

**Supreme Court, Division Bench
Honourable Justice Kumar Regmi
Honourable Justice Hari Prasad Phuyal**

Order

078-WO-1358

Sub: Certiorari, Mandamus

Khagendra Subedi, resident of Tehrathum District, Myanglung Municipality, Ward No. 10, Sawala currently residing in Kathmandu District, Kathmandu Municipality Ward No. 5 -----1

Advocate Sarojnath Pyakurel, resident of District Kathmandu, Kathmandu Municipality Ward No. 16 -----1

Advocate Krishna Hari Khadka, resident of Kathmandu District, Kathmandu Municipality Ward No. 14 -----1

Advocate Deependra Prasad Ghimire, resident Bhaktapur District, Suryavinayak Municipality, Ward No. 5, ----- 1

Vs.

Pokhara Metropolitan City, Kaski-----1

Mayor, Pokhara Metropolitan Municipality, Kaski-----1

Pokhara Valley Urban Development Committee, Kaski-----1

Lake Conservation and Development Authority, Kaski, Pokhara-----1

National Lake Conservation Development Committee, Kathmandu District, Kathmandu Municipality, 10, Baneshwar-----1

The summary of the facts and the order on the writ petition submitted pursuant to Article 46 and Article 133 (2) and (3) of the Constitution of Nepal before this court is as follows:

Fact

1. A writ petition was submitted before this court on 2079/02/11 (corresponding to 25 May, 2022) which states as follows: On 2078/12/17 (corresponding to 31 March, 2022), *Adarsh Samaj*, a national daily newspaper published from Kaski District Pokhara Municipality, in its 26th year, Vol. 337 carried on its front page along with a photograph of Fewa Lake, a report asserting that the standards of various lakes including Fewa lake had been reduced. The report stated that the buffer standard around Fewa Lake had been maintained at 30 meters, while the standards of Rupa and Begnas were fixed at 55/55 meters, and for

Khaste, Dipang, Maidi, Nyureni, Mude and Kamal lakes at 20/20 meters. A writ petition 067-WO-0694 had been filed before the honourable court. On 2075/01/16 (corresponding to 29 April, 2018), the court through an order of mandamus, directed that no physical infrastructures be constructed within 65 meters of the bank of lake, declaring the area a conservation zone. In issuing the order, the court took reference of the decision of Kaski District Council dated 2064/03/15 (corresponding to 29 June, 2007) and resolution of the Pokhara Valley Town Development Committee dated 2064/04/28 (corresponding to 13 August, 2007). The court further directed the Office of the Prime Minister and Council of Ministers and the Executive of Province No. 4 (currently Gandaki Province) to coordinate and ensure the removal within 6 months of all permanent and temporary structures, including houses and hotel constructed illegally within the prohibited zone.

The petitioner further contends that the 55th meeting of the Executive Committee of Pokhara Municipality held on 2078/12/16 (corresponding to 30 March, 2022) resolved to reduce the standard buffer zone of Fewa Lake from 65 meters to 30 meters. It is argued that this decision fails to address the broader objective of conserving Fewa Lake, which serves as a significant tourist hub. The petitioner asserts that such short-sighted measures will inevitably result in the degradation of Fewa Lake and if the buffer zone is gradually reduced, the lake will face destruction within a short span of time. This would lead to the extinction of its natural biodiversity and cultural heritage, thereby infringing upon the "right to live in a clean environment" guaranteed as a fundamental right under Article 30 of the Constitution of Nepal as well as the right to conserve religious under Article 26 (2) particularly the protection of the Tal Barahi Temple. It is further alleged that the meeting of the Executive Committee of Pokhara Municipality held on 2078/12/16, (corresponding to 30 March, 2022) had taken reference of the decision of the Supreme Court dated 2075/01/16 (corresponding to 20 April, 2018) regarding Fewa Lake and in the pretext of conserving Fewa lake had subsequently reduced the standard of the lake in a manner that contravenes the Constitution, the laws, and the judgment of the Supreme Court.

With respect to the standard of Fewa Lake, the then government on 2030/08/15 (corresponding to 30 November, 1973) approved and implemented the Pokhara Town Plan. The Plan prescribed standards for all the lakes within Pokhara, providing that no constructions could be carried out within 200 feet from the bank of the lake. Thereafter, approval was granted for the construction of touristic disposable cottages made of Nepali raw materials along the lakeside, and for one-storey cottage on the opposite shore of the lake. The subsequent decision to reduce the prescribed criterion for Fewa Lake and the act of constructing buildings and hotels contrary to these standards is in clear conflict with the Pokhara Town Plan approved by the then government and equally in contravention of the decision of the Honourable Supreme Court dated 2075/01/16 (corresponding to 29 April, 2018).

Whereas an order for the conservation of Fewa lake had previously been issued against the Office of the Prime Minister and Council of Ministers and the Executive of Gandaki Province, the decision taken by the 55th meeting of Pokhara Municipality Executive on 2078/12/16 (corresponding to 30 March, 2022) reflects a complete disregard of the decision of the honourable Supreme Court dated 2075/01/16 (corresponding to 29 April, 2018). Accordingly, the petitioner requests this court to safeguard the fundamental rights

and requests the court to quash the aforesaid decision of the Executive Committee of Pokhara Metropolitan City through an order of certiorari. The petitioner further seeks the court to issue an interim order restraining the respondents from constructing or causing to construct any structures within 65 meters of the lake.

2. A show cause notice on 2079/02/17 (corresponding to 31 May, 2022) had been issued by this court which reads as follows: “What has transpired in this matter? Why should the order as sought by the petitioner not be issued? Provided there exists any reason and grounds for not issuing the order, the respondents are directed to submit their rejoinder within 15 days excluding the period of travel, either in person or through their legal representatives. It is hereby ordered to provide a copy of the writ 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. Accordingly, a hearing on the request for interim order is scheduled for 2079/02/23 (corresponding to 6 June, 2022) and the parties are hereby directed to be informed.
3. On 2079/03/12 (corresponding to 26 June, 2022), this court issued an interim order in the following terms: “with regards to the deliberation on the interim order, the petition seeks the revocation of the decision made by Executive Committee of Pokhara Metropolitan City concerning the reduction of the prescribed standard of Fewa Lake. Upon perusal of the decision adopted at the 55th meeting of the Executive Committee of Pokhara Metropolitan City on 2078/12/16 (corresponding to 30 March, 2022), it appears that the meeting resolved to propose a measurement of 30 (thirty) meters around the four boundaries of Fewa Lake and to submit the proposal to the Pokhara Valley Town Development Committee and the National Lake Conservation Committee for their opinion with a view to implementing the standards after incorporating the comments received therein.”

In a writ petition of certiorari/mandamus 067-WO-0694 filed by the petitioner Khagendra Subedi against the Office of the Prime Minister and Council of Ministers et.al., it has been observed that this court had previously set aside an order prohibiting the construction of physical structures including buildings within 65 meters from the bank of the lake, in order to protect the conservation of the lake. The decision in the 55th meeting of the Pokhara Metropolitan City is contrary to the said order. If implemented, the decision will adversely affect on the natural features, aesthetic value, and environment of Fewa Lake, which is recognized as national heritage. Accordingly, pursuant to Rule 49 (2) of the Supreme Court Regulation, 2049, an interim order is hereby issued directing the respondents not implement or cause to implement Decision No. 6 made by the 55th meeting of Pokhara Metropolitan City on 2078/12/16 (corresponding to 30 March, 2022) until the final disposal of this petition.

4. The rejoinder submitted by the National Lake Conservation Development Board, Kathmandu on 2079/03/03 (corresponding to 17 June, 2022) is as follows: Recognizing the importance of the environmental, religious and cultural development of lakes, ponds, pools, and wetlands located across Nepal and in accordance with the decision of the Council of Ministers on 2063/11/23 (corresponding to 7 March, 2007) regarding the

protection and conservation of all the lakes, ponds, pools, and wetlands, a “National Lake Conservation Development Committee (Establishment) Order, 2065” was issued. Pursuant to this order, the Development Committee which is subordinate to the Ministry of Forests and Environment has been continuously for the conservation, development, expansion, promotion, and beautification of the biological diversity and environment of all lakes in Nepal.

Since Fewa Lake, including Begnas, Rupa, Maldi, Gudai, Nyureni, Khaste, Dipang, and Kamal Pokhari, had been enlisted in the Ramsar List in 2016, it is imperative to conserve these lakes which are of international importance. As a preliminary step for the conservation of Fewa Lake, the lake boundaries were demarcated. Regarding the conservation of the lake, the honourable Supreme Court on 2075/01/16 (corresponding to 20 July, 2020) rendered a decision. To implement this decision, the Government of Nepal pursuant to a decision made on 2077/04/05 (corresponding to 20 July, 2020) through the Ministry of Land Management, Cooperative and Poverty Alleviation constituted a Committee to determine, demarcate and map the four boundaries of Fewa Lake. Based on the Committee’s recommendations, the area of Fewa Lake was established at 5.726 square kilometers (equivalent to 11,255 ropanis 11 anna and 1 paisa). A decision regarding the four boundaries, borders, and area of Fewa Lake was subsequently made by the Council of Ministers on 2077/11/11 (corresponding to 23 February, 2021), and this information regarding the four boundaries, borders and area of Fewa Lake was published in Issue 70, Number 44, Part 5 of the Nepal Gazette on 2077/11/17 (corresponding to 1 March 2021). Furthermore, the Council of Ministers, referencing the four boundaries, borders and area of Fewa lake and exercising the rights vested under Sub-clause (1) of Clause 3 of the Land and Watershed Conservation Act, 2039 (1982), decided to declare the watershed area of Fewa Lake falling under Pokhara Metropolitan City and Annapurna Rural Municipality of Kaski district as a protected watershed area. This declaration was published Section 71, Number 45, Part 5 of the Nepal Gazette by the Ministry of Forest and Environment. In light of these actions and legal instruments, the National Lake Conservation and Development Committee, Kathmandu, respectfully requests the honourable court to consider these decisions made by the Government of Nepal in its deliberations.

5. The rejoinder submitted by Mayor Dhan Raj Acharya on his own behalf and on behalf Pokhara Metropolitan City on 2079/-3/10 (corresponding to 24 June, 2022) states as follows: the writ petitioner has alleged that the Pokhara Metropolitan City through its 55th meeting held on 2078/12/16 (corresponding to 30 March, 2022) decided to revise the standards of Fewa Lake from 65 meters to 30 meters, the standards of Rupa and Begnas Lake to 55/55 meters and the standards of Khaste, Dipang, Maldi, Nyureni, and Gude Lake to 20/20 meters. The respondent clarifies that no such decisions have been made. Prior to the 55th meeting, in order to conduct a study on the standards of Fewa Lake and to maintain these standards pursuant to the judgment of the honourable Supreme Court, the 53rd meeting of Pokhara Metropolitan City decided to form a Committee under the convenorship of Tirtha Raj Koirala. The Committee submitted a report proposing the standard of Phewa Lake at 55/55 meters, and the standards of Khaste, Dipang, Maldi, Nyureni and Gude lakes at 20/20 meters. The opinions of the Pokhara Valley Town Development Committee and the National Lake Conservation Committee were sought

and pursuant to the authority vested under Clause 11 (2) (j) (12) of the Local Government Operation Act, 2074, a decision was made by the Executive. Upon receiving the opinions from Pokhara Valley Urban Development Committee and National Lake Conservation Committee, Pokhara Metropolitan City was to reconsider the standards of the lakes. However, the petitioner's writ is based solely on news report stating that the 55th meeting of the Metropolitan City held on 2078/12/16 (corresponding to 30 March, 2022) had revised the standard of Fewa Lake from 65 meters to 30 meters. Therefore, the respondent contends that the writ petition is unfounded and should be quashed, as it relies on unverified media reports rather than official decisions.

6. The rejoinder submitted by Lake Conservation and Development Authority, Gandaki Province on 2079/03/02 (corresponding to 16 June, 2022) states as follows: the petitioners' have claimed that the Executive Committee of Pokhara Metropolitan City through its 55th meeting decided to reduce the area of the lakes and have sought an order of certiorari from this court to quash the said decision. The Authority clarifies that it was never consulted in relation to this matter and is not involved in the decision-making process. The Authority only became aware of the alleged decision through the contents of the writ petition and has no knowledge of any such decision taken by the Executive Committee of Pokhara Metropolitan City. Further, the Authority notes that the nine lakes within the Pokhara Valley falls under the Ramsar-listed wetland area. Pursuant to a notification published in Nepal Gazette Part 5 on dated 2078/11/16 (corresponding to 28 February, 2022) and exercising the powers vested under Clause 3, Sub-clause (1) of the Land and Watershed Act, 2039, the watershed area of Fewa Lake lying between Pokhara Metropolitan City and Annapurna Rural Municipality of Kaski District was declared a protected watershed area. The Lake Conservation and Development Authority in accordance with the Constitution of Nepal and prevailing laws is committed to protecting the rights of the citizens. Since the writ petition is filed against the Authority without any factual basis, the Authority respectfully requests the honourable court to quash the writ petition.
7. In response to the writ petition, the rejoinder submitted by Dhanraj Acharya, Chairperson and authorized representative of Pokhara Valley Town Development Committee on 2079/03/17 (corresponding to 1 July, 2022) states as follows: with regard to determining the standards of all lakes and ponds situated in Pokhara including Fewa Lake, extensive deliberations have been conducted, and numerous reports have been prepared. These include: Pokhara Development Plan 1965, Physical Development Plan of Pokhara 2031 B.S., Physical Development Plan of Pokhara Nagar Panchayat 2044-2049, Study Report on the Environmental Protection of Fewa Lake 1993, Fewa Lake Conservation Guidelines 2051, Study Report of JICA and Nepal 2058, decisions regarding standards of Fewa Lake area from 2033 to 2068, Lake Conservation Work Plan 2070, and the orders of this court. Based on these various studies, suggestions and decisions different standards for Fewa Lake have been prescribed over time. In this context, the Pokhara Valley Town Development Committee is committed to establishing uniform standards for lakes and ensuring their conservation. The Committee also recognizes that the lake area cannot be subject to individual encroachment and emphasizes the importance of protecting the integrity and ecological value of the lakes.

Prior to Pokhara being declared a Metropolitan City, the boundary of Fewa Lake on one side was under the jurisdiction of Pokhara while the other side was within the jurisdiction of the Village Development Committee, which resulted in differing perspectives and difficulties in implementation uniform standards. With the establishment of a Metropolitan City, all lakes came under the jurisdiction of Pokhara Metropolitan City. To standardize the criteria, the 53rd meeting of the Pokhara Metropolitan City constituted a Boundary Determination Committee. Based on the Committee's suggestions, the 55th meeting of the Executive Committee held on 2078/12/16 (corresponding to 30 March, 2022) decided to solicit opinions and suggestions from the National Lake Conservation Committee and the Pokhara Valley Town Development Committee in order to reach a final decision. A letter to this effect was addressed to the Pokhara Valley Town Development Committee. In response, the Committee did not provide any opinions or suggestions, nor did it make any decisions regarding the increase or decrease of the lake's measurement. Therefore, the writ petition filed against the Pokhara Valley Town Development Committee should be quashed. It is noted that certified copies of Decision No. 6 and Decision No. 7 of the disputed 55th meeting of the Executive Committee of Pokhara Metropolitan City dated 2078/12/16 (corresponding to 30 March, 2022) has been attached herewith.

8. It noted that certified copies of Decision No. 6 and Decision No. 7 of the disputed 55th meeting of the Executive Committee of Pokhara Metropolitan City dated 2078/12/16 (corresponding to 30 March, 2022) has been attached herewith.

Order Section

The writ petition pursuant to the cause-list had been submitted before this Bench and learned advocate and petitioner Mr. Khagendra Subedi and learned advocates Mr. Padam Bahadur Shrestha, Sarojnath Pyakurel, Pankaj Kumar Karn, and Sanjay Adhikari representing the petitioners argued that the decision of Pokhara Metropolitan City dated 2078/12/16 (corresponding to 30 March, 2022) to maintain a 30-meter standard is contrary to the order of certiorari issued by this court on 2075/01/16 (corresponding to 29 April, 2018). In its decision the Metropolitan City, intending to implement the mandamus order issued by this court on 2075/01/16 (corresponding to 29 April, 2018) decided to prohibit the construction of any physical infrastructure within 30 meters from the bank of the lake. However, this court quoting the letter dated 2064/03/15 (corresponding to 29 June, 2007) of the Kaski District Council and the decision made by the Board Committee of Pokhara Valley Town Committee on 2064/04/28 (corresponding to 13 August, 2007), had issued a 11 point mandamus order in writ petition 067-WO-0694. Specifically, Point No. 3 of the mandamus order stated that no buildings and any other physical constructions affecting the conservation of the lake shall be carried out within 65 meters from the bank of lake and ordered the removal of permanent or temporary structures within 6 months. Therefore, the decision of the Pokhara Metropolitan City to maintain a 30-meter standard is contrary to this court's order and the petitioner requests that the court maintain the standard at 65 meters.

Learned advocate Mr. Shiva Bahadur Bhujel, appearing on behalf of Pokhara Metropolitan submitted that the 55th meeting of Pokhara Metropolitan held on 2078/12/16 (corresponding to 30 March, 2022) has not taken any decision to revise the standard from 65 meters to 30 meters.

He further stated that in the 53rd meeting of the Executive Committee of Pokhara Metropolitan City, a Task Force was formed under the chairmanship of Mr. Tirtha Raj Adhikari, Ward as Chairperson of Ward No. 17. The Task Force submitted its report, on the basis of which a proposal was made to adopt a 30-meter standard in all four directions from the boundary (area) of Fewa Lake. The proposal was forwarded to Pokhara Valley Town Development Committee and the National Lake Conservation Committee for their views and suggestions, with implementation contingent upon incorporating of such feedbacks. As no suggestions and opinions had yet been received and no final decisions had been made, counsel argued that the writ petition is based merely on speculative reports published in the newspapers and therefore is liable to be dismissed.

Learned advocates Dr. Bhimarjun Acharya, Mr. Shivaram Shrestha, and Mr. Krishna Poudel, representing the stakeholders, argued that the petition is fundamentally flawed. They contended that the petitioners lack locus standi, as no genuine issue of public interest has been disclosed. Moreover, they pointed out that those individuals who are directly affected by the enforcement of the 65-meter standard—many of whom have constructed houses and restaurants in full compliance with the law and have been consistently paying property taxes—were not made respondents in the case. Since no judicial order can lawfully be issued in a manner that curtails rights guaranteed to such law-abiding individuals, the writ petition must necessarily be quashed.

Upon consideration of the writ petition, rejoinders, documents on record and the submission of the learned advocates representing the petitioners, respondents and stakeholders, the Bench for the purpose of arriving at a decision, deems it appropriate to frame and deliberate upon the following questions:

1. For the conservation of Fewa Lake, by what method and on what legal or factual basis should the four boundaries and the buffer zone from the bank of Fewa Lake be determined? Furthermore, what should be the legal consequences in respect of land and physical structures constructed within such designated areas?
 2. Whether the prevailing constitutional and legal framework vests the local level with exclusive authority to determine the criterion concerning the perimeter of the Fewa Lake?
 3. Whether an order, as prayed for by the petitioners, ought to be issued in the present case?
2. With regards to the first question, this court in the context of protection of Fewa Lake had on 2075/01/16 (corresponding to 29 April, 2018)) entertained 5 writ petitions (067-WO-0694, 068-WO-082, 069-WO-294, 071-WO-1034 and 072-WO-0127) and rendered significant orders in its judgment. While delivering its decision, the court made special observations on the importance of Fewa Lake and for the purpose of its protection and conservation, issued the following writs of certiorari and mandamus:
- a) In writ petition 071-WO-1034 filed by Advocate Bhagwati Pahari against the Prime Minister and the Office of the Council of Ministers, it was noted that the Pokhara Valley Town Development Committee through its 129th meeting held on 2069/03/27 (corresponding to 11 July, 2012) had entered into conceptual agreement with the Ministry of Physical Infrastructure and Transport to establish and operate a cable car from Basundhara Park up to the Buddhist Stupa with the bottom station located at

Basundhara Park. Furthermore, a writ petition was filed against the Memorandum of Understanding signed on 2071/12/17 (corresponding to 31 March, 2015) between the Ministry of Physical Infrastructure and Transport and Manakamana Darshan Pvt. Ltd., for the preparation of a Detailed Project Report of the Pokhara Cable car. Upon adjudication, this court held that the provisions contained therein were inconsistent with Article 16 and 23 of the Interim Constitution of Nepal, 2063, Article 26 and 30 of the Constitution of Nepal, Clause 33 and 34 of the Land Acquisition Act, 2034 and Clause 68 of the Forest Act, 2049. Accordingly, the said agreement was annulled by an order of certiorari. Furthermore, this court observed that it is the responsibility of the Government of Nepal to protect and conserve the Fewa Lake given its multi-dimensional importance, and that it is an obligation of the State to safeguard the lake for future generations. In relation to the protection of Fewa Lake and the preservation of its environment and biodiversity, a four-point mandamus order was issued in the names of the respondent bodies as follows: the land acquired from individuals for the purpose of developing a green belt (green area) shall not be used for any purpose other than the intended one; the land of Raniban which had been acquired for the purpose of developing a biodiversity garden in Raniban, shall be utilized strictly for that purpose. For the protection and conservation of the lake, as well as the wildlife and vegetation in the adjoining forest, no deforestation and construction activities shall be carried out; activities that undermines the historical significance, religious belief and magnificence of the Taal Barahi Temple shall not be permitted; and considering that Fewa Lake has become a major tourist destination, the concerned authorities are directed to take necessary initiatives to have the Lake included in the World Heritage list.

- b) In the writ petition 072-WO-0127 filed by Dharam Bahadur Lamichhane against the Ministry of Physical Infrastructure and Transport, Singh Durbar, Kathmandu et.al., the principal contention of the petitioner was the cable car should be constructed and brought into operation, and that the construction of the cable car from Pokhara Basundhara Park to Shanti Stupa (Peace Pagoda) had been unlawfully obstructed by one of the respondents, namely, the Public Accounts Committee. It was submitted that the Committee, by its decision dated 2072/04/18 (corresponding to 3 August, 2015) and through its directive issued on 2072/04/19 (corresponding to 4 August, 2015) as well as the directive issued by the International Relations and Labour Committee on 2072/04/22 (corresponding to 7 August, 2015)) had created undue encumbrances, thereby violating the petitioner's constitutional right to profession and employment. The petitioner accordingly sought an order of certiorari to quash the said decisions, directives, and related correspondences, and further prayed for an order of mandamus directing the respondents to create or cause to create conducive environment for the smooth implementation of the project. The writ petition however, was quashed by the Supreme Court. The order set aside by the Supreme Court reads as follows: "each right guaranteed by the Constitution and law has its own unique importance and purpose. One right cannot render another right ineffective or inactive. The right to profession and employment, as invoked by the petitioners, would only arise when the cable car is constructed and brought into operation in Basundhara Park. In its absence, the petitioners are not in a position to exercise such right. The petitioners may have adequate alternatives to engage in other

professions, occupation or businesses within the country. However, there can be no alternative in the event of environmental degradation and depletion of biodiversity. If the petitioners were to be engaged in tourism-related businesses or employment, it is highly probable such businesses or employment would be linked to the conservation of Fewa Lake and natural resources surrounding the lake and forest areas. On the contrary, if the lake is not preserved, this would have a detrimental impact on the environment of the area, rendering it uninhabitable. Therefore, where the writ petition has been filed by the petitioners without consideration of the adverse impact that physical development and related activities would have on human life, such writ petition cannot be deemed justifiable and reasonable from any perspective."

- c. On the basis of various correspondences received from different bodies, including the National Lake Conservation Committee, Pokhara Valley Town Development Committee, and District Administration Office, Kaski, the Kaski Land Revenue Office had placed restrictions on the landholdings of Vishnu Maya Timilsina and 120 others. Against this action, writ petition 069-WO-0294 was filed against the National Lake Conservation Development Committee, Baneswar, et.al. Similarly, in a writ petition of certiorari and mandamus 068-WO-0872 filed by Deu Kumari Gurung and 10 other petitioners against the National Lake Conservation Development Committee, Baneswar, Kathmandu, the principal contention was that the land registered in the name of the petitioners had been put under restriction for the purpose of conservation of the lake. Upon consideration this court held that such restrictions had been imposed pursuant to the authority provided by law and, therefore, refused to vacate the restriction order on the land certiorari. In order to reach a conclusion, the order reads as follows: "Clause 2 (b3) of the Land Revenue Act, 2034, defines lake as government land. Clause 24 (1) of the same Act prohibits the registration or cultivation of government or public land in the name of any individual. Sub-clause 2 of Clause 24 further provides that if such land has been registered in the name of a person, such registration shall ipso facto be deemed to be void. Pursuant to this legal provision, a government land cannot be registered in the name of an individual, and if it so registered, the registration is legally null void. Furthermore, as local residents living near the lake, which is a government property, derive substantial benefits from it, it is to be presumed that the conservation of the lake serves the public good. For this purpose, the lands of the petitioners have been temporarily placed on hold. However, recognizing that the right to property of an individual cannot be deprived indefinitely, an order of mandamus is hereby issued directing the respondents to immediately take appropriate measures to determine the area of land situated beyond the periphery of the lake that is required for its conservation. The respondents are further directed to acquire such land by providing a fair and appropriate compensation and to release any land that does need not be held for conservation purposes.

Advocate Khagendra Subedi et.al., filed a writ petition of certiorari and mandamus 067-WO-0694 against the Prime Minister and Office of the Council of Ministers seeking an order to determine the four boundaries of Fewa Lake and to prevent the construction of houses, hotels or any other activities that may harm to the biodiversity, aquatic life and water quality of the lake. In response the respondents, through their rejoinder, failed to provide the four boundaries of Fewa Lake,

which holds multi-dimensional importance in terms of social, economic, cultural and environmental. Studies conducted by Nepal government indicate that the area of Fewa Lake is decreasing day-by-day. Among the respondents, a relevant body in its rejoinder requested the issuance of an appropriate order for the conservation of Fewa Lake. Considering that the obligation to conserve and protect Fewa Lake rests upon the Government of Nepal, the court observed the necessity of issuing a comprehensive mandamus. Accordingly, an 11-point order of mandamus was issued on 2075/01/16 (corresponding to 29 April, 2018) in relation to writ petition no. 067-WO-0694, for the short-term and long-term protection of Fewa Lake. The key directives of the order were as follows:

1. The Government of Nepal, through the Prime Minister and Council of Ministers, shall, within six months, determine and maintain the four boundaries of Fewa Lake.
2. Pursuant to Clause 2(b2) of the Land Revenue Act, 2034, which defines lakes, ponds, and their banks as government land, and Clause 24 (1) and (2) of the same Act, the Government shall ensure that such lands are maintained as government property.
3. Arrangements shall be made to prohibit the construction of buildings or physical infrastructure within 65 meters of the lake's bank and to remove existing structures within six months.
4. Pursuant to the Land Acquisition Act, 2034, acquire adjoining lands deemed necessary for the long-term conservation of the lake.
5. In order to preserve the environment and dignity of Phewa Lake, the area shall be declared a protected watershed pursuant to Clause 3(1) of the Land and Watershed Act, 2039.
6. Pursuant to Clause 10(1) of the Environment Protection Act, 2053, declare Phewa Lake as an environment protection area.
7. To prevent siltation from Harpan and other rivers feeding Fewa Lake and to control sewage inflow, a check dam shall be constructed to regulate the flow of water into the Lake.
8. As the use of chemicals and pesticides in surrounding farms has contaminated the Lake's water, posing a threat to aquatic life, an immediate ban on pesticides shall be implemented, and natural fertilizers promoted.
9. To control the growth of water orchids and maintain biodiversity, the National Lake Development and Conservation Committee, Pokhara Valley Urban Development Committee, and Pokhara Municipality shall coordinate to prevent activities harming the Lake or polluting its water.
10. Prevent construction of houses and hotels that encroach upon the natural area of the Lake and take steps to stop any activities with adverse environmental impact.
11. Develop and implement standards for the protection and sustainable use of the Lake;s resources.

This order is comprehensive in content and has guided several significant decisions by the Government of Nepal, although some directives remain pending implementation.

2. With regard to the area of Fewa Lake, its protection and conservation, protection of the forest surrounding the lake, the purity and biodiversity of the lake and protection of its water sources, these matters have been detailed in the above writ petitions discussed above, and therefore, further reiteration is unnecessary. This court on 2075/01/16 (corresponding to 29 April, 2018) had issued an order of mandamus in five different writ petitions, and it is the responsibility of all concerned individuals and bodies to comply with the court's order in

order to achieve the common objective of conserving Fewa Lake. Article 126 (2) of the Constitution of Nepal provides that all shall abide by the orders or decisions made by the Supreme Court in the course of trials. Furthermore, Article, Article 128 (4) of the Constitution of Nepal mandates that all must abide by any interpretation of the Constitution and law made by the court during the course of trial, and stipulates that any obstruction in the enforcement of such orders or decisions constitutes contempt of court, for which punishment may be imposed. All responsible individuals and bodies are therefore required to take these provisions seriously and act accordingly.

3. To ensure the conservation of Fewa Lake, it is essential to determine the criteria, the four boundaries, borders, total area of the lake and the surrounding coastal area. Since Fewa Lake is situated near a large human settlement, such measures are critical to protect and conserve the natural features of the lake. With regards to the total area of Fewa Lake, the report of the Nepal-India Cooperation Mission carried out in 2018 B.S., concludes the total area of Fewa Lake is 10.35 square kilometers, indicating the Fewa Lake spread over a large area with a substantial catchment area. Similarly, a certified inscription still visible today located at the dam of Fewa Lake dated 2018/08/03 (corresponding to 3 December, 1961) also records the total area of the lake as 4 square miles (10.35 square kilometers) and the catchment area as 45 square miles (116.549 square kilometers). Furthermore, on 2077/11/17 (corresponding to 1 March, 2021) a notification was published in Nepal Gazette (Vol. 70, No. 44, Part 6) regarding the formation of a Committee tasked with determining and mapping the boundaries and borders of Fewa Lake, under the convenorship of Punya Prasad Paudel. The report submitted by this Committee in 2077 on pages 6 and 7 confirms that the total area of Fewa Lake is 10.35 square kilometers consistent with the findings of the Nepal-India Cooperation Mission report.
4. Pursuant to the notice published in the Nepal Gazette dated 2077/11/17 (corresponding to 1 March, 2021), the four boundaries of Fewa Lake have been determined as follows:
 - **East:** Dam side
 - **West:** Moray sand bank
 - **North:** Damkilo, wedged between Khapouti and Chankhapur
 - **South:** Chisapani Raniban

According to the map in the Schedule, the boundaries of the lake include the lakeshore area encompassing Dam side, Raniban, Gaurighat, Lakeside, Gairako Chautara, Sedi, Khapoudi, Lamidanda, and Andu. The delineation extends from the estuary of Fewa Lake northward from Machha Pokhari crossing the Harpan River to the northeast, passing the last turning point of Bhakunde River, and including the southern part of Majthum Dhisko, and Daladale Dhap area on the east, up to the motorable road of Pamé Ghatichina. The total area of the lake, demarcated is 5.726 square kilometers (equivalent to 11,255 ropani 11 anna 1 paisa).

5. The four boundaries, perimeter, and current expanse of water in Fewa Lake have been addressed by the notification published in the Gazette dated 2077/11/17 (corresponding to 1 March, 2021). It is essential to ensure the maximum reservoir of clean water for Fewa Lake within these established boundaries and perimeter of the lake. In order to conserve and protect the existence of all living creatures - including the birds, fish, and insects that depend on the lake and to promote their environmental growth and maintain biodiversity, it is imperative

that all forms of encroachment caused by natural and human activities within the designated boundaries of Fewa Lake be completely prohibited.

6. For the conservation of the lake, the 65 meter set back and buffer zone is deemed necessary for the following reasons. to prevent pollution of the lake's water, to protect the structural integrity of the shoreline, to safeguard the lake from floods, landslides, and soil erosion, to conserve the flora, fauna, vegetation and environment surrounding the lake, to maintain the habitat of aquatic and terrestrial living organisms, to preserve the quality and purity of the lake's water, to maintain the stability of the lake's water level, to allow the lake to remain in its pristine state, to enable adequate water storage, to preserve the natural thermal condition of the water and to maintain other essential ecological and environmental aspects of the lake.
7. The lake is more than just a source of beauty and attraction. It is intimately connected with human culture, the development of international brotherhood and the very existence of humanity. Human are creation of nature and every living being in the environment possesses a natural right to exist and preserve its life within nature. Just as humans have the right to exist, every living organism and plant must be allowed to sustain itself and humanity must acknowledge and respect this fact. It is therefore essential to preserve the lake's environment and the habitats within and around it, while simultaneously promoting broader environmental conservation. The sustainable use, protection, and promotion of natural resources serve the best interest of humanity. Unlike humans, other living beings generally do not have a detrimental impact on the environment; hence, it is the responsibility of humans to safeguard their existence and to ensure the sustainable conservation of the lake for the benefit of humankind. Provided, the aquatic system operates properly, natural aquatic processes and activities can continue unhindered, supporting the overall ecological balance of the lake.
8. To prevent the natural encroachment on Fewa Lake, concrete and technical measures must be adopted to halt the influx of stones, soil, gravel, sand, trees, and other debris transported from tributary rivers and streams feeding into the lake. To achieve this objective, it is imperative to construct check dams at key locations to allow only water to flow into the lake. The successful implementation of such measures requires effective coordination among the Pokhara Valley Town Development Committee, Pokhara Metropolitan City, and the National Lake Development and Conservation Committee, with necessary support from the federal and provincial governments. To prevent encroachment resulting from human activities, construction within 65 meters of the lake shall be prohibited. All activities including construction of physical infrastructures and the operation of trade and business, that may impact the upper regions of the lake or surrounding wetlands shall be completely stopped. Existing structures within this area must be removed within a prescribed short timeframe and the 65-meter zone shall be designated as a green belt to ensure the long-term protection and conservation of Fewa Lake and its surrounding environment. The area within 65 meters of the lake's boundary shall be entirely free of human settlements, businesses, hotels, restaurants, bars and other human activities. This zone shall be maintained as a green, open and clean space with trees, plants and parks, and shall remain free from human-made pollution and waste. Such measures will help preserve Fewa Lake in the long term as a vast, pristine, and beautiful lake, safeguarding it as a national treasure of Nepal that captivates the global community. Proper conservation of Fewa Lake will also contribute to the biodiversity

preservation, and if maintained naturally, the lake can support the economy through sustainable tourism.

9. Pursuant to the Town Development Implementation Act, 2029, the Pokhara City Plan was approved by the Council of Ministers on 2030/08/15 (corresponding to 30 November, 1973), and the Ministry of Construction and Transportation subsequently published a notification in the Nepal Gazette 2030, Marg 17, Supplement 52. In accordance with the approved city plan, a blueprint for the development of Pokhara city was presented, designating Fewa Lake as a protected area. The plan also included directives prohibiting all forms of construction within 200 feet of the lake's bank to safeguard its natural environment and preserve its ecological and aesthetic value. Upon review of the Preamble of the Town Construction Planning Implementation Act, 2029, it is evident that the Act was issued to promote the development of declared regional development centers. Accordingly, to develop Pokhara, as a center of the Western Regional Development Region, the Pokhara Town Development Plan was implemented. Under the City Plan, no construction could be undertaken without prior approval from the City Plan Implementation Committee. The Plan stipulates that the utilization and consumption of immovable properties - including agriculture land, natural resources, vegetation, forests, wildlife, and archaeological, religious, and historical sites of that area falls under the ambit of Clause 5. Any individual causing obstruction to the implementation of the City Plan or disobeying its orders and directives is subject to punishment pursuant to Clause 6. The City Plan approved by the Council of Ministers on 2030/08/15 (corresponding to 30 November, 1973) explicitly prohibits any construction within 200 feet of the Fewa Lake shoreline and this standard had been in place for over 50 years ago. The Town Construction Planning Implementation Act, 2029, has been repealed by the prevailing Urban Development Act, 2045, and Clause 28.2 provides that the functions and proceeding carried out by the Committee constituted pursuant to Town Development Committee Act, 2019 (1963) and Town Construction Planning Implementation Act, 2029 (1973), along with the corresponding entitlements and liabilities, shall be transferred to the concerned Town Development Committee constituted under the present Act. Further, Clause 28.3 stipulates that the Committees constituted pursuant to Town Development Committee Act, 2019 and Town Construction Implementation Act shall be deemed to have been constituted pursuant to this Act. Therefore, pursuant to the Repeal and Saving Clause of the Act, the decision of the Council of Ministers to prohibit construction activities within 200 feet from the Fewa Lake shoreline made under the Town Construction Implementation Act, 2029 shall be deemed to be a provision under the prevailing Town Development Act, 2045.
10. It is evident that, prior to the Fewa Lake dam burst, in B.S. 2031, construction within 200 feet of the lake's shoreline was prohibited, and this 200-foot zone was designated as the lake bank. Pursuant to law, the 200-foot zone was declared a buffer area over 50 years ago. Continuing this policy for the protection of the lake, the Kaski District Council, in its 15th meeting held on 2064/03/15 (corresponding to 29 June, 2007), decided to prohibit any physical construction within 65 meters in and around the lake. Similarly, in its 17th meeting held on 2064/04/18 (corresponding to 3 August, 2007) the then Pokhara Town Development Committee, Chaired by Durga Timilsina, decided to maintain a 65-meter buffer zone around Fewa Lake. It was determined that no physical structure could be constructed within 65 meters of Fewa Lake's high flood point (i.e. the highest water level or the water's edge during

the rainy season), and that this area must remain vacant to ensure the lakes conservation. These decision made in accordance with the law, demonstrates uniformity and consistency in the enforcement of measures aimed at protecting Fewa Lake. In continuation of these measures, this court in response to writ petition 067-WO-0694 issued an order of mandamus on 2075/01/16 (corresponding to 29 April, 2018), prohibiting all physical activities – including construction of buildings within 65 meters of the lake's shoreline that could affect the lake. The court also ordered removal of all permanent and temporary structures within six months. Keeping the land vacant for conservation of the lake is essential to maintain the purity of the lake's water, increase its storage capacity, and support biodiversity. Accordingly, maintaining the 65-meter buffer zone cannot be deemed otherwise. Where a walking path is to be constructed, it shall be built from the outer end point of 65-meter zone. Maintaining a green area within 65 meters of the lake enhances purity and quality of the lake's water and increases storage capacity and supports overall ecological balance. Therefore, it is evident that the area within 65 meters of the lake's high flood point (high flood point during the monsoon) must be preserved. There is no doubt that all of physical infrastructures within this zone should be removed, and any decisions contrary to this requirement cannot be deemed lawful

11. The water leve of Fewa Lake remained constant from B.S. 2018 to 2031. Following the dam burst in B.S. 2031 the water level decreased, and a land survey was conducted from B.S. 2032-2033. During this survey, some lands were registered in the names of individuals with registration records maintained and land ownership certificate issued, thereby allowing certain individuals to derive benefit. The foundation stone for the reconstruction of the dam was laid in B.S. 2034 and the construction was complete in B.S. 2038. Upon completion, a land survey was carried out in B.S. 2032 which revealed that some of the lands been submerged by the lake. The construction of the dam at Fewa Lake commenced prior to B.S. 2018 and the dam was inaugurated on 2018/08/03 (corresponding to 18 November, 1961) and a policy on compensation was introduced in Bhadra 2018 B.S., and it has been observed that from B.S. 2018 until the dam burst in B.S. 2031, no disputes regarding compensation were raised. Therefore, it is evident that the land constituting Fewa Lake from B.S. 2018 to B.S. 2031 shall be recognized as the property of Fewa Lake. Following the dam burst and the subsequent decrease in the water level, the land recorded in the land survey record during B.S. 2032/33 is still deemed to have been part of Fewa Lake from B.S. 2018 to B.S. 2031. As no compensation issues arose at that time, and had compensation been necessary it can be presumed to have been provided, the court holds that no further compensation is required for these land, which should be officially registered under the name of Fewa Lake. It has also been observed that, following the reconstruction of the dam in 2038 BS, some of these lands were submerged. Accordingly, the lands forming part of Fewa Lake from 2018 to 2031 B.S. are recognized as belonging to Fewa Lake and therefore, no compensation is warranted for those lands.
12. In this regard, the then Ministry of Water Resources through a (Secretary- Level) decision dated 2041/12/12 (corresponding to 25 March, 1985) pursuant to Clause 24 of the Land Revenue Act, 2034, recommended the deregistration of lands that had been submerged in 2018 B.S. but were later registered in the names of individuals during the land survey carried out in 2032/33 B.S., and to have such lands registered in the name of Fewa Lake. Subsequently, on 2042/04/17 (corresponding to 1 August, 1985), His Majesty's Government

through (Minister-Level) decision resolved to proceed with deregistration of these lands and remove the names of individuals from the official record. In this regard, a letter dated 2042/04/21 (corresponding to 5 August, 1985) addressed to the Western Regional Irrigation Directorate of the Ministry of Water Resources, Department of Irrigation and Hydrology, pursuant to Clause 24 of the Land Revenue Act, 2034, directed the deregistration of land falling within the lake. A similar letter was subsequently sent by the Western Regional Irrigation Directorate to the Land Revenue Office, Kaski on 2042/05/09 (corresponding to 25 August, 1985) and to 128 individuals represented by Purna Bahadur Gurung concerning compensation, which is enclosed with the case file. Referring to the Ministerial-Level decisions of 2042/04/17 (corresponding to 1 August, 1985), His Majesty's Government further issued decisions on 2042/12/18 (corresponding to 31 March, 1986) and 2043/09/12 (corresponding to 27 December, 1986) accordingly.

13. With regards to the legal status of the land within the lake and along its embankment, Clause 2 (b.2) of the Land Revenue Act, 2034, defines "government land" to include land, forest, jungle, river, stream, riverbank, lake, pond, and their embankments under the ownership of Government of Nepal. Accordingly it cannot be disputed that Fewa Lake is lake under the ownership of the Government of Nepal. Since Fewa Lake is under the ownership of the Government of Nepal, and the area within the lake remained submerged from B.S. 2018 with no dispute regarding compensation until B.S. 2031, it follows that both the land and the embankment of Fewa Lake rightfully belongs to the Government of Nepal. Clause 24 of the Land Revenue Act, 2034, provides that government or public land shall not be registered or cultivated by any person. Similarly, Clause 24 (2) of the same Act prescribes that "where a person has registered any public land or government land and cultivated it prior to or after the commencement of this Clause, such registration shall ipso facto be void. The Land Revenue Office or any authority specified by the Government of Nepal shall cross of the registration of such land standing in the name of any person." Therefore, pursuant to this provision, any land and embankment of Fewa Lake that has been registered after B.S. 2018 shall be deemed to have been erroneously registered, and registration of such land shall be deemed to be illegal and voidable.
14. With regard to the types of land eligible for compensation under the Land Acquisition Act, 2034, it is evident that upon completion of the construction of the Fewa Lake dam in B.S. 2018, the land inside the lake and within its embankment was, pursuant to the law, deemed to be government-owned land. As these lands were required to be deregistered and maintained in the name of Fewa Lake, no compensation is payable for them. With regard to land falling outside this area, such as land beyond the territory of the lake from B.S. 2018, uncultivated land, barren land, or any other public land, any parcel of land that, prior to the survey conducted in B.S. 2032/33, had been duly registered, for which land tax had been paid, and which had been under the continuous possession of the owner, and which lies at least 65 meters away from the lake, its embankment, and the high flood point, shall be duly compensated in accordance with the law
15. For the conservation of Fewa Lake, the Council of Ministers pursuant to Clause 3 (1) of the Land and Watershed Conservation Act, 2039 had through a decision declared Fewa Lake as "conserved watershed area" and a notification to that effect had been published in Nepal Gazette and in the changed context, this has provided a stronger legal basis for protecting the

four boundaries and borders of Fewa Lake. For the purpose of land and watershed conservation of Fewa Lake, the Watershed Conservation Officer, in accordance with the prescribed provisions, may construct dams , check dams, terraces diversion channels, retention walls for flood prevention and control and ponds or other necessary structures, and maintain them. The Officer may also carry out afforestation activities, including planting and nurturing trees, grass, and other vegetation, protect and conserve forests, grasslands, and other natural vegetation in landslide-prone and steep areas; engage in the cultivation of crops and fruits; and ensure the maintenance of soil fertility, water purity, and overall environmental quality.

16. Clause 6 of the Land and Watershed Conservation Act, 2039, prescribes that upon following the land use system farming of any crops or fruits and plantation of trees, plants or grasses may be carried out within the four boundaries of the conserved watershed area. Clause 10 of the same Act prohibiting activities in lands that is vulnerable or likely to be vulnerable to natural calamities is a significant provision. The Act states that “Notwithstanding anything contained in the prevailing law, no person shall without the permission of the Watershed Conservation Officer carry out any of the following activities in such land as specified by the Watershed Conservation Officer as a land that is vulnerable or likely to be vulnerable to floods, landslides or soil-erosion or soil-cutting.

- 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 vegetation,
- (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 domestic animals and birds.

17. If any act prohibited by the Land and Watershed Conservation Act, 2039 is committed, the offender shall be subject to punishment, and in such cases, the Government of Nepal shall be the plaintiff. To ensure the survival of aquatic life—including birds, fish, insects, frogs,

and other living beings—it is essential to maintain a sufficient supply of clean water within the boundaries of Fewa Lake, to foster their growth in an environmentally friendly manner, and to preserve biodiversity. For this purpose, all forms of encroachment, whether resulting from natural causes or human activities, within the designated boundary of Fewa Lake must be strictly prohibited. Through the effective enforcement and implementation of the law, it is possible to conserve rare and valuable natural resources that have been polluted and degraded due to human encroachment. This will ultimately contribute to the conservation of biodiversity and a clean environment bringing benefits to all humanity. As a result, the beauty and appeal of the lake will be enhanced, and tourism will flourish. Therefore, it is imperative that all concerned parties strictly adhere to and implement the laws enacted for the conservation of protected water resources, forests, and the environment.

18. Turning to the second question under discussion, it is essential to examine how the Constitution of Nepal manages the provision of separation of state powers. Article 57 of the Constitution of Nepal lays down the framework for the distribution and separation of state powers. Article 57 (1) states that the power of the Federation shall be vested in the matters enumerated in Schedule-5, while Article 57 (2) provides that the power of the State shall be vested in the matters enumerated in Schedule-6. Article 57 (4) provides that the power of the local level shall be vested in the matters enumerated in Schedule-8 and Article 57 (3) states that the concurrent powers of the Federation, State shall be vested in the matters enumerated in Schedule-7 whereas Article 57c(5) provides that the concurrent powers of the Federation, State and Local levels shall be vested in the matters enumerated in Schedule-9. In matters that fall exclusively within the single list of the Federation, Province, or local level, the respective level of government shall have the authority to enact laws. However, if a subject appears in both a single list and a concurrent list, the law enacted by the concerned level shall be recognized pursuant to the provisions prescribed in Article 57(6) and Article 57(7) of the Constitution. As per Article 57(6), when making laws on matters included in the concurrent lists under Schedules 7 and 9, the Province and the local level must ensure that their legislation does not contradict federal law. Likewise, in accordance with Article 57(7), while legislating on matters listed in Schedule 9, local level laws must not be inconsistent with provincial law.
19. Article 57 (1) of the Constitution of Nepal prescribes that matters relating to the executive powers of the federal government shall be pursuant to Schedule 5, whereas Article 109 states that the “legislative powers of the Federal Parliament” shall be as enumerated in the lists of Schedule 5, Schedule 7 and Schedule 9. Upon perusal of the matters related to the writ petition, it is observed that the following list enumerated in Schedule 5 falls with the exclusive power of the federal government: List No. 7 - international treaties or agreements; List No. 11 – policies relating to conservation and multiple use of water resources; Policy No. 27 - national and international management, national parks, wildlife reserves, wetlands, national forest policies, and carbon services; and List No. – 29 tourism policies and environment adaption. Article 57 (2) lists the exclusive power of the State wherein No. 19 of Schedule 6 enumerates the use forests, and water and management of environmental within the State whereas Article 57 (4) lists the exclusive power Lof local level wherein No. 10 and 21 under Schedule 8 enumerates the following: (a) local market management, environment protection, and biodiversity and (b) protection of watershed, wildlife, mines, and minerals (No. 21). Article 57 (3) prescribes concurrent powers of the Federation and the

State wherein state boundary river, waterways, environment protection and biological diversity prescribed in No. 13 and utilization of forests, mountains, forest conservation areas and waters stretching in inter-State form are some of the concurrent powers listed in No. 23 of Schedule 7. Likewise, Article 57 (5) prescribes concurrent powers of Federation, State and Local level wherein forests, wildlife, birds, water uses, environment, ecology and biodiversity are some of the concurrent powers listed in No. 7 of Schedule 9. From the constitutional provisions, it can be concluded that the federal government holds exclusive authority to formulate policies and standards concerning the conservation and multiple use of water resources, as well as to enact laws related to national and international management of environment and wetlands. Furthermore, matters concerning the implementation of international treaties and agreements fall within the sole jurisdiction of the federal government. Matters relating to the protection of environment and biodiversity are designated as concurrent powers between the Federal and State, while they are also recognized as exclusive power of the Local level which may create some ambiguity. The inclusion of watershed conservation in the exclusive powers of local levels indicates that local governments are entrusted with primary responsibility for the protection and sustainable management of watersheds, rather than for prescribing standards. At the same time, the placement of forests, jungles, wildlife, birds, water use, environment, and biodiversity in the concurrent list of the federal, provincial, and local levels signifies that provinces and local levels may enact laws, provided they are not inconsistent with federal legislation, and that local levels must also ensure their laws or policies do not contradict provincial legislation. This constitutional arrangement highlights the principle of shared responsibility, requiring coordination and cooperation among all three tiers of government in safeguarding the environment and biodiversity.

20. In addition to constitutional provisions enumerating matters related to water, water sources, watersheds, atmosphere, environment, and biodiversity, Article 30 (1) of the Constitution of Nepal guarantees every citizen the fundamental right to live in a clean and healthy environment. To safeguard this right, the State is obliged to make necessary legal arrangements. Furthermore, Article 25 (1) grants every citizen the right to acquire, own, sell, dispose and derive business benefits, however, Article 25 (4) authorizes the State to impose necessary regulation on the exercise of property right in order to protect the environment. Article 51 of the Constitution provides for State Policies and under policies relating to protection, promotion, and use of natural resources, the Constitution prescribes key constitutional provisions from g (1) to g (9). The policies of the State prescribed by the Constitution must be complied by three levels of government and every individual. In particular, the provisions outlined in Policy (5) to g (9) are also especially relevant to conservation of Fewa Lake. They are as follows:

1. Section 51 (g) (5)- "to conserve, promote and make sustainable use of forest, wildlife, birds vegetation and biodiversity, by mitigating possible risks to environment from industrial and physical development, while raising awareness of general public about environment cleanliness”;
2. Section 51 (g) (6)- “To maintain the forest areas in necessary for ecological balance”;

3. Section 51 (g) (7) – “to adopt appropriate measures to abolish or mitigate existing or possible adverse environmental impacts on the nature, environment or biological diversity;”
 4. Section 51 (g) (8) – “to pursue the principles of environmentally sustainable development such as the principles of polluter pays, of precaution in environmental protection and of prior informed consent”.
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21. The provisions of the Constitution, as the fundamental law of the land, emphasize the importance of protecting the environment and biodiversity. In this context, these constitutional provisions are expected to make a significant contribution to maintaining the cleanliness and expansiveness of wetlands, lakes, and ponds, thereby supporting broader environmental protection efforts. From the constitutional framework regarding the distribution of state powers, fundamental rights, and State policies, it is evident that provincial and local governments have a crucial role to play, operating under the primary responsibility of the federal government, in accordance with the established constitutional arrangement.
 22. The 55th meeting of the Executive Committee of Pokhara Metropolitan City, held on 2078/12/16 (corresponding to), proposed maintaining a 30-meter buffer zone from all four boundaries of Fewa Lake, citing Clause 12 (2) (j) (12) as the source of its authority. Regarding the claim that the Municipality, by exercising the powers vested under Clause 11 (2) (j) (12) of the Local Governance Act, 2074, can take such action, it has been noted and discussed in the above paragraphs that the jurisdiction of the federal government prevails over other levels of government in matters concerning environmental protection, watershed, biodiversity, and issues listed under the Ramsar Convention. In cases of concurrent powers, the different levels of government are required to act in a coordinated manner and their actions must not contravene federal law. Fewa Lake is situated within the Pokhara Metropolitan City and the Metropolitan City cannot make unilateral decision that contravenes the Town Development Act, 2045, which is a federal law. Accordingly, at its 55th meeting on 2078/12/16 (corresponding to), the Executive Committee proposed a 30-meter open space around Fewa Lake and has decided to forward the proposal to the Pokhara Valley Urban Development Committee and the National Lake Conservation Committee for their opinion and suggestions, with final decisions to be made after incorporating their suggestions. Chapter 3 of the Local Government Operation Act, 2074, sets out the functions, duties, and powers of Rural Municipalities and Municipalities, Clause 11(1) provides that “the exclusive rights of the Rural Municipality and Municipality shall be pursuant to Schedule-8 of the Constitution.” In cases where such matters are listed concurrently under the federal, provincial, or concurrent powers, Clause 11(1) further clarifies that the exercise of authority must follow the prescribed protocol. Similarly, Clause 11 (2) states that "the functions, duties, and powers of the rural municipality and municipality without adversely affecting the universality of Sub-clause (1) shall be as follows and in Sub-clause (2) (j) includes "local market management, environmental protection, and biodiversity," and Sub-clause (2) (j) 12 states "formulation, implementation, monitoring and regulating local policies, laws, standards and plans relating to protection of environment and biodiversity. Provided, these matters were had been included in Schedule 8 of the Constitution, they would have been deemed the exclusive right of the local level. However, since they are

instead included in Schedule 5 of the Constitution under the powers of the Federation, in Schedule 7 under the concurrent powers of the Federation and the State, and in Schedule 9 under the concurrent powers of the federal government, the State, and Local level, the Local level must exercise its jurisdiction within the framework of federal or state law and within the ambit of federal and state authority. Furthermore, in relation to the development and protection of natural resource including forest lakes and ponds situated within the metropolitan city, the Executive Committee of the Metropolitan City is obliged to acknowledge and give effect to the legal provisions set forth in Town Development Act, 2045. Likewise, pursuant to the Land and Watershed Conservation Act, 2039, which the Council of Ministers' of the Government of Nepal declared Fewa Lake a "conserved watershed area," the Metropolitan City is under a mandatory duty to comply with the provisions of the said Act.

23. With the objective of building cities in a planned manner, including the regional development center, the "Urban Development Plan Implementation Ordinance, 2029" was promulgated in 2029 B.S. The Ordinance was subsequently replaced by the Urban Development Plan Implementation Act, 2029. Pursuant to the authority conferred by the Act, the Council of Ministers of the Government of Nepal on 2030/08/15 (corresponding to) approved the Pokhara Town Plan. Under the comprehensive plan prepared by the Ministry of Construction and Transportation Fewa Lake was designated as a conserved area wherein all physical activities including construction works were prohibited within 200 feet from the bank of the lake, thereby maintaining it as a protected area. The Town Development Plan Implementation Act, 2029, was repealed and replaced by the Town Development Act, 2045. Under this Act, a Town Development Committee is constituted and vested with the authority to regulate and prohibit any activities that may adversely affect the natural beauty, tourist sites, and public health, or that may result in environmental pollution. Clause 10 of the Act vests the Committee with the authority to prevent or demolish any work that is performed without prior approval. Clause 11 sets forth the functions, duties and powers of the Committee. Clause 10 of the Act, vests the Committee with the authority to prevent or demolish any work that is performed without its prior approval. Clause 11 sets forth the functions, duties, and powers of the Committee. Section 11.1 states the following – save as provided elsewhere in this Act, the Committee shall have the following functions, duties, and powers:

- Clause 11.1.2 (b) to set guidelines for the institutions or local body upon prescribing condition or standard for the physical development;
- Section 11.1.4 to prescribe conditions on construction and other activities to be done in the forests, streams, riverside, and hills, or water area for the protection of nature and environment of town planning region and to perform and cause to perform the act as per the said conditions;
- Section 11.1.5 to prohibit the use of natural resources that causes adverse effect on nature.

Specific standards governing the physical development as well as the conservation of natural resources, riversides, water areas and forest within the town area have been expressly prescribed under these legal provisions. In this regard, the Pokhara Valley Town

Development Committee by its decision dated 2064/04/28 (corresponding to 13 August, 2007), established a 65-meter buffer zone. Notwithstanding this, the Metropolitan City, invoking the Local Government Operation Act, 2074, on 2078/12/16 (corresponding to 30 March, 2022) proposed a different standard contrary to the standard set earlier. However, such proposal cannot be deemed to constitute an exclusive right of the local level.

24. With regards to the third question, while Clause 11 (1) (j) (12) of the Local Government Operation Act, 2074, constitutes a general provision applicable to all rural municipalities and municipalities nationwide, the provisions of the Town Development Act, 2045, are mandatory for town development. Accordingly, the conditions and standards prescribed therein for the development, construction, and protection of natural resources, environment, water, forest, and other natural resources in urban areas must be strictly observed. In this context, the decision of the 55th meeting of the Executive Committee of Pokhara Metropolitan City, dated 2078/12/16 (corresponding to 30 March, 2022), which stipulates that no physical structure, including buildings, may be constructed within 65 meters of the high flood point of Fewa Lake contradicts the earlier decision of the Pokhara Valley Town Development Committee dated 2064/04/28 (corresponding to 13 August, 2007); the Kaski District Council decision dated 2064/03/15 (corresponding to 29 June, 2007) and the order of certiorari/mandamus issued by this court in writ petition no. 067-WO-0694 on 2075/01/16 (corresponding to 29 April, 2018). Furthermore, based on the reasons and grounds established for the first and second questions, Decision No. 6 and No. 7 of the Executive Committee of the Pokhara Metropolitan City, dated 2078/12/16 (corresponding to 30 March, 2022), which maintained a 30-meter standard around the periphery of Fewa Lake cannot be deemed consistent with the law. Consequently the said decisions are hereby quashed by an order of certiorari.
25. Pursuant to Clause 2 (b 2) of the Land Revenue Act, 2034, government land includes lakes, ponds, and their banks under the control of the government. As Fewa Lake falls under the control of the Government of Nepal, it is indisputable that the land constitutes government property. Since the land has been under government control, there has been no dispute regarding compensation for the land from B.S. 2018 to B.S. 2031, and provided there were any dispute during that period are presumed to have been resolved. The area of the lake and its banks remains government land. Under Clause 24 of the Land Revenue Act, 2034, government and public lands cannot be registered or cultivated and any registration or cultivation undertaken in violation of this provision is ipso facto void. Accordingly, the record of registration prepared in contrary to these provisions is hereby quashed by an order of certiorari.
26. Furthermore, the following order of mandamus has been issued against the respondents.
 1. It is hereby ordered to mandatorily remove or cause to be removed all houses, buildings, business complexes, hotels, restaurants, resorts and personal, government, or public physical structures constructed within 65 meters of the high flood bank area within 6 months from the date of receipt of this order. Furthermore, the 65-meter buffer zone shall be declared a green belt, which shall be maintained or caused to be maintained in accordance with this directive.

2. Since Fewa Lake has been declared a "conservation area", it is hereby directed that all works related to its conservation be carried out in accordance with the Land and Watershed Conservation Act, 2039, encompassing the lake from its source (origin) to the entire watershed area.
 3. There has been no dispute regarding compensation for the land from B.S. 2018 to B.S. 2031, and any disputes that may have arisen during that period are presumed to have been resolved. As the land of Fewa Lake and its banks constitutes property of the Government of Nepal, it is hereby directed that the land be registered pursuant to Clause 24 (2) of the Land Revenue Act, 2034, in the name of Fewa Lake, to remain under the control of the Government of Nepal.
 4. With regard to land situated outside the designated area, such as land beyond the territory of the lake since B.S. 2018, uncultivated land, barren land, or any other public land, any parcel of land that, prior to the survey conducted in B.S. 2032/33, had been duly registered, for which land tax had been paid, and which remained under the continuous possession of the owner, and which is located at least 65 meters away from the lake, its embankment, and the high flood point, shall be identified, and provisions for appropriate compensation shall be made in accordance with the law.
27. It is hereby ordered that a notification of this order be provided to respondents the Government of Nepal, Office of the Prime Minister and Council of Ministers; Gandaki Province, Office of the Chief Minister and Council of Ministers; and the Land Revenue Office, Kaski, Pokhara. For the purpose of implementing this order and ensuring continuous monitoring, a copy of the order shall be provided to the Judgment Execution Directorate. It is further ordered the writ petition be removed from the registry, enter the order into the electronic system and accordingly submit the case file to the Record Section.

Judge

Concurring with the above Order

Judge

Bench Officer : Gambhir Rana Magar/Vikesh Maharjan

Computer Operator : Sanjay Gurung

Dated Year 2080 Bikram Sambat of the Month of Ashad Date 4 Day 2

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