BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
NEW DELHI, WESTERN ZONE, BENCH AT PUNE
ORIGINAL APPLICATION NO. 108 OF 2022

Mr. Nandakumar Pawar ... Applicant

Vs

Maharashtra Industrial Development Corporation

& Ors. ... Respondents

COMPILATION OF JUDGMENT ON BEHALF OF THE RESPONDENT NO.5

(2011) 9 Supreme Court Cases 126

(BEFORE G.S. SINGHVI AND H.L. DATTU, JJ.)

KHATRI HOTELS PRIVATE LIMITED AND ANOTHER .. Appellants;

Versus

UNION OF INDIA AND ANOTHER .. Respondents.

Civil Appeal No. 7773 of 2011†, decided on September 9, 2011

A. **Limitation Act, 1963 — Art. 58 and S. 5 — Suit for declaration and permanent injunction for restraining interference with possession of immovable property — Cause of action — When right to sue first accrues — Art. 58 of 1963 Act vis-à-vis Art. 120 of 1908 Act — Relative scope — Suit filed in year 2000 for permanent injunction restraining Delhi Municipal Corporation and Delhi Development Authority (DDA) from interfering with plaintiffs' possession of suit land — In written statement filed in 1990 defendants averred that suit land belonged to Gaon Sabha and with urbanisation of the village, by notification issued under S. 507 of DMC Act, same automatically vested in Central Government and by another notification issued in 1974 under S. 22(1) of DDA Act, Central Government transferred the entire land including the suit land to DDA — Held, plaintiffs' right, if any, over the suit land stood violated with issue of notification under S. 507 of DMC Act and in any case, notification under S. 22(1) of DDA Act or at least on receipt of written statement filed by DDA in 1990 — Cause of action thus deemed to have accrued in December 1990 and therefore, suit filed in 2000 was barred by time — Municipalities — Delhi Municipal Corporation Act, 1957 (66 of 1957) — S. 507(a) — Delhi Development Act, 1957 (61 of 1957) — S. 22(1) — Delhi Land Reforms Act, 1954 (8 of 1954) — S. 150(3) — Specific Relief Act, 1963 — Ss. 38, 41, 34, 5 and 6 — Limitation — Limitation Act, 1908, Art. 120** (Paras 30 and 31)

B. **Limitation Act, 1963 — Art. 58 and S. 5 — Suit for declaration and permanent injunction for restraining interference with possession of immovable property — Art. 58 of 1963 Act vis-à-vis Art. 120 of 1908 Act — Relative scope — Cause of action — "When right to sue first accrues" — "First accrues" — Meaning — Successive violation of right will not give rise to fresh cause of action — Limitation Act, 1908, Art. 120**

Held:

While enacting Article 58 of the 1963 Act, the legislature has designedly made a departure from the language of Article 120 of the 1908 Act. The word "first" has been used between the words "sue" and "accrued". This would mean that if a suit is based on multiple causes of action, the period of limitation will begin to run from the date when the right to sue first accrues. To put it differently, successive violation of the right will not give rise to fresh cause and the suit will be liable to be dismissed if it is beyond the period of limitation counted from the day when the right to sue first accrued. (Para 30)

† Arising out of SLP (C) No. 22126 of 2009. From the Judgment and Order dated 21-8-2009 of the High Court of Delhi at New Delhi in RFA No. 123 of 2009

Rukhmabai v. *Lala Laxminarayan*, AIR 1960 SC 335 : (1960) 2 SCR 253; *Bolo* v. *Koklan*, (1929-30) 57 IA 325 : AIR 1930 PC 270; *Annamalai Chettiar* v. *Muthukaruppan Chettiar*, ILR (1930) 8 Rang 645, *approved*

Gobinda Narayan Singh v. *Sham Lal Singh*, (1930-31) 58 IA 125, *relied on*

C. Specific Relief Act, 1963 — Ss. 34, 38(3) and 41(i) — Suit for declaration and permanent injunction — Conduct of plaintiff — Abuse of process of court — Plaintiff not approaching court with clean hands — Suit filed to secure judicial approval of illegal occupation of public land — Suit filed by appellant-plaintiffs for permanent injunction restraining Delhi Municipal Corporation and Delhi Development Authority from interfering with plaintiffs' possession of suit land — Defendants' plea that plaintiffs had no right, title and interest in suit land as it belonged to Gram Sabha and on urbanisation of the village, it automatically stood vested in Central Government under S. 150(3) of Delhi Land Reforms Act and later Central Government by notification transferred it to DDA under S. 22(1) of Delhi Development Act — Plaintiffs' claim that suit land not part of Gram Sabha but formed part of land purchased by them not substantiated by documents adduced by them i.e. site plan, demarcation report and aks shijra — Trial court found that under garb of suit plaintiffs purported to challenge government notification without specifically challenging the same as entries made in revenue records were made pursuant to the notification — Plaintiffs unauthorisedly occupied suit land and raised construction thereon despite interim injunction issued by High Court and without obtaining permission from competent authority — Plaintiffs had not approached court with clean hands — Held, trial court rightly declined to grant permanent injunction and High Court rightly refused to interfere therewith — Government Grants, Largesse, Public Premises and Property — Illegal/Unauthorised occupation of public premises (Paras 32 to 39)

Rajinder Kakkar v. *DDA*, (1994) 54 DLT 484; *Lal Chand* v. *MCD*, RFA No. 651 of 2003 order dated 24-11-2008 (Del); *Union of India* v. *Sher Singh*, (1997) 3 SCC 555, *referred to*

Khatri Hotels (P) Ltd. v. *Union of India*, (2009) 163 DLT 226, *affirmed*

D. Constitution of India — Art. 136 — Costs — Abuse of process of court — Exemplary/Punitive costs — Appellant-plaintiffs' suit for permanent injunction restraining Delhi Municipal Corporation and Delhi Development Authority from interfering with possession of suit land — Appellants found to have encroached on public land and also abused process of court in order to retain possession — Held, appellants must be saddled with cost, quantified at Rs 5 lakhs — Out of this Rs 2.5 lakhs to be deposited with Supreme Court Legal Services Committee within two months and balance amount of Rs 2.5 lakhs to be deposited with Delhi State Legal Services Committee within two months — In case of failure to deposit the same, Secretaries of the two Committees shall be entitled to recover the same as arrears of land revenue — Civil Procedure Code, 1908 — Ss. 35-B and 35 — Government Grants, Largesse, Public Premises and Property — Illegal/Unauthorised occupation of public premises (Para 41)

E. Civil Suit — Witnesses — Plaintiff though cited as witness not stepping into witness box — Adverse inference from, drawn — Evidence Act, 1872, S. 114 Ill. (g) and S. 106 (Para 35)

Appeal dismissed with costs R-D/48586/CV

Advocates who appeared in this case :

Harin P. Raval, Additional Solicitor General, Mukul Rohatgi, Amarendera Sharan, Senior Advocates (Sushil Kr. Jain, Ashish Aggarwal, Ms Anuradha Jain, M.C. Dhingra, Ashwani Kumar, Ms Iti Sharma, Ms Indra Sawhney, Naresh Kaushik, Ms Sushma Suri, Harsh N. Parekh and Anando Mukherjee, Advocates) for the appearing parties.

Chronological list of cases cited ***on page(s)***

1. (2009) 163 DLT 226, *Khatri Hotels (P) Ltd.* v. *Union of India* 128*d-e*
2. RFA No. 651 of 2003 order dated 24-11-2008 (Del), *Lal Chand* v. *MCD* 134*a*, 142*b*, 145*a*
3. (1997) 3 SCC 555, *Union of India* v. *Sher Singh* 135*a-b*
4. (1994) 54 DLT 484, *Rajinder Kakkar* v. *DDA* 132*g-h*, 137*a*, 145*c-d*
5. AIR 1960 SC 335 : (1960) 2 SCR 253, *Rukhmabai* v. *Lala Laxminarayan* 137*e*, 139*c-d*, 139*d*
6. (1930-31) 58 IA 125, *Gobinda Narayan Singh* v. *Sham Lal Singh* 139*c-d*
7. ILR (1930) 8 Rang 645, *Arnamalai Chettiar* v. *Muthukaruppan Chettiar* 139*c-d*
8. (1929-30) 57 IA 325 : AIR 1930 PC 270, *Bolo* v. *Koklan* 139*b-c*

The Judgment of the Court was delivered by

G.S. SINGHVI, J.— Leave granted. This is an appeal for setting aside the judgment dated 21-8-2009[1] of the learned Single Judge of the Delhi High Court whereby he dismissed the appeal preferred by the appellants against the judgment and decree passed by the Additional District Judge No. 13 (Central), Delhi (hereinafter described as "the trial court") in a suit for declaration of title, mandatory and permanent injunction filed by them.

2. The suit land belonged to the Gaon Sabha of Village Kishangarh and formed part of the revenue estate of that village. By Notification dated 28-5-1966 issued under Section 507(*a*) of the Delhi Municipal Corporation Act, 1957 (for short "the DMC Act"), Municipal Corporation of Delhi (for short "the Corporation"), with the previous approval of the Central Government, declared that the localities mentioned in the schedule forming part of the rural areas shall cease to be the rural areas. The area of Village Kishangarh (Mehrauli) was shown at Serial No. 37 under the heading "South Zone, Delhi". As a consequence of this and by virtue of Section 150(3) of the Delhi Land Reforms Act, 1954 (for short "the Land Reforms Act"), the suit land stood automatically vested in the Central Government. After eight years, the same was transferred by the Central Government to the Delhi Development Authority (for short "DDA") vide Notification dated 20-8-1974 issued under Section 22(1) of the Delhi Development Act, 1957 (for short "the DD Act") for the purpose of development and maintenance as green.

1 *Khatri Hotels (P) Ltd.* v. *Union of India*, (2009) 163 DLT 226

3. The relevant portions of that notification are extracted below:

"MINISTRY OF WORKS & HOUSING

New Delhi, 20-8-1974

S.O. 2190 — Whereas the terms and conditions upon which nazul lands specified in the schedule annexed below will be taken over by the Delhi Development Authority have been agreed upon between the Central Government and the Authority.

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 22 of the Delhi Development Act, 1957 (61 of 1957), the Central Government hereby places with immediate effect, the lands which had vested in the Central Government on the urbanisation of the villages specified in the said schedule at the disposal of the Delhi Development Authority for the purpose of development and maintenance of the said lands as green and for taking such steps as may be required to serve the said purpose, subject to the condition that the Delhi Development Authority shall not make, or cause, or permit to be made any constructions on the said lands and shall when required by the Central Government so to do, replace the said lands or any portion thereof as may be so required, at the disposal of the Central Government.

SCHEDULE

Sl. No.	*Name of the village*
17.	Mehrauli (Kishangarh)

(F. No. 13021/370-II)
S. Chaudhary
Joint Secretary"

4. Appellant 2, Lal Chand and his three brothers, namely, S/Shri Ran Singh, Dhannu and Surat Singh, who claim to have purchased land comprised in Khasra Nos. 2728/1674/2 and 2728/1674/3 total measuring 4 bighas 4 biswas from Om Prakash and Mahinder Pal (sons of Parma Nand), Tej Nath, Tej Prakash, Gokal Chand and Ram Dhan by registered sale deed dated 15-10-1963 encroached upon the suit land, raised construction and started a restaurant under the name and style "Sahara Restaurant". With a view to secure judicial approval of the illegal occupation of the suit land, Appellant 2 Lal Chand filed Suit No. 2576 of 1990 in the Delhi High Court for grant of permanent injunction against the Corporation and DDA by asserting that he is the co-owner of House No. 80, Ward No. 9, Kishangarh, Mehrauli, which forms part of Khasra No. 1674 and was purchased vide registered sale deed dated 10-10-1963; that the suit premises comprise of 3 rooms and one hall surrounded by a boundary wall; that the entire superstructure is in existence for last over 15 years; that he has been residing in the suit premises and is paying property tax since 1968-1969; that the suit land has not been acquired; that the officials of the Corporation and DDA came to the suit premises along with the Tahsildar on 10-8-1990 without serving any notice and threatened to demolish the superstructure on the ground that the same is unauthorised. According to Appellant 2, when he questioned the jurisdiction of the Corporation and DDA to take action for

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demolition of the structures, the officials went away with the threat that they will come again with the police force and demolish the same.

5. Para 10 of the plaint and Prayer (*a*), which have a bearing on the decision of this appeal are reproduced below:

"*10.* That the cause of action accrued in favour of the plaintiff against the defendants on 10-8-1990 when the officials of the defendants came to the suit premises and threatened to demolish the same. The cause of action is continuing till the threat of the defendants to demolish the suit property persists."

"*Prayer*

(*a*) That a decree of permanent injunction be granted in favour of the plaintiff and against the defendants restraining the defendants, their officers, servants, representatives and agents from dispossessing and interfering in the possession of the plaintiff, and from demolishing or scaling, any part of existing structure at House No. 80, Ward No. 9, Kishangarh, Mehrauli, New Delhi more particularly shown red in the plan annexed to the plaint."

6. In the written statement filed on behalf of DDA, it was averred that the suit land belonged to the Gaon Sabha and with the urbanisation of rural areas of Kishangarh, the same automatically vested in the Central Government. It was further averred that vide Notification dated 20-8-1974, the Central Government had transferred the suit land to DDA and the plaintiff has no right, title or interest in the same. The relevant portions of the written statement are extracted below:

"*Preliminary objections*

1. That the suit as filed is false, frivolous and not maintainable. The plaintiff has no legal right to file the present suit. The land forms a part of Khasra No. 1674 of Village Mehrauli. This land belongs to the Gram Sabha and on the urbanisation of Village Mehrauli, all the Gram Sabha land vested in the Central Government and the Central Government later transferred this land at the disposal of the defendant DDA vide Notification No. S.O. 2190 dated 20-8-1974. Therefore, it is clear that the plaintiff has no right, title or interest in the property. In this view of the matter, this suit may be dismissed.

Parawise reply on merits

1. That the contents of Para 1 are wrong and denied. It is denied that the plaintiff is a co-owner of the premises commonly known as House No. 80, Ward No. 9, Kishangarh, Mehrauli, New Delhi forming part of Khasra No. 1674. It is further denied that the plaintiff purchased the suit property vide sale deed dated 10-10-1963. It is submitted that as per the sale deed dated 10-10-1965 supplied by the plaintiff, the suit land forms a part of Khasra No. 1674 of Village Mehrauli. The sale deed is in respect of Khasra Nos. 2728/1674/2(3-3) and 2728/1674/3(1-1) of Village Mehrauli. Both these khasras are a part of the Gram Sabha land. On the urbanisation of Village Mehrauli (Kishangarh), all the Gram Sabha land vested in the Central Government and later on the Central

Government transferred this Gram Sabha land at the disposal of DDA for maintenance as green development vide Notification No. S.O. 2190 dated 20-8-1974. In this view of the matter, the plaintiff has no right or title in the land. It is further submitted that, recently the plaintiff has unauthorisedly occupied this land and constructed a boundary wall on it with 3 temporary rooms. It is submitted that the plaintiff has not annexed any site plan to the plaint, as alleged by him.

2. That the contents of Para 2 are wrong and hence denied. It is submitted that the construction of the suit land is recent and unauthorised. It is denied that the superstructure over the suit land has been in existence for the last 15 years. It is further denied that the tin shed and 2 rooms over the land were constructed sometime in the year 1959-1960.

* * *

4. That the contents of Para 4 are again wrong and therefore denied. It is submitted that the suit land belongs to DDA. It is further submitted that previously, the land formed a part of Khasra Nos. 2728/1674/2 and 2728/1674/3, which was a part of the Gram Sabha land. At the time of urbanisation of Village Mehrauli, the Gram Sabha land vested in the Central Government and later, the Central Government transferred this Gram Sabha land at the disposal of DDA vide Notification No. S.O. 2190 dated 20-8-1974. It is submitted that there is no requirement of any acquisition proceedings in respect of this land, the land being at the disposal of defendant DDA. In this view of the matter it is submitted that, no notification for acquisition need be issued. It is further submitted that as the land does not belong to the plaintiff, he is not entitled to be given any compensation whatsoever."

7. On 20-8-1990, the High Court granted interim injunction, which was confirmed vide order dated 14-7-1998. Thereafter, the suit was transferred to the District Judge, Delhi, who assigned the same to the Civil Judge, Delhi for disposal. After considering the pleadings of the parties, the Civil Judge framed the following issues:

"*1.* Whether the plaintiff is co-owner of House No. 80, Kishangarh, Mehrauli (part of Khasra No. 1674) as alleged in Para 1 of the plaint? OPP.

2. Whether the plaintiff is in occupation of the suit premises for the last 15 years as alleged? OPP.

3. Whether the plaintiff has any legal right to file the present suit? OPP.

4. Whether the suit is barred under Sections 477/478 of the DMC Act? OPD.

5. Whether the suit is bad for misjoinder of parties? OPD.

6. Whether this Court has jurisdiction to entertain and try the present suit? OPD.

7. Whether the plaintiff is entitled for the relief claimed? OPP.

8. Relief."

8. Appellant 2 did not appear in the witness box. Instead, one of his sons, namely, Vinod Kumar Khatri gave evidence as PW 2 in the capacity of the power of attorney. Two other witnesses examined in favour of the suit were Prem Prakash (PW 1) from the office of Kanungo and Shri Kulwant Singh (PW 3), Assistant Zonal Inspector. On behalf of DDA, Prem Chand (Tahsildar) was examined as DW 1, Constable Prabhu Singh of Police Station Vasant Kunj was examined as DW 2 and Khem Chand (Patwari) as DW 3.

9. After considering the pleadings of the parties and evidence produced by them, the learned Civil Judge dismissed the suit vide judgment dated 3-3-2003 by observing that the plaintiff has failed to prove that he and his brothers were owners of the suit land. The learned Civil Judge also held that the plaintiff was not entitled to relief of injunction because the suit filed for determination of title of the disputed land was pending adjudication. The findings recorded by the learned Civil Judge on Issues 3, 6 and 7 read as under:

"*Issues 3, 6 and 7*

12. All these issues being connected together are discussed together. PW 1 has proved the khasra girdawari but it may be mentioned that khasra girdawari is not the document of title. Even these khasra girdawaris are for the years 1957-1959, which are prior to the urbanisation of Village Kishangarh and the same also shows that the land is shamlat land. DW 1 deposed that Village Kishangarh was urbanised vide notification, Ext. DW-1/2 and land was placed at the disposal of DDA vide notification, Ext. DW-1/1. Nothing material has come out of the cross-examination of DW 1. DW 3 is another Patwari from Halka Mehrauli who also deposed that as per khasra paimaish it is the document of title that the land belongs to the Gaon Sabha and the same has been transferred to DDA. He proved the certified copy of record as Ext. DW-3/1 which also shows that the land belongs to the Gaon Sabha and has been placed at the disposal of DDA. PW 2, who is the attorney of the plaintiff himself has admitted that in the correction of revenue record they have also filed suit in the Hon'ble High Court of Delhi. Thus, there is admission on the part of the plaintiff himself that at present in the revenue record the plaintiff or his predecessor-in-interest have no right or title and the land belongs to the Gaon Sabha which has been transferred to DDA. Nothing material has come out of the cross-examination of DW 3 and merely because the user of the land has been shown as gair mumkin pahar and gair mumkin abadi does not make much difference as the main controversy is regarding the ownership that the land belongs to the Gaon Sabha and as such the plaintiff has failed to prove his right or title over the same. There is also a judgment of the Hon'ble High Court in *Rajinder Kakkar* v. *DDA*[2]. It is also for Village Kishangarh in the revenue estate of Mehrauli. In that judgment also the Hon'ble High Court has held that whole of Village Kishangarh was urbanised and after

2 (1994) 54 DLT 484

urbanisation as per Section 150 of the DLR Act the land of whole of the Gaon Sabha ceases to be the rural area and the land belongings to the Gaon Sabha in Village Kishangarh vested with the Central Government and the Central Government vide Notification dated 20-8-1974 placed the same at the disposal of DDA. In this authoritative pronouncement also the Hon'ble High Court held that the petitioners have no right or title over the land and it was further held that:

> 'Time has now come where the society and the law abiding citizens are being held to ransom by persons who have no respect for the law. The wheels of justice grind slowly and the violators of law are seeking to the advantage of the laws delays. That is why they insist on the letter of the law being complied with by the respondents while at the same time showing their complete contempt for the laws themselves. Should there not be a change in the judicial approach or thinking when dealing with such problems which have increased in recent years viz. large-scale encroachment on public land and unauthorised construction thereon, most of which could not have taken place without such encroachers getting blessing or tacit approval from the powers that be including the municipal or the local employees. Should the courts give protection to violators of the law? The answer in our opinion must be in the negative. Time has come when the courts have to be satisfied, before they interfere with the action taken or proposed to be taken by the governmental authorities qua removal of encroachment or sealing or demolishing unauthorised construction specially when such construction like the present, is commercial in nature.'

13. In the present case also the plaintiffs have failed to show their right, title or interest over the land in dispute. In such circumstances as the plaintiff has failed to show his legal right over the land in dispute, therefore, the plaintiff is mere encroacher upon the government land. It seems that under the garb of the present suit the plaintiffs are indirectly challenging the notification by which Village Kishangarh was urbanised or land was placed at the disposal of DDA. But it may be mentioned that this Court has no jurisdiction to try cases challenging government notification to place the land at the disposal of DDA.

14. Furthermore, the plaintiff has already filed suit in the Hon'ble High Court challenging the entries in the revenue records and therefore there is an admission on the part of the plaintiffs themselves that at present the land is not shown in their ownership. Question of suffering an irreparable loss or injury does not arise as the plaintiffs are already pursuing legal remedy available to them by challenging the revenue record. It is well-settled principle of law that no injunction can be granted against a true owner. In the present case as the plaintiffs are mere encroachers upon DDA land as on today's date, therefore, they are not entitled for any relief as prayed by them. As such, all these issues are decided against the plaintiff and in favour of the defendant."

10. RFA No. 651 of 2003 filed by Appellant 2 was disposed of by the Division Bench of the High Court vide order dated 24-11-2008[3], the operative portion of which reads as under:

> "In that view of the matter, we are of the opinion that no interference is called for as far as the impugned judgment and decree is concerned, save and except to record that nothing stated in the impugned judgment and decree dated 3-3-2003 pertaining to the issues of title would be construed as binding between the parties; needless to state that the title dispute would be adjudicated in the suit filed by the appellant by the learned Judge who is seized of the suit as per evidence before the learned Judge and law applicable."

11. In the meanwhile, Surat Singh, one of the brothers of Appellant 2, filed another suit for injunction against the Corporation and DDA. He claimed that he is the co-owner of land measuring 1200 sq yd forming part of Khasra No. 1674, Village Kishangarh. He pleaded that the premises were surrounded by a boundary wall and till January 1991 the same were being used for tethering cattle by one Ved Prakash. He alleged that on 29-2-1992, the officials of the defendants came to the suit land with large police force and illegally demolished a number of premises including the boundary wall of his property and on the next date i.e. 1-3-1992, the officials of the defendants again came and threatened to take forcible possession of the property.

12. The suit of Shri Shri Surat Singh was dismissed by the Civil Judge vide judgment dated 1-5-2004 with the findings that the suit land belonged to the Gaon Sabha and with the urbanisation of the rural area of the village the same automatically vested in the Central Government and that the plaintiff encroached the same. The appeal filed by Surat Singh was dismissed by the Additional District Judge, Delhi vide judgment dated 5-8-2004. The lower appellate court held that as per khatoni paimaish, Ext. DW-1/2, the suit land was a wasteland being gair mumkin pahar and the same belonged to the Gaon Sabha and that after vesting of the land in it, the Central Government had transferred the same to DDA. Para 6 of that judgment is reproduced below:

> "6. The appellant claims himself the co-owner of the land, forming part of Khasra No. 1674, Village Kishangarh on the basis of the sale deed dated 10-10-1963. A photocopy of the sale deed was placed on the record by the appellant through which the appellant along with the others claims to have purchased 4 bighas and 4 biswas of land bearing Khasra Nos. 2728/167/4 and 2728/167/3. As per the scheme of the Delhi Land Reforms Act, 1954 (for short 'the DLR Act') on coming into force of the DLR Act the proprietor of the agricultural land seized to exist. If any land was the part of the holding of a proprietor, he became the bhumidar of it, if it was the part of the holding of some other person, such as a tenant or sub-tenant, etc. he became either a bhumidar or an asami

3 *Lal Chand* v. *MCD*, RFA No. 651 of 2003 order dated 24-11-2008 (Del)

whereupon the rights of the proprietor in that land ceased. The land which was not holding of either of the proprietor or any other person vested in the Gaon Sabha. A perusal of khatoni paimaish, Ext. DW-1/2 would show that the suit land was a wasteland, that is, gair mumkin pahar.

In *Union of India* v. *Sher Singh*[4], it was held by the Hon'ble Supreme Court of India that except the land which for the time being comprised the holding or a grove, whether cultivable or otherwise, vests in the Gaon Sabha from the date of commencement of the Act. The onus was on the appellant to show that the suit land was a part of the holding or a grove and the predecessors of the appellant had become a 'bhumidar' in respect of the suit land on coming into force of the DLR Act. A Notification dated 3-6-1977 was issued by the Government under Section 507 of the DMC Act whereby, the area of Kishangarh in the revenue estate of Mehrauli was urbanised, consequently in accordance with the provisions of Section 150(3) of the DLR Act, the land which had vested in the Gaon Sabha came to vest in the Central Government on urbanisation of the village. The Central Government, vide Notification under Section 22(1) of the DD Act dated 20-8-1974 (Ext. DW-1/1), had placed the entire land which had vested in the Central Government, on the urbanisation of the village specified in the schedule, at the disposal of DDA for the purpose of development and maintenance of the said land. Therefore, all land, including the suit land which had vested in the Gaon Sabha, came to vest in the Central Government and was ultimately placed at the disposal of DDA."

13. During the pendency of the aforementioned two suits, Appellant 1 which is said to have been incorporated under the Companies Act, 1956 in 1994-1995 with Harbir Singh Khatri, another son of Lal Chand as its Managing Director and Appellant 2 Lal Chand filed third suit being Suit No. 313 of 2000 (renumbered as Suit No. 473 of 2004) for grant of a declaration that the entries made in the revenue records in respect of land comprised in Khasra Nos. 2728/1674/2 and 2728/1674/3 situated in the revenue estate of Mehrauli, Village Mehrauli, Kishangarh, Tehsil Mehrauli are wrong and illegal. The appellants further prayed for grant of a decree of mandatory injunction directing the respondents to correct the revenue record and enter their names in the columns of ownership and possession. Another prayer made by the appellants was for restraining the respondents, their servants and agents from demolishing the superstructures and sealing or interfering with their possession of the suit property or running of the restaurant.

14. In the written statement filed on behalf of DDA, several objections were taken to the maintainability of the suit including the following:

(*i*) The plaintiffs have not challenged Notification dated 20-8-1974 vide which the Central Government transferred the suit land to DDA.

(*ii*) The suit was barred by limitation because the same has been filed after 16 years of the accrual of cause of action.

4 (1997) 3 SCC 555 : (1997) 2 CLT 58

(*iii*) The suit is barred by the provisions of Order 2 Rule 2 of the Code of Civil Procedure, 1908.

(*iv*) The plaintiffs not only made encroachment on the suit land, but also abused the process of the court by filing different suits.

15. On merits, it was pleaded that the suit land belonged to the Gaon Sabha and with the urbanisation of Village Kishangarh, the same automatically vested in the Central Government. It was further pleaded that the appellants do not have any right, title or interest in the suit land and they do not have the locus to question the revenue entries. Another plea raised on behalf of DDA was that the suit was barred by limitation.

16. On the pleadings of the parties, the trial court framed the following issues:

"*1*. Whether Plaintiff 2 along with his brother is the owner and in possession of suit land?

2. Whether the suit land is a government land as alleged in Para 1 of the preliminary objections? If so, whether the suit is liable to be dismissed on this ground?

3. Whether the suit is within limitation?

4. Whether the suit is barred under Order 2 Rule 2 CPC?

5. Whether the plaintiffs have not come to the court with clean hands and are not entitled to the equitable relief of injunction as stated in Para 6 of the preliminary objections?

6. Whether the suit land is a government land and was placed at the disposal of DDA under Section 22(1) of the DD Act vide Notification dated 20-8-1974?

7. Relief."

17. On a comprehensive analysis of the pleadings and evidence of the parties, the trial court held that the plaintiffs (the appellants herein) have succeeded in showing that Appellant 2 and his brothers had purchased land comprised in Khasra Nos. 2728/1674/2 and 2728/1674/3, but they could not prove that the land on which Appellant 1 was running "Sahara Restaurant" is a part of those khasra numbers or that they were otherwise in lawful possession of the suit land. The trial court then held that the suit was barred by time because cause of action had accrued 16 years ago when the suit land was transferred to DDA. The trial court also held that the appellants had not approached the court with clean hands inasmuch as they suppressed material facts relating to the vesting of the suit land in the Central Government and transfer thereof to DDA and the documents like aks shijra, site plan and demarcation report, as also the facts relating to the acquisition of an area of 1512 sq yd forming part of Khasra No. 2728/1674/3 and receipt of compensation at the rate of Rs 50 per square yard. The trial court returned affirmative finding on Issue 4 and held that the suit was barred by the provisions of Order 2 Rule 2 CPC.

18. The appeal preferred by the appellants was dismissed by the learned Single Judge of the High Court, who relied upon the judgment of the

Division Bench in *Rajinder Kakkar* v. *DDA*[2] and held that with the issuance of notification under Section 507, Gaon Sabha land of Kishangarh automatically vested in the Central Government and transfer thereof to DDA was valid. The learned Single Judge also agreed with the trial court that the suit was barred by limitation and that the appellants had not approached the Court with clean hands.

19. Shri Mukul Rohatgi, learned Senior Counsel appearing for the appellants extensively referred to the evidence produced by the parties to show that the land in question was shamlat thok and argued that such land does not vest in the Gaon Sabha. The learned Senior Counsel further argued that the notification issued under Section 507 of the DMC Act and the provision contained in Section 150(3) of the Land Reforms Act have no bearing on the appellants' case because the suit land did not belong to the Gaon Sabha and the trial court and the High Court committed serious error by recording a finding that the suit land automatically vested in the Central Government and that the same was validly transferred to DDA.

20. Shri Rohatgi pointed out that the suit land was owned by Smt Kasturi, widow of Jhuman Singh and Rattan Lal, son of Trikha Ram, who sold it to S/Shri Parma Nand, Tej Nath, Tej Prakash, Gokal Chand and Ram Dhan by registered sale deed dated 7-10-1959 and legal heirs of Parma Nand and other vendees sold the same to Appellant 2 and his brothers vide sale deed dated 10-10-1963. The learned Senior Counsel assailed the concurrent finding recorded by the trial court and the High Court on the issue of limitation and submitted that the suit filed in the year 2000 was within time because the cause of action accrued to the appellants for the first time in 1998 when they came to know about the entries made in the revenue records in favour of DDA. In support of this argument, Shri Rohatgi relied upon the judgment of this Court in *Rukhmabai* v. *Lala Laxminarayan*[5].

21. Shri Harin P. Raval, learned Additional Solicitor General and Shri Amarendera Sharan, learned Senior Counsel appearing for DDA argued that the concurrent finding recorded by the trial court and the High Court that land on which the appellants were running a restaurant does not form part of Khasra Nos. 2728/1674/2 and 2728/1674/3 is a pure finding of fact based on correct analysis of the pleadings of the parties and evidence produced by them and the same does not call for interference under Article 136 of the Constitution. Shri Sharan submitted that the suit filed by the appellants for declaration of title and injunction was rightly dismissed by the trial court because they had not produced any evidence to prove that the suit land forms part of land purchased by Appellant 2 and his brothers.

22. Shri Sharan then argued that the suit filed in the year 2000 was barred by limitation because the cause of action had accrued to the appellants on 10-8-1990 when the officials of the Corporation and DDA are said to have visited the suit premises and threatened to demolish the superstructure and, in any case, the cause of action accrued to them in December 1990 when the

2 (1994) 54 DLT 484

5 AIR 1960 SC 335 : (1960) 2 SCR 253

written statement was filed on behalf of DDA with a categorical assertion that with the urbanisation of the rural areas of Village Kishangarh, the suit land automatically vested in the Central Government, which transferred it to DDA vide Notification dated 20-8-1974. The learned Senior Counsel lastly submitted that the appellants are not entitled to any relief because they had not approached the Court with clean hands and suppressed material facts and documents.

23. We shall first consider the question whether the suit filed by the appellants on 14-2-2000 was within limitation and the contrary concurrent finding recorded by the trial court and the High Court is legally unsustainable.

24. The Limitation Act, 1963 (for short "the 1963 Act") prescribes time limit for all conceivable suits, appeals, etc. Section 2(*j*) of that Act defines the expression "period of limitation" to mean the period of limitation prescribed in the Schedule for suit, appeal or application. Section 3 lays down that every suit instituted, appeal preferred or application made after the prescribed period shall, subject to the provisions of Sections 4 to 24, be dismissed even though limitation may not have been set up as a defence. If a suit is not covered by any specific article, then it would fall within the residuary article. In other words, the residuary article is applicable to every kind of suit not otherwise provided for in the Schedule.

25. Article 58 of the Schedule to the 1963 Act, which has a bearing on the decision of this appeal, reads as under:

"THE SCHEDULE

PERIOD OF LIMITATION

[*See* Sections 2(*j*) and 3]

First Division—Suits

	Description of suit	*Period of limitation*	*Time from which period begins to run*
	*	*	*
	PART III—Suits Relating To Declarations		
	*	*	*
58.	To obtain any other declaration.	Three years	When the right to sue first accrues."

26. Article 120 of the Schedule to the Limitation Act, 1908 (for short "the 1908 Act") which was interpreted in the judgment relied upon by Shri Rohatgi reads as under:

"Description of suit	*Period of limitation*	*Time from which period begins to run*
*	*	*
120. Suit for which no period of limitation is provided elsewhere in this Schedule.	Six years	When the right to sue accrues."

27. The differences which are discernible from the language of the above reproduced two articles are:

(*i*) The period of limitation prescribed under Article 120 of the 1908 Act was six years whereas the period of limitation prescribed under the 1963 Act is three years and,

(*ii*) Under Article 120 of the 1908 Act, the period of limitation commenced when the right to sue accrues. As against this, the period prescribed under Article 58 begins to run when the right to sue first accrues.

28. Article 120 of the 1908 Act was interpreted by the Judicial Committee in *Bolo* v. *Koklan*[6] and it was held: (IA p. 331)

> "There can be no 'right to sue' until there is an accrual of the right asserted in the suit and its infringement, or at least a clear and unequivocal threat to infringe that right, by the defendant against whom the suit is instituted."

The same view was reiterated in *Annamalai Chettiar* v. *Muthukaruppan Chettiar*[7] and *Gobinda Narayan Singh* v. *Sham Lal Singh*[8].

29. In *Rukhmabai* v. *Lala Laxminarayan*[5], the three-Judge Bench noticed the earlier judgments and summed up the legal position in the following words: (*Rukhmabai case*[5], AIR p. 349, para 33)

> "*33.* ... The right to sue under Article 120 of the [1908 Act] accrues when the defendant has clearly or unequivocally threatened to infringe the right asserted by the plaintiff in the suit. Every threat by a party to such a right, however ineffective and innocuous it may be, cannot be considered to be a clear and unequivocal threat so as to compel him to file a suit. Whether a particular threat gives rise to a compulsory cause of action depends upon the question whether that threat effectively invades or jeopardizes the said right."

30. While enacting Article 58 of the 1963 Act, the legislature has designedly made a departure from the language of Article 120 of the 1908 Act. The word "first" has been used between the words "sue" and "accrued". This would mean that if a suit is based on multiple causes of action, the period of limitation will begin to run from the date when the right to sue first accrues. To put it differently, successive violation of the right will not give rise to fresh cause and the suit will be liable to be dismissed if it is beyond the period of limitation counted from the day when the right to sue first accrued.

31. In the light of the above, it is to be seen as to when the right to sue first accrued to the appellants. They have not controverted the fact that in the written statement filed on behalf of DDA in Suit No. 2576 of 1990, *Lal Chand* v. *MCD*, it was clearly averred that the suit land belonged to the Gaon Sabha and with the urbanisation of the rural areas of Village

6 (1929-30) 57 IA 325 : AIR 1930 PC 270
7 ILR (1930) 8 Rang 645
8 (1930-31) 58 IA 125
5 AIR 1960 SC 335 : (1960) 2 SCR 253

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Kishangarh vide Notification dated 28-5-1966 issued under Section 507 of the DMC Act, the same automatically vested in the Central Government and that vide Notification dated 20-8-1974 issued under Section 22(1) of the DD Act, the Central Government transferred the suit land to DDA for development and maintaining as green. This shows that the right, if any, of the appellants over the suit land stood violated with the issue of notification under Section 507 of the DMC Act and, in any case, with the issue of notification under Section 22(1) of the DD Act. Even if the appellants were to plead ignorance about the two notifications, it is impossible to believe that they did not know about the violation of their so-called right over the suit land despite the receipt of copy of the written statement filed on behalf of DDA in December 1990. Therefore, the cause of action will be deemed to have accrued to the appellants in December 1990 and the suit filed on 14-2-2000 was clearly barred by time.

32. The issue deserves to be considered from another angle. Although, para 19 of Suit No. 303 of 2000 was cleverly drafted to convey an impression that the right to sue accrued to the appellants in November/December 1998 when they learnt about the wrong recording of entries in khasra girdawaris/ revenue records, but if the averments contained in that paragraph are read in conjunction with the pleadings of the earlier suits, falsity of the appellants' claim that the cause of action accrued to them in November/December 1998 is established beyond any doubt. In the first suit filed by him, Appellant 2 Lal Chand had pleaded that the cause of action accrued on 10-8-1990 when the officials of the respondents came to the suit premises and threatened to demolish the same. In the second suit filed by Surat Singh (brother of Appellant 2 Lal Chand), it was claimed that the cause of action accrued on 29-2-1992 when the officials of the respondents demolished the boundary wall of the property on the ground that the same was the Gaon Sabha land. The appellants have not explained stark contradictions in the averments contained in three suits on the issue of cause of action and in the absence of cogent explanation, it must be held that the statement contained in para 19 of Suit No. 313 of 2000 was per se false and, as a matter of fact, the cause of action had first accrued to the appellants on 10-8-1990 when their so-called right over the suit land was unequivocally threatened by the respondents. Therefore, the suit filed by the appellants on 14-2-2000 was clearly beyond the period of limitation of 3 years prescribed under Article 58 of the 1963 Act and was barred by time.

33. While considering the question whether the suit was barred by time, the trial court noticed the averments contained in paras 9 and 10 of the plaint that during the course of preparation of the trial of Suit No. 2576 of 1990, *Lal Chand* v. *MCD*, the appellants applied for a copy of khasra girdawaris of the suit land and they were shocked to learn that the revenue records have been incorrectly maintained and they were neither shown as owners/bhumidhar nor in possession of the suit land, referred to the pleadings of the suit filed by Appellant 2 Lal Chand in 1990 and observed:

> "Therefore, as per the pleadings the cause of action accrued when according to the plaintiff he applied for the copies of the khasra numbers

which was in November-December 1998 during the course of trial in the earlier suit. This claim of the plaintiff, however, does not appear to be factually correct. It is evident from the judgment dated 3-3-2003 that the detailed written statement had been filed by DDA before the learned Civil Judge when the suit filed by Lal Chand, Plaintiff 2 on 18-8-1990 wherein DDA had specifically pleaded that the land form part of Khasra Nos. 2728/1674/2 and 2728/1674/3 situated in the revenue estate of Village Kishangarh, Tehsil Mehrauli, New Delhi and the urbanisation of Village Mehrauli, all the Gaon Sabha land vested in the Central Government, but later on transferred this land at the disposal of the defendant DDA for development and maintenance as green, vide Notification dated 20-8-1974 and the plaintiff has no right, title or interest over the suit land. It was further pleaded that the plaintiff had wrongly and unauthorisedly occupied the land and constructed the boundary wall along with three temporary rooms which construction was unauthorised and it was denied that the suit property existed for the last 16 years. It is further evident from the said judgment that after the plaintiff filed the replication continuing the aforesaid, issues were framed by the learned Civil Judge on 11-3-1997. *This being so, it is unbelievable that the date of knowledge by the plaintiff was of November-December 1998. Rather the plaintiffs were fully aware of the land being at the disposal of DDA from the proceeding in Suit No. 211/02 of 1990 when DDA filed its written statement when the limitation started to run more so as Plaintiff 2 had also filed replication continuing the aforesaid and therefore as per the provisions of the Limitation Act, Article 58 of the Schedule, challenge to the same should have been made within the period of limitation which is within 3 years from the date of knowledge and limitation which has started running, it is not extended by the plaintiff by obtaining certified copy or by giving notice to the defendants.* This suit which has been filed only on 11-2-2000 is clearly not within the period of limitation of 3 years from the date when DDA filed its written statement in Suit No. 211/02 of 1990 and Plaintiff 2 is first assumed to have acquired knowledge and in attempt to cover up this delay the plaintiff is trying to falsely create the cause of action in November-December 1998 attributing the advantage as during the trial when he applied for the copies of the revenue record despite the fact that the period of limitation started to run when the written statement was filed by DDA to which Plaintiff 2 filed replication pursuant to which the issue framed was, whether the plaintiff has any legal rights to file the present suit. This being the case, I hereby hold that the present suit is clearly beyond the period of limitation and I decide Issue 3 against the plaintiff."

(emphasis supplied)

34. The High Court agreed with the trial court and held that the suit was barred by time. The reasons assigned by the High Court for coming to this conclusion are contained in paras 38 to 45, which are extracted below:

"38. First suit filed by Lal Chand (Appellant 2 in the present proceedings), being Suit No. 2576 of 1990, was suit for injunction

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simpliciter. That suit was dismissed by judgment/order dated 3-3-2001. As per findings given in that suit, the plaintiff was never the owner; the land was government land; the land vested in the Central Government after issuance of notification under Section 507 of the DMC Act and thereafter, the land was transferred to DDA.

39. Against dismissal of that suit for injunction, an appeal bearing RFA No. 651 of 2003 was filed and this Court disposed of the appeal, vide order dated 24-11-2008[3].

40. In that suit, it was alleged in the plaint that:

> 'It was sometime in March 1990 that the Tahsildar along with officers of DDA came to the site of the plaintiff with dispossession and demolition.'

41. Now after 10 years, the appellant being a co-owner, cannot seek relief against alleged threat of demolition or dispossession and the present suit is clearly barred by limitation.

42. In that suit in written statement, a specific plea was taken by the answering respondent herein, that land in question by virtue of issuance of notification under Section 507 of the DMC Act, on urbanisation, came to be vested with the Union of India and thereafter, transferred to the answering respondent. Relevant preliminary objection taken therein to the written statement is as under:

> 'That the suit as filed is false, frivolous and not maintainable. The plaintiff has no legal right to file the present suit. The land forms a part of Khasra No. 1674 of Village Mehrauli. This land belongs to the Gram Sabha and on the urbanisation of Village Mehrauli, all the Gram Sabha land vested in the Central Government, which later transferred this land at the disposal of the defendant DDA vide Notification No. S.O. 2190 dated 20-8-1974. Therefore, it is clear that the plaintiff has no right, title or interest in the property. In this view of the matter, this suit may be dismissed.'

43. It is also contended that the second suit was filed by Surat Singh, one of the co-owners. That was again a suit for injunction, which was dismissed and against this, an appeal (RCA No. 29 of 2004) was preferred before the Additional District Judge on 5-8-2004 and the same was also dismissed.

44. The appellate court, while dismissing the suit of Surat Singh, referred to the pleadings made in the plaint,

> 'that on 29-2-1992, police officials along with the officials of DDA visited the site and proceeded to demolish inter alia the boundary wall of the disputed land. Clearly, therefore, the cause of action had matured and limitation, which necessarily commenced from the date of the demolition of the premises.'

45. That suit was filed in 1992 and surely, a subsequent suit by another co-owner, cannot be maintained after a lapse of 8 years."

3 *Lal Chand* v. *MCD*, RFA No. 651 of 2003 order dated 24-11-2008 (Del)

35. What is most surprising is that even though Appellant 2 Lal Chand was cited as the first witness in Suit No. 303 of 2000 (renumbered as 473 of 2004), he did not step into the witness box. This appears to be a part of calculated strategy. He knew that if he was to appear as a witness, it will not be possible for him to explain the apparent contradictions in the pleadings of the three suits on the issue of cause of action and falsity of the averments contained in para 19 in Suit No. 303 of 2000 will be exposed. This is an additional reason for holding that the trial court and the High Court did not commit any error by recording a conclusion that the suit was barred by limitation.

36. The next question which requires consideration is whether the finding recorded by the trial court on Issues 1 and 2 is legally correct and the High Court rightly declined to interfere with the same. The trial court adverted to the pleadings of the parties and evidence produced by them and observed:

> "... The plaintiff has not placed on record any document nor has examined any witness to prove the location and boundaries of the said land. It is unbelievable that sale of the immovable properties could have taken place without identification of the property with regard to its location. As per existing practice all such transactions of immovable properties either bear the complete details of the boundaries to assist location of the property sold along with the site plan or is accompanied by aks shijra. However, in the present case this has not been done and the plaintiff has not adduced in evidence to prove boundary of the suit land. *Therefore, on the basis of the aforesaid, I hold that Plaintiff 2 had purchased the land falling in Khasra Nos. 2728/1674/2 and 2728/1674/3 but he has not been able to prove the location of the said land comprising of Khasra Nos. 2728/1674/2 and 2728/1674/3. The plaintiff has further not been able to connect the land over which Plaintiff 1 is running Sahara Restaurant to the land comprised in Khasra Nos. 2728/1674/2 and 2728/1674/3 of which Plaintiff 2 and his brothers are stated to be the owners.*
>
> *That DDA has placed on record the complete area location plan, Ext. D2WI/4 to which there is no rebuttal. Only simply suggestion has been given to the witness of the defendant that the aforesaid plan is incorrect but the plaintiff has not placed on record any other alternative plan which according to him, is according to plan, therefore, in these circumstances I find no reason to discard the aforesaid documents which show that Sahara Restaurant has been constructed in front of Community Centre No. 1, Nursery School No. 2 and Group Housing Janta Flats 952 on the road and is shown to be away from abadi of Village Kishangarh, Mehrauli, New Delhi.*
>
> *Annexure A of the award, Ext. PW-4/1 shows that Khasra No. 2728/1674 falls in old abadi of Village Kishangarh and in these circumstances it is not possible to believe that the aforesaid Khasra No. 2728/1674 would be located away from the main village abadi. There it appears that the plaintiff has deliberately tried to create confusion with*

regard to Khasra No. 2728/1674 and as admitted, to show that the land on which Sahara Restaurant is constructed is bearing Khasra Nos. 2728/1674/2 and 2728/1674/3 which is not the case and apparently it was for this reason that he has deliberately not placed on record any site plan, aks shijra, demarcation report made in the plan document to prove the khasra numbers.

In view of the above I hereby hold that the plaintiff has proved that he has purchased the land falling in Khasra Nos. 2728/1674/2 and 2728/1674/3 but has not been able to prove that the land on which Plaintiff 1 is running Sahara Restaurant is comprised of Khasra Nos. 2728/1674/2 and 2728/1674/3 or that he is in legal possession of the suit land over which Sahara Restaurant is constructed." (emphasis supplied)

37. The trial court then proceeded to observe:

"Vide my above findings with regard to Issue 1, I have already held that the plaintiff has not been able to prove that the land on which a large restaurant is made falls in Khasra Nos. 2728/1674/2 and 2728/1674/3 and that in fact Khasra Nos. 2728/1674/2 and 2728/1674/3 is a part of old abadi which is situated at a distance and away from the place where Sahara Restaurant is constructed. The Notification under Section 22(1) of the DD Act dated 20-8-1974 which is Ext. DWW1/2 is not disputed by both the parties. Firstly, the plaintiff has not produced any document in the form of demarcation report or aks shijra which show that the land on which Sahara Restaurant is situated falls in Khasra Nos. 2728/1674/2 and 2728/1674/3 and is the same land which has been purchased by Plaintiff 2. The sale deed so relied upon by the plaintiff is Ext. PW-3/4 does not show the boundaries and identification of the land initially sold by Rattan Singh and Kasturi Devi so purchased by Plaintiff 2 later vide Ext. PW-3/3. Secondly, no explanation is forthcoming with regard to the acquisition award/proceedings placed before this Court which are Ext. PW-4/1, showing that Khasra No. 1673 min(0-12) and Khasra No. 2728/1674/3 min plus 2(14-14) then the area of 1512 sq yd has been acquired with the rate of claim as Rs 50 per square yard and the compensation is awarded at Rs 1,55,600 in all which is in respect of acquisition of land of Ran Singh, Dhan Singh, Lal Chand, Suraj Singh, all sons of Mam Raj as shown in Sl. No. 66. … *Annexure A to the award Ext. PW-4/1 shows Khasra No. 2728/1674 to be falling in old village abadi and no explanation is forthcoming as to how the land on which Sahara Restaurant has been constructed is situated away from the abadi which according to Ext. D2W1/4 is constructed on the road in front of Group Housing Janta Flats 952, Nursery School No. 2 and Community Center No. 1. It is unbelievable that Khasra No. 2728/1674 which falls in old village abadi can be situated away from the said award.* Fourthly, in the earlier suit filed by Plaintiff 2 in the year 1990 before the learned Civil Judge Plaintiff 2 had claimed that he is in possession of two rooms and tin shed which he is using for residential purpose and no explanation is forthcoming as to how this huge construction of a big restaurant was made which is being used by Plaintiff 1 for commercial purposes. *It is*

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evident from the order dated 24-11-2008 in Lal Chand v. *MCD*[3] *that the High Court was apprised of the earlier report of the Local Commissioner in Suit No. 211/02 of 1990 and the large-scale construction raised by the plaintiff over the said land despite the status quo order without the sanction of the municipal authority.* Even otherwise no permission can be granted by DDA for any been (*sic*) uncontroverted by the plaintiff, has constructed restaurant by encroaching upon the government land meant for road. Under the garb of the present suit the plaintiffs are indirectly challenging notification by which Village Kishangarh was urbanised and the land was placed at the disposal of DDA without specifically challenging the same as the entries made in the revenue record are only pursuant to the said notification. Therefore, in view of the aforesaid, I hereby decide this Issue 2 against the plaintiff and in favour of the defendants." (emphasis supplied)

38. Though, the High Court did not examine the issue in detail as was done by the trial court, the learned Single Judge did make a note of the two notifications, the judgment in *Rajinder Kakkar case*[2] and held that by virtue of Section 150(3) of the Land Reforms Act, the suit land automatically vested in the Central Government and the same was transferred to DDA under Section 22(1) of the DD Act. In our view, the conclusion recorded by the trial court that the appellants have failed to prove that the suit land formed part of Khasra Nos. 2728/1674/2 and 2728/1674/3 does not suffer from any error because they did not adduce any evidence to establish that the land on which restaurant was being run formed part of those khasra numbers.

39. We also approve the findings and conclusions recorded by the trial court that the appellants had not approached the Court with clean hands inasmuch as they withheld aks shijra, site plan and the demarcation report and award, Ext. PW-4/1. Not only this, they raised illegal construction despite the injunction order passed by the High Court and that too without obtaining permission from the competent authority.

40. In view of the above discussion, we do not consider it necessary to deal with the question whether the suit filed by the appellants was barred by Order 2 Rule 2 CPC.

41. In the result, the appeal is dismissed. The appellants, who have not only made encroachment on the public land, but also abused the process of the court are saddled with cost, which is quantified at Rs 5 lakhs. Of this, Rs 2.5 lakhs be deposited with the Supreme Court Legal Services Committee within two months from today. The balance amount of Rs 2.5 lakhs be deposited with the Delhi State Legal Services Committee within the same period. If the appellants fail to deposit the cost, the Secretaries of the two Legal Services Committees shall be entitled to recover the same as arrears of land revenue.

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3 RFA No. 651 of 2003 order dated 24-11-2008 (Del)

2 *Rajinder Kakkar* v. *DDA*, (1994) 54 DLT 484

Item No. 4 (Pune Bench)

BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE

(By Video Conferencing)

Original Application No. 63/2019(WZ)
(I.A. No. 100/2019 & I.A. No. 86/2021)

Mr. Ajay Jayvantrao Bhosale

.....Applicant

Versus

Union of India through MoEF&CC & Ors.

....Respondent(s)

Date of hearing: 01.12.2022

CORAM: HON'BLE MR. JUSTICE DINESH KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER

Applicant	:	Mr. Nitin Lonkar, Advocate
Respondent(s)	:	Ms. Manasi Joshi, Advocate for R-1, 6 & 7 Mr. Aniruddha Kulkarni, Advocate for R-3 to 5 Mr. S. Swaminathan, Advocate for R-8 & 9/PCMC Mr. Saket Mone along-with Mr. Abhishek Salian, Advocates for R-11/PP

ORDER

1. Today this matter is listed on the issue of limitation against which objection has been filed by the learned Counsel for the Applicant.

2. Heard the arguments of learned Counsel for the Applicant Mr. Nitin Lonkar and learned Counsel for Respondent No. 11/Project Proponent- Mr. Saket Mone along-with learned Counsel Mr. Abhishek Salian.

I.A. No. 86/2021(WZ)

3. This I.A. has been filed by the Respondent No. 11/Project Proponent (PP), praying for dismissal of the Original Application No. 63/2019(WZ). The main ground which has been set up in this application is that Original Application is time barred, therefore, it requires to be dismissed at the threshold itself. The core issue raised by the Applicant is

that the Respondent No. 11 did not obtain prior Environmental Clearance (EC) with respect to the project in question.

4. As per the Project Proponent (PP), he commenced the construction and excavation in the year, 2012, therefore, the cause of action in respect of the alleged construction first arose in the year, 2012 which is well over 07 years from the date of the filing of the present Original Application.

5. The Sections 14 and 15 of the National Green Tribunal Act, 2010 provide for 06 months from the date when the cause of action first arose within which the Original Application ought to have filed. Therefore, if the 06 months period is calculated from the year 2012, it would expire in the year 2013 and as regards Section 15, it provides for 05 years period from the date of cause of action first arose, which too would expire in the year, 2017, while the Original Application has been filed on 14.08.2019.

6. The learned Counsel for the Respondent No. 11 has drawn our attention to para no. 40 of the main petition, where-in it is stated by the Applicant that the Project Proponent carried out illegal construction on 0 sq. mtrs. to 18500 sq. mtrs. vide sanction dated 24.11.2016.

7. As per the Applicant in O.A., the Project Proponent had intention to go on beyond 36,500 sq. mtrs. vide sanction dated 31.03.2018. The civil construction activity is recurring process. The Project Proponent/Respondent No. 11 has increased the project capacity from 0 sq. mtrs to 18500 sq. mtrs. from 2011 to 19.05.2018, therefore, it is nothing but a recurring cause of action for building construction activity.

8. The Applicant in Original Application had obtained information through online search and under RTI Act from 2017 to 18.05.2018 and thereafter had sent legal notice through Counsel to the Respondents inviting their attention towards the violations committed by the Project

Proponent. Therefore, the cause of action first arose on 15.06.2019 when SEIAA issued a Show Cause Notice to the Project Proponent.

9. Therefore, 06 months period from 15.06.2019 should be counted, which would end on 14.12.2019, while the present application has been filed on 14.08.2019, therefore, it is within time.

10. As per Respondent No. 11/Project Proponent (PP), the above contention of the Applicant in Original Application is absolutely false because the Applicant is trying to establish the date 19.05.2019 as the date, when the first cause of action arose on the basis of his having obtained information under RTI. It is further argued by the learned Counsel for the Respondent No. 11 that any person may move an RTI application on a particular date of his choice in order to create cause of action so as to bring it within the period of limitation in order to initiate legal proceedings, which cannot be allowed to happen because that is not the intent of law.

11. The learned Counsel for the Respondent No. 11 has placed reliance of the Judgment *Jai Javan Jai Kisan and ors. v. Vidarbha Cricket Association and Ors. [MANU/GT/0006/2017],* where-in relevant para no. 11 is as follows:-

> *"11. Conjoint reading of Section 14 and 15 of the National Green Tribunal Act reveals that essentially any application moved for claiming reliefs there-under must necessarily present a Civil case wherein substantial question relating to environment or environmental damage arising under the enactments specified in the Schedule-I of the Act (including accident occurring while handling any hazardous substance) is involved. We are, therefore, of the considered opinion that it is the substantial question relating to the environment or environmental damage as aforesaid which gives rise to the cause for an action under the provisions of National Green Tribunal Act, 2010. In the present case, the question raised is about restoration of the environmental damage on account of injury to it as a result of raising VCA Stadium without EC or consent to operate under the provisions of Schedule-I Acts viz Environment (Protection) Act, 1986, the Air (Prevention and*

Control of Pollution) Act 1981 and Water (Prevention and Control of Pollution) Act 1974. As stated herein above, the causes of injury are insufficiency of Effluent Treatment Plant (ETP), open species, parking spaces and tree cover. These facts were very much manifest when the VCA stadium became functional in the year 2008. In our opinion, therefore, the cause of action for the present Application arose first when the VCA stadium became functional. There is nothing in the Application to state that these injuries stood compounded further to actuate the Applicants to initiate the action in the present case as framed."

12. Thereafter, the learned Counsel for the Respondent No. 11 has placed reliance on *Graminee Environment Development Foundation v. Balaji Infrastructure Ltd. & Ors. [(2017) SCC Online NGT 1098]*, where-in relevant para nos. 11 to 13 are as follows:-

*"**11.** Section 15 (3) of the NGT Act, 2010 in clear terms requires the Application for restitution of the property damaged to be made within the period of five (5) years from the date on which cause for such relief first arose, and provides for discretion to the Tribunal to condone delay for 'sufficient cause' if the application is filed within further period of sixty (60) days and no further. In the present case, the Applicant avers that the cause of action first arose on 24.2.2015, when the letter was addressed by the Member Secretary, Maharashtra Coastal Zone Management Authority (MCZMA) to the Collector, Raigad to take action in respect of the grievance made by the Applicant and yet no action was taken by the authorities. The Applicant has further revealed in her Application that she has been making several complaints to the Authorities about the said grievance, first such complaint being made on 15.9.2014 to the Divisional Commissioner, Konkan Division, Navi Mumbai. Reading of the letter dated 24.2.2015, Annexure "I to the Application (Pg.81) reveals the nature of grievance made by the Applicant. In short, the Applicant was aggrieved by the alleged illegal blasting work, storage of minerals and reclamation by Dighi Port Ltd. Similarly, the grievance made with complaint dated 15.9.2014 is regarding alleged illegal work of reclamation of seashore and filling rocks at village Nanavali and intertidal land encroachment without EC by Dighi Port Ltd, and Balaji Infrastructure Ltd.*

***12.** In our considered opinion, making of grievance of the kind in the present case by writing a letter cannot be constituted as 'cause of action' but the actual act or its consequence constitutes 'cause of action' in any case. In the present case, cause of action has arisen as a result of blasting work as well as dumping of rocks etc. by Dighi Port Ltd and its holding Company Balaji Infrastructure Ltd in the said land.*

> ***13.*** *A perusal of the Application gives some clue as to when such acts of blasting of hills and dumping of material excavated started. The Applicant has pleaded in her Application that Respondent No.1 encroached upon 3km of seashore of village Nanavali and without permission of any Govt. Authority dumped soil and rocks there. It is further pleaded that Respondent No.1 has been doing illegal activities of levelling, blasting, excavation of land, filling of land space with soil, dumping huge rocks and artificial land spaces without any permission; and in spite of such illegalities going on, Respondent Nos. 2 to 7- Govt. Authorities did nothing. The Applicant in her pleadings referred to EC granted in the name of Dighi Port Ltd on 30th September, 2005 for construction of Port at village Dighi, Taluka Shrivardhan, District Raigad and states that she does not challenge or dispute anything about such EC or any work at Dighi Port and her only grievance is that Respondent No.1 has encroached upon the property and extended various kinds of constructions beyond consented area. These facts as pleaded if read in conjunction with the plaint in Regular Civil Suit No.4 of 2009 filed by the Applicant in the Court of Civil Judge, Junior Division, Shrivardhan, do make sense as to when alleged activity had started. At para-7 of the said plaint, the Applicant has categorically stated that on 26.12.2008 the defendant (therein) i.e. Dighi Port Ltd came at the land adjacent to the house of the Applicant in order to make encroachment and reclaimed the land, and this highhanded activity of Dighi Port Ltd was resisted by the Applicant with objection that they cannot reclaim land by blasting the hills and dumping rocks at the said land. A clear fact emerges that the act of blasting the hill sides, dumping materials illegally and reclamation of land, first started in or about December, 2008. Thus, cause of action for the present Application clearly arose in or about December, 2008."*

13. Based on the above provisions of law, it is vehemently argued by the learned Counsel for the Respondent No. 11/Project Proponent that the present application is time barred and needs to be dismissed on that ground alone.

14. During argument, the learned Counsel for the Applicant in Original Application has pointed out that he is relying on para no. 18.25 & 18.26 of the reply affidavit dated 26.10.2021, mentioned at page nos. 981 to 986 of the paper book, which are as follows:-

> *"**18.25.** I state that, this Hon-ble Tribunal in the matter of "Forward Foundation, A Charitable Trust and Ors. Vs. State of Karnataka and Ors. (OA No. 222/2014) Judgment dated*

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7th May, 2015", reported in 2015 SCC Online NGT 5 in dealing with the issue of limitation and cause of action has specifically held as follows-

"24. The expression 'cause of action' as normally understood in civil jurisprudence has to be examined with some distinction, while construing it in relation to the provisions of the NGT Act. Such 'cause of action' should essentially have nexus with the matters relating to environment. It should raise a substantial question of environment relating to the implementation of the statutes specified in Schedule I of the NGT Act. A 'cause of action' might arise during the chain of events, in establishment of a project but would not be construed as a 'cause of action' under the provisions of the Section 14 of the NGT Act, 2010 unless it has a direct nexus to environment or it gives rise to a substantial environmental dispute. For example, acquisition of land simplicitor or issuance of notification under the provisions of the land acquisition laws, would not be an event that would trigger the period of limitation under the provisions of the NGT Act, 'being cause of action first arose'. A dispute giving rise to a 'cause of action' must essentially be an environmental dispute and should relate to either one or more of the Acts stated in Schedule I to the NGT Act, 2010. If such dispute leading to 'cause of action' is alien to the question of environment or does not raise substantial question relating of environment, it would be incapable of triggering prescribed period of limitation under the NGT Act, 2010. [Ref Liverpool and London S.P. and I Asson. Ltd: v. M.V. Sea Success I and Anr., (2004) 9 SCC 512, J. Mehta v. Union of India, 2013 ALL (I) NGT REPORTER (2) Delhi, 106, Kehar Singh v. State of Haryana, 2013 ALL (I) NGT REPORTER (DELHI) 556, Goa Foundation v. Union of India, 2013 ALL (I) NGT REPORTER DELHI 234].

25. In contradistinction to 'cause of action first arose', there could be 'continuing cause of action', 'recurring cause of action' or 'successive cause of action'. These diverse connotations with reference to cause of action are not synonymous. They certainly have a distinct and different meaning in law, 'Cause of action first arose' would refer to a definite point of time when requisite ingredients constituting that 'cause of action' were complete, providing applicant right to invoke the jurisdiction of the Court or the Tribunal. The Right to Sue' or 'right to take action' would be subsequent to an accrual of such right. The concept of continuing wrong which would be the foundation of continuous cause of action has been accepted by the Hon'ble Supreme Court in the case of Bal Krishna Savalram Pujari & Ors. v. Sh. Dayaneshwar Maharaj Sansthan & Ors., AIR 1959 SC 798.

***18.26** Further I state that, the **Forward Foundation** Judgment was challenged before the Flon'b1e Supreme Court in the matter of **Mantri Technoze Pvt. Ltd. Vs. Forward Foundation, Civil Appeal No. 5016/2016 reported in (2019) 18 SCC 494** has specifically held vide judgment dated 5th March, 2019 and has confirmed the said judgment*

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of Forward Foundation and even the Review petition of the same has been dismissed vide order dated 06/08/2019 and has thus become final and binding.

> *"In fact, in the original application before the Tribunal there was no mention of the provision under which it was being filed. It is well settled principal of law that non-mention of or erroneous mention of the provision of law would not be of any relevance, if the Court had the requisite jurisdiction to pass an order. It would be mere irregularity and would not vitiate the application or the judicial order of the Tribunal"*
>
> *The NGT Act being a beneficial legislation, the power bestowed upon the Tribunal would not be read narrowly. An interpretation which furthers the interests of environment must be given a broader reading. (See Kishsore Lal v. Chairman, Employees' State Insurance Corpn. (2007) 4 SCC 579, para 17). The existence of the Tribunal without its broad restorative powers under Section 15(1)(c) read with Section 20 of the Act, would render it ineffective and toothless, and shall betray the legislative intent in setting up a specialized Tribunal specifically to address environmental concerns. The Tribunal, specially constituted with Judicial Members as well as with Experts in the field of environment, has a legal obligation to provide for preventive and restorative measures in the interest of the environment"*
>
> *"The Tribunal has also jurisdiction under Section 15(1)(a) of the Act to provide relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in Schedule I. Further, under Section 15(1)(b) and 15(1)(c) the Tribunal can provide for restitution of property damaged and for restitution of the environment for such area or areas as the Tribunal may think fit. It is noteworthy that Section 15(1)(b) & (c) have not been made relatable to Schedule I enactments of the Act. Rightly so, this grants a glimpse into the wide range of powers that the Tribunal has been cloaked with respect to restoration of the environment."*
>
> *"Section 15(1)(c) of the Act is an entire island of power and jurisdiction read with Section 20 of the Act. The principles of sustainable development, precautionary principle and polluter pays, propounded by this Court by way of multiple judicial pronouncements, have now been embedded as a bedrock of environmental jurisprudence under the NGT Act. Therefore, wherever the environment and ecology are being compromised and jeopardized, the Tribunal can apply Section 20 for taking restorative measures in the interest of the environment."*

15. The Applicant in Original Application has also placed reliance upon the important dates and events, which have been quoted by him in para

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14 of the reply affidavit, mentioned at page nos. 926 to 928 of the paper book, which are as follows:-

"14. IMPORTANT DATES AND EVENTS:

I state that, the following events and dates are very important to understand the collusion between the Government Authorities and Respondent No. 11-PP and tactics, favouring practices adopted by the Joint Committee Members and Respondent No. 11-PP;

"

Sr. No.	Events	Date
1.	1st Application for EC	07.09.2013
2.	1st Show Cause Notice by SEIAA & PS- DoE	30.08.2014
3.	1st Withdrawal Communication for SCN	10.03.2015
4.	1st Consent to Establish	10.03.2015
5.	2nd Application for EC	30.06.2016
6.	2nd Consent to Establish	12.10.2017
7.	3rd Application for EC	06.10.2018
8.	Notice/Complaint of Original Applicant	19.05.2019
9.	MPCB 1st Site Visit by Field Officer	10.06.2019
10.	2nd Show Cause Notice by SEIAA & PS- DoE	15.06.2019
11.	MPCB 2nd Site Visit by SRO 2	27.06.2019
12.	Filing of OA	14.08.2019
13.	First Order of NGT	22.10.2019
14.	Service to Joint Committee of SEIAA & MPCB	02.11.2019
15.	Personal hearing given to PP by PS-DoE	11.11.2019
16.	2nd Withdrawal Communication for SCN	16.11.2019
17.	Second Order of NGT	10.12.2019
18.	Joint Committee Visit to project site	15.12.2019
19.	Architect Certificates prepared on	20.12.2019
20.	Joint Committee Report filed to NGT	07.01.2020
21.	Third Order of NGT issuing Notice 86 Show cause to PP	05.02.2020
22.	Service to the Respondent No. 11-PP	15.02.2020
23.	Grant of ex-post facto EC	18.02.2020
24.	Appeal No. 26/2020 filed on	19.03.2020
25.	Fourth Order of NGT	13.07.2020
26.	Respondent No. 11-PP Reply Affidavit Sworn on	24.09.2020
27.	Respondent No. 11-PP filed	24.09.2020
28.	Fifth Order of NGT	03.09.2021
29.	Respondent No. 11-PP filed 86/2020 filed on	06.10.2021
30.	Respondent No. 11-PP Corrected Reply Affidavit served on Original	09.10.2021

	Applicant	

16. He has argued that in this case, there is recurring cause of action and therefore, the date which has stated in his application i.e. 15.06.2019, when the SEIAA issued a Show Cause Notice to the Project Proponent, should be treated to be the date of cause of action.

17. We have heard the arguments of the parties and perused the record and also have gone through the Judgments, which have been relied upon by both the parties, we find that as far as legal position is concerned, Sections 14 & 15 of the National Green Tribunal Act, 2010 provide as follows:-

> *"Section 14:- Tribunal to settle disputes.-*
>
> *(1) .....*
>
> *(2) .....*
>
> *(3) No application for adjudication of dispute under this Section shall be entertained by the Tribunal unless it is made within a period of six months from the date on which the cause of action for such dispute first arose:*
>
> *Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days."*
>
> *Section 15:- Relief, compensation and restitution –*
>
> *(1) .....*
>
> *(2) .....*
>
> *(3) No application for grant of any compensation or relief or restitution of property or environment under this section shall be entertained by the Tribunal unless it is made within a period of five years from the date on which the cause for such compensation or relief first arose:*
>
> *Provided that the Tribunal, may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days."*

18. According to the Applicant in Original Application, as per his own pleadings which are stated in para no. 40, it is clear that construction of the project by the Project Proponent was started in the year 2011 and continued till 19.05.2018. He states that he had obtained information

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through online search and under RTI from 2017 to 18.05.2018. Thereafter, he had sent legal notice through Counsel on 19.05.2019. According to him, the SEIAA had issued first Show Cause Notice on 15.06.2019. Therefore, that date should be taken to be the date of cause of action, which first arose.

19. We are not inclined to accept this argument because according to his pleading, he had full knowledge in the year 2011 itself when the construction had started. The pretext of having come to know about this project being constructed through RTI on a later date as stated above appears to be only in order to bring the present Original Application within limitation period. We agree with the learned Counsel for the Project Proponent (PP) that it is very easy for any person to use RTI to seek information for any project on any date chosen by him. We are of the considered opinion that such kind of practice cannot be allowed. We are not inclined to accept the argument made by the learned Counsel for the Applicant in Original Application and are convinced with the argument raised by the learned Counsel for the Respondent No. 11/Project Proponent. We find that this Original Application is time barred, hence this Original Application stands dismissed as time barred.

20. All connected I.A.s also stand disposed of.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

December 01, 2022
Original Application No. 63/2019(WZ)
(I.A. No. 100/2019 & I.A. No. 86/2021)
P.Kr

MANU/GT/0006/2017

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BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE

Application No. 33/2016 (M.A. Nos. 317/2016, 322/2016 and 355/2016)

Decided On: 13.01.2017

Appellants: **Jai Javan Jai Kisan and Ors.**
Vs.
Respondent: **Vidarbha Cricket Association and Ors.**

Hon'ble Judges/Coram:
U.D. Salvi, J. (Member (J)) and Ranjan Chatterjee, Member (E)

Counsels:
For Appellant/Petitioner/Plaintiff: Asim Sarode, Adv.

For Respondents/Defendant: N. Subramaniam, Sr. Adv. and Saket Mone, Adv.

JUDGMENT

1. Plea of non-maintainability of the present petition is made by Respondent No. 1 in M.A. No. 322/2016. Broadly, plea is made on three grounds; (1) Limitation as prescribed under National Green Tribunal Act, 2010, (2) Locus-standie and (3) Issue raised falling beyond jurisdiction of the Tribunal as conferred upon it by virtue of the provisions of National Green Tribunal Act, 2010.

2. At the outset, we may clarify that we are examining the present Application from the environmental point of view and the considerations under Town Planning Act have little role to play unless such considerations resonate the environmental aspects.

3. Applicant No. 1 Jai Jawan Jai Kisan claims to be an organization which works for the association of cricket players. Other two Applicants, residents of Nagpur, claim themselves to be RTI and social activists working on various issues, being especially engaged in battle against corruption and doing positive socio-agricultural work.

4. The Applicants are seeking the following reliefs:

> "A. The Respondent No. 1 VCA may kindly be hold responsible for violation of provision in EIA Notification 2006 as they have not taken EC and consent to operate from the MPCB and using the stadium for commercial gain. Other Respondents neglected the environment violation being committed by the Respondent No. 1 hence Respondents No. 2 to 11 may be hold responsible for contravening their legal obligations and exemplary fine may be imposed on them. For not following 'Precautionary Principal', 'Polluters Pay Principal' may kindly be used against the Respondent No. 1 VCA and others by imposing heavy fine.
>
> B. All Matches from the filing of this Petition should be stalled. Use of the VCA stadium, Jamtha, Nagpur should be stopped immediately by issuing closure orders.
>
> C. Environmental damages and revenue losses as deemed fit may kindly be

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imposed on the Respondent No. 1 VCA and other Respondents.

D. The concerned authorities be directed to demolish the VCA's illegal cricket stadium and be prosecuted.

G. Considering the socio-environment purpose of filing the present Environment Interest Litigation (EIL) all the Respondents may kindly be directed to pay cost of Rs. 1 lakhs as litigation expenses to the Applicant."

5. Grievance in the present Application, according to the applicants, arises upon construction of Vidarbha Cricket Association's (VCA) Cricket stadium having total built up area 16,951.576 sq. mtr., at Jamtha, Nagpur, without obtaining Environmental Clearance (EC) or consent to operate and thereby injuring the environment. Perusal of the Application reveals that the injury to the environment is perceived from the facts: that there is insufficient effluent treatment plant, parking spaces, plantation of trees and failure to hand over open spaces and public utility lands to the concerned authority. In substance the Applicant are seeking demolition of VCA stadium raised without obtaining EC or consent to operate, which they believe to be the root cause of environmental ills and demolition of which would restore the environment. It is, therefore, an Application for restoration of environment under Section 15 of the National Green Tribunal Act, 2010.

6. Section 18(2) of the National Green Tribunal Act, 2010 gives the categories of persons who can initiate action for grant of relief or compensation or settlement of dispute in following terms:

"Section 18(2): Application or appeal to Tribunal:

(1) ----

(2) Without prejudice to the provisions contained in section 16, an application for grant of relief or compensation or settlement of dispute may be made to the Tribunal by -

(a) the person, who has sustained the injury, or

(b) the owner of the property to which the damage has been caused; or

(c) where death has resulted from the environmental damage, by all or any of the legal representatives of the deceased or

(d) any agent duly authorized by such person or owner of such property or all or any of the legal representatives of the deceased, as the case may be; or

(e) any person aggrieved, including any representative body or organization, or

(f) the Central Government or a State Government or a Union territory Administration or the Central Pollution Board or a Pollution Control Committee or a local authority, or any environmental authority constituted or established under the Environment (Protection) Act, 1986 (29) of 1986) or any

other law for the time being in force. 33

(3) "

7 . Pertinently, any person aggrieved including any Representative-body or organizations can initiate Application under Section 14 and 15 of National Green Tribunal Act, 2010. Being residents of Nagpur and social activists working for society in general, the Applicants could be said to have been aggrieved by the injury to the environment caused due to raising of the said stadium. As individuals, they have every right to enjoy clean environment. Any infraction of such right entitles them to initiate proceedings under provisions of National Green Tribunal Act, 2010. Objection raised to maintainability of the present Application on the ground of locus, therefore, do not appeal to us much.

8 . The Applicants have narrated the facts leading to the institution of the present Application. All these facts provide a view of what cause of action in the present case is. The Applicants plead that illegalities pertaining V.C.A. stadium at Jamtha commenced since the year 2004 and the stadium started functioning and organizing various big cricket tournaments from the year 2008. Thus, the material existence which possibly could have injured the environment was since the year 2008. Para 13 and 24 quoted herein below reveal what the Applicants have to state about the dimensions of the said stadium.:

> "13. The VCA in its letter Application for consent dated 23/10/2008 to the Regional Officer, MPCB have mentioned in their first para that they are operating the stadium from May 2008. In their third para they have mentioned that "We have constructed the state of art modern stadium with stadium built up area 11,552 sq. mtrs. and activity area of 19,400 sq. mt. we have also constructed club having built up area of 2773 sq. mtr.". According to this letter the total built up area is 33,725 sq. mt. The said letter dated 23/10/2008 written by CA to Regional Officer, MPCB, Nagpur is annexed as Annexure C.
>
> **24.** The VCA's total area is 1 lakh 28 thousand, 2 hundred sq. mt. of which stadium structure measures at 51,854 sq. mts and club house at 5057.34 sq.mt. According to EIA Notification, 2006 EC is mandatory for such huge constructions. The Competent authorities are also supposed to take over 15% of total area of 1,28,200 as open space and public utility land from VCA and keep in its possession for facilitating services to public. VCA is supposed to pay charges for layout and building plan sanction. NIT can earn revenue of over Rs. 50 crore from all these three processes. As nothing of these above mentioned things are happening it is great revenue loss for the State."

9. Respondent No. 2 MPCB has however, in its reply dated 29th September 2016 has revealed that the total built up area of the V.C.A. stadium is 19,951.576 sq. mtrs which includes built up area of the stadium, club-house Restaurant, swimming pool building and STP. According to Applicants the present structure has built up area exceeding 20,000 sq. mtrs. and as such requires Environment Clearance. From the facts disclosed before us by the Respondent No. 2 MPCB, this claim is debatable.

10. Keeping aside this debate, we further look for what the cause of action in the present case would be for seeking restoration of the injured or damaged environment. It is the case of the Applicants that the Applicants started making RTI inquiries regarding various illegalities relating to VCA stadium from the year 2013

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and onwards and after having gathered information from the MPCB that the VCA Stadium has no environmental clearance from the State, the Applicants decided to approach National Green Tribunal and therefore, the present case is well within the limitation.

11. Conjoint reading of Section 14 and 15 of the National Green Tribunal Act reveals that essentially any application moved for claiming reliefs there-under must necessarily present a Civil case wherein substantial question relating to environment or environmental damage arising under the enactments specified in the Schedule-I of the Act (including accident occurring while handling any hazardous substance) is involved. We are, therefore, of the considered opinion that it is the substantial question relating to the environment or environmental damage as aforesaid which gives rise to the cause for an action under the provisions of National Green Tribunal Act, 2010. In the present case, the question raised is about restoration of the environmental damage on account of injury to it as a result of raising VCA Stadium without EC or consent to operate under the provisions of Schedule-I Acts viz Environment (Protection) Act, 1986, the Air (Prevention and Control of Pollution) Act 1981 and Water (Prevention and Control of Pollution) Act 1974. As stated herein above, the causes of injury are insufficiency of Effluent Treatment Plant (ETP), open species, parking spaces and tree cover. These facts were very much manifest when the VCA stadium became functional in the year 2008. In our opinion, therefore, the cause of action for the present Application arose first when the VCA stadium became functional. There is nothing in the Application to state that these injuries stood compounded further to actuate the Applicants to initiate the action in the present case as framed.

12. Section 15 of the National Green Tribunal Act which deals with the Application for restitution/restoration of the environment reads as under:

> "Section 15: Relief, compensation and restitution.. (1) The Tribunal may by an order provide.--
>
> (a) Relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in the Schedule 1 (including accident occurring while handling any hazardous substance),
>
> (b) For restitution of property damaged;
>
> (c) For restitution of the environment for such area or areas, as the Tribunal may think fit.
>
> (2) The relief and compensation and restitution of property and environment referred to in clauses (a) (b) and (c) of sub-section (1) shall be addition to the relief paid or payable under the Public Liability Insurance Act, 1991
>
> (3) No application for grant of any compensation or relief or restitution of property or environment under this section shall be entertained by the Tribunal unless it is made within a period of five years from the date on which the cause for such compensation or relief first arose."

13. The present Application which ought to have been filed within a period 5 year from the date on which the cause of action for restoration first arose i.e. in the year 2008 has been filed on 11th April 2016. The Application is thus found to be beyond

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the prescribed period under section 15 of the National Green Tribunal Act, 2010 and therefore, cannot be entertained, it being time barred.

1 4 . The present Application therefore deserves to be rejected. The M.A. No. 322/2016 is allowed. Original Application No. 33/2016 is rejected and as such Misc. Applications therein M.A. No. 317/2016 and M.A. 355/2016 no longer survive and stand disposed of accordingly.

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2017 SCC OnLine NGT 1098

In the National Green Tribunal
Western Zone Bench, Pune

(BEFORE U.D. SALVI, J.M. AND RANJAN CHATTERJEE, E.M.)

In the matter of:

Graminee Environment Development Foundation, through its Chairman, Mrs. Geeta Bhadrasen Wadhai, (Geeta Xiver), age 45 years, Occupation - Farmer, R/at Post: Dighi, Nanvali, Taluka Shriwardhan, District: Raigad. (Pin 402402) ... Applicant;

Versus

1. Balaji Infrastructure Ltd. C/o Mr. Vijay Govardhandas Kalantri, New Excelsior Building, 6th Floor, A.K. Nayak Marg, Fort. Mumbai
2. Maharashtra Maritime Board, having its office at Indian Mercantile Chambers 3rd Floor, Ramjibhai Kamani Marg, Ballard Estate, Mumbai-400038
3. The Maharashtra Coastal Zone Management Authority, through its Secretary, Environment Department, 15th Floor, Room No. 217, New Administrative Building, Mantralaya, Mumbai 400032
4. Maharashtra State Bio-Diversity Board Jaiv-Vividha Bhavan, Civil Lines, Nagpur, Maharashtra-440001
5. The Collector, Raigad, (also holding charge as Chairperson) District Coastal Zone Management Committee (DCZMA), District Collectorate office, Alibag, (Raigad) (Pin-402201)
6. The Sub-Divisional Officer/Tahasildar of Shrivardhan, Tahasildar Office Shrivardhan, Taluka Shrivardhan, District - Raigad, (Pin-402201)
7. Maharashtra Pollution Control Board through Member Secretary, Kalpataru Point, 3 and 4th Floor, Sion Matunga Scheme Road No. 8, Opp. Cine Planet Cinema, Near Sion Circle, Sion (East), Mumbai-40022 ... Respondents.

Original Application No. 179 of 2016(WZ) M.A. No. 171/2017
Decided on May 18, 2017

Counsel for Appellant(s):

Mr. Asim Sarode Adv.

Counsel for Respondent(s):

Mr. Sake Mone, for Respondent No. 1.

Mr. Tushar Bhosale i/b Legasis Partners for Respondent No. 2.

Mr. Manasi Josh Adv. a/w Mr. Naresh P. Pawar SDO for Respondent Nos. 3, 7.

Mr. Shashank Vakil for Respondent No. 4.

JUDGMENT

1. Heard. Perused Record.

2. Graminee Environment Development Foundation, through its Chairman Mrs. Geeta Wadhai, has filed this Application principally for the relief of restitution of land Gut Nos. 85, 86, 87, 88 and 89 of village Nanavali, Taluka Shrivardhan, District Raigad

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upon removal of illegally dumped rocks, soil bauxite.

3. According to the Applicant, she is the owner of land bearing Gut Nos. 75/B and 76 of village Nanavali, wherein she has her residence being house Nos. 166 and 88. Her property lies adjacent to the property of Respondent No. 1 Balaji Infrastructure Ltd. The Applicant accuses Respondent No. 1 of illegally dumping soil and rocks in the land adjacent to her property particularly, land Gut Nos. 85 to 89 in a bid to reclaim land and thereby causing damage to marine life and bio-diversity. The Applicant submits that, the damage caused to marine life and bio-diversity requires to be undone by restitution of the said land upon removal of dumped materials from the said land.

4. In response to the Notice before admission, Respondent No. 1 - Balalji Infrastructure Ltd. filed reply dated 10th February, 2017 as well as additional affidavit dated 2nd May, 2017.

5. Respondents appeared through their respective counsel.

6. Learned Counsel appearing on behalf of Respondent No. 1 opposes the Application on two (2) counts: (i) being hit by the principle of Res-judicata and (ii) limitation. He submits that the Applicant had raised a civil dispute before this Tribunal with an Application filed under Ss. 14, 15, 16 and 17 read with S. 18 of the National Green Tribunal Act, 2010 in Application No. 63 of 2014 (Pg. No. 109 of the compilation) and the same was disposed off with the Judgment and Order dated 13th November, 2014 (Pg. 148-172 of the compilation). He added that the Applicant filed Regular Civil Suit No. 4 of 2009 (pg. 3 of the compilation) in respect of the property in question in the Court of Civil Judge, Junior Division, Shirvardhan and was dismissed vide order dated 2nd December, 2010, passed below Exh. 1 in RCS No. 9 of 2009 upon taking into consideration the order passed by the Hon'ble High Court of Bombay in PIL No. 42 of 2009 vide Judgment dated 9th July, 2009. He submits that, the present Application is hit by limitation prescribed under Section 15(3) of the NGT Act, 2010, particularly, for the reason that cause of action for the Application firstly arose in the year 2008, when the alleged activity started and not upon receiving response to the RTI Application query in respect of the project as contended by the Applicant.

7. Learned Counsel appearing on behalf of Respondent No. 1 - Balaji Infrastructure Ltd. holding Company of Dighi Port Ltd. submitted that it has been incorporated for the purpose of developing Dighi Port in pursuance to Environment Clearance (EC) dated 30th September, 2005, granted to the project for construction of Dighi Port. He further submits that EC dated 30th September, 2005 permits the Project Proponent (PP) Dighi Port Ltd. to utilize its area for storage, warehouses and deployment of handling equipment, and land in question used for dumping rocks and bauxite within Dighi Port area on rear side of the house of Applicant.

8. In order to set factual contents of the Application in order, the Applicant was allowed to amend the Application, and accordingly amended memo of the Application has been placed on record for our consideration.

9. Learned Counsel appearing on behalf of the Applicant placed before us the Panchnama dated 9th January, 2017 of the site inspection conducted by the Tehsildar, Shrivardhan recording the fact of dumping of rocks at the land in question.

10. Adverting to the grievances regarding restitution of environment, the controversy before us begs a question as to when 'first cause of action' arose for claiming the relief of restitution.

11. Section 15(3) of the NGT Act, 2010 in clear terms requires the Application for restitution of the property damaged to be made within the period of five (5) years from the date on which cause for such relief first arose, and provides for discretion to the Tribunal to condone delay for 'sufficient cause' if the application is filed within further period of sixty (60) days and no further. In the present case, the Applicant

avers that the cause of action first arose on 24.2.2015, when the letter was addressed by the Member Secretary, Maharashtra Coastal Zone Management Authority (MCZMA) to the Collector, Raigad to take action in respect of the grievance made by the Applicant and yet no action was taken by the authorities. The Applicant has further revealed in her Application that she has been making several complaints to the Authorities about the said grievance, first such complaint being made on 15.9.2014 to the Divisional Commissioner, Konkan Division, Navi Mumbai. Reading of the letter dated 24.2.2015, Annexure 'I' to the Application (Pg. 81) reveals the nature of grievance made by the Applicant. In short, the Applicant was aggrieved by the alleged illegal blasting work, storage of minerals and reclamation by Dighi Port Ltd. Similarly, the grievance made with complaint dated 15.9.2014 is regarding alleged illegal work of reclamation of seashore and filling rocks at village Nanavali and intertidal land encroachment without EC by Dighi Port Ltd., and Balaji Infrastructure Ltd.

12. In our considered opinion, making of grievance of the kind in the present case by writing a letter cannot be constituted as 'cause of action' but the actual act or its consequence constitutes 'cause of action' in any case. In the present case, cause of action has arisen as a result of blasting work as well as dumping of rocks etc. by Dighi Port Ltd. and its holding Company Balaji Infrastructure Ltd. in the said land.

13. A perusal of the Application gives some clue as to when such acts of blasting of hills and dumping of material excavated started. The Applicant has pleaded in her Application that Respondent No. 1 encroached upon 3 km. of seashore of village Nanavali and without permission of any Govt. Authority dumped soil and rocks there. It is further pleaded that Respondent No. 1 has been doing illegal activities of levelling, blasting, excavation of land, filling of land space with soil, dumping huge rocks and artificial land spaces without any permission; and in spite of such illegalities going on, Respondent Nos. 2 to 7 - Govt. Authorities did nothing. The Applicant in her pleadings referred to EC granted in the name of Dighi Port Ltd. on 30th September, 2005 for construction of Port at village Dighi, Taluka Shrivardhan, District Raigad and states that she does not challenge or dispute anything about such EC or any work at Dighi Port and her only grievance is that Respondent No. 1 has encroached upon the property and extended various kinds of constructions beyond consented area. These facts as pleaded if read in conjunction with the plaint in Regular Civil Suit No. 4 of 2009 filed by the Applicant in the Court of Civil Judge, Junior Division, Shrivardhan, do make sense as to when alleged activity had started. At para-7 of the said plaint, the Applicant has categorically stated that on 26.12.2008 the defendant (therein) i.e. Dighi Port Ltd. came at the land adjacent to the house of the Applicant in order to make encroachment and reclaimed the land, and this highhanded activity of Dighi Port Ltd. was resisted by the Applicant with objection that they cannot reclaim land by blasting the hills and dumping rocks at the said land. A clear fact emerges that the act of blasting the hill sides, dumping materials illegally and reclamation of land, first started in or about December, 2008. Thus, cause of action for the present Application clearly arose in or about December, 2008.

14. It is also not specifically mentioned in the Application as to what exact damage was caused as a result of dumping of rocks etc., giving rise to adverse impact on environment at the said Gut Nos. 85 to 89 of village Nanavali, and thereby to actionable grievance, particularly, when the EC dated 30th September, 2005 and corrigendum dated 26th December, 2005 (Pg. 311) thereto permits Dighi Port Ltd. to carry out reclamation within the area, which includes the said Gut Numbers vide Notification dated 26th January, 2007 (Pg. 316 to 319) and the map (Pg. 320) filed by Respondent No. 1 showing these survey numbers falling within the area of Dighi Port Ltd. The present Application filed on 30.7.2016, therefore, in our opinion, has been filed much beyond the period of limitation of five (5) years from the date on which 'first cause of action' arose as foresaid.

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15. The Application is, therefore, squarely barred by limitation as prescribed under Section 15(3) of the NGT Act, 2010. The Application therefore fails. Hence, dismissed.

Original Application No. 179 of 2016 stands disposed off accordingly.

M.A. No. 171/2017 moved therein for interim stay no longer survives with disposal of the Main Application. Hence stands disposed off.

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2017 SCC OnLine NGT 1581

In the National Green Tribunal[±]

(BEFORE U.D. SALVI, J.M. AND BIKRAM SINGH SAJWAN, E.M.)

Surendra Waman Dhavale and Others ... Appellants;

Versus

Secretary, Ministry of Environment and Forest and Others ... Respondents.

Application No. 95/2014(WZ)
Decided on September 22, 2017

Advocates who appeared in this case:

Counsel for Applicants

Ms. Dipti R. Khule, Advs. & Mr. Aditya Pratap, Adv.

Counsel for Respondent No. 1:

Mr. D.M. Gupte, Adv. Mrs. Supriya Dangare and Swayamprabha and Mr. Suraj Wagwai, Advs.

Counsel for Respondent No. 7:

Ms. Sarika Kuru Kurudwadikar, Adv. i/by S.J. Law Associates,

Counsel for Respondent No. 16:

Shirin Merchant, Adv.

Counsel for Respondent No. 18

Mr. R.B. Mahabal, Adv.

ORDER/JUDGMENT

1. The issue of limitation has been raised by the Respondent No. 18 PNP Maritime Services Private Ltd. for questioning the maintainability of the present Application.

2. The Applicants have filed this Application on 6th September 2014 for the following reliefs:

(A) That since the impugned construction is fundamentally illegal, hence the additional 4 jetties, godowns, office block, boundary walls etc. which have been made in violation of the Environment Clearance accorded on 6th October, 2003 be ordered to be demolished.

(B) That all construction which has been done beyond the scope of Environment Clearance of 6th October, 2003, be dismantled completely and the land be restored to its original state.

(C) That the railway line which has been constructed without Environment Clearance be dismantled completely and the reclamation done in this respect be undone.

(D) That after the construction is removed, the entire place be planted with mangroves.

(E) That pursuant to Polluter-Pays Principle, the Project Proponent be asked to compensate for the damage to environment and that a heavy cost be imposed on the PNP and Dharamtar Infrastructure Pvt. Ltd. for having indulged in such enormous damage.

(F) That interim orders be issued by this Hon'ble Tribunal to halt the operations of the port, which causes immeasurable pollution of coal dust every day and that almost the entire port is fundamentally illegal.

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(G) Any other order which this Hon'ble Tribunal may deem fit to pass considering the facts and circumstances of this case.

3. Essentially, therefore, the present Application moved by the local residents of village Pimpal Bhat, Shahbaj and Ambepur (described as Ambe in the Application) respectively all of Tal. Alibaug, District Raigad is for restitution of the environment damaged by the construction of jetties in Dharamtar creek at village Shahbaj, Tal. Alibag, District Raigad. Section 15 of the National Green Tribunal Act, 2010 is quoted herein below for ready reference:

Section 15 of NGT Act: *Relief, compensation and restitution.*

(1) The Tribunal may by an order provide.

(a) Relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in the Schedule 1 (including accident occurring while handling any hazardous substance),

(b) For restitution of property damaged;

(c)For restitution of the environment for such area or areas, as the Tribunal may think fit.

(2) ———

(3) No application for grant of any compensation or relief or restitution of property or environment under this section shall be entertained by the Tribunal unless it is made within a period of five years from the date on which the cause for such compensation or relief first arose.

Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days.

(4) ———

(5) ———

4. According to the Applicants, the 'cause of action' for the present Application arose when the facts concerning the transgression of laws were noticed and thereupon the notice dated 25th September 2013 was issued to Respondent No. 17-Dharmtar Infrastructure Ltd. and Respondent No. 18-PNP Maritime Services Pvt. Ltd. Learned counsel appearing on behalf of the Applicants submits that the issue of limitation is mixed question of law and the facts and it will have to be determined on case to case basis and in the given facts and circumstances the cause of action for filing the present Application arose when the Applicant came to know about the illegal construction carried out by Respondent No. 18 and the violation of the environmental clearance conditions.

5. Learned counsel appearing on behalf of Applicants quoted 'Discovery Rule' as endorsed by Hon'ble Supreme Court in *Dr. V.N. Shrikhande's case* reported in (2011) 1 SCC 53 : A.I.R. 2011 SC 212 : *Dr. V.N. Shrikhande* v. *Mrs. Anita Sena Fernandes*. She submitted that the said Rule can be applied in cases of environmental damage.

6. Learned counsel appearing on behalf of Respondent No. 18 conceded that the limitation is mixed question of law and facts. However, he submitted that the facts can be gathered from the material on record produced both by the Applicants as well as Respondents, including Respondent No. 18 PNP Maritime Services Pvt. Ltd. He therefore, invited our attention to the Google imagery produced by the Applicants at Annexure A-1 to A-8 and A-10 to the Application in compilation-II as well as photographs annexed to the affidavit dated 16th December 2015 of the Respondent No. 18 at pages 646 to 657. He submitted that the environmental clearance was granted on 6th October 2003 and the construction of the jetties in question was commenced in February 2004 and almost completed in 2006, except the installation of

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tower-crane on one of the jetties, openly at a place visible and accessible to the public at large. He submitted that the facts could be ascertained from the Google imagery of the construction site which was also accessible to the Applicants at all times. He further submitted that the Applicants referred to several violations of Law, giving rise to separate causes of action for each of the violations both in the notice dated 25th September 2013 and the application and, therefore, clubbing of the causes of action, in the present Application amounts to misjoinder of causes of action in violation of Rule 14 of National Green Tribunal (Practice & Procedure) Rules, 2011.

7. Countering these submissions, the learned counsel appearing on behalf of the Applicants submitted that the they are not seeking plural remedies but they are seeking a remedy of restitution of environment which can be achieved by demolition of the jetties in question though the cause of action for such relief arose as aforesaid she submits that the violations of law quoted in the Application cumulatively translated into environmental damage necessitating the relief of its restitution as prayed for and therefore, there is no violation of Rule 14 of National Green Tribunal (Practice & Procedure) Rule 2011.

8. Perusal of the notice dated 25th September 2013 reveals that the cause for present action before us is "massive construction", which in the words of the Applicant No. 1 Surendra Waman Dhavale is as follows:

> "**4-A.** *That a massive construction of a port at Dharamtar Creek, alongwith large port-related ancillary constructions, such as warehousing, open-storage of coal, setting up of cranes, conveyors, rail siding etc. took place. This construction was done by committing several infractions of laws.*"

9. It is evident from the Google imagery photographs produced both by the Applicants and Respondent No. 18 that the activity of the construction of the jetties was complete in the year 2005 and the destruction of mangroves was perceptible to the public at large from such Google imagery or otherwise. It is also seen from the Inspection Report, dated 1st February 2006 of the MoEF at Annexure A-11 to the Application that the construction of jetty was complete and only construction of storage sheds was going on. Construction activity evidently was not concealed and it was known to the public at large, particularly to the local residents, one of them being the Applicant No. 2-Darshan Atmaram Juikar resident of Shahbaj.

10. In *Dr. V.N. Shrikhande's case* the Hon'ble Apex Court while dealing with the issue of Limitation in a case of medical negligence held:

> *"In case of Medical Negligence "Cause of action" does not accrue until the patient learns of injury/harm or in the exercise of reasonable care and diligence could have discovered the act constituting negligence".*

11. In this case, the Hon'ble Apex Court made distinction between patent effect of negligence and the latent effect of negligence and proceeded to apply the 'Discovery Rule' evolved by the Court in *United States* in case of "*Morgan* v. *Grace Hospital Inc.*, 149 W.Va. 783 : 144 S.E. 2d 156"

12. Here we are dealing with the case of patent event of massive construction perceptible to the public at large. Nothing was concealed as regards the construction in question. In such circumstance, the Ratio *Decidendi* arrived at in the case of *Dr. V.N. Shrikhande* is not applicable in the present case, more particularly for the reason that there was pre-existing jetty and nowhere the applicants have described or given the details of latent effects of harm/injury caused to the environment due to the construction in question which became patent in or about September 2013 the time when the notice dated 25th September 2013 was issued. It is the case of the Applicants that there has been massive cutting of mangroves in the year 2003 by Google imagery Communication 'A-8' for the purpose of construction of jetties. The first cause of action, therefore, in any case arose long back in the year 2003. Even by

liberal estimation, the work of construction could be said to have been evident on its completion in the year 2006 vide Inspection Report dated 1st February 2006. In such situation, the Application which is filed on 6th September, 2014, in our view is grossly time barred.

13. Hence the O.A. No. 95/2014 stands dismissed with no order as to costs.

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† Western Zone Bench, Pune

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2021 SCC OnLine SC 1194

In the Supreme Court of India

Relied on in *Vijay Kumar Ghai* v. *State of W.B.*, (2022) 7 SCC 124

(BEFORE S. ABDUL NAZEER AND KRISHNA MURARI, JJ.)

K. Jayaram and Others ... Appellant(s);

Versus

Bangalore Development Authority and Others ... Respondent(s).

Civil Appeal No(s). 7550-7553 of 2021 (Arising out of S.L.P.(C) No (s). 26374-26377 of 2013)

Decided on December 8, 2021

The Judgment of the Court was delivered by

S. ABDUL NAZEER, J.:— Leave granted.

2. These appeals arise out of the judgment and order dated 11.01.2013 passed by the Division Bench of the High Court of Karnataka in Review Petition Nos. 147/2012 and 1361/2012 which were filed by the appellants before the High Court pursuant to the liberty granted by this Court vide Order dated 27.02.2012 while allowing the appellants to withdraw their Special Leave Petition (C) Nos. 6125-6126 of 2012. However, the High Court declined to review its earlier order dated 06.07.2011 passed in the Writ Appeal Nos. 2592-93 of 2009.

3. Brief facts necessary for the disposal of these appeals are as under:

4. The appellants herein are the sons of one M. Krishna Reddy. They filed Writ Petition No. 26920 of 2005 before the High Court of Karnataka at Bangalore for cancellation of allotment of Site Nos. 1337 and 1336 allotted in favour of respondent nos. 5 and 6 respectively in the layout known as Binnamangala 2nd Stage and for certain other reliefs. According to the appellants their father M. Krishna Reddy was the owner and in possession of land bearing Survey No. 13, measuring 1 acre 26 guntas of Binnamangala Village, Kasaba Hobli, North Taluk, Bangalore District, having acquired the same by virtue of an order passed by the Deputy Commissioner for Abolition of Inams in proceedings bearing C. No. 11/59-60 under Section 5 of the Mysore (Personal & Miscellaneous) Inam Abolition Act, 1954. It was further contented that the entries in the Index of Lands and Record of Rights were registered in the name of M. Krishna Reddy and he was paying land revenue to the State Government. The said land was notified for acquisition by the Bangalore Development Authority (for short 'BDA')

for the formation of layout between Old Madras Road and Banaswadi Road (Binnamangala Layout). A preliminary Notification came to be published in Mysore Gazette dated 21.07.1960 followed by a final Notification published in the said Gazette on 23.02.1967.

5. It was further contended that M. Krishna Reddy filed an application for enhancement of compensation pursuant to which Additional Land Acquisition Officer (Addl. LAO) referred the matter to the Civil Court under Section 18 of the Land Acquisition Act, 1894. The Civil Court, after conducting an inquiry, accepted the Reference in part and increased the award amount payable in respect of 1 acre 18 guntas in Survey Nos. 13/2 & 13/4. M. Krishna Reddy was in possession of 1 acre 26 guntas of land in these two survey numbers. 8 guntas of land was left out from the acquisition. In the suit for partition filed by the third appellant, a portion of Survey No. 13/2 measuring 8 guntas of land which was left out from acquisition, was divided amongst appellants by forming four sites and final decree for partition came to be passed on 30.07.1982. It was further contended that they were not aware of the formation of the sites in this 8 guntas of the land by the BDA and the allotment of said sites in favour of respondent Nos. 5 & 6. Therefore, they filed the aforesaid writ petitions for cancellation of allotment of the said sites.

6. BDA filed statement of objections contending that Survey No. 13 measuring 5 acres 9 guntas and certain other lands were acquired by the BDA in the year 1971 and thereafter sites were formed and allotted to the general public. Admittedly, the appellants received the award amount on 30.11.1971. After lapse of 34 years from the completion of acquisition proceedings and receiving of award amount, the appellants have filed writ petitions before the High Court on false and frivolous grounds. It was further contended that Sy. No. 13 of Binnamangala Village measuring 5 acres 9 guntas and certain other lands were acquired for public purpose for the formation of layout called 'Banaswadi Layout'. The notified Khatedars in respect of Survey No. 13 were Channappa Reddy, Ramakrishna Reddy, N. Papaiah Reddy and M. Krishna Reddy. None of them have questioned the legality of the acquisition proceedings. The appellants have filed a suit i.e. O.S. No. 3936/1999 for the permanent injunction against the BDA by contending that 8 guntas of land has not been acquired by the BDA. The Trial Court by its judgment dated 29.01.2003 dismissed the suit. Aggrieved by the same, the second appellant filed an appeal bearing RFA No. 516/2003 which was dismissed by the High Court on 01.07.2003. The appellants have not disclosed the dismissal of the suit and the appeal in the writ petition.

7. Learned Single Judge, after considering the matter in detail, dismissed the writ petition on 01.04.2009. As noticed above, the Writ

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Appeal Nos. 2592-2593/2009, challenging the order of the learned Single Judge, were dismissed by the Division Bench of the High Court and the review petitions were also dismissed by the High Court subsequently.

8. Prof. Ravivarma Kumar, learned senior counsel appearing for the appellants, would contend that Survey Nos. 13/2 and 13/4 comprise of 1 acre 26 guntas of land out of which the State Government has acquired only 1 acre 18 guntas of land for the formation of the layout. Remaining 8 guntas of land has not been vested with the BDA, as it was not acquired. Since the remaining 8 guntas of land has not been acquired, the appellants have partitioned the said property amongst themselves and each of them is in possession of a site formed in this 8 guntas of land. It was argued that when the said 8 guntas of land itself has not been acquired, question of formation of the sites by the BDA in this land and its allotment to respondent nos. 5 and 6 is illegal.

9. On the other hand, Mr. S.K. Kulkarni, learned counsel appearing for the respondent-BDA, has supported the impugned judgment and order of the High Court. It was argued that Survey No. 13 comprised of lands totally measuring 5 acres 9 guntas and out of which 12 guntas was *kharab-B* land. This is evident from the final Notification published in the Mysore Gazette dated 23.02.1967. Out of the said 5 acres 9 guntas of land, the appellants' father was granted occupancy right of 1 acre 26 guntas. A common Award was passed in respect of the land belonging to Krishna Reddy and his brother. Compensation was awarded in respect of 1 acre 18 guntas which is revenue paying land i.e. non-*kharab* land. Compensation cannot be granted in respect of *kharab-B* land, if acquired. *Kharab* land forms part and parcel of the acquired revenue yielding land and entire extent of 1 acre 26 guntas of land including *kharab* land was acquired. Therefore, the appellants have no right, title and interest whatsoever in respect of the so-called left out land. It is further contented that the appellants had filed O.S. No. 3936 of 1999 before the Civil Court against the BDA for permanent injunction. In the said Suit, the very question involved in the writ petition was raised. The said Suit was dismissed by the Civil Court and the said judgment was confirmed in the appeal by the High Court. The appellants have not disclosed the dismissal of the aforesaid Suit and the appeal in the writ petition. Therefore, the High Court has rightly dismissed the appeal even on the question of suppression of material facts. He prays for dismissal of the appeal.

10. We have carefully considered the submissions made at the Bar by the learned counsel for the parties and perused the materials placed on record.

11. The documents produced by the BDA would clearly disclose that the entire extent of 5 acres 9 guntas of land including 12 guntas of

kharab-B land was notified for acquisition. M. Krishna Reddy, the father of the appellants, claimed to be the owner of 1 acre 26 guntas of lands in the said survey number and it was further contended that 1 acre and 18 guntas have been acquired and 8 guntas was left out from the acquisition. It was further contended that BDA had formed the sites in the said 8 guntas of land left out from acquisition and allotted them to respondent nos. 5 & 6. Admittedly, the appellants had filed O.S. No. 3936/1999 before the Additional City Civil Court against the BDA seeking permanent injunction while pleading identical facts and urging similar grounds. The said suit was dismissed by the trial court. The appeal filed against the said judgment of the trial court was also dismissed by the High Court. The appellants have not disclosed the filing of the suit, its dismissal by the Civil Court and the confirmation of the said judgment by the High Court in the writ petition. It is clear that the appellants have suppressed these material facts which are relevant for deciding the question involved in the writ petitions. Thus, the appellants have not come to the court with clean hands.

12. It is well-settled that the jurisdiction exercised by the High Court under Article 226 of the Constitution of India is extraordinary, equitable and discretionary and it is imperative that the petitioner approaching the writ court must come with clean hands and put forward all facts before the Court without concealing or suppressing anything. A litigant is bound to state all facts which are relevant to the litigation. If he withholds some vital or relevant material in order to gain advantage over the other side then he would be guilty of playing fraud with the court as well as with the opposite parties which cannot be countenanced.

13. This Court in *Prestige Lights Ltd.* v. *State Bank of India*[1] has held that a prerogative remedy is not available as a matter of course. In exercising extraordinary power, a writ court would indeed bear in mind the conduct of the party which is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the court, the court may dismiss the action without adjudicating the matter. It was held thus:

> "**33.** It is thus clear that though the appellant Company had approached the High Court under Article 226 of the Constitution, it had not candidly stated all the facts to the Court. The High Court is exercising discretionary and extraordinary jurisdiction under Article 226 of the Constitution. Over and above, a court of law is also a court of equity. It is, therefore, of utmost necessity that when a party approaches a High Court, he must place all the facts before the Court without any reservation. If there is suppression of material facts on the part of the applicant or twisted facts have been placed before the Court, the writ court may refuse to entertain the petition

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and dismiss it without entering into merits of the matter."

14. In *Udyami Evam Khadi Gramodyog Welfare Sanstha* v. *State of Uttar Pradesh*[2], this Court has reiterated that the writ remedy is an equitable one and a person approaching a superior court must come with a pair of clean hands. Such person should not suppress any material fact but also should not take recourse to legal proceedings over and over again which amounts to abuse of the process of law.

15. In *K.D. Sharma* v. *Steel Authority of India Limited*[3], it was held thus:

> "**34.** The jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. It is, therefore, of utmost necessity that the petitioner approaching the writ court must come with clean hands, put forward all the facts before the court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the court, his petition may be dismissed at the threshold without considering the merits of the claim.
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> 35. The underlying object has been succinctly stated by Scrutton, L.J., in the leading case of *R.* v. *Kensington Income Tax Commrs.*- [1917] 1 K.B. 486 : 86 LJKB 257 : 116 LT 136 (CA) in the following words : (KB p. 514)
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> > "... it has been for many years the rule of the court, and one which it is of the greatest importance to maintain, that when an applicant comes to the court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts—it says facts, not law. He must not misstate the law if he can help it—*the court is supposed to know the law. But it knows nothing about the facts*, and the applicant must state fully and fairly the facts; and the penalty by which the court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the court will set aside any action which it has taken on the faith of the imperfect statement."
>
> (emphasis supplied)
>
> 36. A prerogative remedy is not a matter of course. While exercising extraordinary power a writ court would certainly bear in mind the conduct of the party who invokes the jurisdiction of the court. If the applicant makes a false statement or suppresses material fact or attempts to mislead the court, the court may dismiss the action on that ground alone and may refuse to enter into the merits of the case by stating, "*We will not listen to your application because of what you have done.*" The rule has been evolved in the

larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it.

37. In *Kensington Income Tax Commrs.* (supra), Viscount Reading, C.J. observed : (KB pp. 495-96)

> "... Where an ex parte application has been made to this Court for a rule nisi or other process, if the Court comes to the conclusion that the affidavit in support of the application was not candid and did not fairly state the facts, but stated them in such a way as to mislead the Court as to the true facts, the Court ought, for its own protection and to prevent an abuse of its process, to refuse to proceed any further with the examination of the merits. This is a power inherent in the Court, but one which should only be used in cases which bring conviction to the mind of the Court that it has been deceived. Before coming to this conclusion a careful examination will be made of the facts as they are and as they have been stated in the applicant's affidavit, and everything will be heard that can be urged to influence the view of the Court when it reads the affidavit and knows the true facts. *But if the result of this examination and hearing is to leave no doubt that the Court has been deceived, then it will refuse to hear anything further from the applicant in a proceeding which has only been set in motion by means of a misleading affidavit.*"
>
> (emphasis supplied)

38. The above principles have been accepted in our legal system also. As per settled law, the party who invokes the extraordinary jurisdiction of this Court under Article 32 or of a High Court under Article 226 of the Constitution is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot be allowed to play "hide and seek" or to "pick and choose" the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts. The very basis of the writ jurisdiction rests in disclosure of true and complete (correct) facts. If material facts are suppressed or distorted, the very functioning of writ courts and exercise would become impossible. The petitioner must disclose all the facts having a bearing on the relief sought without any qualification. This is because "the court knows law but not facts".

39. If the primary object as highlighted in *Kensington Income Tax Commrs.* (supra) is kept in mind, an applicant who does not come with candid facts and "clean breast" cannot hold a writ of the court with "soiled hands". Suppression or concealment of material facts is not an advocacy. It is a jugglery, manipulation, manoeuvring or misrepresentation, which has no place in equitable and prerogative

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jurisdiction. If the applicant does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the court, the court has inherent power in order to protect itself and to prevent an abuse of its process to discharge the rule nisi and refuse to proceed further with the examination of the case on merits. If the court does not reject the petition on that ground, the court would be failing in its duty. In fact, such an applicant requires to be dealt with for contempt of court for abusing the process of the court."

16. It is necessary for us to state here that in order to check multiplicity of proceedings pertaining to the same subject-matter and more importantly to stop the menace of soliciting inconsistent orders through different judicial forums by suppressing material facts either by remaining silent or by making misleading statements in the pleadings in order to escape the liability of making a false statement, we are of the view that the parties have to disclose the details of all legal proceedings and litigations either past or present concerning any part of the subject-matter of dispute which is within their knowledge. In case, according to the parties to the dispute, no legal proceedings or court litigations was or is pending, they have to mandatorily state so in their pleadings in order to resolve the dispute between the parties in accordance with law.

17. In the instant case, since the appellants have not disclosed the filing of the suit and its dismissal and also the dismissal of the appeal against the judgment of the civil court, the appellants have to be non-suited on the ground of suppression of material facts. They have not come to the court with clean hands and they have also abused the process of law. Therefore, they are not entitled for the extraordinary, equitable and discretionary relief.

18. Apart from the above, we have also examined the case on merits. As noticed above, Survey No. 13 measures 5 acres 9 guntas, out of which 12 guntas were *kharab-B* land. Notification in respect of the entire 5 acres 9 guntas had been issued and possession of the land had been been taken long back. The contention of the appellants is that their father, M. Krishna Reddy, was the owner of 1 acre 26 guntas of land in Survey Nos. 13/2 and 13/4. According to them, 08 guntas of land has not been acquired and compensation has not been paid in respect of this land. Records produced by the BDA would disclose that 08 guntas of land is k*harab-B* land. Therefore, there is no question of payment of compensation in respect of this land, though, the same was included in the preliminary and final notification. The final notification was issued as early as in the year 1967. The appellants have claimed enhanced compensation also for 1 acre 18 guntas of land and they have raised this issue at a highly belated stage after lapse of about 34 years.

19. Identical contentions have been raised by the appellants in the aforesaid suit. The said suit was dismissed and the judgment of the civil court was confirmed by the High Court in RFA NO. 516/2003 on 01.07.2003, by observing as under:

> "..... Accordingly in the instant case, the trial Court adjudicated upon issue No. 3 as a preliminary issue which related to the maintainability of the suit and on the basis of the facts which could not be reasonably disputed and in respect of which there is presumption of correctness, it has found that the acquisition proceedings in respect of the entire extent of land in Sy. No. 13 having become final and conclusive, the suit of the plaintiffs was impliedly barred under Section 9 of CPC and hence not maintainable. I find no perversity in the view taken by the trial court. It is no doubt true that a contention was sought to be advanced on behalf of the appellant that only an extent of 1 acre 18 guntas of land in Sy. Nos. 13/2 and 13/4 had been acquired by the BDA and the remaining extent of 8 guntas of land is continued to be in possession of the plaintiff. But the materials placed on record clearly indicated that the entire extent of land in Sy. No. 13 had been acquired by the BDA for public purposes and the compensation had been paid thereon. It is not in dispute that the plaintiff's father Shri Krishna Reddy had participated in the acquisition proceedings before the respondent/BDA and he was one of the notified khatedars. Under the circumstances, therefore, when the entire extent of land has been acquired, it is rather difficult to accept the claim of the appellant/plaintiff. Hence, I find no merit in this appeal filed by the appellant."

20. This finding of the High Court has attained finality and the writ court cannot sit in an appeal over the judgment passed by the High Court in the appeal. The conclusions reached by the court in the appeal are binding on the appellants.

21. In view of above, we do not find any merit in these appeals and the same are accordingly dismissed. Pending applications, if any, shall stand disposed of. There shall be no order as to costs.

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[1] (2007) 8 SCC 449

[2] (2008) 1 SCC 560

[3] (2008) 12 SCC 481

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2022 SCC OnLine SC 1469

In the Supreme Court of India

(BEFORE B.R. GAVAI AND B.V. NAGARATHNA, JJ.)

Civil Appeal Nos. 2407-2412 of 2021

State of Uttar Pradesh and Others ... Appellant(s);

Versus

Uday Education and Welfare Trust and Others ... Respondent(s).

With

Civil Appeal Nos. 3144-3146 of 2022
Civil Appeal Nos. 3132-3134 of 2022
Civil Appeal Nos. 3135-3137 of 2022
Civil Appeal No. 3138 of 2022
Civil Appeal Nos. 4061-4062 of 2022
Civil Appeal No. 3141 of 2022
Civil Appeal Nos. 2547-2548 of 2020
Civil Appeal Nos. 3142-3143 of 2022
Civil Appeal Nos. 3147-3149 of 2022

Civil Appeal Nos. 2407-2412 of 2021, Civil Appeal Nos. 3144-3146 of 2022, Civil Appeal Nos. 3132-3134 of 2022, Civil Appeal Nos. 3135-3137 of 2022, Civil Appeal No. 3138 of 2022, Civil Appeal Nos. 4061-4062 of 2022, Civil Appeal No. 3141 of 2022, Civil Appeal Nos. 2547-2548 of 2020, Civil Appeal Nos. 3142-3143 of 2022 and Civil Appeal Nos. 3147-3149 of 2022

Decided on October 21, 2022

The Judgment of the Court was delivered by

B.R. GAVAI, J.:— A For the reasons stated in the applications for impleadment/intervention, the same are allowed.

2. This bunch of appeals challenges the order dated 18th February 2020, passed by the learned National Green Tribunal, Principal Bench, New Delhi (hereinafter referred to as "the learned NGT") in Original Application Nos. 313, 335 and 396 of 2019, thereby quashing and setting aside the notice dated 1st March 2019 issued by the State of Uttar Pradesh for establishing new wood based industries (hereinafter referred to as "WBIs") and also setting aside all the provisional licenses given in pursuance thereof.

3. The appeals also challenge the orders dated 18th March 2020, 2nd December 2020, and 21st December 2020 vide which the review applications filed by the State of Uttar Pradesh and the provisional license holders have been rejected.

4. Civil Appeal Nos. 2407-2412 of 2021 are filed by the State of Uttar Pradesh. The rest of the Civil Appeals are filed by the provisional license holders, who were granted licenses in pursuance of the notice dated 1st March 2019, issued by the State of Uttar Pradesh.

FACTUAL BACKGROUND

5. For the sake of convenience, we will refer to the facts as found in Civil Appeal Nos. 2407-2412 of 2021 filed by the State of Uttar Pradesh.

6. There are series of orders passed by this Court and the Central Empowered Committee (hereinafter referred to as "CEC") appointed by this Court, issuing various directions for prohibiting/regulating the felling of trees as well as the establishment of

WBIs. We will refer to them extensively in the subsequent paragraphs.

7. In pursuance of the order passed by this Court dated 5th October 2015 in Writ Petition (Civil) No. 202 of 1995 (*T.N. Godavarman Thirumalpad* v. *Union of India*), the Ministry of Environment and Forest and Climate Change ("MOEFCC" for short) issued Wood Based Industries (Establishment and Regulation) Guidelines 2016 (hereinafter referred to as "2016 Guidelines") vide Notification No. S.O. 3456 (E) dated 11th November 2016.

8. Subsequent to the 2016 Guidelines, timber assessment for Trees Outside Forest ("TOF" for short) in the State of Uttar Pradesh for WBIs was done for the period between February 2017 and December 2017 by the Forest Survey of India ("FSI" for short). The FSI thereafter submitted its report, which contains district wise, species wise and diameter class wise number of stems (trees), volume and annual potential production of timber from TOF in rural areas of all the districts of the State.

9. In pursuance of the 2016 Guidelines, the matter was placed before the State Level Committee ("SLC" for short) for grant of licenses to various WBIs. The SLC in its meeting held on 4th May 2018, considered the matter about the grant of licenses to various WBIs after taking into consideration the availability of wood in the State of Uttar Pradesh for determining the amount of timber available for new WBIs. In the said meeting, it was also decided that, in order to determine the correct number of new licenses to be issued to WBIs under different categories against the timber available in the State, a reassessment may be done by the Indian Plywood Industries Research and Training Institute ("IPIRTI" for short).

10. In the meeting of the SLC, held on 7th September 2018, since it was found that the capacity of plywood units is taken as fixed by the 2016 Guidelines, which, in turn, was based on the assessment of IPIRTI, a decision was taken that there was no need for the fresh assessment of the capacity by IPIRTI.

11. In pursuance of the aforesaid decision, E-lottery was held on 12th December 2018 for grant of licenses to various WBIs for the establishment of WBIs in 8 categories. Between 12th December 2018 and 31st December 2018, online letters of offer were issued to 1348 successful applicants. Subsequently, in the months of February and March 2019, provisional licenses were issued to 1215 successful applicants in the 8 categories to set up their WBIs. Subsequent thereto, on 1st March 2019, a notice was issued by the Government of Uttar Pradesh communicating the grant of provisional licenses to the newly selected WBIs.

12. Being aggrieved thereby, Original Application No. 313 of 2019 came to be filed by Uday Education and Welfare Trust before the learned NGT in March 2019. Vide order dated 28th March 2019, the learned NGT directed the State Government to submit a report from the Joint Committee comprising of the representative of Principal Secretary (Forest), U.P. and the Principal Chief Conservator of Forest, U.P. to examine the issues.

13. Being aggrieved by the notice dated 1st March 2019 issued by the State Government, Original Application Nos. 335 and 396 of 2019 also came to be filed by Samvit Foundation and U.P. Timber Association respectively before the learned NGT.

14. In pursuance of the directions issued by the learned NGT, the Joint Committee Report came to be submitted on 3rd August 2019. Vide order dated 6th August 2019 passed in Original Application nos. 313, 335 and 396 of 2019, the learned NGT directed the State Government to review the notice dated 1st March 2019 with regard to the establishment of new WBIs by 1350 units strictly in terms of the judgment of this Court in the case of *T.N. Godavarman* v. *Union of India*. Vide order dated 1st October 2019, the learned NGT directed the status quo to be maintained.

15. The State of Uttar Pradesh filed an Interlocutory Application No. 732 of 2019 in O.A. Nos. 313, 335 and 396 of 2019, seeking modification of the order dated 6th

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August 2019 and the order dated 1st October 2019. Vide order dated 18th December 2019, the learned NGT issued directions to the State Government to provide certain data. Subsequently, vide the impugned order dated 18th February 2020, the learned NGT allowed the said Original Applications and quashed and set aside the notice dated 1st March 2019 issued by the State Government for establishing new WBIs and all the provisional licenses given.

16. Being aggrieved thereby, Civil Appeal (Diary) No. 12004 of 2020 was filed before this Court. Vide order dated 26th October 2020, this Court dismissed the said appeals as withdrawn with a liberty to file review application before the learned NGT. Vide orders dated 18th March 2020, 2nd December 2020, and 21st December 2020, the learned NGT rejected the Review Applications.

17. The appellants, therefore, approached this Court being aggrieved by the orders passed by the learned NGT in the Original Applications as well as in the Review Petitions.

SUBMISSIONS

18. We have heard Shri Vikas Singh, Shri P.S. Patwalia and Mr. Rana Mukherjee, learned Senior Counsel appearing on behalf of the State of Uttar Pradesh, Shri V. Giri, Shri Syed Waseem Qadri, Shri V.K. Uniyal, Shri Vinay Navare, Shri V.K. Shukla, learned Senior Counsels, Ms. Prerna Singh, and Mr. Rudraksh Gupta, learned counsels appearing on behalf of the appellants, who were granted provisional licenses. We have also heard Shri Dhruv Mehta and Shri Brijender Chahar, learned Senior Counsels appearing on behalf of the respondent No. 1.

19. Shri Vikas Singh, learned Senior Counsel, submitted that the decision of the State Government to establish WBIs is in accordance with the 2016 Guidelines issued by the MOEFCC. He submits that the timber requirement by 1215 new WBIs, which were issued provisional licenses is only 12.35 lakh cubic meters per year, whereas the total timber available in the State is 80.30 lakh cubic meters per year. It is, therefore, submitted that, as such, the requirement is not even 20% of the total availability of timber. Learned Senior Counsel submitted that the only authorized agency in the country to conduct a survey of the forest as well as TOF is FSI. It is submitted that the object of IPIRTI is not to conduct a survey of either forest or TOF. It is submitted that, as a matter of fact, the learned NGT itself has directed such a study to be conducted by FSI, who has already undertaken similar studies for many States like Punjab, Maharashtra and others. It is submitted that when the survey with regard to availability of timber in the State of Uttar Pradesh was done by the very same agency, the learned NGT fell in gross error in again directing the State Government to conduct such a survey through the FSI.

20. It is submitted that even the MOEFCC had supported the stand taken by the State of Uttar Pradesh and, therefore, the learned NGT ought not to have interfered with the decision of the State Government.

21. Shri P.S. Patwalia, learned Senior Counsel also submitted that the decision of the State Government was in tune with the decision of this Court dated 18th May 2007 and 5th October 2015 passed in Writ Petition (Civil) No. 202 of 1995 (*T.N. Godavarman Thirumulpad* v. *Union of India*). It is submitted that when an expert body like the FSI had done an elaborate study, there was no reason for the learned NGT to have sat in appeal over the same. He further submits that though a detailed affidavit has been filed on behalf of the State of Uttar Pradesh in compliance with the order of the learned NGT dated 18th December 2019, regarding the availability of timber, the learned NGT has totally ignored the same.

22. Shri V. Giri, learned Senior Counsel, submits that the learned NGT erred in passing orders which have vitally affected the rights of the citizens who were granted provisional licenses. He submits that the order impugned is totally in breach of the

principles of natural justice. It is submitted that, from the perusal of the record, it is clear that the State of Haryana while calculating its requirement for wood also takes into consideration the import from the State of Uttar Pradesh. It is submitted that when there is excess wood available in the State of Uttar Pradesh, there is no reason why the same should be permitted to be exported to the State of Haryana at the cost of entrepreneurs in the State of Uttar Pradesh.

23. Shri Vinay Navare, learned Senior Counsel, submitted that the timber used in the WBIs is from the trees which are agro-based. He submits that though the State of Uttar Pradesh had adopted an elaborate procedure right from June 2018 till the grant of licenses, the applicants before the learned NGT had taken no steps. Shri Navare submits that only after the provisional licenses were issued and 632 out of 1215 WBIs provisional license holders had already been established and commenced operations, the applications were entertained and the orders were passed to the prejudice of the WBIs. It is submitted that Section 19(1) of the National Green Tribunal Act, 2010 (hereinafter referred to as "the NGT Act") mandates following of the principles of natural justice. It is submitted that though the applications for impleadment were made by the WBIs, the applicants were not granted an opportunity of being heard.

24. Shri V.K. Uniyal, learned Senior Counsel submitted that the learned NGT had erred in using the word "allotted". It is submitted that there is no question of allotment of timber to the WBIs and they are required to purchase the same from the open market.

25. Shri V.K. Shukla, learned Senior Counsel submitted that the State Government decided to grant provisional licenses for 8 different categories of WBIs. The requirement of raw material for different categories of WBIs is different. It is submitted that the learned NGT has grossly erred in considering all categories of WBIs together and setting aside the licenses granted to all of them. It is submitted that the said industries are established in pursuance of the National Agro Forestry Policy of 2014 and as such the learned NGT ought not to have interfered.

26. Ms. Prerna Singh, learned counsel appears for the appellants, who have been granted provisional licenses for plywood (press only) category. She submits that for plywood (press only) industries, there is no requirement of consumption of timber directly. It is submitted that initially veneer is manufactured out of round/fresh timber. Veneer then so manufactured is glued and pressed together to manufacture plywood. It is submitted that the learned NGT has considered the requirement of timber as twice the actual requirement. She submits that in the State of Uttar Pradesh, veneer is manufactured in surplus, which is exported to the State of Haryana.

27. Shri Rudraksh Gupta, learned counsel, submits that the learned NGT has failed to take into consideration the report of the National Poplar Commission of India.

28. All the learned counsel appearing on behalf of the appellants, in unison, submit that the original applicants before the Court were not *bonafide* litigants. It is submitted that there are reasons to believe that the proceedings were initiated at the instance of either the existing WBIs in the State of Uttar Pradesh to prevent competition or they were filed at the instance of the WBIs in the State of Haryana who were importing timber from the State of Uttar Pradesh at cheaper rates.

29. Shri Dhruv Mehta, learned Senior Counsel appearing on behalf of the respondent No. 1, on the contrary, submits that this Court has repeatedly held that the principles of sustainable development, the precautionary principle and the polluter pays principle are to be followed consistently. He raised a preliminary objection on the ground that in view of Section 22 of the NGT Act, the scope of an appeal before this Court could be limited to that of Section 100 of the Civil Procedure Code, 1908. It is, therefore, submitted that unless a substantial question of law is raised, the appeal could not be tenable.

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30. Shri Dhruv Mehta submits that this Court vide order dated 12th December 1996 has specifically prohibited the felling of trees in any forest, public or private. He further relies on the report of CEC dated 15th March 2005 to buttress his submission that WBIs can be permitted only if they exclusively use timber derived from poplar and eucalyptus species or agriculture waste products. It is submitted that the said guidelines also specifically provided that if the unit is found to have used any timber other than poplar and eucalyptus whether from a legal source or otherwise, the license granted to the unit shall be liable to be cancelled. He further relies on the report of CEC dated 12th October 2006. He submits that an assessment has to be done on the basis of the district-wise survey about timber availability from the TOF category. He submits that the said report of CEC itself would reveal that the assessment of the State is much less than what was initially projected by the State Government. He submits that unless the timber availability for the new WBIs is assessed and the SLC examines and recommends its approval, it is not permissible to establish new WBIs.

31. Shri Mehta further submits that the report of CEC dated 18th April 2007, accepted by this Court vide its order dated 18th May 2007, would show that the availability of timber for WBIs in the State of Uttar Pradesh is only 45.70 lakh cubic meters per year. Learned Senior Counsel submits that taking into consideration the fact that presently many imported machines from China are being used, the capacity of the existing units has gone much higher and, therefore, the timber which is available in the State of Uttar Pradesh would not be sufficient to meet the demand of the existing industries.

32. Shri Mehta submits that when SLC in its meeting dated 4th May 2018 had decided to get a report from IPIRTI, there was no occasion for it to review its decision in its subsequent meeting dated 7th September 2018. He submits that the Senior Officer of the Forest Department of the rank of Chief Conservator of Forest, Kanpur Division, Kanpur recommended that the report from IPIRTI should be obtained before deciding to issue the new licenses. It is submitted that the letters of the said officer dated 11th September 2019 and 20th April 2018 have been ignored by the SLC.

33. Shri Dhruv Mehta further submits that Annexure-I to the 2016 Guidelines is in contravention of the recommendations of CEC, which takes the requirement of timber for plywood unit as "NIL".

34. The learned Senior Counsel submits that vide Notification dated 20th July 2012, the State of Uttar Pradesh had notified 7 species of trees in the prohibited category. However, vide another Notification dated 31st October 2017, the said trees were taken out of the prohibited category. The learned NGT had set aside the said Notification of 2017 by order dated 11th September 2018. It is submitted that the said order of the learned NGT has been accepted by the State of Uttar Pradesh and a fresh notification has been issued on 7th January 2020, again bringing the said trees in the prohibited category. The learned Senior Counsel submits that while assessing the availability of timber, the trees under the said prohibited category have also been taken into consideration. He submits that if 20.75 lakh cubic meters is deducted from the availability of the timber, then the timber available in the State would be much less.

35. The learned Senior Counsel further submits that the survey has not been conducted for all the districts and has been conducted only for 30 districts and, therefore, the survey itself is erroneous.

36. The learned Senior Counsel further submits that FSI, while conducting the survey, has not taken into consideration the rotation period and, therefore, the survey is erroneous on the said count also. Learned Senior Counsel, in support of his submissions, relies on the judgment of this Court in the cases of *Common Cause* v. *Union of India*[1], *Mantri Techzone Private Limited* v. *Forword Foundation*[2], *Municipal Corporation of Greater Mumbai* v. *Ankita Sinha*[3] and *Pragnesh Shah* v. *Dr. Arun Kumar*

Sharma[4].

37. Shri Dhruv Mehta, relying on the judgment of this Court in the case of *Ankita Sinha* (supra), submits that this Court itself has considered the learned NGT to be a special Tribunal and held that it will even have jurisdiction to take suo motu cognizance of the environmental issues. He, therefore, submits that the arguments made on behalf of the appellants with regard to locus are without substance.

38. Shri Vikas Singh, learned Senior Counsel, in rejoinder, submits that the only distinction between the prohibited trees and non-prohibited trees is that the non-prohibited trees can be felled without permission, whereas prohibited trees can be felled only in certain circumstances and only after the requisite permission is granted. He submits that the perusal of the FSI survey would reveal that even after the timber requirement for 1215 new units is taken into count, the State, still, will have 26.36 lakh cubic meters in reserve. He submits that if the new WBIs are permitted, it would result in more farmers going in for agro forestry in the State, which, in turn, will increase the forest cover. It is submitted that said 1215 units are likely to give employment to around 80000 people. Learned Senior Counsel, therefore, submits that the impugned orders deserve to be quashed and set aside.

EARLIER ORDERS OF THIS COURT

39. For appreciating the rival submissions, it will be apposite to refer to certain orders passed by this Court.

40. This Court in the case of *T.N. Godavarman* (supra) passed an order on 12th December 1996. The relevant part thereof is as under:

> "6. Each State Government should within two months, file a report regarding -
>
> (i) the number of saw mills, veneer and plywood mills actually operating within the State, with particulars of their real ownership;
>
> (ii) the licenced and actual capacity of these mills for stock and sawing;
>
> (iii) their proximity to the nearest forest;
>
> (iv) their source of timber.
>
> 7. Each State Government should constitute within one month, an Expert Committee to assess:
>
> (i) the sustainable capacity of the forests of the State qua saw mills and timber based industry;
>
> (ii) The number of existing saw mills which can safely be sustained in the State;
>
> (iii) The optimum distance from the forest, qua that State, at which the saw mill should be located."

41. Vide subsequent order dated 4th March 1997[5], this Court directed thus:

> "**6.** All unlicensed saw mills, veneer and plywood industries in the State of Maharashtra and the State of Uttar Pradesh are to be closed forthwith and the State Government would not remove or relax the condition for grant of permission/licence for the opening of any such saw mill, veneer and plywood industry and it shall also not grant any fresh permission/licence for this purpose. The Chief Secretary of the State will ensure strict compliance of this direction and file a compliance report within two weeks."

42. Vide order dated 9th May 2002, this Court constituted CEC for monitoring of the implementation of the orders passed by this Court and for placing non-compliances of the cases before it.

43. Vide order dated 29th October 2002[6], this Court further directed thus:

> "**44.** No State or Union Territory shall permit any unlicensed sawmills, veneer, plywood industry to operate and they are directed to close all such unlicensed unit forthwith. No State Government or Union Territory will permit the opening of any sawmills, veneer or plywood industry without prior permission of the Central

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Empowered Committee. The Chief Secretary of each State will ensure strict compliance with this direction. There shall also be no relaxation of rules with regard to the grant of licence without previous concurrence of the Central Empowered Committee.

45. It shall be open to apply to this Court for relaxation and or appropriate modification or orders qua plantations or grant of licences."

44. Vide order dated 1st September 2006, this Court allowed licenses to be issued to the closed sawmills, Veneer and Plywood units as per availability of timber and eligibility and seniority as per CEC recommendation.

45. In pursuance of the orders passed by this Court, SLC was constituted by the State of Uttar Pradesh for verification and compilation of information about closed WBIs.

46. The FSI conducted its assessment and assessed the annual availability of wood from TOF in the State of Uttar Pradesh at 55.61 lakh cubic meters vide report dated 3rd April 2007.

47. On the basis of the report of the FSI, the SLC assessed the annual availability of timber for WBIs from TOF at 53.01 lakh cubic meters. CEC further reduced the same to 43.70 lakh cubic meters. However, it added 2.00 lakh cubic meters per year as timber available from government forests, and, therefore, assessed the annual availability of timber at 45.70 lakh cubic meters.

48. It is to be seen that in its report itself, the CEC included 17.77 lakh cubic meters of timber from the prohibited species. This Court considered the report of CEC and passed the following order on 18th May 2007:

"The matters relate to Saw Mills, Plywood and Veneer Units.

The CEC has considered the availability of wood for the industries, which was assessed as 43.70 lakh cu. mt from trees outside forests and 02.00 lakh cu. mt from Government Forests.

It has also assessed the units into four categories.

We accept the CEC's recommendations. The Saw Mills, Plywood and Veneer Units may be permitted, on the basis of the recommendations made by the CEC. Licences may be given by the State Level Committees.

If there are any objections regarding grant of licences, the parties would be at liberty to submit their applications before the CEC for consideration."

49. It could thus be seen that in 2007 itself, this Court had accepted the recommendations of the CEC wherein the CEC had computed the total availability of timber and had also taken into consideration the availability of timber from the prohibited category.

50. Vide order dated 29th February 2008, this court considered the issue regarding the manufacturing of Medium Density Fiber board (MDF) and Particle board in the States of Punjab, Uttarakhand and Karnataka. While considering the same, this Court passed the following order:

"The matter relates to the manufacturing of Medium Density Fiber board (MDF) and Particle Board in the States of Punjab, Uttarakhand and Karnataka. CEC has filed its report and stated that there is a growing trend to use more and more MDF/Particle Board in place of industrial timber. The MDF/Particle Board help in reducing the pressure on natural forests. The lops and tops and small wood available from the plantations of eucalyptus, poplar, etc. raised on the non-forest can be used by MDF/Particle Board plants."

51. In view of the permissions granted by this Court, the licenses were granted to the unlicensed sawmills which were closed on account of the orders passed by this Court taking into consideration the availability of timber between 2007 and 2010.

However, it is to be noted that the said licenses were granted only to the units which were closed and not to the new units.

52. The matter again came up for consideration before this Court on 30th April 2010, when this Court passed the following order:

> "(II) after meeting the requirement of the licensed wood based industry, the units permitted by this Hon'ble Court and the units whose category is yet to be finalised, the plywood/veneer units falling in category IV may be considered for grant of license to the extent of timber availability and strictly in the order of seniority, subject to the one-time payment of Rs. 9 lakhs per press in respect of the veneer units and compliance of the other conditions that have been stipulated. The one-time payment of penalty will be in addition to the normal licence fee and the other charges, if any, payable to the U.P. Forest Department. As decided earlier, the above said amount should be kept in a designated interest bearing bank account and should be utilized only after the scheme in this regard is approved by this Hon'ble Court;"

53. It could thus be seen that this Court permitted granting of additional licenses if additional timber was found to be available.

54. The CEC in its meeting held on 26th May 2010 with the SLC and representatives of WBIs Associations in the State of Uttar Pradesh, after taking into consideration the capacity of timber for Vertical Band Saw (VBS) sawmill, modified/reduced the value of capacity of timber for VBS sawmills upto 10 Horse Power from 540 to 270 cubic meters per year for the State of Uttar Pradesh in line with other States. As such, additional 9,58,230 cubic meters of timber became available for licenses from 3,549 such VBS units. In view of this position between 2010 and 2015, licenses came to be issued by the State of Uttar Pradesh to unlicensed WBIs, which were closed earlier by the order of this Court, as per the criteria recommended by the CEC and accepted by this Court.

55. The matter again came up for consideration before this Court on 5th October 2015 with regard to WBIs, when this Court passed the following order:

> "**CATEGORY I - MATTERS RELATING TO WOOD BASED INDUSTRIES:**
>
> We have heard Shri Harish Salve, learned *amicus curiae,* Shri Ranjit Kumar, learned Solicitor General of India, Shri K.K. Venugopal, learned senior counsel and other learned senior counsel/counsels. Accordingly, we pass the following orders:
>
> (i) The State Level Committees for Wood-Based Industries ("SLCs") are, subject to the compliance of the prescribed guidelines and procedure, authorized to take decisions regarding the grant of license/permission to the wood-based industries;
>
> (ii) In each State/UT for which the SLC has so far not been constituted, the SLC under the Chairmanship of the Principal Chief Conservator of Forests with a representative of the Ministry of Environment and Forest and Climate Change ("MoEFCC") and an officer of the State Forest Department/Industries Department not below the rank of the Chief Conservator of Forests/equivalent rank will immediately be constituted;
>
> (iii) The MoEF is authorized to issue appropriate guidelines in conformation with the orders and directions issued by this Court and also the existing guidelines to the SLCs relating to assessment of timber availability for wood-based industries and grant of license/permission to the wood-based industries including addition of new machineries and also utilization of amounts recovered from the wood-based industries and connected matters;
>
> (iv) Any person aggrieved by the decision taken by the SLC may file an appeal before the MoEFCC seeking appropriate relief within 60 days' time. If, for any

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reason, any person is aggrieved by the orders so passed in the appeal, he may prefer an appropriate petition/application/appeal before the appropriate forum/Court for grant of appropriate relief(s).

We also permit the MoEFCC to condone the delay, if any, in filing an appeal, if sufficient cause is made out by the applicant(s)/appellant(s)"

56. It is thus seen that vide the said order, SLCs were authorized to take decisions regarding the grant of license/permission to the WBIs. Vide the said order, it was also directed to constitute SLC under the Chairmanship of the Principal Chief Conservator of Forest with a representative of MOEFCC and an officer of the State Forest Department/Industries Department not below the rank of the Chief Conservator of Forests/equivalent rank. This Court further directed the SLCs to be constituted in each State/Union Territory for which the SLC was not yet constituted. The MOEF was also authorized to issue appropriate guidelines in conformity with the orders and directions issued by this Court and also the existing guidelines to the SLCs relating to the assessment of timber availability for WBIs. Appeals could be filed before MOEFCC against the decision of the SLC.

MOEFCC GUIDELINES

57. In accordance with the directions issued by this Court vide order dated 5th October 2015, the MOEFCC issued 2016 Guidelines on 11th November 2016. The 2016 Guidelines provided for the constitution of the SLC as well as the powers and functions of SLC. Under clause 4 of the 2016 Guidelines, the SLC was authorised to assess the availability of timber for wood based industrial units in the State/UT every five years. The SLC was also authorised to approve appropriate locations for setting up of wood based industrial units. It was also authorized to approve the name of wood based industrial units which may be considered for grant of fresh license or enhancement of the existing licensed capacity.

58. Clause 5 of the 2016 Guidelines provides for the assessment of the availability of timber for wood based industrial units. It requires that the quantity of timber would be assessed by commissioning the study, preferably in collaboration with institutes/universities of repute, once in five years. Under clause 6 of the 2016 Guidelines, the timber requirement for various units as assessed by IPIRTI was given in Annexure I. The said Annexure I reads thus:

"The Indian Plywood Industry Research and Training Institute (IPIRTI), Bangalore an autonomous body under the Ministry of Environment, Forest and Climate Change has assessed the timber requirement per unit for peeling length of 4 feet and 8 feet size in the plywood/veneer units as 5 cu.mt and 11 cu.mt. respectively per day on an average of 8 working hours per day. By assuming that the peeling units work for 8 hours per day on an average for 300 days in a year the normal timber requirement of the peeling length of 4 feet size in veneer units is 1500 cu.mt. The total timber requirement for the stand alone veneer units may be assessed by calculating the equivalent number of 4 feet length machines and by taking its normal installed capacity as 1500 cu.mt. per annum.

The timber requirement of a plywood unit may be taken as 'nil' on the ground that the round timber is used as timber in the veneer units only and that the plywood units are the secondary users which use the veneer as the raw material produced by the veneer units. The plywood units use presses of various sizes such as 8 × 4 × 6, 8 × 4 × 12, 8 × 4 × 15, 4 × 4 × 7, 4 × 4 × 10. A 8 × 4 × 10 capacity press can produce upto 10 plywood pieces of 8′ × 4′ size per hour whereas a 8 × 4 × 15 capacity press can produce upto 15 plywood pieces of 8′ × 4′ size per hour and so on. The normative installed capacity of the plywood units will accordingly depend upon the number and the type of presses. This number and type of presses installed in each of the plywood unit may be assessed and

thereafter equivalent number or presses of 8 × 4 × 10 capacity may be calculated. The normative annual timber requirement for a integrated plywood unit having a 8 × 4 × 10 capacity press may be taken as 2000 cu.mt. per annum, and accordingly the total requirement of timber for the plywood units should be calculated."

59. It could thus be seen that even as per the assessment of the IPIRTI, the timber requirement of a plywood unit is required to be taken as 'NIL' on the ground that the round timber is used as timber in the veneer units only and that the plywood units are the secondary users which use the veneer as raw material. It could thus be seen that the plywood units use presses of various sizes.

60. In pursuance of the 2016 Guidelines, the SLC was reconstituted in the State of Uttar Pradesh under the Chairmanship of Principal Chief Conservator of Forest/Head of Forest Department on 17th May 2017. Vide Notification dated 11th September 2017, the MOEFCC amended the 2016 Guidelines.

61. Subsequently, in accordance with the 2016 Guidelines, the SLC assessed the availability of timber for WBIs in the State of Uttar Pradesh, through the FSI. For assessing the availability of timber, the FSI conducted a survey and arrived at the annual potential production of timber from TOF in rural areas of all the districts of the State. FSI assessed the annual potential production from TOF at 77.74 lakh cubic meters. Subsequent to the survey and assessment, the SLC in its meeting dated 4th May 2018 considered the matter for grant of license to various WBIs. The SLC decided to get the reassessment done by IPIRTI to determine the correct number of new licenses to be issued to WBIs under different categories against the available timber. However, subsequently, the SLC, in its meeting dated 7th September 2018, found that IPIRTI had not done any new study/assessment of the consumption of timber by various WBIs in any State/Union Territory. It was also found that the State of Haryana had adopted the timber consumption figures based on the CEC figures of 2007. It was therefore unanimously resolved by the SLC that there was no need for any fresh study/assessment for the consumption of timber by WBIs to be conducted by IPIRTI and to adopt the figures for WBIs as were referred to in the 2016 Guidelines. It further found that the CEC in its meeting dated 26th May 2010 had reduced the annual consumption of timber of sawmills upto 10 Horse Power or less HP to 270 cubic meters from 540 cubic meters.

62. On the basis of the decision of the SLC, e-lottery was held. After following the procedure, provisional licenses were issued to 1215 successful applicants in 8 categories of WBIs in February and March 2019. After the issuance of provisional licenses, on 1st March 2019, the State Government issued a Notice with regard to grant of provisional licenses to the newly selected WBIs which came to be challenged before the learned NGT by way of filing the aforesaid Original Applications by the respondents. The learned NGT after passing various interlocutory directions finally passed the impugned order and quashed and set aside the notice dated 1st March 2019 issued by the State Government and provisional licenses given in pursuance thereof. As such we are required to examine the correctness of the decision of the learned NGT.

CONSIDERATIONS

63. The learned NGT while passing the impugned order has set aside the notice of the State of Uttar Pradesh on the following grounds:

(1) that the WBIs can be allowed to operate only after ensuring timber and raw material availability to sustain such industries and this has to be determined in actual terms and not on mere assumptions;

(2) that it is difficult to accept the stand of the State of Uttar Pradesh that there was availability of timber/raw material to sustain the new WBIs;

(3) that it is the stand of the State of Uttar Pradesh that the total potential

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availability of timber per year in the State of Uttar Pradesh is 80.30 lakh cubic meters, which includes 2.56 lakh cubic meters from the Government forests and 77.74 lakh cubic meters from TOF. Out of 80.30 lakh cubic meters, 71.8 lakh cubic meters were stated to be available from 22 species and 8.50 lakh cubic meters from the other species. Out of 22 species, there are 10 species that are prohibited from felling and as such, 20.75 lakh cubic meters from these 10 species are liable to be excluded;

(4) that the major contribution is from Eucalyptus (28 lakh cubic meters) and Poplar species (15 lakh cubic meters), a total of which is 43 lakh cubic meters. Thus, the figure is not actual but presumptive;

(5) that the standard error percentage adopted by the FSI is not correct and is much higher;

(6) that the total availability of timber for consumption including that from the government forests would not be more than 40-45 lakh cubic meters per year;

(7) that the potential availability of 77.74 lakh cubic meters from TOF as given in the affidavit has been overestimated.

64. It is to be noted that after this Court allowed the licenses to be issued to the closed sawmills vide order dated 1st September 2006, the SLCs were constituted. The permissions were to be granted on the recommendations of the CEC. Vide order dated 18th May 2007, this Court had also accepted the recommendation of the CEC. Vide another order dated 30th April 2010, this Court permitted additional licenses to be granted if additional timber was available. Accordingly, licenses were granted between 2010 and 2015. Vide subsequent order dated 5th October 2015, this Court allowed the grant of license/permission to unlicensed WBIs in the country. This Court had directed the reconstitution of the SLCs for WBIs. In pursuance of the directions issued by this Court, the 2016 Guidelines were issued by the MOEFCC. As per the 2016 Guidelines, the SLC was reconstituted in the State of Uttar Pradesh on 17th May 2017.

65. One of the duties which was cast upon the SLC was to assess the availability of timber for wood based industrial units in the State. The SLC was to assess the availability of timber by commissioning studies, preferably in collaboration with institutes/universities of repute, once in five years. In accordance with the 2016 Guidelines, the FSI conducted the survey and submitted its report in March 2018. It will be relevant to refer to the relevant part of the Foreword of the said report of the FSI.

> "In the recent past, a number of requests were received for establishment of wood based industries in the state for which the raw material would come from outside the forest areas. Since accurate assessment of TOF is needed for effective planning & management, Uttar Pradesh Forest Department requested FSI to make Agro-Climatic zone wise assessment on the basis of inventory already done during its regular course of inventory conducted in the State. As per the final report, the total stems as estimated from the study is 299.43 million with a volume of 79.40 m. cum. The total yield in the Uttar Pradesh is estimated 7.8 million cum.
>
> The report gives an assessment of the growing stock existing outside state forest reserves. The report has also indicated district-wise, species-wise and girth class-wise number of stems and volume in each Agro-Climatic Zone wise of inventoried districts. I am confident that this report would provide useful data for arriving at informed policy and programme interventions to give a fillip to forestry sector in the state besides providing benchmark data for tree crop in non-forest area."

66. After conducting the survey, the FSI has come to a finding that the State of Uttar Pradesh had an annual potential production of 77,74,521 cubic meters of timber. For conducting the survey, the FSI acquired satellite data for the inventoried districts of Uttar Pradesh State from National Remote Sensing Centre, Hyderabad. The entire

gambit of scientific methodology was applied. The data processing was carried out independently for all the inventoried districts of Uttar Pradesh. It will be relevant to refer to the following part of the report of the FSI:

> "The data processing was carried out independently for all the inventoried districts of Uttar Pradesh. Estimates of stems per ha and volume per ha were generated according to species and diameter class for block, linear and scattered stratum under each district. Estimated stems and their volumes were generated according to species and diameter class by aggregating stem per hectare and volume per hectare over the entire Rural CNF Area of each stratum for each district by combining the estimated stems and volumes under block, linear and scattered stratum. By aggregating the estimates of stems and volume of all the three strata, the estimates of stems and volumes according to species and diameter class has been prepared for Rural area separately."

67. The FSI had also divided the State of Uttar Pradesh into 9 Agro-climatic zones to generate the estimate of growing stock and annual potential production. District-wise production was estimated before concluding that 77,74,521 cubic meters of timber was the annual potential production. The contention of the respondents that the rotation method was not applied is totally incorrect. It will be relevant to refer to paragraph 5.4 of the said report, which reads thus:

> "**5.4 Estimates of Annual Potential Production of Wood from TOF (Rural)**
>
> Yield of a forest depends on several factors such as its structure, growth, density, productive capacity of site etc. The estimate of yield been generated for rural area using growing stock estimates. The Uttar Pradesh Forest Department was supplied the complete list of tree species which were found in the survey. The Uttar Pradesh Forest Department was asked to indicate tree species being used as 'timber' and 'non timber' and rotation period of specified timber species. ***The Uttar Pradesh Forest Department informed that they do not have rotation period of all species and requested Forest Survey of India to use their rotation period used for estimation of annual potential production of wood.*** The species are arranged into two groups; one containing the species having timber values and another containing rest by agro-climatic zone wise. The yield has been calculated using Von Mentel formula as given below:
>
> Yield= 2GS/R
>
> Where GS : Growing Stock
>
> R : rotation period
>
> Using the information of timber value, growing stock and rotation period in the above mentioned formulae species wise yield were calculated. The Agro-Climatic Zone wise yield has been given in Annexure-11."
>
> [emphasis supplied]

68. The standard error was also determined by applying the appropriate scientific method.

69. The FSI, hence, considered various aspects before concluding and submitting its 101 page report.

70. It could thus be seen that the estimation as arrived at by the FSI was by applying a proper and adequate scientific method.

71. However, it is surprising that the learned NGT has brushed aside such a scientific exercise by merely observing that the figures arrived at were by estimation and not realistic.

72. The FSI has published a paper on "Trees Outside Forest Resources in India". The contributors to the said paper are (1) Dr. Subhash Ashutosh, DG, FSI; (2) Prakash Lakhchaura, DDG, FI, (3) Kamal Pandey, DD, FI; (4) Dr. Sourav Ghose, Proj. Scientist

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D; (5) Sushila Tripathi; and (6) H.K. Tripathi. The paper shows that the timber and panel products of TOF origin have emerged as the major alternative to timber from forests and thus TOF have significantly obviated pressure from forests. The report shows that, the extent of TOF in the country has been assessed at 29.38 m hectare, which is around 8.94% of the total geographical area of the country. The report further shows that based on the recommendations of the National Commission on Agriculture (NCA, 1976), the Government of India launched a social forestry program in the late seventies on a large scale. The paper further shows that, these days satellite data in a wide range of spectral, spatial, radiometric and temporal resolutions are available from various Remote Sensing Agencies of several countries. It further shows that there has been a rapid advancement in the development of digital image processing software. It, therefore, observes that the desired mapping of natural resources with reasonable accuracy is possible. The report refers to the methodology of assessment of TOF in different countries of the world and refers to various authorities. It refers to different types of methodologies used for different periods; the first one being from 1991 to 2001; the second period being from 2001 to 2016; and the third period being from 2016 onwards. The report shows that the State of Maharashtra has the highest potential annual yield of timber in India followed by the States of Uttar Pradesh and Karnataka.

73. It will be relevant to refer to the conclusion of the said paper, which is as follows:

> "**5. Conclusion**
>
> TOF play a significant role in the socioeconomic lives of people both in rural and urban areas of the country by enriching the people and society at large economically as well as ecologically. The management of TOF assumes high significance in the country for realizing much higher potential which it offers in generating wood based economy and ecosystem services including carbon sequestration. Periodic assessment of TOF resources including its spatial distribution is prerequisite for its scientific management in the country. FSI is mandated with this task however there is need for continuous improvement in the methodology and inclusion of more number of variables in the assessment. The organization will have to be further strengthened particularly in terms of man power, to address the emerging information needs on TOF. There has been regular refinement in methodologies in the last three decades to quantify TOF resources using various statistical designs and estimates with better precision. The advancement of technologies in the field of remote sensing, satellite image processing and availability of high resolution satellite data made the methodology much precise and easier. The progression of science may further refine the existing method of TOF assessment in near future.
>
> TOF also act as an important source for timber and fuel wood to meet the demands of fast growing population of the country. There is a need to put focus on increasing the growing stock per hectare or yield of TOF by better management and planning. There is also a need for a separate policy on TOF to ensure its expansion and sustainable management for multiple ecological benefits, timber production, carbon sequestration and for obviating pressure from the natural forests.
>
> Occupying nearly 9% of the geographical area of the country, TOF are significant natural, renewable resource which make vital contribution to the agro-ecology, socio -economy of the rural areas, environmental amelioration in the urban areas and feed wood based industries with the raw material and thus generate significant employment. TOF form a nearly 38% of the carbon sink in forest & tree cover of the country. TOF offers the path for achieving the national policy goal of 33% of forest & tree cover in the country. Through expansion of TOF, particularly in agro-forestry

and on culturable waste lands, India can substantially increase its carbon sink to achieve its international commitments of NDC and LDN by 2030."

74. It could thus be seen that the FSI has also emphasized the need of promoting TOF. It has been observed that TOF are significant natural, renewable resources which make vital contributions to the agro-ecology, socio-economy of the rural area, and environmental amelioration in the urban area and feed WBIs with raw material and thus generate significant employment.

75. It is our considered view that, when the estimation was done by the FSI by applying the scientific method and had arrived at the conclusion based on satellite data, such a report could not have been brushed aside by the learned NGT lightly.

76. Insofar as the finding of the learned NGT that the survey also takes into consideration the prohibited trees, the felling of which is not permissible, it will be relevant to note that the Notification dated 7th January 2020 issued by the Government of Uttar Pradesh provides that the prohibited trees shall not be felled till 31st December 2025 except under unavoidable circumstances, such as when a tree is dead or dying or it constitutes a danger to persons or property, or its felling is necessary for executing development work approved by the Government, or if the fruit bearing capacity of such tree has declined substantially. Such trees cannot be felled unless permission to fell such tree has been obtained in writing from the competent authority. The tree owners are also required to maintain 10 trees in place of each tree felled. It is thus clear that there is no absolute prohibition for felling the trees which are in the prohibited category. However, the same can be done only in exceptional circumstances.

77. It is to be noted that the prohibited trees also include trees like Mango, Jamun, etc. which are fruit bearing trees. After a particular number of years, the fruit bearing capacity of such trees drastically reduces and as such, the farmers normally fell such trees and go in for replantation of the orchard. Apart from that, it is to be noted that the CEC itself approved the availability of timber for the State of Uttar Pradesh in its report dated 19th April 2007, which included 17.77 lakh cubic meters of prohibited trees. The said report of the CEC was approved by this Court vide its order dated 18th May 2007.

78. It is further to be noted that in pursuance of the order of the learned NGT dated 28th March 2019, a Committee of Experts [Joint Committee comprising of representative of Principal Secretary (Forest), U.P. and Principal Chief Conservator of Forest, U.P.] had submitted its report on 3rd August 2019. Not only this, but in pursuance of the directions issued by the learned NGT on 18th December 2019, another detailed affidavit was filed on behalf of the State Government on 21st January 2020, giving therein the details about the availability of timber. It was specifically stated in the said affidavit that eucalyptus and poplar are the main species of TOF and 80% of the wood is derived therefrom. It was further pointed out that the farmers in the State of Uttar Pradesh were not getting remunerative prices and are forced to sell their produce at a very cheap rate mainly to middlemen. It was also pointed out that there would be an expected investment of about Rs. 3000 crore in the State with the establishment of new WBIs. The same would employ more than 80000 people, mostly in the rural areas of the State. However, all these factors have been ignored by the learned NGT.

79. As such, the learned NGT has grossly erred in deducting the availability of timber from the prohibited trees. By now, it is more than settled that the Courts should not enter into an area that is the domain of the experts. FSI, which is undisputedly an expert body, had arrived at its estimation based on the scientific method. The learned NGT could not have sat in appeal over the opinion of the expert.

80. It is relevant to note that MOEFCC, in pursuance of the directions issued by the

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learned NGT had filed its opinion on 18th December 2019. It will be relevant to refer to paragraph 8 of the said opinion.

> "8. That based on the examination of available documents in light of the provisions of the Wood Based Industries (Establishment and Regulation) Rules, 2016, MoEFCC is of the opinion that the State of U.P. has followed the Wood Based Industries (Establishment and Regulation) Guidelines, 2016 (as amended in 2017) issued by MoEFCC. The availability of wood in the State has also been assessed by the SLC through FSI. The Ministry is, therefore, of the view that the SLC may approve setting up of new industries in the State if it is satisfied that sufficient timber is available legally to run the new wood based industries."

81. The learned NGT has failed to take into consideration the stand of the MOEFCC, which also supported the stand of the State that sufficient timber was available legally to run the new WBIs.

82. Insofar as the contention of the learned counsel for the respondents that, though in the meeting of the SLC dated 4th May 2018, it was decided to get the assessment done by IPIRTI, the SLC in its meeting dated 7th September 2018 did a volte-face and decided not to get the assessment done from IPIRTI, the perusal of the minutes of the meeting of the SLC dated 7th September 2018 would reveal that it was found that the IPIRTI had not done any new study/assessment of the consumption of timber by various WBIs in any State/Union Territory. It was noticed that, as per the report of the FSI, the TOF available was 77,74,522 cubic meters. Adding the timber available in the forest area of 2,57,273 cubic meters, the total quantity of availability of timber was 80,31,795 cubic meters. It is to be noted that the SLC had taken note of the letter dated 29th August 2018 issued by the Director, IPIRTI, where he had communicated that no assessment pertaining to the annual consumption of timber by Veneer and Plywood Industries was undertaken by the IPIRTI during the last two years in any State of the country. It was found that the 2016 Guidelines itself provided for annual consumption of timber based on the report of IPIRTI. In this premise, it was found that there was no need to conduct a fresh study/assessment for the consumption of timber by WBIs by IPIRTI. It was decided to accept the figures as provided in the 2016 Guidelines.

83. It can thus be seen that the decision of the SLC for not getting the assessment done by the IPIRTI is based on sound reasons. When the 2016 Guidelines itself provided for the consumption of timber by WBIs based on the report of the IPIRTI, there was no purpose to again get the assessment done by IPIRTI. The scope of judicial review has been succinctly explained by this court in the case of *Tata Cellular* v. *Union of India*[2], which has been consistently followed in a catena of cases. This Court, in the said case, observed thus:

> "**77.** The duty of the court is to confine itself to the question of legality. Its concern should be:
>
> 1. Whether a decision-making authority exceeded its powers?
> 2. Committed an error of law,
> 3. committed a breach of the rules of natural justice,
> 4. reached a decision which no reasonable tribunal would have reached or,
> 5. abused its powers.
>
> Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

(*i*) Illegality : This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.

(*ii*) Irrationality, namely, Wednesbury unreasonableness.

(*iii*) Procedural impropriety.

The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in *R.* v. *Secretary of State for the Home Department, ex Brind* [[1991] 1 A.C. 696], Lord Diplock refers specifically to one development, namely, the possible recognition of the principle of proportionality. In all these cases the test to be adopted is that the court should, "consider whether something has gone wrong of a nature and degree which requires its intervention"."

84. Applying the aforesaid principle to the present case, it cannot be said that the decision-making process has been vitiated either on account of illegality, irrationality or procedural impropriety.

85. With regard to the contention of Shri Dhruv Mehta, learned Senior Counsel, that Annexure I to the 2016 Guidelines providing the timber requirement of a plywood unit to be taken as "NIL" is contrary to the CEC recommendations is concerned, we do not find any substance in the said submission. Firstly, 2016 Guidelines have been issued by the MOEFCC in pursuance of the directions issued by this Court dated 5th October 2015. In any case, the raw material for plywood industries is 'Veneer' and the raw material for veneer is 'timber'. We find substance in the contention of the appellants that, if timber is to be considered again as a raw material for plywood, then it will amount to showing the consumption of the same timber more than once, which is, in fact, not consumed. It is not in dispute that veneer is a raw material for plywood, which is derived from timber. The same timber is used for deriving veneer and such veneer, which is used for manufacturing plywood, cannot be counted twice. In any case, as long as the 2016 Guidelines which are issued in pursuance of the directions issued by this Court are not set aside, the contention in that regard is without substance.

86. That leads us to consider the contention of the respondents that this Court has repeatedly emphasized the principles of sustainable development, the precautionary principle and the polluter pays principle. No doubt that the protection of the environment is of utmost importance. It is the duty of this generation to protect the environment for future generations.

CONCLUSION

87. It cannot be disputed that Section 20 of the NGT Act itself directs the learned Tribunal to apply the principles of sustainable development, the precautionary principle and the polluter pays principle. Undisputedly, it is the duty of the State as well as its citizens to safeguard the forest of the country. The resources of the present are to be preserved for the future generations. However, one principle cannot be applied in isolation of the other.

88. It is necessary that, while protecting the environment, the need for sustainable development has also to be taken into consideration and a proper balance between the two has to be struck.

89. A body having expertise in the field, i.e. the FSI, upon a scientific study, has concluded that there is sufficient timber available in the State of Uttar Pradesh. Not only that, but the respondents themselves have placed on record a project report on "Study to know the percentage and value of the raw material sourced through U.P. Forests by Plywood and Khair (Kattha) Industries in U.P.". The said report is prepared by RAK Management Consultants on the instructions of the Department of Planning, Economic and Statistics Division, Government of Uttar Pradesh. The said report itself shows that the consultants, during the field survey, observed resentment among the

plywood manufacturers against the process of issuing new licenses to the WBIs by the State Government.

90. The report further goes on to show that on average 1500-1700 trucks/tractor trollies of the eucalyptus and popular wood from all over Haryana, Punjab, Himachal Pradesh and Uttar Pradesh go to Yamuna Nagar, Haryana daily. Out of the said trucks/trollies, approximately 300-350 tractor trollies and some other small vehicles per day come from Uttar Pradesh. The report shows that approximately 5 to 6 lakh metric tons of timber per year is exported to Yamuna Nagar. The said material belongs to the western districts of Uttar Pradesh, i.e. Muzaffarnagar, Saharanpur, Shamli, Baghpat and Meerut. It is stated that there is no sufficient market for this produce in the said area. The report further finds that the western districts of Uttar Pradesh, i.e. Meerut, Muzaffarnagar, Saharanpur, Baghpat and Shamli, etc. do not have sufficient number of plywood and veneer units and as such, they are not sufficient for the entire farmers' produce available in the said area. The report itself shows that the western districts need around 80-85 plywood and veneer units. The report goes on further to show that there is dissatisfaction among the already existing industrialists about the assessment made by the FSI.

91. It is further to be noted that the State has specifically pointed out before the learned NGT that on the establishment of WBIs, an investment of about Rs. 3000 crore was likely to be attracted in the State; employment opportunities to over 80000 people will be available and the farmers of the State would get a more remunerative price. This would result in more impetus for large-scale plantation and agro-forestry. The State also emphasized that this will reduce dependence on traditional/cash crops and also reduce migration of people to urban areas. It is also emphasized that if the new WBIs are permitted, it will reduce the import of WBIs produce. However, all these aspects have not been taken into consideration by the learned NGT.

92. It will be relevant to note that the Forest Research Institute, Dehradun, Uttarakhand has published 'Country Report of Poplars and Willows Period : 2012-2015'. The report states that the timber from poplar and willow is the backbone of vibrant plywood, board, match, paper and sports goods industries. The report further states that in tune with Indian Agroforestry Policy 2014, the plantation of poplar has been promoted. It further states that the Planning Commission of India has given special grants to certain States for the diversification of agriculture where farmers are advised to move away from paddy cultivation to sustain agricultural production. Poplar and eucalyptus are among the few trees promoted under this diversification plan. The report states that Poplar plays a significant role in rural development by generating employment for many categories of skilled, semi-skilled and unskilled workers.

93. The paper on "Trees Outside Forest Resources in India" published by the FSI, cited supra, also emphasizes that TOF are significant natural, renewable resources which make vital contributions to the agro-ecology, socio-economic improvement of the rural areas, environmental amelioration in the urban areas and feed WBIs with raw material and thus generate significant employment. TOF form nearly 38% of the carbon sink in the forest and tree cover of the country. It states that TOF offers the path for achieving the national policy goal of 33% of forest and tree cover in the country. It states that through the expansion of TOF, particularly in agro-forestry and on culturable waste lands, India can substantially increase its carbon sink to achieve its international commitments of NDC and LDN by 2030.

94. As already discussed herein above, the majority of TOF is from two species, i.e. Poplar and Eucalyptus. These trees are fast growing. If a market is available for the said trees, there will be impetus to the farmers for large scale plantations. The rotation in these species is quite fast. This will, in turn, increase the green coverage. We are of the considered view that the learned NGT has taken a lopsided view. It has failed to

take into consideration the concerns expressed by the State. The learned NGT has committed patent error in ignoring the expert's report and sitting in appeal over the same. The learned NGT has also failed to take into consideration the stand taken by the MOEFCC, which supported the stand of the State. As already discussed herein above, the State had emphasized many advantages of granting new licenses to WBIs. It was also emphasized that the timber from the State of Uttar Pradesh was being exported to the State of Haryana. However, none of these aspects have been considered by the learned NGT. We are, therefore, of the considered view that the impugned orders of the learned NGT are not sustainable in law.

95. There is another reason, in our view, why the order of the learned NGT would not be sustainable. Though, on the date on which the review applications were rejected, 1215 provisional licenses were already granted and 633 units had already been established and commenced production, the learned NGT has passed the impugned order which adversely affects their interest. Either some of such industries ought to have been impleaded in their representative capacity or a public notice should have been given so that such license holders could have represented their case. However, the said contention is lightly brushed aside by the learned NGT by holding that, since the issue is related to the general decision of the State which is applicable uniformly to all the proposed provisional licensees, it is not necessary to consider the issue raised in the impleadment applications. It is more than a settled law that the principles of natural justice are required to be followed even in administrative actions when such actions adversely affect the rights of the citizens. When the learned NGT exercised its judicial powers, it could not have ignored the principles of natural justice, which, even under Section 19(1) of the NGT Act, it is bound to follow.

96. Another aspect that needs consideration is that a serious issue was raised before the learned NGT by the appellants herein with regard to the credentials and *bonafides* of the original applicants.

97. When the matter was heard by us, we too made pertinent queries to Shri Mehta and Shri Chahar with regard to the credentials of the applicants before the learned NGT. One applicant is Uday Education and Welfare Trust; the second applicant is Samvit Foundation and the third applicant is U.P. Timber Association. Undisputedly, the U.P. Timber Association was a litigant interested in the litigation. However, insofar as the other original applicants, i.e. Uday Education and Welfare Trust and Samvit Foundation, for whom Shri Dhruv Mehta and Shri Brijender Chahar, learned Senior Counsel are appearing, specific queries with regard to the activities undertaken by the said original applicants were made as to whether they were involved in any activity with regard to the protection of the environment; had they at least been engaged in promoting plantation; what were the aims and objectives of the said original applicants; and what are the sources of funding, etc. Shri Mehta and Shri Chahar, learned Senior counsel, fairly submitted that apart from the fact that they (original applicants) had previously filed some public interest litigations wherein orders were passed in their favour, they had no other information.

98. Shri Dhruv Mehta, learned Senior Counsel has rightly relied on the judgment of this Court in the case of *Ankita Sinha* (supra) to submit that the learned NGT is empowered to take suo motu cognizance. This Court has held that, taking into consideration the nature of functions of the learned NGT, it cannot be equated with other Tribunals and in environmental matters, it will also have a power to take *suo motu* cognizance. However, when the credentials and *bonafides* of a litigant approaching the learned NGT are seriously raised, the same cannot be ignored.

99. We find that before a litigant is permitted to knock the doors of justice and seek orders which have far reaching effects of affecting the employment of thousands of persons, stopping investment in the State, prejudicing the interests of the farmers;

the credentials and *bonafides* of the applicants must be tested. In the present case, there is scope to infer that the litigation could be at the behest of the existing WBIs who wanted to avoid competition and continue to get raw material at a cheaper rate. There is also scope to infer that it could be at the behest of the WBIs in the adjoining Yamuna Nagar district of Haryana where lakhs of tons of timber is exported from the State of Uttar Pradesh. There is scope to infer that it could be in the interest of middlemen who are engaged in exporting timber from Uttar Pradesh to Haryana. We would, therefore, only request the learned NGT that, when credentials and *bonafides* of such litigants are seriously raised and when entertaining the grievance of such litigants, which is likely to adversely affect the rights of many, it should ensure the *bonafides* and credentials of such litigants.

100. Though we are allowing the appeals, setting aside the orders of the learned NGT, and upholding the action of the State Government in granting licenses, we would like to remind the State and its authorities that it is their duty to protect the environment. The State and its authorities should ensure that necessary steps are taken for arresting the problem of declining forest and tree cover. The State and its authorities should make meaningful and concerted efforts to ensure that the green cover in the State of Uttar Pradesh is not reduced and to ensure that it increases.

101. The conservation of forest plays a vital role in maintaining the ecology. It acts as processors of the water cycle and soil and also as providers of livelihoods. As such, preservation and sustainable management of forests deserve to be given due importance in formulation of policies by the State. In this regard, it will be apposite to refer to certain earlier pronouncements of this Court.

(a) In the case of *Samatha* v. *State of A.P.*[8], a three-Judge Bench of this Court after referring to the earlier judgment in the case of *State of H.P.* v. *Ganesh Wood Products*[9] observed that, even while considering the grant of renewal of mining leases, the provisions of the Forest (Conservation) Act, 1980 and the Environment (Protection) Act, 1986 would apply. This Court held that the MOEF and all the States have a duty to prevent mining operations affecting forests. It further observed that, whether mining operations are carried on within the reserved forest or other forest area, it is their duty to ensure that the industry or enterprise does not denude the forest to become a menace to human existence nor a source to destroy flora and fauna and biodiversity. It has further been held that if it becomes inevitable to disturb the existence of forests, there is a concomitant duty upon the State to reforest and restore the green cover and to ensure adequate measures to promote, protect and improve both man-made and natural environment, flora and fauna as well as biodiversity. It further held that there can be no distinction between government forests and private forests in the matter of forest wealth of the nation and in the matter of environment and ecology.

(b) In the case of *Essar Oil Ltd.* v. *Halar Utkarsh Samiti*[10], this Court discussed the need for a balance between the economic and social needs and development on the one hand and environment considerations on the other. It was observed that laws on environment should be to create harmony between the two since neither one can be sacrificed at the altar of the other. In this regard, the observations of this Court in the case of *Indian Council for Enviro-Legal Action* v. *Union of India*[11] were quoted as under:

> "While economic development should not be allowed to take place at the cost of ecology or by causing widespread environment destruction and violation; at the same time, the necessity to preserve ecology and environment should not hamper economic and other developments. Both development and environment must go hand in hand, in other words, there

should not be development at the cost of environment."

(c) In the case of *Maharashtra Land Development Corporation* v. *State of Maharashtra*[12] reference was made to *Glanrock Estate Private Limited* v. *State of Tamil Nadu*[13] wherein it was observed as under:

> "*27.* .... Forests in India are an important part of the environment. They constitute [a] national asset. In various judgments of this Court delivered by the Forest Bench of this Court in *T.N. Godavarman Thirumulpad* v. *Union of India* (Writ Petition No. 202 of 1995), it has been held that 'intergenerational equity' is part of Article 21 of the Constitution.
>
> *28.* What is intergenerational equity? The present generation is answerable to the next generation by giving to the next generation a good environment. We are answerable to the next generation and if deforestation takes place rampantly then intergenerational equity would stand violated.
>
> *29.* The doctrine of sustainable development also forms part of Article 21 of the Constitution. The 'precautionary principle' and the 'polluter pays principle' flow from the core value in Article 21.
>
> *30.* The important point to be noted is that in this case we are concerned with vesting of forests in the State. When we talk about intergenerational equity and sustainable development, we are elevating an ordinary principle of equality to the level of overarching principle."

(d) Of course, one cannot ignore one of the several dicta of this Court in *T.N. Godavarman Thirumulkpad* v. *Union of India*[14] wherein this Court enunciated the definition of "forest" in the following words:

> "**4.** The Forest Conservation Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance; and therefore, the provisions made therein for the conservation of forests and for matters connected therewith, must apply to all forests irrespective of the nature of ownership or classification thereof. The word "forest" must be understood according to its dictionary meaning. This description covers all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(*i*) of the Forest Conservation Act. The term "forest land", occurring in Section 2, will not only include "forest" as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. This is how it has to be understood for the purpose of Section 2 of the Act. The provisions enacted in the Forest Conservation Act, 1980 for the conservation of forests and the matters connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof..."

102. Though we find that for the sustainable development of the State and on account of the availability of the timber, sanction of granting licenses can be permitted to continue, however, as a responsible State, it needs to ensure that environmental concerns are duly attended to. We, therefore, direct the State Government to ensure that while granting permission for felling trees of the prohibited species, it should strictly ensure that the permission is granted only when the conditions specified in the Notification dated 7th January 2020 are satisfied. The State Government shall also ensure that when such permissions are granted to the applicants, the applicants scrupulously follow the mandate in the said notification of planting 10 trees against 1 and maintaining them for five years.

103. In the result, the appeals are allowed. The impugned orders passed by the learned National Green Tribunal, Principal Bench, New Delhi in Original Application Nos. 313, 335 and 396 of 2019 as well as in the Review Applications are quashed and set aside.

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104. Pending applications, if any, shall stand disposed of. No costs.

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[1] (2017) 9 SCC 499

[2] (2019) 18 SCC 494

[3] 2021 SCC OnLine SC 897

[4] 2022 SCC OnLine SC 79

[5] (1997) 3 SCC 312

[6] (2008) 16 SCC 337

[7] (1994) 6 SCC 651

[8] AIR 1997 SC 3297 : (1997) 8 SCC 191

[9] (1995) 6 SCC 363

[10] (2004) 2 SCC 392

[11] (1996) 5 SCC 281

[12] (2011) 15 SCC 616

[13] (2010) 10 SCC 96

[14] (1997) 2 SCC 267 : AIR 1997 SC 1228