

Supreme Court, Division Bench

Honorable Justice Om Prakash Mishra

Honorable Justice Sapana Pradhan Malla

Order

Date of Order: 2075/1/16 (corresponding to 29 April, 2018)

071-WO-1034

Sub: Certiorari/Mandamus

Petitioner: Advocate Bhagawati Pahari et.al., Kaski District, Pokhara Sub-metropolitan City, Ward No. 6

Vs.

Respondent: Office of the Prime Minister and Council of Ministers, Singha Durbar, Kathmandu et.al.

- According to the concept of **Eminent Domain** and on the grounds of the existing legal framework grants the State the authority to acquire private property for public interest by providing appropriate compensation. However, if such authority is exercised to use public property for the personal benefit of a private company or an individual, such an act shall be regarded as a **colorable exercise of power**.

(Para 13)

- The fundamental rights guaranteed by the Constitution are enshrined not merely to enhance the appeal of the Constitution, but to protect the interests of citizens; accordingly, it is the duty of the State to ensure an environment in which citizens can exercise these rights with ease.
- Living in a polluted environment inevitably has adverse effects on an individual's health; accordingly, the right to live in a pollution-free environment is inherently linked with the right to life. The guarantee of such a right necessarily requires the environment to be clean, and the preservation of forests, lakes, ponds, rivers, clean air and water, and ecological balance is indispensable to ensure such cleanliness. As the guardian of citizens' interests, and in accordance with the doctrine of *parens patriae*, the State bears the duty to protect and safeguard the rights and interests of the public.

(Para 16)

On behalf of the Petitioner: Learned Senior Advocate Mr. Raghav Lal Vaidya and Mr. Prakashmani Sharma and Advocate Mr. Khagendra Subedi, Mr.

Raju Prasad Chapagain, Mr. Chudamani Paudel and Mr. Bhagawati Pahari

On behalf of the Respondent: Learned Deputy Attorney General Mr. Kiran Paudel, Learned Advocate Mr. Narendra Prasad Gautam

Precedents Cited:

Relevant Laws:

Order

Honorable Justice Om Prakash Mishra: In accordance with Article 32 and Article 107 (2) of the Interim Constitution of Nepal, 2063, the brief facts and order pertaining to the writ petition filed and submitted before this Court are as follows:

Contents of the Writ Petition:

Kantipur Daily on 2071/12/18 (1 April, 2015) under the headline “*Cable Car above Fewa Lake*” had published that an agreement between the Ministry of Physical Infrastructure and Transport and Manakamana Darshan Pvt. Ltd., had been reached wherein Doppelmayr Seilbahnen Austria and Chitwan Co. Nepal Pvt. Ltd., in a joint venture were to operate a cable car from Basundhara Park, located at Ward No. 6, Baidam, Lakeside, Pokhara Sub-Metropolitan City, Kaski District, Gandaki Zone, up to the Buddhist Peace Stupa, and also to construct other physical infrastructures within Basundhara Park in the name of development, granting the use of Basundhara Park for 20 years. After the publication of this news, the attention of local residents as well as various organizations associated with tourism has been drawn. We, the representatives of stakeholder organizations, convened a meeting on 2071/12/21 (4 April, 2015) and, upon discussion, concluded that the proposed cable car project in the Basundhara Park area was environmentally against the public interest. Since operating such a project from the Basundhara Park area would also have adverse effects on the environment, a citizens’ level “Basundhara Park Conservation Committee” was formed to take necessary initiatives to prevent the operation of the project from that location. Accordingly, we formally corresponded with the relevant government offices on various dates, requesting necessary steps to ensure that the project not be operated from Basundhara Park. Since no initiative has been taken so far to stop the said activity, and instead Manakamana Darshan Pvt. Ltd. has even started soil testing on Ashadh 11 (June 25, 2014) to move the project forward, I, the petitioner, Advocate Bhagwati Pahari, also serving as the Secretary of the Basundhara Park Conservation Committee, have been compelled to seek justice before this honorable court.

There exists an interdependent relationship between the environment and human life. A clean and healthy environment is indispensable not only for human livelihood but also for the very existence of human life. The natural resources gifted to humankind by nature should not be used solely for the benefit of the present generation; rather, their proper utilization must be ensured so that future

generations too can enjoy them. Safeguarding this right is a constitutional and legal obligation of the government. On 2037/03/28 (corresponding to 11 July, 1980), a meeting chaired by the then Gandaki Zonal Commissioner decided to acquire the land located in Ward No. 6, Baidam, Pokhara Sub-Metropolitan City, Kaski District having the following boundaries, Firké Khola to the east, Hima Griha to the west, pitch road to the north, and Fewa Lake to the south as part of the Fewa Dam area, and to place the land under the Department of Irrigation. With the support of the Department of Irrigation, the Department of Tourism, and the Town Planning Office, the plan was to develop a well-managed greenbelt park in that area with the aim of contributing to tourism development, conserving Fewa Lake, and enhancing the beauty of Pokhara. Accordingly, as per the decision dated 2038/07/04 (corresponding to 20 October, 1981) the land was acquired. The primary objective of acquiring the land at Basundhara Park was to construct a greenbelt park for the conservation of Fewa Lake. At present, one section of the park has been developed into a children's park, where both domestic and foreign tourists, as well as local residents, come to enjoy the fresh air and relax in the park. Acquisition of these parks, have served as a foundation for the conservation of Fewa Lake. Fewa Lake has now gained recognition not only as a national treasure but also as an international tourist destination. However, private projects of this nature along the shores of Fewa Lake risk polluting and contaminating the lake, causing siltation due to erosion, and ultimately leading to the potential disappearance of the lake in the future. The land of Raniban was acquired specifically for the conservation of Fewa Lake. With the concept of developing a greenbelt park to preserve the beauty of Fewa Lake, the land of Basundhara Park was acquired. However, the proposed construction of a cable car and other physical infrastructures right along the lakeshore contrary to the original purpose will inevitably have long-term impacts. A standard prohibiting any construction within 65 meters of the Fewa Lake shoreline has been set. Majority of Basundhara Park falls within this standard zone. Therefore, the proposed project is contrary to the established standards.

The Raniban area, located on the opposite side of Fewa Lake in Ward No. 1 formerly Pumdibhumdi V.D.C., currently Ward No. 25 of Pokhara Metropolitan City, was also land acquired from local residents. Raniban is a forest area with moist soil, extending east to west and sloping towards Fewa Lake. After its acquisition, it was preserved as government forest and gradually developed into dense woodland. Collecting withered leaves is prohibited in this forest. As a result of such protection, Raniban stands as a thriving expanse of lush and dense green forest. This forest is currently protected under the Ministry of Forests and Soil Conservation, Department of Plant Resources, as the World Peace Biodiversity Park, with the aim of conserving and promoting biodiversity and the natural environment while contributing to tourism development. The forest serves to protect plants, wildlife, and the natural environment, supports international and domestic tourism, facilitates the study and research of biodiversity, and provides a nature- and environment-friendly recreational space for local and foreign visitors. Constructing six cable car towers over a distance of 1.3 kilometers in this well conserved area would necessitate felling trees in a forest safeguarded for decades. In Raniban, one of the most beautiful forests of Kaski District, building the cable car from the top station to the bottom station would involve creating tower

foundations of 20 square meters each, which would lead to extensive deforestation of the long-preserved. The World Peace Biodiversity Park, operating within Raniban, is the only Biodiversity Park in the Western Region. Owing to its wind and water conditions, this area is highly suitable for the conservation of both local and non-local plant species. This area provides a particularly suitable environment for orchid (*Sunakhari*), a medicinal plant that is rare even globally. All species of the orchid family are listed under CITES. Constructing robust foundations for cable car towers in a location where such rare plants grow, and transporting construction materials such as stones, gravel, sand, cement, and iron, could lead to the destruction of these rare plant species.

To have Fewa Lake inscribed in the World Heritage List, international standards require a 100-meter buffer zone from the lakeshore. However, JICA Nepal submitted a report proposing a 65-meter standard. The 15th meeting of the Kaski District Development Committee, held on 2064/02/24 (corresponding to 7 June, 2007) decided to maintain a 65-meter lakeshore standard, planning the development of inclusion of Fewa Lake in the World Heritage List while ensuring the protection of its surrounding environment. Since the proposed project by the respondents may threaten the integrity of the lake area, which qualifies for listing in the World Heritage, it is imperative to prevent the project from proceeding.

The Valley Urban Development Committee, established for the beautification of Pokhara, is tasked with ensuring that public properties in Pokhara are used in accordance with the law. Considering the long-term future of Fewa Lake, and for its conservation, the then Urban Planning Implementation Committee decided to acquire the lands of Basundhara Park and Komagane Park along the lakeshore under the Fewa Lake Watershed Conservation Project. These lands were converted into thick, verdant forest through systematic and extensive tree plantation and subsequently handed over to the Pokhara Valley Urban Development Committee to ensure their protection. It is unfortunate that on 2069/03/27 (corresponding to 11 July, 2012), the respondents, rather than fulfilling their responsibilities in protecting the park, which has been developed into a greenbelt through dense tree plantation, neglected its conservation and provided theoretical approval to the Ministry of Physical Infrastructure and Transport to construct a cable car, thereby endangering the conservation, management, and beauty of Fewa Lake. In response to the increasing encroachment and pollution of Fewa Lake, and to ensure its protection, the Government of Nepal issued the Fewa Lake Conservation Directive, 2051. The Directive clearly states that any land acquired must be used solely for the purpose for which it was obtained. Contrary to this, the respondents have planned to place the bottom foundation of a cable car along the lakeshore and to lease out the land of Basundhara Park for various construction activities, as part of a master plan agreement, thereby violating the intended purpose of the land.

Based on the respondents' theoretical approval from the Valley Urban Development Committee dated 2069/03/27 (11 July, 2012), the respondents, on 2071/12/17 (31 March, 2015), entered into a master plan agreement with the Ministry of Physical Infrastructure and Transport and Mankamana Darshan Pvt. Ltd. for the cable car project. Under this agreement, the entire plot of

Basundhara Park, plot no. 4, Ward No. 6, Pokhara Sub-Metropolitan City, Kaski District, measuring 54,937.10 sq. m, was leased out. The master plan allows for the construction of the cable car along with various facilities including a bus park, car park, swimming pool, changing rooms, guard rooms, restaurant, tea garden, and potentially other future constructions. The respondents' proposed project is inappropriate for this site, as it would result in extensive and lasting environmental damage and goes against the public interest. Since the Ministry of Physical Infrastructure and Transport and Manakamana Darshan Pvt. Ltd. have entered into an agreement for the Detailed Project Report of the Pokhara Cable Car, and with the project poised to proceed, the respondents' action would undermine and violate the petitioners' right to live in a clean and healthy environment guaranteed by the Interim Constitution of Nepal.

The petitioners requested opinions from the relevant government authorities regarding the potential impact of the respondents' actions on Basundhara Park and Raniban. In response, the District Soil Conservation Office, Kaski, on 2073/03/06 (corresponding to 20 June, 2016), stated that since the area includes wetlands, the construction in the proposed area could increase the risk of landslides, disturb the World Peace Biodiversity Park, and negatively affect the habitat of aquatic and terrestrial birds. The office further noted that such construction could cause irreparable damage to the lake, surrounding landscapes, and natural beauty, thereby impacting tourism. Accordingly, it recommended exploring alternative locations for the cable car project. Similarly, the District Forest Office, Kaski, in its opinion dated 2072/02/10 (24 May, 2015) provided its opinion to Manakamana Marg Ranipokhari Project, wherein the office stated that most of the proposed sites for the cable car and amusement park fell within the under-construction World Peace Biodiversity Park and that development in these areas would have significant adverse impacts. The office further recommended that the project should only proceed after fully complying with all procedures and regulations established by the Government of Nepal for the use of forest land for other purposes. Similarly, the World Peace Biodiversity Park, Kaski contactOffice, Pokhara, in its opinion dated 2072/03/13 (28 June, 2015) to Manakamana Darshan Pvt. Ltd., stated that based on the on-site evaluation of the proposed area for the cable car, the towers and the 10/10meter zones on either side would lead to the destruction of natural plant resources, potentially causing a decline in biodiversity and opined that the area within Raniban is not suitable for construction. The letters and opinions received from the relevant government authorities clearly indicate that the respondents' decision was arbitrary, irresponsible, and unlawful.

Despite there being many alternative sites for a cable car in Pokhara, the respondents' focus on public land appears to be driven solely by the intent to seize Basundhara Park. When the Ministry of Physical Infrastructure and Transport provides such local land for the project, disregarding national interest and the greater welfare of the people, and acting against the purpose of land acquisition for private gain, it undermines the very concept of a greenbelt. This would lead to increased pollution in Fewa Lake and violate our right to live in a clean and healthy environment. The Pokhara Valley Urban Development Committee, without conducting any assessment of the

potential impacts of the project, gave theoretical approval on 2069/03/27 (corresponding to 11 July, 2012) to the Ministry of Physical Infrastructure and Transport to allocate 54,937.10 sq. m. of Basundhara Park land. Furthermore, the Memorandum of Understanding for the Detailed Project Report of the Pokhara Cable Car, signed by and between the Ministry and Manakamana Darshan Pvt. Ltd. on 2071/12/17 (corresponding to 31 March, 2015), is arbitrary, unlawful, and contrary to the public interest.

In violation of the law, and the illegal Memorandum of Understanding for the Detailed Project Report of the Pokhara Cable Car, signed between the Ministry and Manakamana Darshan Pvt. Ltd. on 2071/12/17 (corresponding to 31 March, 2015), the decision of the Pokhara Valley Urban Development Committee on 2069/03/27 (corresponding to 11 July, 2012) to grant theoretical approval to the Ministry of Physical Infrastructure and Transport for the allocation of 54,937.10 sq. m. of Basundhara Park land, contravenes Article 26 of the Interim Constitution of Nepal, 2063, Section 68 of the Forest Act, 2049, Section 7 of the Environment Protection Act, 2053, and Section 34 of the Land Acquisition Act, 2034, wherein the petitioner requests the honorable court to declare the approvals and agreement null and void through an order of certiorari and also requests the court to issue an order of mandamus directing the respondents to preserve the land acquired for establishing a greenbelt for the protection of Fewa Lake, and prohibit any construction within Basundhara Park, prevent any felling of trees in Raniban, which houses the World Peace Biodiversity Park operated by the Department of Plant Resources under the Ministry of Forests and Soil Conservation, and prohibit any construction in this area, prohibit any activities that could affect Fewa Lake, including the proposed cable car route over the Talbarahi Temple, as such construction would compromise both the temple's sanctity and the natural beauty of the lake, which has strong potential for World Heritage listing, protect the Raniban area, which serves as habitat for many protected plant species, wildlife, birds, and butterflies, some of which are listed in international documents as threatened, and prevent industrial activities that may endanger these species and owing to its environmental, scientific, and cultural significance, should pursuant to Section 23 of the Forest Act, 2049, be declared protected forest.

Show Cause Notice Issued by this Court:

Provided, there is exists any reasons or ground as to why the order sought by the petitioners should not be issued, the respondents are hereby directed to submit a rejoinder within 15 days from the date of receipt of this order, excluding the period of travel. It is hereby ordered to provide a copy of this order and the petition and to issue summon in the names of the respondents with the case file to be submitted upon receipt of the rejoinder or upon the expiry of the prescribed limitation period. With regard to the interim order as sought by the petitioner, this Bench deems it appropriate to consider the matter in the presence of both parties should be provided to the respondents along with the notice of the deadline. With regard to the interim order as sought by the petitioner, this Bench deems it appropriate to consider the matter in the presence of both parties. Accordingly, a 10 (ten) days period has been provided for hearing on the interim order and the parties are hereby directed to be informed and to submit the case file accordingly.

Order to Attach Case Files

An order was issued by this court to attach the writ petitions numbered 071-WO-1063, 067-WO-0694, 067-WO-1241, 069-WO-1434, 071-WO-0052, and 070-WO-0081 to the case files. It was further directed that the case files, along with the decisions of the Government of Nepal regarding this matter, be obtained through the Office of the Attorney General, and that the case be presented on 2072/04/17 (corresponding to) for discussion concerning the interim order.

Rejoinder Submitted by Ministry of Forest and Soil Conservation:

This Ministry has not undertaken any action that would disturb the environmental balance of Pokhara or adversely affect matters of public concern. The mandate of this Ministry and its subordinate bodies relates to the conservation of biodiversity, maintenance of the environment, and preservation of ecological balance, and all activities are being carried out in accordance with this mandate. Since no action or decision by this Ministry has adversely affected the petitioners, there is no basis to claim that any of their legal or constitutional rights regarding public interest or concern have been violated. Furthermore, the writ petition fails to clearly specify any such alleged violation. Therefore, the writ petition, which names this Ministry as a respondent, should be dismissed.

Summary of Rejoinder Submitted by Department of Plant Resources:

This Department has not undertaken any action that would disturb the environmental balance of Pokhara or adversely affect matters of public concern. The mandate of this Department and its subordinate bodies relates to the conservation of biodiversity and the maintenance of environmental and ecological balance, and all activities are being carried out in accordance with this mandate. Since no action or decision by this Department has adversely affected the petitioners, the writ petition naming this Department as a respondent should be dismissed.

Summary of the Rejoinder Submitted by Pokhara Valley Urban Development Committee:

The Office of the then Urban Planning Implementation Committee acquired land along the shore of Fewa Lake in Pokhara-6, Baidam, in 2038 B.S. to establish a greenbelt for lake conservation. The land, obtained through negotiations with private owners, lies within the following four boundaries: Firke Khola to the east, Himagriha to the west, the main road leading north toward Baidam, and Fewa Lake to the south. Since the road from Baidam to the opposite side of Fewa Lake cuts across the area leading to Fishtail Lodge, the western portion of this land is locally known as Basundhara Park, while the eastern portion is known as Komagane Park. The Pokhara Sub-Metropolitan City requested land to establish a park named after Komagane City in Japan, with which it has a sister-city relationship. Accordingly, the land was made available in 2055 B.S. for the creation of Komagane Park. The argument presented in the writ petition that installing poles in Raniban to carry a cable car from Basundhara Park to the World Peace Stupa would cause soil erosion, fill the lake, and drive away deer is entirely overstated and rather implausible. Since the

cable car poles will be installed in a planned and permanent manner, soil generated during construction must not be allowed to enter the lake. About 15–16 years ago, when the motorable road from Baidam Khahare to Pame was constructed along the lakeside, the respondents did not raise any objections to the requirement that the road should maintain a safe distance of approximately 500 meters from the lake. However, about 5–6 years later, continuous rainfall for three days caused landslides along the section from Sedi Danda to Pame, resulting in 80–90 minor and major landslides. Many areas around Sedifant were washed away, causing the deaths of 2–3 people and injuries to several others. Fewa Lake has suffered its greatest siltation from the Khahare–Pame road. When the Pokhara–Baglung Highway was constructed in 2045 B.S., the water drainage was supposed to be directed toward Dhampus V.D.C.; however, due to various interests, it was diverted via Naudanda, causing soil erosion from the highway ultimately to flow into Fewa Lake. Given these major causes of siltation, it is unreasonable to claim that installing four cable car poles in Raniban would significantly fill the lake with soil. Pokhara is a tourist city, attracting most visitors who come to Nepal via Kathmandu. Tourists tend to stay longer in Pokhara, which generates additional economic activity, including hotel business, benefiting the local residents. The state is economically weak and cannot afford to develop a park with such a large investment. The land acquired in 2038 B.S. for lake conservation could not be developed into a park earlier due to financial constraints. Therefore, the writ petition filed by the respondents for constructing a cable car park according to the proposed plan should be dismissed.

Rejoinder Submitted by the Ministry of Science and Technology:

The Council of Ministers of the Government of Nepal, on 2068/04/11 (corresponding to 27 July, 2011), designated the Raniban area for the establishment and operation of the World Peace Biodiversity Park with the objectives of conserving and promoting natural resources, conducting research, and promoting tourism. Since the area is already being managed primarily for park purposes, there is no need to re-declare it as an environmental protection area. It is necessary to protect this area due to its geographical sensitivity, the preservation of Fewa Lake's beauty, the conservation of biodiversity, and to prevent landslides on the soft terrain. Accordingly, the use of this area solely for park purposes, as decided by the former Council of Ministers, appears appropriate. Since the subject matter claimed by the petitioners does not fall within the jurisdiction of this Ministry, and the petitioners have not demonstrated how any action or decision by this Ministry has violated their rights, the present writ petition should be quashed.

Rejoinder Submitted by Ministry of Tourism and Civil Aviation:

The petitioners have not specified which actions of this Ministry form the basis for naming it as a respondent. Since the Ministry has been included as a respondent without any stated grounds, the writ petition should be quashed.”

Rejoinder Submitted by Ministry of Physical Infrastructure and Transport:

Environmental impacts can be properly assessed only after a DPR study of the project. This Ministry has not undertaken any action contrary to the objectives, spirit, or intent of the environmental laws, regulations, or other prevailing Act and laws. Furthermore, the construction of the Pokhara Cable Car is expected to contribute to the beauty, development, and prosperity of Pokhara. Since the petition has named this Ministry as a respondent without justification, the writ petition is without merit and should be dismissed.

Rejoinder Submitted by Mankamana Darshan Pvt. Ltd.:

Under the law, the Government of Nepal may reject a project proposal if a DPR indicates that the project is not feasible. Since the DPR for the present project has not yet been completed, it is premature to determine the exact environmental impacts at this stage. For the development and prosperity of Pokhara, the decision to construct the Pokhara Cable Car has been made by the Government of Nepal, and the project has progressed through various phases since 2068 B.S. The writ petition appears to have been filed with the intent to obstruct or hinder the ongoing development and construction. As the petitioners' constitutional and legal rights have not been violated, the present writ petition should be dismissed.

Rejoinder Submitted by Office of the Prime Minister and Council of Ministers:

The writ petition should not have named this office as a respondent in connection with the agreement between the Ministry of Physical Infrastructure and Transport and Manakamana Darshan Pvt. Ltd. for the preparation of the DPR, as the agreement was made in the exercise of powers conferred by law. Accordingly, the writ petition filed against this office should be dismissed.

Decision

In accordance with the rules, the present writ petition was listed on the daily cause list and presented before the Bench. The entire case file and all accompanying documents were thoroughly examined. On behalf of the petitioners, the Learned Senior Advocates Mr. Raghav Lal Baidya and Mr. Prakashmani Sharma, along with Advocates Mr. Khagendra Subedi, Mr. Raju Prasad Chapagain, Mr. Chudamani Paudel, and Mr. Bhagwati Pahari, argued that pursuant to the Constitution and existing legal provisions and various international treaties to which Nepal is a Party, it is the duty and responsibility of the Government of Nepal to protect Fewa Lake, which holds significant economic, social, religious, cultural, touristic, and environmental value. The land of Basundhara Park along the shore of Fewa Lake was acquired in 2038 B.S. specifically for the purpose of creating a greenbelt to protect Fewa Lake. Currently, the land has been developed into a park and is being used as a green space, significantly contributing to the protection of the environment and biodiversity in the area. Similarly, the Raniban area, located on the opposite side of Fewa Lake, was acquired from private individuals with the objective of conserving biodiversity, and dense forests have been established there to support and promote biodiversity conservation.

The land that was acquired is currently being used in accordance with the purpose for which it was acquired. In this context, the decision of the Pokhara Valley Urban Development Committee on 2069/03/27 (corresponding to 11 July, 2012) to give in-principle approval to the Ministry of Physical Infrastructure and Transport for constructing a cable car at Basundhara Park, and the Memorandum of Understanding dated 2071/12/17 (corresponding to 31 March, 2015) between the Ministry and Manakamana Darshan Pvt. Ltd. for the Detailed Project Report of the Pokhara Cable Car, are contrary to the Constitution of Nepal, existing legal provisions, various international treaties to which Nepal is a Party, and precedents set by this court regarding biodiversity and environmental conservation. According to the said Agreement, provided, the cable car is constructed at that location, it will fail to protect Fewa Lake, destroy the existing biodiversity, and cause serious negative impacts on the environment of the area. Therefore, it was argued that the decision of the Pokhara Valley Urban Development Committee on 2069/03/27 (corresponding to 11 July, 2012) to give in-principle approval to the Ministry of Physical Infrastructure and Transport for constructing a cable car at Basundhara Park, and the Memorandum of Understanding dated 2071/12/17 (corresponding to 31 March, 2015) between the Ministry and Manakamana Darshan Pvt. Ltd., should be declared void through an order of certiorari and appropriate orders for the protection of Fewa Lake should be issued and a deliberation note containing the same content was also submitted.

On behalf of the respondent Office of the Prime Minister and Council of Ministers' and other government offices, the learned Deputy Attorney General, Mr. Kiran Paudel, submitted that the Pokhara Valley Urban Development Committee with the aim of promoting tourism gave theoretical approval to allocate Basundhara Park land for the operation of a cable car from Basundhara Park to the Buddha Stupa in Pokhara. Three companies had expressed interest in operating the cable car, and from among them, a Memorandum of Understanding was signed with Manakamana Darshan Pvt. Ltd. According to the MoU, various components of the project are still pending execution. It was argued that since the cable car has not yet been operated at the site, there is no basis to conclude that it would have any negative impact on Fewa Lake or the surrounding environment. Potential environmental impacts can only be properly assessed through an Environmental Impact Assessment, incorporating observations and inputs from the local community. As other stages of the project are still pending execution, and the writ petition was filed solely on the grounds that the Basundhara Park land was proposed to be allocated to others, the writ petition is premature and should be dismissed.

On behalf of the respondent Manakamana Darshan Pvt. Ltd., the learned Advocate Mr. Narendra Prasad Gautam argued in the absence of a Detailed Project Report (DPR) for the cable car project from Basundhara Park to the Buddha Stupa, it is not possible to determine what impact the project might have on the environment. Once the DPR is prepared and the Environmental Impact Assessment is conducted, and if it is determined that the project would have adverse environmental impacts, the Government retains the authority to cancel the project. Since the land of the park will remain in the name of the Government of Nepal and not in the name of the company constructing

the project, it cannot be transferred to the company. The Government of Nepal has approved the construction of the cable car for the development and prosperity of Pokhara, and after twenty years of operation by the applicant company, the entire cable car infrastructure will be handed over to the Government. Therefore, it is evident that both parties stand to benefit equally from the arrangement. It was submitted that, contrary to the petitioner's claim, the alleged work has not yet been undertaken. The construction of the cable car in Pokhara is expected to promote tourism and create local employment opportunities. Consequently, the writ petition should be dismissed. A deliberation note reflecting these submissions was also submitted.

Based on the facts and arguments presented above, the following questions need to be resolved:

- (a) What potential impacts might result from constructing the cable car at the bottom station at Basundhara Park and routing it through Raniban to the Buddha Stupa?
- (b) Can land acquired by the government for a specific purpose be repurposed for another use while it is still being utilized for its original intended purpose?
- (c) Should the decision of the Pokhara Valley Urban Development Committee to grant theoretical approval to the Ministry of Physical Infrastructure and Transport on 2069/03/27 (corresponding to), and the Memorandum of Understanding for the Detailed Project Report of the Pokhara Cable Car signed between the Ministry and Manakamana Darshan Pvt. Ltd. on 2071/12/17 (corresponding to), be nullified or not?
- (d) Should the order be granted as prayed or not?

Before addressing the above-mentioned questions, a brief review of the issues raised by the petitioners shows that the Pokhara Valley Urban Development Committee, on 2069/03/29 (corresponding to 13 July, 2012), granted in-principle approval to the Ministry of Physical Infrastructure and Transport to allocate 54,937.10 sq. m. of Basundhara Park land. Subsequently, a Memorandum of Understanding for the Detailed Project Report of the Pokhara Cable Car was signed on 2071/12/17 (corresponding to 31 March, 2015) between the Ministry and Manakamana Darshan Pvt. Ltd. for operating a cable car from Basundhara Park to the Buddha Shanti Stupa. These actions are contrary to the Constitution of Nepal, prevailing laws, international treaties to which Nepal is a Party, the principles established by this court, and the original purpose for which the park land was acquired. Accordingly, the writ petition has been filed as a matter of public concern, seeking annulment of the prior orders through an order of certiorari, and sought prohibition of any construction on the park land, and implementation of necessary measures for the protection of Fewa Lake.

2. Regarding the first question, it is essential to examine how the land of Basundhara Park and Raniban was acquired. For the development of tourism in Pokhara, the land along Fewa Lake was intended to be maintained as a green belt. Except for areas that were suitable for paddy cultivation but unsuitable for a park, all other land was to be acquired. The decision of the Pokhara Urban Planning Implementation Committee on 2037/03/28 (corresponding to 11 July,

1980) indicates that this area was acquired under the Department of Irrigation as part of a larger Fewa Lake park. With the coordinated efforts of the Department of Irrigation, the Department of Tourism, and Urban Planning, the land was to be systematically developed into a park to support tourism development. In accordance with the decision of the Committee on 2038/07/04 (corresponding to 20 October, 1981), the land within the four boundaries Firke Khola to the east, Hima Griha to the west, the main road to the north, and Fewa Lake to the south was acquired for lake conservation. According to the decision dated 2038/10/04 (corresponding to 20 October, 1981), as confirmed by the letter from Pokhara Valley Urban Development Committee, Pokhara, Kaski, dated 2071/05/09 (corresponding to 25 August, 2014) compensation amount of NPR 4,340,000 (forty-three lakh forty thousand) was allocated for the land. When the Pokhara Valley Urban Development Committee submitted its rejoinder to this court, it acknowledged that the land along the shore of Phewa Lake was acquired to establish a green zone for lake conservation. It further stated that the land, which is crossed by the road from Baidam to Fishtail Lodge, is known as Basundhara Park on the west side and Komagane Park on the east side. Thus, based on the above-mentioned decision of the Pokhara Urban Planning Implementation Committee, the letter submitted by the Pokhara Valley Urban Development Committee, and the rejoinder presented before this court, it was established that the land where Basundhara Park currently exists was originally privately owned by local individuals and was later acquired in 2038 B.S. for lake conservation and the creation of a green zone. Similarly, the Raniban area, located across Phewa Lake in what was formerly Ward No. 1 of Pumdibhumdi V.D.C., Kaski District, and currently Ward No. 25 of Pokhara Metropolitan City, was also acquired from local individuals, as mentioned in the petition. It appears that none of the respondents have refuted this assertion made by the petitioner. Therefore, it is evident that the lands of Basundhara Park and the Raniban area were acquired from individuals and subsequently developed into a park and forest area.

3. According to the rejoinder submitted by the Pokhara Valley Urban Development Committee, the total area of Basundhara Park is 108 ropanis. Out of this, 8 ropani of land was allocated for the construction of structures, including a cable car, under an agreement dated 2071/12/17 (corresponding to 31 March, 2015) between the Ministry of Physical Infrastructure and Transport and Manakamana Darshan Pvt. Ltd. Pursuant to the agreement, the bottom station of the cable care is to situation at Basundhara Park, Pokhara, and the line shall extend across Phewa Lake, traversing the Raniban area, up to the Buddhist Pagoda (World Peace Pagoda). Basundhara Park appears to have been established with the purpose of conserving Phewa Lake through the creation of a designated green zone. In order to construct the bottom station of the cable car on 8 ropani of park land, the construction would entail the felling of trees in that area. Various species of birds are found in the Fewa Lake area of Pokhara, some of which are endangered species. (A detailed analysis of this matter has been made in Writ Petition No. 067-WO-0694.) It is beyond disputed that the forests and parks adjacent to the lake constitute the natural habitat of these birds. Thus, the felling of trees in the park and the construction of structures therein would have a direct impact on the habitat of the birds. Furthermore, the

excessive human presence in the area and the noise generated by various equipment would deter the birds from inhabiting the site. As Basundhara Park and Raniban are located along the lakeshore, the area constitutes a wetland, and it is indisputable that, in addition to birds, other wildlife also inhabits this region.

4. Studies and research have shown that wetlands, which also serve as habitats for birds, are being destroyed at a rapid pace worldwide, and due to increasing hunting, the population of certain species has drastically declined, leading them to the brink of extinction or complete disappearance from the earth. Recognizing the special importance of wetlands as habitats for such water-dependent birds, the *Convention on Wetlands of International Importance Especially as Waterfowl Habitat* was concluded in 1971 at Ramsar, Iran. Also known as the Ramsar Convention, Nepal became a signatory State in 1988, thereby placing an international obligation on the State to conserve wetland areas. A wetland situated within a densely populated area performs multiple ecological and societal functions: it filters pollutants, purifies water, regulates local microclimate, controls floods and landslides, and provides food and habitat for various species such as insects, fish, birds, frogs, snakes, and alligators. Additionally, it supports tourism, recreation, and serves as a suitable site for educational and scientific research. Consequently, the State has a duty to protect such wetlands
5. Constructing the cable car's bottom station in Basundhara Park and traversing it through Raniban up to the Buddhist Stupa would necessitate cutting down the trees in the park and forest. The removal of these trees would cause deforestation, and rainfall-induced soil erosion could deposit sediment into the lake, leading to its deterioration and infilling of the lake.. Likewise, the habitats of various species residing in these two areas would be destroyed, adversely affecting the conservation of biodiversity, a fact on which there can be no disagreement. With regard to the conservation of biological diversity, Nepal became a signatory State to the *Convention on Biological Diversity* in 1994. This Convention imposes obligations on signatory States, including adopting specific measures necessary for the conservation of biodiversity, establishing protected areas or systems of areas, formulating guidelines for conservation, and promoting the protection of natural habitats and ecosystems. However, constructing the cable car from the bottom station in Basundhara Park through Raniban to the Buddhist Stupa would necessitate cutting down trees, which would lead to a decline in biodiversity. Consequently, the State would not be able to fulfill its obligations under the *Convention on Biological Diversity*. After acquisition, the area known as Raniban was developed as a government forest. According to the rejoinder submitted by the Ministry of Science, Technology, and Environment, by decision of the Council of Ministers dated 2068/04/11 (corresponding to 27 July, 2011), the Raniban area has been declared the World Peace Biological Diversity Park with the objectives of conserving and promoting natural heritage, as well as supporting research and tourism.
6. Thus, the forest designated as a Biological Diversity Park and protected area qualifies as a national forest under the definition provided in Section 2(e) of the Forest Act, 2049. Section

49 of the same Act lists prohibited activities in national forests, which include, among others, (a) clearing, plowing, digging, or cultivating or constructing houses or huts thereon. Constructing foundations and carrying out excavation for a cable car in a long-conserved area would involve the removal of trees and soil disruption, thereby violating the provisions of the existing Forest Act. This demonstrates that, although the State has designated the area as a protected area, another branch of the State (the Ministry) has entered into an agreement with a private company to construct permanent physical structures, such as a cable car, in direct contradiction to the objectives of the protected area. Such action demonstrates a lack of policy coherence in the execution of State functions and an absence of necessary coordination among the concerned agencies.

7. Forests, water bodies, and biological diversity in any area play a crucial role in maintaining the environmental balance of that location. Pokhara is also known as the area receiving the highest rainfall in Nepal. However, if the forests and water resources here are destroyed, this defining characteristic and identification will be lost. Viewed in its entirety, constructing a cable car from the bottom station in Basundhara Park through the Raniban area to the Buddhist Stupa would result in a decline in biodiversity in Basundhara Park and Raniban, hinder the conservation of Fewa Lake, lead to the degradation of Raniban, and cause serious adverse impacts on the environmental system of the region.
8. With regard to the second question, as noted in aforementioned paragraphs, the lands of Basundhara Park and Raniban in Pokhara were acquired by the Government of Nepal from local individuals to conserve the lake and establish a green zone and develop a biological diversity park. The State has the authority to acquire private property for public use. This authority of the State is derived from the concept of Eminent Domain. The term originates from the Latin phrase '*Dominium Eminens*', which can be translated into English as 'Supreme Lordship'¹. The concept that the State may acquire an individual's private property for public interest has, at times, been subject to arbitrary use. In this context, the *Magna Carta* of 1215 provided a guarantee against the arbitrary seizure of an individual's property by the government². With regard to Eminent Domain, the eminent jurist Hugo Grotius stated: "*The property of subjects is under the eminent domain of the state; so that the state, or he who acts for it, may use, and even alienate and destroy such property... for ends of public utility, to which ends those who founded civil society must be supposed to have intended that private ends should give way. But it is to be added, that when it is done, the state is bound to make good the loss to those who lose their property.*"³ According to the aforementioned statement of Grotius, the State may exercise its right of Eminent Domain to acquire an individual's

¹ Eminent Domain in 21st Century India: What New Delhi Can Learn from New London, Downing, C. in New York University Journal of International Law and Policies; 46,1;207-252. The new york university school of law; 2013 (p.212).

² Magna Carta Art, xxix "No freeman shall be taken, or imprisoned, or be disseized of his freehold but by lawful judgment of his peers, or by the law of the land."

³ Hugo Grotius, De Jure Belli Pacis (1625) As Cited In Bevier's Law Dictionary And Concise Encyclopedia 1008 (8th Ed. 1914) Available at <https://archive.org/stream/bouviere/awdicti01bouv/bouviere/awdicti01bouv.djvu.txt>.

property for public purposes. However, when property is acquired in this manner, there is an obligation to act fairly toward the person whose property has been taken. In other words, the State is required to provide adequate compensation to the individual whose property is acquired. The protection of individual property rights, beginning with the *Magna Carta*, has also been recognized in several international human rights instruments, as well as in the constitutions and laws of various countries. In Nepal, property rights were first included in the *Constitution of the Kingdom of Nepal, 2015*, although the *Constitution of the Kingdom of Nepal, 2047 B.S.*, prohibited the acquisition of private property except for public purposes. This provision was continued under the Interim Constitution of Nepal, 2063, and the current Constitution of Nepal. Thus, under the concept of Eminent Domain, it is evident that the State may acquire an individual's property for public purposes.

9. Examining the legal framework concerning the acquisition of private property, at the time this writ petition was filed, *Article 19(2) of the Interim Constitution of Nepal, 2063 B.S.*, provided that: '*the State shall not except for public interest, acquire or appropriate the property of any individual, nor create any rights over such property in any other manner.*' This constitutional provision clearly prohibits the State from acquiring an individual's property for purposes other than public interest. Article 25 of the present Constitution of Nepal guarantees right to property. Article 25(2) states: '*the State shall not, except for public interest, requisition, acquire, or otherwise create any encumbrance on, property of a person*' and this provision provides continuity to the provision prescribed in the Interim Constitution, 2063. Thus, both the existing constitutional framework and the theoretical principles concerning property rights confirm that the State may acquire an individual's private property for public interest.
10. Regarding whether property acquired by the State can be used for purposes other than those for which it was acquired, it is evident from the foregoing that, although the State may acquire an individual's private property for public purposes, provided, the property is not used in accordance with the public purpose for which it was acquired, the prevailing principle is that the property should be returned to the original owner. However, property acquired by the State for one public purpose may be used for another public purpose. Sub-article (5) of Article 25 of the *Constitution of Nepal* provides that: "*nothing shall prevent the State from using the property of any person, which it has requisitioned for public interest, for any other public interest instead of such public interest.*" According to this constitutional provision, in the present context, land acquired for one public purpose may be utilized for another public purpose.
11. Similarly, Section 33 of the *Land Acquisition Act, 2034*, provides that land acquired for one purpose may be used for another purpose. Section 33 prescribes the following: "*Land acquired under this Act for the Government of Nepal or an institution fully owned by the Government of Nepal, if no longer required for the purpose for which it was acquired or if there is surplus land after using it for that purpose, may be used by the Government for any other public*

purpose, or by such institution for any of the purposes specified in Sub-section (1) of Section 4.” The aforementioned legal provisions also indicate that land acquired for a specific purpose may be used by the Government for another public purpose if it is no longer needed for the original purpose. Section 34 (1) of the same Act provides the following: *'if land acquired under this Act for a particular purpose is no longer required for that purpose or there is surplus land after using it for that purpose, and the Government of Nepal or an institution fully owned by the Government does not utilize it for another purpose under Section 33, such unused or surplus land shall be returned to the original owner.'* Accordingly, if the acquired land is not used for its intended purpose and the Government or an institution fully owned by the Government does not employ it for another purpose, the land must be returned to the concerned individual."

12. The record reflects that an agreement was entered into between Manakamana Darshan Pvt. Ltd. and the Ministry of Physical Infrastructure and Transport for the establishment of the bottom station of a cable car at Basundhara Park, located on the banks of Fewa Lake in Pokhara, and for its operation up to the Buddhist Stupa. There is no controversy that Manakamana Darshan Pvt. Ltd. is a private company incorporated with the objective of earning profit. It is further evident that the company has not denied that the proposed cable car project at Basundhara Park constitutes an investment undertaken with the objective of generating profit. The record indicates that the acquisition of land encompassing Basundhara Park and Raniban was not undertaken with the objective of transferring it to any private company, nor is there any evidence that a private company has paid compensation on account of such acquisition. On the contrary, it is evident that the land acquired in Basundhara Park and Raniban has, in accordance with the stated purpose of acquisition, continued to be utilized for the development of green spaces and the conservation of biodiversity. As matters stands, the establishment of a cable car station within the said area and the erection of pillars inside the forest would result in adverse impacts on the environment and a decline in biodiversity, thereby amounting to an act contrary to the very purpose for which the land was acquired. In addition, when property is acquired in the name of public interest, the benefits derived from its use must accrue to the general public. However, in the present case, the profits to be generated from the operation of the cable car proposed to be constructed by Manakamana Darshan Pvt. Ltd. would not be received by the general public or the Government, but rather by the company itself. Hence, it cannot be held that the concerned land is being utilized for a public purpose.
13. According to the concept of **Eminent Domain** and on the grounds of the existing legal framework grants the State the authority to acquire private property for public interest by providing appropriate compensation. However, if such authority is exercised to use public property for the personal benefit of a private company or an individual, such an act shall be regarded as a **colorable exercise of power**. With regards to colorable exercise, Justice

Krishna Iyer in *State of Punjab vs. Gurdial Singh*⁴ opined the following: “Pithily put, bad faith which invalidates the exercise of power- sometimes called colorable exercise or fraud on power and oftentimes overlaps motives, passions and satisfactions- is the attainment of ends beyond the sanctioned purpose of power by simulation or pretension of gaining a legitimate goal... When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested the court calls it a colorable exercise and is undeceived by illusion.” The essence of the above observation of Justice Krishna Iyer is that if a person vested with authority under law abuses such authority and, with a mala fide intent, acts beyond the purpose contemplated by law in order to secure some benefit, such conduct amounts to a fraudulent exercise of power.

14. Upon perusal of the present writ petition, it is noted that the land adjacent to the lake, presently constituting Basundhara Park, was acquired as private property for the express purpose of maintaining it as a green belt, while the Raniban area was acquired with the objective of establishing a biodiversity park for the benefit of the public. The development and management of Basundhara Park and Raniban have, accordingly, been undertaken in consonance with the purposes for which the respective lands were acquired. In light of the fact that the objectives of acquisition are being fulfilled, and that Nepal has assumed obligations under various international treaties and conventions, it is manifest that any utilization of the said park and forest in a manner that would result in their destruction, and thereby extinguish the habitats of the resident flora and fauna, would constitute an exercise of authority entirely contrary to the purpose of acquisition. Such action, therefore, cannot be sanctioned under the existing laws of Nepal.
15. Now, with regard to the third issue, it is observed that, following the 129th meeting of the Pokhara Valley Urban Development Committee held on 2069/03/27 (corresponding to), in which the Ministry of Physical Infrastructure and Transport was accorded in-principle approval to establish a bottom station at Basundhara Park, situated on the banks of Fewa Lake in Pokhara, and to operate a cable car from there up to the Buddhist Stupa, a Memorandum of Understanding for the Detailed Project Report of the Pokhara Cable Car was subsequently executed on 2071/12/17 (corresponding to 31 March, 2015) between the Ministry of Physical Infrastructure and Transport and Manakamana Darshan Pvt. Ltd.
16. Article 16 of the *Constitution of Nepal* guarantees every person the right to live with dignity. The right to live with dignity, as enshrined in the Constitution, does not merely entail physical survival. It inherently includes the right to livelihood, the right to health, and the right to live in a pollution-free environment. Further, in the present context, Article 30 of the *Constitution of Nepal* explicitly guarantees every citizen the distinct right to live in a clean and healthy environment. The fundamental rights guaranteed by the Constitution are enshrined not merely

⁴ 1980 AIR 319 P.321

to enhance the appeal of the Constitution, but to protect the interests of citizens; accordingly, it is the duty of the State to ensure an environment in which citizens can exercise these rights with ease. Living in a polluted environment inevitably has adverse effects on an individual's health; accordingly, the right to live in a pollution-free environment is inherently linked with the right to life. The guarantee of such a right necessarily requires the environment to be clean, and the preservation of forests, lakes, ponds, rivers, clean air and water, and ecological balance is indispensable to ensure such cleanliness. As the guardian of citizens' interests and in accordance with the doctrine of *parens patriae*, the State bears the duty to protect and safeguard the rights and interests of the public.

17. Pursuant to the aforementioned agreement, it appears that the construction of the cable car would necessitate the erection of pillars within the Raniban area. Section 68 of the *Forest Act, 2049*, stipulates that, notwithstanding anything contained elsewhere in the Act, the Government of Nepal may, in the absence of any alternative means, authorize the use of any portion of government-managed forests, protected forests, community forests, leasehold forests, or religious forests for the implementation of a nationally prioritized project, provided that such implementation does not cause significant adverse impacts on the environment. The aforementioned provision permits the use of forest land for the implementation of a nationally prioritized project only as a last resort and solely where such use does not result in significant adverse impacts on the environment. The proposed project to establish a cable car in Basundhara Park, extending up to the Shanti Stupa, is neither a nationally prioritized project nor a government initiative. Furthermore, it is not demonstrated, even by the respondents, that there exists no alternative to using the park and forest area for the construction of the cable car. Further, Raniban has been declared the World Peace Biodiversity Park, and given the geographical sensitivity of the area, the need to protect the aesthetic beauty of Fewa Lake, the conservation of biodiversity, and the prevention of landslides in the fragile terrain, it is evident that any change in land use, without utilizing the park for its intended purpose, could adversely affect the park's objectives, its intrinsic character, and its aesthetic value, as well as disrupt environmental balance. This is affirmed by the rejoinder of the Ministry of Science, Technology, and Environment. Raniban has long been a protected national forest and is home to globally rare endemic and endangered species of birds, butterflies, and rare flora including orchids (*Shunakhari*). Therefore, the felling of trees and the installation of cable car pillars in this area would undoubtedly have an adverse impact on its biodiversity.
18. Basundhara Park and the Raniban area also constitute a wetland. Visitors come to Pokhara to enjoy the panoramic view of the *Machhapuchhre* (Fishtail) mountain reflected in Fewa Lake. The complete view of *Machhapuchhre*'s reflection and the lake can be fully appreciated only from Basundhara Park. The sound of birds residing in Raniban, located on the opposite side, further enhances the charm of this experience. The erection of cable car structures in the park would obstruct such scenic observation, and the noise from cable car machinery and the crowd

of people would disturb the resident birds and butterflies, likely causing them to abandon the area.

19. Furthermore, the proposed cable car route from Basundhara Park to the Buddhist Stupa traverses above the Tal Barahi Temple. This Tal Barahi Temple possesses its own historical significance and serves as a symbol of faith for adherents of Hinduism. Article 26 of the *Constitution of Nepal* guarantees every citizen the freedom to follow, practice, and preserve the religion of their choice. Operation of the cable car over the Tal Barahi Temple would, therefore, adversely affect the faith of millions of devotees, resulting in an infringement of the right to religious freedom of Hindus.
20. Accordingly, in view of the in-principle approval granted by the 129th meeting of the Pokhara Valley Urban Development Committee on 2069/03/27 (corresponding to 11 July, 2012) to the Ministry of Physical Infrastructure and Transport for the operation of a cable car from Basundhara Park to the Buddhist Stupa, and the Memorandum of Understanding for the Detailed Project Report of the Pokhara Cable Car executed on 2071/12/17 (corresponding to 31 March, 2015) between the Ministry and Manakamana Darshan Pvt. Ltd., it is evident that the proposed arrangement contravenes the obligations under Articles 26 and 30 of the *Constitution of Nepal*, Sections 33 and 34 of the *Land Acquisition Act, 2034*, Section 68 of the *Forest Act, 2049*, and various international treaties to which Nepal is a Party. Consequently, it is apparent that the said agreement cannot be allowed to remain in force.
21. Accordingly, for the reasons set forth above, the in-principle approval granted by the 129th meeting of the Pokhara Valley Urban Development Committee on 2069/03/27 (corresponding to 11 July, 2012) to the Ministry of Physical Infrastructure and Transport, as well as the Memorandum of Understanding for the Detailed Project Report of the Pokhara Cable Car executed on 2071/12/17 (corresponding to 31 March, 2015) between the Ministry and Manakamana Darshan Pvt. Ltd., are found to be in contravention of Nepal's obligations under the relevant international treaties, Articles 16 and 23 of the *Interim Constitution of Nepal, 2063*, and Articles 26 and 30 of the *Constitution of Nepal*, as well as Sections 33 and 34 of the *Land Acquisition Act, 2034*, and Section 68 of the *Forest Act, 2049*. Consequently, by way of an order of certiorari, the said Memorandum of Understanding for the Detailed Project Report is hereby quashed. From the present writ petition, as well as the other writ petitions filed in conjunction therewith, it is evident that the Government of Nepal bears the responsibility to protect a wetland of multifaceted significance such as Fewa Lake, and to preserve it for future generations. In order to ensure the conservation of Fewa Lake, and to safeguard its environment and biodiversity, it is hereby deemed appropriate to issue a writ of mandamus directing the respondent authorities to undertake the following measures:
 - It is hereby directed that in undertaking any construction or development activities within natural and cultural heritage sites of environmental and cultural significance, such as Fewa

Lake, policy formulation and implementation must be undertaken with due coherence, ensuring that the environment is accorded primary consideration, and that all concerned authorities coordinate effectively in this regard.

- The land currently constituting Basundhara Park was acquired from private individuals with the objective of establishing a green belt, and Basundhara Park was developed in accordance with that purpose. Any construction of additional physical structures on this land would result in the destruction of the park. Given that Basundhara Park also plays a significant role in the conservation of Fewa Lake, it is hereby directed that no construction or development activity shall be undertaken or shall be caused to be undertaken within Basundhara Park in a manner that would compromise the park or the lake's conservation.
- The land constituting Raniban was likewise acquired from private individuals for the purpose of establishing a biodiversity park, and trees were planted and other related activities were undertaken in accordance with that objective. The rejoinder of the Ministry of Science, Technology, and Environment also confirms that biodiversity park-related activities are ongoing. In order to ensure the conservation of Fewa Lake, the protection of biodiversity, and the preservation of the flora and fauna within this forest, it is hereby directed that no trees shall be felled or caused to be felled and no construction or development activities shall be undertaken or cause to be undertaken within Raniban.
- Given that the Tal Barahi Temple, situated in the middle of Fewa Lake, possesses its own historical significance, the construction or operation of any physical structures, including a cable car, above the temple would not only detract from the lake's aesthetic beauty but also impinge upon the sanctity of the temple. It is hereby directed that no activity shall be undertaken or cause to be undertaken that adversely affects the existence of Fewa Lake or its surrounding environment. Furthermore, recognizing that Fewa Lake constitutes a major tourist destination within Nepal, it is also directed that necessary measures be taken to nominate and register it as a site on the World Heritage List.

22. It is hereby directed to provide a copy of this order to the respondents and to remove the writ petition from the registry and accordingly submit the case file to the Record Section of this court.

Consenting with the above Opinion:

Honorable Justice Sapana Pradhan Malla

Bench Officer: Ramu Sharma

Dated Year 2075 of the Month of Baisakh Date 16 Day 1

(Corresponding to Year 2018 of the Month of April Date 29 Day 1)