

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

JAIPUR BENCH, JAIPUR

ORDER

SB Civil Writ Petition No.11153/2011

Suo Motu versus State of Rajasthan

Date of Order :

29<sup>th</sup> May, 2012

PRESENT

HON'BLE MR. JUSTICE MN BHANDARI

Mr Virendra Dangi

Mr Ashok Kumar Bhargava – Members of the Monitoring  
Committee

Mr RP Singh, Additional Advocate General – for the State

Mrs Neeraja Khanna

Mr Sanchit Tamra

Mr AK Bhandari, Sr Adv with Mr V Bhargava – for applicants

BY THE COURT:

Reportable

A great Saint Kabirdasji once aptly observed, I quote-

“पानी जीवन है, बिन पानी सब सून”

I was moved by it. Acute water scarcity in the State of Rajasthan is a wide and vivid problem with which the population is faced. Water has been universally admitted as a symbol of life, since it is essential not only for maintaining eco-friendly environment but also to have eco-system conducive to sustain all forms of life. Water plays a vital role in fulfilling basic human

need for life and health so also for over all socio-economic development. The demand of water is increasing day by day. To meet the requirement of ever increasing population and for catering the demands, more particularly, drinking water, special attention is needed. State of Rajasthan is considered as a driest state in the country so far as water is concerned.

This court took cognizance of the aforesaid issue and decided the matter in the year 2004 after thorough examination and giving directions thereupon. It was expected of the State authorities to implement the directions issued by this court on earlier occasion, however, when news was published in leading news papers of the State of Rajasthan regarding Ramgarh Dam in Jaipur district, this court took suo motu cognizance of the matter and issued notices to the State Government.

**History of Ramgarh Dam** – The construction of Ramgarh dam was started on 30.12.1897 by the erstwhile ruler of Jaipur Maharaja Madhosingh. It took around 6 years to complete its construction. It was inaugurated some time in the year 1903 by the then Governor General of Rajputana Mr Crasthwest. The height of its walls were raised looking to inflow of water. In the year 1981 water level touched 64.5 feet which was the last height point of the aforesaid reservoir. It has catchment area of 2975

square miles having average rainfall of 19-22 inches. The dam was having irrigation area of 21.5 miles by canals apart from 139.5 miles by its tributaries. In the year 2003, the dam could not fetch sufficient water and the same story was repeated in the year 2004. It was in the year 2005 that water was not taken from the dam. In the year 1982, Pinkcity witnessed Rowing Event in Asian Games. The Ramgarh dam has survived since nearly last 100 years after its construction. It started getting less water flow after the year 1999, thus in the year 2003, water was taken through boring. What happened to a dam which was taking care of entire Jaipur city for last 100 years? It was not mystery, reasons were broadly focused by the leading news papers.

Taking note of alarming situation, this court took suo motu cognizance of the mater and issued notice to the State Government vide order dated 12.8.2011. It was with reference to all the issues focused in the news papers indicating reasons for premature death of Ramgarh dam. It was not due to natural disaster but on account of large scale inaction on the part of the State Government coupled with illegal acts of others. Learned Advocate General was asked to accept notice on behalf of the State Government so as to submit factual report and the matter was posted for 23.8.2011.

On 23.8.2011, this court passed detailed order on submission of a report prepared by the Water Resources Department, Jaipur with a detailed map prepared by the Geological Survey of India showing complete topography and picture of catchment area. Tala and Banganga rivers are main source of water along with its tributaries. It was source of irrigation till the year 1978. On getting initial details, this court took notice of the judgment of this court in the case of “Abdul Rehman versus State of Rajasthan”, DB Civil Writ Petition No.1536/2003, decided on 2.8.2004 at Principal Seat, Jodhpur with certain directions. The court broadly issued directions to remove encroachments and illegal constructions in the catchment areas. The Forest Department and Revenue Department were restrained to lease out or allow any construction or encroachment in catchment area of Ramgarh dam. The State Government was also directed to come out with a plan to remove encroachments and for development of the area.

This court constituted a two-members Monitoring Committee to monitor implementation of the directions issued by this court. Respondent-State Government thereafter submitted detailed compliance report.

Before averting to the subsequent developments in

this case, it would be necessary to focus on important points pertaining to water problem in India, more specifically, in the State of Rajasthan.

As per Water Resource Vision 2045, India has 16% of the world population whereas water resources are only 4%. Thus in the population ratio, India is facing alarming problem of water resources. The State of Rajasthan took note of the problem in the State to focus Vision 2045. This is to indicate reasons of water scarcity and concern to work upon. Perusal of Vision 2045 reveals that all the issues focused by the media have already been taken into consideration by the State Government. To specifically point out basic features of Vision 2045, the same are extracted hereunder -

“Some of the main challenges being faced by the water sector, as listed below, clearly indicate that a lot more is to be done for integrated water resources development and management -

1. Inadequate availability of water for meeting demands of all sectors and uneven temporal and spatial distribution of water.

2. Harnessing of remaining 40 % of internal surface water resources.

3. Inadequate maintenance resulting in deteriorated condition and low efficiencies of existing water supply projects.

4. Financial constraints for implementing new projects and for adequate maintenance of existing facilities.

5. Inefficient management and reluctance to adopt modern water saving technologies, like pressure irrigation / volumetric measurement / leak detection and control, by developers and users both.

6. Ensuring effective groundwater control and management and also conjunctive use of surface and groundwater.

7. Environmental sustainability and mitigating environmental degradation in terms of water logging and salinity and deteriorating quality of water due to pollution and over exploitation of groundwater.

8. Resettlement and rehabilitation problem of displaced population due to implementation of water resources projects.

9. Financially non sustainable water rates.

10. Recurring droughts and effective drought management. Inadequate institutional infrastructure and human resource development for adopting new technologies and innovative approach.

11. Inculcating participatory approach in development and management of water resources.

12. Inter-sectoral coordination.

To face these challenges successfully and for integrated water resources development and its optimum utilisation radical changes in approach, planning and technology after a critical review of earlier and existing policies is needed. The State of Rajasthan has adopted the State Water Policy in 1999 to address the problems facing the water sector supported by a long term State Water Plan with planning horizon extending up-to the year 2045. has also been formulated.

Water Resource Vision 2045 has been prepared to highlight the short term (upto 2015) and long term (upto-2045) thrust areas and action plan which are pre-requisites for successful implementation of the State Water Policy and Plan and achieving the objective of optimum use of every drop of scarce and precious utilisable water resource. It is also envisaged that its periodical review and evaluation would help timely refinement/modification of the policy, thrust areas and the action plan to achieve the objectives of the State Water Policy.”

Perusal of the portions quoted above reveals major issues of concern.

The Jaipur Development Authority has also focused similar issues while preparing Master Plan 2025. It has noticed not only encroachments and illegal construction in the catchment areas but other issues also. The Pinkcity is trying to shine on the world map in view of specific directions by the Hon'ble apex

Court in the pending litigation. The authorities have not shown major concern to the water problem in the city except getting water from Bisalpur dam , knowing that nearby areas of Bisalpur dam like Deoli and Malpura etc are not getting water every day from this source.

The report submitted by the respondent State was a shocking surprise to this court in regard to allotment of government land of catchment area in gross violation of the statutory provisions of law, more particularly, section 16 of the Rajasthan Tenancy Act, 1955. This court thus issued further directions on 8.9.2011 to find out Government's decision on the issue formulated by the Division Bench of this court in the case of Abdul Rehman (supra). It was given out that directions issued in the aforesaid case have already been complied with resulting in dismissal of the contempt petition. It was, however, not disputed that directions issued in the aforesaid case were not as a one time measure so as to violate the same in future after getting prima facie satisfaction of its compliance with dismissal of the contempt petition. This court thus issued many fold directions independent of the judgment in the case of Abdul Rehman (supra). This was pursuant to the compliance report submitted by the respondent-State.



Respective departments were given many fold directions which include Forest, Revenue, Mining and Irrigation apart from directions to the Jaipur Development Authority and the Collector, Jaipur etc.

First compliance report submitted by the State needs to be made part of this order to show that violation of provisions of Rajasthan Tenancy Act, 1955 were though identified by the State but even then number of allotments were made in violation of the provisions of section 16 of the Act of 1955 and other laws followed by references to the Board of Revenue. For convenience, portions of department-wise compliance reports submitted by the State on 27.9.2011 are quoted hereunder for ready reference thus -

“7. **Revenue Department** : That a survey of the entire catchment area of Jamwa Ramgarh was carried out and the information collected was collated in three separate portions relating to mutations, allotments and encroachments.

(a) Mutations : A survey was carried out of the area in the context of orders of this Hon'ble Court in the case of Abdul Rehman wherein mutations have been affected of the land situated in river bed, tank or allotments made in violation of section 16 of the Rajasthan Tenancy Act, 1955 (hereinafter the Act of 1955) during the

settlement operations or otherwise, 141 matters have been identified and referred to the Addl. Collectors which after due consideration would be referred to the Board of Revenue for cancellation of allotments. Separate instructions are being issued to the revenue officials/revenue officers for expeditious disposal of these matters. The details of the references would be kept ready for perusal of the Hon'ble Court during the course of submissions and are not being submitted to avoid making the record bulky.

(b) *Allotments*: 225 allotments made in lands contrary to section 16 of the Act of 1955 were identified in the four Tehsils. In 105 cases, references have already been made to the Board of Revenue for cancellation of the allotments. Remainder 120 matters are under consideration with the Addl. Collectors/revenue officers who have been instructed to expedite the matters. Simultaneously, the officials responsible for the illegal allotments are being identified for initiating disciplinary proceedings. The details of 225 references would be kept ready for perusal of the Hon'ble Court during the course of submissions and are not being submitted to avoid making the record bulky.

(c) **Encroachments**: A survey of the encroachments in the catchment area was carried out by the revenue department. In addition, a list of encroachments was also compiled by the Irrigation Department in the context of encroachments in their areas of jurisdiction has also been received by the department. Notices under section 91 of the Rajasthan Land Revenue Act, 1956 (hereinafter the Act of 1956) have been issued to the concerned persons. The revenue officials have been directed to ensure that action in accordance with the law is taken against all persons who encroached on government land and such action is taken through to its logical conclusion and the encroachments removed. The details compiled of encroachments would be kept ready for perusal of the Hon'ble Court during the course of submissions and are not being submitted to avoid making the record bulky.

8. **Irrigation Department** :

(a) That the Irrigation Department had recently compiled a report on the water flows to the Ramgarh dam and a team was constituted to study the Ramgarh dam catchment and identified critical anicuts and the water bodies in the area. A copy of the report would be kept ready for perusal of this Hon'ble Court during the course of

submissions and is not being submitted to avoid making the record bulky.

(b) That simultaneously data with regard to the rainfall, land under agriculture and various other figures were compiled and collated particularly in the context of the four Tehsils comprising the catchment area. An average, over a five year period it worked out and is tabulated below which would show that quantum of rainfall has reduced but the quantum of water coming into the lake has dropped far more drastically.

<b>Year</b>	<b>Average rainfall</b>	<b>Average yield in M.Cum</b>	<b>Actual water inflow (average) in Ramgarh dam M.Cum</b>
1986-90	429.38	18.99	5.39
1991-95	620.51	51.19	18.91
1996-2000	604.92	44.72	14.8
2001-2005	571.35	38.72	2.8
2006-2010	560.06	37.04	0.1

(c) That during the same period it has been noticed that there has been 30,000 sq. hectares of land under cultivation. Besides in the approximately 2 lakh hectare of land already under cultivation prior to the time from which data has been compiled, additional crops are being cultivated. Earlier the farmers used to take one crop one year,

whereas now 2/3<sup>rd</sup> crops are being taken per year. For the purposes of agriculture, bunding is being done on the fields to arrest the horizontal water flow by farmers. The figures of land under cultivation for different periods are tabulated below.

<b>Year</b>	<b>Jamwa Ramgarh</b>	<b>Amer</b>	<b>Viratna gar</b>	<b>Shahpu ra</b>	<b>Total</b>	<b>Difference</b>
1986-87 to 1994- 95	51566.75	69941.12	26717	40024	188248.87	
1995-96 to 2004- 05	54332.1	76710.3	29097	45203	205342.4	17093.53
2005-06 to 2009- 10	57664.2	51007.6	31125.2	49341.4	219138.4	30889.53

(D) That the total surface water in the four tehsils in the catchment area is 204.84 MCM and ground water is 237.19 MCM, i.e., a total of 442.13 MCM. The requirement of water is estimated at 417.42 MCM, which is much more than the surface water available and the gap is being supplied by instruction of ground water leading to the aquifers getting denuded.

(e) that in the course of water shed programmes in the past, 342 water structures were constructed covering in area

of approx 70,000 sq. hectares. This factum along with bunding in the fields has led to the diminishing of the horizontal water flow but has simultaneously led to an increase in vertical flow. This has further resulted in the decrease in the rate of drop of ground water level in Amer and Viratnagar Tehsils as per the data compiled in the year 2010. In the P.H.E. Department is procuring water to the tune of 45 lakh liters per day from Jamwa Ramgarh Tehsil (ground water) for supply to Jaipur City in addition to the water being utilized for agriculture and other purposes and yet there has been a drop of only 0.73 meters in the water-table of Jamwa Ramgarh. These data indicate that there is definitely a vertical movement of the water compensating the ground-water. But this phenomena has led to the diminishing of the horizontal flow of the water leading to the Ramgarh dam being denuded of water.

(h) that four dams viz., Mammtori (capacity 16.66 MCF), Dantori (capacity 21.20 MCF), Tando (capacity 23 MCF) and Tanku (capacity 15.83 MCF) were transferred by the irrigation department to the panchayati department. Further, 415 water bodies in addition were identified. However, all these are also empty and no water is reaching these dams.

(g) that over a period of 30 years, the Irrigation Department, the Forest Department and the Panchayati Department have constructed 24 big anicuts (36 MCF), 50 small anicuts (29.50 MCF), 138 big ponds (207 MCF) and 194 small ponds (97 MCF). Even these structures are lying vacant.

(h) that a total of 235.83 hectares of land has been encroached upon. Necessary steps had been initiated for removing the aforesaid encroachments.

(i) that a plan for constructions of pillars at suitable spacing the catchment area as directed by the Hon'ble Court in the case of Abdul Rehman has been prepared. Similarly, plans for installing pillars in unhabitated areas and demarcation of drainage channels has been prepared. However, these could not be effected thus, far for want of budgetary allocations.

(j) that 25 anicuts of height more than 2 meters (as directed in Abdul Rehman's case) had been got demolished by the department.

(k) that of late farming has commenced even in the river bank, which is going to be effectively stopped hereinafter.

(l) Irrigation Department is also carried out a survey and drawn a list of encroachments. A list of encroachments has been forwarded to the revenue department and simultaneously instructions had been issued to file FIR and take effective steps for removal of encroachments as and when they take place in future.

(m) that the Monitoring Committee has suggested [page 17 item (ii)] that water logging upto 0.75 meters be allowed and the rest be removed immediately. It is most respectfully submitted that in the case of Abdul Rehman (supra), a Division Bench of this Hon'ble Court has directed that anicuts more than 2 meters should be dismantled implying thereby that water structure upto 2 meters are permitted.

(n) the Monitoring Committee has suggested that rain gauze system (RGS) be installed to get a realistic assistance. It is most respectfully submitted that as per the standing instruction of the India Meteorological Department one RGS is installed in the area of 260-390 sq. kms. There are four RGS already working at Shahpura Tehsil, Ramgarh dam, Amer Tehsil and Viratnagar Tehsil. However, considering the fluctuation in the rainfall



and in view of the suggestions from the Monitoring Committee, more RGS would be put up for which places are being identified in equipment being procured.

9. **Forest Department :**

(a) That the total area falling in the catchment of the land is managed by two forest divisions of Jaipur, viz., DCF (Central) for Achrol, Amer, Raisar and Jamwa Ramgarh and the DCF (North) for Viratnagar, Beelwadi and Shahpura.

(b) that looking to the field conditions the total area falling in the catchment area of the Ramgarh dam is divided in three categories:

- (1) Unavailable for plantation
- (2) already planted area
- (3) area available now for plantation

The category Nos. 1 and 2 need no treatment and plan for plantation on the lands of category No.3 has been prepared.

(c) that a five year plan has been prepared by the forest department to plant trees over 7,000 sq. hectare area out of 28, 204 hectares of forest land falling in the catchment for which the scheme involving Rs.29.3 crores has been submitted for approval. In continuation of the above plan,

the department has prepared plan for plantation on forest land of about 1400 hectares every year.

(d) that three categories of encroachments have been identified in the forest area.

(a) encroachments which have been taken to the Court and are under litigation,

(b) encroachments which have been recently being noticed in compliance of the directions of the Hon'ble Court and

(c) encroachments that present administrative and technical difficulties due to local resistance which could lead to law and order situation for which a separate plan is being worked out.

(e) that 695 encroachments in the catchment area of Jamwa Ramgarh has been identified. However, these do not impede the flow of water.

(f) the 33 spots have been identified where minor illegal non-commercial mining is carried out by the villagers which has been stopped.

(g) that in the three year period 2008-09 to 2010-11, 1294 cases were registered under the Rajasthan Forest Act, 1953 and

Wildlife Preservation Act, 1972 and a sum of Rs.12,05,254 has been collected as penalty.

10. **Mining Department :**

(a) That no commercial illegal mining is being carried out in the catchment area of Ramgrah Dam. However, three spots, viz., Achrol, Kaali Ghanti and Burhanpur, have been identified from where villagers extract building stone or local non-commercial use.

(b) that the spots where the illegal mining even though of non-commercial scale is taking place has been identified, vidoographed and additional home-guards (at Achrol) deployed to stop whatever illegal mining is being done. It is further submitted that this is not impeding the flow of water in any manner whatsoever.

(c) that a map showing the entire catchment area, sites where mining leases has been granted in accordance with law and spots where illegal mining is being carried out would be kept ready for perusal of the Hon'ble Court during the course of arguments.

(d) that the areas mentioned by the Monitoring Committee, namely, general area Kant, Bilochi and Chandwaji, have been lawfully leased out. There are

approximately 199 leases granted to various lessees on most of which are on Sawai Chak land. In other cases, legal procedures have been punctiliously followed in working restrictions imposed. The details of the same would be kept ready for perusal of the Hon'ble Court during the course of submissions. Further, mining in these areas does not impede the flow of water in any manner whatsoever.

(e) that the depth of these mines is minimal. Since these mines do not fall in the water flow path, very little water gets collected in the pits during rainy season.

11. **Jaipur Development Authority:**

That only some portion of Amer Tehsil falls within the jurisdiction of the Jaipur Development Authority where encroachments have been identified in 9 places. Notices to these persons have already been issued under section 72 of the Jaipur Development Authority Act, 1982 and these encroachments would be removed at the earliest possible after following due process of law.

12. That instructions had been issued by the Panchayati Raj Department not to undertake any work or to utilize the funds of NREGA which would impede the flow of

water.”

Perusal of the report submitted by the government shows not only illegal allotment of land followed by reference to the Board of Revenue for its cancellation but encroachments of the revenue land as well as in the forest areas. The details of average rainfall has been given by the Irrigation Department which shows higher rate of average rainfall in the year 1991-95 if compared to statistic of the years 1986-90. In the year 2006-10 average rainfall has been shown as 560.06 mm as compared to rainfall of 429.38 mm in the years 1986-90 but inflow of water in Ramgarh dam was substantially reduced in the year 2001. In the years 1991-95 actual inflow of water was 18.914 M.Cum. whereas in the years 2006-10 it remained only 0.116 M.Cum.

The State government has not examined the issue as to what were the reasons for reduction of inflow of water in Ramgarh dam though rainfall had not shown substantial reduction. It is shown to be due to increase of cultivation in various Tehsils namely Jamvaramgarh, Amer, Viratnagar and Shahpura forming catchment area of Ramgarh dam. It is obstructing flow of water, however, this court was not convinced as cultivation of land alone could not diminish water flow. This is for the reason that from the year 1986-87 till the year 1994-95 total area under cultivation in

four Tehsils is shown to be 1,88,248.87 which increased upto 2005-06 to 2009-2010 to 2,19,138.40 making difference of 30,889.53 thus substantial increase does not exist.

The excessive construction of anicuts obstructed water flow to Ramgarh dam. It has been admitted by the respondent State that majority of those anicuts remain dry except in rainy season. This court thus issued directions that onwards anicuts should not be constructed without complete survey of rainfall to ensure that public money on construction of anicuts may not go waste for want of water to anicuts. A specific direction was given to get complete survey of rainfall in catchment area of Ramgarh dam and density of water required for more than 450 anicuts. The respondent State initiated their action by calling tenders to engage expert body for the aforesaid purpose but no information was further given to this court.

This court further took notice regarding illegal allotment of land in the catchment area ignoring provisions of section 16 of the Act of 1955 and called for the details of the officers who were instruments behind it. The list of officers was submitted in the sealed cover though it was expected from the State to initiate action against those defaulting officers. In any case, the details of the officers were taken on record for passing

necessary orders at the final stage.

The facts narrated above more or less pertains to Ramgarh dam but story of other reservoirs in the State of Rajasthan is not different thus it was made clear that cognizance of issue taken by the court is not restricted to Ramgarh dam only but will apply to entire State of Rajasthan. For effective monitoring, the State Government agreed to constitute district level committees. If the matter is looked into for the entire State of Rajasthan following issues need to be focused for required directions -

1. encroachment in catchment areas chocking flow of water;
2. illegal allotment of land in catchment area which includes land belonging to tank, nala, Johar, river, pond etc;
3. illegal mining and unmanaged placement of overburden in the catchment area, obstructing flow of water;
4. excessive construction of anicuts without proper survey of rainfall in the catchment area;
5. lack of demarcation of catchment area, giving room to encroachments;
6. development of colonies in the catchment area due to inaction on the part of the concerning State authorities;
7. lack of plantation nearby catchment area or removal of trees

from forest area with or without connivance of the authorities;

8. lack of planned development of forest areas;
9. unplanned construction under Mahatma Gandhi National Rural Employment Guarantee Act (for short (NREGA) like construction of roads in river obstructing flow of water; and
10. inaction on the part of the government against those officers engaged in making illegal allotment of land in violation of section 16 of the Rajasthan Tenancy Act, 1955.

The compliance report shows some efforts for removal of encroachment initially in Ramgarh dam catchment area apart from reduction of size of the anicuts to the level of 2 meters. The references of cases to the Board of Revenue for allotments made in violation of section 16 of the Act of 1955 and constitution of team of Advocates to contest the matters on priority level basis.

A decision of the State Government dated 22-7-2010 has also been placed restricting construction of anicuts and imposition of ban for its construction, without prior permission of the government so that onwards catchment area of dam, pond, Johar, nala etc may not be obstructed. The efforts to engage an expert body to make survey of rainfall to find out whether with the existence of 450 anicuts in catchment area of Ramgarh dam, water



can flow to Ramgarh dam. Subject to survey report, a decision was to be taken to keep those anicuts or remove part of the same. A report was submitted even by the Mining Department to indicate stoppage of illegal mining and for proper placement of overburden so that it may not obstruct flow of water. Similarly, Forest Department also submitted report to show removal of encroachments and planned development of forest area.

A detailed report was also given indicating names of persons and khasra numbers from where encroachments were removed.

During pendency of the writ petition, applications were filed by many applicants for impleadment in regard to other dams in the State of Rajasthan where similar problem exist. The applications were kept pending, as while final judgment was to be delivered, it was to apply to the entire State of Rajasthan. Accordingly, this court passed an order directing the State Government to indicate their decision on major issues focused from time to time.

The proposed decision of the State Government was brought before the court in sealed cover at the stage when it was pending consideration before the Law Department. The perusal of

the recommendations revealed ignorance of the provisions of section 16 of the Act of 1955 as a decision was taken to maintain revenue record from the year 2004 in regard to land of nala, pond, tank, river, Johar etc. It was nothing but an effort to keep silence in regard to the illegal allotments of the land made prior to the year 2004. It was more surprising that reference made to the Board of Revenue were for illegal allotments of land after enactment of the Act of 1955 thus the State Government was called upon to justify their action.

On 13.3.2012, Chief Secretary appeared before this court and assured for a proper decision by the State. A prayer was made to grant sufficient time. On the aforesaid date, matter was heard finally and was reserved for judgment. The parties were given liberty to file their written statements which has been done by the Monitoring Committee but no written submissions have been submitted by the State.

The written statements submitted by the Monitoring Committee furnishes complete details and the actions taken pursuant to the order passed by this court from time to time. They have given definition of “catchment area” and “drainage” apart from complete details about encroachments, development of colonies and other aspects of the matter along with suggestions,

which have been taken into consideration.

In view of the discussion made above and keeping in mind the interim orders passed by this court from time to time followed by submission of compliance report, I am of the opinion that at present following directions are required to be passed with follow up monitoring by the committee and timely compliance report to this court so that the issue may not remain on paper but be implemented in reality -

1. The State Government should plan for a drive to remove encroachments in catchment areas of water bodies in the State of Rajasthan. For the aforesaid purpose, they may get survey by remote sensing or through any other appropriate mechanism so that a proper picture may come for its follow up action. If the encroachments in catchment areas are not stopped, other reservoirs would face same situation as of Ramgarh dam. The above direction should be given priority looking to water scarcity in the State of Rajasthan.

2. Instructions be issued restraining allotment of land falling in catchment areas of water reservoirs like Johar, Nala, Tank, river, pond etc. Infringement of instructions should be viewed seriously with follow-up action against the defaulting officers and

the beneficiaries so that tendency of illegal allotment of land may be stopped at all levels.

3. Action may be taken for cancellation of allotments made in violation of section 16 of the Act of 1955 and other Rules and Regulations. Presently, details of the references sent to the Board of Revenue in regard to Ramgarh dam catchment area have been furnished to this court which are more than 400 by now. Similar drive for making reference to the Board of Revenue in regard to catchment areas of other water reservoirs in the State of Rajasthan should be taken up so that with the cancellation of illegal allotments followed by removal of encroachments, water may flow to reservoirs like river, dam, nala, pond, Johar etc without obstruction.

4. The Water Resource Department of the State has already issued directions not to allow construction of anicuts more than 2 meters height. The directions have not been properly executed by other departments. The order issued by the Water Resources Department may be conveyed to all the departments so that in future anicuts may not be constructed with a height of more than 2 meters other than in exceptional cases but in those cases also it should be with the permission of the Water Resources Department.

5. Construction of anicuts should not be permitted unless a proper survey is made to assess rainfall in the area indicating sufficiency of water for the anicuts and overflow thereupon to the catchment area of a dam, pond, Johar, nana, river etc. A survey be conducted to find out duration for which water may remain in the anicut/s. To summarise the aforesaid direction, construction of anicut/s should be only after planned development and proper survey. Presently, majority of anicuts are lying dry resulting in wastage of public money. The accumulation of water in rainy season does not justify construction of anicuts. The State Government is expected to take proper decision for construction of anicuts in future and, till then, they are restrained to construct anicut/s obstructing flow of water to a reservoir.

6. The Forest Department should frame scheme for development of forest, more specifically, nearby catchment areas of water reservoirs if their notified land exist therein. This will attract rain and save environment already damaged to a great extent. The efforts of the department should be to stop cutting of trees in the forest area affecting top soil of the hills resulting in deterioration of environment. The Environment Department should meanintfully co-operate with the Forest Department for proper plantation to take all measures to save environment.

7. The State Government had agreed to constitute district level committees to monitor compliance of the directions issued in the judgment with a centralised body at the State level for taking policy decision on the issue or for any action for implementation of the directions given. The centralised body should consist of senior officers of concerned departments apart from legal experts, which may be Mr RP Singh, Additional Advocate General, members of the Monitoring Committee etc to see proper implementation of the directions herein.

8. Measures should be taken to demarcate catchment area of a water reservoir so as to stop encroachments thereon. The demarcation may be done by an appropriate manner for which State Government may take a proper decision. It is not necessary to construct wall or pillar but it may be by any other method but should indicate boundaries. It may be with plantation in a row.

9. Appropriate directions may be issued to stop construction in catchment areas of water reservoirs, more specifically under NREGA scheme as it has been seen that even roads were constructed dividing the river in two parts and obstructing flow of water. The State Government has removed those roads from catchment area of Ramgarh dam, however, such unplanned constructions result in wastage of public money. Thus, necessary

orders may be issued to avoid such construction in future, rather, proper directions may be issued not to raise construction obstructing flow of water in catchment areas.

10. The State Government shall issue directions to all the local bodies namely; Municipal Corporations, Municipal Councils, Municipalities, Panchayat Samities, Gram Panchayats etc not to allow development of residential colonies in the catchment area of any water reservoirs in the State. This will not only save catchment areas of water reservoirs but also save those colonies from damage in case of natural calamity. It may occur due to chocking of water flow. It will also save lives of persons who developed colonies in catchment area unknowingly that some day nature may take its own course to restore the position resulting in serious damage to life and property.

11. The Revenue Department should maintain the position of the land belonging to water reservoirs nala, pond, river, Johar, dam etc and other tributaries as was obtaining in the year 1955 with the commencement of the Rajasthan Tenancy Act, 1955. The excuse regarding non-availability of revenue record was taken by the government but it is found to be without substance as they themselves have taken action for cancellation of allotments in Ramgarh dam based on old revenue record, hence, excuse above

would be viewed seriously, more so when government is under an obligation to maintain revenue record since inception.

12. The Water Resources Department is directed to work as a Nodal Agency for taking action for removal of encroachments and for stoppage of illegal construction and other related areas in the catchment areas of water reservoirs in the State.

13. The two-members Monitoring Committee is directed to submit report to this from time to time with follow up action and compliance of directions issued above on periodical basis so that direction given in this judgment may not remain on papers but are given effect to. The directions earlier issued in regard to the Monitoring Committee by interim orders will continue.

14. All the interim orders passed by this court from time to time would be treated as part and parcel of this judgment and would be implemented by the State Government.

15. The State is directed to chalk out initial plan to show as to how this order is intended to be executed and place before this court in the second week of July, 2012. The case would then be listed before this court initially in the first week of every month to see compliance of the directions given above. It would be open to



seek modification/ alteration of the directions if need be by the government or at the instance of the Monitoring Committee and person concerned to the issue.

So far as the applications for impleadment are concerned, they stand disposed of as the directions given above apply to the entire State of Rajasthan thus need not be dealt with separately.

With the aforesaid directions and observations, this writ petition is disposed of.

(MN Bhandari) J.

bnsharma

All corrections made in the judgment/ order have been incorporated in the judgment/ order being emailed.

(BN Sharma)  
PS-cum-JW