void.

74. Challenging this part of the argument urged on behalf of the PIL petitioner/respondents herein, it was contended on behalf of the appellant that the language of the Wet Land Rules 2010 when referred to in detail makes it clear that these rules can only apply in a situation where the Central WetLand Authority , a Government of India body

established under the Wetland Rules 2010 sends its recommendation to the Central Government for notifying a certain area as a wetland. It was urged that in the present case, it is undisputed that when the Lease Deed was executed and environmental clearance (EC) from State Level Environment Impact Assessment Authority (SEIAA for short) was granted on 29.4.2010, the Wetland Rules 2010 were not even enacted. Therefore, the question of Wetland Rules 2010 applying to the project retrospectively would not arise. Even otherwise under the Wetland Rules 2010, there is a detailed procedure specified which has to be complied with mandatorily before an area can be notified as a wetland. It was submitted that in the present case even after the Wetland Rules 2010 came into force, no such procedure admittedly has been undertaken to identify Mansagar Lake as a wetland when these PILs were filed. It was further contended in this regard that such a project is contrary to the specific intent of the framers which is unequivocal viz even assuming that an area is zoologically, scientifically, environmentally or

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technologically to be factually a wetland, it does not become so legally unless and until the *persona designata* under the delegated legislation so declares it to be. Admittedly, that *persona designata* is only the specialized authority appointed under the rules and has chosen not to exercise its power for the Mansagar Lake.

75. It was still further contended on behalf of the appellant that the technique of applying a law by notification to a specific fact situation is an age old parliamentary technique and/or the technique applied by the framers of delegated legislation like the Central Government who framed the Wetland Rules. Even the Apex Court would not consider it legally appropriate to issue a mandamus to notify and bring into force legislation or a delegated legislation until and unless the *persona designata* under that regime chooses to do so. In support of this proposition of law, learned counsel for the appellant has placed reliance on the following case laws: *(1982) 1 SCC 271* at page 308, 310 paras 51 and 59 ***A.K. Roy*** vs. ***Union of India*** when it recorded as follows:

> "……the question which was put in the forefront by Dr. Ghatate, namely, that since the Central Government has failed to exercise its power within a reasonable time, we should issue a mandamus calling upon it to discharge its duty without any further delay. Our decision on this question should not be construed as putting a seal of

approval on the delay caused by the Central Government in bringing the provisions of Section 3 of the 44th Amendment Act into force...........But we find ourselves unable to intervene in a matter of this nature by issuing a mandamus to the Central Government obligating it to bring the provisions of Section 3 into force. The Parliament having left to the unfettered judgment of the Central Government the question as regards the time for bringing the provisions of the 44th Amendment into force, it is not for the court to compel the government to do that which, according to the mandate of the Parliament, lies in its discretion to do when it considers it opportune to do it."

Similarly reliance was placed on the judgment and order of this Court reported in (2002) 5 SCC 44 at 49-50 para 7 delivered in the matter of ***Union of India*** vs. ***Shree Gajanan Maharaj Sansthan*** when it concurred with the view that no mandamus could be issued to the executive directing it to commence the operation of the enactment although non-issuance of such a direction should not be construed as any approval by the Court of the failure on the part of the Central Government for a long period to bring the provisions of the enactment into force; leaving it to the judgment of the Central Government to decide as to when

the various provisions of the enactment should be brought into force.

76. Relying on these decisions it was urged that from the ratio of these decisions it follows that since Mansagar Lake itself is not a Wetland, therefore, the contention of the respondents that the entire 100 acres land leased to the appellant is part of the Lake Bed and, therefore, a wetland ought to be rejected outright and the finding of the High Court on this aspect ought to be reversed. However, Mr. Jaydeep Gupta, learned senior counsel who was appointed to represent the State of Rajasthan after the change of the Government in 2014 in place of the Attorney General Shri G.E. Vahanwati who had already concluded his arguments on behalf of the State of Rajasthan, submitted that the incumbent Government of Rajasthan cannot accept the interpretation given to the Wetland Rules 2010 by the previous government. As per the subsequent stand taken by the counsel for the new government, the previous government ought to have identified wetland in the State within one year of the

Wetland Rule 2010 being enacted. According to the counsel for the new incumbent government, since the previous government did not undertake the activity of identifying Mansagar Lake as a wetland, the 2010 rules have been violated. Thus, it had been urged by Mr. Gupta that the stand taken by the previous government before the High Court as well as this Hon'ble Court is untenable.

77. The appellant, in turn, has submitted that the change in stand by the incumbent government should not be permitted by this Court. It was submitted that reference to the pleading put forward by the State Government on the issue of the wetland before the High Court and this Court has been categoric and specific . It has been expressly pleaded that the Wetland Rules 2010 do not apply to the project and that the said rules are not retrospective so as to affect the project. This stand has been specifically taken in the counter affidavit filed by the State Government in the three Special Leave Petitions preferred by Jal Mahal Resorts Pvt. Ltd. It was, therefore, submitted that assuming without admitting that the incumbent State Government can

withdraw its three Special Leave Petitions, the appellant strongly disputes this and it does not follow and should not be allowed that the stand taken by the State Government in the counter affidavit in the three SLPs filed by the appellant and the three SLPs filed by the State Government can in any manner be changed or altered. In addition, it was submitted on this aspect that the stand of the State Government in the High Court should not be allowed to be changed before the Supreme Court merely due to change of the Government after new elections were held and it has been strenuously submitted in the pleadings before this Court by the State Government earlier through the Attorney General that the High Court had gravely erred in law in holding that the Wetland Rules 2010 were applicable to the Project. The attempt being made by the State Government shifting its stand which was taken before the High Court and also before this Court when the learned Attorney General had appeared and concluded the arguments, it is clearly a change in stand from the stand taken by it from the High Court right up to this Court.

78. It was submitted that the underlying basis for the incumbent State Government to change its stand has been justified by it based on its understanding of the Wetland Rules 2010. According to the incumbent government and its political philosophy Mansagar Lake ought to be identified as a wetland. According to the incumbent government the fact that the Mansagar lake was not identified as a wetland by the previous government itself was an illegality and was contrary to the Wetland Rules.

79. Contesting the aforesaid stand taken by the respondent-State, the appellant strongly urged that such an interpretation of the Wetland Rules had been taken by the previous Government of Rajasthan as a matter of policy which had decided not to notify Mansagar Lake as a wetland keeping in mind the Master Plan of Jaipur since 1976. As per the Master Plan, the Vijay Mahal Area approximately 200 acres (including the entire 100 acres leased to the appellant) was to be urbanized and developed for tourism purposes. Therefore, as per the contention of the appellant, this area naturally could not have been identified as wetland. In the alternative, it was submitted that even otherwise the 100 acres leased was not part of the Lake

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Bed and, therefore, the question of identifying the leased 100 acres land as a wetland is out of the ambit and scope of the question involved.

80. In regard to the plea pertaining to the Master Plan of Jaipur, it was submitted that the Master Plan has statutory force and since the Master Plan itself has identified this area to be urbanized , the question of it being declared as a wetland does not arise. In fact, the Master Plan consistently from 1976 onwards has provided that approximately more than 200 acres of land is available for the development of tourism facilities on the southern and western sides of the Mansagar Lake. In view of these aspects, learned counsel for the appellant urged that the Mansagar Lake is not a wetland under the Wetland Rules 2010 and 100 acres leased land was not a part of the Lake Bed and, therefore, the leased land of 100 acres is not a wetland under the Wetland Rules 2010. As already stated hereinbefore, it was urged that the Wetland Rules 2010 are not retrospective in nature since the Lease Deed was executed in the year 2005 and the wetland rules framed

thereunder and enacted only five years later in 2010 when implementation of the Project had already started.

81. In so far as the plea taken by the PIL petitioner/respondent herein regarding reduction of the Mansagar Lake area in order to carve out 100 acres of land is concerned, it was explained by relying upon the historical background of the matter that Maharaja Man Singh of Amer who ruled from the year 1589 to 1614, constructed the Mansagar Dam much earlier than Jaipur was founded. The Mansagar Lake was created by damming Darbhawati River on the north side of the Khilangarh fortress. The purpose of the lake was to create a water body that would cater to the irrigation needs and ground water recharge of the area. It was urged that the Mansagar Lake is a man-made water body and its beauty, therefore, is not a natural one but the creation of man. Elaborating on this part, it was submitted that certain undisputed facts established that 100m RL is the Amer Road level. At 99m RL is the full tank level and this has been admitted by the PIL petitioner K.P. Sharma in his writ petition before the High Court and 98.12m RL is the

plinth level of Jal Mahal Monument as enumerated in the Detailed Projects Report (DPR for short). It was submitted that admittedly one of the primary objects of the Project was to restore Jal Mahal Monument. Thus water level had to be maintained at a level that ensured plinth/ground floor of the monument and is not submerged and further weakened. It was submitted that the Master Plan of Jaipur 1976 establishes that approximately 200 acres of land located in Vijay Mahal (including the 100 acres land leased to the appellant) was to be developed for tourism purposes. Thus, obviously, the 100 acres land leased to the appellant pre-existed the execution of the Lease Deed dated 22.11.2005 and was available much before the Project was undertaken.

82. It was further contended on behalf of the appellant that the hydrological modeling undertaken by the Project Development Corporation of Rajasthan (PDCOR) in Detailed Project Report (DPR) scientifically determined a sustainable water level. The DPR explored the following water level scenarios finally chose a water level of 98m RL. The water level scenarios examined scientifically reported

that water could not be maintained at 100m RL because at this level in the monsoons water can flood the neighbouring areas that are densely populated since at this level water would be at Amer Road level. Consequently, the Jal Mahal Monument would be nearly wholly submerged. It was added that technically supplying so much quantity of water all the year around was not possible.

83. It was further contended that the water could not be maintained at 99m RL because at this level lake spread and volume is difficult to maintain through out the year this being a technical matter. Consequently, the lower floor of Jal Mahal Monument would be submerged having only terrace and first floor for re-use. Thus the appellant submitted that 98m RL being the next lowest water level after 99m RL was considered ideal for maintaining water level. It was argued that most important thing if water level were to be fixed at 99m RL i.e. full tank level then also there would have been more than 100 acres of land available to lease, yet the appellant was granted only 100 acres.

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84. Learned counsel for the appellant further elaborated on this by relying upon Detailed Project Report (DPR) and urged that as a matter of fact the DPR found that the lake at present is an approximately 130 hectares in its full spread. However, *"at first, a much smaller natural shallow lagoon existed, on the edge of which, the Jal Mahal structure was located. Thus, originally the spread of the lake was much smaller than at present. The spread of the lake has increased and the depth decreased in recent times mainly due to the silt deposits as a result of erosion."*

85. It was contended that neither the respondents/PIL petitioners have challenged the correctness of the DPR nor its scientific basis. Thus it is not open to them to advance arguments that indirectly seek to question the DPR. It was submitted that the respondents are bound by the report of the DPR entirely and wholly.

86. The appellant further referred to the arguments advanced by the learned Attorney General on behalf of the State of Rajasthan and submitted that the approach of the High Court was wrong as it proceeded on an erroneous basis that the Lake Bed was manipulated to make the

project viable while there was no such manipulation. The Attorney General has further argued that the DPR was correct and the decision to maintain water level at 98m RL was a conscious, well informed and deliberated decision taken to protect the integrity of the monument. The counsel for the appellant, therefore, submitted that since the water level was determined scientifically and much before the appellant came into the picture rather was not even born in regard to this dispute, the question of its tampering with the lake so as to reduce the size of the lake does not arise and, therefore, the finding of the High Court on this aspect is contrary to the DPR and hence deserves to be set aside.

87. In regard to the question pertaining to general conditions in Environment Impact Assessment 2006 (EIA), it was submitted on behalf of the appellant that even according to the respondents- Ministry of Environment and Forests (MoEF) is the appropriate authority with jurisdiction to decide on the environment impact of the project in the present case. The MoEF being the author of EIA 2006 has construed its own notification (EIA 2006) to mean that

general conditions do not apply to Item 8 (a) and 8 (b) projects. Adding further on this it was contended that it ought to be clarified that the need to issue OM dated 24.5.2011 was felt because OM dated 28.4.2011 in broad terms provided that category B projects that fell within 10 KM of notified critically polluted areas would be treated as category A and general condition would be applicable to such projects. MoEF in order to clarify OM dated 28.4.2011 issued OM dated 24.5.2011 that expressly provided that the projects falling under Items 8 (a) and/or 8 (b) do not attract general condition even if such projects fell within critically polluted areas. It was urged on behalf of the appellant that it has received environment clearance from SEIAA dated 29.4.2010. This clearance is in terms of EIA 2006 and is, therefore, valid. It was added further that as the general conditions do not apply to the present project, as made clear by MoEF in its affidavit and also by OM dated 24.5.2011, the appellant did not require clearance from MoEF. Therefore, the impugned judgment of the High Court ought to be reversed on this aspect as it failed to appreciate these

crucial facts. It was still further submitted on this that even otherwise on an interpretation of EIA 2006, it becomes apparent that MoEF has consciously decided not to stipulate general condition in column 5 against Item 8 (a and 8 (b) because EIA 2006 has issued originally and till date does not stipulate general condition against Item 8 (a) and 8 (b) in the Schedule, while it does so with respect to a number of other items in the Schedule. It was added that MoEF vide notification dated 1.12.2009 had carried out wide ranging amendments to the Schedule in EIA 2006 and in doing so general condition had been stipulated/inserted for the first time against certain items. However, while doing so, the MoEF has not stipulated the general condition against the Item 8 (a) or 8 (b). It is, therefore, evident that MoEF consciously as a policy decision has chosen not to stipulate general conditions against Item 8 (a) or 8 (b). Further paragraphs 4 (iii) of EIA 2006 provides activities included as category B in the Schedule which require prior environment clearance from SEIAA except those that fulfil general condition stipulated in the Schedule. It was,

therefore, submitted that since general condition is not applicable to Item 8 (a) and 8 (b) projects irrespective of the location of such project, therefore, the contention of the PIL petitioners/respondents and the finding of the High Court that since the project is within 10 Km of the Nahargarh Sanctuary ought to be declared as illegal without substance which is liable to be rejected.

88. The learned Attorney General Mr. Vahanvati on behalf of the State of Rajasthan had also argued that the finding of the High Court on this aspect is entirely incorrect as the environment clearance from MoFF is not required for this project as the general conditions specified in EIA 2006 did not apply to this project. Therefore, neither general nor specific conditions apply to Item 8 to the Schedule and hence environment clearance given by SEIAA is legal and valid.

89. The PIL petitioner/respondents had also contended that the Rajasthan Municipalities (Disposal of Urban Land) Rules 1974 (for short '1974 rules') have been violated since Jaipur Municipal Corporation while allotting land to RTDC has violated certain norms and that the premium was not

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charged from RTDC for the land allotted to it and secondly without any General House Resolution allotment of land was made to RTDC. On this aspect it was submitted on behalf of the appellant that both the contentions are misplaced for the reason that under 18 (2) and the proviso to 1974 Rules, the State Government can exempt the payment of cost of land being allotted by Jaipur Municipal Corporation to any government department. In the present case, the Government decision dated 9.2.2004 makes it clear that RTDC shall not have to pay any cost of land to the land owning agencies including Jaipur Municipal Corporation as the whole intent of this allotment in favour of RTDC was to only facilitate the project of the Government. As a matter of fact, Jaipur Municipal Corporation through its General House Meeting dated 28.4.2004 was attended by at least 58 of its members who resolved to allot the said land to RTDC in order to implement the project. Thus, it is more than apparent that the Government had exempted charge of any kind from RTDC for the transfer/allotment of land to which a furthermore

RTDC through a transparent and well considered resolution comprising of is members resolved to allot this land to RTDC. Thus the contention of the respondent that the 1974 rules have been violated is wholly unsustainable and finding of the High Court on this aspect therefore needs to be reversed and set aside.

90. It was still further contended that the Jaipur Development Authority Act 1982 was not violated in any manner and the appellant submitted that rule 18 of the Rajasthan Improvement Trust (Disposal of Urban Land) Rules, 1974 enabled JDA to allot land without any adding cost of the land if the State Government exempts any department of the government from paying cost of the land. In the present case, the Government of Rajasthan vide its meeting dated 16.9.2003 had noted that the JDA had issued orders for transfer of land to RTDC. The object of a gazette notification under Section 54 (3) is to keep matters in the public domain but not to affect 3rd party rights since the land is merely being transferred from a subordinate state instrumentality to the Sovereign State itself. Thus, there is

no project cost in view of non-gazetting of the decision of the Government under Section 54 (3). Reference to official gazette under Section 54 (3) must be read as directory and not mandatory and the provision has been specifically complied with.

91. It was further submitted on behalf of the appellant that admittedly development of tourism in Jaipur on the southern and western side of Mansagar Lake has been an avowed object of the Jaipur Master Plan 1976, 2011 and 2025. Thus the project is in alignment with the Master Plan. Jaipur Master Plan is a statutory document under Section 21 of the JDA Act 1982. Section 26 mandates that once the Master Plan is in force and JDA must take action for implementing the plan as may be necessary. Thus, it is statutorily incumbent on the JDA to implement the Master Plan *inter alia* which enables development of tourism in the given area. Undisputedly approximately 43 acres in the 100 acres leased was vested in the JDA and transfer to it for the purpose of developing the tourism project in the area designated in the Master Plan referred to above.

Therefore, the land allotted by JDA to RTDC was also for implementation of JDAs Master Plan. Therefore, it cannot be disputed that the present project is a tourism project. Thus, there was ample authority with the JDA to allot land to RTDC under the JDA Act 1982 particularly section 54 (1) for implementing its master plan. Cumulatively, it was submitted that the JDA under Section 54 (1) has the power to allot land vested in it for the purposes of the JDA 1982 subject to rules by the Government of Rajasthan. It was submitted that obviously allotment of land to implement the Master Plan of the JDA Act 1982, Rule 18 gives Government of Rajasthan power to exempt State Department from paying cost of the land when land from the JDA is allotted. Exemption by the Government of Rajasthan in favour of RTDC acting on behalf of Department of Tourism as an agent from paying cost of the land is traceable to power vested under Rule 18 read with Government of Rajasthan decision dated 9.2.2004. Hence for all these reasons, non-gazetting under Section 54 (3) was not a requirement.

92. Contesting the argument raised by the PIL petitioner/respondent that the State Government has changed the rules of the tender so as to favour the petitioner company in awarding the contract is not borne out by the record that has been produced before this Court in the form of various collegiate, transparent meetings that have been presided over by the highest functionaries in the State Government, *inter -alia* including the Chief Secretary, the Principal Secretary and various Head or statutory authorities who participated in these meetings . On a perusal of the pre-qualification evaluation report dated 6.10.2003 which was prepared by the Project Development Corporation of Rajasthan (PDCOR), a joint venture between the Rajasthan State Government and IL & FS, it is clear beyond any doubt that the threshold qualification criteria required to be satisfied by the appellant KDG Enterprises (the lead Member of KGK Consortium) stood more than adequately made out when KGK Enterprises satisfied the technical requirement and the financial requirements required under the request for proposal. It is pertinent to

point out that KGK Enterprises satisfied the substantive provision of the pre-qualification violation criteria (namely the technical and financial capabilities). In other words, the technical and financial bids were yet to be opened and the criteria that was satisfied by KGK Enterprises was only threshold preliminary criteria at the pre-qualification evaluation stage. A further perusal of this report makes it apparent that PDCOR has observed that the tender submitted by KGK Consortium through KGK Enterprises, the lead bidder was a partnership firm, therefore, the argument of the respondent that there was concealment with respect to material fact does not stand and is for this reason unsustainable.

93. PDCOR as a part of its evaluation report and other correspondence recommended that apart from the other two bidders who had satisfied the pre-qualification evaluation criteria, even KGK Consortium should be permitted for being considered and the technical evaluation phase as KGK Consortium satisfied the substantive conditions at the pre-qualification evaluation stage. PDCOR in its recommendation further opined that condition of KGK enterprises at the subsequent stage would promote

competition amongst the bidders and, therefore, be in public interest. The intent of the RFP according to the PDCOR was never to exclude any bona fide legal entity that may consider putting its bid subject to it satisfying the other threshold criteria as already stated hereinbefore.

94. It is pertinent to mention again that the above recommendations were transparent, bona fide and were put for approval before the Government of Rajasthan for considering the recommendations of PDCOR. The Government of Rajasthan after due deliberation permitted KGK Enterprises to be considered for technical evaluation.

95. Another important feature of the tender process was that after the financial bids were opened only KGK Consortium was found to be the highest bidder by 39%, the matter was considered by the Empowered Committee on Infrastructure Development (ECID for short) meeting held on 9.2.2004 headed by the Chief Secretary with other senior government functionaries attending . In the said ECID meeting on perusing the entire tender process decided to award the project to the highest bidder being the KGK Consortium. Thereafter, these recommendations of the ECID were put up for the approval of the then Chief Minister who unreservedly endorsed the decision of the ECID dated 9.2.2004.

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96. Thereafter, on 30.9.2004, the Government of Rajasthan issued a letter of intent to KGK Enterprises (lead Member of KGK Consortium) for award of the project. The final decision in the decision making process that culminated in the execution of the lease and license agreement was taken by the Chief Minister on 27.10.2005 whereby it was approved that the execution of the lease and license agreements be entered into by the State Government with the highest bidder M/s. Jal Mahal Resorts Pvt. Ltd. a Special Purpose Vehicle Company of KGK Consortium.

97. It was, therefore, submitted that on a perusal of this detailed decision making process undertaken by the Government of Rajasthan during the regime of successive Chief Minister after which the government contested the PIL petitioner before the High Court as also before this Court through the Attorney General, there is no doubt that the decision taken to approve the project and execution of Lease Deed was a bona fide decision for the general and overall betterment of the project meeting the

area around the Jal Mahal and, therefore, no fault can be found in regard to the decision even if certain procedural relaxations were granted for approving the project. In sum and substance, it was submitted that in so far as the relaxation granted in concerned, the action of the State Government was bona fide approved by the previous and subsequent government of Rajasthan which was bona fide and cannot be called unfair or illegal in any manner.

98. In support of the submission, the learned counsel for the appellant has cited several authorities of this Court *inter alia* being ***BSN Joshi & Sons*** vs. ***Nair Coal Services Ltd.*** **& Ors.** (2006) 11 SCC 548 and the relevant portion at 571 para 66 (v) and (vii) states as follows:

> "(v) when a decision is taken by the appropriate authority upon due consideration of the tender document submitted by all the tenderers on their own merits and if it is ultimately found that successful bidders had in fact substantially complied with the purport and object for which essential conditions were laid down, the same may not ordinarily be interfered with;

(vii) where a decision has been taken purely on public interest, the court ordinarily should exercise judicial restraint."

Similarly reliance was also placed in ***Poddar Steel Corporation*** vs. ***Ganesh Engineering Works* & Ors.** (1991) 3 SCC 273 wherein this Court held that as a matter of general proposition it cannot be held that an authority inviting tenders is bound to give effect to every term mentioned in the notice in meticulous detail, it is not entitled to waive even a technical irregularity of little or no significance. Thus, it was held that minor technical irregularity and deviation from non-essential or ancillary/subsidiary requirement can be waived and the Government would be justified in waiving technical compliance with a tender condition.

99. The thrust of the aforesaid case law cited is to reinforce the submission that when there is substantial compliance of the terms of tender , the government is entitled to waive any non-essential term in the tender for the bona fide reasons and in public interest. In any case, since the project in terms of the RFP had to be executed through a SPV and the appellant being as such SPV, then the vehement insistence by the respondent that the lead member must be a company is not a violation of a

substantial condition of the tender. In conclusion therefore it had to be held that there was no mala fide in the decision making process and the finding given by the High Court is perverse and cannot be sustained and deserves to be set aside.

100. On perusal of the background and other materials on record, it could be noticed that the genesis of restoration and conservation of Mansagar Lake goes back to 1984 whereby the efforts of the State from 1984 onwards have been directed towards restoring and developing the largest water body in Jaipur (that was lying disused the sewage, filth, stench and effluent) into an attractive public interest destination with a pleasing environmental ambience for attracting tourists from all over the world.

The figures and conclusions in the impugned order itself indicate the enormous difficulty and repetitive failures of the State Government to either implement the restoration itself or to get any private entity to do so over a period of approx. 20 years from 1984 to year 2003. Indeed, the attempts

immediately preceding the present tender from year 2000 to 2002 have also admittedly failed.

Had the figures found in the impugned order or the conclusion of the impugned order that the Project proposal constituted a squandering of State largesse had been correct, applicants would have been falling over themselves to bid for the Project not only in the present tender but also in the preceding unsuccessful attempts. Even in the present case, despite the attendance of as many as 20 major participants (including corporate names like Oberoi, Taj, Ansal, Neemrama to mention a few) who admittedly attended the pre-bid meeting, no one except the SLP petitioner/appellant and three other ultimately came forward. Obviously, the proposal was ex-facie not an attractive one for potential investors, and the inescapable conclusion is that all attempts to restore the Lake and develop the area as a tourism hub had failed when the SLP Petitioner/appellant was nowhere in the picture.

101. We have further taken note of the reasons for the clear reluctance of potential investors which have been stated as follows:

> The pre-existing state of the entire area of approx. 310 acres of Lake and more than 100 acres of land seemed physically irreparable which has been demonstrated by the photographs submitted [V/X]. There was no water body; the so called Lake consisted of an empty large hollow filled with sewerage stench, filth and huge sedimentation; two major nallas of the city were emptying all their sewerage and effluents in to the lake; the monument was completely dilapidated, over growth of shrubbery, and not visited by any one for decades; the nearby land was barren, filled with mud and dirt and therefore not in use.

The impugned order further appears to have ignored that the whole structure of the tender was conceptually different and had been thus in all previous attempts failed as (i) it sought huge investment by the successful bidder to restore the entire area which, at conservative estimates, would cost approx. Rs. 100 crores (in the year 2003), and now with the gross delay occasioned by the PIL Petitioner, involves an investment (approx.) Rs. 500 crores. (ii)

No commercial exploitation either of the monument or of the lake was involved and indeed was not permitted. (iii)

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Approximately 10.5 out of 14 acres would be utilized for a walk-way around the Lake involving no commercial return. (iv) The successful bidder would pay the State Government/RTDC Rs. 2.52 crores per year which would be escalated by 10% every 3 years, which, if calculated in the 99th year of the lease would amount to Rs. 27 crores approx, and if calculated in the 50th year of the lease would amount to Rs. 12 crores approx. (v) The accommodation/resort could only be constructed within a FAR of 0.1362. Relevantly, the normal FAR permitted is 2 while the FAR permitted for the SLP Petitioner's Project is only 0.1362. (vi) No structure in the entire project could exceed the height of 9 meters and also could not exceed more than a total of two floors viz. ground and first. (vii) Almost 12 acres of land would be devoted to a handicrafts village showcasing the cultural heritage of Rajasthan where the commercial return to the bidder would be only in the form of lease rent, and the sales occurring due to footfalls would accrue to the sub-lessee who sells the craft and not to the SLP Petitioner. (viii) The project has along gestation period not only in terms

of restoration and development costs but also construction of infrastructure, and the footfalls would increase only over time after the Project has fully established its credentials. (ix) In a nutshell, therefore, huge investments-sure, certain and un-avoidable were front ended; possible returns-unsure and uncertain were back ended. (x) All the forgoing admitted points have been completely ignored in the impugned order, or not noticed or cursorily mentioned and not decided, and in any event not given adequate probative weight. (xi)

Equally ignored has been the very raison-d-etre of the Project actuated by the fundamental object by the State Government to restore heritage site and to create a sustainable and pleasing environmental ambience. The lease rent model, increasing as time goes on had always been the consistent approach of the State since 1999 when restoration was first envisaged. It is inconceivable that this model could be created to assist or benefit the bidder like the SLP Petitioner who came in to the picture for the first time only in year 2003.

102. Learned Attorney General had submitted that it is an axiomatic legal principle that revenue maximization cannot and need not be the sole or even the predominant object of a State initiative. Indeed, revenue maximization as the sole object is frequently antithetical to public interest projects involving long gestation periods, a history of disuse and failure, reluctant bidders, certain and unavoidable front ended investments and highly uncertain back ended gains. As a matter of law, also as matter of business reality and commercial efficacy, it is universally recognized that even direct invitation to potential investors/bidders without any bid or auction at all is a fully valid manner of creating infrastructure where non-existed, especially in nascent areas and new areas projects. In respect of this submission reliance has been placed on (i) Natural Resources Allocation (2012) 10 SCC 1 @87 pr. 119, 120-CLC 1/153-244 @ 206; (ii) Sachidanand Pandey V. State ofWest Bengal (1987) 2 SCC 295 @ 314 p. 19, @ 264 pr. 35, @ 266 pr. 39, @ 266-67 pr. 40-41, 43; (ii) M.P. Oil Extraction vs. State of M.P. (1997) 7 SCC 592 @ 612-613 pr 45- CLC 1/271-285 @ 284; (iv) Kasturi

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Lal Lakshmi Reddy v. State of Jammu Kashmir (1980 4 SCC 1 @ 13 pr. 14 – CLC 1/286-300 @ 294].

103. In fact, we have noted that there was not one but repeated attempts at tendering which had failed. While the earlier attempts failed, the present tender open to the whole world, shrunk from 20 parties to9 parties and then to only 4 parties at the time of submission of bids (whereby the SLP petitioner succeeded on merits). If the project value correctly involved 4 and 5 crore figures mentioned in the impugned order, it is inconceivable and inexplicable as to how and why neither the 20 nor the 9 nor the 3 ultimate bidders apart from the SLP Petitioner offered a maximum figure of Rs. 2.52 crores only. The bidding process was open and transparent considering tourism development.

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104. We have taken note of the factual submission that the reserve figure of lease rental expected by the State had been fixed at Rs. 1 crore in the RFP [Vol 3/551 @ CL 3.2]. This was not merely an adhoc magical figure plucked out from the air but arrived at after repeated transparent

evaluation by expert committees and proclaimed openly to the whole world. There is not even an allegation of surreptitious or ex-parte dealing at the stage of conceiving and designing the tender or stipulating its multiple parameters. This minimum rent had been determined with the objective of providing a rate of return of 20-22% per annum from the Project to the private sector developer. Such a rate of return was considered a reasonable return for a long term capital asset which at the end of the lease would have no terminal value for the developer, as it would require to be transferred back to RTDC who is acting on behalf of R2 [PDCOR-R6 WS in HC(B pr 6). Thus, it is evident that sufficient economic diligence were used before issuing the RFP and subsequently accepting KGK Consortium's highest financial bid. In conclusion, therefore, it had to be held that there was no mala fide in the decision making process and the finding given by the High Court, cannot be sustained and hence deserves to be set aside.

105. On a careful analysis of the submissions of the contesting parties in the light of the materials referred to

before the High Court as also this Court, we further cannot overlook the historical background and the sequence of events which led to the culmination of the project for which a lease deed was executed on 22.11.2005 and 5 to 6 years thereafter the respondents herein filed three public interest litigations which clearly fails the test of utmost good faith. It needs to be recollected from the sequence of events and the historical background related herein before that the Jal Mahal Tourism Infrastructure Project was conceived and approval was given by the Standing Committee on Infrastructure Development (for short 'SCID') for the first time in its third meeting held on 21.12.1999. Resolution had been filed in which it was stated that at that point of time Jaipur Municipal Corporation must own the project. Hence bids were initially 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 were therefore scrapped and JDA was made the sponsoring department for the lake side development component in the meeting of Board of Infrastructural Development and

Investment Promotion (BIDI) held on 23.08.2002 and 3.9.2002. After approval, an expenditure sanction was granted by the MoEF, for the Lake Restoration Component but MoEF had clearly granted approval to the lake side development component of Mansagar Lake. It is no doubt urged on behalf of the respondent–PIL petitioner and taken note of by the High Court that the National Lake Conservation Plan did not contemplate any commercial venture upon the lake to be restored under the plan. But it cannot be overlooked that the State Government had full authority to carve out a plan for development of lake and the lake area considering the fact that way back in 1962 the lake glory as a pristine water body lasted only until the former rulers had their control over the city and unpleasant history of lake began when the new administration of Jaipur diverted walled city sewage in 1962 through two main waste water drains namely Brahmapuri and Nagtalai. It is borne out from the factual history of the lake that most notorious aquatic weed water hyacinth entered into lake in 1975 and the water fall foul population started affecting the

resident and migratory species. It is in this background that the Government of Rajasthan submitted project for restoration of Mansagar Lake to the Central Government. Thereafter, Jal Mahal Tourism Infrastructure was conceived and approved by the Standing Committee on Infrastructure Development in its meeting held on 21.12.1999 and initially Jaipur Municipal Corporation was to own the project. The bids were invited in the year without identification of the land to be used and without studies with regard to the Environment Impact Assessment. Hence, the bid process was scrapped and the Jaipur Development Authority was made sponsoring department for the lake side development component in the meeting of Board of Infrastructure Development and Investment Promotion (for short 'BIDI) held on 23.8.2002 and 3.9.2002. Hence the Project Development Corporation of Rajasthan (for short 'PDCOR') got a detailed project report prepared which contemplated the following components:

(1) Restoration of Mansagar Lake;
(2) Restoration and re-use of Jal Mahal Monument;

(3) Development of Tourism/Recreational components
at the lake precincts.

106. Thereafter, in the meeting of BIDI held on 9.08.2003, 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 'RTDC') vide order dated 6.9.2003. The last date for submission of deed was 5.9.2003. The petitioner on the other hand and also the Attorney General clarified that the need to issue office memorandum dated 24.5.2011 was felt because OM dated 28.4.2011 in broad terms provided that category B projects that fell within 10 KM of notified critically polluted areas would be treated as category A and general condition would be applicable to such projects. MoEF in order to clarify OM dated 28.4.2011 issued OM dated 24.5.2011 that expressly provided that the projects falling under Items 8 (a) and/or 8 (b) do not attract general condition.

107. On an analysis of the aforesaid aspects, it is clear that the project that was conceived, deliberated and given effect to emerged from the status of the land adjoining the lake area which had a history behind it and in view of the garbage, filth stench on the area, decision had been taken to develop the two project site.

108. We have further taken note of the arguments advanced by the Ld. Attorney General who had submitted that the High Court has not taken into account the steps that were taken in the project since 1998 onwards. The Ld. Attorney General representing the State had relied on a comprehensive list of dates beginning from 1984 onwards discussed hereinbefore to show the step by step decision taken before the project was awarded to the KGK Consortium including the Jaipur Master Plan of 2011.

109. It may further be noted that the argument advanced by the counsel for the respondent PIL Petitioner that 100 acres land lease to the petitioner was part of the lakebed, does not get supported from the revenue entries placed on record or any other material which makes it clear

and establishes that only 13 bighas 17 biswas is classified as *'gairmumkin talab'* (lakebed) being khasra No. 67 /317 which would be approximately 8.65 acres. However, the balance land that is 100 acres less 8.65 acres is in fact recorded as 'Banjar' in the revenue record and not lakebed. We find sufficient substance in the plea that this Court in the past have placed reliance on revenue entries to determine the nature of land from which it follows that based on the revenue entries, no other khasra of land forming part of 100 acres of land leased to the petitioner is lakebed. It may further be noted that as per the petitioners/appellants 14.15 acres of land is 'banjar' and not lakebed whereas according to the PIL petitioner it is a lakebed/wetland which is contrary to the revenue record.

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110. From the version and counter version of the counsel for the parties, it is obvious that although the PIL petitioners had challenged the 100 acre land as lakebed so as to assail that the same could not have been a part of the lease area, the fact remains that the entire emphasis is only in regard to the land comprising 14.15 acres equivalent to

22 bighas and 10 biswas and another chunk comprising 8.65 acres equivalent to 13 bighas and 17 biswas. The counsel for the appellant-lessee submitted that if the revenue record for 13 bighas 17 biswas equivalent to 8.65 acres noted as '*gairmumkin talab*' lakebed bearing khasra No. 67/317 is relied upon by the Court, then further revenue entries classifying 14.15 acres of land recorded as barren land/banjar also should be accepted, adopting the view taken in the matter of **Okhla Bird Sanctuary case** (Supra) that revenue entries are fit to be relied upon in order to determine the nature and character of the land.

111. However, we are of the view that in order to avoid this controversy in regard to these two chunks of lands as to whether the same form parts of the lakebed or not, it would be just and appropriate to slash this part of the land from the lease hold area as per clause 18.4 of the lease deed itself implying that these two areas shall not form part of the lease hold area so as to be given out on lease to the petitioner/appellant. In view of this 13 bigas and 17 biswas of land equivalent to 8.65 acres which has been classified as

'*gairmumkin talab*'/ bearing khasra no. 67/317 shall not be treated as a part of the lease hold area and the same shall be within the control and domain of the Government of Rajasthan which will be free to reconvert this area into the lake area.

112. In so far as 14.15 acres of land recorded as barren land/banjar is concerned, we are pleased to hold that this area shall be treated as a construction free zone and neither party i.e. the State of Rajasthan nor the lessee/appellant herein shall be permitted to raise any construction thereon. We are informed that this area is being used as a public promenade (walk way) for the use of the public which shall be allowed to continue.

113. In so far as the balance area of land pertaining to the lease deed is concerned, we are pleased to hold that the respondents/PIL petitioners have not been able to lead any iota of evidence or material to prove that this area was at all or at any point of time lakebed or wetland. This fact is further proved from the historical background of this litigation as it is the case of the appellant/lessee/ the PIL

petitioner which gets reinforced from the record and the detailed project report of the PDCOR indicating that the efforts were being made to develop this land way back from 1984 and in the year 1999 as already noted hereinbefore reflected from the minutes of the third meeting held on 21.12.1999, the Standing Committee on Infrastructure Development (SCID) agreed that the Jaipur Municipal Corporation must own the project to develop this land and the bids were invited in the year 2000-01 with regard to the development of the land. However, the same was scrapped and the JDA was made the sponsoring department for the lake side development component in the meeting of the board of infrastructure development and investment promotion held on 23.8.2002 and 3.9.2002.

114. From the aforesaid history, it gets factually established that this land in any view was available for development atleast way back from 21.12.1999 and no question was ever raised that this was not available for infrastructural development. In fact, we have further noted that in the three Master Plans of Jaipur, 200 acres of land

were shown for infrastructural development for tourism purpose and out of that 100 acres was made a part of the lease deed after extensive research conducted by the Project Development Corporation of Rajasthan which got detailed project report prepared way back in 2001 when the petitioner/appellant was not even in the picture so as to develop the land. Even if the Ministry of Environment and Forest of the Central Government did not accept the position that it had given clearance for this project, the fact remains that the land was lying within the domain of the State Government due to which it had full administrative discretion to take a decision in regard to development of the land and it is not that it was done in a huff or hurry without deliberation or study. In fact the Project Development Corporation (PDCOR) got the detailed project report prepared way back in 2001 and thereafter in 2003, steps for inviting tender were taken by the PIL petitioners. If at all the bonafide of the respondent/PIL petitioners were clear, they ought to have assailed the invitation of tender which finally got executed only in the year 2005.

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115. Thus, from the year 2001 when detailed project report was prepared, decision to award tender was taken, 'Expression of Interest' invitation of tender and bid was invited and accepted, the PIL petitioners never ever challenged these activities on the part of the State which was approved, accepted and continued by the successive Governments which were ruling in the State of Rajasthan. Thus, the submission of the counsel for the appellant that the PIL lacks bonafide and good faith cannot be brushed aside totally although the same has neither been a reason with the High Court nor with us to reject the petition as we have ignored the delay and also lack of bonafide on the part of the PIL petitioners/respondents herein and have examined the matter on merit taking note of every meticulous argument and counter argument advanced by the contesting parties.

116. From this, it is clear that although the Courts are expected very often to enter into the technical and administrative aspects of the matter, it has its own limitations and in consonance with the theory and principle

of separation of powers, reliance at least to some extent to the decisions of the State Authorities specially if it based on the opinion of the experts reflected from the project report prepared by the technocrats, accepted by the entire hierarchy of the State administration, acknowledged, accepted and approved by one Government after the other, will have to be given due credence and weightage. In spite of this if the Court chooses to overrule the correctness of such administrative decision and merits of the view of the entire body including the administrative, technical and financial experts by taking note of hair splitting submissions at the instance of a PIL petitioner without any evidence in support thereof, the PIL petitioners shall have to be put to strict proof and cannot be allowed to function as an extraordinary and extra judicial ombudsmen questioning the entire exercise undertaken by an extensive body which include administrators, technocrats and financial experts. In our considered view, this might lead to a friction if not collision among the three organs of the State and would affect the principle of governance ingrained in the theory of

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separation of powers. In fact, this Court in the matter of M.P. Oil Extraction v. State of M.P., (1997 7 SCC 592 at page 592) has unequivocally observed that the power of judicial review of the executive and legislative action must be kept within the bounds of constitutional scheme so that there may not be any occasion to entertain misgivings about the role of judiciary in outstepping its limit by unwarranted judicial activism being very often talked of in these days. The democratic, set-up to which polity is so deeply committed cannot function properly unless each of three organs appreciate the need for mutual respect and supremacy in their respective fields.

117. However, we hasten to add and do not wish to be misunderstood so as to infer that howsoever gross or abusive may be an administrative action or a decision which is writ large on a particular activity at the instance of the State or any other authority connected with it, the Court should remain a passive, inactive and a silent spectator. What is sought to be emphasized is that there has to be a boundary line or the proverbial 'laxman rekha' while

examining the correctness of an administrative decision taken by the State or a Central Authority after due deliberation and diligence which do not reflect arbitrariness or illegality in its decision and execution. If such equilibrium in the matter of governance gets disturbed, development is bound to be slowed down and disturbed specially in an age of economic liberalization wherein global players are also involved as per policy decision.

118. In a matter of the instant nature, where the policy decision was taken way back from 1976 followed by Master Plans to develop a particular chunk of land by adopting the mode of private/public partnership method and a global tender was floated, obviously the private players were bound to participate specially in an age when private partnership is not an anathema. In that view of the matter when a particular policy decision was taken to develop a particular project supported by extensive research and study by the experts in the field who prepared the project report relying upon the three successive Master Plans of the city of Jaipur and the global tender was floated for development of land

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for tourism adjoining the lake area, entertaining PIL petition on the ground that the area in question is a wet land without substantiating the same in any manner, i.e. neither from the revenue record nor any other material, the perception of PIL Petitioners without factual basis cannot be allowed to prevail over the decision of the entire group of experts which was finally accepted by the State Government through the Project Development Report of a State Agency which got the detailed project report (DPR) prepared and nothing could be brought to the notice of the Court that the DPR was not fit to be relied upon or that it was prepared in a clandestine manner. In our considered view unless the Detailed Project Report, Master Plan of Jaipur, Revenue Record indicating the nature of land that the project was fraught with risk of environmental degradation which could establish with facts & figures that the decision is not in public interest, interference by the Court adopting an over all view smelling foul play at every level of administration is bound to make the governance an impossibility. Therefore, the courts although would be justified in questioning a particular

decision if illegality or arbitrariness is writ large on a particular venture, excessive probe or restraint on the activity of a State is bound to derail execution of an administrative decision even though the same might be in pursuance of a policy decision supported by other cogent materials like survey and search by the reliable Expert Agency of a State after which the State Project or private and public partnership project is sought to be given effect to.

119. At this juncture, we take note of two overriding considerations which combined, narrow the scope of review. The first is that of deference to the views of administrative experts and the other we take assistance from the words of Chief Justice Neely who expressed as follows:

> "I have very few illusions about my own limitations as a judge and from those limitations I generalise to the inherent limitations of all appellate courts reviewing rare cases."

The learned Chief Justice further observed as follows:

> "I am not an accountant, electrical engineer, financier, banker, stock broker, or systems management analyst. It is the height of folly to expect judges intelligently to review a5000 page

record addressing the intricacies of public utility operation.

It is not the function of a judge to act as a super board, or with the zeal of a pedantic schoolmaster substituting its judgment for that of the administrator. The result is a theory of review that limits the extent to which the discretion of the expert may be scrutinized by the non-expert judge. It was suggested that the alternative for the court is to desist itself from interference on technical matters, where all the advantages of expertise lie with the agencies. If the court were to review fully the decision of an expert body such as State Board of Medical Examiners, 'it would find itself wandering amid the maze of therapeutics or boggling at the mysteries of the pharmacopoeia'."

120. Bearing the aforesaid aspects in mind, we are prone to infer that the disputed area of the lease deed borne out from the revenue record is clearly confined to14.15 acres plus 8.65 acres and the balance area of the lease deed could not have been interfered with so as to set aside the entire project.

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121. However, we have noted that the period of the lease deed had been finally fixed as 99 years which in our view could not have been done by the State Government as that clearly converts the lease deed into a perpetual lease.

In fact we have noted that when the tender was floated for granting the lease deed, the maximum period for the lease deed as per the Rule could not have been more than 30 years yet the tender was floated for a period of 60 years which was later extended to 99 years. This in our view could not have been done by the State Government as one can infer even at a glance that the same being contrary to the rules, could not have granted it for a period of 99 years.

122. We, therefore, set aside the period of lease which has been granted in favour of the appellant for a period of 99 years and the same shall stand reduced to a period of 30 years only which could be the maximum period of the lease for the land under the rules which should start ordinarily from the date of its execution so as to expire on or before the period of 30 years. But we are conscious of the fact that much time has lapsed after execution of the lease deed in 2005 due to which only Phase-I of the project could start after which it got stuck and the project is in a state of limbo due to delay on account of the litigation started at the

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behest of the respondent/PIL petitioners who questioned the validity of the lease deed executed and finally succeeded in getting it set aside. We are, therefore, of the view that the lease deed which could not be made effective in view of the intervening litigation due to which the Project got delayed, it is legally just and appropriate to direct that the period of 30 years of the lease shall now be counted from the date of this judgment and order.

123. We are further of the view that on or after expiry of 30 years to be counted from the date of this judgment and order, if for any reason whatsoever the lease deed is not renewed in favour of the lessee/appellant or the appellant chooses not to seek its renewal, the appellant shall be adequately compensated for the property and structure which stands developed at the instance of the appellant during the period when the lease subsisted in its favour. Subsequently, however, as to what would be the adequate period of lease to be granted in favour of the existing or a new lessee obviously would be determined by the State

Government at the relevant time but in so far as the instant lease deed is concerned, the existing period of 99 years shall stand decreased to 30 years to be counted from the date of judgment and order of this Court.

124. Thus the lease deed although was executed for a period of 99 years shall pursuant to this decision, run for a period of 30 years which shall commence from the date of this judgment and order and may be extended by the State Government for such other period as may be considered legally viable based on the rules and regulations at the relevant period. We further add in the interest of justice, that after expiry of 30 years of lease period and in case the lease deed is not renewed in favour of the appellant, the State Government shall compensate the appellants at the market value of the project including compensation for the loss of business and profit. It is clarified that in the event of any dispute arising with respect to quantum of compensation, it may be resolved by availing the remedy of arbitration mechanism provided in the lease deed.

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125. We are informed that the first phase of the Project has been completed since February, 2011. It is therefore directed that the completion certificate and the lease agreement for the first phase be issued expeditiously but not later than a period of 30 days from the date of receipt of this order. Accordingly, the State Government shall issue the restoration completion certificate for Phase I to enable the Project alongwith the Jal Mahal Monument as per the Lease Deed, to open for entry and visit of the members of the public. Upon issuance of the phase–I certificate, the project developer/lessee/appellant shall be allowed to undertake the construction as per the approved plan in terms of the lease deed.

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126. We further hold that the area of 8.65 acres equivalent to 13 bighas and 17 biswas shall not form part of the lease hold area as already stated hereinabove and the same shall stand re-transferred to the Government of Rajasthan which shall be recarved and added to the lake area and the same shall be maintained by the competent

authorities of the State. However, the area of 14.15 acres equivalent to 22 bighas and 17 biswas although shall be notionally treated as part of the lease deed, the said area shall be treated as a construction free zone which will be allowed to be used as a walkway/ the public promenade free of any charge at the instance of the lessor and the lessee. Remaining portion of the land forming part of the lease deed shall remain intact to be used by the appellant as per the terms and conditions of the lease deed already executed. However by way of abundant caution, we clarify that Mansagar Lake Restoration Project if undertaken by the State or the Ministry of Environment, the same shall not get affected by virtue of the lease deed in any manner.

127. It is further held that since the land which is a part of the lease hold area barring 2 chunks viz. 8.65 acres equivalent to 13 Bighas 17 Biswas of land and 14.15 acres of land approximately 22 Bighas 10 Biswas, in all 35 bighas and 27 biswas equivalent to 22.80 acres, the Wetland Rules of 2010 shall not apply to the project since environment clearance had already been issued under PIA 2006 prior to

commencement of the project. In any view the lease hold area barring the land equivalent to 35 bighas and 27 biswas having not been held as wetland or lakebed as per the revenue record as also the fact that it was available for development way back from 1982 which gets established from the various Master Plans of Jaipur and the historical background referred to hereinbefore, no dispute relating to application of the Wetland Rules 2010 shall be allowed to be raised hereinafter with retrospective effect in regard to the lease hold area of the land which has been granted for development of the project and could not be proved to be wetland barring 22.80 acres equivalent to 35 bighas and 17 biswas. It is further clear by now that the project comprising the lease hold land is not in conflict with the development of lake area or Jal Mahal monument so as to raise issues or concern regarding the lake area or environment degradation as restoration and maintenance of Jal Mahal cannot possibly disturb the monument or lead to environmental degradation. In any view, the dispute being confined to the lease hold area for development of the project which we have now

resolved, we direct that the appellant/lessee shall be entitled to re-start the project forthwith subject to what we have recorded hereinbefore.

128. The judgment and order of the High Court thus stands quashed and set aside to the extent by which the lease deed has been cancelled except an area of 13 bighas 17 biswas equivalent to 8.65 acres and the balance disputed area claimed to be lake bed comprising 14.15 acres shall be notionally treated as part of the lease deed but the same shall remain a construction free zone where neither the State Government of Rajasthan nor the appellant-lessee/Jal Mahal Resorts Pvt. Ltd. shall have the right to raise any construction on this area as the same shall remain exclusively for the use of public promenade / walkway free of charge.

129. In view of the analysis made hereinbefore, these appeals stand partly allowed to the extent indicated hereinabove but in the circumstance, the parties are directed to bear their own costs.

……………………………….J.
(GYAN SUDHA MISRA)

……………………………….J.
(PINAKI CHANDRA GHOSE)

New Delhi;
April 25, 2014

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