

**Supreme Court, Division Bench
Honorable Justice Kumar Regmi
Honorable Justice Hari Prasad Phyal**

Judgement

Date of Order: 2080/3/4 (corresponding to 19 July, 2023)

067-WO-1241

Subject: Certiorari including Mandamus

Petitioner: Advocate Khagendra Subedi et.al., age 41 resident of Terathum District Sawala V.D.C.
Ward No. 4 currently residing in Kathmandu District Kathmandu Metropolitan City
Ward No. 29

Vs.

Respondent: Nepal Government Prime Minister and Office of the Council of Ministers, Singha
Durbar, Kathmandu

- Pursuant to Section 3 (1) of the **Land and Water Resources Conservation Act, 2039**, the four boundaries of Phewa Lake in Pokhara have been duly demarcated and declared as a protected water resource area under the law. Accordingly, any activity undertaken contrary to the protection, preservation and development as prescribed in the Act shall constitute a criminal offense under Section 22 of the same Act. In view of this, the Government of Nepal may initiate proceedings as a plaintiff in such matters. Therefore, all concerned parties and individuals are hereby advised to remain vigilant and responsible, ensuring that no activities contrary to the provisions of the Act occur within the designated four-boundary area of Pokhara Phewa Lake.

(Para 7)

- Fewa Lake, by virtue of its natural, biological diversity, environmental significance, and ecological systems, constitutes a protected public heritage of substantial value. Its scenic and aesthetic importance further underscores its status as a public asset. It is hereby observed that using, or allowing the use of, such protected public property for private or commercial gain, other than in the public interest, would be contrary to public trust and the collective interest of society.

(Para 22)

On behalf of the Petitioner: Learned Senior Advocate Mr. Prakashmani Sharma Bhushal, Advocate Mr. Khagendra Subedi, Mr. Padam Bahadur Shrestha, Mr. Pankaj Kumar Karn and Mr. Nish Chaudhary

On behalf of the Respondent: Learned Joint Government Attorney Mr. Govind Khanan and Learned Senior Advocate Mr. Harihar Dahal, Mr. Shambhu Thapa, Mr. Purnaman Shakya and Mr. Umesh Khakurel

Precedents Cited:

Relevant Laws:

- Constitution of Nepal
- Land Acquisition Act, 2034
- Forest Act, 2049
- Land Revenue Act, 2034
- Land and Water Resources Protection Act, 2039
- Environment Protection Act, 2053
- Town Development Committee Act, 2019
- Town Development Plan Implementation Act, 2029
- Town Development Act, 2045

Order

Honorable Justice Kumar Regmi: The brief facts and order relating to the petition filed before this court pursuant to Article 46 and Article 133 (2) and (3) are as follows:

Statement of Facts

The content of the writ petition filed on 2068/3/13 (corresponding to 7 July, 2011) is as follows: Fewa Lake, located in the central area of Lamdanda, Wards 5 and 6 of Pumdi Bhumdi Village Development Committee (VDC) in Kaski District of the Gandaki Zone is bordered by Pokhara Sub-Metropolitan City Wards 6 and 17 to the east, Kaskikot VDC Mandir Jholunge Kottra Bridge, Chapakot VDC) to the west, Sarangkot VDC to the north, and Pumdi Bhumdi VDC to the south is a priceless national treasure endowed with natural beauty. Tourists from within the country and abroad visit this place to observe the importance and beauty of this lake, thereby promoting internal and external tourism. Fewa Lake, a significant national heritage that also contributes to the country's economic sector and is a natural resource for the enjoyment of every citizen, must be protected. When granting permission for construction or for operating businesses around the lake, all environmental laws and other nature-related measures must be adopted, and permission should be granted only in a manner that does not affect the lake's original form and purity. Due to the respondents' negligence and lack of supervision, businesses have been allowed to operate in a manner that harms the lake, contrary to the spirit of the relevant Acts and Regulations. As a result, the lake's form, area, and purity have been seriously affected.

Article 16 of the Interim Constitution of Nepal, 2006, provides for the right to a clean environment and health. Although Article 12 (3) (f) guarantees as a fundamental right, the freedom to engage in any profession, be engaged in employment, industry and trade, the proviso clause under Article 12 (3) (5) subjects this freedom to public rights, interests, and public health. This freedom cannot be exercised in a manner that causes environmental degradation of natural resources, and the State has the obligation to make necessary arrangements to ensure that the exercise of such freedom does not adversely affect public health.

To minimize, as far as possible, the adverse impacts that environmental degradation may have on humankind, wildlife, vegetation, nature, and physical objects, and to maintain a clean and healthy environment as well as to protect the environment through the proper use and management of natural resources, Section 9 (1) of the Environmental Protection Act, 2053, and Chapter 3 of the Environmental Protection Regulations, 2054, provide that it is the duty of the concerned authorities to protect the national heritage. Since the Act and Regulations impose this duty, the respondents and the relevant agencies have an important role in the conservation of Fewa Lake.

Around Fewa Lake, and in the area that was a pond in the year 2018 B.S. but has now turned into farmland, large hotels, buildings, and houses are being rapidly constructed. These buildings are being used as tourist hotels, lodges, restaurants, and resorts. With or without obtaining permission and often in collusion with the respondents, houses and buildings are being built along the lakeshore. As there is no alternative for the hotels, restaurants, and resorts operating in those buildings to dispose of their waste, the waste produced from them is being dumped into the lake, turning Fewa Lake into a dumping site. Because, in this manner, the respondents, acting in collusion, have been recommending permission for operating hotels, lodges, restaurants, resorts, and bars along the shores of Fewa Lake, and have also been recommending registration for companies, industries, and firms. Such acts have facilitated the encroachment of Fewa Lake. Furthermore, the waste discharged from these hotels has polluted the lake's environment, causing Fewa Lake, an important source of tourism to shrink day by day and become foul-smelling. Therefore, it is requested that an order of *certiorari* be issued to annul the registrations of those industries and businesses that were registered within the lake's boundaries or surrounding areas in a manner that adversely affects the lake. It is also requested that the Ministry of Tourism, the Office of the Company Registrar, the Cottage and Small Industries Office, Kaski, and the Department of Industry be ordered not to register or grant permission for establishing any hotel, lodge, restaurant, bar, or resort in that area. Additionally, it is requested that an order of *mandamus* be issued in the names of the Ministry of Tourism, the Tourism Industry Division, and the Tourism Office, Kaski, directing them not to grant permission for the operation of tourism-related industries and businesses of the mentioned categories in that area. Furthermore, the respondent Park Village Waterfront Resort Pvt. Ltd., having designated as its operational area the land plot nos. 174, 176 located in Kaski District, formerly Ward No. 1 of Gyarjati VDC and currently Ward No. 7 of Sarangkot VDC has been constructing buildings on those lands for the establishment of the said resort. Since this ongoing construction, the viewing of Fewa Lake, and the pollution caused by the waste discharged from the resort would directly affect Fewa Lake and create a threat to its natural form, and therefore, the petitioner pursuant to Rule 41 (1) of the Supreme Court Regulation, 2049 requests the court to issue an interim order until the final disposal of the case, directing the respondents not to provide or cause to provide to operate the resort by designating the lakeshore as its area of operation and also not to grant or cause to grant any permission for operating any type of industry in the areas surrounding Fewa Lake, and that no company be registered for such purposes, and that no new construction be allowed or carried out and restraining them from granting such permission, registering companies, or allowing any new construction.

An order had been issued by the court on 2068/04/08 (corresponding to 24 July, 2011) which reads as follows: What has transpired in this matter and why should an order as sought by the petitioner not be issued? It is hereby directed to submit a rejoinder within 15 days from the date of receipt of this order excluding the period of travel and it is hereby directed to provide a copy of the petition and a notice to respondents 1, 2, 3, 4, 5, 6 and 9 and inform the Office of the Attorney General. It is hereby directed to notify respondents 7 and 8 through the concerned District Court and to submit the case file upon receipt of the rejoinder or expiry of the limitation period. Furthermore, since the petitioner has not been able to substantiate the claim that the hotels and other structures mentioned in the writ petition were constructed or are being operated without the approval of the concerned authority, this court, considering the balance of convenience and the possibility of irreparable harm, finds no need to issue an interim order as demanded.

The rejoinder submitted by Government of Nepal, Office of the Prime Minister and Council of Ministers on 2068/04/19 (corresponding to 4 August, 2011) is as follows: The petitioner has not been able to state any basis or reasons for making this office a respondent. Since this office has no concern or involvement with the subject matter of the petition, it cannot be made a respondent for the purpose of filing a writ petition. Even the honorable court's order does not justify seeking a rejoinder reply from this office. According to the law, the responsibility for acts performed or not performed lies with the authorities who are independent and competent to perform the tasks assigned to them. Holding this office responsible for matters within the jurisdiction of other independent and competent authorities, and filing a writ petition against it, is inconsistent with the principles of justice and law and therefore, the respondent requests the writ petition to be dismissed.

The rejoinder submitted by Government of Nepal, Department of Industry on 2068/04/24 (corresponding to 9 August, 2011) reads as follows: In the context of the Interim Constitution of Nepal, 2006, which provides every citizen the fundamental right and freedom to engage in any profession, employment, industry, or trade, no one can restrict the exercise of this constitutionally guaranteed fundamental right except as prescribed under the proviso clause of Article 12 (3) (5) of the Constitution. When an application is made for the registration of an industry and permission to operate it in accordance with the prevailing law, it is the duty of the Department of Industry to grant such permission or register the industry within the framework of the law. Therefore, the Department of Industry cannot be removed from its responsibility to grant industry permissions or register industries, as claimed in the writ petition and therefore, the respondents requests the court to quash the writ petition.

The rejoinder submitted by Tourism Office, Pokhara on 2068/05/07 (corresponding to 24 August, 2011) is as follows: Fewa Lake, which is a priceless tourist heritage, is located within the boundary areas of Ward Nos. 6 and 17 of Pokhara Sub-Metropolitan City, Kaski District, Gandaki Zone, as well as Kaskikot VDC, Sarangkot VDC, and Pumdi Bhumdi VDC to the west, north, and south respectively. This office has continuously provided support, as far as its resources allow, for the protection, promotion, and maintenance of the lake in an environmentally clean condition. Contrary to the petitioner's claims, no negative action has been taken by this office, nor has any irreparable damage occurred. Using the authority provided under the Tourism Act and its Regulations, this office has recommended industry registration only for hotels, lodges, and restaurants that have been officially prepared and approved. To date, it has not been clearly determined which agency is responsible for the protection, promotion, and development of Fewa Lake. There is no record showing this office's involvement in the recommendation of the registration process of the respondent Park Village Waterfront Resort Pvt. Ltd., nor is the file of that resort available in this office and therefore, the respondent requests the writ petition to be dismissed.

The contents of the rejoinder submitted by the Office of the Company Registrar on 2068/05/07 (corresponding to 24 August, 2011) is as follows: When registering any company, the company's memorandum and bylaws must disclose the address of the registered office and the addresses of any contact or branch offices. The memorandum also specifies that for activities requiring permission or approval, the company must obtain such permission from the relevant authority before carrying out those activities. The registration certificate further states that "the registration of the company alone does not grant permission to implement the company's objectives; the company must obtain the necessary approvals from the relevant authorities in accordance with the

law before conducting business in line with its objectives. Similarly, this commitment is mentioned in Sub-clause (a) of Sub-section (1) of Section 4 of the Memorandum of Park Village Waterfront Resort Hotel Pvt. Ltd. Therefore, the petitioner's inclusion of the Office of the Company Registrar as a respondent is not appropriate and request the writ petition be dismissed.

The rejoinder submitted by the Ministry of Civil Aviation on 2068/05/07 (corresponding to 24 August, 2011) is as follows: According to Section 10 of the Tourism Act, 2035, there is no record showing that Park Village Waterfront Pvt. Ltd. Resort was recommended by this Division for registration as a resort at the tourist site. For other hotels, lodges, restaurants, and resorts, recommendations for industry registration are made only when documents such as land ownership certificate, receipts, maps, completed building reports, citizenship, on-site inspection reports, kitchen, toilets, parking, and other prescribed indoor facilities, as well as an environmental study report for establishments with more than 50 beds, are submitted in accordance with the Act, Regulations, and Rule 40 of Chapter 6 of the Internal Procedure Manual, 2064. Furthermore, the authority to approve or disapprove construction and other related activities during the construction phase does not fall within the jurisdiction of this Ministry and therefore, the respondent requests the writ petition to be quashed.

The contents of the two separate rejoinders submitted on behalf of Park Village Waterfront Resort Pvt. Ltd. and Karn Shakya, hotel operator is as follows: Park Village Waterfront Resort Hotel Pvt. Ltd. is a company registered with the Office of the Company Registrar on 2061/03/22 (corresponding to 6 July, 2004). The company's registered office is located in Ward No. 1 of Sarangkot VDC, Kaski District, and its main objective is to operate hotels and resorts for the service of tourists. To carry out activities in line with its objective, the company submitted designs to the Pokhara Valley Town Development Committee for constructing buildings on lands registered in the company's name, located in former Gyarjati VDC Wards 1 and 5 currently Ward No. 7 of Sarangkot VDC. Based on the Committee's recommendation dated 2066/05/24 (corresponding to 9 September, 2009), the Sarangkot VDC office granted approval on the same date. Following the standards set by the Pokhara Valley Town Development Committee, the company is constructing the buildings such that the structures, including a safety tank and arrangements for hotel waste management, are placed beyond 65 meters from the concrete pillars marking the High Flood Level of Fewa Lake. These arrangements ensure that the construction does not cause pollution while utilizing the company's legally owned land.

The Founders of this Company in the past have been operating conservation-oriented tourism businesses in other locations. Continuing this practice, the Company, understanding the sensitivity of Fewa Lake, constructed the tourist hotel at the mentioned site in a manner that minimizes any significant impact on the surrounding environment. Being conscious of environmental protection even before starting hotel operations, the Company adopted all possible technologies to prevent pollution during the construction of the hotel buildings. To maintain natural cleanliness and prevent pollution around the hotel, the company entered into an agreement with the Environment and Public Health Organization (ENPHO) and, through this organization, constructed the first state-of-the-art safety tank in Pokhara. Advanced technology has also been installed to treat and purify black water and grey water generated within the hotel. Since a quiet environment is essential for the hotel, eco-friendly equipment has been installed to ensure that no excessive noise is generated. Other waste is disposed of at locations designated by the local authority. Fewa Lake in Pokhara is the primary foundation for the tourism business in the area, so establishing tourism-related businesses is not a new concept. However, in this modern era, development without

conservation, or conservation without development, is impossible. Recognizing that development and conservation are complementary, the Company has undertaken development activities in a manner that does not harm the lake. Precautionary measures for environmental protection and pollution control technologies have already been installed. Therefore, the petitioner's claim that the lake is being polluted due to this hotel is unfounded and therefore, requests the writ petition to be dismissed.

The rejoinder submitted by Cottage and Small Industries Office, Kaski on 2068/05/21 (corresponding to 7 September, 2011) is as follows: This office, under its delegated authority, is responsible for registration only of small industries with fixed capital investment up to 20 million rupees and that are recognized as registered companies. Since many hotels, lodges, restaurants, and resorts around Fewa Lake have capital investment exceeding 20 million rupees, including foreign investment, the registration of such hotels, lodges, restaurants, and resorts does not fall within the jurisdiction of this office. Therefore, the petitioner's inclusion of this office as a respondent is not justified and therefore, requests the writ petition to be quashed.

An order had been set aside by this court on 2075/01/16 (corresponding to 29 April, 2018) which reads as follows: In this regard, referring to the decision of the 15th meeting of the Kaski District Council on 2064/03/15 (corresponding to 29 June, 2007), and the board meeting of the Pokhara Valley Town Committee on 2064/04/28 (corresponding to 13 August, 2007), which decided to establish a protected area extending 65 meters outward from the shoreline of Fewa Lake, the question arose whether the buildings of Park Village Waterfront Resort Pvt. Ltd., constructed on plot nos. 174 and 176 located in former Gyarjati VDC Ward No. 1 and later Sarangkot VDC Ward No. 7, fall within this 65-meter protected area. The respondent hotel claims that the waste water discharged from these resorts is treated and reused within the hotel and is not released into the lake. To verify whether the waste water has been properly treated or if any untreated water was discharged into Fewa Lake, the court directed to constitute a Committee with one representative each from the Survey Department and the Land Reform Management Department under the Ministry of Agriculture, Land Management and Cooperatives, and one representative each from the Ministry of Forests and Environment, the Ministry of Culture, Tourism and Civil Aviation, and the Ministry of Education, Science, and Technology and directs the Committee to coordinate with the relevant provincial ministries and keeping both the petitioner and the respondents present, was tasked to complete the work as per the court order and submit a report to this court within two months. Furthermore, the Prime Minister and Council of Ministers' office was directed to submit the complete file, including maps and other documents prepared during the construction of the resort, through the Office of the Attorney General in accordance with the rules.

According to this Court's order dated 2075/01/16, and based on the decision of the Government of Nepal (Secretary level) dated 2075/02/13 (corresponding to 27 May, 2018), the Committee formed under the coordination of Chief Survey Officer Narayan Regmi submitted its inspection report on 2075/03/03 (corresponding to 7 June, 2018). The report includes the resort's maps along with the case file.

An order had been set aside on 2077/12/26 (corresponding to 8 April, 2012) which reads as follows: on 2075/01/16 (corresponding to 30 May, 2019) through writ case No. 067-WO-0694, had directed for the determination of the "four areas" of Fewa Lake within 6 months. Pursuant to

the order, a Committee under the coordination of Punya Prasad Paudel had been formed which had submitted its report on 2077/11/02 (corresponding to 14 February, 2021) to the Office of the Prime Minister and Council of Ministers through the Ministry of Land Management, Cooperatives, and Poverty Alleviation. Taking cognizance of the report, the petitioner has requested to take this report as evidence. Therefore, the court hereby orders that the report be obtained from the Prime Minister and Office of the Council of Ministers', Singha Durbar, and that the records of the writ case No. 067-WO-0694, including the order dated 2075/01/16, be retrieved and submitted along with the application 076-MS-0004.

According to the decision of the Government of Nepal and the Council of Ministers dated 2077/04/05 (corresponding to 20 July, 2020), the committee formed for determining, demarcating, and mapping the "Four Corners" of Fewa Lake submitted its second report to the Ministry of Land Management, Cooperatives, and Poverty Alleviation on 2078/05/28 (corresponding to 13 September, 2021). The petitioner's attorney had submitted a request before the Bench to obtain and review this report. Accordingly, an order had been set aside directing to submission of the report from the relevant ministry and to include in the case file. The court further directs the submission of the writ petition No. 078-WO-1356 which involves the respondent and the respondent the Office of the Prime Minister and Council of Ministers and sub-judice before this court along with the writ petition 076-MS-0004 to be presented together.

Pursuant to the decision of the Council of Ministers of the Government of Nepal dated 2077/04/05 (corresponding to 20 July, 2020), the Ministry of Land Management, Cooperatives, and Poverty Alleviation was assigned the responsibility for the demarcation, boundary marking, and mapping of Fewa Lake. Subsequently, in accordance with the Ministry (ministerial-level) decision dated 2077/05/07 (corresponding to 23 August, 2020), it was determined that the Chairperson of the Fewa Lake Demarcation, Boundary Marking, and Mapping Committee would be a representative of the Gandaki Province Government. Accordingly, as per the decision of the Gandaki Province Government dated 2077/07/02 (corresponding to 18 October, 2020), the Government of Nepal, Council of Ministers, received the report submitted by the nine-member Committee chaired by Punya Prasad Paudel of Annapurna Rural Municipality-3, Kaski. A copy of the report is attached herewith the case file.

Order

Upon hearing the matter listed as per the cause list, the following submissions were made on behalf of the petitioner. Senior Advocate Mr. Prakashmani Sharma Bhusal appeared along with the petitioner's advocate Mr. Khagendra Subedi and learned advocates Mr. Padam Bahadur Shrestha, Mr. Pankaj Kumar Karn, and Mr. Nishi Chaudhary. It was submitted that at the inauguration of the dam constructed on Fewa Lake, Pokhara, on 2018/08/03 (corresponding to 18 November, 1961), the inscription placed at the site recorded the area of Fewa Lake as 4 square miles (10.35 square kilometers) and the catchment area as 45 square miles (116.549 square kilometers). Further, reference was made to the Nepal Gazette, 2030 B.S., Part 17, Supplement No. 52, and the notification issued by the Ministry of Construction and Transport, whereby the then His Majesty's Government, in accordance with the decision of the Council of Ministers dated 2030/08/15 (corresponding to 30 November, 973) under the Municipal Development Plan Implementation Act, 2029, approved the municipal plan of Pokhara. The plan delineates the layout of Pokhara city and designates an area extending 200 feet from the banks of Fewa Lake as a prohibited zone, within

which no construction activity is permitted. In accordance with the prescribed standards, construction of buildings up to one storey is allowed only in areas beyond the prohibited zone. It is noted that the Municipal Development Plan Implementation Act, 2029, was subsequently amended by the Municipal Development Act, 2045. With regard to the construction undertaken by the respondent party, Park Village Waterfront Resort Hotel Pvt. Ltd., the letter submitted by the Pokhara Valley Municipal Development Committee to the Sarangkot Rural Municipality Office dated 2066/05/24 (corresponding to 9 September, 209) does not appear to have been issued in accordance with the decision of the Municipal Development Committee. It was submitted that Section 9 of the Municipal Development Act, 2045, prohibits the Committee itself from issuing such letters. Pursuant to Section 4 of the said Act, a letter signed solely by one individual, namely Dilli Prasad Dhungana, without any reference to the Committee's decision, authority, or position, cannot be considered valid. Despite this, the hotel relied on such unauthorized correspondence and constructed structures without legal authority. It was further argued that the hotel operated in the prohibited zone, which lies within the catchment area, without obtaining permission from the Ministry of Tourism or the Tourism Department, in violation of the law and without adherence to legal procedures. Accordingly, it was submitted that the hotel, along with all other structures in the prohibited and catchment areas, must be removed. Prayer was made for issuance of an order of certiorari including an order of mandamus to ensure the protection of Fewa Lake, recognized not only as one of Nepal's most beautiful areas but also as one of the most scenic areas in the world.

Learned Joint Government Attorney Mr. Govinda Khanal on behalf of the respondent, the Prime Minister and the Office of the Council of Ministers argued that Fewa Lake is an important tourist site not only for Nepal but also for the world. The determination of its boundaries is of utmost importance for its protection. It was submitted that pursuant to the order dated 2075/01/16 in Writ Petition No. 067-WO-0694 of the Honorable Supreme Court, the Fewa Lake Demarcation Committee was constituted under the chairmanship of Punya Prasad Paudel. The report submitted by the Committee was accepted by the Government of Nepal on 2077/11/11 and published it in the Nepal Gazette on 2077/11/17. This notification was issued under the authority granted by Section 3 (1) of the Land and Watershed Conservation Act, 2039, and the four-boundaries of Fewa Lake were determined, fixing its area at 5.726 square kilometers (11,255 ropani 11 aana 1 paisa). The map of Fewa Lake, along with its area, has also been included in the Paudel report. It was further submitted that, in accordance with the decision of the Council of Ministers dated 2030/08/15 and upheld by the Honorable Supreme Court's order dated 2075/01/16, no structure or building may be constructed within 65 meters of the lake's bank. The Government of Nepal is committed to removing structures located in this area, working in coordination with all three levels of government. Since the boundary of Fewa Lake has been determined, the government will also implement other decisions aimed at protecting the sources and tributaries of the lake. It was submitted that the Paudel report also contains provisions regarding the allotment of land within the lake and other related matters, all of which shall be fully complied with.

Learned Senior Advocates Mr. Harihar Dahal Mr. Shambhu Thapa, Mr. Purnaman Shakya and Mr. Umesh Khakurel on behalf of the respondent Park Village Waterfront Resort Hotel Pvt. Ltd., and its operator, Mr. Karn Shakya, argued that the Company has been operating on its legally owned land using state-of-the-art pollution control technologies. Consequently, there is no risk of pollution to Fewa Lake. It was further submitted that the writ petition, which seeks to restrain the

Company and its operator from obtaining any approval, license, or permission, is filed with bias and prejudice. It was submitted that a petition directed at a single individual cannot constitute a matter of public importance or concern. Since the hotel structures exist solely on land legally owned by the Company, the allegation of encroachment by the opposing party is frivolous. Learned counsel for Park Village Waterfront Resort Hotel Pvt. Ltd. and its operator further submitted that no illegal construction has been undertaken by the Company or its operator. All structures have been constructed on land legally owned by the Company, beyond 65 meters from the High Flood Line of Fewa Lake, within the company's rightful ownership. Moreover, state-of-the-art pollution control technologies were applied during construction and operation to prevent any contamination of the lake. It was emphasized that the claims by the petitioner that the hotel causes pollution and directly affects Fewa Lake are false and requested that the writ petition should be dismissed.

Having heard the writ petition, the rejoinders, and the documents attached thereto, and having considered the arguments advanced by learned counsel for both the petitioner and the respondents, it is for the court to examine the following questions and reach a decision:

- (a) Whether or not all human-made physical structures and commercial establishments must be removed to ensure the protection of Fewa Lake within the demarcated four boundaries?
 - (b) Whether or not the structures of Park Village Waterfront Resort Pvt. Ltd. have been constructed within the ambit of the law?
 - (c) Whether or not order as sought by petitioner need to be issued?
2. Now, considering the first question, it is noted that the role of Fewa Lake owing to its aesthetic, religious, historical and environmental significance in the development of Nepal's tourism sector has already been extensively documented and need not be reiterated here. Generally, without Fewa Lake, Pokhara would not exist in its present form and without Pokhara as it is, a significant portion of Nepal's domestic and international tourism could not be sustained. Pokhara serves as the center not only of domestic tourism but also of international tourism, and its core comprises the Machapuchare mountain range and Fewa Lake. Just as Mount Everest is considered the crown of Nepal, Pokhara may be regarded as the heart of Nepal, and Fewa Lake as the heartbeat of that heart. Therefore, given the vastness, cleanliness, and surrounding greenery of Fewa Lake, including its mix with the Annapurna range, its beauty and grandeur are far superior to any human-made structures or commercial establishments. There can be no difference of opinion regarding the need for its complete preservation and promotion.
3. With regard to the protection of Fewa Lake, this Court, on 2075/01/16 (corresponding to 29 April, 2018), after the final hearing of five writ petitions (067-WO-0694, 068-WO-082, 069-WO-294, 071-WO-1034, and 072-WO-0127), issued certain important orders. In those orders, the court discussed in detail the significance of Fewa Lake and issued an order of certiorari including an order of mandamus for its protection and promotion which are as follows:
 - (a) In Writ Petition 071-WO-1034, filed against the Office of the Prime Minister and Council of Ministers by Advocate Bhagwati Pahari, it was noted that the 129th meeting of the Pokhara Valley Municipal Development Committee on 2069/03/27 (corresponding to 11

July, 2012), had given theoretical approval to the Ministry of Physical Infrastructure and Transport for operating a cable car from Basundhara Park to Buddha Stupa. Further, a Memorandum of Understanding for the Detailed Project Report of the Pokhara Cable Car was executed between the Ministry of Physical Infrastructure and Transport and Manakamana Darshan Pvt. Ltd. on 2071/12/27 (corresponding to 10 April, 2015). At the time the writ petition was filed, these actions were contrary to Article 16 and 23 of the Interim Constitution of Nepal, 2063, Articles 26 and 30 of the Constitution of Nepal, Section 33 and 34 of the Land Acquisition Act, 2034, and Section 68 of the Forest Act, 2049. Accordingly, the court set aside the orders in question. Moreover, recognizing the multidimensional importance of Fewa Lake, and acknowledging the responsibility of the Government of Nepal to protect the lake and preserve it for future generations, the court issued a four-point mandamus in favor of the relevant authorities for the protection of Fewa Lake and the conservation of the surrounding environment and biodiversity. The four-point mandamus provided that the land acquired from individuals for the purpose of creating a green belt must not be used for any purpose other than that objective; land acquired for Rani Ban to establish a biodiversity park must be preserved; no deforestation or construction activity is permitted in the forest in order to protect the lake, wildlife, and plant species; due to the historical significance of Tal Barahi Temple, no activity should be undertaken that would affect its sanctity or aesthetic value and considering that Fewa Lake makes Pokhara one of Nepal's main tourist destinations, necessary steps should be taken to include it in the World Heritage List.

- b) In Writ Petition 072-WO-0127, filed by Dharam Bahadur Lamichhane against the Ministry of Physical Infrastructure and Transport, Singh Durbar, Kathmandu, the primary claim was that certain authorities had unlawfully interfered with the construction and implementation of the cable car project from Basundhara Park to the Shanti Stupa, thereby obstructing the project. Specifically, the petitioner alleged that the instructions issued by the Public Accounts Committee on 2072/04/18 (corresponding to 3 August, 2015) and communicated via letter on 2072/04/19 (corresponding to 4 August, 2015) as well as directives from the International Relations and Labor Committee dated 2072/04/22 (corresponding to 19 August, 2015) had hindered the petitioners' right to profession and employment and the petition sought that these instructions and related correspondence be set aside through an order of mandamus, thereby allowing the project to proceed. In its judgment the court dismissed the petition, holding as follows: "The rights and entitlements guaranteed under the Constitution and law each have their own distinct significance and purpose. No single right can render another right ineffective or dormant. The petitioners' claim to right to profession and employment does not arise in a context where they are deprived of such rights unless the cable car is constructed and operated at Basundhara Park. The petitioners have sufficient alternatives to pursue other professions, employment, or business within the country. However, in a scenario where the environment is degraded and biodiversity is lost, no alternative exists. If the petitioners intend to engage in tourism-based business or employment in the area, the most viable option remains activities that are based on the protection and sustainable use of Fewa Lake and its surrounding natural resources, forests, and lake. In the absence of the lake or if the environment is negatively impacted, such opportunities cease to exist. Therefore, expecting guarantees for physical development and other activities that adversely affect human life, the court finds that the present writ petition is not justifiable or reasonable from any perspective."

- c) In Writ Petition 069-WO-0294, filed by Vishnu Maya Timilsina and 120 others, and in Writ Petition 068-WO-0872, filed by Deu Kumari Gurung and 10 others, the petitioners sought an order of mandamus directing the National Lake Conservation Development Committee, Baneshwor, and related authorities to release lands blocked by the Land Revenue Office, Kaski. The court observed that the lands in question had been blocked pursuant to the statutory authority provided for lake conservation and, accordingly, declined to issue an order of mandamus. The court noted: “Section 2 (b 3) of the Land Revenue Act, 2034, defines lakes as government land. Section 24 (1) of the same Act prohibits registration or cultivation of any governmental land or public land. Subsection (2) of Section 24 provides that any registration made in the name of an individual shall ipso facto be void. Accordingly, government land cannot be registered in the name of an individual, and any such registration shall be invalidated. Moreover, since local residents derive various benefits from the lake as a government property, they are the primary beneficiaries of its conservation. Therefore, lake conservation constitutes a matter of public purpose, and the lands of the petitioners were blocked in furtherance of that public purpose.” The court further observed that, as property rights cannot be withheld for an indefinite period, for areas outside the designated lake boundary required for lake conservation, appropriate compensation must be promptly determined and the land acquired. Lands not necessary for this purpose should be released from the block. Accordingly, an order of mandamus was issued directing the authorities to ensure the above measures.
- d) In writ petition 067-WO-0694, filed by Advocate Khagendra Subedi against the Office of the Prime Minister and Council of Ministers, the petitioners sought an order of mandamus to demarcate the four boundaries of Fewa Lake and to prohibit any construction, such as houses or hotels that would harm the lake’s biodiversity, aquatic life, water retention capacity, or environment, including any activity contrary to the lake’s ecological balance. Accordingly, considering the need to protect the environment and biodiversity of the area, an eleven-point mandamus was issued in the name of the concerned authorities, directing the preservation and management of Fewa Lake. The court observed that Fewa Lake, which carries multidimensional importance such as social, economic, cultural, and environmental had been officially demarcated with a four-boundary; there was no rejoinder from the respondent challenging the necessity of the order; various studies conducted by Government of Nepal agencies confirmed that the area of Fewa Lake has been decreasing day by day; even the rejoinder of relevant government authorities indicated the necessity for appropriate orders to ensure the protection of Fewa Lake and the primary responsibility for conserving Fewa Lake rests with the Government of Nepal. For the short-term to long-term protection of Fewa Lake, the orders contained in the present petition are comprehensive in nature. Based on these orders, the Government of Nepal has taken several important measures, while some actions remain pending. Anyone studying the 11-point mandamus issued in Writ Petition 067-WO-0694 will recognize its significance in restoring the gradually diminishing Fewa Lake to a sustainable and resilient state. The eleven points include the following: that the Government of Nepal, through the Office of the Prime Minister and Council of Ministers, demarcate the four boundaries of Fewa Lake within six months; considering ponds, lakes, and their beds as government land under Section 2 (b) (2) of the Land Revenue Act, 2034, the Government shall maintain such lands as government property under Section 24 (1) and (2) of the same Act; no physical structures

that could affect the conservation of the lake, including buildings, shall be constructed within 65 meters from the lake's bank, and existing structures must be removed within six months; for long-term conservation of the lake, any surrounding lands required shall be acquired in accordance with the Land Acquisition Act, 2034; to preserve the environmental quality and sanctity of Fewa Lake, it shall be declared a protected watershed area under Section 3(1) of the Soil and Watershed Conservation Act, 2039; Fewa Lake shall be established as an environmental protection area under Section 10 (1) of the Environment Protection Act, 2053; check dams shall be constructed to prevent silt, sand, stones, and gravel carried by the Harpan and other rivers from filling the lake, and to ensure that only water enters the lake; agricultural use of lands around the lake shall immediately cease the use of chemical fertilizers and pesticides, permitting only natural fertilizers, to prevent pollution and threats to aquatic life, fish, and other organisms; take measures to control water hyacinth of Fewa Lake; any activity that could pollute the lake water, threaten the life of aquatic biodiversity, encroach upon the natural lake area, or adversely affect the lake environment including construction of houses and hotels is strictly prohibited. The National Lake Development and Conservation Committee, Pokhara Valley Municipal Development Committee, and Pokhara Metropolitan City shall coordinate to establish standards and ensure implementation and in addition to the above measures, the Office of the Prime Minister and Council of Ministers shall take all necessary decisions for the conservation of Fewa Lake. The order was issued on 2075/1/16 (corresponding to 29 April, 2018) underscoring the holistic approach required for the protection, management, and sustainable preservation of Fewa Lake.

4. In considering the area of Fewa Lake, its conservation and promotion, the preservation of the surrounding forests, maintenance of the lake's cleanliness and biological diversity, and the protection of the water sources feeding into the lake, it is imperative that all responsible persons and authorities fully comply with the directives issued by this Court on 2075/01/16 (corresponding to 29 April, 2018) in the five writ petitions referenced above. Article 126 (1) of the Constitution of Nepal, expressly provides that every individual and authority must abide by the orders or decisions issued by the Supreme Court in the course of adjudication. Further reinforcing this constitutional mandate, Article 128 (4) stipulates that all interpretations of the Constitution and laws made by the Supreme Court in the course of proceedings shall be binding upon all. Pursuant to the same provision, failure to comply with or deliberate disregard of the court's orders or judgments may constitute contempt of court, thereby subjecting the responsible persons or authorities to legal action and punishment. It is, therefore, incumbent upon all concerned agencies and officials to treat these obligations with utmost seriousness.

5. For the effective conservation of Fewa Lake, it is first essential to ascertain and ensure the determination of its boundaries, total lake area, and the standards applicable to the coastal (buffer zone) surrounding the lake. Given that Fewa Lake is a natural formation located in close proximity to a large human settlement, such delineation becomes even more indispensable for its protection. With respect to the lake's area, the 2018 B.S. Nepal-India Cooperation Mission Report records the total area of Fewa Lake as 10.35 square kilometers, from which it may be concluded that Fewa Lake is an expansive water body with a substantial watershed. The inscription dated 2018 Mangsir 3, located at the dam site of Fewa Lake, also indicates that the lake covers an area of 4 square miles (10.35 sq. km.), and its watershed or catchment area extends to 45 square miles (116.549 sq. km.). This fact is further corroborated in pages 6 and 7

of the 2077 report submitted by the Committee for Determination of Fewa Lake Boundary, Demarcation, and Mapping, coordinated by Mr. Punya Prasad Poudel.

6. Pursuant to the decisions of the Government of Nepal, Council of Ministers, dated 2077/04/05, 2077/07/02, and 2077/07/20, the Committee for Determination, Demarcation, and Mapping of the Boundary of Fewa Lake, 2077, constituted under the convenorship of Mr. Punya Prasad Poudel of Annapurna Rural Municipality, Ward No. 3, Kaski submitted a detailed report containing the boundary, total area, and the particulars of the lands falling within such boundary. It is evident that the Government of Nepal approved the said report, and the same was published in the Nepal Gazette on 2077/11/17. In Volume 70, Number 44, Part 5 of the Nepal Gazette dated 2077/11/17, the following notice of the Ministry of Land Management, Cooperatives and Poverty Alleviation has been published: “Since the Government of Nepal has approved the boundary, demarcation, and area of Fewa Lake as mentioned below, this notice is hereby published accordingly:”
 - (a) Four Areas: Dam side to the east, morebagar to the west, Damkilo area between Khapauti and Chankhapur to the north and Chisapani Rani Ban to the south.
 - (b) Boundaries: As per the map included in the Schedule, the littoral zone of Fewa Lake covering dam-side, Rani Ban, Gauri Ghat, Lakeside, Gaira Chautara, Sedi, Khapaudi, Lamidanda, and Andu extends up to the maximum monsoon waterline on the lakeside. Towards the inlet side of the lake, the boundary extends from the fishpond at Morebagar towards the northeast, crossing the Harpan Stream, proceeding close to the final bend of the Bhakunde Stream, touching the southern slope of Majhthum Hill, then encompassing the Daldale Dhap marsh area on the east, and reaching up to the Ghantichhina Pame motor road.
 - (c) Area: 5.726 square kilometres (equivalent to 11,255 ropani, 11 aana, and 1 paisa).
7. Once the aforementioned boundaries and limits were specified, the Government of Nepal, by exercising the authority conferred under Section 3 (1) of the Soil and Watershed Conservation Act, 2039, declared Fewa Lake as a Protected Watershed Area through the decision of the Council of Ministers dated 2077/11/11, as published in the *Nepal Gazette*, Part 5, Volume 71, Number 45, dated 2077/11/17, issued by the Ministry of Forests and Environment. Upon such declaration of the protected watershed area by determining the four boundaries pursuant to Section 3(1) of the Act, the law purpose of conservation has clearly provided what activities are permissible and what activities are prohibited within that protected area. **In essence, since Fewa Lake in Pokhara has already been declared a protected watershed area under Section 3(1) of the Soil and Watershed Conservation Act, 2039, upon the determination of its boundaries and limits, any activity carried out within the said boundaries in contravention of the provisions of the Act shall constitute a criminal offence under Section 22 of the same Act. Consequently, proceedings may be instituted with the Government of Nepal as the plaintiff. Therefore, it is incumbent upon all stakeholders and individuals to remain fully aware of, and strictly accountable to, the legal prohibition against undertaking any activity within the prescribed four boundaries and limits of the Fewa Lake area that violates the provisions of the Act.**
8. The notification published on 2077/11/17 in the Nepal Gazette appears to have addressed the matters relating to the boundary limits, demarcation, and the current water-spread area of

Phewa Lake. Within the delineated boundary and demarcated limits, it is imperative to ensure the maintenance of an adequate and clean water reserve in Fewa Lake. It is desirable to preserve the existence of all forms of wildlife dependent on the lake including birds, fish, insects, and other species and to enhance their ecological growth so as to maintain biological diversity. For that purpose, all forms of encroachment arising from natural or human activities within the prescribed boundary of Fewa Lake must be strictly prohibited.

9. In order to prevent natural forms of encroachment upon Fewa Lake, all necessary technologies must be employed with visible and concrete action to stop stones, soil, gravel, sand, logs, shrubs, timber, pebbles, and similar materials that flow into the lake from the upstream rivers and streams feeding it. For this purpose, where necessary, check-dams shall be constructed so as to create a condition in which only water is allowed to enter the lake. To accomplish this, the Pokhara Valley Town Development Committee, Pokhara Metropolitan City, and the National Lake Conservation and Development Committee shall, in coordination and with the support of both the federal and provincial governments, take immediate and necessary steps. To prevent encroachment arising from human activities, all construction works within at least sixty-five meters from the demarcated boundary of Fewa Lake shall be completely prohibited. Likewise, any activity that affects the wetland or marshy areas located upstream or around the lake, the construction of physical structures, and the operation of trade or business shall be entirely barred. Structures already existing within this prohibited zone shall be removed within a stipulated short period, and a sixty-five-meter green belt shall be established. Within sixty-five meters from the lake's boundary, a completely human-free zone shall be maintained free from human settlement, commercial activity, hotels, restaurants, bars, or any other form of human intervention and shall instead be developed as an open green field or garden, or a well-managed park filled with trees and vegetation. This area must be kept free from human-generated waste and pollution, thereby preserving Fewa Lake as a vast, clean, and beautiful lake for the long term, safeguarding it as one of Nepal's precious jewels capable of captivating people around the world. If Fewa Lake can be preserved in this manner, it will serve as a cornerstone for the conservation of its biological diversity. Furthermore, its natural protection will allow for significant economic growth through tourism.
10. Pursuant to the Municipal Development Plan Implementation Act, 2029, the Council of Ministers approved the Pokhara City Plan on 2030/08/15. Accordingly, a notice was published in the Nepal Gazette, 2030, Part 17, Extra No. 52, by the Ministry of Construction and Transport. The approved city plan presented the developmental blueprint for Pokhara City and clearly demarcated Fewa Lake as a protected area, stipulating that no construction of any kind shall be permitted within at least 200 feet from the lake's shoreline. Upon the plan's implementation, no individual may undertake any construction within this zone without prior approval from the Municipal Plan Implementation Committee. The provision under Section 5 also encompasses the use and management of immovable property within this area, including agricultural lands, natural resources, flora, forests, wildlife, archaeological sites, and religious or historical landmarks. Any obstruction to the municipal plan's execution or failure to comply with its directives would invoke penalties as per Section 6 of the Act. Thus, the restriction against any construction within 200 feet of Fewa Lake's shore, as set forth in the Council of Ministers' decision of 2030/08/15, had legally been established over fifty years ago. When the Municipal Development Act, 2045, repealed the Municipal Development Plan Implementation Act, 2029, Section 28 (2) provided that all actions, rights, and obligations executed by

committees formed under the repealed Acts would transfer to the corresponding municipal development committees constituted under the new Act. Section 28 (3) further clarified that until new committees are formed under the 2045 Act, the committees formed under the previous Acts shall continue to function as if constituted under the new law. Consequently, the provision barring any construction within 200 feet of Fewa Lake, as initially prescribed under the Municipal Development Plan Implementation Act, 2029, remains valid under the Municipal Development Act, 2045, and there is no ambiguity regarding its continued applicability.

11. Building on the decision made fifty years ago under the law, which had already established a minimum 200-foot shoreline (buffer zone) for Fewa Lake, the Kaski District Council, for the purpose of the conservation of the lake, in its 15th meeting dated 2064/03/15 decided that no physical structure shall be built within 65 meters from the lake's shoreline. Similarly, in the 17th meeting dated 2064/04/28, chaired by the then Chairperson of Pokhara Municipal Development Committee, Durga Timalsina, a single decision was made to maintain a 65-meter buffer zone around Fewa Lake. Thus, there has been long-standing legal consistency regarding the prohibition of any physical construction within 65 meters from the lake's High Flood mark (or the maximum water level during the rainy season), with the area to be kept vacant for the protection of the lake. The requirement to keep this area vacant entails maintaining greenery in the 65-meter zone so as to safeguard the lake's water quality and biodiversity. Even in the case of constructing walking paths, such paths should be located at the outer edge of the 65-meter boundary, ensuring that the green zone is preserved to enhance water purity, cleanliness, and storage capacity of the lake.
12. With Fewa Lake having been declared a "Protected Watershed Area" under Section 3(1) of the Soil and Watershed Conservation Act, 2039, and published in the Nepal Gazette, it is evident that strong legal protection has been provided for the conservation of Fewa Lake and its four boundaries. Pursuant to Section 4 of the Soil and Watershed Conservation Act, for the protection of the lake's watershed, the Watershed Conservation Officer is empowered to take preventive or control measures in the lake's source and surrounding areas. This includes the construction and maintenance of dams to prevent or control water flow; check dams for erosion and silt control; embankments; terrace improvements; main and auxiliary channels or diversion canals; retaining walls and ponds and other necessary structures. Furthermore, the Officer may also undertake the care and maintenance of these structures, carry out afforestation, plant grass, shrubs, or other vegetation, protect natural vegetation on slopes, landslide-prone areas, and cliff edges, cultivate crops and fruit trees, and ensure that the fertility of soil, water, and environmental cleanliness are maintained in a balanced manner. Section 6 of the Act provides that within the four boundaries of the Protected Watershed Area, land may be used for the cultivation of crops, orchards, or planting of trees, shrubs, or grass only by following an approved land-use system. Section 10 of the Act contains an important provision regarding prohibited activities on land prone to natural hazards. Regardless of any other provisions in the prevailing law, no person shall carry out any activity on land within the Protected Watershed Area that has been designated by the Watershed Conservation Officer as prone or potentially prone to floods, landslides, soil erosion, or land degradation, without obtaining prior approval from the Watershed Conservation Officer.
 - (a) To block or collect in any way the water of any stream, canal, rill, lake or reservoir or ground water or divert the blocked or collected water elsewhere or return the same

- through a ditch, diversion channel, drainage or in any other manner or use such water in any work by so blocking, collecting, diverting, returning or otherwise,
- (b) To cut or otherwise destroy any such trees, plants or other forest products as that person may deal with according to his/her will pursuant to the prevailing law relating to forests,
 - (c) To cut or otherwise destroy any existing forests, trees, plants, weeds, grasses or other natural vegetations,
 - (d) To carry out any act causing the collection or dumping of stone, sand mud, etc. or any act causing the collected or dumped stone, sand, mud etc. to be swept away,
 - (e) To dig, excavate or take away stone, sand or other kind of soil,
 - (f) To throw away solid wastes or similar other detritus contaminating the environment or build a site for collecting or keeping such solid wastes or detritus.
 - (g) To establish an industry, business or settlement of habitation
 - (h) To carry, keep or graze cows, buffaloes, sheep, goats, chicken and similar other
13. Any activities prohibited under the aforementioned provisions and the Act are subject to punishment under Section 21 of the Act. Furthermore, in cases of offenses under this law, the Government of Nepal pursuant to Section 22 shall be the plaintiff. Effective enforcement of this law ensures the protection of rare and valuable natural resources, which are shrinking, degrading, and being destroyed due to human encroachment and pollution. Ultimately, this safeguards biodiversity and a clean environment, benefiting all of humanity. As a result, the beauty and attractiveness of the lake will be enhanced, leading to increased tourism. Therefore, all relevant parties must strictly comply with and implement the laws enacted for the protection of the Protected Watershed Area, forests, and the environment.
14. From B.S. 2018 to 2031, the surface of Fewa Lake remained intact. During B.S. 2031, when the dam breached and the water level decreased, some land were surveyed in B.S. 2032–2033, and certain plots were registered in the names of private individuals, with land ownership certificates issued and some even occupied. In B.S. 2034, the reconstruction of the dam commenced, and after its completion in B.S. 2038, it was observed that some plots, which had been registered based on the survey of B.S. 2032, again fell within the lake’s inundation area. The construction of the Fewa Lake dam began prior to B.S. 2018, with its inauguration on B.S. 2018/08/03, and a compensation policy was issued in B.S. 2018/Bhadra. Until the dam breached in B.S. 2031, there were no disputes regarding compensation. Under these circumstances, land that was part of Fewa Lake from B.S. 2018 to 2031 must be considered property of the lake. When the dam breached and water levels decreased in B.S. 2032–2033, the registration of plots on these lands did not create a new entitlement to compensation, as they had historically been part of the lake. Any compensation that would have been due should have already been provided at the appropriate time. Therefore, such lands should be maintained in the name of Fewa Lake. Furthermore, some of these lands again became inundated after the dam’s reconstruction in B.S. 2038. Since these plots were part of Fewa Lake from B.S. 2018 to 2031, no compensation is required for these areas either.

15. In this context, by the decision of the then Ministry of Water Resources (at the Secretary level) dated 2041/12/12, land parcels that had fallen within the Fewa Lake inundation area since B.S. 2018, but were surveyed and registered in the names of private individuals during the B.S. 2032–2033 survey, were recommended to be maintained in the name of the lake in accordance with Section 24 of the Land Act, 2034. Following this, on 2042/04/17, the His Majesty’s Government of Nepal (at the Minister level) decided to cancel such registrations and proceed with assessment of levies. Regarding this, a letter dated 2042/04/21 from the Ministry of Water Resources, Department of Irrigation and Climate Science, Western Regional Irrigation Directorate stated that, “the registration of the land within the lake shall pursuant to Section 24 of the Land Act, 2034, will be cancelled. Based on this directive, the Western Regional Irrigation Directorate sent a letter to the Kaski District Land Revenue Office and to Purna Bahadur Gurung, the chief representative of 128 claimants including himself, on 2042/05/09, as evidenced in the attached documents. Subsequent decisions by the His Majesty’s Government on 2042/12/18 and 2043/09/12 confirmed the same course of action as per the ministerial decision as of 2042/04/17.
16. Regarding the legal status of land within the lake and the lake’s shoreline, according to the Land Act, 2034, Section 2(b 2), the term “government land” includes forests, shrubs, wilderness, rivers, streams, canals, riverbanks, lakes, ponds, and their depressions under the control of the Government of Nepal. It is undisputed that Fewa Lake falls under jurisdiction of the Government of Nepal. Since the lake has been under government control, there was no dispute over land and depressions within Fewa Lake that were inundated from B.S. 2018 to B.S. 2031 and had no claims for compensation during that period. These lands are therefore considered government land. Section 24 of the Land Act, 2034, prohibits the registration or adjudication of such government or public land. Subsection 24 (2) states that “If any government or public land was registered or adjudicated in the name of an individual either before or after this Section came into effect, such registration shall be automatically cancelled. The levy or dues for such land, if registered in an individual’s name, shall be collected by the Land Revenue Office or the authority designated by the Government of Nepal.” Accordingly, if any land within Fewa Lake or its depression was registered in an individual’s name since B.S. 2018, such registration is considered invalid, illegal, and liable to cancellation.
17. In order to protect Fewa Lake, the Kaski District Council, through its 15th meeting on 2064/03/15, and pursuant to the Town Development Act, 2045, the 17th meeting of the Pokhara Valley Town Development Committee held on 2064/04/28 designated a 65-meter buffer zone around Fewa Lake and prohibited any physical construction within that area. Relying on these decisions as well, this court, on 2075/01/16, in writ petition No. 067-WO-0694, issued an order of mandamus directing that no physical construction, including buildings, shall be carried out within 65 meters from the bank of the lake, and that any such permanent or temporary structures such as houses and hotels constructed in violation thereof must be removed within six months, as they adversely affect the conservation of the lake. Accordingly, there is no room for doubt that all types of physical structures within 65 meters from the boundary of the lake must be removed. Any decision of any authority contrary to this cannot be deemed to be valid in law.
18. In examining which categories of land attract compensation under the Land Acquisition Act, 2034, this court finds that the applicable legal provisions expressly designate as government land all areas lying within the confines of Fewa Lake, together with the land constituting its

natural edge at the time of the completion of the lake's dam in 2018 B.S. Any land parcels falling within this classification must, therefore, have their existing registrations cancelled and be entered in the records under the name of Fewa Lake. As a result, no claim to compensation can be sustained in respect of such lands. With respect to land located beyond the foregoing area, it is evident that excluding the lake land as it existed in 2018 B.S., unregistered public land (*ailani*), uncultivated land (*parti*), and any other form of public land, compensation is payable in accordance with law for those parcels that held valid registration, cadastral documentation, land revenue receipts, and uninterrupted possession prior to the cadastral survey undertaken around 2032/33 B.S. Such compensation is admissible only for land situated outside the 65-meter zone measured from the high-flood waterline that is the highest monsoon water level of Fewa Lake, and applies solely to areas lying beyond the lake and its embankments.

19. The second issue requiring determination concerns whether the physical structures constructed by one of the respondents, Park Village Waterfront Hotel Resort Pvt. Ltd., were built within the bounds of the law. In this regard, upon consideration of the documents submitted including those produced by the Company, it is necessary to reach a conclusion. The petitioner asserts that the ongoing construction of Park Village Waterfront Hotel Pvt. Ltd. adversely affects the scenic view of Fewa Lake and that the resort's wastewater management system directly harms the lake, thereby placing its ecological character at risk. On this basis, the petitioner has principally sought an order prohibiting the operation of Park Village Waterfront Hotel Pvt. Ltd., alleging that the Company has established its operational premises along the lake's edge. Conversely, in the rejoinder filed on behalf of Park Village, and during the submissions advanced by learned counsel, it has been contended that the main building of the hotel has been constructed beyond 65 meters from the high-flood waterline of Fewa Lake; that the structures were built with the approval and consent of the competent authorities; and that state-of-the-art pollution-control measures have been installed. Accordingly, they have prayed that the writ petition be dismissed. In this connection, upon examining the separate rejoinders submitted on behalf of Park Village Waterfront Resort Hotel Pvt. Ltd. and its operator, Karna Shakya, both presenting identical factual positions, it is noted that the land parcels registered in the name of the company located at the former Gyarjati Village Development Committee Wards Nos. 1 and 5 now Sarangkot VDC Ward No. 7, were granted approval for building construction. On the basis of a recommendation provided by Pokhara Valley Town Development Committee on 2066/05/24, approval was issued by the Sarangkot VDC Office on the same date.
20. Upon examining the letter dated 2066/05/24, submitted along with the rejoinder submitted by Park Village Waterfront Hotel Pvt. Ltd., it is noted that the recommendation letter purportedly issued by the Pokhara Valley Town Development Committee states that the recommendation was made the very next day after the petitioner submitted an application on 2066/05/23. The letter does not indicate on what basis was the decision of the Town Development Committee was issued. Moreover, it appears that the recommendation addressed to the Sarangkot VDC Office was signed by one Dilli Prasad Dhungana, whose official designation has not been mentioned in the document. Although the recommendation letter acknowledges that the petitioner, Park Village Waterfront Hotel Pvt. Ltd., is being constructed on the banks of Fewa Lake, it is evident that the letter was issued without compliance with the provisions of the Town Development Act, 2045, and without any formal decision of the Town Development Committee. In Pokhara, pursuant to the Cabinet's decision, the Town Planning framework

under the Town Development Plan Implementation Act, 2029, has been in force since 2030/08/15, and the Pokhara Valley Town Development Committee has been operational under the Town Development Act, 2045. Under Section 4 of the Act, no action specified in Section 9 may be undertaken without the prior approval of the Committee established under the Act. Section 9.1 explicitly provides that the Committee has the authority to regulate, control, or prohibit the matters enumerated therein within the town planning area. Without the prior approval of the Town Development Committee, no action shall be undertaken as per the following provisions of Subsection 9.1 of the Act: Subsection 9.1.1: the use or exploitation of agricultural land, natural resources, vegetation, forests, wildlife, archaeological, religious, and historical sites, as well as residential and uncultivated (*parti*) lands and immovable property, is prohibited; Subsection 9.1.2: no new construction of any type of building, office, or other structure, nor the expansion of existing structures, is permitted; Subsection 9.1.3: The establishment or habitation of settlements, dwellings, or residential areas, and the creation of recreational areas, markets, bazaars, industries, or similar facilities, is prohibited and Subsection 9.1.4: any activity that adversely affects the natural beauty, tourist sites, public health, or causes environmental pollution is prohibited. Further, Subsection 9.2 provides that for the purposes of Subsection 9.1, the Committee may grant approval either partially or wholly, or refuse approval, and may impose such conditions, directions, or standards as it deems necessary while granting approval.

21. Section 4.2 of the Town Development Act, 2045, clearly provides the composition of the Town Development Committee. In accordance with this provision, the Committee shall consist of the following members: the Chief or Chairperson of the concerned local authority as Chairperson; Members appointed by the Chief of the District Coordination Committee of the respective district; the Chief District Officer, or an officer designated by the Chief District Officer as Member; representatives of local or district offices responsible for forests, land, and cadastral surveys as Members; three members appointed by the concerned municipality or Village Development Committee from among its council members; two members from among local social workers, including at least one woman, as appointed by the concerned local authority; and the Chief Administrative Officer of the concerned local authority as Member-Secretary. Further, pursuant to Section 4.3, the Committee may, as deemed necessary, invite any expert or advisor to its meetings in the capacity of an observer. The purpose of constituting such a comprehensive Committee is clear: within areas where the town plan is in force, the activities that Section 9 empowers the Committee to regulate, control, or prohibit cannot be undertaken without its prior approval. This ensures that unauthorized activities are restrained and that urban development proceeds in an orderly manner with a clean and healthy environment. There can be no doubt that, in a city possessing national assets such as Fewa Lake, any physical structures or activities that may adversely affect the long-term sustainability of such heritage or increase pollution are entirely prohibited. This legislative intent is clearly reflected in the provisions of Sections 4 and 9 of the Act. Despite the clear provisions of the aforementioned sections, it appears that those provisions were entirely disregarded and violated. The construction of the hotel was allegedly carried out on the basis of a recommendation dated 2066/05/24 from the Pokhara Valley Town Development Committee, without any prior investigation or on-site inspection of the petitioner's application, without convening a Committee meeting, without placing the matter on the agenda for discussion, and without any deliberation, conclusion, or decision. Moreover, the recommendation was based on a letter signed by an unauthorized person whose official position was not disclosed.

Similarly, the claim of Park Village Waterfront Resort Pvt. Ltd. that the Sarangkot VDC, on the same day 2066/05/24, granted approval for building construction on the basis of the Town Development Committee's recommendation, without convening any meeting and solely at the discretion of the Secretary is both implausible and inconsistent with the law.

22. With regard to the third issue, it concerns whether, pursuant to this court's order dated 2075/01/16, the buildings of Park Village Waterfront Resort Pvt. Ltd. constructed on plots no. 174 and 176 fall within the 65-meter zone from the lake's bank, and whether the wastewater from the resort is treated and reused within the hotel premises without being discharged into the lake. In compliance with the court's direction to conduct an inquiry and submit a report within two months, a report was submitted by the Committee constituted under the decision of the Government of Nepal (Secretary level) dated 2075/02/13, chaired by Chief Survey Officer Narayan Regmi. The report is annexed as part of the case record. The report, submitted along with maps indicating the structures of the resort located within and beyond the 65-meter zone, notes that the following structures of the resort fall within the prohibited 65-meter area from the bank of Fewa Lake: (a) water purification tank; (b) swimming pool; (c) toilet adjacent to the swimming pool; (d) truss; (e) garden; (f) parking area for vehicle; (g) main gate; and (h) guard house. Likewise, the report states that only two buildings of the resort are located beyond the 65-meter zone from the lake's bank.
23. The inquiry report, submitted on 2075/03/03 under the chairmanship of Narayan Regmi, concludes that, in addition to the structures noted above, a wastewater treatment system DEWATS is operational at the resort. The report further notes that no direct discharge of wastewater from the resort into Fewa Lake was observed. However, laboratory testing of the wastewater revealed that it is not potable and this finding has been duly recorded in the report. The report also notes that the plot number 173, 304, and 305, on which the resort was constructed and is utilizing structures, are public uncultivated (*parti*) lands. In this manner, utilizing or permitting the **use of Fewa Lake, a protected heritage of public importance, rich in natural, biological, and environmental diversity, and scenic beauty for private or commercial gain, rather than for the public interest, is clearly contrary to public trust and the public interest.** In this regard, it is evident that the recommendation letter dated 2066/05/24 from the Pokhara Valley Town Development Committee, and the approval letter signed by the Secretary of Sarangkot VDC on the same date, upon which the respondent Park Village Waterfront Resort Pvt. Ltd. claims to have obtained permission for hotel and building construction were not issued in accordance with law. Furthermore, it is apparent that the plot numbers 173, 304, and 305 on which the resort has been constructed and is utilizing structures, are public uncultivated (*parti*) lands. In addition, pursuant to Section 24 of the Land Revenue Act, 2034, all land lying within Fewa Lake and its embankment, as it existed from 2018 B.S. to 2031 B.S., is deemed to be automatically cancelled. Therefore, the cadastral record prepared contrary to these provisions is hereby cancelled through an order of certiorari.
24. In addition, the following mandamus orders are issued in the name of the respondents:
 - (a) In view of the order of mandamus issued by this court in writ No. 067-WO-0694, dated 2075/01/16, and for the long-term protection of Fewa Lake, it is directed that any land within Fewa Lake that has been registered in the name of any individual or institution

- shall have such registration cancelled and the land be recorded in the name of Fewa Lake. Furthermore, all types of physical structures, whether private, governmental, or non-governmental within 65 meters from the high-flood waterline of the lake, including businesses, offices, houses, hotels, restaurants, and resorts, shall be removed. No permission shall be granted for any commercial activity within this area, and if any such permission has been granted, it shall be revoked.
- (b) The area extending up to 65 meters from the high-flood waterline (the highest water level during the monsoon) of Fewa Lake shall be maintained and preserved or shall be caused to be maintained and preserved entirely as a green zone.
 - (c) It has been observed that the majority of the structures constructed by the respondent, Park Village Waterfront Resort Pvt. Ltd., fall within 65 meters from the high-flood waterline of Fewa Lake. It further appears that the hotel and building construction was not authorized in accordance with the law, and that the resort's structures have been erected even on public uncultivated (*parti*) land. In order to ensure the long-term purity, beauty, and conservation of Fewa Lake, all such unauthorized structures shall be removed.
25. A copy of this petition and the present order shall be provided to the respondents, as well as to the Government of Gandaki Province, the Office of the Chief Minister and Council of Ministers, the Pokhara Valley Town Development Committee, Pokhara Metropolitan City, and the Land Revenue Office, Kaski, Pokhara. For continuous monitoring of the enforcement of this order, a copy of this order shall be provided to the Judgment Execution Directorate. It is hereby ordered to remove the present writ petition from the case diary and enter the order into the electronic system and accordingly submit the case file to the Record Section.

Concurring with the above Opinion

Honorable Justice Hari Prasad Phyal

Bench Officer: Gambhir Rana Magar/Bikesh Maharjan

Dated: Year 2080 of the Month of Asadh Date 04 Day 2

(Corresponding to Year 2023 of the Month of June Date 19 Day 2)