

**IN THE HON'BLE NATIONAL GREEN TRIBUNAL, SOUTHERN ZONE  
BENCH, CHENNAI**

**ORIGINAL APPLICATION NO. 11 of 2024**

**IN THE MATTER OF: -**

**SIVAIAH NAIDU**

**.... Applicant**

**Versus**

**THE DISTRICT COLLECTOR  
AND DISTRICT MAGISTRATE TIRUPATI DISTRICT,  
ANDHRA PRADESH AND ORS**

**.... Respondents**

**TYPESET FILED ON BEHALF OF THE APPLICANT**



Filed by:  
**Adv. G.M. SYED NURULLAH SHERIFF**  
**Senior Standing Counsel**  
**Ph No. 9444015330**



**Adv. L. SURYAPRABHU**  
**Ph No. 9884410559**  
**Counsels for the Applicant**

**IN THE HON'BLE NATIONAL GREEN TRIBUNAL, SOUTHERN  
ZONE, CHENNAI BENCH**

IN

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...Applicants

**Vs.**

THE DISTRICT COLLECTOR  
AND DISTRICT MAGISTRATE TIRUPATI DISTRICT,  
ANDHRA PRADESH AND ORS

...Respondents

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**PLACE:- CHENNAI**

**DATE:- 17.3.2025**

**Adv. G.M. SYED NURULLAH SHERIFF**

Senior Standing Counsel

Mob. No. 9444015330

**Adv. L. SURYAPRABHU**

Mob no. 9884410559

**Counsels for the Applicant**

**SALE DEED**

Date: 11-5-1945

We (1)Samudrala Ramisetty, (2)Papayya (3)Buddakka, children of Balija Farmer Samudrala China Guravaiah written and given this sale deed in unison to Thaidala Rangadu S/o Thaidala Changaiah, R/o 131 Nethakuppam village, Rayala Cheruvu (Pond) Payakut, Narayanavanm Taluk, Tirupati Sub Division, Chittoor Division.

For the needs of our family we had taken Rs. 50 (Rupees Fifty only) from you and selling the land includes the schedule in our ownership to you and handing the same to you. We are written and given this sale deed to you by affirming that from now onwards you can cultivate the land, pay land tax and enjoy with full rights.

**Schedule:**

Chittoor Division, Tirupati Sub Division, Narayanavanam Taluka, Rayala Cheruvu (Pond) Payakattu, 131 Netta Kuppam Lekka Dakhala East of Cattle Path, South of Chillati CHenu Banda and Barren Lands, West to water stream and North to pond lies land of 10 acres in Survey No. 157 and Right of Muchala Kona Narava (Muchala Kona Pond) water according to proportion.

**Signatures**

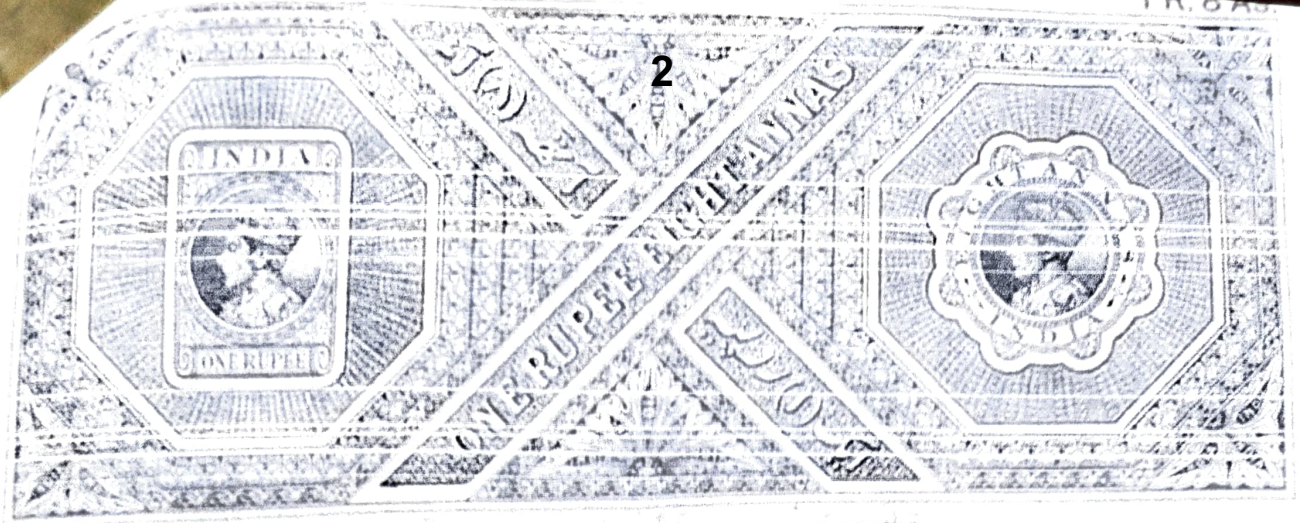
1. Samudrala Ramisetty,
2. Papayya
3. Buddakka

**Witness:**

1. Ramachandra Reddy
2. Sengara Gangisetty

**ATTESTED BY**

V. Sreenivasulu  
V. SREENIVASULU  
ADVOCATE & NOTARY  
D.No.18-3-61/18, Shanthi Naga  
Khadi Colony, TIRUPATI  
Cell No: 9885428



एक रुपया काठ आना

Handwritten text in Devanagari script, likely a receipt or official document, containing multiple lines of text.

- Handwritten notes and a list of items at the bottom of the page, possibly a ledger or inventory list.

Translated copy

## SALE DEED

Date: 22-9-1947

We three, V Ramanatham Shetty(1), B Sriramulu Shetty(2), V Krishnaiah Shetty(3) R/o of 131 Nethakuppam written and given this sale deed in unison to Konda Reddy S/o Appayya, R/o Vepa Kuppam village, Rayala Cheruvu (Pond) Payakut, Narayanavanm Taluk, Tirupati Sub Division, Chittoor Division.

Today i.e. 22-09-1947 for the needs of our family we had taken Rs. 100 (Rupees One Hundred only) from you and give you the land in our ownership. From this land, you can enjoy and get full rights. Any dispute arising out of this shall be resolved by us at our own expense.

### **Schedule:**

Chittoor Division, Tirupati Sub Division, Narayanavanam Taluka, Rayala Cheruvu (Pond) Payakattu, 131 Netta Kuppam Lekka Dakhala West of Cattle Path, South of Muchchala Kona Narava (Muchala Kona Pond), East of Mala Rangadu Land, North of Jalla Gangaiah, Etukuru Munaswami Naidu Lands, 83.00 Guntas of Land in Punja Survey No. 186, and 88.00 Guntas of land in 5 acres in Survey No. 195, full rights in Bidugu well and Right of Muchala Kona Narava (Muchala Kona Pond) water according to proportion. This land belongs to Chittoor division board area.

### **Signatures**

- 1.V Ramanatham Shetty
- 2.B Sriramulu Shetty
- 3.V Krishnaiah Shetty

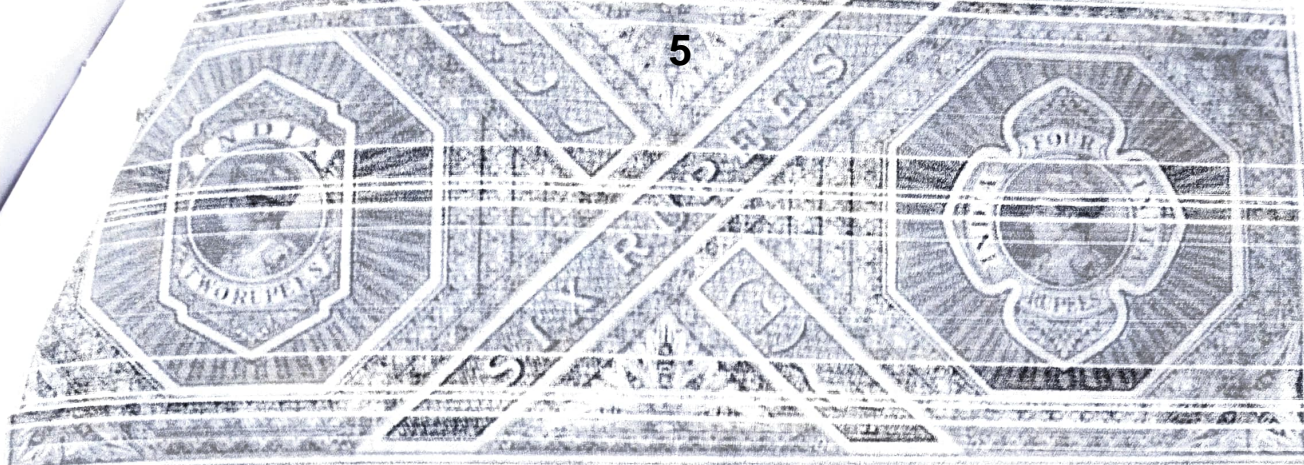
### **Witness:**

1. Munaswami Reddy
2. M.Varada Reddy

**ATTESTED BY**

V. Sreenivasulu  
V.SREENIVASULU  
ADVOCATE & NOTARY  
D.No.18-3-61/18, Shanthi Nagar  
Khadi Colony, TIRUPATI  
Cell No: 9885428271





2032.  
No. 22-9-47. **శ్రీ: నాథా** వ్యవస్థాపక కమిటీ. 2.4. 1947

యన గల అనుబంధం అనుగుణంగా ప్రకారముగా పంపించు  
బి.కె.ఎం. వర్గాల పాఠశాలకు ప్రకారముగా పంపించు  
కుటుంబ సంరక్షణ కమిటీ వారి ద్వారా ప్రకారముగా పంపించు  
ప్రకారముగా పంపించు ప్రకారముగా పంపించు  
ప్రకారముగా పంపించు ప్రకారముగా పంపించు

శ్రీ: నాథా వ్యవస్థాపక కమిటీ  
వ్యవస్థాపక కమిటీ  
వ్యవస్థాపక కమిటీ  
వ్యవస్థాపక కమిటీ

Ram Anand Chetty  
Srinamulu Chetty  
V. Krishniah Chetty

శ్రీ: నాథా వ్యవస్థాపక కమిటీ

Translated copy

6

**MORTGAGE DEED**

Date: 07-11-1949

Chengaiyah (1), Nagaiah(2), Jayaramaiah(3), Minor Ranemma(4), Subbaramaiah(5)  
S/o Karavadi Chengaiah, R/o Harijanwada, 131 Nethakuppam village, Rayala  
Cheruvu (Pond) Payakut, Narayanavanm Taluk, Tirupati Sub Division, Chittoor  
Division writing and giving this mortgage deed to Samudrala Pichamma W/o  
Samudrala Pullaiah, a Balija Farmer R/o of same village.

To buy oxens for agriculture purpose and for our family expenses we had taken  
Rs. 200 (Rupees Two hundred only) from you as hand loan and we are indebted to  
you. In this regard we will pay interest of 0.8.4 per month per hundred rupees  
whenever asked to pay and take this mortgage paper back. Till we pay principle  
and interest we are mortgaging the land includes the schedule in our ownership  
to you and handing the same to you. This land was not given to anyone previously.  
We are written and given this sale deed to you and any dispute arising out of this  
shall be resolved by us at our own expense.

**Schedule:**

Chittoor Division, Tirupati Sub Division, Narayanavanam Taluka, Rayala Cheruvu  
(Pond) Payakattu, 131 Netta Kuppam Lakka Dakhala, East of Gattia Path and in  
between Challati Chenu Banda lies land of 16 Guntas in Survey No. 157 and hal of  
the share in Well and Right of Muchala Kona Narava (Muchala Kona Pond) water  
according to proportion.

Signatures

1. Karavadi Chengaiah
2. Karavadi Nagaiah
3. Karavadi Jayaramaiah
4. Minor Subbaramaiah

Written by Muni Ramireddy

Witness:

1. Puranam Muniswami Acahari
2. Penugonda Subramanyam Chetti

ATTESTED BY

V. Sreenivasulu 29/1/2024  
V. SREENIVASULU  
ADVOCATE & NOTARY  
D.No.18-3-61/18, Shanthi Nagar  
Khadi Colony, TIRUPATI  
Cell No: 988542827



22.10.1951

Handwritten notes in Kannada script, including names and dates.



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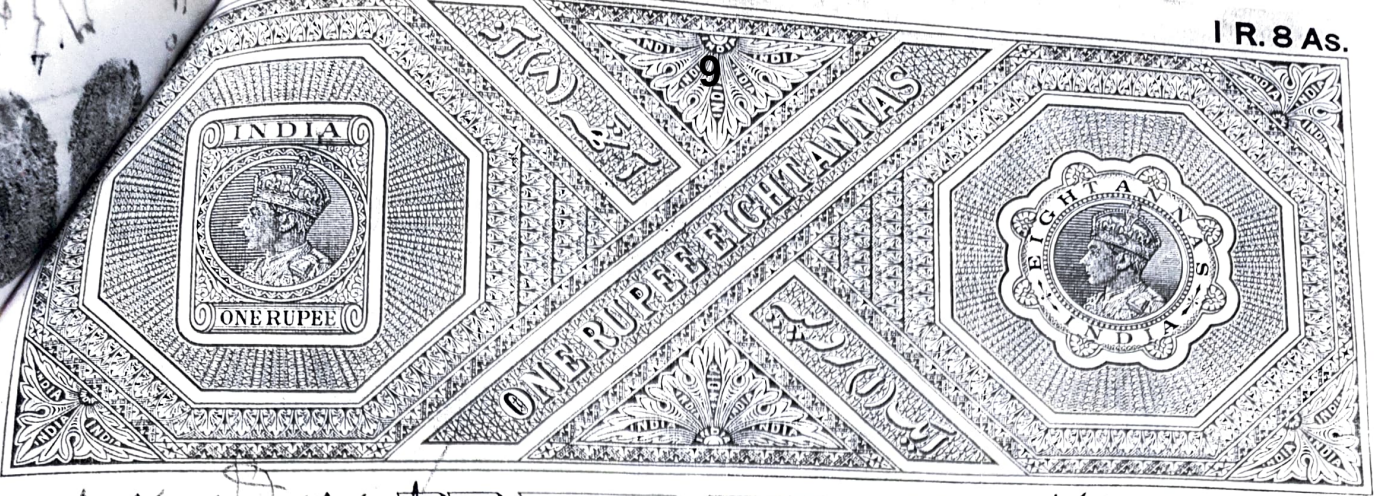
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1953... 19.4.4. ...



- 1. ... 2. ... 3. ...



72. w... .. క రుపయా ఖాత ఖానా ... ..

రెజిస్ట్రేషన్ నెంబర్ 200 / ... .. 7-11-49

7-11-1949 నెంబర్ ... ..

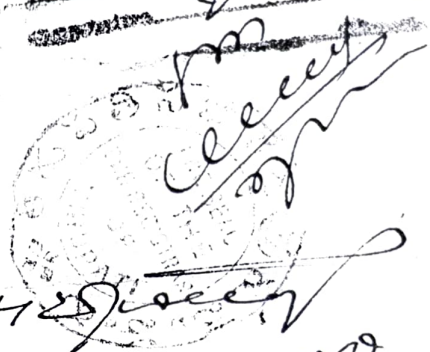
గాంధీ జయంతి వినోదానికి ... ..

యంబికంత్రి ... ..

మానవీయ సంకల్పం ... ..

కరణాది. పం నయ్య. ప. యు. యు. కి  
కరణాది. పం నయ్య. ప. యు. యు. కి  
కరణాది. పం నయ్య. ప. యు. యు. కి  
కరణాది. పం నయ్య. ప. యు. యు. కి

1551



Handwritten text in Telugu script, possibly a title or header, including the word 'సంకలనం' (Collection).

(1) వంశ వంశం

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(2) వంశ వంశం

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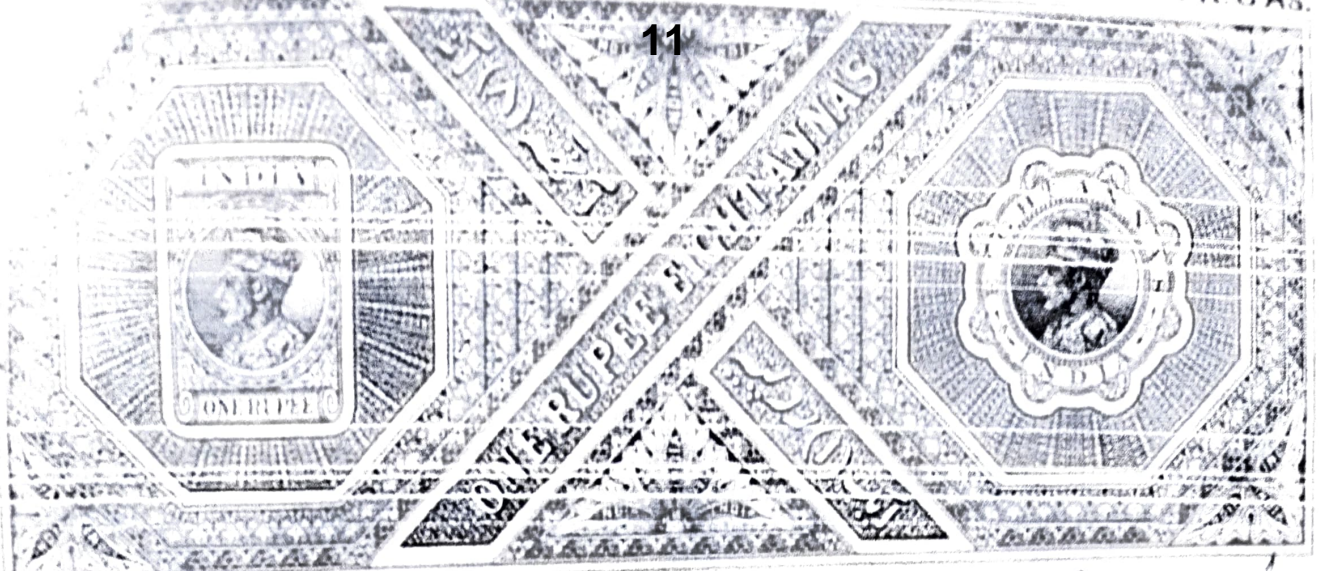
(3) వంశ వంశం

Handwritten notes and signatures corresponding to the third item.

Vertical handwritten text on the right margin, possibly a date or reference.

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Large block of handwritten text at the bottom, including a signature and possibly a date or location.



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2

7-1-19

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Handwritten signature or name on the left side.

Handwritten signature or name on the right side.

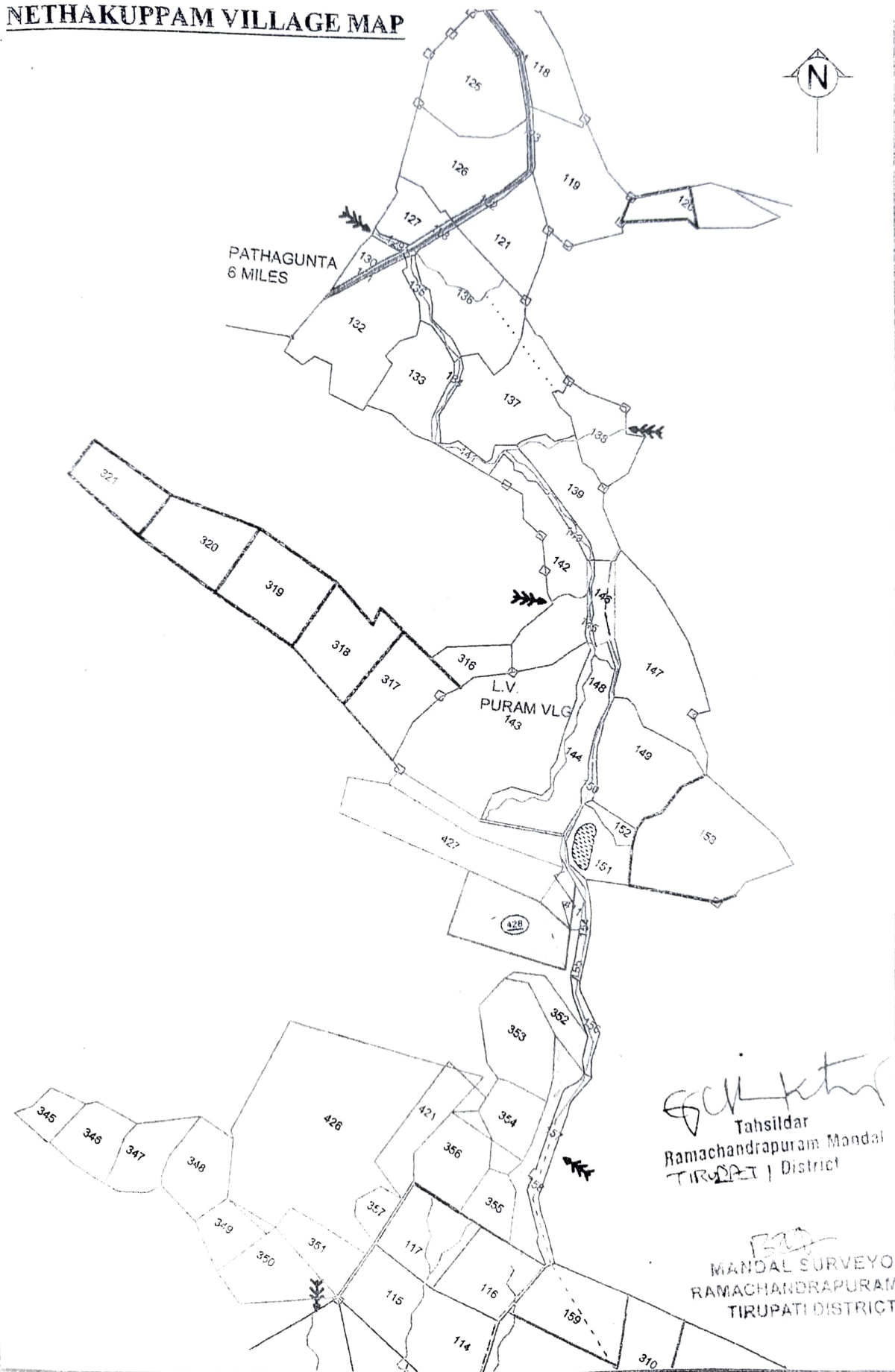
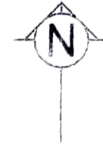
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Handwritten signature or name on the right side.

Handwritten signature or name on the right side.

Annexure -2

NETHAKUPPAM VILLAGE MAP



Annexure -13

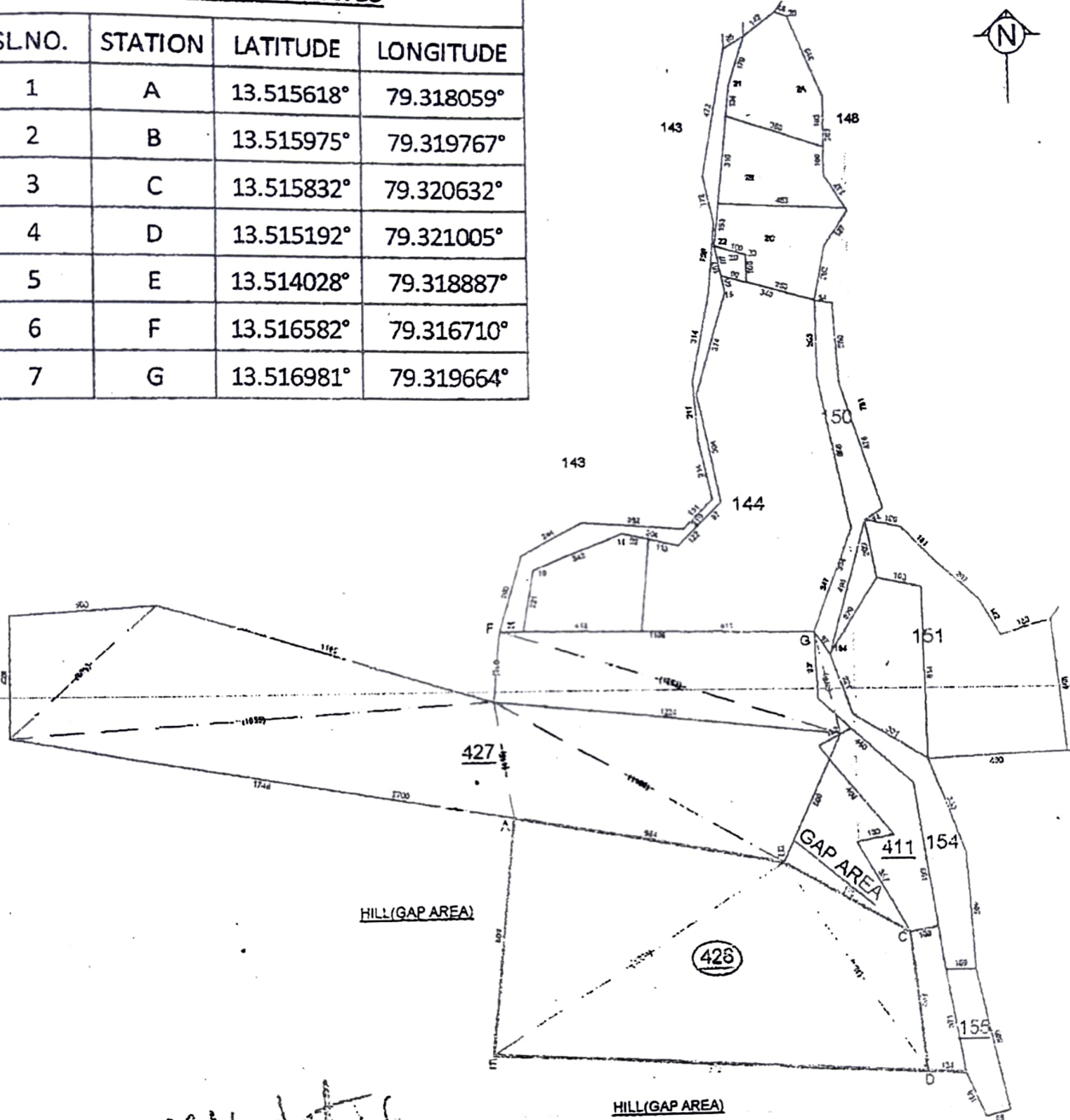
DISTRICT: TIRUPATI  
MANDAL : R.C.PURAM

LOCATION SKETCH

Village No. : 11  
Village Name : NETHAKUPPAM

GEO CO - ORDINATES			
SL.NO.	STATION	LATITUDE	LONGITUDE
1	A	13.515618°	79.318059°
2	B	13.515975°	79.319767°
3	C	13.515832°	79.320632°
4	D	13.515192°	79.321005°
5	E	13.514028°	79.318887°
6	F	13.516582°	79.316710°
7	G	13.516981°	79.319664°

FIELD NO.428 Area : 10.00 Acres 4.05.0Hec Area



*[Handwritten Signature]*  
S. S. S. S.  
Ramachandrapuram Mandal  
TIRUPATI District

DATE OF COMMENC EMENT	DATE OF COMPLETED	V.NO.	NAME OF THE VILLAGE	NEW S.NO	NO.OF FULL FIELDS	EXTENT IN		REMARKS
						ACRES	HEC	
27.01.2023	27.01.2023	11	NETHAKUPPAM	428	1	10.00	4.05.0	

SCALE : 1/5 CM : 1 Chain of 20 Meters

1300  
MANDAL SURVEYOR  
RAMACHANDRAPURAM

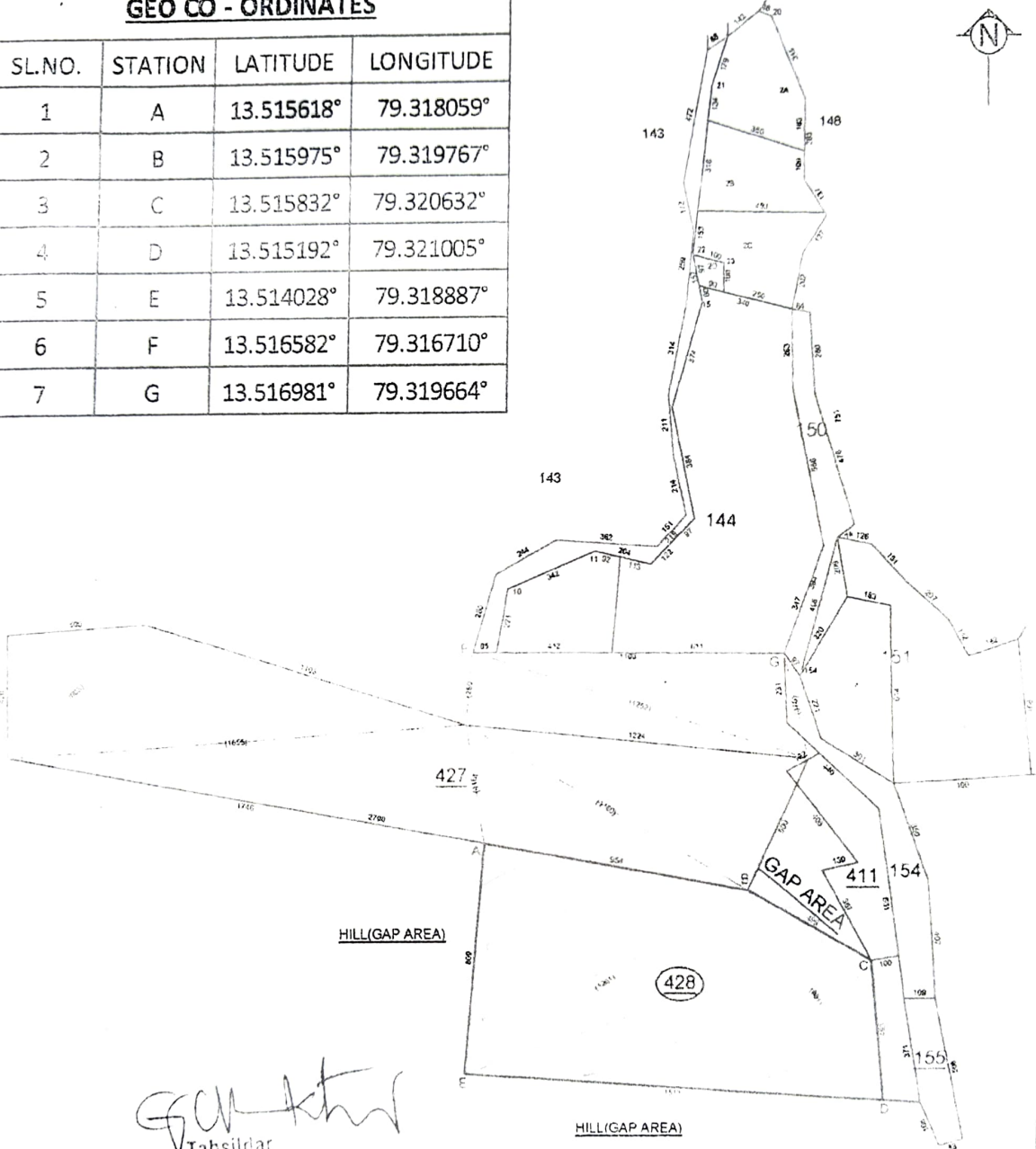
DISTRICT: TIRUPATI  
MANDAL: R.C.PURAM

DEMARICATION SKETCH

Village No. : 11  
Village Name : NETHAKUPPAM

GEO CO - ORDINATES			
SL.NO.	STATION	LATITUDE	LONGITUDE
1	A	13.515618°	79.318059°
2	B	13.515975°	79.319767°
3	C	13.515832°	79.320632°
4	D	13.515192°	79.321005°
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6	F	13.516582°	79.316710°
7	G	13.516981°	79.319664°

FIELD NO.428 Area : 10.00 Acres 4.05.0Hec Ares



*G. Ch. Kumar*  
Tahsildar  
Ramachandrapuram Mandal  
TIRUPATI District

SL.NO.	NAME OF THE SURVEYOR	DATE OF		NO.OF STONES PLANTED			SIGNATURE
		COMENCEMENT	COMPLETED	A	B	TOTAL	
1	B.HEMA KUMAR	27.01.2023	27.01.2023	-	5	5	

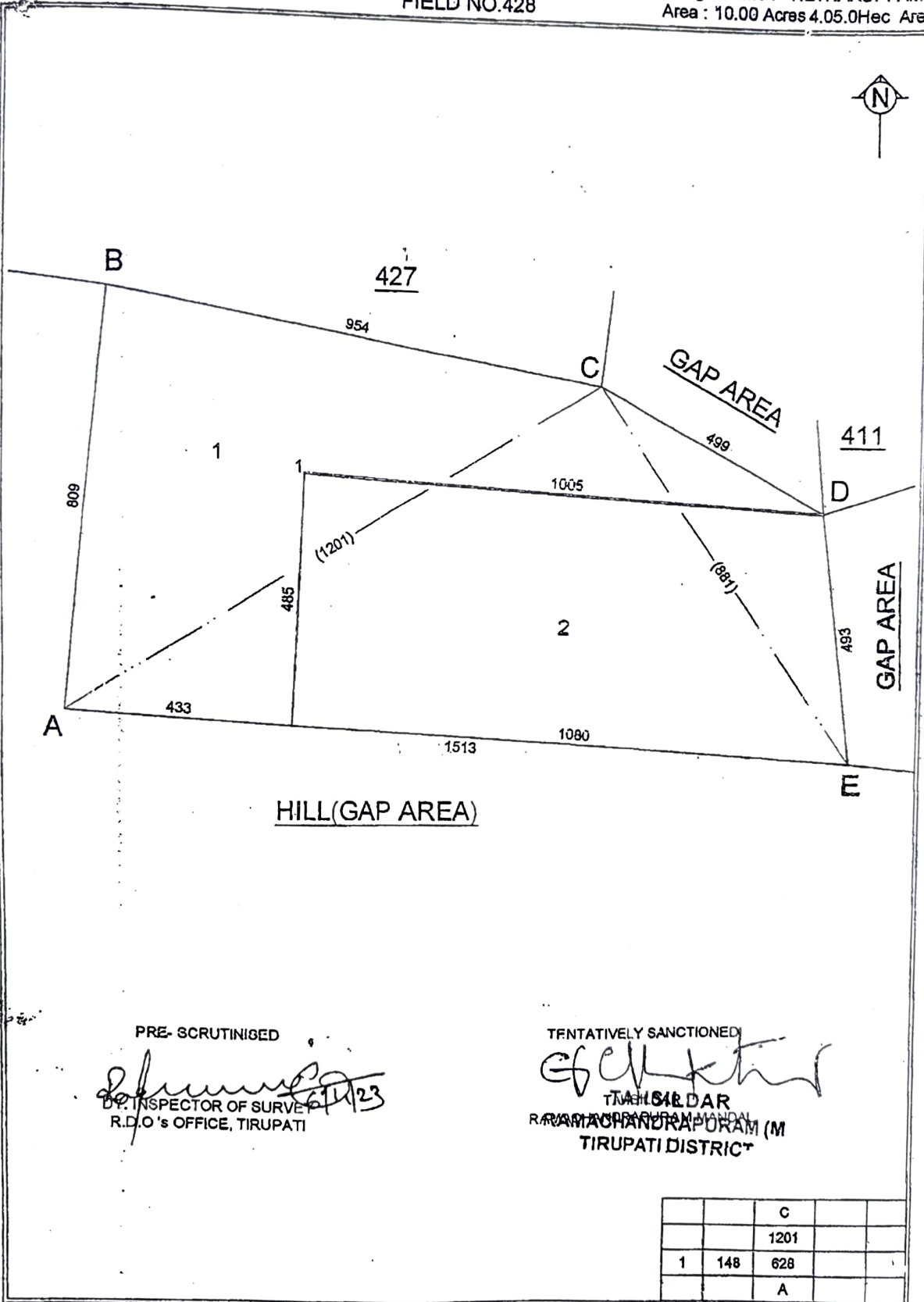
SCALE : 1/5 CM : 1 Chain of 20 Meters

*B. Hema Kumar*  
MANDAL SURVEYOR  
RAMACHANDRAPURAM  
TIRUPATI DISTRICT

DISTRICT: TIRUPATI  
MANDAL : R.C.PURAM

FIELD NO.428

Village No. : 11  
Village Name : NETHAKUPPAM  
Area : 10.00 Acres 4.05.0Hec Area



PRE- SCRUTINIGED

*[Signature]*  
D.P. INSPECTOR OF SURVEY  
R.D.O's OFFICE, TIRUPATI

TENTATIVELY SANCTIONED

*[Signature]*  
TALUK D.A.R.  
RAMACHANDRAPURAM MANDAL  
TIRUPATI DISTRICT

SCALE : 1 CM : 1 Chain of 20 Meters

*[Signature]*  
MANDAL SURVEYOR  
RAMACHANDRAPURAM

S.No.	Extent	Sub - Div No	Extent A.C	Extent H.A	
428	<u>10.00</u> 4.05.0	1	5.00	2.02.5	
		2	5.00	2.02.0	
		<u>Total :-</u>	<u>10.00</u>	<u>4.05.0</u>	

CERTIFIED:-

- 1) THAT IS TRUE COPY OF THE F.M.B. AND MEASUREMENT CONVERTED IN TO METRIC MEASURE AND REPLOTED BY ME
- 2) THAT NEW SUB - DIVISIONS ARE MEASURED AND PLOTTED BY ME
- 3) THAT ALL THE SURVEY ERROR'S OF CORRECTED BY ME.

MANDAL SURVEYOR  
R.C.PURAM

A 943

Statement of Sub-Divisions in the Village of No. 11, Name: NETHAKUPPAM, Mandal: RAMACHANDRAPURAM, District: TIRUPATI  
 Standing Order No. 34-A-Paragaraph 13(a)  
 Particulars of the proposed Sub-Division

Is Classification Survey area and assessment		Particulars of the proposed Sub-Division		Remarks	
1	Present Survey No & Sub-Div No	11	Name of Present Registered holders	12	Signature of Parties
2	Dry, Wet, Proramboke	6	Dry, Wet, Proramboke	13	Are there will defend boundaries on the ground and whether the Sub-Div have been duly
3	Survey Area	7	Survey Sub-Div No	14	Reasons for Omissions if any, On the part of parties to sign in column No (12)
4	Assessment	8	Extent According to the Area Square Paper	15	Reasons for Sub-Divisions
5	Name of Present Registered holders	9	Adjusted extent With reference to column No (3)	16	Number of Sub-Div in the field fit for clubbing and whether the holder there of has any objection to their
6	GOVT. DRY	10	Assessment		
7	GOVT. POROMBOKE	11	Name of Present Registered holders		
8	10.00 4.05.0	12	Signature of Parties		
9	10.00 4.05.0	13	Are there will defend boundaries on the ground and whether the Sub-Div have been duly		
10	10.00 4.05.0	14	Reasons for Omissions if any, On the part of parties to sign in column No (12)		
11	10.00 4.05.0	15	Reasons for Sub-Divisions		
12	10.00 4.05.0	16	Number of Sub-Div in the field fit for clubbing and whether the holder there of has any objection to their		
TOTAL:-	10.00 4.05.0	TOTAL:-	10.00 4.05.0		

**PRE-SCRUTINISED**  
 DEPUTY INSPECTOR  
 Survey & Land Records  
 R.D.O. OFFICE, TIRUPATI

**TENTATIVELY SANCTIONED**  
 TASHSUDAR  
 RAMACHANDRAPURAM MANDAL  
 TIRUPATI DISTRICT

MANDAL SURVEYOR  
 RAMACHANDRAPURAM MANDAL

PROPOSED FOR  
 ASSIGNMENT  
 PROPOSED FOR  
 ASSIGNMENT

**GOVERNMENT OF ANDHRA PRADESH  
MUNICIPAL ADMINISTRATION & URBAN DEVELOPMENT DEPARTMENT**

Memo No. 261/I<sub>1</sub>/2006

Dt: 16.07.2007.

Sub:- Municipal Administration and Urban Development Department –  
G.O.Ms.No.111, Municipal Administration & Urban Development  
(I1) Department, dated: 08.03.1996 – Regulating the developments  
in the downstream area – Draft Notification – Issued.

Ref:- 1. G.O.Ms.No.50 MA & UD Department, dated 28.01.1989.  
2. G.O.Ms.No.192 MA & UD Department, dated 31.03.1994.  
3. G.O.Ms.No.111 MA & UD Department, dated 08.08.1996.  
4. G.O.Rt.No.952 MA & UD Department, dated 29.11.2005.  
5. Opinion rendered by the Learned Advocate General, dt:15.03.2006.  
6. Report submitted by the Technical Committee, dated 25.09.2006.  
7. D.O.Letter No. EPTRI/EQM/75/2/AHWQ-H/ 2006/1139,  
dated 05.01.2007.  
8. From the Managing Director, HMWS&SB, Hyderabad Letter No.  
MD/GO111/2007/1973, dated 21.04.2007.

<<<>>>

The appended notification will be published in the extraordinary issue of Andhra Pradesh Gazette, dated 17.07.2007.

2. Specific approval of the Principal Secretary to Government, Municipal Administration and Urban Development Department has been obtained for publication of notification in the extraordinary issue of Andhra Pradesh Gazette.

S.P.SINGH  
PRINCIPAL SECRETARY TO GOVERNMENT

To  
The Commissioner of Printing, Stationery & Stores Purchase, Hyderabad.  
The Vice-Chairman, Hyderabad Urban Development Authority, Hyderabad – With a  
request to display this notification in the notice board and give wide publicity.  
The Commissioner, Greater Hyderabad Municipal Corporation, Hyderabad – With a  
request to display this notification in the notice board and give wide publicity.  
The Managing Director, Hyderabad Metro Water Supply & Sewerage Board, Hyderabad  
The Member Secretary, APPCB, Hyderabad.  
The Director of Town and Country Planning, Hyderabad.  
The Commissioner & Director of Municipal Administration, Hyderabad.  
The District Collector, Ranga Reddy District, Hyderabad.  
The District Collector, Hyderabad District, Hyderabad.  
The Commissioner of Industries, Abids, Hyderabad.

//FORWARDED BY ORDER //

Sd/-  
SECTION OFFICER

...2

::2::

APPENDIX  
NOTIFICATION

Whereas a part of drinking water requirement of twin cities of Hyderabad and Secunderabad is met from two surface reservoirs namely Osmansagar and Himayathsagar. In 1988 it had come to the notice of the Government that in catchment area of the two lakes some unauthorized check-dams were being constructed and water was being illegally tapped thereby reducing the flows of water into the above lakes. Therefore with a view to protect the hydrological regime of the catchment areas, orders were issued in G.O.Ms.No. 50 MA dt: 28.01.1989 prohibiting the interception of any inflows of water into the lakes, removal of unauthorized check dams; tapping of ground water in these catchment areas: preventing unauthorized occupation of land etc.

2 And whereas, in 1993 Hyderabad Metro Water Supply & Sewerage Board constituted an Expert Committee to suggest ways and means to monitor the quality of water in the above two reservoirs. Based on the interim report of the Committee orders were issued in G.O.Ms.No. 192, dt: 31.03.1994 prohibiting the establishments of any polluting industries, major hotels, Residential colonies or other establishments that generate pollution in the catchment area within 10 km radius from Full Tank Level of above two lakes; permitting the development activities beyond 10 Km radius (within the catchment area) subject to No Objection Certificate from Hyderabad Metro Water Supply & Sewerage Board, Andhra Pradesh Pollution Control Board, Director of Town Planning, Hyderabad Urban Development Authority and Industries Department.

3 And whereas, in 1995, after detailed discussions and field visits the expert committee submitted second report, based on which orders were issued in G.O.Ms.No. 111, MA dt: 8.3.1996. The fundamental objective of this notification was to protect the above reservoirs by preventing upstream pollution and to certain extent downstream pollution and declare a zone as a prohibited zone. For this purpose 84 villages falling within 10 kms distance in the catchment area were notified as prohibited zone wherein polluting industries, major hotels, residential colonies or other establishments that generate pollution are prohibited and polluting industries are prohibited within 10 Km radius i.e., both on upstream and downstream side to prevent acidification of lakes (due to air pollution).

4 And whereas, keeping in view, the recent developments coming up in the downstream of the above two reservoirs Government felt that there is a need to regulate the developments in the downstream area also to avoid direct pollution of the reservoirs. Therefore, vide G.O.Rt.No. 952 Municipal Administration & Urban Development Department, dated 29.11.2005, a Committee has been constituted with the officials of Hyderabad Metro Water Supply & Sewerage Board, Andhra Pradesh Pollution Control Boards, Hyderabad Urban Development Authority, Andhra Pradesh Industrial Infrastructure Corporation, Industries Department and Municipal Administration & Urban Development Department to indicate the activities to be permitted in the downstream area and specify the clear distance to be maintained from the bund / Full Tank Level in the downstream to prevent direct pollution of the above reservoirs. Meanwhile, the study conducted by the Environment Protection Training & Research Institute in collaboration with the NGRI / IICT on the possibilities of establishing non-polluting industries within 10 kms distance in the down stream area has concluded that there is not possibility of ground water moving upwards the lakes; no back flow of effluents; acidification of lakes is not of concern in the Hyderabad Region; there is possibility of establishment of non-polluting industries (Green and Orange category) in the down stream and all monitored pollutants are well within the standards.

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5 And whereas , the Technical Committee constituted by the Government has submitted their report recommending that upto 500 m from the bund / Full Tank Level in the down stream may be declared as Prohibited Zone, beyond 500 mts and upto 1000 mts (1Km) only low rise residential development (ground + 2 floors) may be allowed and beyond 1 Km distance in the downstream all developments such as Residential, Commercial, IT Units, Hotels, Public and Semi Public may be permitted. The Environment Protection Training & Research Institute while agreeing with the recommendations of the Committee have recommended that except 68 listed industries, all other industries / activities could be permitted in the down stream areas of the above two reservoirs.

6 In view of the above, Government have examined the issue in consultation with Managing Director, Hyderabad Metro Water Supply & Sewerage Board and after careful consideration of the matter felt that there is a need to regulate the developments in the downstream area also to prevent direct pollution of above two reservoirs.

7 Now, therefore, after careful consideration of the matter, Government with a view to prevent any possible direct pollution into the Osman Sagar / Himayat Sagar lakes proposes to issue following regulatory measures, which would be applicable to the downstream areas of above two Reservoirs:-

- (i) No development will be allowed upto 500 m from the bund / Full Tank Level in the down stream and same shall be declared as prohibited zone.
- (ii) Beyond 500 m and upto 1000 mts (one Km) in the downstream, only low rise residential development (ground + 2 floors) will be allowed.
- (iii) Beyond 1000 mts distance in the down stream, all developments such as Residential, Commercial, IT Units, Hotels, Public and Semi Public developments will be allowed except 68 industries listed in Annexure-I of this Notification, subject to compliance of all other extant rules.
- (iv) For protection of raw water channel from Osmansagar to Asifnagar no layout or building permission will be granted and while approving the layout along the above 100 feet distance shall be maintained.
- (v) 30 Meter green belt will be earmarked all along the existing two surplus channels.
- (vi) 30 Meter buffer zone will be maintained all along the reserve forest and the heritage structures.
- (vii) As the proposal deals with the downstream areas only, the villages falling within 10 kms distance from the Full Tank Level / bund in the downstream are indicated in the Annexure-II of this notification.
- (viii) Hyderabad Urban Development Authority will be designated as Nodal Agency to enforce the regulations; take action against the violators and develop green belt in the prohibited zone.
- (ix) Hyderabad Metro Water Supply & Sewerage Board will (i) prepare a comprehensive integrated underground drainage system (ii) constitute a Special Watch and Ward Wing to monitor the water quality and to furnish the periodical reports to Nodal Agency for taking effective steps against the violators and for strict implementation of regulations.
- (x) Other special measures proposed to be enforced, as recommended by the committee, are indicated in Annexure –III of this notification.

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8 Further, the Vice-Chairman, Hyderabad Urban Development Authority will prepare a Zonal Development Plan for the entire downstream area incorporating the above regulations and ensure that the above restrictions are enforced strictly. Managing Director Hyderabad Metro Water Supply & Sewerage Board will constitute a watch committee to oversee the enforcement of these regulations.

9 Notice is hereby given that the above draft will be taken into consideration after expiry of fifteen days from the date of publication of the notification in the Extraordinary issue of Andhra Pradesh Gazette and that any objections or suggestions which will be received from any person with respect thereto before expiry of the said period will be considered by the Government of Andhra Pradesh. Objections or suggestions should be addressed to the Principal Secretary to Government, Municipal Administration and Urban Development Department, Secretariat, Andhra Pradesh, Hyderabad – 500 022.

S.P.SINGH  
PRINCIPAL SECRETARY TO GOVERNMENT

Sd/-  
SECTION OFFICER

ANNEXURE – I  
LIST OF INDUSTRIES PROHIBITED

The list of industries that are not permitted in area falling in downstream of Osman Sagar and Himayat Sagar lakes within 10 kms from Full Tank Level are

1. Metallurgical industries including smelters, foundries and alloy making processes.
2. Coal and other mineral processing industries.
3. All cement plants.
4. Industries based on the use of coal / coke.
5. Refineries.
6. Petrochemical products (Basic and intermittent) Large, Medium and Small scale.
7. Synthetic Rubber manufacture.
8. Thermal and Nuclear Power plants.
9. Manufacturing of vanaspati, hydrogenated vegetable oils for industrial purposes.
10. Sugar mills.
11. Manufacturing of by products of coke ovens and coal tar distillation products.
12. Alkalis and acids.
13. Electro-thermal products (such as artificial abrasives, calcium carbide etc.,)
14. Phosphorous and its components.
15. Fire crackers.
16. Phthalic anhydride.
17. Processes involving chlorinated hydrocarbons.
18. Chlorine, Fluorine, Bromine, Iodine and their compounds.
19. Synthetic fibers and rayon.
20. Manufacturing or formulation of synthetic Pesticides / Insecticides / fungicides etc.
21. Basic drugs.
22. Distillery (Alcohol Distillery).
23. Leather industry including tanning and processing of animal, skins, hides, leather etc.
24. Plastic or latex industry including manufacturing of balloon.
25. Making of Coke / Liquefaction of coal.
26. Manufacturing of fuel gas.

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27. Fiber glass production or processing.
28. All category of dyes and their intermediates – Large, Medium and Small scale.
29. Electro chemical and their products.
30. Paint, enamels and varnishes.
31. Poly vinyl chloride.
32. Polypropylene.
33. Chlorates, per chlorates and peroxides.
34. Polishes.
35. Synthetic resins.
36. Asbestos.
37. Stone crushing unit.
38. Ferrous and non-ferrous metal extraction, refining, casting, forging processing etc.
39. Phosphate rock processing plants.
40. Glass and glass products involving use of coal.
41. Petroleum refinery.
42. Manufacture of lubricating oils and greases.
43. Coal, oil, wood or nuclear based thermal power plans.
44. Craft paper mills.
45. Caustic soda – Mercury cell and Membrane cell.
46. Potash.
47. Phosphorous and its compounds.
48. Acids and their salts (organic & inorganic).
49. Nitrogen compounds (Cyanides, Cyanamides and other nitrogen compounds).
50. Explosive (including industrial explosives, detonators and fuses).
51. Phthalic anhydride.
52. Processes involving chlorinated hydrocarbon.
53. Fertilizer Industry – Large, Medium and Small scale.
54. Paper board and straw boards.
55. Manufacture of pulp-wood, pulp, mechanical or chemical (including dissolving pulp).
56. Industrial carbons (including graphite electrodes, anodes, midget electrodes, graphite blocks, graphite crucibles, gas carbons activated carbon, synthetic diamonds, carbon black, channel black, lamp black etc.)

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57. Cement with vertical shaft kiln technology pending certification of proven technology on pollution control.
58. Chlorates per chlorates & peroxides.
59. Integrated Iron & Steel.
60. Pharmaceuticals (Basic) – Large, Medium and Small scale.
61. Organic and inorganic Chemicals.
62. Reheating (Reverberatory) Furnace.
63. Foundaries, Cupola, Arc furnace, induction furnace – Large and Medium scale.
64. Pulp and paper industries (Agro based and Waste based).
65. Electroplating.
66. Calcium Carbide Industry.
67. Lime skin.
68. Bone mills and allied Industries.

S.P.SINGH  
PRINCIPAL SECRETARY TO GOVERNMENT

Sd/-  
SECTION OFFICER

ANNEXURE –II  
LIST OF DOWNSTREAM VILLAGES FALLING IN 10 KMS DISTANCE FROM  
FULL TANK LEVEL OF OSMANSAGAR AND HIMAYATSAGAR.

## VILLAGE / HABITATION

1. AKBARPURA
2. ANJAYYANAGAR
3. ATTAPUR
4. BAGVATGUDA
5. BAHADURPURA
6. BAIRAGIGUDA
7. BANDLAGUDA
8. BENTONBAVDI
9. BODEWADI
10. BUDVEL
11. CHANDUGUDA
12. CHANDULAR BARADARI
13. EDULANAGULAPALLI
14. GACHIBAULI
15. GAGNPAHAD
16. GANDAMGUDA
17. GANDIPET
18. GOLLADODDI
19. GOPANAPALLI
20. GOPANAPALLI TANDA
21. HAKIMPET
22. HIMAYATSAGAR
23. HUSSAIN SHAVALI DARGHA
24. HYDERGUDA
25. HYDERSAHIGUDA
26. IBRAHIMBAGH
27. IMAMPUR
28. INDIRANAGAR
29. JAHANNUMA
30. JALAPALLI
31. KAJAGUDA
32. KAJIKALLI
33. KATEDHAN.
34. KHAJAGUDA.
35. KILASKHANDARGA
36. KISMATPUR
37. KOKAPET
38. KOLLUR
39. KOLLUR TANDA
40. KONDAKAL
41. KONDAPUR
42. KOTTAGUDA
43. LAKSHMIGUDA

## VILLAGE / HABITATION

44. MAHALNEKNAPUR
45. MAHULVA
46. MAILARDEVPALLI
47. MAKTA
48. MAKTADARWAZABASTI
49. MAMIDPALLI
50. MANCHIREVULA
51. MANIKONDA.
52. MONDELEGUEDEM
53. NALLAGANDLA
54. NANAKRAMGUDA
55. NANDI MUSALAIGUDA
56. NARSINGI
57. NEHRUNAMPURAM
58. NEKHANPUR
59. OSMANSAGAR
60. PIRANCHERU
61. POCHARAMGUTTA
62. PREMAVATIPET
63. PUPPALAGUDA
64. RAJENDRANAGAR
65. RAMDEOGUDA
66. RAMPUR
67. RAMSINGHAPUR
68. RETIBAVDI
69. SANGAM
70. SATAMRAYI
71. SERIGUDA
72. SERLINGAMPALLI
73. SHAIKPET
74. SHRINAGAR
75. SIDDIQUINAGAR
76. SIVARAMPALLI
77. TADBUND
78. TARANAR
79. TELLAPURAM
80. TOLICHOWKI
81. TURKANKUNTA TANDA
82. UDAMGADDA
- 83 UPPARPALLI
- 84 VALLABHARAYUNIGUTTA TANDA
85. VELIMELA
86. YEMKUNTA

S.P.SINGH

PRINCIPAL SECRETARY TO GOVERNMENT

Sd/-

SECTION OFFICER

ANNEXURE III  
SPECIAL MEASURES RECOMMENDED BY THE COMMITTEE

1. The scientific studies conducted by reputed scientific organizations indicate that there is no acidification of the lakes. However as a precaution, the industries identified and listed in the Annexure I shall be prohibited in the down stream up to 10 Km from the two lakes.
2. Permission may be accorded for other industries adhering to the existing legislative and regulatory framework. However any new industry shall be prohibited to install any equipment / machinery which use Coal / Furnace oil as fuel.
3. Considering the existing ambient air quality status being within the permissible limits, the existing industries in downstream of the two lakes will be permitted to operate provided they adhere to the existing environmental laws and regulatory norms.
4. In order to protect raw water channel from Osman Sagar to Asifnagar, no layout or building permission shall be granted by MCH / HUDA / Director of Town and Country Planning up to a maximum of 100 feet from the conduit site boundary. While approving layout plans for building permission with the above condition also it shall be ensured that the conduit a minimum of 9 Meters wide road plus green belt to a maximum width of 100 feet shall be maintained to act as buffer on either side of conduit. The green belt which will be part of mandatory open space to be left out in the layout. Drainage pipelines must be laid parallel to the conduit and no sewage / sullage water discharges will be allowed from the layout towards the conduit.
5. The Government may take up a detailed drainage and sewerage plan for the entire area i.e., 10 km distance in the downstream of lakes. For augmenting the resources for this purpose, a special cess may be imposed while permitting any development activities in the downstream of the lakes.
6. Considering the scientific reports of low ground water availability, ground water use shall be discouraged.
7. Paved areas shall be minimum to the extent possible and Greenery / Plantation / Open areas may be encouraged as per HUDA norms / provisions.
8. The minimum plot size will be specified while preparing the master plans / zonal development plans covering this area to avoid unplanned growth. All activities / plots shall conform to HUDA norms / rules.
9. Property designed rain water harvesting structures shall be constructed and maintained for water conservation.
10. The solid waster generated will be collected properly, transported and disposed safely by the respective local authority.
11. Biological, Physico Chemical (BPC) parameters shall be monitored by the Nodal Agency to ensure the wholesomeness of the areas of the two lakes regularly. Any deviations will be tracked and suitable measures / decisions will be taken. Impact studies on lakes will be carried out periodically by a competent agency within 10 kms from FTL including hydrological and geological studies so as to monitor the impact of the activities on the lake water quality and impact on the catchment area.

12. The topography of the bunds of the lakes shall not be changed.
13. Impact studies are to be carried out periodically by a competent agency within 10 kms from FTL including hydrological and geological studies so as to monitor the impact of the activities on the lake water quality and impact on the catchment area.
14. Concept of green building practices will be encouraged.

S.P.SINGH  
PRINCIPAL SECRETARY TO GOVERNMENT

Sd/-  
SECTION OFFICER

## Annexure -6

## Revenue Department

From  
Shri U.Madhusudhan Rao, M.A.,  
Tahsildar,  
R.C. Puram Mandal.

To  
The District Collector,  
Chittoor.

(Through the Revenue Divisional Officer, Chittoor)

Roc. B / 88 / 2020 Dt. 29-04-2021

Sub: Assignment of Land under Ex-Service Man – Chittoor District – Application of Sri B.Venugopal Reddy, Ex-Service man - received from ZSWO, Chittoor District- for allotment of land under Ex-service men – quota-Report Submitted – -proposals returned to submit in full shape- report- submitted -Reg.

- Ref: 1.Roc E/1849/2020,dt: 26.04.2021 of the Revenue Divisional Officer, Chittoor  
2. REV-ESEC/144/2020-JA(E6)-COLL-CTR(27876120),dt:02-06-2020 of the District collector, Chittoor.  
3. Report of the VRO/ Mandal Revenue Inspector, R.C.Puram dt. 12-10-20  
4. Report of Surveyor, dt:27.10.2020  
5. zaza .Report of Village Revenue Officer, Mandal Revenue Inspector , dt:27.10.2020

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I invite kind attention to the reference cited, and submit that while forwarding the application of one Sri B.Venugopal Reddy S/o B.Rami Reddy, Ex-Service man, resident of Venkatapuram satram village of Puthalapattu Mandal of Chittoor District for assignment of Government land in Sy.No.181 in Anupalle village of Ramachandrapuram under Ex-Service Man Quota and directed to pursue the application with the following conditions as per the CCLA, A.P., Vijayawada vide Lr.No.Assn-I(1)/1297/2019, dt:31.08.2019 and furnish feasibility report whether the lands are required for public purpose.

i) Strictly follow the procedure laid down under BSO-15 for assignment of Govt.land to land less poor for agriculture purpose.

ii) List of the selected beneficiaries should be placed before the District Level Assignment Review Committee as per G.O.Ms.No.250 Revenue (assn-I) Dept., dt:15.05.2018 to get approval.

iii) At the time of issuing D-Patta, survey and sub-division should be taken up.

iv) Pattadar Passbooks and Title deeds along with D-Patta should be issued duly incorporations carried out in all revenue records.

v) Land possession should be handed over to the beneficiary simultaneously with patta, in case the beneficiary is not an existing encroacher.

In this connection, on verification of records, the land in Sy.No.181/1 is classified as Kaluva and Gutta and the matter has got into enquired by the Village revenue officer, Anupalle and Mandal revenue Inspector, Ramachandrapuram and Submitted their report stating that the Sy.No.181/1 is classified as Kaluva& Gutta and no land was available and the said land is not fit for cultivation.

Further, I submit that the Mandal Surveyor, Mandal Revenue Inspector and Village Revenue Officer concerned were enquired in to the matter and reported that, the land to an extent of Ac.12.75 Cents in Sy.No.85 of C.K.Palle Village of Ramachandrapuram Mandal is identified and submitted their report stating that the land in Sy.No. 85 is classified as "Gutta Poramboke" and the subject land is lying vacant and free from disputes and encroachments. The Mandal Surveyor has reported that, Sy.No.85/9 measuring an extent Ac.04.00 for allotment with due procedure of law.

It is submitted that, the Govt. of A.P. has issued G.O.Ms.No.743, Revenue (B) Dept., dt:30.04.1963, with a view of emergency created by the unprovoked aggression on our borders by the Chinese and the consequent heavy responsibilities cast on our Jawans to safeguard the country, the govt. felt that a generous policy is called for in the matter of assignment of agricultural land to Jawans serving in various capacities and in Para 7 of the said G.O., it was clearly mentioned that all application under these rules shall be routed through the Secretary, State Soldiers, Sailors and Airmen's Board and the applications should be duly certified by the Officer Commanding the regiment in which the jawans serve. The Secretary, State Soldiers, Sailors and Airmen's Board may send applications direct to the Collector of the certificate to which that the person who has applied for land is an ex-soldier. The application shall be made within twelve months from the date of discharge.

Further it is submitted that, the Govt. of A.P. has issued G.O.Ms.No.250 Revenue (Assn.I) Dept., dt:15.05.2018 constituting DLARC with a view to accord permission / approval for the list of beneficiaries identified by the Tahsildar under landless poor category as a matter of general assignment policy. The above G.O.Ms.No.250 has not suppressed the G.O.Ms. No.743, dt:30.04.1963 which was issued as a generous policy towards Jawans discharged from service.


It is further submitted that, during enquiry and on verification of documents produced by the applicant, it is noticed that the individual was discharged from service on 31.12.2018 and his application was forwarded by the Zilla Sainik Welfare Officer, Chittoor vide Lr.No.1252/land/2019/A2,dt:16.06.2020 of the ZSWO, Chittoor to the District Collector, Chittoor. The applicant has submitted his report stating that he was worked in Indian army as a soldier from 23.01.2002 to 31.12.2018 under the unit army artillery regt and have no house and landed property in the name of him and applied for grant of Assignment as per the Para 3 of G.O.M.S.No.861 (Q)Department ,Dt: 22.07.1985. (Affidavit enclosed).

It is further submitted that, the subject land is not required for the house sites under NAVARATHNALU- PEDALANDARIKI ILLU Program or any other public purpose.

Hence, the proposal is here by submitted to issue necessary orders for issue of DKT patta in favor of Sri B.Venugopal Reddy S/o B.Rami Reddy, Ex-Service man, resident of Venkatapuram satram village of Puthalapattu Mandal of Chittoor District in the Sy.No.85/9 measuring an extent Ac.04.00. classified as "Gutta Poramboke" in C.K.Palle village of Ramachandrapuram Mandal and subject to condition that, orders will be approved as on when the assignment committee shall be conduct.

The record of enquiry, FMB copies and Village accounts and applicants documents for verification are submitted herewith for taking necessary action.

Yours faithfully

  
Tahsildar  
Ramachandrapuram Mandal  
Chittoor District

Copy submitted to the District Collector, Chittoor for favor of kind information

## REVENUE DEPARTMENT

From  
Dr.C.Renuka, M.A., M.Phil, Ph.D.,  
Revenue Divisional Officer,  
Chittoor.

To  
The District Collector,  
Chittoor.

Roc.E/1849 /2020 dated. -05-2021.

Sir,

Sub: - Assignment of Land under Ex-service man – Chittoor District & Division – R.C.Puram Mandal – Anupalli Village - Application of Sri.B.Venu Gopal Reddy, received from ZSWO, Chittoor for allotment of land under Ex-service men – quota – Proposals submitted - Reg.

Ref: - 1. REV-ESEC/599/2020-SA-E3-COLL-CTR(296622/20), dt.24.06.2020.  
2. Roc.E/1849/2020, dt.15.09.2020 of the Revenue Divisional Office, Chittoor.  
3.Roc.No.A/88/2020 Dt.27.04.2021. of Tahsildar,R.C.Puram.

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I invite kind attention to the references cited, where in the reference 1<sup>st</sup> cited, the District Collector, Chittoor has informed that, while forwarding the application of one Sri R Venugopal Reddy S/o B.Rami Reddy, Ex-Service man, resident of Venkatapuram satram village of Puthalapattu Mandal of Chittoor District for assignment of Government land in Sy.No.181 in Anupalle village of Ramachandrapuram under Ex-Service Man Quota and directed to pursue the application with the following conditions as per the CCLA, A.P., Vijayawada vide Lt.No.Assn-I(1)/1297/2019, dt:31.08.2019 and furnish feasibility report whether the lands are required for public purpose

i) Strictly follow the procedure laid down under BSO-15 for assignment of Govt.land to land less poor for agriculture purpose.

ii) List of the selected beneficiaries should be placed before the District Level Assignment Review Committee as per G.O.Ms.No.250 Revenue (assn-I) Dept., dt:15.05.2018 to get approval.

iii) At the time of issuing D-Patta, survey and sub-division should be taken up.

iv) Pattadar Passbooks and Title deeds along with D-Patta should be issued duly incorporations carried out in all revenue records.

v) Land possession should be handed over to the beneficiary simultaneously with patta, in case the beneficiary is not an existing encroacher.

In the reference 3<sup>rd</sup> cited, the Tahsildar, R.C.Puram has reported that, on verification of records, the land in Sy.No.181/1 is classified as Kaluva and Gutta and the matter has got into enquired by the Village Revenue officer, Anupalle and Mandal Revenue Inspector, Ramachandrapuram reported that the Sy.No.181/1 is classified as Kaluva& Gutta and no land was available and the said land is not fit for cultivation.

Further, the Tahsildar, R.C.Puram has reported that, the Mandal Surveyor, Mandal Revenue Inspector and Village Revenue Officer concerned were enquired in to the matter and reported that, the land to an extent of Ac.12.75 Cents in Sy.No.85 of C.K.Palle Village of Ramachandrapuram Mandal is identified and submitted their report stating that the land in Sy.No. 85 is classified as "Gutta Poramboke" and the subject land is lying vacant and free from disputes and encroachments. The Mandal Surveyor has reported that, Sy.No.85/9 measuring an extent Ac.04.00 for allotment with due procedure of law.

Further, the Tahsildar, R.C.Puram has reported that , the Govt. of A.P. has issued G.O.Ms.No.743, Revenue (B) Dept., dt:30.04.1963, with a view of emergency created by the unprovoked aggression on our borders by the Chinese and the consequent heavy responsibilities cast on our Jawans to safeguard the country, the govt. felt that a generous policy is called for in the matter of assignment of agricultural land to Jawans serving in various capacities and in Para 7 of the said G.O., it was clearly mentioned that all application under these rules shall be routed through the Secretary, State Soldiers, Sailors and Airmen's Board and the application should be duly certified by the Officer Commanding the regiment in which the jawans serve. The Secretary, State Soldiers, Sailors and Airmen's Board may send applications direct to the Collector of the certificate to which that the person who has applied for land is an ex-soldier. The application shall be made within twelve months from the date of discharge.

Further, the Tahsildar, R.C.Puram has reported that , the Govt. of A.P. has issued G.O.Ms.No.250 Revenue (Assn.I) Dept., dt:15.05.2018 constituting DLARC with a view to accord permission / approval for the list of beneficiaries identified by the Tahsildar under landless poor category as a matter of general assignment policy. The above G.O.Ms.No.250 has not suppressed the G.O.Ms. No.743, dt:30.04.1963 which was issued as a generous policy towards Jawans discharged from service.

Further, the Tahsildar, R.C.Puram has reported that , during enquiry and on verification of documents produced by the applicant, it is noticed that the individual was discharged from service on 31.12.2018 and his application was forwarded by the Zilla Sainik Welfare Officer, Chittoor vide Lr.No.1252/land/2019/A2,dt:16.06.2020 of the ZSWO, Chittoor to the District Collector, Chittoor. The applicant has filed affidavit stating that he was worked in Indian army as a soldier from 23.01.2002 to 31.12.2018 under the unit army artillery regt and have no house and landed property in the name of him and applied for grant of Assignment as per the Para 3 of G.O.M.S.No.861 (Q)Department ,Dt: 22.07.1985. (Affidavit enclosed).

Further, the Tahsildar, R.C.Puram has reported that , the subject land is not required for the house sites under NAVARATHNALU- PEDALANDARIKI ILLU Program or any other public purpose.

Finally, the Tahsildar, R.C.Puram has submitted proposals to issue necessary orders for issue of DKT patta in favor of Sri B.Venugopal Reddy S/o B.Rami Reddy, Ex-Service man, resident of Venkatapuram satram village of Puthalapattu Mandal of Chittoor District in the Sy.No.85/9 measuring an extent Ac.04.00. classified as "Gutta Poramboke" in C.K.Palle village of Ramachandrapuram Mandal and subject to condition that, orders will be approved as on when the assignment committee shall be conduct by enclosing the the record of enquiry, FMB copies and Village accounts and applicants documents for verification are submitted herewith for taking necessary action.

In view of the above, I submit herewith proposals of the Tahsildar, R.C.Puram to issue suitable orders for issue of assignment under ex-Serviceman quota in favor of Sri B.Venugopal Reddy S/o B.Rami Reddy, Ex-Service man, resident of Venkatapuram satram village of Puthalapattu Mandal of Chittoor District in the Sy.No.85/9 measuring an extent Ac.04.00, which is classified as "Gutta Poramboke" in C.K.Palle village of Ramachandrapuram Mandal by enclosing the proposals of the Tahsildar, R.C.Puram.

Encl: As above.

Yours faithfully,

Revenue Divisional Officer  
Chittoor.

Copy to the Tahsildar, R.C.Puram.

## Revenue Department

From  
Sri G.C.Venkateswarlu  
Tahsildar,  
R.C. Puram Mandal.

To  
The District Collector,  
Tirupati

(Through the Revenue Divisional Officer, Chittoor)

Roc. B / 88 /2020 Dt. 20.03.2023

Sir,

Sub: Assignment of Land under Ex-Service Man – Chittoor District – Application of Sri B.Venugopal Reddy, Ex-Service man - received from ZSWO, Chittoor District- for allotment of land under Ex-service men quota-Report Submitted

- Ref: 1.Roc E/1849/2020,dt: 26.04.2021 of the Revenue Divisional Officer,Chittoor  
2. REV-ESEC/144/2020-JA(E6)-COLL-CTR(27876120),dt:02-06-2020 of the District collector,Chittoor.  
3.Roc B/88/2020,dt:27.10.2020 of this office.  
4..Representation of Sri Sri B.Venugopal Reddy, Ex-Service man ,dt:02.09.2022  
5. Report of the VRO/ Mandal Revenue Inspector, R.C.Puram/ Mandal Surveyor, dt. 20.03.2023

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Kind attention is invited to the subject and references cited, It is submitted that in the reference 2nd cited The then District Collector, Chittoor Collector, chittoor while forwarding the application of One Sri B.Venugopal Reddy S/o B.Rami Reddy, Ex-Service man, resident of Venkatapuram satram village of Puthalapattu Mandal of Chittoor District for assignment of Government land in Sy.No.181 in Anupalle village of Ramachandrapuram under Ex-Service Men Quota.and directed to pursue the application with the following conditions as per the CCLA, A.P., Vijayawada vide Lr.No:Assn-I(1)/1297/2019, dt:31.08.2019 and instructed to furnish feasibility report wheather the lands are required for public purpose

In this connection, on verification of records, it is noticed that the then Tahsildar vide reference 3<sup>rd</sup> sited has submitted report to the District collector chittoor as the land in Sy.No.181/1 is classified as Kaluva and Gutta and the matter has got into enquired by the Village revenue officer, Anupalle and Mandal revenue Inspector, Ramachandrapuram and submitted their report stating that the Sy.No.181/1 is classified as Kaluva & Gutta and no land was available and the said land is not fit for cultivation.

Further, I submit that later<sup>35</sup>, the Mandal Surveyor, Mandal Revenue Inspector and Village Revenue Officer concerned were enquired in to the matter and reported that, the land to an extent of Ac.12.75 Cents in Sy.No.85 of C.K.Palle Village of Ramachandrapuram Mandal is identified and submitted their report stating that the land in Sy.No. 85 is classified as "Gutta Poramboke" and the subject land is lying vacant and free from disputes and encroachments. The Mandal Surveyor has reported that, Sy.No.85/9 measuring an extent Ac.04.00 for allotment with due procedure of law.

Further, the applicant has submitted the representation to alter the land as the land allotted in C.K.Palle Village in Sy.no.85 is lying as hillock, rocky, no road connectivity and also not useful for any agricultural purpose and requested to allot the land in Nethakuppam Village of Ramachandrapuram.

Further it is submitted that during field inspection it is noticed that the land which was already proposed for assignment in favour of Petitioner under Ex-servicemen quota, is not feasible since, there is no accessibility to the proposed land and it is covered by boulders and hillocks. Hence as per the request of the applicant an alternate land has been identified in the Gap area located between Nethakuppam Revenue Village and after obtaining the forest clearance the proposal has been submitted for the Additional Director Survey for scrutiny and subdivision. The Assistant director , Survey and land records has scrutinized the said subdivision record and the survey number 428 measuring an extent of Ac.10.00cts has been assigned and the part of the said land in Sy.No.428/2 an Extent Ac.05.00 is proposed for assignment of the land in favour of applicant under Ex-servicemen quota.

Further it is submitted that, the Govt. of A.P. has issued G.O.Ms.No.250 Revenue (Assn.I) Dept., dt:15.05.2018 constituting DLARC with a view to accord permission / approval for the list of beneficiaries identified by the Tahsildar under landless poor category as a matter of general assignment policy. The above G.O.Ms.No.250 has not suppressed the G.O.Ms. No.743, dt:30.04.1963 which was issued as a generous policy towards Jawans discharged from service.

It is further submitted that, during enquiry and on verification of documents produced by the applicant, it is noticed that the individual was discharged from service on 31.12.2018 and his application was forwarded by the Zilla Sainik Welfare Officer, Chittoor vide Lr.No.1252/land/2019/A2,dt:16.06.2020 of the ZSWO, Chittoor to the District Collector, Chittoor. The applicant has submitted his report stating that he was worked in Indian army as a soldier from 23.01.2002 to 31.12.2018 under the unit army artillery regt and have no house and landed property in the name of him and applied for grant of Assignment as per the Para 3 of G.O.M.S.No.861 (Q)Department ,Dt: 22.07.1985.

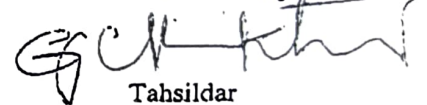
It is submitted that A1 notice has been published in the panchayat by the village revenue Officer, Nethakuppam and Mandal Revenue Inspector, Rcpuram , no objections has been not received from the villagers and also Gram panchayat resolution is also submitted by the Special Officer,

Nethakuppam for allotment of land in the said Sy.No.428 in Nethakuppam under Ex-military man quota and also the subject land is not required for the house sites under NAVARATHNALU- PEDALANDARIKI ILLU Program or any other public purpose.

Hence, the proposal is here by submitted for issue of DKT patta in favor of Sri B.Venugopal Reddy S/o B.Rami Reddy, Ex-Service man, resident of Venkatapuram satram village of Puthalapattu Mandal of Chittoor District in the Sy.No.428/2 measuring an extent Ac5.00 classified as "Gap area" in Nethakuppam village of Ramachandrapuram Mandal and to approve the orders by the assignment committee

The record of enquiry, FMB copies and Village accounts and applicants documents for verification are submitted herewith for taking necessary action.

Yours faithfully



Tahsildar  
Ramachandrapuram

Copy submitted to the District Collector, Chittoor for favor of kind information

File No.REV02-LAND0ALN/11/2023-DT-E2-COLL.FPT

Annexure -9

PROCEEDINGS OF THE COLLECTOR & DISTRICT MAGISTRATE, TIRUPATIPRESENT: SRI K. VENKATA RAMANA REDDY, I.A.S.Rc.E1/951/2023

Dated:14/09/2023

Sub:-Assignment of Land under Ex - Servicemen category - Tirupati  
District - Tirupati Division - Sri B. Venugopal Reddy S/o Rami Reddy have filed a application before the Zilla Sainik Welfare Officer, Tirupati with a request to grant assignment for an extent of Acs:5.00cts under Ex Servicemen Category - Land Identified for an extent of Acs:5.00cts in Sy No:428-2 of Nethakuppam village of Ramachandrapuram mandal - Assignment Review Committee approved - Assignment Review Committee Approved - Tahsildar directed to issue Assignment Patta - Orders issued Reg.

- Read:-1) Application filed by Sri B. Venugopal Reddy S/o B. Rami Reddy before the Zilla Sainik Welfare Officer, Chittoor Dt:08-07-2019.  
2) Zilla Sainik Welfare Officer, Chittoor Lr.No:1252/land/2019/A1, Dt:15-07-2019  
3) G.O.Ms No:743 Revenue Department, Dt:30-04-1963.  
4) Tahsildar, Ramachandrapuram Mandal Lr.No:Roc.B/88/2020, Dt:20.03.2023.  
5) Revenue Divisional Officer Lr.No:Roc.G/505/2023, Dt:15.04.2023  
6) This Office Lr.No:Rc.E1/951/2023, Dt:17.06.2023.  
7) Zilla Sainik Welfare Officer, Chittoor Lr.No:Rc.No.A/AgI.Land/Misc/816/2023, Dt:19.06.2023.  
8) Minutes of the Assignment Review Committee approved by the Incharge Minister.  
9) G.O.Ms No:1142 Revenue Department, Dt:18-06-1954.  
10) CCLA's Ref No: Assn-I(1)/1297/2019, Dt:31.08.2019.  
11) G.O.Ms No:128 Revenue (Assignment-I) Department, Dt:04.04.2016.  
12) G.O.Ms No:250 Revenue (Assgn.I) Department, Dt:15-05-2018.  
13) Chief Commissioner of Land Administration, A.P. Managalagiri Lr.No: Assn.I(1)/350/2022, Dt:04.05.2022.

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ORDER:-

In the reference 1<sup>st</sup> read above, Sri B. Venugopal Reddy S/o B. Rami Reddy, resident of Venkatapuram Satram village of Puthalapattu

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Mandal of Chittoor District have filed a application before the Zilla Sainik Welfare Officer, Chittoor stating that he has served in the Indian Army from Dt:22.01.2002 to 31-12-2018 under the unit of Army Artillery Madras 70 Medium regt., and finally submitted requisition to allot land to an extent of Acs:5.00cts in Nethakuppam Village of Ramachandrapuram mandal under Ex - Servicemen Category.

In the reference 2<sup>nd</sup> read above, the then Zilla Sainik Welfare Officer, Chittoor has informed the Erstwhile Collector & Dist. Magistrate, Chittoor stating that Sri B. Venugopal Reddy S/o Rami Reddy was enrolled in the Indian Army on Dt:23-01-2002 in Artillery and discharged from the service on Dt:31-12-2018 and requested to grant assignment under Assignment category and forwarded the application for taking further action.

Further, the Erstwhile Collector & Dist. Magistrate, Chittoor vide Lr.No:REV-ESEC/144/2020-JA (E6) - COLL- CTR (27876120), Dt:02.06.2020 has forwarded the application of Sri B. Venugopal Reddy and directed the Tahsildar, Ramachandrapuram to identify the land to an extent of Acs:5.00cts and furnish feasibility report.

Further, in the reference 4<sup>th</sup> & 5<sup>th</sup> read above, the Tahsildar Ramachandrapuram Mandal and Revenue Divisional Officer, Tirupati has submitted a detailed report stating that the applicant Sri B. Venugopal Reddy S/o Rami Reddy was born on Dt:31.05.1984 and enrolled in the service on Dt:23-01-2002 and discharged from the service on Dt:31-12-2018 under the unit of Army Artillery Madras 70 Medium Regt., and further the Tahsildar, Ramachandrapuram reported that he has identified and personally inspected the lands in Sy No:428 measuring to an extent of Acs:10.00cts which classified as " GAP AREA" of Nethakuppam village and out of the total extent, an extent of Acs:5.00cts in Sy No:428-2 was proposed for Assignment.

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Further, the Revenue Divisional Officer, Tirupati reported that, the District Survey and Land Records Officer, Tirupati has scrutinised the Sy No and sub - divided the same. Further A1 notice was published at Panchayat through the Village Revenue Officer, Nethakuppam and Mandal Revenue Inspector, Ramachandra Puram, no objections were received from the villagers and the Special Officer of Nethakuppam Gram Panchayat has also issued their resolution for allotment of land to an extent of Acs:5.00cts in Sy No:428-2 in favour of Sri B. Venugopal Reddy S/o Rami Reddy under Ex - Servicemen category and further reported that the said land is not required for the purpose of house sites under Navarathnalu - Pedalandariki Illu scheme or any other public purpose.

Finally, the Tahsildar Ramachandrapuram and Revenue Divisional Officer, Tirupati has recommended to grant Assignment Patta in favour of Sri B. Venugopal Reddy S/o B. Rami Reddy for the land to an extent of Acs:5.00cts in SY No:428-2 of Nethakuppam village of Ramachandrapuram mandal which classified as " GAP AREA" and recommended to place the above proposal before the District Assignment Review Committee.

Further, the District Forest Officer, Tirupati vide Lr.No:Rc.No:192/2023/TO, Dt:04.02.2023 has informed that the Forest Range Officer, Tirupati & concerned staff have inspected and stated that the proposed land falls in Western side of Nethakuppam village and at a distance of 60 meters from Dornakambala Reserve Forests.

Further, the Govt., of Andhra Pradesh vide G.O.Ms NO:743 Revenue Dept., Dt:30-04-1963 has issued guidelines stating that " All Jawans domiciled in Andhra Pradesh and serving in the defence forces of India, will after demobilisation, be eligible for the assignment of lands in their own villages or elsewhere under these rules. Each Jawan will be eligible for the grant of an extent of Acs:2.50cts wet or Acs:5.00cts Dry land provided that the total extent of land Acs:2.50 Wet or Ac.5.00 Dry.

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Further, as verified from the Web Land/ Navasakam portal of A.P to know whether the applicant has already owned any land or not, and after verification, it is noticed that the applicant or his family members haven't owned any land and hence the applicant was eligible for grant of Assignment.

In view of the guidelines issued by the Govt., of A.P., a letter vide this office Rc.E1/951/2023 to the Zilla Sainik Welfare Officer, Chittoor with request to submit remarks whether Sri B. Venugopal Reddy S/o Rami Reddy was served in the Army or not and a detailed report on the genuineness on the above issue for taking further action in the matter.

Accordingly, the Zilla Sainik Welfare Officer, Chittoor vide Lr.No:Rc.No:A/Agl.Land/Misc/816/2023, Dt:19.06.2023 has informed that the said Ex - Servicemen has applied for assignment of Agricultural land within in the prescribed time limit as per the existing orders in force and the same has already been recommended to the Collector & Dist. Magistrate, Trupati vide their office earlier Lr.No:1252/land/2019/A1, Dt:15.07.2019 and further reported that the Ex - Servicemen was also issued Identity Card bearing No:AP-6759861, Dt:03.01.2019 has been issued to Ex - Serviceman by this office and he is a bonafide Ex - Serviceman eligible for all the benefits extended by the state / Central Government subject to the conditions laid down in the respective orders in force.

In this connection, the Govt., of A.P. vide G.O.Ms No:250 Revenue (Assn.I) Dept., Dt:15-05-2018 has stated that, after careful examination of the proposal of the Special C.S & Chief Commissioner of Land Administration, A.P. in suppression of the orders issued in GOs No:146, Revenue (L.Ref) Dept., Dt:05.02.1996 to G.O.Ms No:412, Revenue (Land Reforms) Dept., Dt:28.06.2012, Government hereby reconstitute the District Level Assignment Review Committee under the Chairmanship of District Incharge Minister with the Members as follows;

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- |   |   |                   |
|---|---|-------------------|
| 1. District Incharge Minister                 | - | Chairman          |
| 2. Concerned District Minister/               | - | Members           |
| 3. Joint Collector                            | - | Member – Convenor |
| 4. MLCs who choose the constituency concerned | - | Special invitee   |
| 5. MLA of the Assembly Constituency Concerned | - | Member            |
| 6. RDO/ Sub – Collector concerned             | - | Member            |

Further, the District Level Assignment Review Committee under the Chairmanship of District Incharge Minister has met on Dt: 15-07-2023 for the purpose of granting assignments in favour of eligible beneficiaries and the committee has also approved and recommended to grant assignment for the land to an extent of Acs:5.00cts in Sy No:428-2 of Nethakuppam village of Ramachandrapuram Mandal in favour of Sri B. Venugopal Reddy S/o Rami Reddy under Ex – Servicemen category.

Further, the Govt., of A.P., vide G.O.Ms No:279, Revenue (Assn.I) Dept., Dt:04-07-2016 and the Chief Commissioner of Land Administration, A.P., Mangalagiri has issued circular instructions vide Assn.I(1)/350/2022, Dt:04.05.2022 dispensing with the procedure of issuing NOCs that “ there shall be no need for obtaining NOC in all cases of assignment of Ex – Servicemen in which a period of 10 years has been expired and there is no dispute on the land with the Government” and the lands assigned to Ex – Servicemen may be kept in separate Annexure in 22(A)(1) with date of Assignment certified by the District Collector with a clause that all the assigned lands to Ex – Servicemen shall stand withdrawn from 22(A)(1) list to sell the lands assigned under Ex – Servicemen category.”

Further, the Govt., vide G.O.Ms No:128 Revenue (Assn.I) Dept., Dt:04.04.2016 has issued amendment for the condition No.1 in G.O.Ms No:840, Revenue (Assn.I) Dept., Dt:04.04.2016 of D- Form patta of Telugu version, the following shall be substituted namely;

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" అస్సైన్ టునులను వ్యవసాయం మరియు నెలబందీల అనుబంధ కార్యకలాపాలు - ఉద్యానవన, వ్యవసాయగుల పెంపకం, వనంజనం, వనం, తోటలు పెంపకం, కోళ్ళ పెంపకం, గొర్రల పెంపకం, మేకలు పెంపకం, వంటి వ్యయోజనముల కోసం ఉపయోగించ వచ్చును, ఏదేని ఇతర వ్యయోజనాల కొరకు ఉపయోగించకూడదు."

Further, Chief Commissioner of Land Administration, A.P. Mangalagiri vide circular instructions No:Assn.I(1)/350/2022, Dt:04.05.2022 has issued instructions stating that " The Collector shall ensure that such assignment is as per instructions by examining the matter on electronic file in e-office.

Further, in view of the guidelines issued in G.O.Ms No: 743 Revenue Department, Dt:30-04-1963, G.O.Ms No:1142 Revenue Department, Dt:18-06-1954, CCLA's Ref No: Assn-I(1)/1297/2019, Dt:31.08.2019, G.O.Ms No:128 Revenue (Assignment-I) Department, Dt:04.04.2016, G.O.Ms No:250 Revenue (Assgn.I) Department, Dt:15-05-2018, Chief Commissioner of Land Administration, A.P. Managalagiri Lr.No: Assn.I(1)/350/2022, Dt:04.05.2022, the Tahsildar, Ramachandrapuram mandal is directed to once again re verify the genuineness of the Ex - Servicemen and further directed to issue Assignment Patta for the land to an extent of Acs:5.00cts in Sy No:428-2 (GAP AREA) of Nethakuppam village of Ramachandrapuram Mandal in favour of Sri B. Venugopal Reddy S/o Rami Reddy duly strictly following the procedure laid down under B.S.O -15 for grating assignment of Government land to Ex - Servicemen subject to the following conditions;

- a. Land Assigned should not be sold or otherwise alienated for a period of ten Years.
- b. Lands Assigned shall be brought under cultivation within 3 years .
- c. Cultivation shall be by the assignee or members of his family or with hired labour under the supervision of himself or a members of his family.

Further, the Tahsildar, Ramachandrapuram mandal was further directed to issue Pattadar Pass Books along with D- Patta duly

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incorporations varied out in all Revenue records and to take necessary action as per above said rules and submit action report for record purpose. Further, the District Registrar, Tirupati is hereby directed to prohibit the land to an extent of Acs:5.00cts in Sy.No:428-2 of Nethakuppam village of Ramachandrapuram Mandal under section 22(A)(1)(A) as Ex - Servicemen assigned land and further directed to delete the same from the Prohibited Properties U/s 22(A)(1)(a) in which a period of 10 years has expired from the date of granting assignment when there is no dispute on the land with the Government.

This order does not confirm any right to the applicant over the title of the land and found if any mistake of fact or misrepresentation of facts in the documents submitted by the applicant, the undersigned reserves the right to cancel the said Assignment Patta which issued in favour of the petitioner.

This order was issued subject to the outcome of orders if any pending as O.S / W.Ps / SLPs in Civil Courts/ High Courts/ Supreme Courts.

K V Ramana Reddy  
Collector & District Magistrate,  
Tirupati.

To  
The Tahsildar, Ramachandrapuram Mandal.  
The District Registrar, Tirupati.  
Copy to Sri B. Venugopal Reddy S/o B. Rami Reddy, resident of  
Venkatapuram Satram village of Puthalapattu Mandal of Chittoor District.

Copy to the Revenue Divisional Officer, Tirupati.

Signed by K V Ramana  
Reddy  
Date: 14-09-2023 10:22:07  
Reason: Approved

**PROCEEDINGS OF THE COLLECTOR & DISTRICT MAGISTRATE, TIRUPATI****PRESENT: SRI K. VENKATA RAMANA REDDY, I.A.S.****Rc.E1/1193/2023****Dated: 14/09/2023****Sub:-Assignment of Land under Ex - Servicemen category - Tirupati**

District - Tirupati Division - Sri P. Jagadeesh Babu S/o Rathnam Reddy have filed a application before the Zilla Sainik Welfare Officer, Tirupati with a request to grant assignment for an extent of Acs:5.00cts under Ex - Servicemen Category - Land Identified for an extent of Acs:5.00cts in Sy No:428-1 of Nethakuppam village of Ramachandrapuram mandal - Assignment Review Committee approved Tahsildar directed to issue Assignment Patta in favour of applicant - Orders issued - Reg.

- Ref:-
- 1) Application filed by Sri P. Jagadeesh Babu S/o Rathnam Reddy before the Zilla Sainik Welfare Officer, Chittoor Dt:08-07-2019.
  - 2) Zilla Sainik Welfare Officer, Chittoor Lr.No:1253/land/2019/A1, Dt:15-07-2019
  - 3) G.O.Ms No:743 Revenue Department, Dt:30-04-1963.
  - 4) Tahsildar, Ramachandrapuram Mandal Lr.No:Roc.B/88/2020, Dt:21.03.2023.
  - 5) Revenue Divisional Officer Lr.No:Roc.G/506/2023, Dt:15.04.2023
  - 6) This Office Lr.No:Rc.E1/1193/2023, Dt:10.07.2023.
  - 7) Zilla Sainik Welfare Officer, Chittoor Lr.No:Rc.No.A/Agl.Land/Misc/972/2023, Dt:13.07.2023.
  - 8) Minutes of the Assignment Review Committee approved by the Incharge Minister.
  - 9) G.O.Ms No:1142 Revenue Department, Dt:18-06-1954.
  - 10) CCLA's Ref No: Assn-I(1)/1297/2019, Dt:31.08.2019.
  - 11) G.O.Ms No:128 Revenue (Assignment-I) Department, Dt:04.04.2016.
  - 12) G.O.Ms No:250 Revenue (Assgn.I) Department, Dt:15-05-2018.
  - 13) Chief Commissioner of Land Administration, A.P. Managalagiri Lr.No: Assn.I(1)/350/2022, Dt:04.05.2022.

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**ORDER:-**

In the reference 1<sup>st</sup> read above, Sri P. Jagadeesh Babu S/o rathnam Reddy, resident of Kurapalli village of Irala Mandal of Chittoor District have filed a application before the Zilla Sainik Welfare Officer, Chittoor stating

that he has served in the Indian Army from Dt:20-02-2001 as Havaldar in Artillery and discharged from the service on Dt:31-12-2018 and finally submitted requisition to allot land to an extent of Acs:5.00cts in Nethakuppam Village of Ramachandrapuram mandal under Ex - Servicemen Category.

In the reference 2<sup>nd</sup> read above, the then Zilla Sainik Welfare Officer, Chittoor has informed the Erstwhile Collector & Dist. Magistrate, Chittoor stating that Sri P. Jagadeesh Babu S/o Rathnam Reddy was enrolled in the Indian Army on Dt:20-02-2001 as Havaldar in Artillery and discharged from the service on Dt:31-12-2018 and recommended to grant assignment under Assignment category and forwarded the application for taking further action.

Further, the Erstwhile Collector & Dist. Magistrate, Chittoor vide Lr.No:REV-ESEC/144/2020-JA (E6) - COLL- CTR (27876120), Dt:02.06.2020 has forwarded the application of Sri P. Jagadeesh Babu S/o P. Rathnam Reddy and directed the Tahsildar, Ramachandrapuram to identify the land to an extent of Acs:5.00cts and furnish feasibility report.

Further, in the reference 4<sup>th</sup> & 5<sup>th</sup> read above, the Tahsildar Ramachandrapuram Mandal and Revenue Divisional Officer, Tirupati has submitted a detailed report stating that the applicant Sri P. Jagadeesh Babu S/o P. Rathnam Reddy was born on Dt:21.06.1983 and enrolled in the service on Dt:20-02-2001 and discharged from the service on Dt:31-12-2018 as Havaldar under the unit of 10 Engineer Regt., and further the Tahsildar, Ramachandrapuram reported that he has identified and personally inspected the lands in Sy No:428 measuring to an extent of Acs:10.00cts which classified as "GAP AREA" of Nethakuppam village and out of the total extent, an extent of Acs:5.00cts in Sy No:428-1 was proposed for Assignment.

Further, the Revenue Divisional Officer, Tirupati reported that, the District Survey and Land Records Officer, Tirupati has scrutinised the Sy No and sub - divided the same. Further A1 notice was published at Panchayat through the Village Revenue Officer, Nethakuppam and Mandal Revenue Inspector, Ramachandra Puram, no objections were received from the villagers and the Special Officer of Nethakuppam Gram Panchayat has also issued their resolution for allotment of land to an extent of Acs:5.00cts in Sy No:428-1 in favour of Sri P. Jagadeesh Babu S/o P. Rathnam Reddy under Ex - Servicemen category and further reported that the said land is not required for the purpose of house sites under Navarathnalu - Pedalandariki Illu scheme or any other public purpose.

Finally, the Tahsildar Ramachandrapuram and Revenue Divisional Officer, Tirupati has recommended to grant Assignment Patta in favour of Sri P. Jagadeesh Babu S/o Rathnam Reddy for the land to an extent of Acs:5.00cts in SY No:428-1 of Nethakuppam village of Ramachandrapuram mandal which classified as " GAP AREA" and recommended to place the above proposal before the District Assignment Review Committee.

Further, the District Forest Officer, Tirupati vide Lr.No:Rc.No:192/2023/TO, Dt:04.02.2023 has informed that the Forest Range Officer, Tirupati & concerned staff have inspected and stated that the proposed land falls in Western side of Nethakuppam village and at a distance of 60 meters from Dornakambala Reserve Forests.

Further, the Govt., of Andhra Pradesh vide G.O.Ms NO:743 Revenue Dept., Dt:30-04-1963 has issued guidelines stating that " All Jawans domiciled in Andhra Pradesh and serving in the defence forces of India, will after demobilisation, be eligible for the assignment of lands in their own villages or elsewhere under these rules. Each Jawan will be eligible for the grant of an extent of Acs:2.50cts wet or Acs:5.00cts Dry land provided that the total extent of land already owned plus the land assigned to him, shall

not exceed Acs:2.50 Wet or Ac.5.00 Dry.

Further, as verified from the Web Land/ Navasakam portal of A.P to know whether the applicant has already owned any land or not, and after verification, it is noticed that the applicant or his family members haven't owned any land and hence the applicant was eligible for grant of Assignment.

In view of the guidelines issued by the Govt., of A.P., a letter vide this office Rc.E1/1193/2023, Dt:10.07.2023 to the Zilla Sainik Welfare Officer, Chittoor with request to submit remarks whether Sri P. Jagadeesh Babu S/o Rathnam Reddy was served in the Army or not and a detailed report on the genuinity on the above issue for taking further action in the matter.

Accordingly, the Zilla Sainik Welfare Officer, Chittoor vide Lr.No:Rc.No:A/Agl.Land/Misc/972/2023, Dt:13.07.2023 has informed that the said Ex - Servicemen has applied for assignment of Agricultural land within in the prescribed time limit as per the existing orders in force and the same has already been recommended to the Collector & Dist. Magistrate, Tirupati vide their office earlier Lr.No:1252/land/2019/A1, Dt:15.07.2019 and further reported that the Ex - Servicemen was also issued Identity Card bearing No:AP-02/6759855, Dt:02.01.2019 has been issued to Ex - Serviceman by this office and he is a bonafide Ex - Serviceman eligible for all the benefits extended by the state / Central Government subject to the conditions laid down in the respective orders in force.

In this connection, the Govt., of A.P. vide G.O.Ms No:250 Revenue (Assn.I) Dept., Dt:15-05-2018 has stated that, after careful examination of the proposal of the Special C.S & Chief Commissioner of Land Administration, A.P. in suppression of the orders issued in GOs No:146, Revenue (L.Ref) Dept., Dt:05.02.1996 to G.O.Ms No:412, Revenue (Land Reforms) Dept., Dt:28.06.2012, Government hereby reconstitute the District

Level Assignment Review Committee under the Chairmanship of District Incharge Minister with the Members as follows;

- |   |   |                   |
|---|---|-------------------|
| 1. District Incharge Minister                 | - | Chairman          |
| 2. Concerned District Minister/s              | - | Members           |
| 3. Joint Collector                            | - | Member - Convenor |
| 4. MLCs who choose the constituency concerned | - | Special invitee   |
| 5. MLA of the Assembly Constituency Concerned | - | Member            |
| 6. RDO/ Sub - Collector concerned             | - | Member            |

Further, the District Level Assignment Review Committee under the Chairmanship of District Incharge Minister has met on Dt: -08-2023 for the purpose of granting assignments in favour of eligible beneficiaries and the committee has also approved and recommended to grant assignment for the land to an extent of Acs:5.00cts in Sy No:428-2 of Nethakuppam village of Ramachandrapuram Mandal in favour of Sri B. Venugopal Reddy S/o Rami Reddy under Ex - Servicemen category.

Further, the Govt., of A.P., vide G.O.Ms No:279, Revenue (Assn.I) Dept., Dt:04-07-2016 and the Chief Commissioner of Land Administration, A.P., Mangalagiri has issued circular instructions vide Assn.I(1)/350/2022, Dt:04.05.2022 dispensing with the procedure of issuing NOCs that "**there shall be no need for obtaining NOC in all cases of assignment of Ex - Servicemen in which a period of 10 years has been expired and there is no dispute on the land with the Government**" and the lands assigned to **Ex - Servicemen may be kept in separate Annexure in 22(A)(1) with date of Assignment certified by the District Collector with a clause that all the assigned lands to Ex - Servicemen shall stand withdrawn from 22(A)(1) list to sell the lands assigned under Ex - Servicemen category.**"

Further, the Govt., vide G.O.Ms No:128 Revenue (Assn.I) Dept., Dt:04.04.2016 has issued amendment for the condition No.1 in G.O.Ms

No:840, Revenue (Assn.I) Dept., Dt:04.04.2016 of D- Form patta of Telugu version, the follwoung shall be substituted namely;

“ అస్సైన్డ్ భూములను వ్యవసాయం మరియు సంబంధిత అనుబంధ కార్యకలాపాలు - ఉద్యానవన, వట్టుపురుగుల పెంపకం, వశుపోషణ, చేపల, రొయ్యల పెంపకం, కోళ్ళ పెంపకం, గొర్రెల పెంపకం, మేకలు పెంపకం, వంటి వ్యయోజనముల కోసం ఉపయోగించ వచ్చును. ఏదేని ఇతర వ్యయోజనాల కొరకు ఉపయోగించకూడదు.”

Further, Chief Commissioner of Land Administration, A.P. Mangalagiri vide circular instructions No:Assn.I(1)/350/2022, Dt:04.05.2022 has issued instructions stating that “ The Collector shall ensure that such assignment is as per instructions by examining the matter on electronic file in e-office.

Further, in view of the guidelines issued in G.O.Ms No: 743 Revenue Department, Dt:30-04-1963, G.O.Ms No:1142 Revenue Department, Dt:18-06-1954, CCLA's Ref No: Assn-I(1)/1297/2019, Dt:31.08.2019, G.O.Ms No:128 Revenue (Assignment-I) Department, Dt:04.04.2016, G.O.Ms No:250 Revenue (Assgn.I) Department, Dt:15-05-2018, Chief Commissioner of Land Administration, A.P. Managalagiri Lr.No: Assn.I(1)/350/2022, Dt:04.05.2022, the Tahsildar, Ramachandrapuram mandal is directed to once again re verify the genuineness of the Ex - Servicemen and further directed to issue Assignment Patta for the land to an extent of Acs:5.00cts in Sy No:428-1 (GAP AREA) of Nethakuppam village of Ramachandrapuram Mandal in favour of Sri P. Jagadeesh Babu S/o Rathnam Reddy duly strictly following the procedure laid down under B.S.O -15 for grating assignment of Government land to Ex - Servicemen subject to the following conditions;

- a. Land Assigned should not be sold or otherwise alienated for a period of ten Years.
- b. Lands Assigned shall be brought under cultivation within 3 years .
- c. Cultivation shall be by the assignee or members of his family or with hired labour under the supervision of himself or a members of his family.

Further, the Tahsildar, Ramachandrapuram mandal was further directed to issue Pattadar Pass Books along with D- Patta duly incorporations varied out in all Revenue records and to take necessary action as per above said rules and submit action report for record purpose.

Further, the District Registrar, Tirupati is hereby directed to prohibit the land to an extent of Acs:5.00cts in Sy.No:428-1 of Nethakuppam village of Ramachandrapuram Mandal under section 22(A)(1)(A) as Ex - Servicemen assigned land and further directed to delete the same form the Prohibited Properties U/s 22(A)(1)(a) in which a period of 10 years has expired from the date of granting assignment when there is no dispute on the land with the Government.

This order does not confirm any right to the applicant over the title of the land and found if any mistake of fact or misrepresentation of facts in the documents submitted by the applicant, the undersigned reserves the right to cancel the said Assignment Patta which issued in favour of the petitioner.

This order was issued subject to the outcome of orders if any pending as O.S / W.Ps / SLPs in Civil Courts/ High Courts/ Supreme Courts.

K V Ramana Reddy  
Collector & District Magistrate,  
Tirupati.

To

The Tahsildar, Ramachandrapuram Mandal.

The District Registrar, Tirupati.

Copy to Sri P. Jagadeesh Babu S/o Rathnam Reddy, resident of Kurapalli village of Irala Mandal of Chittoor District.

Copy to the Revenue Divisional Officer, Tirupati.

FAIR AREA LISTDistrict: TirupathiBlock No: Gap AreaV.No: 11Mandal: R.C.PuramN.S.Nos. 428V.Name: Nethakuppam

Survey Number	Sub-division Number	Area in	
		Acres	Hectares
1	2	3	4
428	-	10.00	4.05.0
Total:-		10.00	4.05.0
A- List			
428	-	10.00	4.05.0

Survey Number	Sub-division Number	Area in	
		Acres	Hectares
1	2	3	4
ABSTRACT			
Actual area of the old block No. Gap Area		Gap Area	
Area of newly splitted S.Nos 428		10.00	4.05.0
Residual area of the old block No Gap Area		Gap Area	

Fair area list prepared by

K. Usharavi  
9/2/23  
C.D.S-II

PRE-SCRUTINISED

INSPECTOR OF SURVEY  
O/o DISTRICT SURVEY AND LAND RECORDS  
TIRUPATI DISTRICT

09/02/2023  
Som/c

ROUGH AREA LIST.

<b>DISTRICT :TIRUPATI</b>	<b>BL.NO: GAP AREA</b>	<b>V.NO:11</b>
<b>MANDAL: R C PURAM</b>	<b>NS. NO:428</b>	<b>VILLAGE NAME: NETHAKUPPAM</b>

New Survey Number	Sub Division Number	Acres In	
		Acres	Hectares
1	2	3	4
428	-	10.00	4.05.0
	<u>Total</u>	<u>10.00</u>	<u>4.05.0</u>
A List			
428	-	10.00	4.05.0
	<u>Total</u>	<u>10.00</u>	<u>4.05.0</u>

New Survey Number	sub division Number	Area in	
		Acres	Hectares
428		10.00	4.05.0
Abstract			
<u>Actual area of the Block No</u>	<u>Gap</u>	<u>Area</u>	
Area of Newly splitted S No 428 only	10.00	4.05.0	
Resudal area of the old Block No Gap area	Gap AREA		

*G. Ch. K. S.*  
Tahsildar  
Ramachandrapuram Mandal  
Tirupati District

*R. S.*  
MANDAL SURVEYOR  
RAMACHANDRAPURAM (M)  
TIRUPATI DISTRICT

## Annexure -12

Checklist for Assignment Application

- 1) Name of the Applicant : B. Venu Gopal Reddy
- 2) Relation Name : B. Rami Reddy
- 3) Age : 39 yrs
- 4) Social status : Married
- 5) Whether he comes under BPL Category : NO (yes/No)
- 6) Details of Ration card Number : -
- 7) Details of Adhar Number : 6304 1179 4096
- 8) Total family members : 6 members
- 9) Occupation of the family : Ex Serviceman
- 10) Annual Income of the Family : 2,52,000/- per annum
- 11) Residential Address  
Residing from ---- Years : U-31 C, Venkatapuram satam,  
pedavaram, chittoor.
- 12) Details of Agricultural lands  
Owned by family members : Sy.No Extent Name of the Rev. Village  
NIL
- 13) Any Assignments made to  
the family members : Yes/No (if Yes) ✓  
Sy.No Extent Village Year of Assignment  
NIL
- 13) Name of the Mandal : Rainachandrapuram
- 14) Name of the Revenue Village : Nethakuppam
- 15) Details of claimed Survey number along  
with Sub Division : 428/2
- 16) Extent proposed : A 5.00 cents
- 17) Whether it is Sivoijamedar occupation  
(or) Fresh Assignment : Land allotted under ex-mili  
quota
- 18) Nature and classification as per  
A Register/Fair Adangal : Gap Area
- 19) Total extent as per A Register/F. Adangal : A 10.00 cents
- 20) Whether A1 notice published or not : Yes Published
- 21) Objections if any : NO
- 22) Present status of the land : (Vacant/Occupation) Vacant
- 23) whether the proposed land is free from  
Civil disputes or not : Yes


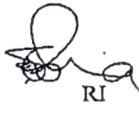
24) Gramasabha Resolution with date


25) Whether the proposed land is useful for : Yes/No  
Bonafide Public purpose Navaratnalu  
Pedalandariki illu/SEZ, etc


No

26) Whether the Application is  
Accepted/Rejected

Accepted

  
VRO VRO  
  
RI

  
MS

  
TAHSILDAR  
RAMACHANDRAPURAM (M  
TIRUPATI DISTRICT

G. Raghava Das And Etc. Etc. vs Government Of Andhra Pradesh And Ors. on 23 January, 1987

## **G. Raghava Das And Etc. Etc. vs Government Of Andhra Pradesh And Ors. on 23 January, 1987**

**Equivalent citations: AIR1987AP166, AIR 1987 ANDHRA PRADESH 166, (1987) 1 ANDH LT 210 (1987) 1 APLJ 195, (1987) 1 APLJ 195**

### JUDGMENT

Amareswari, J.

1. These three writ petitions involve a common question of law as to the interpretation of S. 2, Forest (Conservation) Act, 1980 (Act 69 of 1980).

2. The brief facts are as follows :-

The petitioner in Writ Petition No. 6357 of 1983 was granted a mining lease for one year on 23-5-1980 over an extent of 9 acres 30 cents in Tadepalli, Mangalagiri Taluk for murrum and road metal. He made an application for renewal on 11-2-1981 within the specified time. The application was rejected by the Deputy Director of Mines and Geology by order dt. 3-4-1981 on the ground that the applied area is situate in a reserve forest and as per Ordinance No. 17 of 1980 (later replaced by Act 69 of 1980) "reserved areas should not be put for a non-forest use". The petitioner carried the matter in appeal to the State Government under R. 35, Andhra Pradesh Minor Mineral Concession Rules, 1966. The State Government by its order dt. 30-4-1983 dismissed the appeal. It is the validity of these two orders that is challenged in this writ petition.

3. The petitioner in Writ Petition Nos. 6788 of 1983 and 7234 of 1985 was granted a mining lease for quarrying limestone over an extent of 58 acres in Survey No. 120 of Madinapadu, notified as a reserve forest area in Piduguralla Taluk, Guntur District. As the lease was expiring on 8-5-1982 an application for renewal was made on 30-4-1981. The application was not disposed of within two months as required by the Rules. A revision was filed before the Central Government under S. 30, Mines and Minerals (Regulation and Development) Act against the deemed rejection. The Central Government allowed the revision on 31-5-1983 and directed the State Government to dispose of the application. As the State Government had taken no action, Writ Petition No. 6788 of 1983 is filed challenging the inaction of the State Government on the application for renewal. Since the Forest Department was not made a party in Writ Petition No. 6788 of 1983, Writ, Petition No. 7234 of 1985 was filed impleading the Forest Department also as a party respondent. In these writ petitions, the petitioner seeks a direction to the respondents to renew the mining lease.

4. The respondents filed a counter resisting the claim of the petitioners contending that S. 2, Forest (Conservation) Act of 1980, prohibits the grant of leases of my land situate in a reserve forest area and hence the writ petitions are liable to be dismissed.

5. When the writ petitions came up for hearing before our learned brother Ramaswamy, J., it was contended that S. 2, Forest (Conservation) Act, had no application to leases already granted as the land was broken up and it applies only to fresh leases in respect of "virgin area". In support of this contention, reliance placed on a judgment of this Court in Writ Appeal No. 795 of 1985 dt. 20-8-1985 and the decision of the Supreme Court in State of Bihar v. Banshi Ram, . The respondents contended that renewal is a fresh grant and S. 2 which aims at conservation of forests prohibits the grant of any permission to use a forest area for a non-forest purpose except with the prior approval of the Central Government and the petitioners have no automatic right of renewal. They relied upon an earlier Bench decision of this Court in Anupama Minerals v. Union of India, and a decision of the Supreme Court in State of Tamil Nadu v. Hind Stone, . The learned Single Judge was of the view that having regard to the purpose and object of the Conservation Act, no lease of a reserve forest area can be granted except in accordance with S. 2 of the Act and the view of the later Division Bench in Writ Appeal No. 795 of 1985 requires reconsideration and referred the matter for a decision by a Full Bench.

6. The Forest (Conservation) Act of 1980 (preceded by Ordinance No. 17 of 1980) came into force on 25-10-80. Section 2 of the Act is as follows :-

"2. Restriction on the dereservation of forests or use of forest land for non-forest purpose :- Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing -

(i) that any reserved forest (within the meaning of the expression "reserved forest") in any law for the time being in force in that State or any portion thereof, shall cease to be reserved;

(ii) that any forest land or any portion thereof may be used for any non-forest purpose.

Explanation :- For the purposes of this Section "non-forest purpose" means breaking up or clearing of any forest land or portion thereof for any purpose other than reforestation".

It is plain from the Section that after coming into force of this Act, the State Government is prohibited from making an order permitting the use of any forest land for a no forest purpose" means as contained in the explanation breaking up or clearing up any forest for any purpose other than reforestation. Basing upon the Explanation to S. 2, it is contended that the approval of the Central Government is necessary only in a case where land is sought to be broken up for the first time and not to case where land is already broken up by virtue of prior leases.

7. To appreciate this contention, it is necessary to examine the object and the intendment of the Act. The statement of objects and reasons indicates that the Act was passed with a view to check deforestation which had been taking place in the Country on a large scale causing ecological imbalance leading to environmental deterioration. It cannot be gainsaid that breaking up the soil or clearing of the forest land affects reforestation or regeneration of forests and such activity can only be permitted after taking into consideration all aspects of the question such as the over all advantages and disadvantages to the economy of the country, environmental conditions, ecological imbalance that is likely to occur, its effects on the "flora and the fauna" in the area. Therefore, it was thought that the entire control of forest areas should vest in the Central Government. With that end in view, S. 2 had provided that prior approval of the Central Government should be obtained before permitting the use of the forest land for a non-forest purpose. The Act has provided for constitution of an Advisory Committee to advise the Central Government on all cases in which the question of granting permission required by S. 2 of the Act arises. The intention of the Act is to serve a laudable purpose. It has, therefore, to be enforced strictly for the benefit of the general public. The Act applies not merely to cases for mining leases in respect of areas within the reserve forest, but to all cases where forest land is sought to be used for non-forest purpose.

8. A Division Bench of this Court had an occasion to consider the question whether renewal of a mining lease of an area situate in a reserve forest can be granted by the State Government without complying with S. 2 of the Forest (Conservation) Act, 1980 in *M/s. Anupama Minerals v. Union of India*, . The facts in this case are almost identical. The party who had a lease in his favour applied for renewal after the Forest Act had come into force as the lease had expired by them. The question was whether prior approval of the Central Government had to be obtained. After an exhaustive consideration of all the provisions of the Forest (Conservation) Act, the Division Bench held as follows :-

"It is thus clear, on a reading of the Act and the Rules, that with effect from the date of coming into force of the act, neither the State Government nor any other authority is entitled to permit any forest land or any portion thereof to be used for any non-forest purpose except with the prior approval of the Central Government.

"Non-forest purposes" means breaking up or clearing of any forest land or portion thereof for any purpose other than reforestation. Indisputably, using a forest land or a portion thereof for the purpose of mining is a non-forest purpose."

Thus, this decision had authoritatively laid down that even in case of renewal, S. 2 had to be complied with. But it is contended by Mr. S.L. Chennakesava Rao, the learned Counsel for the petitioners that this point was not argued and the learned Judges took it for granted that S. 2 applies even to case of renewal. True, as contended by the learned Counsel, that the contention in this form had not been raised as evident from Para 10 of the Judgment at page 152 where the contentions are extracted. But the learned Judges considered the scope of S. 2 with reference to various other provisions of the Act. It cannot thereof, be said that the observations of the Division Bench in *M/s. Anupama Minerals v. Union of India*, are obiter.

8A. The learned Counsel Mr. S. L. Chennakesava Rao then strenuously contended that the decision in Anupama Minerals case is no longer good law in view of the decision of the Supreme Court in State of Bihar v. Banshi Ram, . Holding that S. 2 is attracted only to leases in respect of virgin area and (not) in the case of renewals, the land is already tapped and it ceased to be avirgin area. In other words, the argument was that S. 2 applies only to a case of fresh lease for the first time and not renewals.

Since the entire argument is based upon the decision in State of Bihar v. Banshi Ram, , we will deal with the facts in detail. In this case, a mining lease was granted for winning mica for a period of 20 years and the lease was expiring by 24-4-1986. The Forest Act came into force on 25-10-1980. During the course of mining operations, the lessee discovered two other minerals Felspar and Quartz. This discovery was subsequent to the coming into force of the Forest Act. The lessee applied to the State Government for inclusion of these two minerals in the lease deed since no mineral can be won unless it is included in the lease. The State Government without reference to S. 2 of the Act accorded permission and amended the lease deed including the two new minerals. However, notwithstanding the amendment of the lease deed, by the State Government, the Forest officials obstructed the lessee from winning the new minerals on the ground that the permission of the Central Government was not obtained by the State Government for including these two minerals in the lease deed. The lessee moved the High Court of Bihar by way of a writ petition and the same was allowed. The State of Bihar carried the matter in appeal to the Supreme Court. The contention of the State of Bihar was that after coming into force of the Act, no permission to win any mineral from any part of the forest area can be granted by the State Government except with the prior approval of the Central Government except with the prior approval of the Central Government. This contention was negated by the Supreme Court. After referring to S. 2 and the explanation thereto, the Supreme Court held as follows :-

"Reading them together, these two parts of the Section mean that after the commencement of the Act no fresh breaking up of the forest land or no fresh clearing of the forest on any such land can be permitted by any State Government or any authority without the prior approval of the Central Government. But if such permission has been accorded before the coming into force of the Act and the forest land is broken up or cleared then obviously the section cannot apply. In the instant case, it is not disputed that in an area of five acre out of eighty acres covered by the mining lease the forest land had been dug up and mining operations were being carried on even prior to the coming into force of the Act. If the State Government permits the lessee by the amendment of the lease deed to win and remove felspar and quartz also in addition to mica it cannot be said that the State Government had violated S. 2 of the Act because thereby no permission for fresh breaking up of forest land is being given. The result of taking the contrary view will be that while the digging for purposes of winning mica can go on, the lessee would be deprived of collecting felspar or quartz which he may come across while he is carrying on mining operations for winning mica. That would lead to an unreasonable result which would not in any way subserve the object of the Act. We are, therefore, of the view that while before granting permission to start mining operations on a virgin area S. 2 of the Act

has to be complied with it is not necessary to seek the prior approval of the Central Government for purposes of carrying out mining operations in a forest area which is broken up or clear before the commencement of the Act."

9. Thus, it is seen that this is not a case of renewal of a mining lease. The application was for amendment of a lease deed under which a lease was granted long prior to the Act had come into force. No permission for fresh breaking up is granted. Even without amendment, the lessee was free to carry on mining operations till the expiry of the lease period. The learned Judges are conscious of the fact that this is not an application for renewal of the lease as evident from the following observations in para 2:-

"By the said deed, felspar and quartz were included in the original lease as minerals which the lessee could win and carry away after paying the required royalty from the area over which he had been granted lease for mining mica. All other conditions of the lease including the period of lease remained the same. In fact it was not a new mining lease for a fresh period. The lease is to expire on April 24, 1986 as originally stipulated."

The observations that the period of lease remained the same and it is not a new mining lease for a fresh period made it abundantly clear that if a lease for a fresh period is required, compliance with S. 2 is necessary. The facts in this case are totally different and clearly distinguishable.

With utmost respect, we hold that the observations made in this Judgment that the permission of the Central Government is necessary only for mining operations in a "virgin area" are to be confined to the facts of that case.

10. The learned Counsel then relied upon a decision of this Court in Writ Appeal No. 795 of 1985 wherein the principle was applied to a case of renewal and held that S. 2 need not be complied with in the case of renewals as the land is already broken up.

11. We do not think that the Division Bench was right. After all what is renewal? It is in fact and in essence a fresh lease. It is a lease for a fresh period.

12. In *State of T. N. v. Hind Stone*, , Justice Chinnappa Reddy, who spoke for the Court held that an application for renewal of lease is in essence an application for grant of a lease for fresh period. In view of this decision, we have no doubt that the application for renewal has to be treated as an application for a fresh lease for the purpose of S. 2 of the Act and the approval of the Central Government has to be necessarily obtained. By granting renewal, the State Government would be permitting fresh breaking up and clearing of the forest. But for the renewal the lessee would not be able to do it as the lease had expired unlike in the case of *State of Bihar v. Banshi Ram*, where even without the fresh permission, the lessee could carry on the mining operations. We are, therefore, unable to accept the contention of the learned Counsel that S. 2 has no application to a case of renewal of leases.

13. We accordingly hold that the decision of the Division Bench in Writ Appeal No. 795 of 1985 is not correct.

However, the rejection of the renewal application by the respondents on the ground that the Forest (Conservation) Act prohibited grant of lease altogether within the reserve forest area is illegal. The Act did not contain any such absolute ban, but only provided that the prior approval of the Central Government shall be obtained before permitting any use of the reserve forest for a non-forest purpose which includes the use of land for mining purposes as well. All that S. 2 says is that no State Government or other authority shall make an order directing the reserve forest land or any portion thereof to be used for non-forest purpose except with the prior approval of the Central Government.

14. We accordingly quash the orders of the Deputy Director of Mines and Geology dt. 3-4-1981 and the order of the State Government dt. 30-4-1983. In the circumstances, we deemed it fit to give the following directions :-

(1) The respondents shall consider the applications for renewal and if they are of the opinion that renewal should be granted, they shall address the Central Government for its approval under S. 2, Forest (Conservation) Act of 1980 and the Forest (Conservation) Rules.

(2) If the Deputy Director of Mines and Geology or the State Government, as the case may be, so address the Central Government, the latter shall consider the matter in accordance with law and communicate their approval or rejection to the Deputy Director of Mines and Geology or the State Government.

(3) We direct the respondents to consider the applications within a period of one month from the date of receipt of this order and in case the Central Government is addressed for according prior approval, the Central Government shall take a decision within three months thereof and indicate its opinion to the Deputy Director of Mines and Geology or the State Government.

15. We may clarify that no applicant has a vested right for renewal and it is only when the authorities are satisfied that the application is in order and is in conformity with the Act and the Rules and is of the opinion that renewal should be granted they should seek the prior approval of the Central Government.

16. The writ petitions are allowed to the limited extent as indicated above. No costs. Advocate's fee Rs. 250/- in each.

17. Order accordingly.

**M.C. Mehta vs Kamal Nath & Ors on 13 December, 1996****Equivalent citations: AIRONLINE 1996 SC 711****Author: Kuldip Singh****Bench: Kuldip Singh, S. Saghnr Ahmad**

PETITIONER:

M.C. MEHTA

Vs.

RESPONDENT:

KAMAL NATH &amp; ORS.

DATE OF JUDGMENT: 13/12/1996

BENCH:

KULDIP SINGH, S. SAGHNR AHMAD

ACT:

HEADNOTE:

JUDGMENT:

THE 13TH DAY OF DECEMBER, 1996 Present:

Hon'ble Mr. Justice Kuldip Singh Hon'ble Mr. Justice S. Saghir Ahmad In-person for Petitioner H.N. Salve, Sr. Adv., M.S. Vashisht, Rajiv Dutta, Shiv Pujan Singh, J.S. Atri, L.R. Rath, Advs. With him for the Respondents.

J U D G M E N T The following judgment of the Court was delivered:

Kuldip Singh J.

This Court took notice of the News item appearing in the "Indian Express" dated February 25, 1996 under the caption - "Kamal Nath dares the mighty Beas to keep his dreams afloat". The relevant part of the news item is as under:-

"Kamal Nath's family has direct links with a private company, Span Motels Private Limited, which owns a resort - Span Resorts - for tourists in the Kullu-Manali valley. The problem is with another ambitious venture floated by the same company - Span Club.

The club represents Kamal Nath's dream of having a house on the bank of the Beas in the shadow the bank of the Beas in the shadow of the snow-capped Zanskar ranges. The club was built after encroaching upon 27.12 bighas of land, including substantial forest land, in 1990. The land was later regularised and leased out to the company on April 11, 1994. The regularisation was done when Mr. Kamal Nath was Minister of environment and Forests. .... The swollen Beas changed its course and engulfed the Span club and the adjoining lawns, washing it away. For almost five months now, the Span Resorts management has been moving bulldozers and earth-movers to turn the course of the Beas for a second time.

The heavy earth mover has been used to block the flow of the river just 500 meters upstream. The bulldozers are creating a new channel to divert the river to at least one kilometer downstream. The tractor trolleys move earth and boulders to shore up the embankment surrounding Span Resort for flaying a lawn. According to the Span Resorts management, the entire reclaiming operation should be over by March 31 and is likely to cost over a crore or rupees.

Three private companies - one each from Chandigarh, Mandi and Kullu - have moved in one heavy earth mover (hired at the rate of Rs. 2000 per hour), four earth movers and four bulldozers (rates varying from Rs 650 to Rs 850 each per hour) and 35 tractor trolleys, A security ring has been thrown all around.

.....Another worrying thought is that of the river eating into the mountains, leading to landslides which are an occasional occurrence in this area, Last September, these caused floods in the Beas and property estimated to be worth Rs 105 crore was destroyed. ....Once they succeed in diverting the river, the Span management plans to go in for landscaping the reclaimed land. But as of today, they are not so sure. Even they confess the river may just return.

"Mr. Kamal Nath was here for a short while two-three months ago. He came, saw what was going on and left. I suppose he knows what he is doing", says another executive. The district administration pleads helplessness. Rivers and forest land, officials point out, are not under their jurisdiction. Only the Kullu conservator of forests or the district forest officer can intervene in this case.

But who is going to bell the country's former Environment and Forests Minister?

Interestingly, a query faxed to Kamal Nath for his views on these developments fetched a reply from Mr. S. Mukerji, President of the Span Motels Private Limited. Admitting that the Nath family had "business interests" in the company since 1981,

he said, "the company is managed by a team of professional managers and Mr. Kamal Nath is not involved in the management activity of the company."

"The Board comprises professionals, some of whom are friends and relatives of the Nath family", Mr. Mukerji said, He expressed surprise that a reference had been made to Rangri and Chakki villagers "since these villagers are at least 2/3 kilometers away and not even on the river side."

He said the Span Club was not for the exclusive use of any one individual." "We would like to emphasize that we are only `restoring the river' to its original and natural course and are restoring our land and or those or neighbouring villagers similarly affected by the flood."

He maintained that "Mr. Kamal Nath has definitely not been to Span Resorts in the last two months and in fact, to the best of my knowledge, has not traveled to the Kullu Valley for quite some time now....In any case, we had never "blocked" any channel in the vicinity of Span."

Mr. Kamal Nath filed one-page counter affidavit dated June 8, 1996. Paras 1 and 3 of the counter area as under:-

"I say that I have been wrongly arrayed as a respondent in the above petition in-as-much as I have no right, title or interest in the property known as "Span Resorts"

owned by "Span Motels Private Limited".

I further say that the allegations made in the press reports based on which this Hon'ble Court was pleased to issue notice are highly exaggerated, erroneous, mala fide, mischievous and have been published only to harm and malign the reputation of this respondent."

On behalf of Span Motels Private Limited (the Mote), Mr. Banwari Lal Mathur, its Executive Director filed counter affidavit. Paras 2 and 3 of the counter are as under:-

"I say that Mr. Kamal Nath who has been arrayed as respondent No.1 in the above writ petition has no right, title or interest in the property known as SPAN RESORTS owned by Span Motels Pvt. Ltd. or in the lands leased out to the said company by the State of Himachal Pradesh.

I say that the shareholding of SPAN MOTELS PVT. LTD. is as under:

	No. of Shares Held	% Share holding
Mrs. Leela Nath	32,560	42
EMC Projects Pvt. Ltd.	14,700	19
SHAKA Properties		

Pvt.Ltd.	15,000	19
SHAKA Estate & Finance Pvt. Ltd.	15,000	19
Capt. Alok Chandola	250	01
	-----	
	77,510	100

It was not disputed before us by Mr. Harish Balve, learned counsel appearing for Mr. Kamal Nath that almost all the shares in the Motel are owned by the family of Mr. Kamal Nath. We do not wish to comment on the averment made on oath by Mr. Kamal Nath that he has "no right, title or interest in the property known as Span Resorts owned by Span Motels Private Limited".

Mr. B.L. Mathur filed an additional counter affidavit dated July 30, 1996 on behalf of the Motel, The counter affidavit mentioned above states that Government land measuring 40 bighas 3 biswas situated along side Kullu- Manali Road on the bank of river Beas was granted on lease to the Motel for a period of 99 years with effect from October 1, 1972 to October 1, 2071. The lessee was granted permission to enter and occupy the said area for the purpose of putting up a motel and for installing ancillaries in due course as may be subsequently approved by the lessor. We may refer to paras 6 and 7 of the lease deed dated September 29, 1972 which are as under:-

"The Lessee shall not dig deep pits of trenches in the said land, which may lead to the danger or erosion and shall make good the Lessor defects caused by their acts or defaults within one month of notice by the Lessor.

In the event of said land being required by Lessor for any other purpose, whatsoever the Lessor will be entitled to terminate this lease at any time by giving six months notice in writing to the lessee and the lessee shall not be entitled to any compensation whatsoever on account of such termination."

The current management (Shri Kamal Nath's family) took over the Motel in the year 1981, fresh lease was signed on September 29, 1981. The new lease was for the same period from 1972 to 2071. Paras 4 and 5 of the additional affidavit are as under:-

"I say that the Motel commenced operations in 1975. There are over 800 trees in this area of 40 bighas. the motel has two clusters with 8 dwelling units of 3 rooms each. The rooms are nowhere near the river - the distance between the cluster or rooms and the beginning of the river basin is about 10 meters-actually the river is another 50 meters therefrom.

Thus, the effective distance between the edge of the river and the cluster of rooms is 40 meters. I say that in the peak of the flood, the river did not come closer than 10 meters to the rooms and did not, therefore, pose any danger to the rooms, particularly there is no problems qua rooms as the rooms are on a higher level - at least 5-7 meters at their closest point."

Along with the additional affidavit the correspondence between the Motel and the Government has been annexed. In a letter dated October 19, 1988 addressed to the Chief Minister Himachal Pradesh. The Motel gave details of the flood-damage during the year 1988 and finally requested the Government for the following steps:-

"Further it is imperative that the Government take immediate steps to stop erosion of the land under lease to us. It would appear that strong concrete blackened retaining walls will be necessary to be placed at appropriate points to protect the land mass around us."

The Motel addressed letter dated August 30, 1989 to the Divisional Forest Officer, Kullu. The relevant part of the letter is as under:-

"When we acquired our land on lease, there were no clear demarcations of the surrounding areas and boundaries. There has existed a stretch of waste and "banjar" (Class III) forest land in a longitudinal strip along the River bank admeasuring about 22.2 bighas, contiguous and adjacent to our leased land. Over the years, and especially after the sever flood erosion last year, we have built extensive stone, cemented and wire-mesh created embankments all along the river banks at considerable expanse and cost. We have also gradually and painstakingly developed this entire waste & "banjar" area, beautified and landscaped it, planted ornamental, fruiting and varied forest trees extensively such that it blends with our estate and with the surrounding flora and environment in a harmonious manner. A Revenue map along with all revenue department records covering this entire area, is forwarded enclosed herewith for your reference and perusal.

We are aware that in accordance with the Forest Conservation Act of 1980, the use of Forest land by Private Agency even for natural development and afforestation scheme, requires alternative matching compensatory afforestation land areas to be surrendered by the concerned party, after due approval of the Government. In view of this statutory pre-condition, we wish to submit that we can immediately surrender to the Government nearly 28 bighas & 13 biswas of private agricultural cultivated land located at Village MAJHACH, (Burua), MANALI, in exchange for the above mentioned 22.2 bighas of Class III banjar forest land adjoining our land in Village Baragan Bihal, which we request for transfer to our company in lieu of the land we are willing to surrender. The specific Revenue maps and records concerning this area of land of Village Majhadh, are also enclosed herewith for your kind perusal."

It is obvious from the contents of the letter quoted above that the motel had encroached upon an additional area of 22.2 bighas adjoining to the lease-hold area. Apart from that the Motel had built extensive stone, cemented and wire mesh created embankments all along the river banks. The Motel was keen to have the encroached and by way of exchange/lease. A request to that effect was repeated in the letter dated September 12, 1989 addressed to the Divisional Forest Officer, Kullu. The Motel again repeated its request for lease of the additional land by the letter dated July 9, 1991. The said

letter further stated as under:-

"We would also like to mention that the Banjar land adjoining our hotel, referred to in para 1 above, lies along the bank of river Beas which erodes it every year. About ten years ago almost 4 bighas of this land were lashed away and the on flowing water had posed a serious threat to our hotel buildings and adjoining area. To protect our property we were compelled to erect deep protection embankments along the banjar land in question at huge cost the details of which will be sent to you shortly. If our proposal is accepted for the exchange of and it will become possible for us to take further steps to protect this land".

The Divisional Forest Officer, Kullu sent reply dated January 12, 1993 which state as under:-

"In this connection it is intimated that at present we are not having funds to put crates and spurs along the river side near your hotel to check the soil erosion, as indicated in your letter referred to above. In order to protect your property from the damage, you can carry out such works at your level, subject to the condition that the ownership of the land would vest with Forest Department and the Department would not be liable to pay any among incurred for the purpose by you at a later stage and you would not claim any right on government property."

The above quoted letter can be of no consequence because much before the said letter the Motel had built extensive stone, cemented and wire mash crated embankments all along the river banks. This is obvious from the contents of the letter dated August 30, 1989 (quoted above).

The Motel addressed a letter dated June 21, 1993 to the Chief Secretary, Himachal Pradesh wherein it is clearly stated that the adjoining land measuring 122 bighas and 3 bishwas had been reclaimed by the Motel. The relevant part of the letter is as under:-

"Adjoining our Resort and Contiguous to our leased land is a stretch of class III - Banjar forest land in a longitudinal strip along the river bank admeasuring 22 Bighas and 3 Biswas. This was a stony piece of land and used to get flooded every year during monsoons and often got washed away and reduced in size by river erosion year by year. This land was reclaimed by us and protected by an embankment and filling from the river side."

The said letter further states as under:-

"Similarly on the river side part of our leased land there used to be floods and erosion every year. If we would have let this continue, the leased land would have also got reduced every year. In order to protect our leased land and to save damage to our hotel property, we at our own considerable expense and cost built stone and wire mesh crated embankment all along the river bank. This not only protected our hotel land but also the forest land....

In 1988 there were severe floods when every a portion of leased land got washed away. It became imperative for us at considerable expense to build an embankment on the river front along the leased property. In order to build an embankment on the river front along the leased property the washed away area and part of the river bank had to be filled at huge cost. Once the river bed and the washed away area was filled, the choice before us was either to put soil on it and grow grass and trees to secure it or let it remain unsecured and aesthetically displeasing. We chose the former. As a result of land filling and embankment our leased area when measured will obviously show an increase. This increase is not an encroachment but reclamation with the objective of protecting the leased property."

In the letter dated August 7, 1993 addressed to the Divisional Forest Officer, the Motel again asked for lease of adjoining area. The relevant part of the letter is as under:-

"We had explained in our previous letters dated 21.6.93 and 23.7.93 (copies of which have been sent to you with our letter dated 6.8.93) the circumstances under which we had to spend enormous sum of money in protecting and reclaiming the forest land adjoining our Resort. It had become necessary for us to undertake this reclamation and protection work by filling the land from the river bed, constructing embankments, retaining walls and crating etc. in order to protect the land leased by the Government to our Span Resort and property thereon but we were unable to complete the entire work as we were restrained from carrying on with the work under undue allegations of encroachment on the forest land.....

In order to expedite the process of commencing protection work on an urgent basis on the forest land, we propose that the forest land be given to us on long lease co-terminus with the lease on the land granted by the Government for our Span Resorts. This could be done by a supplementary lease as it is imperative to save the land under the original lease.

All we have done is to reclaim and protect the land from erosion by constructing crates, retaining walls and embankments along the river Beas by investing huge amounts which unfortunately have all been washed away due to floods and now requires reconstruction to save the forest land an our adjoining property from total destruction."

The Government of India, Ministry of Environment and Forests by the letter dated November 24, 1993 addressed to the Secretary, Forest, Government of Himachal Pradesh, Shimla conveyed its prior approval in terms of Section 2 of the Forest (Conservation) Act. 1980 for leasing to the Motel 27 bighas and 12 biswas of forest land adjoining to the land already on lease with the Motel. A lease deed dated April 11, 1994, regarding the said land was executed between the Himachal Government and the Motel. The additional affidavit tiled by the Motel refers to the prior approval granted by the Government of India as under:-

"In the Ministry of Environment and Forests, the proposal was cleared by the Secretary and forwarded to the Forest Advisory Committee by passing the Minister concerned. the Forest Advisory Committee cleared the proposal subject to severe restrictions - and also certain restrictions which are not normally imposed in such cases. The proposal was then cleared at the level of the Prime Minister and by a letter of 24th November, 1993, approval was communicated to the State Government and SMPL."

it may be mentioned that Mr. Kamal Nath was the minister in charge, Department of Environment and Forests at the relevant time. What is sought to be conveyed by the above quoted paragraph is that Mr. Kamal Nath did not deal with the file. The correspondence between the Motel and the Himachal Government referred to and quoted by us shows that from 1988 the Motel had been writing to the Government for the exchange/lease of the additional forest land. It is only in November, 1993 when Mr. Kamal Nath was the Minister, incharge of the Department that the clearance was given by the Government of India and the lease was granted, Surely it cannot be a coincidence.

This Court took notice of the news item - quoted above

- because the facts disclosed therein, it true, would be a serious act of environmental-degradation on the part of the motel. It is not disputed that in September 1995 the swollen Beas engulfed some part of the land in possession of the motel. The news item stated that the motel used earth-movers and bulldozers to turn the course of the river. The effort on the part of the motel was to create a new channel by diverting the river-flow. Accordingly to the news item three private companies were engaged to re-claim huge tracts of land around the motel. The main allegation in the news item was that the course of the river was being diverted to save the motel from future floods. In the counter affidavit filed by the motel, the allegations in the news item have been dealt with in the following manner:

"1) If the works were not conducted by the Company, it would in future eventually cause damage to both banks of the river, under natural flow conditions.

m) By dredging the river, depth has been provided to the river channel thus enhancing its capacity to cope with large volume of water.

n) The wire crates have been put on both banks of the river. This has been done to strengthen and protect the banks from erosion and Nos. as any form of river diversion. It is not necessary to divert the river because simply providing greater depth and removing debris deposits enhances the capacity of the river to accommodate greater water flow.

o) I further state that the nearly 200 metres of wire crates which have been put on the felt bank of the river (the river bank on the opposite side of SPAN) is in the interest of the community and nearby residents/villages. This left Bank crating protects the

hillside where RANGRI, CHAKKI and NAGGAR are located.

s) After the floods, it was observed, that the boulders and rubble deposits were obstructing and hindering the flow of the river and thus, it was the common concern of the Company as well as of the Panchayat of the Village BARAGRAN BIHAL to carry out dredging measures to provide free flow of the river water.

t) Accordingly alleviation measures conducted by the company and the villagers of BARAGRAN BIHAL were as under;

i) Dredging of debris deposit:

Debris deposits in river basin which had collected due to the floods were removed by dredging. This deepens the channel and thus allows larger flow of water.

ii) Strengthening of both banks with wire crates: Wire crates are the common method of protection of bank erosion. Accordingly wire crates were put along the opposite side (left bank) to protect the landslide of the hillside wire on which village RANGRI is perched.

Wire crating was also put on the Resort side of the River (Right Bank) to strengthen & protect the bank against erosion. All the wire crating runs along the river flow and not as an obstruction of for any diversion.

w) It is further submitted that whereas the report mischievously refers to villagers of Rangris Chakki and Naggar nowhere does it take n to account the very real problems of villagers of baragran Bihal which is located immediately on the Right Bank near the SPAN Resort who were seriously affected by the floods, Chakki, Rangri and Naggar Villages have not at all been affected by the floods and there is no remote possibility of these villages being affected due to the flood protection works conducted by the Company."

In the additional affidavit filed by the motel the facts pleaded are as under:

"ii) It had become necessary for them to undertake this reclamation and protection work by filling the land from river bed, constructing embankments, retaining walls and crates, etc. in order to protect the land leased by the Government to the Resort and the property thereon.

vii) The forest land which is susceptible to heavy river erosion by floods involves high cost for its protection from getting washed away every year would be protected by construction of embankments and filling from the river side by the Company.....local community of Kullu and Manali and surrounding villages will benefit."

Mr. G.D. Khachi, Under Secretary (Revenue) Government of Himachal Pradesh in the counter affidavit filed in this Court stated as under:

"iii) That subsequently, a piece of land measuring 21-09 bighas was encroached by M/s. Span Motels, On coming to the notice of the Government of such encroachment, the Govt. of Himachal Pradesh in Revenue Department took action and reportedly got the encroached land vacated, and the possession of which has been taken over by the Forest Department.

that on 21-22 July, 1992, the then Chief Secretary to the Government of Himachal Pradesh visited the site who drew the inference that M/s, Span Hotel Ltd. were still using the encroached land. The copy of note on inspection of the then Chief Secretary is annexed as R-1.

That immediately on receipt of the recommendations of the then Chief Secretary (Annexure k-1), the Department of Forest started working at the site but in the mean time, it was decided to lease out a piece of land measuring 27-12 bighas which includes the said encroached land measuring 21-09 bighas. The lease granted by the Government of Himachal Pradesh in Revenue Department vide letter No.Rev.D(6)(6-53/93, dated 5.4.1994 is annexed as Annexure R-II after obtaining the approval of Government of India, Ministry of Environment and Forest, New Delhi vide letter No.9-115/93-ROC, dated 24.11.93 (copy annexed as Annexure R-III) for the purpose of protecting earlier leased land.

that the development activities which was being undertaken by M/s.

Span Motels Ltd. came to the knowledge of the Government from the News Item which appeared in the Press and field officers of all the concerned departments took an exercise to carry out the inspection and reported the matter to the Government".

C.P. Sujaya, Financial Commissioner-cum-Secretary (Irrigation and Public Health) Government of Himachal Pradesh in her counter affidavit filed in this Court, inter alia, stated as under:

"Admitted to the extent that the Span Resorts management had deployed heavy earth moving machinery to reclaim their land and to divert/channelise the course of river to its course which it was following prior to 1995 - floods by dredging and raising of earthen and wire crated embankments.

The flow of river has been changed/diverted by dredging/raising of wire crated embankments and creating channel from a point u/s or Span resorts to D/s of Span Resorts. The approximate length of channel is about 1000 meters.

Admitted to the extent that village Ranghri and Chakki are located on left bank of river Beas. However, channelization of river has been done slightly away from the toe of foot hills except for the last about 500 meters where. It is running along the foot hills. The hill on which village Rangri and Chakki are situated consists of small

boulders embedded in Sandy Strata and is quite fragile/unstable in nature. Therefore, this reach of river is prone to land slides in the normal course also. However, it is feared that flow of river along the root hills may hasten/aggravate the process of land slides. The Span Management has provided wire crated embankment in a reach of about so embankment in a reach of about 90 metres on left bank and about 270 metres on right bank to channelise the flow and also to reclaim part of land on right bank of river Beas.

Admitted to the extent that the diversion/channelization of river has been done to restore it to its course of pre-1995 floods and in the report. Para 4.2 of the report gives details of the construction done by the motel prior to 1995 floods.

The relevant part of the paragraph is as under:

"To protect the newly acquired land, SMPL took a number of measures which include construction of the following as shown in Rig.2:

(a) 8 ros. studs of concrete blocks 8m long and 20m apart on the eastern face or the club island on the upstream side,

(b) 180m long stepped wall also on the eastern race of club island on the certriteam side,

(c) ?? high bar of concrete blocks ?? the entry at the spill.

(d) For Personal 8 nos. studs also 8m long in 20m apart on the right bank of the-river Beas in front of the restation of the SMPL.

While (a) or (b) were aimed at protecting the club island from the main current, (c) was to discourage larger inflow into the spill channel. Item (d) was meant to protect the main resort land or SMPL if heavy flow comes into the spill channel.

The works executed in 1993 were bank protection works, and were not of a nature so as to change the regime or the course of river, A medium flood again occurred in 1994. Partly due to the protection works, no appreciable damage occurred during this flood. The main current still continues on the left bank."

The happening of events in the vicinity of motel during the 1995 flood and the steps taken by the motel have been stated in the report as under:

"A big slip occurred on the hill side on the left bank, at a distance about 200 m upstream from the point where division into main and spill channels was occurring, on the afternoon of September 4, 1995, This partially blocked the main left side channel which was relatively narrow at this location. This Presumably triggered the

major change of course in the river, diverting the major portion of the flow into spill channel towards the right and almost over the entire lane area of the club island. The enquire club building and the plantation as well as the protection works built in 1993 were washed away. heavy debris was deposited on this. and Damage occurred on the right bank also but the buildings of the main SMPL resort remained more or test and rented, A large hotel and rare buildings on the right bank, relevant adjacent to SMPL, in the downs Station also washed away. The bar under knocks at the upstream end of the spill channel as well as most of studs of this channel were also washed away. Some remnants on five down spread studs could be seen at the time of the visit.?. After the passage of 1993 flood, SMPL have taken further steps o protect their property as shown in Fig. 3. These are as follows:

1. The left side channels (the main channel), which had become less active, has been dredged to increase its capacity. Wire crate revetments (A, B & C) on both banks of this channel have been made to direct the flow through this channel. These revetments and restoration earth revetments and restoration earth work down would curtail the entry of water into the right side relief/spill channel which had developed into the main channel during the flood. As relatively small channel (the relief/spill channel) still exist;

and carries very little flow. Bulk of the flow is now going into the left bank channel.

On the left bank, there are steep unstable slopes at higher elevations left after the slides during the flood. These are likely to slip in any case, and if so happens, may block the left channel again, This land belongs to some villagers from Rangri. The left bank channel is again sub-dividing into two streams(d) and the small stream is flowing close tot he toe of the hills for a distance of about 500 to 600 m before it turns towards midstream, Some of the dredged material is piled on the right bank and some on the divide between the main channel and the subsidiary channel on the left.

Strips card be seen in this reach of 500-600 m even now, and erosion at toe may aggravate sliding tendency. SMPL has also put 190 m wire crates (C) as protection against erosion of this bank, which may be helpful upto moderate flood conditions.

The dredging and channelisation of the left bank channel, though aimed at protecting SMPL land, should normally keep high intensity of flow away from both banks in moderate floods. This should thus not be a cause of concern. In high floods, the water would spill or spread beyond this channel. Due to restriction of entry in the right relief/spill channel, though the works may not withstand a high flood, there may be a tendency for more flow towards the left bank, However, the river is presently in a highly unstable regime after the 1995 extra-ordinary floods, and it is difficult to predict its behavior if another high flood occurs in the near future."

The conclusions given by the inspecting team in the report are as under:

6.8 The relief channel is supposed to be the government land.

Construction of any sort to block the natural flow of water is illegal and no permission has been taken from the concerned department.

6.9 The lease agreement of 1994 had the clause for protection of the land but it should have been done not by blocking the flood spill/relief channel.

6.10 Relief channel is the shortest path between the two bends. Any future slip on left bank due to training of discharge at its foot may cause flood on the right bank where the leasehold land (1994) exists.

6.11 No new construction should be allowed in this flood prone area except flood protection measures. No economic activity should be undertaken in the aforementioned stretch.

6.12 Since newly acquired land of M/s SMPL is located on the flood plain, sandwiched between the main channel and the relief/spill channel, the land may be released and the Forest Department take care of plantation in the area after adequate flood control measures are taken by the irrigation Department. This is necessitated in view of the fact that the left bank opposite SMPL is very steep (almost vertical) and is subjected to potential threat of land slip to block the channel and cause change of course of the river flow again.

6.13 Even if land slips occur, the impact will be local limited only to the stretch of the Beas river near SMPL.

6.14 The river is presently in a highly unstable regime after 1995 extra-ordinary floods, and it is difficult to predict its behaviour if another high flood occur in the near future. A long-term planning for flood control in the Kullu Valley needs to be taken up immediately with the advice of an organisation having expertise in the field, and permanent measures shall be taken to protect the area so that recurrence of such a heavy flood is mitigated permanently"

On a careful examination of the counter-affidavits filed by the parties, the report placed on record by the Board and other material placed on record, the following facts are established:

1. The lease hold area in possession of the motel is a part of the protected forest land owned by the State Government.
2. The forest land measuring 27 bighas and 12 biswas leased to the motel by the lease-deed dated April 11, 1994 is situated on the right bank of the river and is separated from the motel by a natural relief/spill channel of the river.
3. A wooden bridge on the spill channel connects the main motel land and the land acquired under the 1994 lease-deed.

4. 22.2 bighas out of the land leased to the motel in 1994 was encroached upon by the motel in the year 1988/89.

5. Prior to the 1995 floods the motel constructed 8 studs of concrete blocks 8m long and 20m apart on the upstream bank of the river, 150m long stepped wall on the downstream side of the river and 2m high bar of concrete blocks at the entry at the spill channel and additional 8 studs 8m long and 20m apart on the right bank of the river Beas in front of the restaurant of the Motel.

6. After the 1995 floods the motel has dredged the left side channel (the main channel) of the river to increase its capacity. Wire crate revetments on both banks of the main channel of river have been made to direct the flow through the said channel. This has been done with a view to curtail the entry of water into the right side relief/spill channel.

7. The motel has constructed 190m wire crates on the bank of the river (upstream). The dredged material is piled up on the banks of the river. The dredging and channelising of the left bank has been done on a large scale with a view to keep high intensity of flow away from the motel.

8. The dredging of the main channel of river was done by blasting the big boulders and removing the debris.

9. The mouth of the natural relief/spill channel has been blocked by wire crates and dumping of boulders.

10. The construction work was not done under expert advice.

11. The construction work undertaken by the motel for channelising the main course has divided the main stream into two, one of which goes very near to the left bank because of which, according to the report, fresh land slip in future cannot be ruled out.

The report further indicates that the relief channel being part of the natural flow of the river no construction of any sort could be made to block the said flow. According to the report no permission whatsoever, was sought for the construction done by the motel. The Board in its report has further opined that the clause in the lease agreement for protection of land did not permit the motel to block the flood spill/relief channel of the river. The report categorically states that no new construction should be allowed in this flood prone area and no economic activities should be permitted in the said stretch. It has been finally recommended by the inspection team that the land acquired by the motel under the 1994 lease-deed is located on the flood plain sandwiched between the main channel and the relief/spill channel and as such it should be released so that the Forest Department may take care of the plantation in the area and also preserve the ecologically fragile area of river Beas.

Mr. Harish Salve vehemently contended that whatever construction - activity was done by the Motel on the land under its possession and on the area around, if any, was done with a view to protect the lease-hold land from floods. According to him the Divisional Forest Officer by the letter dated January 12, 1993 quoted above - permitted the motel to carry out the necessary works subject to the conditions that the department would not be liable to pay any amount incurred for the said purpose by the Motel. We do not agree. It is obvious from the correspondence between the Motel and the Government referred to by us that much before the letter of the Divisional Forest Officer dated January 12, 1993, the Motel had made various constructions on the surrounding area and on the banks of the river. In the letter dated August 30, 1989 addressed to the Divisional Forest Officer Kullu - quoted above - the Motel management admitted that "over the years, and especially after the sever flood erosion last year, we have built extensive stone, cemented and wire-mesh crated embankments all along with the river banks at considerable expense and cost. We have also gradually and painstakingly developed this entire waste and banjar area". The "Banjar Area" referred to in the letter was the adjoining area admeasuring 22.2 bighas which was not on lease with the Motel at that time. The admissions by the Motel-management in various letters written to the Government, the counter affidavits filed by the various Government officers and the report placed on record by the board clearly show that the Motel-management has by their illegal constructions and callous interference with the natural flow of river Beas has degraded the environment. We have no hesitation in holding that the Motel interfered with the natural flow of the river by trying to block the natural relief/spill channel of the river.

The forest lands which have been given on lease to the Motel by the State Governments are situated at the bank of the river Beas. Beas is a young and dynamic river. It runs through Kullu valley between the mountain ranges of the Dhaulandhar in the right bank and the Chandrakheni in the left. The river is fast - flowing, carrying large boulders, at the times of flood. When water velocity is not sufficient to carry the boulders, those are deposited in the channel often blocking the flow of water. Under such circumstances the river stream changes its course, remaining within the valley but swinging from one bank to the other. The right bank of the river Beas where motel is located mostly comes under forest, the left bank consists of plateaus, having steep - bank facing the river, where fruit orchards and cereal cultivation are predominant. The area being ecologically fragile and full of scenic beauty should not have been permitted to be converted into private ownership and for commercial gains.

The notion that the public has a right to expect certain lands and natural areas to retain their natural characteristic is finding its way into the law of the land. The need to protect the environment and ecology has been summed up by David B. Hunter (University of Michigan) in an article titled an ecological perspective on property: A call for judicial protection of the public's interest in environmentally critical resources published in Harvard Environmental law Review Vol. 12 1988 Page 311 in the following words:

"Another major ecological tenet is that the world is finite. The earth can support only so many people and only so much human activity before limits are reached. The lesson was driven home by the oil crisis of the 1970's as well as by the pesticide scare of the 1960's. The current deterioration of the ozone layer is another vivid example of

the complex, unpredictable and potentially catastrophic effects posed by our disregard of the environmental limits to economic growth. The absolute finiteness of the environment, when coupled with human dependency on the environment, leads to the unquestionable result that human activities will at some point be constrained. "[H]uman activity finds in the natural world its external limits. In short, the environment imposes constraints on our freedom; these constraints are not the product of value choices but of the scientific imperative of the environment's limitations. Reliance on improving technology can delay temporarily, but not forever, the inevitable constraints. "There is a limit to the capacity of the environment to service...growth, both in providing raw materials and in assimilating by-product wastes due to consumption. The largesse of technology can only postpone or disguise the inevitable."

Professor Barbara Ward has written of this ecological imperative in particularly vivid language:

We can forget moral imperatives. But today the morals of respect and care and modesty come to us in a form we cannot evade. We cannot cheat on DNA. We cannot get round photosynthesis. We cannot say I am not going to give a damn about phytoplankton. All these tiny mechanisms provide the preconditions of our planetary life. To say we do not care is to say in the most literal sense that "we choose death."

There is a commonly-recognized link between laws and social values, but to ecologists a balance between laws and values is not alone sufficient to ensure a stable relationship between humans and their environment. Laws and values must also contend with the constraints imposed by the outside environment. Unfortunately, current legal doctrine rarely accounts for such constraints, and thus environmental stability is threatened.

Historically, we have changed the environment to fit our conceptions of property. We have fenced, plowed and paved. The environment has proven malleable and to a large extent still is. But there is a limit to this malleability, and certain types of ecologically important resources - for example, wetlands and riparian forests - can no longer be destroyed without enormous long-term effects on environmental and therefore social stability. To ecologists, the need for preserving sensitive resources does not reflect value choices but rather is the necessary result of objective observations of the laws of nature.

In sum, ecologists view the environmental sciences as providing us with certain laws of nature. These laws, just like our own laws, restrict our freedom of conduct and choice. Unlike our laws, the laws of nature cannot be changed by legislative fiat; they are imposed on us by the natural world. An understanding of the laws of nature must therefore inform all of our social institutions."

The ancient Roman Empire developed a legal theory known as the "Doctrine or the Public Trust. It was founded on the ideas that certain common properties such as rivers, sea- shore, forests and the air were held by Government in trusteeship for the free and unimpeded use of the general public. Our contemporary conceded about 'the environment' bear a very close conceptual relationship to this legal doctrine. Under the Roman Law these resources were either owned by no one (res Nullius) or by every one in common (Res Communis). Under the English common law, however, the Sovereign could own these resources but the ownership was limited in nature, the Crown could not grant these properties to private owners if the effect was to interfere with the public interests in navigation or fishing. Resources that were suitable for these uses were deemed to be held in trust by the Crown for the benefit of the public. Joseph L. Sax, Professor of Law, University of Michigan proponent of the Modern Public Trust Doctrine - in an erudite article "Public Trust Doctrine in natural resource law: effective judicial intervention". Michigan Law Review Vol. 68 Part-1 page 4/3 has given the historical background of the Public Trust Doctrine as under:

"The source of modern public trust law is found in a concept that received much attention in Roman and English law - the nature of property rights in rivers, the sea, and the seashore. That history has been given considerable attention in the legal literature, need not be repeated in detail here. But two points should be emphasized, First, certain interests, such as navigation and fishing, were sought to be preserved for the benefit of the public; accordingly, property used for those purposes was distinguished from general public property which the sovereign could routinely grant to private owners. Second, while it was understood that in certain common properties - such as the seashore, highways, and running water - "perpetual use was dedicated to the public," It has never been clear whether the public had an enforceable right to prevent infringement of those interests. Although the state apparently did protect public uses, no evidence is available that public rights could be legally asserted against a recalcitrant government.

The Public Trust Doctrine primarily rests on the principle that certain resources like air sea, waters and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being a gift of nature, they should be made freely available to everyone irrespective of the status in life. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes. According to Professor Sax the Public Trust Doctrine imposes the following restrictions on governmental authority.

"Three types of restrictions on governmental authority are often thought to be imposed by the public trust: first, the property subject to the trust must not only be used for a public purpose, but it must be held available for use by the general public; second, the property may not be sold, even for a fair cash equivalent; and third

property must be maintained in particular types of uses".

The American law on the subject is primarily based on the decision of the United States Supreme Court in *Illinois Central R.R. Company vs. Illinois* 146 US 687 (1892). In the year 1869 the Illinois legislature made a substantial grant of submerged lands - a mile strip along the shores of Lake Michigan extending one mile out from the shoreline - to the Illinois Central Railroad. In 1873, the legislature changed its mind and repealed the 1869 grant. The State of Illinois sued to quit title. The court while accepting the stand of the State of Illinois' held that the title or the State in the land in dispute was a little different in character from that which the State held in lands intended for sails. It was different from the title which the United States held in public lands which were open to preemption and sale. It was a title held in trust - for the people of the State that they may enjoy the navigation of the water, carry on commerce over them, and have liberty of fishing their in free from obstruction or interference of private parties. The addition of the general control of the State over lands in dispute was not consistent with the exercise of the trust which required the Government of the State to preserve such waters for the use of the public. According to Professor ?? court in *Illinois' Central* "articulated a principle that has become the central substantive thought in public trust litigation. When a State holds a resource which is available for the free use of the general public, a court will look with considerable skepticism upon any governmental conduct which is calculated either to relocate that resource to more restricted uses or to subject public uses to the self- interest of private parties".

In *Gould vs. Greylock Reservation Commission* 350 Mass 410 (1966), the Supreme Judicial Court of Massachusetts took the first major step in developing the doctrine applicable to changes in the use of lands dedicated to the public interest. In 1888 a group of citizens interested in preserving Mount Greylock as a unspoiled natural forest, promoted the creation of an association for the purpose of laying out a public park on it. The State ultimately acquired about 9000 acres, and the legislature enacted a statute crating the Greylock Reservation Commission. In the year 1953, the legislature enacted a statute creating an Authority to construct and operate on Mount Greylock an Aerial Tramway and certain other facilities and it authorised the commission to lease to the Authority any portion of the Mount Greylock Reservation. Before the project commenced, five citizens brought an action against both they Greylock Reservation Commission and the licency Authority. The plaintiffs brought the sult us beneficiaries of the pubic trust. The court has been the lease and the management agreement invalid on the ground that they were in excess or the statutory grant of the authority. The crucial passage in the judgment of the Court is as under:-

"The profit sharing feature and some aspects of the project itself strongly suggest a commercial enterprise. In addition to the absence of any clear or express statutory authorization of as broad a delegation of responsibility by the Authority as is given by the management agreement, we find no express grant to the Authority or power to permit use of public lands and of the Authority's borrowed funds for what seems, in part at least, a commercial venture for private profit."

Professor Sax's comments on the above quoted paragraph from *Gould* decision are as under:-

"It hardly seems surprising, then that the court questioned why a state should subordinate a public park, serving a useful purpose as relatively undeveloped land, to the demands of private investors for building such a commercial facility. The court, faced with such a situation, could hardly have been expected to have treated the case as if it involved nothing but formal legal issues concerning the state's authority to change the use of the certain tract of land ..... would, like Illinois Central, was contented with the most overt sort of imposition on the public interest; commercial interests had obtained advantages which infringed directly on public uses and promoted private profits. But the Massachusetts court as also confronted a more pervasive, if more subtle, problem - that concerning projects which clearly have some public justification. Such cases arise when, for example, a highway department seeks to take a piece of parkland or to fill a wetland."

In *Sacco vs. Development of Public Works* 352 MASS 670, the Massachusetts Court restrained the Department of Public Works from filling a great pond as part of its plan to relocate part of State Highway. The Department purported to act under the legislative authority. The court found the statutory power inadequate and held as under:-

the improvement of public lands contemplated by this section does not include the widening of a State highway. It seems rather that the improvement of public lands which the legislature provided for ... is to preserve such lands so that they may be enjoyed by the people for recreational purposes."

In *Robbins vs. Department of Public Works* 244 N.E. 2d 577, the Supreme Judicial Court of Massachusetts restrained the Public Works Department from acquiring Fowl Meadows, "Wet lands of considerable natural beauty ... often used for nature study and recreation" for highway use.

Professor Sax in the article (Michigan Law Review) refers to *Prieweys. Wisconsin State Land and Improvement Company* 93 Wis 534 (1896), *Crawford County Lever and Drainage district Nos.1, 182, Wis 404, city of Milwaukee vs. State* 193 Wis 423, *State vs. Public Service Commission* 275 Wis 112 and opines that the Supreme Court of Wisconsin has probably made a more conscientious effort to rise above rhetoric and la work out a reasonable meaning for the public trust doctrine than have the courts or any other State".

Professor Sax stated the scope of the public trust doctrine in the following words:-

If any of the analysis in this Article makes sense, it is clear that the judicial techniques developed in public trust cases need not be limited either to these few conventional interests or to questions of disposition of public properties. Public trust problems are found whenever governmental regulation comes into question, and they occur in a wide range of situations in which diffuse public interests need protection against tightly organized groups with clear and immediate goals. Thus, it seems that the

delicate mixture of procedural and substantive protections which the courts have applied in conventional public trust cases would be equally applicable and equally appropriate in controversies involving air pollution, the dissemination of pesticides, the location of rights of way for utilities, and strip mining or wetland filling on private lands in a state where governmental permits are required." We may at this stage refer to the judgment of the Supreme Court of California in *National Audubon Society vs. Superior Court of Alpine County* 33 CAL. 3d 419. The case is popularly known as "the Mono lake case", Mono lake is the second largest lake in California. the lake is saline. It contains no fish but support a large population of brine shrimp which feed vast numbers of nesting and migrating birds. Islands in the lake protect a large breeding colony of California gulls, and the lake itself serves as a haven on the migration route for thousands of birds. Towers and spires of tufa on the north and south shores are matters of geological interest and a tourist attraction. In 1940, the Division of Water Resources granted the Department of Water and Power of the city of Los Angeles a permit to appropriate virtually the entire flow of 4 of the 5 streams flowing into the lake. As a result of these diversions, the level of the lake dropped, the surface area diminished, the gulls were abandoning the lake and the scenic beauty and the ecological values of the Mono Lake were imperiled. The plaintiff environmentalist - using the public trust doctrine - filed a law suit against Los Angeles Water Diversions, the case eventually came to the California Supreme court, on a Federal Trial Judge's request for clarification of the States public trust doctrine. the Court explained the concept of public trust doctrine in the following words:-

"By the law of nature these things are common to mankind - the air, running water, the sea and consequently the shores of the sea." (Institutes of Justinian 2.1.1.) From this origin in Roman law, the English common law evolved the concept of the public trust, under which the sovereign owns "all of its navigable waterways and the lands lying beneath them as trustee of a public trust for the benefit of the people."

The Court explained the purpose of the public trust as under:-

"The objective of the public trust has evolved in tandem with the changing public perception of the values and uses of waterways. As we observed in *Marks v. Whitney*, supra, 6 Cal.3d 251, "[p]ublic trust easements [were] traditionally defined in terms of navigation, commerce and fisheries. They have been held to include the right to fish, hunt, bathe, swim, to use for boating and general recreation purposes the navigable waters of the state, and to use the bottom of the navigable waters for anchoring, standing, or other purposes. We went on, however, to hold that the traditional triad of uses-navigation, commerce and fishing-did not limit the public interest in the trust res. In language of special importance to the present setting, we stated that "[t]he public uses to which tidelands are subject are sufficiently flexible to encompass changing public needs. In administering the trust the state is not burdened with an outmoded classification favoring one mode of utilization over another. there is a growing public recognition that one of the most important public uses of the

tidelands-a use encompassed within the tidelands trust-is the preservation of those lands in their natural state, so that they may serve as ecological units for scientific study, as open space, and as environments which provide food and habitat for birds and marine life, and which favorably affect the secondary and climate or the area."

Mono Lake is a navigable waterway.

It supports a small local industry which harvests brine shrimp for sale as fish food, which endeavor probably qualifies the lake as a "fishery" under the traditional public trust cases. The principal values plaintiffs seek to protect, however, are recreational and ecological-the scenic views of the lake and its shore, the purity of the air, and the use of the lake for nesting and feeding by birds, Under *Marks v. Whitney*, supra, 6 Cal.3d 251, it is clear that protection of these values is among the purposes of the public trust."

The court summed up the powers of the state as trustee in the following words:-

"Thus, the public trust is more than an affirmation of state power to use public property for public purposes. It is an affirmation of the duty of the state to protect the people's common heritage of streams, lakes, marshlands and tidelands, surrendering that right of protection only in rare cases when the abandonment of that right is consistent with the purposes of the trust.....

The Supreme Court of California, inter alia, reached the following conclusion:-

"The state has an affirmative duty to take the public trust into account in the planning and allocation of water resources, and to protect public trust uses whenever feasible. Just as the history of this state shows that appropriation may be necessary for efficient use of water despite unavoidable harm to public trust values, it demonstrates that an appropriative water rights system administered without consideration of the public trust may cause unnecessary and unjustified harm to trust interests. (See *Johnson*, 14 U.C.Davis LL. Rev.233, 230-257;

*Robie*, Some Reflections on Environmental Considerations in Water Rights Administration, 2 *Ecology L.Q.*695, 710-711 (1972); Comment, 33 *Hastings L.J.* 653,

654.) As a matter of practical necessity the state may have to approve appropriations despite foreseeable harm to public trust uses. In so doing, however, the state must bear in mind its duty as trustee to consider the effect of the taking on the public trust (see *United Plainsmen v. N.D. State Water Cons. Comm'n*, 247 N.W. 2d 457, 462-463 (N.D. 1976), and to preserve, so far as consistent with the public interest, the uses protected by the trust."

The Court finally came to the conclusion that the plaintiffs could rely on the public trust doctrine in seeking reconsideration of the allocation of the waters of the Mono basin.

It is no doubt correct that the public trust doctrine under the English Common Law extended only to certain traditional uses such as navigation, commerce and fishing. But the American Courts in recent cases have expanded the concept of the public trust doctrine. The observations of the Supreme Court of California in Mono Lake case clearly show the judicial concern in protecting all ecologically important lands, for example fresh water, wetlands or riparian forests. The observation of the Court in Mono Lake case to the effect that the protection of ecological values is among the purpose of public trust, may give rise to an argument that the ecology and the environment-protection is a relevant factor to determine which lands, waters or airs are protected by the public trust doctrine. The Courts in United States are finally beginning to adopt this reasoning and are expanding the public trust to encompass new types of lands and waters. In Phillips Petroleum co. vs. Mississippi 108 S.Ct. 791 (1988), the United States Supreme Court upheld Mississippi's extension of public trust doctrine to lands underlying nonnavigable tidal areas. The majority judgment adopted ecological concepts to determine which lands can be considered tide lands. Phillips Petroleum case assumes importance because the Supreme Court expanded the public trust doctrine to identify the tide lands not on commercial considerations but on ecological concepts. We see no reason why the public trust doctrine should not be expanded to include all eco-systems operating in our natural resources.

Our legal system - based on English Common Law - includes the public trust doctrine as part of its jurisprudence. The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the sea-shore, running waters, airs, forests and ecologically fragile lands. The State as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership.

We are fully aware that the issues presented in this case illustrate the classic struggle between those members of the public who would preserve our rivers, forests, parks and open land in their pristine purity and those charged with administrative responsibilities who, under the pressures of the changing needs of an increasing complex society, find it necessary to encroach to some extent open lands heretofore considered inviolate to change. The resolution of this conflict in any given case is for the legislature and not the courts. If there is a law made by Parliament or the State Legislatures the courts can serve as an instrument of determining legislative intent in the exercise of its powers of judicial review under the Constitution. But in the absence of any legislation, the executive acting under the doctrine of public trust cannot abdicate the natural resources and convert them into private ownership or for commercial use. The esthetic use and the prestige glory of the natural resources, the environment and the eco-systems of our country cannot be permitted to be eroded for private, commercial or any other use unless the courts find it necessary, in good faith, for the public goods and in public interest to encroach upon the said resources.

Coming to the facts of the present case, large area of the bank of river Beas which is part of protected forest has been given on a lease purely for commercial purposes to the Motels. We have no hesitation in holding that the Himachal Pradesh Government committed patent breach of public trust by leasing the ecologically fragile land to the Motel management. Both the lease - transactions are in patent breach of the trust held by the State Government. The second lease granted in the year 1994 was virtually of the land which is a part of river-bed. Even the board in its report has

recommended de-leasing of the said area.

This Court in *Vellore Citizens Welfare Forum v. Union of India & Ors.* JT 1996(7) S.C.375 explained the "Precautionary Principle" and "Polluters Pays principle" as under:-

Some of the salient principles of "Sustainable Development", as culled out from Brundtland Report and other international documents, are inter-Generational Equity, Use and Conservation of Natural Resources, Environmental Protection, the Precautionary Principle, Polluter Pays principle, Obligation to assist and cooperate, Eradication of Poverty and Financial Assistance to the developing countries. We are, however, of the view that "The Precautionary Principle" and "The Polluter Pays" principle are essential features of "Sustainable Development". The "Precautionary Principle" - in the context of the municipal law - means:

(i) Environment measures - by the State Government and the statutory authorities - must anticipate, prevent and attack the causes of environmental degradation.

(ii) Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

(iii) The "Onus of proof" is on the actor or the developer/industrialist to show that this action is environmentally benign.

"The Polluter Pays" principle has been held to be a sound principle by this Court in *Indian Council for Enviro-Legal Action vs. Union of India* JT 1996 (2) 196. The Court observed, "We are of the opinion that any principle evolved in this behalf should be simple, practical and suited to the conditions obtaining in this country". The Court ruled that "Once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable care while carrying on his activity. The rule is premised upon the very nature of the activity carried on".

Consequently the polluting industries are "absolutely liable to compensate for the harm caused by them to villagers in the affected area, to the soil and to the underground water and hence, they are bound to take all necessary measures to remove sludge and other pollutants lying in the affected areas". The "Polluter Pays" principle as interpreted by this Court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental of the damaged environment is part of the process of "Sustainable Development" and as such polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology. The precautionary principle and the polluter pays principle have been accepted as part of

the law of the land.

It is thus settled by this Court that one who pollutes the environmental must pay to reverse the damage caused by his acts.

We, therefore, order and direct as under:

1. The public trust doctrine, as discussed by us in this judgment is a part of the law of the land.
2. The prior approval granted by the Government of India, Ministry of Environment and Forest by the letter dated November 24, 1993 and the lease-deed dated April 11, 1994 in favor of the Mote are quashed. The lease granted to the Motel by the said lease-deed in respect of 27 bighas and 12 biswas of area, is cancelled and set aside. The Himachal Pradesh Government shall take over the area and restore it to its original-natural conditions.
3. The Motel shall pay compensation by way of cost for the restitution of the environment and ecology of the area. The pollution caused by various constructions made by the Motel in the river bed and the banks of the river Beas has to be removed and reversed. We direct NEERI through its Director to inspect the area, if necessary, and give an assessment of the cost which is likely to be incurred for reversing the damage caused by the Mote to the environment and ecology of the area, NEERI may take into consideration the report by the Board in this respect.
4. The Motel through its management shall show cause why pollution fine in addition be not imposed on the Motel.
5. The Motel shall construct a boundary wall at a distance of not more than 4 meters from the cluster of rooms (main building of the Motel) towards the river basin. The boundary wall shall be on the area of the Motel which is covered by the lease dated September 29, 1981. The Motel shall not encroach/cover/utilise any part of the river basin. The boundary wall shall separate the Motel building from the river basin. The river bank and the river basin shall be left open for the public use.
6. The Motel shall not discharge untreated effluent into the river. We direct the Himachal Pradesh Pollution Control Board to inspect the pollution control devices/treatment plants set up by the Motel. If the effluent/waste discharged by the Mote is not conforming to the prescribed standards, action in accordance with law be taken against the motel.
7. The Himachal Pradesh Pollution Control Board shall not permit the discharge of untreated effluent into river Beas.

The Board shall inspect all the hotels/institutions/factories in Kuliu-Manali area and in case any of them are discharging untreated effluent/waste into the river, the Board shall take action in accordance with law.

8. The Motel shall show cause on December 18, 1996 why Pollution-fine and damages be not imposed as directed by us., NEERI shall send its report by December 17, 1996. To be listed on December 18, 1996.

The writ petition is disposed of except for limited purpose indicated above.

## **T.N. Godavarman Thirumulkpad vs Union Of India & Ors on 12 December, 1996**

**Equivalent citations: AIR 1997 SUPREME COURT 1228, 1997 AIR SCW 1263, (1997) 10 JT 377 (SC), 1997 (3) JT 338, 1997 (2) SCC 267, (2008) 1 MAD LJ 997, 1997 (1) UJ (SC) 290, 1997 UJ(SC) 1 290, (1997) 1 CURCC 304, (1997) 2 EASTCRIC 711, (1997) 2 SUPREME 221**

**Bench: J.S. Verma, B.N. Kirpal**

PETITIONER:

T.N. GODAVARMAN THIRUMULKPAD

Vs.

RESPONDENT:

UNION OF INDIA & ORS.

DATE OF JUDGMENT: 12/12/1996

BENCH:

J.S. VERMA, B.N. KIRPAL

ACT:

HEADNOTE:

JUDGMENT:

(With W.P.(Civil) No. 171/96) O R D E R In view of the great significance of the points involved in these matters, relating to the protection and conservation of the forests throughout the country, it was considered necessary that the Central Government as well as the Governments of all the States are heard. Accordingly, notice was issued to all of them. We have heard the learned Attorney General for the Union of India, learned counsel appearing for the States and the parties/applicants and, in addition, the learned Amicus Curiae, Shri H.N. Salve, assisted by Sarvashri U. U. Lalit, Mahender Das and P.K. Manohar. After hearing all the learned counsel, who have rendered very able assistance to the court, we have formed the opinion that the matters require a further indepth hearing to examine all the aspects relating to the National Forest Policy. For this purpose, several points which emerged during the course of the hearing require further study by the learned counsel

and, therefore, we defer the continuation of this hearing for some time to enable the learned counsel to further study these points.

However, we are of the opinion that certain interim directions are necessary at this stage in respect of some aspects. We have heard the learned Attorney General and the other learned counsel on these aspects.

It has emerged at the hearing, that there is a misconception in certain quarters about the true scope of the Forest Conservation Act, 1980 (for short the 'Act') and the meaning of the word "forest" used therein. There is also a resulting misconception about the need of prior approval of the Central Government, as required by Section 2 of the Act, in respect of certain activities in the forest area which are more often of a commercial nature. It is necessary to clarify that position.

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 fore 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 cover 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. This aspect has been made abundantly clear in the decisions of this Court in *Ambica Quarry Works and ors. versus State of Gujarat and ors.* (1987 (1) SCC

213), *Rura' Litigation and Entitlement Kendra versus State of U.P.* (1989 Suppl. (1) SCC 504), and recently in the order dated 29th November, 1996 in *W.P.(C) No.749/95 (Supreme Court Monitoring Committee vs. Mussorie Dehradun Development Authority and ors.)*. The earlier decision of this Court in *State of Bihar Vs. BanshiRam Modi and ors.* (1985 (3) SCC

643) has, therefore, to be understood in the light of these subsequent decisions. We consider it necessary to reiterate this settled position emerging from the decisions of this court to dispel the doubt, if any, in the perception of any State Government or authority. This has become necessary also because of the stand taken on behalf of the State of Rajasthan, even at this late stage, relating to permissions granted for mining in such area which is clearly contrary to the decisions of this court. It is reasonable to assume that any State Government which has failed to appreciate the correct position in law so far, will forthwith correct its stance and take the necessary remedial measures without any further delay.

We further direct as under:-

#### I. General:

1. In view of the meaning of the word "forest" in the Act, it is obvious that prior approval of the Central Government is required for any non-forest activity within the area of any "forest". In accordance with Section 2 of the Act, all on-going activity within any forest in any State throughout the country, without the prior approval of the Central Government, must cease forthwith. It is, therefore, clear that the running of saw mills of any kind including veneer or ply-wood mills, and mining of any mineral are non-forest purposes and are, therefore, not permissible without prior approval of the Central Government. Accordingly, any such activity is prima facie violation of the provisions of the Forest Conservation Act, 1980. Every State Government must promptly ensure total cessation of all such activities forthwith.

2. In addition to the above, in the tropical wet ever-

green forests of Tirap and Changlang in the State of Arunachal Pradesh, there would be a complete ban on felling of any kind of trees therein because of their particular significance to maintain ecological balance needed to preserve bio-diversity. All saw mills, veneer mills and ply- wood mills in Tirap and Changlang in Arunachal Pradesh and within a distance of 100 Kms. from its border, in Assam, should also be closed immediately. The State Governments of Arunachal Pradesh and Assam must ensure compliance of this direction.

3. The felling of trees in all forests is to remain suspended except in accordance with the Working Plans of the State Governments, as approved by the Central Government. In the absence of any Working Plan in any particular State, such as Arunachal Pradesh, where the permit system exists, the felling under the permits can be done only by the Forest Department of the State Government or the State Forest Corporation.

4. There shall be a complete ban on the movement of cut trees and timber from any of the seven North-Eastern States to any other State of the country either by rail, road or water-ways. The Indian Railways and the State Governments are directed to take all measures necessary to ensure strict compliance of this direction. This ban will not apply to the movement of certified timber required for defence or other Government purpose. This ban will also not affect felling in any private plantation comprising of trees planted in any area which is not a forest.

5. Each State Government should constitute within one month an Expert Committee to:

(i) Identify areas which are "forests", irrespective of whether they are so notified, recognised or classified under any law, and irrespective of the ownership of the land of such forest;

(ii) identify areas which were earlier forests but stand degraded, denuded or cleared; and

(iii) identify areas covered by plantation trees belonging to the Government and those belonging to private persons.

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 licensed 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.

8. The Expert Committees so constituted should be requested to give its report within one month of being constituted.

9. Each State Government would constitute a Committee comprising of the Principal Chief Conservator of Forests and another Senior Officer to oversee the compliance of this order and file status reports.

## II. FOR THE STATE OF JAMMU & KASHMIR:

1. There will be no felling of trees permitted in any "forest", public or private. This ban will not affect felling in any private plantations comprising of trees planted by private persons or the Social Forestry Department of the State of Jammu & Kashmir and in such plantations, felling will be strictly in accordance with law.

2. In `forests', the State Government may either departmentally or through the State Forest Corporation remove fallen trees or fell and remove diseased or dry standing timber, and that only from areas other than those notified under the Jammu & Kashmir Wild Life Protection Act, 1978 or any other law banning such felling or removal of trees.

3. For this purpose, the State Government will constitute an Expert Committee comprising of a representative being an IFS Officer posted in the State of Jammu &

Kashmir, a representative of the State Government, and two private experts of eminence and the Managing Director of the State Forest Corporation (as Member Secretary) who will fix the qualitative and quantitative norms for the felling of fallen trees, diseased and dry standing trees. The State shall ensure that the trees so felled and removed by it are strictly in accordance with these norms.

4. Any felling of trees in forest or otherwise or any clearance of land for execution of projects, shall be in strict compliance with the Jammu & Kashmir Forest Conservation Act, 1990 and any other laws applying thereto.

However, any trees so felled, and the disposal of such trees shall be done exclusively by the State Forest Corporation and no private agency will be permitted to deal with this aspect. This direction will also cover the submerged areas of the THEIN Dam.

5. All timber obtained, as aforesaid or otherwise, shall be utilised within the State, preferably to meet the timber and fuel wood requirements of the local people, the Government and other local institutions.

6. The movement of trees or timber (sawn or otherwise) from the State shall, for the present, stand suspended, except for the use of DGS & D, Railways and Defence. Any such movement for such use will -

a) be effected after due certification, consignment-wise made by the Managing Director of the State Corporation which will include certification that the timber has come from State Forest Corporation sources; and

b) be undertaken by either the Corporation itself, the Jammu & Kashmir Forest Department or the receiving agency.

7. The State of Jammu & Kashmir will file, preferably within one month from today, a detailed affidavit specifying the quantity of timber held by private persons purchased from State Forest Corporation Depots for transport outside the State (other than for consumption by the DGS & D, Railways and Defence). Further directions in this regard may be considered after the affidavit is filed.

8. No saw mill, veneer or plywood mill would be permitted to operate in this State at a distance of less than 8 Kms. from the boundary of any demarcated forest areas. Any existing mill falling in this belt should be relocated forthwith.

### III. FOR THE STATE OF HIMACHAL PRADESH AND THE HILL REGIONS OF THE STATES OF UTTAR PRADESH AND WEST BENGAL:

1. There will be no felling of trees permitted in any forest, public or private. This ban will not affect felling in any private plantation comprising of trees planted in any area

which is not a 'forest'; and which has not been converted from an earlier "forest". This ban will not apply to permits granted to the right holders for their bonafide personal use in Himachal Pradesh.

2. In a 'forest', the State Government may either departmentally or through the State Forest Corporation remove fallen trees or fell and remove diseased or dry standing timber from areas other than those notified under Section 18 or Section 35 of the Wild Life Protection Act, 1972 or any other Act banning such felling or removal of trees.

3. For this purpose, the State Government is to constitute an expert Committee comprising a representative from MOEF, a representative of the State Government, two private experts of eminence and the MD of the State Forest Corporation (as Member Secretary), who will fix the qualitative and quantitative norms for the felling of fallen trees and diseased and standing timber. The State shall ensure that the trees so felled and removed are in accordance with these norms.

4. Felling of trees in any forest or any clearance of forest land in execution of projects shall be in strict conformity with the Forest Conservation Act, 1980 and any other laws applying thereto. Moreover, any trees so felled, and the disposal of such trees shall be done exclusively by the State Forest Corporation and no private agency is to be involved in any aspect thereof.

#### IV. FOR THE STATE OF TAMIL NADU:

1. There will be a complete ban on felling of trees in all forest areas'. This will however not apply to:-

(a) trees which have been planted and grown, and are not of spontaneous growth, and

(b) are in areas which were not forests earlier, but were cleared for any reason.

2. The State Government, within four weeks from today, is to constitute a committee for identifying all "forests".

3. Those tribals who are part of the social forestry programme in respect of patta lands, other than forests, may continue to grow and cut according to the Government Scheme provided that they grow and cut trees in accordance with the law applicable.

4. In so far as the plantations (tea, coffee, cardamom etc.) are concerned, it is directed as under:

a) The felling of shade trees in these plantations will be -

i) limited to trees which have been planted, and not those which have grown spontaneously;

ii) limited to the species identified in the TANTEA report;

iii) in accordance with the recommendations of (including to the extent recommended by) TANTEA; and

iv) under the supervision of the statutory committee constituted by the State Government.

b) In so far as the fuel trees planted by the plantations for fuel wood outside the forest area are concerned, the State Government is directed to obtain within four weeks, a report from TANTEA as was done in the case of Shade trees, and the further action for felling them will be as per that report. Meanwhile, eucalyptus and wattle trees in such area may be felled by them for their own use as permitted by the statutory committee.

c) the State Government is directed to ascertain and identify those areas of the plantation which are a "forest"

and are not in active use as a plantation. No felling of any trees is however to be permitted in these areas, and sub- paras (b) and (c) above will not apply to such areas.

d) There will be no further expansion of the plantations in a manner so as to involve encroachment upon (by way of clearing or otherwise) of "forests".

5. As far as the trees already cut, prior to the interim order of this court dated December 11, 1995 are concerned, the same may be permitted to be removed provided they were not so felled from Janmam land. The State Government would verify these trees and mark them suitably to ensure that this order is duly complied with. For the present, this is being permitted as a one time measure.

6. Insofar as felling of any trees in Janmam lands is concerned (whether in plantations or otherwise), the ban on felling will operate subject to any order made in the Civil Appeal Nos. 367 to 375 of 1977 in C.A. Nos. 1344-45 of 1976. After the order is made in those Civil Appeals on the I.As. pending therein, if necessary, this aspect may be re- examined.

7. This order is to operate and to be implemented, notwithstanding any order at variance, made or which may be made by any Government or any authority, tribunal or court, including the High Court.

The earlier orders made in these matters shall be read, modified wherever necessary to this extent. This order is to continue, until further orders. This order will operate and be complied with by all concerned, notwithstanding any order at variance, made or which may be made hereafter, by any

authority, including the Central or any State Government or any court (including High Court) or Tribunal.

We also direct that notwithstanding the closure of any saw mills or other wood-based industry pursuant to this order, the workers employed in such units will continue to be paid their full emoluments due and shall not be retrenched or removed from service for this reason.

We are informed that the Railway authorities are still using wooden sleepers for laying tracks. The Ministry of Railways will file an affidavit giving full particulars in this regard including the extent of wood consumed by them, the source of supply of wood, and the steps taken by them to find alternatives to the use of wood.

I.A. Nos. 7,9,10,11,12,13 and 14 in Writ Petition (Civil) No. 202 of 1995 and I.A. Nos. 1,3,4,5,6,7,8 & 10 in Writ Petition (Civil) No. 171 of 1996 are disposed of, accordingly.

List the matter on February 25, 1997 as part-heard for further hearing.

**Hinch Lal Tiwari vs Kamala Devi And Ors on 25 July, 2001**

**Equivalent citations: AIR 2001 SUPREME COURT 3215, 2001 (6) SCC 496, 2001 AIR SCW 2865, 2001 ALL. L. J. 2035, 2001 (4) LRI 861, 2002 (1) UJ (SC) 102, 2002 UJ(SC) 1 102, (2001) 6 JT 88 (SC), 2001 (7) SRJ 444, 2001 ALL CJ 2 1604, (2001) REVDEC 689, (2001) 3 ALL WC 2398, (2001) 4 SCALE 670, (2001) 3 SCJ 51, (2001) 2 UC 247**

**Bench: Syed Shah Mohammed Quadri, S.N. Phukan**

CASE NO. :

Appeal (civil) 4787 of 2001

PETITIONER:

HINCH LAL TIWARI

RESPONDENT:

KAMALA DEVI AND ORS.

DATE OF JUDGMENT: 25/07/2001

BENCH:

SYED SHAH MOHAMMED QUADRI & S.N. PHUKAN

JUDGMENT:

JUDGMENT 2001 Supp(1) SCR 23 The Order of the Court was as follows :

Leave is granted.

This appeal is from the judgment and order of the High Court of Judicature at Allahabad allowing in part Civil Miscellaneous Writ Petition No. 26572 of 1999, filed by Respondents 1 to 10, on 16-8-2000.

The dispute relates to Plot No. 774-KA measuring 15 biswas situated in Village Ugapur, Taluka Asnao, District Sant Ravidas Nagar (U.P.) (hereinafter referred to as "the pond"). It appears that proceeding was initiated by the Lekhpal of the village to allot plots of land to an extent of 15 biswas of the pond area on 11-8-1988. The SDO allotted 250 sq. yards to each of Respondents 1 to 10 who are said to belong to one family. Seventeen persons of that village objected to the said allotment under Rule 115-P of the U.P. Zamindari Abolition and Land Reforms Rules (for short "the Rules"). The Additional Collector called for a report from the Tahsildar on their objections but the matter seems to have rested there as the objectors withdrew their objections. At that stage the appellant filed an application praying the Additional Collector to cancel the allotment of land in favour of Respondents 1 to 10. On

25-2-1999 the Additional Collector cancelled the allotment in question made in their favour. They carried the matter unsuccessfully in revision before the Commissioner who by order dated 12-3-1999 dismissed the revision. Challenging the correctness of the order of the Divisional Commissioner the said respondents filed Writ Petition No. 26572 of 1999 in the High Court of Judicature at Allahabad. By the impugned order the High Court partly allowed the writ petition by confirming the allotment in respect of 10 biswas and cancelling in respect of 5 biswas, which led to filing of this appeal.

Mr. Ranjit Kumar, the learned Senior Counsel for the appellant vehemently contends that the power of allotment of the land is available in respect of abadi site and not in respect of a pond which is a public utility and meant for public use; that no part of it could have been allotted in favour of any person, much less in favour of Respondents 1 to 10 who do not fall in the specified categories of the beneficiaries under the Rules. He invited our attention to Section 122-C(1) which specifies the classes of land which can be earmarked for the provisions of abadi sites and pointed out that pond (talab) area is not among them. Mr. Dwivedi, the learned Senior Counsel appearing for the official respondents argued that having regard to the provisions of the Act and the Rules, it is difficult to support the allotment of the pond land in favour of Respondents 1 to 10 and that the order of cancellation of allotment is justified and valid. Mr. Garg, the learned counsel appearing for Respondents 1 to 10 submits that the Lekhpal forwarded proposals for allotment of house sites on the land which ceased to be a pond, to the Additional Collector who allotted the plots in their favour, therefore, it must be assumed that the land was treated as an abadi site in respect of which allotment of house site would be permissible.

The short question that arises for our consideration is whether the allotted land forms part of a pond (talab) and if so, can it be allotted under Section 122-C(1) of the Act.

It would be useful to refer to the provisions of the U.P. Zamindari Abolition and Land Reforms Act, 1950 (referred to in this judgment as "the Act"). Under Section 4 of the Act, all estates shall vest in the State from the specified date. Section 117 of the Act deals with vesting of certain lands in a Gaon Sabha. Clause (vi) of the said section which is relevant for our purpose reads thus :

"117. Vesting of certain lands, etc. in Gaon Sabhas and other local authorities. - (1) At any time after the publication of the notification referred to in Section 4, the State Government may, by general or special order to be published in the manner prescribed, declare that as from a date to be specified in this behalf, all or any of the following things, namely -

(i)-(v) \* \* \*

(vi) tanks, ponds, private ferries, water channels, pathways and abadi sites, -

which had vested in the State under this Act shall vest in a Gaon Sabha or any other local authority established for the whole or part of the village in which the said things are situate, or partly in one such local authority (including a Gaon Sabha) and partly in another :Provided that it shall be lawful for the State Government to make the declaration aforesaid subject to such exceptions and conditions as may be specified in such order."

A perusal of the provision extracted above makes it clear that tanks, ponds, private ferries, water channels, pathways and abadi sites which had vested in the State under Section 4 of the Act shall vest in the Gaon Sabha or any other local authority established for the whole or any part of the village in which the said things are situate, or partly in one such local authority and partly in another, from the date specified in the notification issued by the Government in this behalf. Section 122-C authorises the Assistant Collector, in charge of the sub-division to earmark the classes of land noted hereunder either on his own motion or on the resolution of the Land Management Committee, for the members of the Scheduled Castes and the Scheduled Tribes and agricultural labourers and village artisans. It would be apt to refer to clause (a) of sub-section (1) of Section 122-C which reads as follows :

"122-C. Allotment of land for housing site for members of Scheduled Castes, agricultural labourers etc. - (1) The Assistant Collector in charge of the sub-division of his own motion or on the resolution of the Land Management Committee, may earmark any of the following classes of land for the provision of abadi sites for the members of the Scheduled Castes and the Scheduled Tribes and agricultural labourers and village artisans -

(a) lands referred to in clause (i) of sub-section (1) of Section 117 and vested in the Gaon Sabha under that section;"

And the said clause (i) runs as follows :

" 117. (1)(i) lands, whether cultivable or otherwise, except lands for the time being comprised in any holding or grove, \* \* \*"

The term "land"

is defined in Section 3, sub-section (14) to mean land held or occupied for purposes connected with agriculture, horticulture or animal husbandry which includes pisciculture and poultry farming. The definition excludes land dealt with in Sections 109, 143, 144 and Chapter 7. We may note that we are not concerned with the excepted categories. From a combined reading of the provisions aforementioned, it is plain that the subject-matter of allotment of house sites is lands referred to in clause (i) of sub-section (1) and not tanks, ponds, private ferries, water channels, pathways referred to in clause (vi) of sub-section (1) of Section 117 of the Act. It appears to us that due to inappropriate drafting the expression "and abadi sites" is wrongly placed in clause (vi).

It would not be out of place to notice here that Section 122-C enumerates the categories of persons who are entitled to allotment of land and they are (1) Scheduled Castes, (2) Scheduled Tribes, (3) agricultural labourers, and (4) village artisans. For disposal of this case it is unnecessary to go into the question whether in a case of allottable land, the said respondents answer the description of the beneficiaries specified in sub-section (3) of Section 122-C of the Act.

Reverting to the first part of the question, from the report of the Tahsildar dated 18-4-1990 which is termed as the first report, it is clear that in the said Survey No. 774-KA, there is a pond (talab). The same is the substance of the report of the SDO dated 20-4-1990. Two more reports were called for by the orders of the High Court. They are dated 12-9-1999 and 3-4-2000. We do not find any substantial difference between these reports and the reports prepared by the Tahsildar and the SDO. We may also mention here that in khasra khatauni for the years 1387 to 1392 Fasli (corresponding to years 1980 to 1985) and 1393 to 1398 Fasli (1986-92) the description of the said survey number is given as pond. Consistent with those entries the Additional Collector found it to be a pond (talab) and cancelled the allotment of plots in favour of the said respondents. The Commissioner rightly confirmed the order of the Additional Collector. In writ petition, the High Court, in the impugned order, noted :

"From the report of the Sub-Divisional Officer dated 3-4-2000 it is clear that the land had the character of a pond but due to passage of time most of its part became levelled. But some of the portion had still the character of a pond and during the rainy season it is covered by water. The area which is covered by water or may be covered by water in the rainy season could not be allotted as abadi site to any person."

On this finding, in our view, the High Court ought to have confirmed the order of the Commissioner. However, it proceeded to hold that considering the said report the area of 10 biswas could only be allotted and the remaining five biswas of land which have still the character of a pond, could not be allotted. In our view, it is difficult to sustain the impugned order of the High Court. There is concurrent finding that a pond exists and the area covered by it varies in the rainy season. In such a case no part of it could have been allotted to anybody for construction of house building or any allied purposes.

It is important to notice that the material resources of the community like forests, tanks, ponds, hillock, mountain etc. are nature's bounty. They maintain delicate ecological balance. They need to be protected for a proper and healthy environment which enables people to enjoy a quality life which is the essence of the guaranteed right under Article 21 of the Constitution. The Government, including the Revenue Authorities i.e. Respondents 11 to 13, having noticed that a pond is falling in disuse, should have bestowed their attention to develop the same which would, on one hand, have prevented ecological disaster and on the other provided better environment for the benefit of the public at large. Such vigil is the best protection against knavish attempts to seek allotment in

non-abadi sites. For the aforementioned reasons, we set aside the order of the High Court, restore the order of the Additional Collector dated 25-2-1999 confirmed by the Commissioner on 12-3-1999. Consequently, Respondents 1 to 10 shall vacate the land, which was allotted to them, within six months from today. They will, however, be permitted to take away the material of the houses which they have constructed on the said land. If Respondents 1 to 10 do not vacate the land within the said period the official respondents i.e. Respondents 11 to 13 shall demolish the construction and get possession of the said land in accordance with law. The State including Respondents 11 to 13 shall restore the pond, develop and maintain the same as a recreational spot which will undoubtedly be in the best interest of the villagers. Further it will also help in maintaining ecological balance and protecting the environment in regard to which this Court has repeatedly expressed its concern. Such measures must begin at the grass-root level if they were to become the nation's pride.

The appeal is accordingly allowed. There shall be no order as to costs.

**Case Note:** Case concerning the general question about conservation, preservation and protection of forests and ecology, with the particular question being that when forest land is used for non-forest purposes, what measures are required to be taken to compensate for loss of forest land and to compensate effect on the ecology.

This document is available at [www.ielrc.org/content/e0508.pdf](http://www.ielrc.org/content/e0508.pdf)

AIR2005SC4256, (2006)1SCC1

## **IN THE SUPREME COURT OF INDIA**

Decided On: 26.09.2005

**T.N. Godavarman Thirumulpad**

**v.**

**Union of India (UOI) and Ors.**

### **Hon'ble Judges:**

Y.K. Sabharwal, Arijit Pasayat and S.H. Kapadia, JJ.

## **JUDGMENT**

**Y.K. Sabharwal, J.**

Natural resources are the assets of entire nation. It is the obligation of all concerned including Union Government and State Governments to conserve and not waste these resources. Article 48A of the Constitution of India requires the State shall endeavour to protect and improve the environment and to safeguard the forest and wild life of the country. Under Article 51A, it is the duty of every citizen to protect and improve the natural environment including forest, lakes, rivers and wild-life and to have compassion for living creatures.

In the present case, the question is about conservation, preservation and protection of forests and the ecology. When forest land is used for non-forest purposes, what measures are required to be taken to compensate for loss of forest land and to compensate effect on the ecology, is the main question under consideration.

Forests are a vital component to sustain the life support system on the earth. Forests in India have been dwindling over the years for a number of reasons, one of it being the need to use forest area for development activities including economic development. Undoubtedly, in any nation development is also necessary but it has to be consistent with protection of environments and not at the cost of degradation of environments. Any programme, policy or vision for overall development has to evolve a systemic approach

so as to balance economic development and environmental protection. Both have to go hand in hand. In ultimate analysis, economic development at the cost of degradation of environments and depletion of forest cover would not be long lasting. Such development would be counter productive. Therefore, there is an absolute need to take all precautionary measures when forest lands are sought to be directed for non forest use.

The point in issue is whether before diversion of forest land for non- forest purposes and consequential loss of benefits accruing from the forests should not the user agency of such land be required to compensate for the diversion. If so, should not the user Agency be required to make payment of Net Present Value (NPV) of such diverted land so as to utilize the amounts so received for getting back in long run the benefits which are lost by such diversion? What guidelines should be issued for determination of NPV? Should guidelines apply uniformly to all? How to calculate NPV? Should some projects be exempted from payment of NPV? These are the main aspects which require examination and determination in the backdrop of various legislations which we would presently notice.

The legislature to provide for conservation of forest and for matters connected therewith or ancillary or incidental thereto enacted the Forest (Conservation) Act, 1980 (for short, the 'FC Act'). It postulates that no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing that any forest land or any portion thereof may be used for any non-forest purpose. The Central Government under the FC Act has been empowered to constitute a Committee to advice it with regard to grant of approval. Under Section 2 of the Act the question of use of any forest land for non-forest purposes and any other matter connected with the conservation of forest may be referred to such a committee by the Central Government under the FC Act. The contravention of any of the provisions of Section 2 has been made an offence.

Noticing the decline in environment quality due to increasing pollution, loss of vegetal cover and biological diversity, excessive concentrations of harmful chemicals in the ambient atmosphere and in food chains, growing risks of environmental accidents and threats to life support system, the Environment (Protection) Act, 1986 (for short, the 'EP Act') has been enacted. It has been noted in the Statement of Objects and Reasons that although there are existing laws dealing directly or indirectly with several environmental matters, it is necessary to have a general legislation for environmental protection. Existing laws generally focus on specific types of pollution or on specific categories of hazardous substances. Some major areas of environmental hazards are not covered. There also exist uncovered gaps in areas of major environmental hazards. There are inadequate linkages in handling matters of industrial and environmental safety. Control mechanisms to guard against slow, insidious build up of hazardous substances, especially new chemicals, in the environment are weak. Because of a multiplicity of regulatory agencies, there is need for an authority which can assume the lead role for studying, planning and implementing long-term requirements of environmental safety and to give direction to, and co-ordinate a system of speedy and adequate response to emergency situations threatening the environment. The EP Act was, therefore, enacted to provide for protection and improvement of environment and for matters connected therewith. The Central

Government has been given wide powers to take measures to protect and improve the environment as provided under Section 3 including the power to constitute an authority or authorities for the purpose of exercising and performing such of the powers and functions, including the power to issue directions under Section 5, of the Central Government under the Act and for taking measures with respect to such of the matters referred to in sub-section (2) of Section 3 as may be mentioned in the order and subject to the prejudice and control of the Central Government. Section 5 of the EP Act empowers the Central Government, in exercise of its powers and performance of its function under the Act, to issue directions in writing to any person, officer or any authority and such person, officer or authority shall be bound to comply with such directions. The Central Government has the power to direct the closure, prohibition or regulation of any industry, operation or process or stoppage of regulation of the supply of electricity or water or any other service.

Parliament has also enacted enactments to prevent and control water pollution and air pollution [The Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981].

A statement was placed before this Court by the Central Government showing the position as on 20<sup>th</sup> March, 2000 of the cases approved for diverting forest lands, stipulation for compensatory afforestation under the FC Act and the compensatory afforestation done, funds to be utilized and actually utilized. The Court noted the dismal situation as there was a shortfall to the extent of 36% of total afforestation compensatory or otherwise afforestation. It further noted that though funds had been realized by all the States in connection with such afforestation, a very large number of States had spent 50% or less amount on afforestation. In this background, taking suo moto action, notices were directed to be issued to the States mentioned in the Order dated 17<sup>th</sup> April, 2000 to explain as to why moneys realized have not been spent on carrying out afforestation.

On 23<sup>rd</sup> November, 2001, after considering the affidavits that had been filed, it was noted that large sums of money had been realized by various States from the user-agency to whom permits were granted to use forest land for non-forest purposes. The moneys were paid by user agencies to the State Governments for compensatory afforestation but the utilization was only about 83% of the funds actually realized by the State Governments, the shortfall being of nearly Rs.200 crores.

The Ministry of Environment and Forests (MOEF) was directed to formulate a scheme providing that whenever any permission is granted for change of use of forest land for non-forest purposes and one of the conditions of the permission is that there should be compensatory afforestation, then the responsibility of the same should be that of user-agency and it should be required to set apart a sum of money for doing the needful. In such a case the State Government will have to provide or make available land on which reforestation can take place and this land may have to be made available either at the expense of the user-agency or of the State Government, as the State Government may decide. It was decided that the scheme shall ensure that afforestation takes place as per the permissions which are granted and there should be no shortfall.

The scheme was submitted by MOEF alongwith an affidavit dated 22<sup>nd</sup> March, 2002.

The Central Empowered Committee (CEC) on consideration of relevant material including the scheme submitted by MOEF made its report (IA 826) containing recommendations dated 9<sup>th</sup> August, 2002. The report, taking note of the present system of compensatory afforestation as per guidelines issued by MOEF from time to time under the FC Act, the procedure for receipt and utilization of funds for compensatory afforestation, activities permissible under compensatory afforestation, adequate compensation for loss of forest land - recovery of Net Present Value, funds for catchment area, treatment plant and involvement of user- agency for compensatory afforestation, made the following recommendations :

(a) in addition to the funds realized for compensatory afforestation, net present value of the forest land diverted for non- forestry purposes shall also be recovered from the user agencies, while according approval under the Forest (Conservation) Act, 1980;

(b) a 'Compensatory Afforestation Fund' shall be created in which all the monies received from the user-agencies towards compensatory afforestation, additional compensatory afforestation, penal compensatory afforestation, net present value of forest land, Catchment Area Treatment Plan funds, etc., shall be deposited. The rules, procedure and composition of the body for management of the Compensatory Afforestation Fund shall be finalized by the Ministry of Environment & Forests with the concurrence of Central Empowered Committee within one month;

(c) the funds received from the user-agencies in cases where forest land diverted falls within Protected Areas i.e. area notified under Section 18, 26A or 35 of the Wild Life (Protection) Act, 1972, for undertaking activities related to protection of bio- diversity, wildlife, etc., shall also be deposited in this Fund. Such monies shall be used exclusively for undertaking protection and conservation activities in protected areas of the respective State/UT;

(d) the amount received on account of compensatory afforestation but not spent or any balance amount lying with the State/UT or any amount that is yet to be recovered from the user agency shall also be deposited in this Fund;

(e) besides artificial regeneration (plantations), the funds shall also be utilized for undertaking assisted natural regeneration, protection of forests and other related activities. For this purpose, site specific plans should be prepared and implemented in a time bound manner;

(f) the user agencies especially the large public sector undertakings such as Power Grid Corporation, NTPC, etc., which frequently require forest land for their projects should also be involved in undertaking compensatory afforestation by establishing Special Purpose Vehicle. Whereas the private sector user-agencies may be involved in monitoring and most importantly, in protection of compensatory afforestation. Necessary

procedure for this purpose would be laid down by the MOEF with the concurrence of the Central Empowered Committee.

(g) Plantations must use local and indigenous species since exotics have long term negative impacts on the environment; and

(h) an independent system of concurrent monitoring and evaluation shall be evolved and implemented through the Compensatory Afforestation Fund to ensure effective and proper utilization of funds.

The aforesaid report, inter alia, notes that there was general consensus amongst the States/Union Territories that the present practice of concentrating only on artificial regeneration through plantations should be dispensed with as it does not adequately compensate the loss of natural forest and that a part of the fund should also be used for assisted natural regeneration wherein the natural forests are allowed to regenerate and grow by undertaking silvicultural and cultural operations such as fire tracing, singalling of seedlings, protection, etc. These activities help in regenerating the rootstock which may exist in the degraded forests. Besides, this helps in restoring the natural forests, which is not possible through plantations. It also noted that to compensate for the loss of tangible as well as intangible benefits flowing from the forest lands which has been diverted for non-forest use, the NPV of such land is being recovered from the user agency in the States of Madhya Pradesh, Chhattisgarh and Bihar. In the states of Madhya Pradesh and Chhattisgarh, the NPV is being recovered at the rate of Rs.5.80 lac per hectare to Rs.9.20 lac per hectare of the forest land depending upon the quality and density of the forest land diverted for non-forestry use. The underlying principle for recovery of NPV was that the plantations raised under the compensatory afforestation scheme could never adequately compensate for the loss of natural forests as the plantations require more time to mature and even then they are a poor substitute to natural forest. It noted that States/Union Territories as well as MOEF are of the view that in addition to the funds realized for compensatory afforestation, the NPV of the forest land being directed for non-forestry purposes should also be recovered from the user-agencies.

The MOEF, in principle, accepted the aforesaid recommendations of CEC. The order dated 29<sup>th</sup> October, 2002 notices this fact. Further noticing that no other State had filed any response to the report of CEC, the Court presumed that the State Governments were also not opposed to the said report and have accepted the same in the same manner as Union of India. On detailed examination of the report, the recommendations of CEC were accepted and Union of India was directed to frame comprehensive rules with regard to the constitution of a body and management of the compensatory afforestation funds in concurrence with the CEC. It was directed that the compensatory afforestation funds which had not yet been realized by the States shall be transferred to the aforesaid body by respective States and the user agencies within six months of its constitution. In addition, while according approval under the FC Act for change in user, the user-agency shall also pay into the said fund, the NPV of forest land diverted for non-forest purposes at the rate of Rs.5.80 lac per hectare to Rs.9.20 lac per hectare of forest land depending upon the quality and density of the land in question converted for non- forest use. The amount was

subject to upward revision by the MOEF in consultation with CEC as and when necessary. The aforesaid recommendations of CEC were accepted.

An application (I.A.No.1046) was filed by the MOEF, inter alia, seeking directions that the NPV calculation shall be part of the detailed project report submitted to it for a forestry clearance under the FC Act. During the course of hearing, learned Solicitor General informed this Court that the Government was agreeable to the suggestions of CEC that money received from user-agencies for compensatory afforestation fund should be kept in an interest bearing account, though initially it had some reservations about it. Reference has also been made in the application about exemption being granted to some projects from payment of NPV, an aspect which we would consider later at an appropriate stage so also the basis of the calculation of the NPV. We may, however, note that although in the application it was stated that the format issued by the World Bank for calculation for NPV for the projects shall be the basis of its calculation, the learned Solicitor General stated that he was not relying upon the said format. Regarding the mining projects, the application mentions that there has to be difference in approach for mineral of high volume and low volume and low value and minerals of high value and low volume. It is stated that levying of flat rates of NPV per hectare basis will, therefore, not be rational. The application states that in case of mining, NPV should be calculated at the rate of 10% for the major minerals and 5% for the minor minerals to be levied on the annual royalty. An application (IA 1047) has also been filed by the Ministry of Mines, Government of India taking similar pleas as are taken in IA 1046 seeking directions that in mining NPV may be calculated at the rate of 10% and 5% as above noted.

Now, we may refer to Notification dated 23rd April, 2004 issued by MOEF in exercise of the powers conferred by sub-section (3) of Section 3 of the EP Act constituting an authority known as Compensatory Afforestation Fund management and Planning Authority (hereinafter referred to as 'CAMPA') for the purpose of management of money towards compensatory afforestation, NPV and any other money recoverable in pursuance of this Court's order and in compliance of the conditions stipulated by the Central Government while according approval under the FC Act for non-forestry uses of the forest land. The Executive Body of the Authority comprises of the following:

- |       |  |                |
|-------|--|----------------|
| "(i)  | Director General of Forests and<br>Special Secretary, Ministry of<br>Environment and Forests, Government<br>of India | -- Chairperson |
| (ii)  | Addl. Director General of Forests<br>(Forests) Ministry of Environment and<br>Forests, Government of India           | -- Member      |
| (iii) | Addl. Director General of Forests<br>(Wildlife)  | -- Member      |
| (iv)  | Inspector General of Forests (Forest<br>Conservation), Ministry of Environment<br>And Forests, Government of India   | -- Member      |
| (v)   | Joint Secretary and Financial Advisor,<br>Ministry of Environment and Forests,<br>Government of India                | -- Member      |
| (vi)  | Chief Executive Officer (CEO)  | -- Member      |

- (vii) A professional ecologist, not being from -- Member  
The Central and State Government, for  
A period of two years at a time, for up  
Two consecutive terms."

The powers and functions of the Executive Body are:

- "(a) deployment of staff on contractual basis or on deputation;
- (b) financial procedure;
- (c) delegation of financial or administrative powers;
- (d) other day-to-day working in respect of receipts of funds;
- (e) investment of funds;
- (f) expenditure on establishment and other overheads including office accommodation subject to the approval of the annual budget by the Governing Body."

The management of the fund is provided in clause 6.3 and the disbursement of the fund in clause 6.4 of the Notification. These clauses read as under:

**"6.3 Management of the Fund:**

- (i) The amount collected by the CAMPA shall be invested in Reserve Bank of India, Nationalized Banks, Post Office, Government Securities, Government Bonds and deposits.
- (ii) The non-recurring as well as recurring cost for the management of CAMPA including the salary and allowances payable to its officers and staff shall be met by utilizing a part of the income by way of accrued interest on the funds invested by the CAMPA excluding income from funds received as per para 6.2(ii).
- (iii) The expenditure incurred on independent monitoring and evaluation shall be borne by the CAMPA out of the income by way of interest on the funds invested by the CAMPA excluding income from funds received as per para 6.2(iii).
- (iv) The CAMPA shall get the annual accounts audited internally as well as externally through chartered accountant(s) who are on the panel of the Comptroller and Auditor-General of India and the auditor(s) shall be selected on the approval of the Governing Body.

**6.4 Disbursement of Funds:**

- (i) The money received for compensatory afforestation, additional compensatory afforestation may be used as per the site specific schemes received from the States and

Union Territories along with the proposals for diversion of forest land under the Forest (Conservation) Act, 1980.

(ii) The money received towards Net Present Value (NPV) shall be used for natural assisted regeneration, forest management, protection, infrastructure development, wildlife protection and management, supply of wood and other forest produce saving devices and other allied activities.

(iii) Monies realized from the user agencies in pursuance of the Hon'ble Supreme Court's order or decision taken by the National Board for Wildlife involving cases of diversion of forest land in protected areas shall form the corpus and the income therefrom shall be used exclusively for undertaking protection and conservation activities in protected areas of the States and the Union Territories and in exceptional circumstances, a part of the corpus may also be used subject to prior approval of the CAMPA.

(iv) CAMPA shall release monies to concerned State and Union Territory in predetermined installments through the State Level Management Committee as per the Annual Plan of Operation (APO) finalized by the concerned State and the Union Territory.

(v) The monies received in CAMPA from a State or the Union Territory as per para 6.2 and the income thereon after deducting expenditure incurred by the CAMPA on its establishment cost, monitoring and evaluation on a prorata basis shall be used only in that particular State or the union Territory."

Clause 6.6 provides for other functions and reads thus:

"(i) The CAMPA may establish Special Purpose Vehicles (SPV) for undertaking compensatory afforestation particularly by involving large public sector undertakings which frequently require forests and for their projects, in consultation and as far as possible with the concurrence of the CEC.

(ii) The CAMPA may also consider evolving new mechanism to generate additional sources of fund for forest conservation works and to create capacity and data base for better conceptualization and management of fund."

Having regard to the nature of the functions of the Executive Body of the CAMPA, we find substance in the suggestion of learned Amicus Curiae that there should be more involvement of NGOs by including in the Executive Body, the conservationists, environmentalists, economists and experts in forestry. We are of the view that the Executive Body deserves to be expanded as, presently, only one professional ecologist is its member, remaining all being officers of the Government. We may note here that a forthright and fair stand was taken by the learned Solicitor General not only in regard to the constitution of CAMPA but on other aspects also, keeping in view the non-adversarial nature of the litigation. Learned Solicitor General submitted that the Government is

committed to conserve the forest and protect the environments, and would implement, in letter and spirit, the directions issued by this Court.

In view of above, we direct that clause 2.2 shall be suitably amended so as to include two more environmentalists, one of whom may be expert in the field of forest and the other in the field of forest economy development. These members shall be included in the Executive Body in consultation with the Chairperson of the CEC.

Regarding clause 6.3(iv), it was suggested that there should be corporate accounting based on double entry system and auditing should be conducted by the Comptroller and Auditor-General (CAG). We see substance in this suggestion as well.

Clause (v) in 6.4 provides that the monies received in CAMPA shall be used only in that particular State or Union Territory. The clause seems to be too rigid. Many a times, the effect of degradation of environment or depletion of forest can be felt more in the adjoining area which may be in a different State or Union Territory. The effect of environmental degradation cannot be restricted to a particular area. The impact cannot be limited to the place of origin. Therefore, we direct that a suitable modification of the clause shall be made so as to provide that ordinarily expenditure shall be incurred in the particular State or Union Territory but leaving it to the discretion of the CAMPA to also incur expenditure in the State or Union Territory other than the one mentioned in clause 6.2 if it considers it necessary.

Clause 6.6 which by use of the word 'may' leaves it to the discretion of the CAMPA to establish Special Performance Vehicle (SPV) for undertaking compensatory afforestation deserves to be amended so as to substitute the word 'may' by the word 'shall' so that the regeneration is done by some SPV in specified areas.

Now, we come to the question of the guiding principle to be laid for determining the NPV. Reference was made to opinions of various experts laying down as to what is the concept of NPV and how it is to be calculated. The question is also about the legal and jurisdictional basis to levy NPV. Most of the States did not object to the recovery of the NPV from the user-agency but strenuously urged that since the land under the forest belongs to the State, the amount deposited by the user-agency as NPV shall be paid to them. It was also contended on behalf of the States that there should be no NPV on degraded forest. The further submission was that all public utility projects shall be exempted from payment of NPV. On the other hand, relying upon the principles of inter-generational equity and sustainable development, Mr. Harish Salve, learned senior counsel and Amicus Curiae contended that forest is a part of eco-system and, therefore, the value to be put and calculated is not only on trees and leaves but the basis has to be the preservation of bio-diversity. It is submitted that NPV is to be levied and collected not because property rights of the States are affected but on account of effect on ecology by conversion of forest land for non-forest purpose. Further, Mr. Salve submits that the basis for calculation of NPV should be the economic value, spread over a period of 50 years, which would be regenerational value for forest regeneration to be taken into account as opposed to restoration value, i.e., financial value. Regarding legal and jurisdictional basis

to levy NPV, Mr. Salve contended that there are various legal principles which act as source of power to levy NPV. In this regard, reference has been made to provision of the FC Act, EP Act and Forest Policy of 1988. It is contended that these enactments and the policy are the measures taken by the legislature and the Government to discharge the constitutional obligation to protect the environments. Reliance is also placed upon the doctrine of public trust, which learned counsel submits is a constitutional doctrine.

First, we may consider the meaning of NPV and determine what is NPV.

The NPV is the present value (PV) of net cash flow from a project, discounted by the cost of capital.

Forestry is a public project. It is important to bear in mind that a benefit received today is worth more than that received later. The benefit received today is in fact 'cost incurred' today. Time value of the cash inflow/outflow is important in investment appraisal. NPV is a method by which future expenditures (costs) and benefit are levelised in order to account for the time value of money. The object behind NPV is to levelise costs. What is the value of Rupee today would not be the value of Rupee say 50 years later. For example, let us have the starting point of value of Rupee in India in the year 2005 and analyse it with the value of Rupee that may be in the year 2050. Cost incurred or to be incurred in 2050 have to be discounted by using appropriate parameters like rate of discount, gestation period, ratio of deflators to GDP. Therefore, expenses incurred in each year between say 2005 and 2050 have to be brought down to their present values by using appropriate discount rate in the NPV.

The project like forestry has long gestation period of 40-50 years. It goes through cost cycles each year depending upon inflation, rate of interest, internal rate of return etc. Therefore, costs for the year 2005 will differ from the cost of 2006 and cost of 2006 will differ from that of the year 2007 and so on and so forth. However, this constitutes what is called as conventional method of accounting cost which does not take into account social and economic cost of diversion of forest.

Cost is a function of the discount rate (a measure of the value of capital) used. Under NPV, all costs are discounted to some reference date which we have taken as 2005 for illustration. The total cost reckoned at this reference date is the sum of present value or future value of costs discounted to the year 2005. Similarly, one can calculate the present value of the revenues from the expected benefits of forest regeneration.

The question then is why charge NPV. In the case of a conventional project like Hydro-electric Project, the accounting procedure is normally based on Return On Investment (ROI) in which the unit cost of energy includes return on capital, investment, depreciation of capital, annual fuel cost and operational and maintenance costs. However, ROI excludes the time value of money. It also excludes the gestation period of the project. Therefore, we have the NPV method which discounts future costs and future benefits by use of appropriate discount rate and brings down such costs and benefits to the reference date which in the present case has been assumed to be the year 2005.

The question, which we have to answer, is concerning the relevance of fixing appropriate discount rate in valuation of the costs and benefits arising from forestry as a project.

The value of any asset is discounted by present value of the economic benefits it will generate in future years. For example, timber asset value is the discounted future stumpage price for mature timber after deducting costs of bringing the timber to maturity. NPV is one of the methods for valuation of standing timber. The general expression V for the value of an asset, in the base year O, is simply the sum of the net economic benefits it yields in each year over the life time, T, of the Asset, discounted to the present value by the discounted rate.

The current method of valuing public sector projects, like forestry, has become contentious as public sector undertakings agrees for lower discount rate on account of long gestation period. However, the flaw with this argument is that the low rate of return is computed without including the intangible or environmental impacts/benefits emanating from forest.

How does one value the intangibles? There are several methods, viz, opportunity cost, replacement cost, travel cost, contingent value method (CVM) and social benefit cost analysis (SBCA).

SBCA can be applied to the evaluation of environmental impacts of forestry projects. Here, one must appreciate that the environmental outputs from forests appear as public goods for which there is no market. Various environmental outputs can be classified into this category, namely,

Flood	Control	Benefits
Water		Production
Soil		Conservation
Outdoor		Recreation
Biodiversity	&	Conservation
Habitat		

#### Air Purification

The problem in valuation of the above outputs is: allocation of fixed costs according to the contribution of each product in total revenue. This is because except contribution of timber product, contribution of the other above-noted outputs is not known, especially intangible outputs. However, under SBCA, benefits from each of the above environmental outputs are identifiable. For example, flood control benefits arise because of the role of forests as stream regulator. Similarly, valuation method for each of the above outputs differs. In valuing biodiversity, CVM is useful. SBCA is helpful in placing monetary value on carbon storage on air purification.

The point is that for each of the above functions of the forests, different methods of valuation have to be applied. Various methods have been used to estimate the value of

environment like CVM, Opportunity Cost Method, Travel Cost Method, SBCA etc. It would be appropriate if body of experts examine the aspect and report to this Court suggesting the best method depending on factors like gestation period, rate of discount (interest), density of the forest, social benefits of the project undertaken by PSU etc. They will take into account economic values associated with forests, viz., direct use values, indirect use values such as value of environmental benefits from the forest, option values and existence value.

The above discussion shows that NPV helps levelising the costs of public projects like forestry. It is an important tool of SBCA. Under SBCA, benefits from each of the above environmental outputs are identifiable. Hence, applying NPV, one can allocate levelised costs according to the contribution of each product in the total revenue. It is important to bear in mind that a benefit or cost received or incurred now is worth more than that received or incurred later. Therefore, using the appropriate discount rate helps to aggregate marginal benefits and costs. The choice of interest rate depends upon time preference. For public project, such as forestry, a social discount rate, which indicates time preference of the society, should be used.

Forest sustainability is an integral part of forest management and policy that also has a unique dominating feature and calls for forest owners and society to make a long-term (50 years or longer) commitment to manage the forest for future generation. One of the viewpoints for sustaining forest is a naturally functioning forest ecosystem. This view point takes a man and nature relationship to the point of endorsing to, the extent possible, the notion of letting forest develop and process without significant human intervention. A strong adoption of the naturalistic value system that whatever nature does is better than what humans do, this is almost the "nature dominates man" perspective. Parks and natural reserve creations; non-intervention in insect, disease and fire process; and reduction of human activities are typical policy situation. This viewpoint has been endorsed by 1988 Forest Policy of Government of India.

Yet another viewpoint recognizes the pragmatic reality faced by the governments and the administrative, namely, trees don't vote while people do. Some of the criteria reflecting key elements of ecological, economic and social sustainability are:

1. Conservation of biological diversity.
2. Maintenance of productive capacity of forest ecosystems.
3. Maintenance of forest ecosystem health and vitality.
4. Conservation and maintenance of soil and water resources.
5. Maintenance of forest contribution to global carbon cycles.
6. Maintenance and enhancement of long-term multiple socioeconomic benefits to meet the needs of societies.

## 7. Legal, institutional and economic framework for forest conservation and sustainable management.

An expert dealing with principles and applications of forest valuation, on the aspect of value of inputs and outcomes and conditions, says :

"Decision making in forest management requires that we understand the relative values of inputs, outcomes, and conditions. Cost values for inputs such as labour, capital, interest, supplies, legal advice, trades, and other management activities as well as the market value of existing timber stands are relatively easy to obtain. Outcomes or resulting condition values are more difficult, but we need measures of the values of timberland, recreation, water, wildlife, visual amenities, biodiversity, environmental services, and ecological process to help guide management decisions. By understanding market, social and other values of forests, we can better allocate our scarce and valuable resources to attain the desired mix of outcomes and conditions."

The emphasis is on ecosystem, management philosophy that has greater emphasis on integration, biological diversity and ecological processes.

In respect of working economic values of the outcome, it is said:

"In real world forest management situations, decision makers are faced with several alternatives and potentially large sets of criteria related to the ecological, economic and social impacts of these alternatives. It would be very easy to generate a nearly incomprehensible table that documented every physical, biological, economic, and social outcome and condition resulting from each management alternative. Such information could include outcome levels for water yield, sediment production, and timber growth; population trends for important wildlife species; and recreation use for backcountry and developed recreation sites. Similarly, information on the economic value of these outcomes can be estimated by means of the methods discussed in chapter 8 and added to our impact table. To this avalanche of information, we could add the impacts on the social well-being of local and regional communities. The forest management analyst can easily overwhelm the decision makers and stakeholders with information."

Dealing with fundamental of decision analyses to achieve ecological, economic and social goals, it is said that what is to be broadly kept in view is:

"Ecological and environmental goals are important to forest managers, landowners, and their stakeholders, we need information about how decision alternatives affect such goals. These goals can be broadly stated as

1. Maintaining and enhancing forest productivity
2. Conservation of biological diversity
3. Protecting and enhancing environmental conditions."

The aforesaid also shows that NPV as a tool of SBCA is required to be based on Total Economic Value (TEV). It indicates the components of TEV. It further shows what are the type of agency or experts which are required to examine these issues.

Dealing with co-relation between economics and environmental management, in 'Environmental Economics in practice' edited by Mr. Gopal K. Kadekodi in his write up through case studies, answers the question as to what has economics got to do with environmental management. The author says that economics is the science of explaining the behaviour of different agents who take part in production, consumption and distribution activities in the economy and make decisions regarding the use of resources. *That, environmental economics focuses on market and non-market behaviour of different agents in the society regarding natural and environmental resources, viewed from intergenerational, inter-temporal and different institutional frameworks.* (Emphasis supplied by us)

It is further stated that one of the major branches of economic theory is the 'theory of value'. Economic theory always makes a distinction between value and price. Answering the question as to why value natural resources specifically, it is stated that one reason is that there is no market for ecosystem services such as nutritional cycle, carbon sequestration, watershed functions, temperature control, soil conservation etc. It is also stated that assuming there are markets, they do not do their job well. This market may be regulated one. There may be restrictions on entry as a result of licensing or rationing introduced by the Government. For the above reasons, it is concluded that valuation beyond the present is necessary and for natural resource Accounting NPV method is a must.

Mr. Salve advocates for Total Economic Value (TEV) on the ground that TEV expresses the full range of value or benefits - both tangible and intangible. Basically, it is understood that natural and environmental resources provide several 'use values' and 'non-use values' to enhance human welfare and provide sustainability to all lives (often termed as anthropogenic values). Conceptually, it is the sum of use values (UV) and non-use value (NUV) which constitutes the TEV. Further elaborations UV, option value (OV) non-use value (NUV) etc. have been given. The UV, it is stated, can be further broadly classified into three groups  $\uparrow$  direct, indirect and option values. Direct Use Values (DUV) refer to the current use (consumption) of the resources and services provided directly by natural and environmental resources. Examples are the use of timber and non-timber forest products. Recreation (tourism to wildlife sanctuaries or Himalayan Glaciers, mountains), education, research etc., are examples of direct non-consumptive use values. Indirect Use Values (IUV) generally are referred to the ecological functions that natural resource environments provide. It can be broadly classified into three groups - watershed values, ecosystem services and evolutionary processes. The Optional Value (OV) is associated with the benefits received by retaining the option of using a resource (say a river basin) in the future by protecting or preserving it today, when its future demand and supply is uncertain. Take the example of the Narmada river basin.

It is not necessary to delve further in this matter since ultimately it would be for the experts to examine and assist this Court as to the Model to be adopted for valuation, namely, TEV, CVM, SBCA etc. It is for the experts to tell us as to what NPV should be applied in case of mines and different types of forests. We may only note that basis of these valuations is the theory of sustainable development, i.e., development that meets the needs of the present without compromising with the ability of future generations to meet their own needs. Despite various elaborations, definition of sustainable development, though very old, still is widely accepted world over and has been reiterated by this Court in catena of cases.

Regarding the parameters for valuation of loss of forest, we may only note as to what is stated by Ministry of Environment and Forests, Government in its handbook laying down guidelines and clarifications upto June 2004 while considering the grant of approval under Section 2 of the FC Act. Dealing with environmental losses (soil erosion, effect on hydrological cycle, wildlife habitat, microclimate upsetting of ecological balance), the guidelines provide that though technical judgment would be primarily applied in determining the losses, as a thumb rule, the environmental value of one hectare of fully stocked forest (density 1.0) would be taken as Rs.126.74 lakhs to accrue over a period of 50 years. The value will reduce with density, for example, if density is 0.4, the value will work out at Rs.50.696 lakhs. So, if a project which requires deforestation of 1 hectare of forest of density 0.4 gives monetary returns worth over Rs.50.696 lakhs over a period of 50 years, may be considered to give a positive cost benefit ratio. The figure of assumed environmental value will change if there is an increase in bank rate; the change will be proportional to percentage increase in the bank rate. Ms. Kanchan Chopra, while conducting the case study of Keoladeo National Park in respect of economic valuation of biodiversity at the institute of economic growth, Delhi as a part of the Capacity 21 project sponsored by the UNDP and MOEF, Government of India examined the question as to what kind of values are to be taken into consideration. As per the study, different components of biodiversity system possess different kinds of value (1) a commodity value (as for instance the value of grass in a park), (2) an amenity value (the recreation value of the park) and/or (3) a moral value (the right of the flora and fauna of the park to exist). It is recognized that it is difficult to value ecosystem, since it possesses a large number of characteristic, more than just market oriented ones. It also leads to the need to carry out bio-diversity valuation both in terms of its market linkage and the existence value outside the market as considered relevant by a set of pre-identified stakeholders. It is, however, evident that while working out bio-diversity valuation, it is not trees and the leaves but is much more. Various techniques for valuing biodiversity that have been developed to assess the value of living resources and habitats rich in such resources have been considered by the author for her case study while considering the aspect of value, their nature and stakeholders interest. In so far as the value of ecology function in which the stakeholders or scientists, tourists, village residents, non-users, the nature of value is - regulation of water, nutrient cycle, flood control. These instances have been noted to highlight the importance of the biodiversity valuation to protect the environments. The conclusions and the policy recommendations of the author are:

"Biodiversity valuation has important implications for decision making with respect to alternative uses of land, water and biological resources. Since all value does not get reflected in markets, its valuation also raises methodological problems regarding the kinds of value that are being captured by the particular technique being used. Simultaneously, in the context of a developing country, it is important to evolve methods of management that enable self-financing mechanisms of conservation. This implies that biodiversity value for which a market exists must be taken note of, while simultaneously making sure that the natural capital inherent in biodiversity rich areas is preserved and values which are crucial for some stakeholders but cannot be expressed in the market are reflected in societal decision making.

A focus on both the above aspects is necessary. It is important to take note of the nature of market demand for aspects of biodiversity that stakeholders, such as tourists, express a revealed preference for by way of paying a price for it. Simultaneously, it is important to examine the extent to which a convergence or divergence exists between value perceptions of this and other categories of stakeholders. It is in this spirit that two alternative methodologies are used here to arrive at an economic valuation of biodiversity in Keoladeo National Park. The travel-cost methodology captures the market-linked values of tourism and recreation. It throws up the following policy implications :

1. Keeping in mind the location of the park and the consequent joint product nature of its services, cost incurred locally is a better index of the price paid by tourists. It is found that demand for tourism services is fairly insensitive to price. A redistribution of the benefits and costs of the park through an increase in entry fee would not affect the demand for its services.
2. Cross-substitution between different categories of stakeholders can improve the financial management of the wetland. A part of the proceeds can go to the local management. Also, high-income tourists, scientists and even non-users with a stake in preservation can pay for or compensate low-income stakeholders for possible loss in welfare due to limits on extraction and use.
3. However, the limit to such a policy is determined by the number of visitors and their possible impact on the health of the wetland. Such a constraint did not appear to be operational in the context of the present park.

Identification and ranking of values of different aspects of biodiversity resources as perceived and expressed by different categories of stakeholders namely scientists, tourists, local villagers and non-users is an important object in the process of valuation. In the KNP study, a fair degree of congruence with respect of ecological function value and livelihood value is discovered to exist in the perceptions of diverse groups. Stakeholders as diverse as scientists, tourists, local villagers and non-users give high rankings to these uses."

Next question is to which expert reference shall be made. Counsel for parties agree that Institute of Medical Economic Growth is an institute of eminence having been set up

about half a century earlier. It has also been pointed out that this Institute is getting regular maintenance and development grant from Indian Council of Social Sciences research (ICSSR). Further, it appears that the Institute is also receiving research and training grants from Ministry of Finance, Ministry of Health and Family Welfare and Ministry of Agriculture, besides National Bank for Agriculture and Rural Development. We have been informed that eminent faculty members in the institute are engaged in the field of research and Ms.Kanchan Chopra, (Ph.D. Economics, University of Delhi) is one such faculty member and her field of specialization is resources and environmental economics, agriculture and rural development and project evaluation. The matter deserves to be referred to a committee of experts in respect whereof we will in latter part of the judgment issue appropriate directions.

Next, we will deal with the contention of Mr. Venugopal who, appearing for State of Kerala, submitted that the State has no objection to the levy of NPV but the amount so received should come to the State. Referring to Notification dated 23<sup>rd</sup> April, 2004 constituting CAMPA, learned counsel contended that clause 6.4 of the said Notification, which deals with disbursement of the funds, does not envisage the amount being disbursed to the State Government. Learned senior counsel also challenged the constitutional validity of the Notification. The contention put forth is that the Notification does not have any Parliamentary or Legislative control. Referring to various clauses of the notification, it was contended that fund sought to be created under CAMPA lacks accountability and puts aside financial control. There is a total lack of financial discipline which, learned counsel contends, is against the constitutional framework. It was further contended that the forests vest in the Government; the same are State properties and, therefore, all amounts received shall go to Consolidated Fund of India or Consolidated Fund of the State or to Public Funds, as the case may be. Reference has also been made to the provisions of the Comptroller and Auditor-General (Duties, Powers and Conditions of Service) Act, 1971 (for short, the 'CAG Act') and the submission is that no provision under the Notification shows that the account can be subjected to audit under the CAG Act. The contention, in short, is that constitutionally it is not permissible to any person or authority to hold funds collect on behalf of the Government. This is basis for urging that the Notification dated 23<sup>rd</sup> April, 2004 is unconstitutional.

For examining the nature of the fund sought to be regulated by CAMPA, brief reference is necessary to be made to some of constitutional provisions.

Article 110 in so far as the Parliament is concerned and Article 199 in so far as the State is concerned, while defining Money Bills make a deeming provision for certain contingencies. Article 110 and Article 199 read as under:

**"110. Definition of "Money Bills".** -- (1) For the purposes of this Chapter, a Bill shall be deemed to be a Money Bill if it contains only provisions dealing with all or any of the following matters, namely :--

(a) to (d) ...

(f) the receipt of money on account of the Consolidated Fund of India or the public account of India or the custody or issue of such money or the audit of the accounts of the Union or of a State; or

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**199. definition of "Money Bills".** --(1) For the purposes of this Chapter, a Bill shall be deemed to be a Money Bill if it contains only provisions dealing with all or any of the following matters, namely :

(a) to (d) ...

(f) the receipt of money on account of the Consolidated Fund of the State or the public account of the State or the custody or issue of such money; or"

The contention is that Notification constituting CAMPA shall be deemed to be a Money Bill.

Articles 294 and 295 deal with succession to property, assets, rights, liabilities and obligations in certain cases as from the commencement of the Constitution of India, providing for vesting of the properties and assets in the Union and in the States. These articles were referred to contend that forest is the property and asset of the State.

Article 266 deals with Consolidated Fund of India and of the States. Article 283 deals with custody of the consolidated funds, contingency funds and the moneys credited to the public accounts. Article 284 deals with other monies received by public servants in courts and postulates the same shall be paid into the public account of India or the public account of the State, as the case may be.

Article 266 deals with all revenues received by the Government of India, all loans raised by that Government by the issue of treasury bills, loans or ways and means advances and all moneys received by that Government in repayment of loans shall form one consolidated fund to be entitled "the Consolidated Fund of India", and likewise the sum received by Government of State shall form one consolidated fund to be entitled "the Consolidated Fund of the State". Article 266 stipulates that all other public moneys received by or on behalf of the Government of India or the Government of a State shall be credited to the public account of India or the public account of the State, as the case may be.

Third category of receipt is in terms of Article 284 which is required to be paid into the public account of India or the public account of the State, as the case may be.

Chapter III of CAG Act deals with duties and powers of the Comptroller and Auditor-General. Section 10 thereof deals with compilation of accounts of Union and the States by CAG. Under Section 11, the CAG is required to prepare and submit accounts to the President, Governors of State and Administrators of Union Territories having Legislative

Assemblies. Under Section 12, CAG is required to give information and render assistance to the Union Government and the State Governments. Section 13 sets out general provisions relating to audit. Under this provision, it shall be the duty of the CAG to audit all expenditure from the Consolidated Fund of India and of each State and of each Union Territory having a Legislative Assembly and to ascertain whether the moneys shown in the accounts as having been disbursed were legally available for and applicable to the service or purpose to which they have been applied or charged and whether the expenditure conforms to the authority which governs it; to audit all transactions of the Union and of the State relating to contingency funds and public account; to audit all trading, manufacturing, profit and loss accounts and balance sheet and other subsidiary accounts kept in any department of the union or of a State; and in each case to report on the expenditure, transactions or accounts so audited by him. Section 14 of CAG Act deals with audit of receipts and expenditure of bodies and authorities substantially financed from Union or State revenues. Section 15 provides for the functions of CAG in the case of the grants or loans given to other authorities or bodies. Section 16 deals with audit of receipts of Union or of States and Section 17 with audit of accounts of stores and stock. Section 18 provides for the powers of CAG in connection with audit and accounts. The audit of Government companies and corporations by CAG is dealt with under Section 19. Section 20 is in the nature of a residuary provision providing that CAG, if requested by the President of India or the Governor of the State or the Administrator of Union of Territory having a Legislative Assembly to undertake the audit of the accounts of such other body or authority of which audit has been entrusted to CAG, the CAG shall undertake such audit. Chapter III shows the responsibility of CAG to conduct audit in the manner provided in the law or on request made for the audit in the manner provided under Section 20.

Relying on aforesaid constitutional provisions and also of CAG Act, it was contended that the notification constituting CAMPA is unconstitutional as it does not stipulate that the amounts collected on behalf of Government shall go to the relevant consolidation fund or to public fund. Further, no provision has been made for audit under the CAT Act. To examine this contention, it is necessary to determine the nature of Fund dealt with by CAMPA.

The background under which the fund came to be created has already been noted. Noticing fast depletion of forests, the fund was ordered to be utilized for protection of forests and environments. The environments are not the State property and are national asset. It is the obligation of all to conserve the environments and for its utilization, it is necessary to have regard to the principles of sustainable development and inter-generational equity.

Reverting now specifically to forests, if it becomes necessary for economic development to use the same for non-forest purpose, then before grant of permission for diversion of forest land, there should be some scheme whereunder loss occurring due to such diversion can be made up by adopting both short term measures as well as long term measures one of it being a regeneration programme. Natural regeneration is a long process. It requires huge amounts. It requires a policy and direction. It requires proper use

of funds for regeneration of depleted forest and ecology. The natural resources like forests are in trust with the present generation. In this light, various statutes noted above have been enacted by the Parliament. Keeping in view the letter and spirit of those statutes and constitutional provisions, the legality of CAMPA and the power to issue directions for natural regeneration and utilization of funds is required to be appreciated. The body set up or fund generated to protect ecology and provide for regeneration cannot in constitutional scheme of things be considered and treated as a fund under Article 266 or Article 283 or Article 284 of the Constitution of India. When seen in this light, neither Article 110 nor Article 199 and/or Article 294 or 195 would have any application. There is an additional reason for the view that NPV will not fall under Article 110 or 199 or 195 of the Constitution. Our constitution draws a distinct line between a "TAX" and a "FEE". In case of *Ratilal Panachand Gandhi v. State of Bombay and Ors.* [1954 SCR 1055], one of the questions which arose for determination was regarding constitutional validity of Section 58 of Bombay Public Trust Act, 1950. That section makes it obligatory on every Public Trust to pay to the Administration Fund a contribution at such time and in such manner as may be prescribed. Under the rules, the contribution was fixed at the rate of 2% per annum upon the gross annual income of every Public Trust. Failure to pay such contribution was made liable to penalty under Section 66 of the Act. It was contended on behalf of the Trustees that the levy of contribution under Section 58 was in substance the levy of a tax, it was beyond the competence of the State legislature to enact such a provision. This argument was rejected by this Court by holding that the Administration Fund constituted under Section 57 of Bombay Public Trust Act was a Special Fund which was to be applied exclusively for payment of charges for expenses incidental to the regulation of Public Trusts and in carrying into effect the provisions of the Act. Under Section 57 Special Fund vested in the Charity Commissioner. That Fund was set up from the charges levied on various Trusts in the State. The Fund was to be managed by the Charity Commissioner. All investments were to be made by the Charity Commissioner. All disbursements were to be made by him in the manner prescribed by the rules. The collections of these charges, deployed in the Special Fund, were not merged in the general revenue, but these collections were earmarked and set apart for the purposes of the Act. This Court further noticed that the Charity Commissioner and the servants appointed under the Act drew their salary from the Consolidated Fund of the State. However, this Court observed that Section 57 was enacted to facilitate the Administration and not with a view to mix up the Fund with the general revenue collected for government purposes. Therefore, this Court held that Public Trusts Administration Fund was set up to meet all expenses of the administration of Trust property within the scheme of the Act and it is to meet such expenses that they levy was made and collections were effected. Therefore, this Court held that such payments were levied for rendering service which the State considers beneficial in public interest. In the circumstances, it was held that Section 57 and Section 58 of the 1950 Act were not ultra vires the State legislature because they did not levy a tax but they levied a fee which came within Entry 47 of List III of Seventh Schedule to the Constitution, which reads as under:

"47. Fees in respect of any of the matters in this List, but not including fees taken in any court."

Thus reading Entry 47 with Entry 20 of the same List, the imposition of NPV is a charge or a fee which falls within Entry 47 read with Entry 20 of List III of Seventh Schedule to the Constitution. The Fund set up is a part "of economic and social planning" which comes within Entry 20 of List III and the charge which is levied for that purpose would come under Entry 47 of List III and, therefore, Article 110 is not attracted.

To sustain ecological, economic and social values, in so far as forests are concerned, primarily, it is a question of Forest Management. In the introduction chapter of Forest Management, Fourth Edition, co-authored by Lawrence S. Davis, Professor Emeritus, University of California-Berkeley, K. Norman Johnson, Oregon State University, Peter S. Bettinger, Oregon State University and Theodore E. Howard, University of New Hampshire, authors have said that "forest management remains the attempt to guide forests toward a society's goals. A forest manager is the catalyst of this effort. As such, the manager needs an earthy understanding of biological process; a knowledge of animals and their habitats; an appreciation of streams and their environments; the long-range viewpoint of a planner; the patience of a labour negotiator, the skills of an administrator; and the alertness, flexibility and all-round resourcefulness of a successful business executive. Above all, the forest manager requires a genuine sense and feeling for the forest as an entity." This objective is to be borne in mind while considering the question of ecology as opposed to mere compensatory afforestation. Compensatory afforestation is only a small portion in the long range efforts in the field of regeneration. It has been said that recognizing the aforesaid uniqueness while applying the principles of management is the heart of forest management.

Forest Management planning involves a blend of ecological, economic and social systems with the economic and social sides of planning often just as complex as the ecological sides. Table 1.1 gives examples of decisions needed in the management of forest as under :

**"Table 1.1**  
**Examples of decisions needed in the management of forests**

Type of decision	Example
Extent and distribution of Wilderness reserves	
Management emphases for areas where active management will occur	Big game emphasis, high-intensity timber production, scenic areas
Types of activities allowed	Timber harvest, prescribed fire
Aggregate harvest level over time	Evenflow, nondeclining yield
Silvicultural system	Even-aged, uneven-aged
Age structure of forest	Areas by 10-year age classes
Size and shape of treatment units	Small units versus large units

Spatial pattern of treatment units	Concentrated or dispersed cutting blocks
Protection strategy	Wildfire suppression policy
Vertical and horizontal diversity/stand density	Approach to partial cutting and prescribed burning
Regeneration harvest timing	Rotation age (even-aged), cutting cycle (uneven-aged)
Regeneration method	Clearcutting, clearcutting with leave trees, shelterwood, selection, prescribed fire, natural disturbance."

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When permission is granted by the Government of India to use the forest land for non-forest purposes, it is not unconditional. Conditions are attached mainly with a view to protect the environments and to make good the loss likely to occur by grant of such permission. The payment into such a fund or imposition of conditions are for the protection of natural resources. The Notification dated 23rd April, 2004 sets up a body to which payment is made so that the said body can carry out the statutory and constitutional obligations. Since the amount does not go to the accounts postulated by Article 283, the said provision shall have no application. Similarly, the provisions of the CAG Act would also have no application. At the same time, it may be noted that clause 6.3 stipulates the audit through Chartered Accountants on the panel of CAG. In order to provide for financial discipline, transparency and accountability, it would be appropriate to provide for corporate accounting on the principles of double entry system. We are further of the view that the accounts of the Fund shall be subjected to internal Statutory Audit, the Statutory Auditors to be taken from the panel of CAG. The internal audit shall be conducted every six months.

The duty to preserve natural resources in pristine purity has been highlighted in *M.C. Mehta v. Kamal Nath and Ors.* After considering the opinion of various renowned authors and decisions rendered by other countries as well on environment and ecology, this Court held that the notion that the public has a right to expect certain lands and natural areas to retain their natural characteristics is finding its way into the law of the land. The Court accepted the applicability of public trust doctrine and held that it was founded on the ideas that certain common properties such as rivers, sea-shore, forests and the air were held by the Government in trusteeship for the free and unimpeded use of the general public. These natural resources have a great importance to the people as a whole that it would wholly unjustified to make them subject to private ownership. These resources being a gift of nature, should be made freely available to everyone irrespective of the status in life. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes. It was held that our legal system - based on English common law - includes the public trust doctrine as part of its jurisprudence. The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is the beneficiary of these resources. The State as a trustee is under a legal duty to protect these natural resources. Summing up the Court said :

"We are fully aware that the issues presented in this case illustrate the classic struggle between those members of the public who would preserve our rivers, forests, parks and open lands in their pristine purity and those charged with administrative responsibilities who, under the pressures of the changing needs of an increasingly complex society, find it necessary to encroach to some extent upon open lands heretofore considered inviolate to change. The resolution of this conflict in any given case is for the legislature and not the courts. If there is a law made by Parliament or the State Legislatures the courts can serve as an instrument of determining legislative intent in the exercise of its powers of judicial review under the Constitution. But in the absence of any legislation, the executive acting under the doctrine of public trust cannot abdicate the natural resources and convert them into private ownership, or for commercial use. The aesthetic use and the pristine glory of the natural resources, the environment and the ecosystems of our country cannot be permitted to be eroded for private, commercial or any other use unless the courts find it necessary, in good faith, for the public good and in public interest to encroach upon the said resources."

In view of above, we hold that the natural resources are not ownership of any one State or individual, public at large is its beneficiary and, therefore, the contention of Mr. Venugopal that the amount of NPV shall be made over to the State Government cannot be accepted.

The Indian Forest Act was enacted to consolidate the law relating to forests, the transit of forest-produce and the duty leviable on timber and other forest-produce. The focus of this Act is on the proprietary rights. Section 3 empowers the State Government to constitute any forest land or waste land which is the property of the Government or over which the Government has proprietary rights, or to the whole or any part of the forest produce of which the Government is entitled in a reserved forest in the manner provided in the Act. As provided in Section 5, no right can be acquired over the land in respect whereof notification has been issued under Section 4. In the manner provided in Section 11, the Forest Settlement Officer is empowered to acquire the land. Section 20 provides for declaration of reserved forest. No right in or over a reserved forest can be acquired, as provided in Section 23. Acts prohibited in respect of forests have been incorporated in Section 25. Section 29 deals with declaration of protect forest and Section 30 empowers the State Government to issue notification reserving trees etc. in a protected forest. The power of the State Government for protection of forest has been provided in Section 35. The power to impose duty on timber and other forest produce is contained in Section 39 of the Act.

From the above, it can be seen that scheme of 1927 Act is a State management and regulation of the forest. On the assumption that local communities were incapable of scientific management of forest, the British Government introduced Forest Policy and Management by setting up a forest department and enacting the Indian Forest Act, 1878 which was amended from time to time. By passage of time, it was found that the provisions of the said Act were not adequate and, thus, in order to consolidate the law relating to forest, the transit of forest produce and the duty leviable for timber and other forest produce, the Indian Forest Act, 1927 was enacted. To further tighten the

management and regulation, the FC Act of 1980 was enacted. It became necessary for conservation of forest on realizing that there has been large scale of deforestation which is causing ecological imbalance leading to environmental deterioration. This led to enactment of the FC Act providing for prohibition for use of forest land for non-forest purpose by anyone including the State Government or other authorities except with the prior approval of the Central Government. This legislature was enacted, as already noted, after Forest and Wildlife were taken out from the State list and placed in the Concurrent list. At the same time, Article 48A was inserted in the Constitution of India for protection and improvement of environments and safeguarding forest and wildlife in the year 1977.

The basis objectives leading to the laying down of the National Forest Policy, 1988 may also be noted and also the need and requirement for its enforcement. This policy was framed on realizing that 1952 Forest Policy for the management of State forest in the country had not halted the depletion of forests. It was, therefore, considered necessary to evolve a fresh policy for future to lay down new strategies of forest conservation which had become imperative. Conservation includes preservation, maintenance, sustainable utilization, restoration and enhancement of the natural environment. The principal aim of the forest policy is to ensure environmental stability and maintenance of ecological balance including atmospheric equilibrium which are vital for sustenance of all life forms, human, animal and plant. The derivation of direct economic benefit must be subordinated to this principal aim.

The forest policy has a statutory flavour. The non-fulfillment of aforesaid principle aim would be violative of Articles 14 and 21 of the Constitution. The basic objectives of the Forest Policy, 1988 are:

"2.1 The basic objectives that should govern the National Forest Policy are the following:

- Maintenance of environmental stability through preservation and, where necessary, restoration of the ecological balance that has been adversely disturbed by serious depletion of the forests of the country.
- Conserving the natural heritage of the country by preserving the remaining natural forests with the vast variety of flora and fauna, which represent the remarkable biological diversity and genetic resources of the country.
- Checking soil erosion and denudation in the catchment areas of rivers, lakes reservoirs in the interest of soil and water conservation, for mitigating floods and droughts and for the retardation of silation of reservoirs.
- Checking the extension of sand-dunes in the desert areas of Rajasthan and along the coastal tracts.
- Increasing substantially the forest/tree cover in the country through massive afforestation and social forestry programmes, especially on all denuded, degraded and unproductive lands.

- Meeting the requirements of fuelwood, fodder, minor forest produce and small timber of the rural and tribal populations.
- Increasing the productivity of forests to meet essential national needs.
- Encouraging efficient utilization of forest produce and maximum substitution of wood.
- Creating a massive people's movement with the involvement of women, for achieving these objectives and to minimize pressure on existing forests.

2.2 The principal aim of Forest Policy must be to ensure environmental stability and maintenance of ecological balance including atmospheric equilibrium which are vital for sustenance of all life forms, human, animal and plant. The derivation of direct economic benefit must be subordinated to this principal aim."

It has been recognized that one of the essentials for forest management is the conservation of total biological diversity, the network of national parks, sanctuaries, biosphere reserves and other protected areas to be strengthened and extended adequately.

The strategy under the Forest Policy is to have a minimum of one- third of the total land area of the country under forest or tree-cover. In the hills and in mountainous regions, the aim should be to maintain two-third of the area under such cover in order to prevent erosion and land degradation and to ensure the stability of the fragile ecosystem. Clause 4.3 lays down the aspects of management of State forests. It would be instructive to reproduce hereunder certain parts of the Policy with a view to have clarity of the aim to be achieved.

"**4.3.1.** Schemes and projects which interfere with forest that clothe steep slopes, catchments of rivers, lakes, and reservoirs, geologically unstable terrain and such other ecologically sensitive areas should be severely restricted. Tropical rain/moist forest, particularly in areas like Arunachal Pradesh, Kerala, Andaman and Nicobar Islands should be totally safeguarded. **4.3.2.** No forest should be permitted to be worked without the Government having approved the management plan, which should be in a prescribed format and in keeping with the National Forest Policy. The Central Government should issue necessary guidelines to the State Government in this regard and monitor compliance.

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**4.4.1.** forest land or land with tree cover should not be treated merely as a resource readily available to be utilized for various projects and programmes, but as a national asset which requires to be properly safeguarded for providing sustained benefits to the entire community. Diversion of forest land for any non-forest purpose should be subject to the most careful examinations by specialists from the standpoint of social and environmental costs and benefits. Construction of dams and reservoirs, mining and industrial development and expansion of agriculture should be consistent with the needs for conservation of trees and forests. Projects which involve such diversion should be

least provide in their investment budget, funds for regeneration/ compensatory afforestation.

**4.4.2.** Beneficiaries who are allowed mining and quarrying in forest land and in land covered by trees should be required to repair and re-vegetate the area in accordance with established forestry practice. No mining lease should be granted to any party, private or public, without a proper mine management plan appraised from the environmental angle and enforced by adequate machinery.

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**4.6** Having regard to the symbiotic relationship between the tribal people and forests, a primary task of all agencies responsible for forest management, including the forest development corporations should be to associate the tribal people closely in the protection, regeneration and development of forests as well as to provide gainful employment to people living in and around the forest. While safeguarding the customary rights and interests of such people, forestry programmes should pay special attention to the following

-- One of the major cause for degradation of forest is illegal cutting and removal by contractors and their labour. In order to put an end to this practice, contractors should be replaced by institutions such as tribal cooperatives, labour cooperatives, government corporations, etc. as early as possible;

-- Protection, regeneration and optimum collection of minor forest produce along with institutional arrangements for the marketing of such produce;

-- Development of forest villages on par with revenue villages;

-- Family-oriented schemes for improving the status of the tribal beneficiaries; and,

-- Undertaking integrated area development programmes to meet the needs of the tribal economy in the around the forest areas, including the provision of alternative sources of domestic energy on a subsidized basis, to reduce pressure on the existing forest areas.

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**4.8.1.** Encroachment on forest lands has been on the increase. This trend has to be arrested and effective action taken to prevent its continuance. There should be no regularization of existing encroachments.

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**4.9.** The main considerations governing the establishment of forest-based industries and supply of raw material to them should be as follows :

-- As far as possible, a forest-based industry should raise the raw material needed for meeting its own requirements, preferably by establishment of direct relationship between the factory and the individuals who can grow the raw material by support the individuals with inputs including credit, constant technical advice and finally harvesting and transport services.

-- No forest-based enterprise, except that at the village or cottage level, should be permitted in the future unless it has been first cleared after a careful scrutiny with regard to assured availability of raw material. In any case, the fuel, fodder and timber requirements of local population should not be sacrificed for this purpose.

-- Forest-based industries must not only provide employment to local people on priority but also involve them fully in raising trees and raw-material.

-- Natural forests serve as a gene pool resources and help to maintain ecological balance. Such forests will not, therefore, be made available to industries for undertaking plantation and for any other activities.

-- Framers, particularly small and marginal farmers would be encouraged to grow, on marginal/degraded lands available with them, wood species required for industries. These may also be grown along with fuel and fodder species on community lands not required for pasture purposes, and by forest department/corporations on degraded forests, not earmarked for natural regeneration.

-- The practice of supply of forest produce to industry at concessional prices should cease. Industry should be encouraged to use alternative raw materials. Import of wood and wood products should be liberalized.

-- The above considerations will, however, be subject to the current policy relating to land ceiling and land-laws.

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**4.16.** The objective of this revised Policy cannot be achieved without the investment of financial and other resources on a substantial scale. Such investment is indeed fully justified considering the contribution of forests in maintaining essential ecological processes and life- support systems and in preserving genetic diversity. Forest should not be looked upon as a source of revenue. Forests are a renewable natural resource. They are a national asset to be protected and enhanced for the well being of the people and the Nation."

It is clearly a constitutional imperative to preserve and enhance forest cover as a natural gene pool reserve.

As opposed to the above, the ground reality has been depletion of forest.

The shift in the approach of the legislation is evident from the FC Act of 1980 when compared with the scheme underlying the Indian Forest Act, 1927 which was State oriented for conserving the Forest Policy of 1952. Further, in 1977, Forest and Wildlife were taken out from the State list and incorporated in Concurrent list. Considering compulsions of States and large depletion of forest, these legislative measures have shifted the responsibility from States to Centre. Moreover, any threat to the ecology can lead to violation of right of enjoyment of healthy life guaranteed under Article 21 which is required to be protected. The Constitution of India enjoins upon this Court a duty to protect environments.

The aforesaid background has been given to demonstrate that the object of amount of NPV is to utilize the fund to conserve the ecology without in any manner affecting proprietary rights of the State Government over the land, timber or the minerals. The Notification dated 23rd April, 2004 does not deprive any State of any land timber or mineral and, therefore, there is no question of disbursement of any amount to the State. The damage to environment is a damage to the country's assets as a whole. Ecology knows no boundaries. It can have impact on the climate. The principles and parameters for valuation of the damage have to be evolved also keeping in view the likely impact of activities on future generation.

We have already noted that this matter came to be examined on Central Government filing statement showing the dismal state of affairs of the forest in the country. It is evident that despite the FC Act and the forest policy the forests have been rapidly depleting. The forest policy recognizes this fact and, in fact, was involved to check the menace of fast eroding of forest in the country. Despite constitutional amendments made effective from the beginning of 1977 and despite various environmental laws enacted between 1974-1986 depletion of forest has not halted.

The State of Forest Report 1995 published by Forest Survey of India when compared with the State of Forest Report 1997 also shows that there has been considerable depletion of forest cover. It also shows the limited regeneration. A comparison of the two reveals that total forest cover of the country decreased from 638,879 sq.km. to 633,397 sq.km., thus showing a net loss of 5,482 sq.km. Further it reveals that there has been a net decrease of 17,777 sq.km. of dense forest cover of the country while open forests and mangroves have increased by 12,001 sq.km. and 294 sq.km respectively. The redeeming feature, however, is an improvement which can be seen from the State of Forest Report 2001. Learned Amicus Curiae submits that improvement is a result of strict vigil on account of various orders passed by this Court from time to time. It cannot be doubted that it is necessary to continue the efforts for regeneration of forest.

It would also be useful to make a mention of the order dated 22nd September, 2000 passed by this Court which led to grant of sanction of rupees 1,000 crores for maintenance of forest under the 12th Finance Commission (2005-2010). The said order took note of the fact that felling of the trees is far in excess of what would be justified with reference to regeneration, and the main cause is non-availability of sufficient funds. It also notices that even with regard to the felling of trees as per working plans in the last

three years, the corresponding prescription for regeneration has not been implemented. It further notices that there cannot be any felling without regeneration because that will, over a period of time, only result in forest vanishing. Further, the order says that the shortfall of regeneration which has resulted in depletion of forest cover has to be made up. The court took note of the suggestion that for regeneration there should be a joint venture between State of Madhya Pradesh – a State having a large forest area, and the Central Government whereby the working capital, in whole or substantially the whole, can be provided by the Central Government and the regeneration of degraded forests carried out. Taking an overall view, it is important for the nation that in certain areas where natural forest exists, the same should be preserved and at the same time the Central Government should consider whether the deficient States should not be asked to contribute towards the preservation of the existing forest cover and the compensation/incentive given to the forest rich States to preserve and regenerate forests. In a sense, there should be a partnership of all the States to ensure the maintenance and improvement of forest cover. It was observed that this suggestion should be considered by a Committee of Secretary (MOF) and the Secretary (MOEF) in consultation with the Chief Secretaries of all the States.

Para 14.25 of the 12th Finance Commission Report deals with maintenance of forest. Noticing that several States have represented that subsequent to the restrictions placed by this Court on exploitation of forest wealth, the forests have become a net liability for the States rather than a source of revenue and maintenance of forest has become a problem due to financial constraints, these States pleaded that separate grant should be provided for maintenance of forest. Recognising that forest are a national wealth and the country as a whole has the responsibility in preserving the said national wealth, the Commission decided to recommend a grant of rupees 1000 crores spread over the award period 2005-2010 for maintenance of forest. This would be over and above what the States have been spending through their forest departments. The amount was distributed among the States based on their forest area, to be spent for preservation of forest wealth. In this light, it is not open to the State Government to contend that the amount of NPV paid by the user agency shall be handed over to them.

Reference may also be made to report of the Planning Commission (Chapter IX) relating to forest environments in Tenth Five Year Plan (2002- 2007) which has taken note of the fact that sustainability is not an option but imperative since without it environmental deterioration and economic decline will be feeding each other leading to poverty, pollution, poor health, political upheaval and unrest. Environment cuts across all sectors of development. The rapid increase in green house gases in the atmosphere, land degradation, deteriorating conditions of fragile eco systems, deforestation, loss of biodiversity and environmental pollution have become subjects of serious global concern. The overall impact of these phenomena is likely to result in depletion of ozone layer, change of climate, rise in sea-level loss of natural resources, reduction in their productivity ultimately leading to an ecological crisis affecting livelihood options for development and over all deterioration in quality of life.

From the above report, it follows that the deterioration and consequently preservation of eco-systems cannot be area or state specific and that utmost attention is required to be accorded to conservation of natural resources and for improvement of the status of our environments. The report notices the need to tackle the environmental degradation in a holistic manner in order to ensure both economic and environmental sustainability. Forests play an important role in environmental and economic sustainability. It takes note of the forests being consistently and seriously undervalued in economic and social terms. It recognizes that the economic value of the eco-system services of the forests is vast though it is extremely difficult to quantify. It takes note of the fact that generally much of the land-use decision that presently drives forest change takes relatively little account of these values. The country's forest resource is under tremendous pressure. Note has been taken of the fact that India's biological diversity is reflected in the heterogeneity of its forest cover. It is one of the 12 'mega-diversity' countries of the world. India is also at the meeting zone of three major zone of three major bio-geographic realms, namely, the Indo-Malayan (the richest in the world), the Eurasian and Afro-tropical. India also has the two richest bio-diversity areas, one in the northeast and the other in the Western Ghats. The biological diversity is being conserved through a network of biosphere reserves, national parks and sanctuaries, however, the challenges for conservation emanate from population pressures, adverse impacts of industrialization and intensifying threat from illegal trade.

The importance of conserving and managing existing natural forest and forest soils, which are very large stores of carbon, has been emphasized as it will significantly reduce greenhouse gas emissions. To develop and protect forest, a scientific management is necessary so as to enhance productivity, density and health. Forestry projects have to lay emphasis on management and rejuvenation of natural forests. The fragile eco-systems should be properly managed in order to safeguard the livelihood of millions of people.

The national development agenda must recognize the necessity of protecting the long-term ecological security. The problem area is the growing population, high degree of mechanization and steep rise in energy use which has led to activities that directly or indirectly affect the sustainability of the environment.

It is recognized that the sustainable use of bio-diversity is fundamental to ecological sustainability. The loss of bio-diversity stems from destruction of the habitat, extension of agriculture, filling up of wet lands, conversion of rich bio-diversity sites for human settlement and industrial development, destruction of coastal areas and uncontrolled commercial exploitation. It is thus evident that the preservation of eco-systems, bio-diversity and environment whether examined on common law principle or statutory principle or constitutional principle eyeing from any angle it is clearly a national issue to be tackled at the national level. All initiatives are required to seriously pursue.

Dealing with inter-generational justice, it has been rightly observed that posterity shall not be treated like dirt. In an article published in 2003 **Columbia Journal of Environmental Law** (28 *Colum.J.Envntl.L.*185), the author says that the way in which a

society cares or does not care for its dirt - its land - reflects the degree to which it cares or does not care for its own long-term future.

We may also briefly refer to Public Trust doctrine and its applicability to the matters under consideration. The Public Trust Doctrine looks beyond the need of the present generation and also suggests that certain resources are invested with a special nature. It would be instructive to make a note of a story given in by Timothy Patrick Brady in Boston College Environmental Affairs Law Review, Spring 1990 under the title 'But most of it belongs to those yet to be born'. The story relates to digging of well at the time of drought. When a Frenchman told villagers of a prudent African solution of digging well, many villagers agreed but others argued that it will bring people from other villages and they would bring their cattle and that would increase the pressure on the already precious water. The Frenchman told the villagers that why not explain to them that the well is only for your own village and they can dig their own. It was then said that 'water is not only ours, but is gift of nature from God and must be shared.' Ultimately, they concluded that it was wiser not to dig the well at all. The moral of the story is that we are trustees of natural resources which belong to all including future generation as well. The public trust doctrine has to be used to protect the right of this as also future generation.

Having regard to the above, amounts under CAMPA have to be used for regeneration of eco-system and the same cannot be handed over to any State Government on the premise that ecology is not property of any State but belongs to all being a gift of nature for entire nation. The object of the FC Act and EP Act is protection of environments. These Acts do not deal with any proprietary rights of anyone.

As already stated the question as to what amount of NPV is required to be paid to achieve these object is a matter to be gone into by the experts. However, the amounts shall have to be updated from time to time after every three years. For grant of approval under Section 2 of the FC Act besides payment of NPV as being presently calculated by MOEF, the user agencies shall have to give undertakings to pay the remaining amount, if any, pending finalization of determination by the experts.

Turning now to the grant of exemption to certain projects, learned Solicitor General submitted that Government hospitals, dispensaries, non- commercial government ventures like schools, rain water harvesting tanks, sewer lines, village roads etc. are the projects meant for public welfare and have no adverse impact on environment as such and, therefore, these cases deserve to be granted exemption. Learned Amicus Curiae has no objection to non-commercial and non-revenue earning Government public welfare projects being treated differently and granted exemption from the purview of the payment of NPV. Submission was also made by learned counsel appearing for some of the parties that other projects like irrigation, hydro electricity or other similar projects engaged in public welfare and public utility activities too deserve to be similarly treated and granted exemption. On behalf of the National Hydro Project Corporation Ltd. (NHPC), it was submitted that dams/hydro electric projects and other similar projects are undertaken in public interest and these will also not create environmental pollution and mere fact of these are revenue earning projects should not be taken as a ground to treat them

differently. Reliance has been placed on observations made in *Hindustan Motors Ltd. and Anr. v. N. Siva Kumar and Anr.* [(2000) 10 SCC 664] to contend that such a project is not a pollution industry. This decision is not relevant for determining the question about levy and payment of NPV. The question is not only about these and projects referred by the Solicitor General not creating pollution but is about diversion of forest land for non-forest purpose, thereby depleting forest so as to utilize land area in setting up these projects. A distinction has to be maintained between a project set up for providing public utility but which is revenue earning, the category to which the project of NHPC falls and the government projects of the nature above referred like hospitals, schools etc., non-revenue earning projects. A balance is required to be maintained in the development and protection of environments. As already noted, the development has to be based on sustainability. If NHPC uses the forest land for non forest purposes, the payment of NPV is to protect the ecological and bio-diversity having regard to the doctrines above referred. Generally speaking, projects like NHPC are commercial ventures.

What we have stated above is also applicable to submissions made on behalf of Grid Corporation of Orissa (GRIDCO), State of Uttranchal and State of Madhya Pradesh. We are unable to accept the submission that wherever the government is the user agency in notified forest area, protected forest/reserved forest etc., NPV should not be charged. Such a submission cannot be accepted in the teeth of Section 2 of the FC Act and other environmental laws noticed hereinbefore.

The submission made on behalf of the Federation of Indian Mineral Industries about calculation of NPV at the rate of 10 per cent for major mineral and 5 per cent for minor mineral as already noted cannot be accepted. The question is not of the value of the mineral or it being high value and low volume and mineral of high volume and low value, the question is about use of the forest areas and need to protect the environments in the manner above stated. A larger public interest has to be the guiding principle and not the present interest of user agency only.

We are of the view that the question as to which class of projects deserve to be exempted can first be examined by experts having regard to principles laid in this judgment and in receipt of the report from them, this Court would further examine the matter and issue appropriate directions. However, prima facie we feel that revenue earning projects do not deserve similar treatment as non-revenue earning public welfare projects.

We are clear that if let loose, the benefits achieved as indicated in the State Forest Report of 2001 would be lost and we may be again where we were in 1990's or 1980's and earlier period during which there was immense depletion of forest and insignificant regeneration.

The work of regeneration and also of compulsory afforestation requires special, specific and expert attention and we see no illegality in establishment of Special Purpose Vehicle (SPV) in terms of clause 6.6 above quoted except that for present till further orders it would be necessary to monitor the establishment of SPV. Thus, in respect of clause 6.6 in relation to establishment of SPV, we hold that before establishing SPV, its format shall

be filed in Court and SPV shall not be established without permission of the Court. Further in our view the constitution of authority (CAMPAs) is necessary to fully and effectively implement recommendation dated 9th August, 2002 made by CEC for protection of environment

In view of the aforesaid discussion, our conclusions are:

1. Except for government projects like hospitals, dispensaries and schools referred to in the body of the judgment, all other projects shall be required to pay NPV though final decision on this matter will be taken after receipt of Expert Committee Report.
2. The payment to CAMPAs under notification dated 23<sup>rd</sup> April, 2004 is constitutional and valid.
3. The amounts are required to be used for achieving ecological plans and for protecting the environment and for the regeneration of forest and maintenance of ecological balance and eco-systems. The payment of NPV is for protection of environment and not in relation to any propriety rights.
4. Fund has been created having regard to the principles of intergenerational justice and to undertake short term and long-term measures.
5. The NPV has to be worked out on economic principles.

In view of the above, we issue following directions:

A. An expert committee comprising of three experts including Ms.Kanchan to be appointed within a period of one month by the Institution of Economic Growth (North Campus).

B. The committee of experts would examine the following issues:

- (i) To identify and define parameters (scientific, bio-metric and social) on the basis of which each of the categories of values of forest land should be estimated.
- (ii) To formulate a practical methodology applicable to different bio-geographical zones of India for estimation of the values in monetary terms in respect of each of the above categories of forest values.
- (iii) To illustratively apply this methodology to obtain actual numerical values for different forest types for each bio-geographical zone in the country.
- (iv) To determine on the basis of established principles of public finance, who should pay the costs of restoration and/or compensation with respect to each category of values of forests.

(v) Which projects deserve to be exempted from Payment of NPV.

C. The user agencies shall give undertakings for the further payment, if any, as may be determined on receipt of report from the expert body.

D. The Special Purpose Vehicle shall be established with the permission of the Court.

E. The Institute shall send report of Committee of Experts within a period of four months.

F. The various clauses of CAMPA shall be suitably modified in terms of this judgment within a period of one month.

List after four months.

## Jagpal Singh & Ors vs State Of Punjab & Ors on 28 January, 2011

**Equivalent citations: AIR 2011 SUPREME COURT 1123, 2012 AIR SCW 2574, (2011) 99 ALLINDCAS 88 (SC), 2011 AIR SCW 990, AIR 2012 SC (CIVIL) 1453, AIR 2011 SC (CIVIL) 492, (2011) 1 CURCC 144, (2011) 3 MAD LW 17, (2011) 1 ORISSA LR 940, (2016) 3 PAT LJR 268, (2011) 2 RAJ LW 1389, 2011 (11) SCC 396, (2011) 1 RECCIVR 912, (2011) 1 ICC 742, (2011) 2 SCALE 42, (2016) 3 JLJR 321, (2011) 85 ALL LR 500, (2011) 3 ALL WC 2379, (2011) 2 GUJ LR 1304, (2011) 3 MAD LJ 760, (2011) 2 JCR 52 (SC), (2011) 112 CUT LT 130, (2011) 1 LANDLR 61, (2011) 113 REVDEC 329, (2011) 1 CLR 554 (SC), 2011 (1) KLT SN 97 (SC), 2011 (86) ALR SOC 49 (SC)**

**Author: Markandey Katju**

**Bench: Markandey Katju, Gyan Sudha Misra**

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1132 /2011 @ SLP(C) No.3109/2011  
(Arising out of Special Leave Petition (Civil) CC No. 19869 of 2010)

Jagpal Singh & Ors. .. Appellant (s)

-versus-

State of Punjab & Ors. .. Respondent (s)

JUDGMENT

Markandey Katju, J.

1. Leave granted.
2. Heard learned counsel for the appellants.

3. Since time immemorial there have been common lands inhering in the village communities in India, variously called gram sabha land, gram panchayat land, (in many North Indian States), shamlat deh (in Punjab etc.), mandaveli and poramboke land (in South India), Kalam, Maidan, etc., depending on the nature of user. These public utility lands in the villages were for centuries used for the common benefit of the villagers of the village such as ponds for various purposes e.g. for their cattle to drink and bathe, for storing their harvested grain, as grazing ground for the cattle, threshing floor, maidan for playing by children, carnivals, circuses, ramlila, cart stands, water bodies, passages, cremation ground or graveyards, etc. These lands stood vested through local laws in the State, which handed over their management to Gram Sabhas/Gram Panchayats. They were generally treated as inalienable in order that their status as community land be preserved. There were no doubt some exceptions to this rule which permitted the Gram Sabha/Gram Panchayat to lease out some of this land to landless labourers and members of the scheduled castes/tribes, but this was only to be done in exceptional cases.

4. The protection of commons rights of the villagers were so zealously protected that some legislation expressly mentioned that even the vesting of the property with the State did not mean that the common rights of villagers were lost by such vesting. Thus, in *Chigurupati Venkata Subbayya vs. Paladuge Anjayya*, 1972(1) SCC 521 (529) this Court observed :

"It is true that the suit lands in view of Section 3 of the Estates Abolition Act did vest in the Government. That by itself does not mean that the rights of the community over it were taken away. Our attention has not been invited to any provision of law under which the rights of the community over those lands can be said to have been taken away. The rights of the community over the suit lands were not created by the landholder. Hence those rights cannot be said to have been abrogated by Section 3) of the Estates Abolition Act."

5. What we have witnessed since Independence, however, is that in large parts of the country this common village land has been grabbed by unscrupulous persons using muscle power, money power or political clout, and in many States now there is not an inch of such land left for the common use of the people of the village, though it may exist on paper. People with power and pelf operating in villages all over India systematically encroached upon communal lands and put them to uses totally inconsistent with its original character, for personal aggrandizement at the cost of the village community. This was done with active connivance of the State authorities and local powerful vested interests and goondas. This appeal is a glaring example of this lamentable state of affairs.

6. This appeal has been filed against the impugned judgment of a Division Bench of the Punjab and Haryana High Court dated 21.5.2010. By that judgment the Division Bench upheld the judgment of the learned Single Judge of the High Court dated 10.2.2010.

7. It is undisputed that the appellants herein are neither the owner nor the tenants of the land in question which is recorded as a pond situated in village Rohar Jagir, Tehsil and District Patiala. They are in fact trespassers and unauthorized occupants of the land relating Khewat Khatuni No. 115/310, Khasra No. 369 (84-4) in the said village. They appear to have filled in the village pond and

made constructions thereon.

8. The Gram Panchayat, Rohar Jagir filed an application under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 to evict the appellants herein who had unauthorisedly occupied the aforesaid land. In its petition the Gram Panchayat, Rohar Jagir alleged that the land in question belongs to the Gram Panchayat, Rohar as is clear from the revenue records. However, the respondents (appellants herein) forcibly occupied the said land and started making constructions thereon illegally. An application was consequently moved before the Deputy Commissioner informing him about the illegal acts of the respondents (appellants herein) and stating that the aforesaid land is recorded in the revenue records as Gair Mumkin Toba i.e. a village pond. The villagers have been using the same, since drain water of the village falls into the pond, and it is used by the cattle of the village for drinking and bathing. Since the respondents (appellants herein) illegally occupied the said land an FIR was filed against them but to no avail. It was alleged that the respondents (appellants herein) have illegally raised constructions on the said land, and the lower officials of the department and even the Gram Panchayat colluded with them.

9. Instead of ordering the eviction of these unauthorised occupants, the Collector, Patiala surprisingly held that it would not be in the public interest to dispossess them, and instead directed the Gram Panchayat, Rohar to recover the cost of the land as per the Collector's rates from the respondents (appellants herein). Thus, the Collector colluded in regularizing this illegality on the ground that the respondents (appellants herein) have spent huge money on constructing houses on the said land.

10. Some persons then appealed to the learned Commissioner against the said order of the Collector dated 13.9.2005 and this appeal was allowed on 12.12.2007. The Learned Commissioner held that it was clear that the Gram Panchayat was colluding with these respondents (appellants herein), and it had not even opposed the order passed by the Collector in which directions were issued to the Gram Panchayat to transfer the property to these persons, nor filed an appeal against the Collector's order.

11. The learned Commissioner held that the village pond has been used for the common purpose of the villagers and cannot be allowed to be encroached upon by any private respondents, whether Jagirdars or anybody else. Photographs submitted before the learned Commissioner showed that recent attempts had been made to encroach into the village pond by filling it up with earth and making new constructions thereon. The matter had gone to the officials for removal of these illegal constructions, but no action was taken for reasons best known to the authorities at that time. The learned Commissioner was of the view that regularizing such kind of illegal encroachment is not in the interest of the Gram Panchayat. The learned Commissioner held that Khasra No. 369 (84-4) is a part of the village pond, and the respondents (appellants herein) illegally constructed their houses at the site without any jurisdiction and without even any resolution of the Gram Panchayat.

12. Against the order of the learned Commissioner a Writ Petition was filed before the learned Single Judge of the High Court which was dismissed by the judgment dated 10.2.2010, and the judgment of learned Single Judge has been affirmed in appeal by the Division Bench of the High Court. Hence this appeal.

13. We find no merit in this appeal. The appellants herein were trespassers who illegally encroached on to the Gram Panchayat land by using muscle power/money power and in collusion with the officials and even with the Gram Panchayat. We are of the opinion that such kind of blatant illegalities must not be condoned. Even if the appellants have built houses on the land in question they must be ordered to remove their constructions, and possession of the land in question must be handed back to the Gram Panchayat. Regularizing such illegalities must not be permitted because it is Gram Sabha land which must be kept for the common use of villagers of the village. The letter dated 26.9.2007 of the Government of Punjab permitting regularization of possession of these unauthorized occupants is not valid. We are of the opinion that such letters are wholly illegal and without jurisdiction. In our opinion such illegalities cannot be regularized. We cannot allow the common interest of the villagers to suffer merely because the unauthorized occupation has subsisted for many years.

14. In *M.I. Builders (P) Ltd. vs. Radhey Shyam Sahu*, 1999(6) SCC 464 the Supreme Court ordered restoration of a park after demolition of a shopping complex constructed at the cost of over Rs.100 crores. In *Friends Colony Development Committee vs. State of Orissa*, 2004 (8) SCC 733 this Court held that even where the law permits compounding of unsanctioned constructions, such compounding should only be by way of an exception. In our opinion this decision will apply with even greater force in cases of encroachment of village common land. Ordinarily, compounding in such cases should only be allowed where the land has been leased to landless labourers or members of Scheduled Castes/Scheduled Tribes, or the land is actually being used for a public purpose of the village e.g. running a school for the villagers, or a dispensary for them.

15. In many states Government orders have been issued by the State Government permitting allotment of Gram Sabha land to private persons and commercial enterprises on payment of some money. In our opinion all such Government orders are illegal, and should be ignored.

16. The present is a case of land recorded as a village pond. This Court in *Hinch Lal Tiwari vs. Kamala Devi*, AIR 2001 SC 3215 (followed by the Madras High Court in *L. Krishnan vs. State of Tamil Nadu*, 2005(4) CTC 1 Madras) held that land recorded as a pond must not be allowed to be allotted to anybody for construction of a house or any allied purpose. The Court ordered the respondents to vacate the land they had illegally occupied, after taking away the material of the house. We pass a similar order in this case.

17. In this connection we wish to say that our ancestors were not fools. They knew that in certain years there may be droughts or water shortages for some other reason, and water was also required for cattle to drink and bathe in etc. Hence they built a pond attached to every village, a tank attached to every temple, etc. These were their traditional rain water harvesting methods, which served them for thousands of years.

18. Over the last few decades, however, most of these ponds in our country have been filled with earth and built upon by greedy people, thus destroying their original character. This has contributed to the water shortages in the country.

19. Also, many ponds are auctioned off at throw away prices to businessmen for fisheries in collusion with authorities/Gram Panchayat officials, and even this money collected from these so called auctions are not used for the common benefit of the villagers but misappropriated by certain individuals. The time has come when these malpractices must stop.

20. In Uttar Pradesh the U.P. Consolidation of Holdings Act, 1954 was widely misused to usurp Gram Sabha lands either with connivance of the Consolidation Authorities, or by forging orders purported to have been passed by Consolidation Officers in the long past so that they may not be compared with the original revenue record showing the land as Gram Sabha land, as these revenue records had been weeded out. Similar may have been the practice in other States. The time has now come to review all these orders by which the common village land has been grabbed by such fraudulent practices.

21. For the reasons given above there is no merit in this appeal and it is dismissed.

22. Before parting with this case we give directions to all the State Governments in the country that they should prepare schemes for eviction of illegal/unauthorized occupants of Gram Sabha/Gram Panchayat/Poramboke/Shamlat land and these must be restored to the Gram Sabha/Gram Panchayat for the common use of villagers of the village. For this purpose the Chief Secretaries of all State Governments/Union Territories in India are directed to do the needful, taking the help of other senior officers of the Governments. The said scheme should provide for the speedy eviction of such illegal occupant, after giving him a show cause notice and a brief hearing. Long duration of such illegal occupation or huge expenditure in making constructions thereon or political connections must not be treated as a justification for condoning this illegal act or for regularizing the illegal possession. Regularization should only be permitted in exceptional cases e.g. where lease has been granted under some Government notification to landless labourers or members of Scheduled Castes/Scheduled Tribes, or where there is already a school, dispensary or other public utility on the land.

23. Let a copy of this order be sent to all Chief Secretaries of all States and Union Territories in India who will ensure strict and prompt compliance of this order and submit compliance reports to this Court from time to time.

24. Although we have dismissed this appeal, it shall be listed before this Court from time to time (on dates fixed by us), so that we can monitor implementation of our directions herein. List again before us on 3.5.2011 on which date all Chief Secretaries in India will submit their reports.

.....J. [Markandey Katju] .....J. [Gyan Sudha Mishra] New Delhi;

January 28, 2011

[2011] 7 S.C.R. 954

A LAFARGE UMIAM MINING PVT. LTD.  
T.N. GODAVARMAN THIRUMULPAD  
v.  
UNION OF INDIA & ORS.  
(I.A. NOS. 1868, 2091, 2225-2227, 2380, 2568 and 2937)  
B IN  
WRIT PETITION (C) No. 202 OF 1995  
JULY 6, 2011  
[S.H. KAPADIA, CJI, AFTAB ALAM AND K.S.  
C RADHAKRISHNAN, JJ.]

*Environmental Law:*

*Environment and utilization of natural resources –*  
D *Balancing of equities – HELD: Time has come to apply the constitutional “doctrine of proportionality” to the matters concerning environment as a part of the process of judicial review in contradistinction to merit review – Utilization of the environment and its natural resources has to be in a way that*  
E *is consistent with principles of sustainable development and intergenerational equity, but balancing of these equities may entail policy choices – In the circumstances, barring exceptions, decisions relating to utilization of natural resources have to be tested on the anvil of the well-recognized principles of judicial review – The court should review the*  
F *decision-making process to ensure that the decision of MoEF is fair and fully informed, based on the correct principles, and free from any bias or restraint – Once this is ensured, then the doctrine of “margin of appreciation” in favour of the decision-maker would come into play – Judicial Review –*  
G *Doctrine of proportionality – Doctrine of margin of appreciation – Polluter pays principle – Intergenerational equity.*

*Mines and minerals – Limestone mining project in East Khasi Hills District, Meghalaya – Environmental clearance*

H 954

and forest clearance – Mining lease agreement signed with Village Durbar – In the application for environmental clearance it was mentioned that the land in question fell under Karst topography – No objection granted by KHADC – Site clearance granted by MoEF – DFO concerned certified that mining site was not a forest area – Environmental public hearing held – Finally, EIA clearance given by MoEF on 9.8.200 – Subsequently, when it was pointed out that non broken area in the leased mine was forest within the meaning of Forest (Conservation) Act, 1980, ex post facto environmental clearance and forest clearance granted on 19.4.2010 and 22.4.2010, respectively – Validity of – HELD: The word “environment” has different facets – That the land in question falls under Kast topography is borne out by the certificate dated 27.8.1999 issued by KHADC – According to the NEHU Report, the site is located in the area on the outskirts of forest – Requirement of submitting the proposal for forest diversion is exclusively the obligation of the State Government – While granting environmental clearance dated 9.8.2001, there was an express finding that “no diversion of forest land was involved” – Since the area of mining lease did not fall in forest, State Government did not submit any proposal to Central Government u/s 2 of the 1980 Act – It is in view of the existence of 1958 Act that the native people as also the DFO understood the area in the light of the said Act – On facts of the case, it cannot be held that the decision to grant ex post facto clearances stood vitiated on account of non-application of mind or on account of suppression of material facts by the applicant – Similarly, it cannot be held that ex post facto clearances have been granted by MoEF in ignorance of the existence of forests due to mis-declaration – The ex post facto clearance is based on the revised EIA – In the circumstances, EIA Notification of 2006 would not apply – The order of the Court is confined to the instant case only – United Khasi-Jaintia Hills Autonomous District (Management and Control of Forests) Act, 1958 – s.2(6) – Forest (Conservation) Act, 1980 – s.2 – Mines and Minerals

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A *(Regulation and Development) Act, 1957 – s.5(1).*

B *Environment and development – Limestone mining in tribal area – Role of tribals and rural public – HELD: Public participation provides a valuable input in the process of identification of forest – The natives and indigenous people are fully aware and they have knowledge as to what constitutes conservation of forests and development – They equally know the concept of forest degradation – They are equally aware of systematic scientific exploitation of limestone mining without causing of “environment degradation” – However, they do not have the requisite wherewithal to exploit limestone mining in a scientific manner – The word “development” is a relative term – One cannot assume that the tribals are not aware of principles of conservation of forest – In the instant case, limestone mining has been going on for centuries in the area and it is an activity which is intertwined with the culture and the unique land holding and tenure system of the area – On the facts of the case, the MoEF exercised due diligence in the matter of forest diversion.*

E *Environment and sustainable development – Utilization of natural resources – Guidelines to be followed in future cases – The words “environment” and “sustainable development” have various facets – Care for environment is an ongoing process – Identification of an area as forest area is solely based on the Declaration to be filed by the User Agency (project proponent) – The project proponent under the existing dispensation is required to undertake EIA by an expert body/ institution – The MoEF/ State Government acts on the report (Rapid EIA) undertaken by the Institutions who though accredited submit answers according to the Terms of Reference propounded by the project proponent – At times the court is faced with conflicting reports – Similarly, the government is also faced with a fait accompli kind situation which in the ultimate analysis leads to grant of ex post facto clearance – Therefore, guidelines are required to be given so*

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*that fait accompli situations do not recur – Time has come for this Court to declare and it is hereby declared that the National Forest Policy, 1988 which lays down far-reaching principles must necessarily govern the grant of permissions u/s 2 of the Forest (Conservation) Act, 1980 as the same provides the road map to ecological protection and improvement under the Environment (Protection) Act, 1986 – The principles/ guidelines mentioned in the National Forest Policy, 1988 should be read as part of the provisions of the Environment (Protection) Act, 1986 read together with the Forest (Conservation) Act, 1980 – This direction is required to be given because there is no machinery even today for implementation of the National Forest Policy, 1988 read with the Forest (Conservation) Act, 1980 – Further guidelines enumerated – National Forest Policy, 1988 – Environment (Protection) Act, 1986 Forest (Conservation) Act, 1980 – Environment (Protection) Rules, 1986 – r.5(3)(d).*

**The predecessor-in-interest of the applicant Lafarge Umiyam Mining Pvt. Ltd. (LUMPL), namely, LMMPL, made an application on 1.9.1997 under Environment Impact Assessment (EIA) Notification, 1994 for granting environmental clearance for limestone mining project at Nongtraï, East Khasi hills District, Meghalaya. By application dated 23.9.1998 LMMPL applied for Site Clearance. The application stated that the site was not a habitat/corridor for endangered/rare/endemic species; an area of 100 hectares stood acquired by LMMPL on lease basis for mining for which an agreement was signed with Village Durbar; and that the limestone bearing area fell under the Karst topography. LMMPL, obtained “no objection” certificate dated 27.8.1997 issued by the Khasi Hills Autonomous District Council (KHADC), Shillong, a constitutional authority under the Sixth Schedule to the Constitution of India, site clearance was given by MoEF by letter dated 18.6.1999, certificate dated 13.6.2000 of the DFO concerned was issued certifying that the mining site**

A was not a forest area as per Supreme Court's order dated 12.12.1996 nor did it fall under any of the notified reserved, and the environmental public hearing took place on 3.6.1998. Ultimately, EIA Clearance was given to LMMPL by MoEF on 9.8.2001. Under a transfer deed  
B executed on 28.2.2002, the mining lease was transferred and assigned in favour of the applicant LUMPL and, accordingly, on 30.7.2002, the environmental clearance granted to LMMPL stood transferred to LUMPL (the applicant) by MoEF.

C Subsequently, by letter dated 1.6.2006 from the Chief Conservator of Forests (C) addressed to MoEF, it was pointed out that the mining lease area around the developed mine benches stood surrounded by thick  
D natural vegetation cover with sizeable number of tall trees. The said vegetation included trees being cleared for developing the mining benches and for such clearance no permission under the Forest (Conservation) Act, 1980 was taken. LUMPL, irrespective of its claim to NOC issued by the DFO, submitted its application dated 3.5.2007 for  
E forest clearance under the 1980 Act. By letter dated 11.5.2007 the Principal Chief Conservator of Forests, Meghalaya wrote to the State government that the project proponent had broken up an area of about 21.44 Ha; that  
F the topography in the leased mine around the broken up areas was Karst topography; that non-broken up area in the leased mine was forest land falling within the purview of the 1980 Act; that the project proponent be allowed to remove the already broken limestone from the site and it may be directed to apply for forest clearance under  
G the 1980 Act for the non-broken up part of the leased area. LUMPL filed the instant IA No. 1868 of 2007 seeking directions to MoEF to expeditiously process its application u/s 2 of the 1980 Act.

H On 6.9.2007 CEC submitted its report to the Supreme

Court stating that the project proponent should have taken permission under the 1980 Act before starting operations in the area and as *ex post facto* approval was sought and since *fait accompli* situation had arisen, there was no option but to recommend the case for grant of permission for the use of forest land for mining lease subject to certain conditions mentioned therein. By interim order dated 5.3.2010 the project proponent was directed to stop all mining activities. On 5.4.2010 a report was submitted by the Regional Chief Conservator of Forests [also known as High Powered Committee (HPC)], stating, *inter alia*, that although the area supported rich flora, the same could be re-forested as a part of reclamation plan prepared and executed in a time bound manner; that the project was positive and beneficial to the residents of the village due to huge amount of cash going to the Village Durbar, reaching the individual household and improving the financial health of the population of the villages concerned. Accordingly, on 19.4.2010 the MoEF granted environmental clearance (with certain additional conditions) which was followed by forest clearance dated 22.4.2010 (*ex-post facto* clearance) granted by MoEF stipulating further conditions to be complied with by the project proponent.

The contentions of the parties boiled down to the issues: (i) nature of land and (ii) whether *ex post facto* environmental and forest clearances dated 19.4.2010 and 22.4.1010 respectively stood vitiated by alleged suppression by the appellant regarding the nature of the land.

Disposing of the IAs, the Court

HELD:

(a) Legal Position

A 1.1. Universal human dependence on the use of environmental resources for the most basic needs gave rise to the concept of “sustainable development”. Care of the environment is an on-going process. It would depend on the facts of each case whether diversion in a given case should be permitted or not, barring “No Go” areas (whose identification would again depend on undertaking of due diligence exercise). In such cases, the margin of appreciation doctrine would apply. [para 19] [1009-E-H; 1110-A-B]

C *Narmada Bachao Andolan v. Union of India and Others* 2000 (4) Suppl. SCR 94 = (2000) 10 SCC 664 – referred to

D 1.2. Since the nature and degree of environmental risk posed by different activities vary, the implementation of environmental rights and duties require proper decision making based on informed reasons about the ends which may ultimately be pursued, as much as about the means for attaining them. Setting the standards of environmental protection involves mediating conflicting visions of what is of value in human life. [para 20] [1010-B-C]

F 1.3. Time has come to apply the constitutional “*doctrine of proportionality*” to the matters concerning environment as a part of the process of judicial review in contradistinction to merit review. It cannot be gainsaid that utilization of the environment and its natural resources has to be in a way that is consistent with principles of sustainable development and intergenerational equity, but balancing of these equities may entail policy choices. In the circumstances, *barring exceptions*, decisions relating to utilization of natural resources have to be tested on the anvil of the well-recognized principles of judicial review. The court should H review the decision-making process to ensure that the

decision of MoEF is fair and fully informed, based on the correct principles, and free from any bias or restraint. Once this is ensured, then the doctrine of "margin of appreciation" in favour of the decision-maker would come into play. [para 30] [1028-C-H] A

*R v. Chester City Council* (2011) 1 All ER 476 – referred to. B

1.4. Accordingly, the matter is disposed of keeping in mind various facets of the word "environment", the inputs provided by the Village Durbar of Nongtraï (including their understanding of the word "forest" and the balance between environment and economic sustainability), their participation in the decision-making process, the topography and connectivity of the site to Shillong, the letter dated 11.5.2007 of the Principal Chief Conservator of Forests and the report dated 5.4.2010 given by HPC (each one of which refers to economic welfare of the tribals of Village Nongtraï), the polluter pays principle and the intergenerational equity (including the history of limestone mining in the area from 1858) and the prevalent social and customary rights of the natives and tribals. [para 31] [1029-A-D] C D E

(b) Nature of the land

2.1. According to the State of Forest Report, 2001, the North Eastern Hill State of Meghalaya is predominantly tribal with 86% tribal population. The area in question falls under Karst topography; and this fact is also borne out by the certificate dated 27.8.1997 issued by KHADC, Shillong which is a constitutional authority under the Sixth Schedule to the Constitution. According to the NEHU Report of 1997, the site selected for mining has commercially viable limestone deposit. The site was selected after thorough consultation with the village Durbar concerned which is the custodian of the land. F G H

- A The village Durbar also felt that in the area unscientific limestone quarrying was going on resulting in loss of revenue both to the State as well as the inhabitants of the village, particularly, because the said mining was undertaken by unorganized sectors and, thus, it was
- B decided to enter into the lease with the project proponent so that mining could be done on scientific basis. The site was also selected because of easy accessibility by road and less vegetation clearance stood involved. According to the NEHU Report, the site is located in the area on the
- C outskirts of the forest. [para 21] [1011-B-H; 1012-A-C]

(c) Validity of ex-post facto clearance:

- 3.1. By an order dated 12.12.1996, a Division Bench of this Court, in *T.N. Godavarman Thirumulpad\**, directed
- D each State Government to constitute within a specific period an Expert Committee to identify areas which are forests irrespective of whether they are so notified, recognized or classified under any law and also identify areas which were earlier forests but stand degraded,
- E denuded or cleared. This order dated 12.12.1996, thus, clarified that every State Government seeking prior approval u/s 2 of the Forest (Conservation) Act, 1980 Act shall first examine the question relating to existence of forests before sending its proposal to the Central
- F Government in terms of the form prescribed under the Forest (Conservation) Rules, 1981 (Rule 4). Thus, the requirement of submitting the proposal for forest diversion under the 1980 Act is exclusively the obligation of the State Government. In the instant case, the project proponent had obtained EIA clearance given by MoEF
- G dated 9.8.2001 which clearance stood transferred to the applicant only on 30.7.2002. While granting environmental clearance dated 9.8.2001 there was an express finding to the effect that “no diversion of forest land was involved”.
- H In terms of the order of this Court dated 12.12.1996, an

Expert Committee was in fact formed by the State of Meghalaya by notification dated 8.1.1997 with the Principal Chief Conservator of Forests as its Chairman. On 10.2.1997, the State of Meghalaya had addressed a specific letter to the Khasi Hills Autonomous District Council, stating that the land in question was reckoned as non-forest land and the Council was asked to clarify whether the area in question under the mining lease fell in the forest as per the records of the Council. The Council by its letter dated 28.4.1997 had informed the State Government that the area in question did not fall in the forest. Apart from the said letter, the Chairperson of the Expert Committee appointed by the State of Meghalaya being the Principal Chief Conservator of Forests also submitted his report in which it was expressly stated that the mining lease granted by the State Government did not fall in the forest. Since the mining lease granted by the State did not fall in the forest, the State Government did not submit any proposal to the Central Government u/s 2 of the 1980 Act as it treated the site in question as falling on the outskirts of the forests. [para 25] [1015-H; 1016-A-H; 1017-A-F]

*\*T.N. Godavarman Thirumulpad v. Union of India 2005 (3) Suppl. SCR 552 = (2006) 1 SCC 1 – referred to.*

3.2. It is almost after nine years that there was a change of view on the part of MoEF under which the report of the Expert Committee headed by the Principal Chief Conservator of Forests was given a go-by. Between 1997 and 2007, the view which prevailed was that the project site stood located on the outskirts of the forests. In this connection, it needs to be stated that on 1.6.2006 for the first time the Chief Conservator of Forests (C), came out with the change of view which was ultimately accepted in 2007 by MoEF. The most important fact is that subsequent to the letter dated 1.6.2006,

A addressed by the Chief Conservator of Forests (C), the  
Principal Chief Conservator of Forests agreed with the  
opinion of the Chief Conservator of Forests (C). This was  
by letter dated 11.5.2007. However, even according to the  
Principal Chief Conservator of Forests, who was the  
B Chairperson of the Expert Committee appointed by the  
State Government, the applicant was not at fault because  
the certificate indicating absence of forest was given by  
Khasi Hills Autonomous District Council. In fact the letter  
dated 11.5.2007 further goes to state that the activities of  
C the applicant will provide employment to a large number  
of local tribals and rural people and consequently the  
application for forest clearance made by the applicant  
without prejudice to their rights and contentions dated  
3.5.2007 be considered by MoEF. [para 25] [1017-F-H;  
1018-A-D]  
D

3.3. Besides, on 22.4.1998, a notification was issued  
by the State Pollution Control Board constituting an  
Environmental Public Hearing Panel to evaluate and  
assess the documents submitted by M/s. LMMPL. On  
E 3.6.1998, a public hearing did take place. The Headman  
of Nongtraï was also present. The village Durbar had  
agreed to the proposed project, for the reason that the  
limestone was abundantly available in the area but the  
same remained unutilized by local villagers themselves  
F due to lack of infrastructure. For economic development  
of the local population, the village Durbar had decided to  
lease the area to the project proponent. [para 25] [1018-  
D-H; 1019-A]

3.4. Public participation provides a valuable input in  
G the process of identification of forest. The natives and  
indigenous people are fully aware and they have  
knowledge as to what constitutes conservation of forests  
and development. They equally know the concept of  
forest degradation. They are equally aware of systematic  
H scientific exploitation of limestone mining without

causing of “environment degradation”. However, they do not have the requisite wherewithal to exploit limestone mining in a scientific manner. These natives and indigenous people know how to keep the balance between economic and environment sustainability. In the instant case, this fact is brought out by the Minutes of the meeting held on 3.6.1998. In fact the written submissions filed by the Nongtraï Village Durbar (respondent No. 5) in I.A. No. 1868 of 2007 have specifically averred that the Nongtraï village has about 1300 hectares of community land out of which 900 hectares are limestone bearing land. The manner and method of allocation, use and occupation of the community lands are decided by the Village Durbar. The Village Durbar has granted lease of 100 hectares of community land which is limestone bearing land. [para 25] [1019-C-H; 1020-A-D]

3.5. The word “development” is a relative term. One cannot assume that the tribals are not aware of principles of conservation of forest. Limestone mining has been going on for centuries in the area and it is an activity which is intertwined with the culture and the unique land holding and tenure system of the Nongtraï Village. [para 31] [1029-D-E]

3.6. Further, a detail written submission has been filed on 13.5.2011 by the Nongtraï Village Durbar fully supporting the impugned project. Thus, this is a unique case from North East. This Court is fully satisfied that the natives and the indigenous people of Nongtraï Village are fully conscious of their rights and obligations towards clean environment and economic development. There is ample material on record which bears testimony to the fact of their awareness of ecological concerns which has been taken into account by MoEF. [para 25] [1020-D-F]

3.7. The word “environment” has different facets. Section 2(f) of the United Khasi – Jaintia Hills

A Autonomous District (Management and Control of  
Forests) Act, 1958 defines the expression "forest". It is  
the trees of a particular girth and breast height and not  
every tree should be counted while computing whether  
a particular area is a forest area or not. In fact in the year  
B 2007, a survey of the unbroken area was conducted by  
the Forest Department of the State of Meghalaya wherein  
an inventory of the existing trees was prepared based on  
their nature and girth. The said record confirms that the  
unbroken area has less than 25 trees per acre having  
C girth of more than 120 cms. It is in view of the existence  
of the 1958 Act, which is a local legislation, that the native  
people as also the State officials like the DFO understood  
the area in the light of the said Act. It is important to note  
once again that this understanding of the natives and  
D tribals about the Local Act is an important input in the  
decision making process of granting environmental  
clearance. It is deeply engrained in the local customary  
law and usage. It is so understood by the Expert  
Committee headed by the then Principal Chief  
E Conservator of Forests on the basis of which the State  
granted the mining lease saying that there was no forest.  
This certificate was granted by the State in terms of the  
order of this Court dated 12.12.1996. This understanding  
also existed in the mind of KHADC when it gave  
F certificates on 28.4.1997, 10.7.1997 and 27.8.1997. In fact  
this has been the understanding of the Council as is  
apparent even from its letter dated 18.1.2011 (page 126  
of the affidavit dated 9.3.2011 filed by the State of  
Meghalaya). This view prevailed with the MoEF between  
1997 and 2007. [para 25] [1020-G-H; 1021-C-H; 1022-A]

G 3.8. On facts of the case, it cannot be held that the  
decision to grant ex post facto clearances stood vitiated  
on account of non-application of mind or on account of  
suppression of material facts by the applicant as alleged  
H by SAC. [para 25] [1022-A-B]

4.1. Similarly, it cannot be held that ex post facto clearances have been granted by MoEF in ignorance of the existence of forests due to mis-declaration. Firstly, the ex post facto clearance is based on the revised EIA. In the circumstances, EIA Notification of 2006 would not apply. Secondly, IA preferred by SAC being I.A. No. 2225-2227/08 was preferred only in March, 2008. Thus, during the relevant period of almost a decade, SAC did not object to the said project. I.A. No. 3063 of 2011 preferred by CEC, which has acted only after receiving inputs from respondent No. 5, prima facie throws doubt on the credibility of objections raised by SAC. [para 26] [1022-C-G]

4.2. On the ex post facto clearance, suffice it to state that after Chief Conservator of Forests (C) submitted his report on 1.6.2006, MoEF directed the project proponent to apply for necessary clearances on the basis that there existed a forest in terms of the order of this Court dated 12.12.1996 and the ex post facto clearance has now been granted on that basis permitting diversion of forest by granting Stage-I forest clearance subject to compliance of certain conditions imposed by MoEF and by this Court. [para 26] [1022-G-H; 1023-A-B]

4.3. On the question of non-application of mind by the MoEF, at various stages despite compliances by the project proponent and despite issuance of certificates by various authorities, MoEF sought further clarifications/information by raising necessary requisitions. A number of queries have been raised from time to time by the MoEF as indicated from the facts. There were four terms of references given to the HPC. According to the report, all conditions imposed with regard to environmental clearance had been substantially complied with by the applicant. The most important aspect is the HPC Report regarding the topography of the area. It states that

A though the area can be treated as forest, still it is a hilly  
uneven undulating area largely covered by “Karstified”  
limestone. The Report further states that the area can be  
reforested as a part of the reclamation plan. It further  
states that the indigenous and native people are satisfied  
B with the credentials of the applicant as the company is  
providing health care facilities, drinking water facilities,  
employment for local youth, construction of village roads,  
employment for school teachers, scholarship programme  
for children, etc. It also indicates that the issue of mining  
C was thoroughly discussed with the Village Durbar by the  
members of the HPC who visited the site and that the  
community was in agreement to allow the applicant to  
continue mining. [para 26] [1023-A-B; 1024-A-F]

4.4. Keeping in view the steps taken by MoEF, this  
D Court is satisfied that the parameters of intergenerational  
equity are satisfied and no reasonable person can say  
that the impugned decision to grant Stage-I forest  
clearance and revised environmental clearance stood  
vitiating on account of non-application of mind by MoEF.  
E On the contrary, the facts indicate that the MoEF has been  
diligent; that, MoEF has taken requisite care and caution  
to protect the environment; and, in the circumstances,  
this Court upholds the stage-I forest clearance and the  
revised environmental clearance granted by MoEF. [para  
F 26] [1024-H; 1025-A-B]

4.5. The order dated 12.4.2010 recites agreed  
conditions between the parties, imposed by this Court in  
addition to the conditions laid down by MoEF. These  
conditions are in terms of judgment of this Court in *T.N.*  
G *Godavarman Thirumulpad* with regard to *commercial*  
*exploitability* which even according to SAC was not  
considered by MoEF at the time of granting revised  
environmental clearance on 19.4.2010 or at the time of  
granting forest clearance on 22.4.2010. This order  
H

indicates the benefit which will accrue to the natives and residents of the Nongtraï Village. The site covers 100 hectare required for limestone mining. The Village Durbar seeks to exploit it on scientific lines. The minutes of the meeting of the Village Durbar and the submissions filed by the Durbar indicate the exercise of the rights by the tribals and the natives of Nongtraï Village seeking economic development within the parameters of the 1980 Act and the 1986 Act. [para 27-28] [1025-C-E; 1027-G-H]

4.6. However, it is made clear that none of the observations made in this judgment in the context of the nature of the land (the extent of the lands owned by the community and by private persons) shall be taken into account by the competent court in which title dispute is pending. [para 29] [1028-A-B]

4.7. On the facts of the case, the MoEF exercised due diligence in the matter of forest diversion. The instant order is confined to the facts of this case. Accordingly, there is no reason to interfere with the decision of MoEF granting site clearance dated 18.6.1999, EIA clearance dated 9.8.2001 read with revised environmental clearance dated 19.4.2010 and Stage-I forest clearance dated 22.4.2010. [para 31-32] [1029-E-F; G-H]

## Part II

### Guidelines to be followed in future cases

5.1. The words "environment" and "sustainable development" have various facets. At times in respect of a few of these facets data is not available. Care for environment is an ongoing process Identification of an area as forest area is solely based on the Declaration to be filed by the User Agency (project proponent). The project proponent under the existing dispensation is required to undertake EIA by an expert body/ institution.

A The MoEF/ State Government acts on the report (Rapid  
EIA) undertaken by the Institutions who though  
accredited submit answers according to the Terms of  
Reference propounded by the project proponent. At  
times the court is faced with conflicting reports. Similarly,  
B the government is also faced with a *fait accompli* kind  
situation which in the ultimate analysis leads to grant of  
ex facto clearance. Therefore, guidelines are required to  
be given so that *fait accompli* situations do not recur:

C (i) Time has come for this Court to declare and it is  
hereby declare that the National Forest Policy, 1988  
which lays down far-reaching principles must  
necessarily govern the grant of permissions u/s 2 of  
the Forest (Conservation) Act, 1980 as the same  
provides the road map to ecological protection and  
D improvement under the Environment (Protection)  
Act, 1986. The principles/ guidelines mentioned in the  
National Forest Policy, 1988 should be read as part  
of the provisions of the Environment (Protection) Act,  
E 1986 read together with the Forest (Conservation)  
Act, 1980. This direction is required to be given  
because there is no machinery even today for  
implementation of the National Forest Policy, 1988  
read with the Forest (Conservation) Act, 1980.

F Section 3 of the Environment (Protection) Act, 1986  
confers a power coupled with duty and, thus, it is  
incumbent on the Central Government to appoint an  
Appropriate Authority, preferably in the form of  
Regulator, at the State and at the Centre level for  
ensuring implementation of the National Forest  
G Policy, 1988. The Court is of the view that under s.  
3(3) of the Environment (Protection) Act, 1986, the  
Central Government should appoint a National  
Regulator for appraising projects, enforcing  
environmental conditions for approvals and to  
H impose penalties on polluters.

A regulatory mechanism should be put in place and till the time such mechanism is put in place, the MoEF should prepare a Panel of Accredited Institutions from which alone the project proponent should obtain the Rapid EIA and that too on the Terms of Reference to be formulated by the MoEF.

A

B

(ii) In all future cases, the User Agency (project proponents) shall comply with the Office Memorandum dated 26.4.2011 issued by the MoEF which requires that all mining projects involving forests and for such non-mining projects which involve more than 40 hectares of forests, the project proponent shall submit the documents which have been enumerated in the said Memorandum.

C

(iii) If the project proponent makes a claim regarding status of the land being non-forest and if there is any doubt the site shall be inspected by the State Forest Department along with the Regional Office of MoEF to ascertain the status of forests, based on which the certificate in this regard be issued. In all such cases, it would be desirable for the representative of State Forest Department to assist the Expert Appraisal Committee.

D

E

(iv) At present, there are six regional offices in the country. This may be expanded to at least ten. At each regional office there may be a Standing Site Inspection Committee which will take up the work of ascertaining the position of the land (namely, whether it is forest land or not). In each Committee there may be one non-official member who is an expert in forestry. If it is found that forest land is involved, then forest clearance will have to be applied for first.

F

G

(v) Increase in the number of Regional Offices of the

H

A Ministry from six presently located at Shillong,  
Bhubaneswar, Lucknow, Chandigarh, Bhopal and  
Bangalore to at least ten by opening at least four new  
Regional Offices at the locations to be decided in  
consultation with the State/UT Governments to  
B facilitate more frequent inspections and in-depth  
scrutiny and appraisal of the proposals.

(vi) Constitution of Regional Empowered Committee,  
under the Chairmanship of the Chief Conservator of  
Forests (Central) concerned and Conservator of  
C Forests (Central) and three non-official members to  
be selected from the eminent experts in forestry and  
allied disciplines as its members, at each of the  
Regional Offices of the MoEF, to facilitate detailed/in-  
depth scrutiny of the proposals involving diversion  
D of forest area more than 5 hectares and up to 40  
hectares and all proposals relating to mining and  
encroachments up to 40 hectares.

(vii) Creation and regular updating of a GIS based  
E decision support database, tentatively containing  
*inter-alia* the district-wise details of the location and  
boundary of: (i) each plot of land that may be defined  
as forest for the purpose of the Forest (Conservation)  
Act, 1980; (ii) the core, buffer and eco-sensitive zone  
F of the protected areas constituted as per the  
provisions of the Wildlife (Protection) Act, 1972; (iii)  
the important migratory corridors for wildlife; and (iv)  
the forest land diverted for non-forest purpose in the  
past in the district. The Survey of India toposheets  
in digital format, the forest cover maps prepared by  
G the Forest Survey of India in preparation of the  
successive State of Forest Reports and the  
conditions stipulated in the approvals accorded  
under the Forest (Conservations) Act, 1980 for each  
case of diversion of forest land in the district will also

H

be part of the proposed decision support database. A

(viii) Orders to implement these may, after getting necessary approvals, be issued expeditiously.

(ix) The Office Memorandum dated 26.4.2011 is in continuation of an earlier Office Memorandum dated 31.03.2011. B

(x) Besides, Office Memorandum dated 26.04.2011 on Corporate Environmental Responsibility has also been issued by the MoEF. This O.M. lays down the need for PSUs and other Corporate entities to evolve a Corporate Environment Policy of their own to ensure greater compliance with the environmental and forestry clearance granted to them. C

(xi) All minutes of proceedings before the Forest Advisory Committee in respect of the Forest (Conservation) Act, 1980 as well as the minutes of proceedings of the Expert Appraisal Committee in respect of the Environment (Protection) Act, 1986 should be regularly uploaded on the Ministry's website even before the final approval/decision of the Ministry for Environment and Forests is obtained. This has been done to ensure public accountability. This also includes environmental clearances given under the EIA Notification of 2006 issued under the Environment (Protection) Act, 1986. Henceforth, in addition to the above, all forest clearances given under the Forest (Conservation) Act, 1980 may now be uploaded on the Ministry's website. D  
E  
F

(xii) Completion of the exercise undertaken by each State/UT Government in compliance of this Court's order dated 12.12.1996 wherein *inter-alia* each State/UT Government was directed to constitute an Expert Committee to identify the areas which are "forests" G  
H

A irrespective of whether they are so notified,  
recognized or classified under any law, and  
irrespective of the land of such "forest" and the  
B areas which were earlier "forests" but stand  
degraded, denuded and cleared, culminating in  
preparation of Geo-referenced district forest-maps  
containing the details of the location and boundary  
of each plot of land that may be defined as "forest"  
for the purpose of the Forest (Conservation) Act,  
1980.

C (xiii) Incorporating appropriate safeguards in the  
Environment Clearance process to eliminate chance  
of the grant of Environment Clearance to projects  
involving diversion of forest land by considering  
D such forest land as non-forest, a flow chart depicting,  
the tentative nature and manner of incorporating the  
proposed safeguards, to be finalized after  
consultation with the State/ UT Governments.

E (xiv) The public consultation or public hearing as it  
is commonly known, is a mandatory requirement of  
the environment clearance process and provides an  
effective forum for any person aggrieved by any  
aspect of any project to register and seek redressal  
of his/her grievances.

F (xv) The MoEF will prepare a comprehensive policy  
for inspection, verification and monitoring and the  
overall procedure relating to the grant of forest  
clearances and identification of forests in  
consultation with the States (given that forests fall  
G under entry 17A of the Concurrent List). [Para 32]  
[1030-B-H; 1031-A; 1036-A-C]

H 5.2. These guidelines are to be followed by the  
Central Government, State Government and the various  
authorities under the Forest (Conservation) Act, 1980 and

the Environment (Protection) Act, 1986, and implemented in all future cases of environmental and forest clearances till a regulatory mechanism is put in place. These guidelines have been issued in the light of this Court's experience in the last couple of years. On the implementation of these Guidelines, MoEF will file its compliance report within six months. [para 33] [1036-D-F]

**Case Law Reference:**

2000 (4) Suppl. SCR 94 referred to para 19 C  
2005 (3) Suppl. SCR 552 referred to para 27  
(2011) 1 All ER 476 referred to para 30

CIVIL ORIGINAL JURISDICTION : I.A. Nos. 1868, 2091, 2225-2227, 2380, 2568 & 2937 D

IN

Writ Petition (Civil) No. 202 of 1995 etc.

Under Article 32 of the Constitution of India. E

WITH

Transfer Petition (C) No. 277 of 2010.

Goolam E. Vahanvati, AG, Parag P. Tripathi, ASG, Harish N. Salve, U.U. Lalit, Shyam Divan, F.S. Nariman, Dr. A.M. Singhvi, Jayant Bhushan, Krishnan Venugoplan, Siddhartha Chowdhury, A.D.N. Rao, P.K. Manohar, Somiran Sharma, Nishanth Patil, Haris Beeran, Devdatt Kamat, S.N. Terdal, Subhash Sharma, Sanjeev K. Kapoor, Rajat Jariwal Kumar Mihir (for Khaitan & Co.), Anuj Bhandari, Ranjan Mukherjee, S. Bhowmick, S.C. Ghosh, H.S. Thangkhiew, Manish Kumar Bishnoi, P. Nongbri for the appearing parties. F G

The Judgment of the Court was delivered by H

A S. H. KAPADIA, CJI.

**Facts**

B 1. Lafarge Surma Cement Ltd. ('LSCL' for short) is a  
company incorporated under the laws of Bangladesh. It has set  
up a cross-border cement manufacturing project at Chhatak in  
Bangladesh, which inter-alia has a captive limestone mine of  
100Ha located at Phlangkaruh, Nongtraï, East Khasi Hills  
District in the State of Meghalaya. The mine is leased out in  
favour of Lafarge Umium Mining Pvt. Ltd. ('LUMPL' for short),  
C which is an incorporated company under the Indian Companies  
Act, 1956 and which is a wholly owned subsidiary of LSCL. The  
entire produce of the said mine is used for production of  
cement at the manufacturing plant at Chhatak, Bangladesh  
under the agreement/arrangement between Government of  
D India and Government of Bangladesh. There is no other source  
of limestone for LSCL except for the captive limestone mine  
situated at Nongtraï, East Khasi Hills District in the State of  
Meghalaya. The limestone as mined by LUMPL is conveyed  
from the mine situated at Nongtraï after crushing in a crusher  
E plant. The limestone mined is conveyed by a conveyor belt to  
LSCL plant in Bangladesh.

F 2. The National Forest Policy, 1988 stood enunciated  
pursuant to Resolution No. 13/52-F, dated 12th May 1952 of  
GOI to be followed in the management of State Forests in India.  
The said Policy stood enunciated because over the years  
forests in India had suffered serious depletion due to relentless  
pressures arising from ever increasing demand for fuel wood,  
fodder and timber; inadequacy of protection measures;  
diversion of forest lands to non-forest uses without ensuring  
G compensatory afforestation and essential environmental  
safeguards; and the tendency to look upon forests as revenue  
earning resource. Thus, there was a need to review the situation  
and to evolve, for the future, a strategy of forest conservation  
including preservation, maintenance, sustainable utilisation,

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restoration and enhancement of the natural environment. It is this need which led to the enunciation of National Forest Policy dated 7th December, 1988. The principal aim of the Policy was to ensure environmental stability and maintenance of ecological balance. The derivation of direct economic benefit was to be subordinate to the principal aim of the Policy (See para 2.2). Under essentials of forest management it is stipulated that existing forests and forest lands should be fully protected and their productivity improved. It is further stipulated that forest cover should be increased rapidly on hill slopes, in catchment areas and ocean shores. It is further stipulated that diversion of good and productive agricultural lands to forestry should be discouraged in view of the need for increased food production (See para 3.2). Under the Policy a strategy was prescribed vide para 4. The goal is to have a minimum of one-third of the total land area under forest or tree cover. In the hills and in mountains the aim is to maintain two-third of the area under forest or tree cover in order to prevent erosion and land degradation and to ensure the stability of the fragile eco-system. Under para 4.2.3, village and community lands, which is the common feature in north-east regions, not required for other productive uses, should be taken up for development of tree crop and fodder resources and the revenue generated through such programmes should belong to the panchayats where lands are vested in them and in other cases such revenues should be shared with local communities to provide an incentive to them and accordingly land laws should be so modified wherever necessary so as to facilitate and motivate individuals and institutions to undertake tree farming. Vide para 4.3.1, the Policy lays down that schemes and projects which interfere with forests that cover steep slopes, catchment of rivers, lakes and reservoirs, geologically unstable terrain and such other ecologically sensitive areas should be severely restricted. Tropical rain/moist forests, particularly in areas like Arunachal Pradesh, Kerala, Andaman & Nicobar Islands should be totally safeguarded. No forest should be permitted to be worked without the government having approved the management plan in a prescribed form and in

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A keeping with the National Forest Policy (See para 4.3.2).  
Under para 4.3.4.2 the rights and concessions from forests  
should primarily be for the bonafide use of the communities  
living within and around forest areas, specially the tribals. The  
Policy recognizes the fact that the life of tribals and other poor  
B people living within and near forests revolves around forests and  
therefore the Policy stipulates vide para 4.3.4.3 that the rights  
and concessions enjoyed by such persons should be fully  
protected and that their domestic requirements of fuel wood,  
fodder, minor forest produce and construction timber should be  
C the first charge on the forest produce. Para 4.4 deals with  
diversion of forest lands for non-forest purposes. Under the said  
para it is stipulated that forest land or land with tree cover should  
not be treated merely as a resource readily available to be  
utilised for various projects, but as a national asset which  
D requires to be properly safeguarded for providing sustained  
benefits to the community. Diversion of forest land for non-forest  
purpose therefore should be subject to most careful  
examination by experts from the stand point of social and  
environmental costs and benefits. Construction of dams and  
reservoirs, mining and industrial development should be  
E consistent with the need for conservation of trees and forests.  
Projects which involve such diversion should at least provide  
in their investment budget, funds for regeneration/compensatory  
afforestation. Beneficiaries who are allowed mining and  
quarrying in forest lands and in lands covered by trees should  
F be required to re-vegetate the area in accordance with forestry  
practices and, therefore, by para 4.4.2 it is stipulated that no  
mining lease shall be granted without a proper mine  
management plan. Under para 4.5 it is stipulated that forest  
management should take special care for wildlife conservation  
G and consequently forest management plans should include  
prescriptions for that purpose. Under para 4.6 of the Policy it  
is stipulated that a primary task of all agencies responsible for  
forest management shall be to associate the tribals and  
communities living in such areas in the protection, regeneration  
H and re-development of forests as wells as to provide gainful

employment to people living in and around the forest.

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3. On 27.1.1994, in exercise of the powers conferred by Section 3(1) read with clause (v) of sub-Section (2) of Section 3 of the Environment (Protection) Act, 1986 (for short "the 1986 Act") read with Rule 5(3)(d) of Environment (Protection) Rules, 1986 the Central Government issued Environmental Impact Assessment Notification whereby it directs that on and from the date of publication of the said Notification in the official gazette expansion or modernization of any activity or a new project listed in Schedule-I shall not be undertaken in India unless it has been accorded environmental clearance by the Central Government in accordance with the procedure specified in the Notification. Under clause (2)(I) any person who desires to undertake any new project listed in Schedule-I shall submit an application to MoEF, New Delhi in the proforma specified in Schedule-II to be accompanied by a project report which shall include EIA report/environment management plan prepared in accordance with the guidelines issued by MoEF. Under clause 2(II) in case of mining as a site specific project the project authority (project proponent) will intimate the location of the project site to the MoEF while initiating any investigation and survey. The MoEF will convey its decision regarding suitability of the proposed site within a specified period. Thus, site clearance will be granted for a sanctioned capacity and shall be valid for five years for commencing construction, operation or mining. The EIA Report submitted with the application by the project proponent shall be evaluated and assessed by the Impact Assessment Agency, and if deemed necessary, it may consult a Committee of Experts having a composition as specified in Schedule-III. The Impact Assessment Agency (IAA) is MoEF. The Committee of Experts shall have full right of entry and inspection of the site. The IAA shall prepare a set of recommendations based on technical assessment of documents and data, furnished by the project authorities (project proponent), supplemented by data collected during visits to sites which would include interaction with the affected

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- A population and environmental groups, if necessary. The summary of the reports, the recommendations and the conditions, subject to which environmental clearance is given, shall be made available subject to public interest to the concerned parties or environmental groups on request.
- B Comments of the public may be solicited within the specified period by IAA in public hearings arranged for that purpose. The public shall be provided access, subject to public interest, to the summary of the EIA report/environment management plan. The clearance granted shall be valid for five years for commencement of the construction or operation of the plant.
- C The monitoring of the implementation of the recommendations and conditions of IAA is also provided for in the said notification vide clause IV.

D 4. The said notification dated 27.1.1994 stood slightly amended by notification dated 10.4.1997. By the said notification detailed procedure for public hearing has been prescribed. It also prescribes composition of public hearing panels.

E 5. On 1.9.1997 LMMPL made an application for granting environmental clearance for limestone mining project at Nongtraï, East Khasi Hills District, Meghalaya. The application was made under EIA Notification, 1994. It was made in the form prescribed by the Notification, 1994. 20 copies of Rapid EIA Report (NEHU Report) were also annexed therewith. However,

F the said proposal dated 1.9.1997 was returned by MoEF vide letter dated 24.10.1997. The reason being that on 10.4.1997, as stated hereinabove, the MoEF had amended the EIA Notification of 1994 making public hearing mandatory for the development projects listed in Schedule-I of the Notification. By

G reason of the said Notification dated 10.4.1997 the then project proponent (M/s. LMMPL) was asked to seek Site Clearance as well as Project Clearance separately. The Site Clearance proposal was called for through the State level agency dealing with the mines. Accordingly, by application dated 23.9.1998 M/

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s. LMMPL applied for Site Clearance for Limestone Mining Project at Nongtraï village, East Khasi Hills District, Meghalaya. This application was made in the prescribed form. The application indicates that there exists an approach/access road to the site that is described as Shillong-Mawsynram-Nongtraï or Shillong-Cherrapunjee-Shella-Nongtraï. The application further states that all villages represent tribal population. The application further indicates that there exists many private limestone quarries in the area. It is further stated in the application that the topography of the area is hilly. Against the column 'Forest Land Involved in the Project' the answer given by the project proponent was "Nil". According to the application the site is not a habitat/corridor for endangered/rare/endemic species. The source of this information was the NEHU Report. According to the said Report, mining of limestone in Khasi Hills was a source of revenue right from 1858. The limestone deposit in Meghalaya is estimated to be 2165 million tonnes. Exploitation of Nongtraï limestone dates back to 1885. Even today, a number of private parties quarry limestone in this area. An area of 100 hectares stood acquired by LMMPL on lease basis for mining. For that an agreement was signed with Village Durbar. The limestone bearing area around Nongtraï and Shella falls under the Karst topography. This area falls on the southern fringe of the Meghalaya plateau. [See Land Use/ Land Cover Map (March 1997) submitted by Mr. F.S. Nariman, Source: IRS-1C LISS-3 MX DATA, Path & Row: 111-054, Date: March 1997] Karst topography is a landscape formed by the dissolution of a layer(s) of soluble bedrock, usually carbonate rock such as limestone. Karst topography is characterized by limestone caverns carved by groundwater. Karst landscapes are formed by the removal of bedrock (composed in most cases of limestone, gypsum or salt). [See Article from Encyclopedia Britannica by William B. White] Alongwith the application, a certificate dated 27.8.1997 was annexed. It was issued by Khasi Hills Autonomous District Council, Shillong which council is the constitutional authority under Sixth Schedule of the Constitution. By the said certificate

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A the council specifically stated that it had no objection for mining operation in the area at Nongtraï village since the area does not fall within a forest land. This application for site clearance was allowed by MoEF vide letter dated 18.6.1999 addressed to the Project Proponent. Site clearance was, thus, granted

B under the 1994 Notification as amended on 4.5.1994 and 10.4.1997 subject to strict compliance of terms and conditions mentioned therein. One of the conditions was that the Project Proponent shall obtain environmental clearance for the proposed limestone mine as per the procedure laid down in

C the 1994 Notification before taking up developmental work at the site. The said clearance was not to be construed as grant of mining permission. No developmental activity relating to the project was to start prior to environmental clearance. Accordingly, on 17.4.2000, LMMPL made an application for environmental clearance to MoEF in the prescribed form to excavate 2.0 million tonnes per annum of limestone and to transport the same to Chhatak in Bangladesh through belt conveyor (7.2 km long within Indian territory). The mining lease area was indicated to be 100 hectare. The description of land was shown as "barren". In the application, it was further stated

D that there is no notified forest land within 25 kms. from the proposed mine. Along with the application vide Annexure A, copy of No Objection Certificate (NOC) for mining operations at the proposed site dated 27.8.1997 stood annexed. That certificate was issued by Khasi Hills Autonomous District

E Council, Shillong, which, as stated above, inter alia states that the Council has no objection for mining operations at Nongtraï Village since the area of 100 hectare does not fall within forest land. Similarly, vide letter dated 6.7.1997 issued by Village Durbar, NOC was granted for withdrawal of water for the project. Vide Annexure G to the application, consent to establish the project stood issued by Meghalaya Pollution Control Board. By Annexure H to the application, minutes of Environmental Public Hearing of the project has been annexed. These minutes indicates the presence of Addl. Deputy

F Commissioner, East Khasi Hills District, various government

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officials including nominees of Forest Conservators and Member Secretary of the Pollution Control Board. According to the Headman of Nongtraï Village, limestone is abundantly available in the area; the same has not been utilized by local villagers due to lack of infrastructure; for economic development, the Village Durbar had decided to lease the area; the environmental implications of the project stood discussed; complaint received from Meghalaya Adventures Association was read out which complaint mainly dealt with destruction of caves which stood rebutted by the Headman and, thus, the meeting stood concluded. All this indicates even public participation and grant of NOCs by various competent authorities. Vide Annexure J to the application for environmental clearance, we find approval being granted under Section 5(1) of the Mines and Minerals (Regulation and Development) Act, 1957. Along with the application for environmental clearance M/s. LMMPL also forwarded to MoEF Rapid EIA of Limestone Mine prepared by Environmental Resources Management India Pvt. Ltd. This report describes in detail the topography of the mining site. According to the said report the leased area lies on the western side of Umium river valley. It is approachable from Shillong via Mawsynram and Nongtraï villages by motorable road. It is also accessible from Shillong by road via Cherrapunji. According to the report the site is at the Phalngkaruh which originates from the foot hills of the proposed mine site. According to the said report the site is on uneven terrain with a rugged topography. There are heaps of fractured rocks all over the place. It is a rocky region. The site rejects any possibility of natural growth of forest. It is an area of low botanical and floral diversity. It is an area covered with rocks. The area can be termed as a wasteland.

6. On receipt of the application for environmental clearance, certain queries were raised by MoEF with regard to the scope of the site clearance (the original site clearance was for 0.8 million tonnes whereas subsequently that capacity was revised to 2 million tonnes); that, as per this Court's order

- A dated 12.12.1996, "forests" has to be understood in terms of the dictionary meaning and, accordingly, a certificate was asked for in that regard from local DFO; the effect due to disposal of waste water through soak pit and whether the existing road width was sufficient to carry on heavy equipments
- B for mining purposes. These were some of the queries/objections on the basis of which clarification was sought vide letter dated 1.5.2000 by MoEF with regard to environmental clearance under the 1994 notification. As requested by MoEF, the project proponent vide letter dated 11.5.2000 requested the
- C local DFO to issue necessary certificate as called for by MoEF in terms of the order of this Court dated 12.12.1996. Accordingly, on 13.6.2000, the DFO forwarded the certificate to the project proponent in respect of Limestone Mining Project at Nongtraï, East Khasi Hills District, Meghalaya by which it was
- D certified that the mining site was not a forest area as per this Court's Order dated 12.12.1996 and nor did it fall under any of the notified reserved or protected forests. Moreover, the certificate once again reiterated that the site area stood covered with Karst topography which supported only a sporadic growth of a few tree shrubs. Despite such certificate of DFO,
- E MoEF in continuation of their letter dated 1.5.2000 called for additional information inter alia including list of flora and fauna in compliance of Wildlife (Protection) Act, 1972, list of species under the 1972 Act, consent from the State Pollution Control Board for 3000 TPD of limestone, information on ground water
- F potential, information regarding water requirement, etc. Clarifications sought by MoEF vide letters dated 1.5.2000 and 16.6.2000 for environmental clearance were answered by LMMPL vide letter dated 17.8.2000. As per the said reply, the environmental public hearing notice was published in three
- G newspapers; that, earlier the project proposal was for 0.8 million tonnes per annum but later on based on the increased cement plant production capacity in Bangladesh, it stood increased to 2.0 MTPA; that, earlier the lease period was proposed to be 35 years which stood reduced to 30 years; that,
- H the mine site was on Karst topography which neither MoEF nor

the Shella Action Committee ("SAC" for short) denies; that, the equipment to the mine site would be brought through Guwahati – Shillong – Mawsynram route which contains an established route whose width was 7.5 m wide; that, there was no proposal to cut any trees for the purpose; that, no sanctuary/ national park is located within 25 kms. radius from the proposed mine location; that, the mine site is situated in the southern slopes of the Central Plateau of Meghalaya; that, the core area comprising of the mining site consisted of uneven terrain with a rugged Karst topography (see page 484 of Volume III); the minutes of the environmental public hearing dated 3.6.1998 were also annexed; site clearance dated 18.6.1999 granted by MoEF was also annexed; that, a report regarding impact of limestone mining on Nongtraï, Meghalaya on Siltation Process prepared by Center for Study of Man and Environment dated April, 2000 also stood annexed to the clarifications given by LMMPL. We need to comment on that report. Firstly, it indicates that the mining site is located on the southern fringe of the Meghalaya Plateau adjoining the plains of Bangladesh having a rich endowment of high grade limestone. Secondly, it highlights that the site is approachable from Shillong (109 km.) by motorable road via Mawsynram and Nongtraï. Thirdly, it states that on account of dissolution of the limestone, Karst topography has resulted which topography is characterized by caverns and caves which are so prominent that even in 1:50,000 toposheet, they could be plotted. In other words, the karst features are intimately tied up with hydrological situation. Certain recommendations have been made in the report with regard to possible impact of limestone mining on the Phalangkaruh river system. Despite clarification, MoEF once again examined the matter through Expert Committee which held its meeting on 19th and 20th October, 2000 in New Delhi under the aegis of MoEF. In the meeting, the project proponent made a presentation on their proposal for production of limestone at the rate of 30,000 tonnes per annum for five years. Certain queries were raised by the Expert Committee on the basis of which once again further clarification was sought by

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A MoEF from LMMPL vide letter dated 6.11.2000. According to the query, the area in question supports diversity of plants and animals. It also represents the remnants of the rapidly vanishing humid rainforest. That, the area is a home of endemic insectivorous plants, butterflies; All this, according to MoEF,

B would require a detailed survey of plants and animals to be carried out with the help of BSI and ZSI offices located in Shillong. Accordingly, the project proponent submitted report on Ecological Status Survey prepared by Centre for Environment and Development; report on Afforestation

C Reclamation Plan, report on Physiography and Hydrogeology of Fugro Milieu Consult B.V. and report on Catchment Area Treatment Plan, vide letter dated 9.2.2001 addressed to MoEF. One more aspect may be noted. These reports were placed before the Expert Committee once again on 7.3.2001. Even

D Wild Life Division also gave its report on 1.6.2001. After placement of all these reports, at the end of the day, EIA Clearance was given by MoEF on 9.8.2001 which again contained further conditions which were to operate once the developmental work started. According to the environmental

E clearance dated 9.8.2001, the total lease area of the mine is 100 hectares; that no diversion of forest land was involved; that the targeted annual production capacity of the mine had to be 2.0 million tonnes and, lastly, certain general conditions were stipulated with regard to steps to be taken during the developmental work. On EIA Clearance being granted by

F MoEF, LMMPL became desirous of transferring and assigning the lease in favour of LUMPL having its registered office at Shillong on which the State Government granted permission to transfer the mining lease vide order dated 29.8.2001. Accordingly, a transfer deed stood executed on 28.2.2002 in

G the prescribed form under Rule 37-A of Mineral Concession Rules, 1960. Accordingly, on 30.7.2002, environmental clearance which was earlier granted to LMMPL stood transferred to LUMPL by MoEF.

H 7. However, vide letter dated 1.6.2006, from Chief

Conservator of Forests (C), Shri Khazan Singh, addressed to MoEF it was pointed out that he had visited Limestone Mining Project of M/s. Lafarge when it was found that project had completed developmental works and opening of mine benches had also been accomplished for 7Ha of the mining lease land. According to the said letter the mining lease area around the developed mine benches stood surrounded by thick natural vegetation cover with sizeable number of tall trees. The said vegetation included trees being cleared for developing the mining benches. That the wood obtained from felling of trees was collected by the lessor who were from Nongtraï Village. According to the said letter, for such clearance no permission was taken under Forest (Conservation) Act, 1980 (for short the '1980 Act'). Further, even the Rapid EIA report submitted by the project proponent described the land as wasteland though the visit of the Chief Conservator found it to be otherwise. Consequently, by the said letter the Chief Conservator of Forests (C) informed the MoEF that the project proponent may be directed to obtain forest clearance under the 1980 Act and not to proceed with the mining activities till such clearance. A copy of the said letter was also sent to the project proponent. By letter dated 11.8.2006, the project proponent replied to the Chief Conservator of Forests (C) stating that it had proceeded with the developmental work on the basis of the certificate given by DFO dated 13.6.2000 under which it was certified that the project area was not a forest area and it did not fall in any of the notified reserved or protected forests. It was further clarified that in the core area there were only a few trees, shrubs growing in some soil trapped in the crevices and only those shrubs and trees which are growing in the area demarcated on the excavation plan have been cut. According to the said letter the 1980 Act was not applicable as there was no diversion of forest land for non-forestry purposes. Accordingly, a letter was addressed by MoEF on 15.11.2006 to M/s. LMMPL. The complaint made by the Chief Conservator of Forests (C) was conveyed to the project proponent. In terms of the said complaint, MoEF directed M/s. LMMPL to obtain forest

- A clearance under the 1980 Act before taking steps to clear vegetation including trees for developing mining benches. On 14.9.2006, MoEF issued EIA Notification 2006 whereunder concerns of local affected persons were required to be taken into account through public consultation. By letter dated 29.1.2007, M/s. Lafarge took the stand that there is some natural growing vegetation; that only those shrubs which are growing in the excavation plan have been cleared and since there was no diversion of forest land for non-forestry purposes the 1980 Act was not applicable. Vide letter dated 9.4.2007 addressed by the Chief Conservator of Forests (C) to the Secretary, Department of Forest and Environment, Government of Meghalaya as well as to the Khasi Hills Autonomous District Council, it was pointed out that the mining project was undertaken in the virgin and natural forest; that the forest is standing all around the periphery of the broken area; that the mine was operating on forest land without clearance under the 1980 Act; that the area is a natural/virgin forest; that the land belonged to village Durbar of Nongtraï and in the circumstances forest clearance was required to be obtained under the provisions of 1980 Act in terms of the order of the Supreme Court dated 12.12.1996. According to the said letter, there was a clear violation of the 1980 Act. Accordingly, the Chief Conservator of Forests(C) Shri B.N. Jha requested the Government of Meghalaya to stop fresh clearance of vegetation, breaking of land, extension of mining area, removal of felled trees and stoppage of non-forestry activities with immediate effect. A copy of the said letter was also forwarded to MoEF. By letter dated 17.4.2007 addressed by MoEF to Government of Meghalaya a report was asked for indicating justification for continuance of mining by the project proponent within a week failing which MoEF had no option but to direct mine closure. Thereafter response was given by M/s. Lafarge vide letter dated 25.4.2007. However, MoEF, vide letter dated 30.4.2007, directed complete closure of all on going non-forestry activities by M/s. Lafarge in compliance of the directions of the Supreme Court dated 12.12.1996. Suffice it

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to state without going into further correspondence that M/s. Lafarge submitted its application for forest clearance under the 1980 Act vide application dated 3.5.2007. The application makes it clear that permission is sought for forest clearance without prejudice to the rights and contentions of the project proponent. After reciting the above facts, M/s. Lafarge submitted that the project was a cross-border project; that it had put in ten years of efforts for obtaining approvals; that had the reservation on the legal status of the land and the use of the mine site as forest land been made clear by Chief Conservator of Forests (C) and had such reservation been conveyed to M/s. Lafarge earlier or even at the time of consideration of the proposal for environmental clearance, they (project proponent) would have sought approval under the 1980 Act before implementing the mining project. It was pointed out that the mining lease area was 100 Ha. At the time of making the application for forest clearance the broken up area was 21.44 Ha. In the said application M/s. Lafarge undertook to bear the cost of raising and maintenance of compensatory afforestation. They also undertook to fulfill all other conditions leviable under the law. By letter dated 11.5.2007 addressed by the Principal Chief Conservator of Forests, Meghalaya to the Government of Meghalaya, it was pointed out that the project proponent had broken up area of about 21.44Ha; that the topography in the leased mine around the broken up areas was Karst topography consisting of limestone surface having natural fissures and crevices; that a sizeable quantity of limestone was lying in and around the broken up area; that the non-broken up area in the leased mine was forest land falling within the purview of the 1980 Act. By the said letter, the Principal Chief Conservator of Forests submitted that the project proponent be allowed to remove the already broken limestone from the site and that the project proponent may be directed to apply for forest clearance under the 1980 Act for the non-broken up part of the leased area. It is at this stage that M/s. Lafarge moved this Court by way of I.A. No. 1868 of 2007 inter alia seeking orders directing MoEF to expeditiously process its application under Section

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A 2 of the 1980 Act within a time bound programme preferably within 60 days. By letter dated 3.7.2007 addressed by M/s. Lafarge to the MoEF (North-East Region), the regional office of the MoEF, was informed that the project proponent had already applied for forest clearance to the MoEF, New Delhi.

B 8. On 6.9.2007 CEC submitted its report to this Court saying that the project proponent should have taken permission under the 1980 Act before starting operations in the area. According to CEC this was a typical case where ex-post facto approval under the 1980 Act is sought after the mine has been allowed to operate illegally. Since fait accompli situation arose according to CEC there was no option but to recommend the case for grant of permission for the use of forest land for mining lease, conveyor belt system and associated activities subject to certain conditions mentioned therein. By interim order dated 5.2.2010 M/s. Lafarge was directed to stop all mining activities. On 5.4.2010 a report was submitted by Shri B.N. Jha, Regional Chief Conservator of Forests (C) [also known as High Powered Committee (HPC)]. The report was submitted pursuant to the site inspection carried out by a High Level Committee which also had interaction with local population and institutions in the first week of April, 2010. Briefly, it may be stated that the report indicates assessment of the impact of the mining done by the project proponent up to April 2010 on forest, wildlife and surroundings. The report indicates details of the area already broken up. On the impact aspect the report states that the total clearing involves felling of 9345 trees out of which 1200 trees have already been felled. That, although the area supports rich flora, the same can be re-forested as a part of reclamation plan. According to the report, the said impact can be minimized after a thorough study of Bio-Diversity Management Plan as well as Catchment Area Treatment Plan is prepared and executed in a time bound manner. At the same time the report states that the project is positive and beneficial to the residents of Nongtraï village due to huge amount of cash going to village Durbar and reaching the individual household improving the

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financial health of the population of two villages, i.e., Nongtra and Shella. According to the report, interaction took place between the High Powered Committee constituted by MoEF and the locals. That villagers of Shella are not having any problems from M/s. Lafarge and that the people are very satisfied with the mining company which has provided health care facilities, drinking water facilities, employment, schools etc. According to the report, M/s. Lafarge has been contributing for the benefits of the village as well as for all the villagers by way of payment of rent for the use of the community land as well as towards the price of limestone exported to Bangladesh. The figures of such payments are also indicated in the report. Further, the report states that mining is not having any adverse effect on the human life. When the matter came before the Supreme Court on 12.4.2010, the learned Attorney General stated that MoEF will take a final decision under the 1980 Act for the revised environmental clearance for diversion of 116 Ha of forest land subject to certain conditions. Accordingly, on 19.4.2010 the MoEF granted environmental clearance with certain additional conditions. The environmental clearance dated 19.4.2010 was followed by forest clearance dated 22.4.2010 (ex-post facto clearance) granted by MoEF. This letter refers to letter of the State Government dated 19.7.2007 forwarding its proposal for diversion of 116.589 Ha of forest land for Lime Stone Mining in favour of M/s. Lafarge wherein prior approval of Central Government was sought. The said proposal of the State Government was examined by FAC constituted by Central Government under Section 3 of the 1980 Act. Thus, forest clearance was granted by MoEF vide letter dated 22.4.2010 which again stipulated further conditions to be complied with by the project proponent. Accordingly on 26.4.2010 learned AGI submitted before this Court that M/s. Lafarge may be permitted to resume the mining operations subject to compliance of conditions enumerated in the order passed by MoEF on 22.4.2010. However, this Court ordered that before it grants permission to resume the mining operations it was imperative that plans should be drawn up and

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- A relevant reports be placed before this Court based on a comprehensive engineering and biological study including assessment of flora and fauna. A study report was submitted by NEHU on June, 2010 in which it has been stated that the forests in the said area can be categorized into tropical moist-
- B deciduous forest, tropical semi-evergreen forest, savanna, subtropical broadleaved forest, forest gardens, orchards etc. Regarding the core area, the report states that the broken up area (already mined) was 38.089 Ha; that the said area was devoid of any vegetation and could be characterized by
- C limestone floor and benches. However, the vegetation in the rest of the core area (i.e. proposed mining area) had tropical-moist deciduous type of vegetation with variable canopy cover and mostly sparse. It further states that the density of plants is very low due to rocky terrain and low soil content. It further states
- D that only a few trees described in that paragraph are present in the undisturbed core zone. On compliance of various conditions imposed by MoEF including payment of compensatory afforestation, penal compensatory afforestation and NPV with interest as well as the reports submitted by various authorities were placed before the Expert Appraisal
- E Committee on 29.6.2010 and 21.7.2010 pursuant to the directions of the Supreme Court vide order dated 26.4.2010. According to the minutes of Expert Appraisal Committee, the conditions and environmental safeguards stipulated by MoEF while according environmental clearance on 9.8.2001 and
- F 19.4.2010 were comprehensive enough to mitigate any adverse impacts of the project and to protect the environment if implemented effectively. The minutes of the meeting of the Expert Appraisal Committee dated 21.7.2010 also recites that various reports were considered by the Committee. It also
- G recites the fact that the Government of Meghalaya had addressed a letter to MoEF on 12.7.2010 conveying their recommendations for the grant of formal approval under Section 2 of the 1980 Act for diversion of 116.589 Ha of forest land for Lime Stone Mining. On 21.10.2010 M/s. Lafarge submitted a
- H compliance chart of 31 conditions.

**Submissions**

9. According to the learned Amicus Curiae, it is obvious from all the documents that have come on record including those filed by M/s. Lafarge that permissions under EIA Notification, 1994 (as amended) under Section 3 of the 1986 Act have been obtained without a candid disclosure of the facts. That, even if it is held that in cases of bona fide mis-interpretation of statutory provisions and Rules the project stood commenced without obtaining prior permission as mandated under Section 2 of the 1980 Act, save and except in cases of absolute candor and where the want of such permission is solely and entirely on account of bona fide doubt as to the nature and character of the land and /or statutory regime applicable to such projects, no permission should be granted specially to private projects established only for profit where the project presents a 'fait accompli'. The learned Amicus submitted that over the years we find commencement of projects without obtaining prior permission as mandated under Section 2 of the 1980 Act and, when detected, the project proponent(s) falls back on the plea of 'fait accompli'. According to the learned Amicus, time has, therefore, come for this Court not to regularize such projects which are commenced without obtaining prior permission under the 1980 Act except in cases of absolute candor and where the want of permission is solely and entirely based on account of bona fide doubt as to the nature and character of the land and/ or the statutory regime applicable to such projects. According to the learned Amicus, barring the above exceptions, this Court should direct removal of the project and restoration of the environment wherever it is possible or to take over the project to ensure that all gains from such projects are allowed to be used only for those whose rights have been violated. In support of his above submissions, learned Amicus placed reliance on the report of Chief Conservator of Forests (C) dated 1.6.2006 addressed to the MoEF in which it was stated that the mining lease area around the developed benches has been found surrounded by thick

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- A natural vegetation cover with sizeable number of tall trees; that, the said vegetation including the trees was being cleared for developing the mine benches; that, the wood obtained from felling of trees was being collected by Nongtraï Village Durbar; and that, the said report of the Chief Conservator of Forests
- B (C) dated 1.6.2006 contradicts the Rapid EIA report submitted by the project proponent which describes the land in question as waste land. The learned Amicus also relied upon the second report dated 9.4.2007 again by the Chief Conservator of Forests (C) based on his site visit on 7.4.2007 in which report
- C it has been stated that the mining lease lies in the midst of virgin and natural forest. According to the said report, the said mine in question is operating on forest land without clearance under the 1980 Act. According to the said report, calling the area / site by any other name than a forest would be travesty which
- D could only be assigned to an ulterior motive of obtaining exemption or avoiding taking prior approval of Government of India under the 1980 Act. The learned Amicus also placed reliance on the report dated 11.5.2007 of the Principal Chief Conservator of Forests. In the said report dated 11.5.2007, the
- E Principal Chief Conservator of Forests also agreed with the view of the Chief Conservator of Forests (C) stating that the project proponent should have taken permission under the 1980 Act to start the operation in the area. According to the learned Amicus, though the mine commenced commercial production w.e.f. October, 2006, the said commencement was
- F based on approvals granted by statutory authorities on the assumption that the mining lease area is a non-forest land. In this connection, learned Amicus pointed out that the entire case of the project proponent is based on only one certificate issued by DFO, Khasi Hills Division dated 13.6.2000 in which it has
- G been certified that the mining site for limestone mining project at Nongtraï, East Khasi Hills District, Meghalaya is not a forest area in terms of the order of this Court dated 12.12.1996 and that it does not fall under any notified reserved or protected forests. In the said certificate, it has been further stated that the
- H project site is on Karst topography which supports only a

sporadic growth of a few trees shrubs and creepers. Besides the said certificate dated 13.6.2000, the project proponent also seeks to place reliance on letters dated 28.4.1997 and 27.8.1997 addressed by Khasi Hills Autonomous District Council which took the view that the area is a non-forest land. According to the learned Amicus, it is not open to the project proponent to rely upon the certificate of DFO dated 13.6.2000 as the said certificate was given without any intimation to the higher authorities and that an inquiry has been instituted to determine the circumstances in which the certificate was issued by DFO. Learned Amicus further pointed out that the prospecting licence held by the project proponent was allowed to be converted into a mining licence in 1997 which was after the order of the Supreme Court dated 12.12.1996. That apart, there is a special law in the State of Meghalaya, i.e. The United Khasi-Jaintia Hills Autonomous District (Management and Control of Forests) Act, 1985 under which forest has been defined to mean an area in which there are twenty five trees per acre. Thus, according to the learned Amicus by all these definitions the area in question is a forest. Thus, according to the learned Amicus even if the project proponent ultimately succeeded in getting forest clearance under Section 2 of the 1980 Act on 22.4.2010 since the said project stood established originally in the forest area in a brazen violation of the 1980 Act such a project cannot be allowed to be regularized by grant of permission ex-post facto dated 22.4.2010.

10. Shri Shyam Divan, learned senior counsel appearing on behalf of Shella Action Committee (SAC) while adopting the submissions of the learned Amicus Curiae with regard to the project being illegal, submitted that having regard to para 4.3.1 of the National Forest Policy, 1988, tropical rain/moist forest are required to be totally safeguarded. According to SAC the forest in the region is a tropical moist forest and no forest clearance ought to have been granted because of the ecological significance recognized by the 1988 Policy. According to SAC this fact was known to M/s. Lafarge at all

A material times as can be seen from the Rapid EIA Report prepared by NEHU which specifically states that the vegetation at the study site is a mixed moist deciduous forest. Reliance is also placed by the learned counsel on the assessment of floral diversity prepared by NEHU in June, 2010 which indicates  
B that the forest in the study area can be categorized into tropical moist-deciduous forest, tropical semi evergreen forest, savanna, sub-tropical broad leaves forest, forest garden, orchards and riparian forest. According to the said assessment of 2010, the vegetation in the core area is tropical moist-  
C deciduous types whereas the vegetation in the proper zone can be categorized into tropical and sub-tropical types. Thus, according to the learned counsel having regard to the undisputed position emerging from the record the subject area is covered by a tropical moist forest deserving highest degree  
D of ecological protection and therefore this Court should set aside the environmental clearance dated 9.8.2001 given under Section 3 of the 1986 Act by MoEF. In this connection it may be mentioned that SAC has also moved this Court by way of I.A. No. 2937 of 2010 seeking revocation of the environmental clearance dated 9.8.2001. They have also challenged the  
E revised environmental clearance dated 19.04.2010 granted by MoEF as also Stage-I forest clearance dated 22.04.2010 issued by MoEF.

11. According to the learned counsel, M/s. Lafarge was  
F duty bound to make an honest disclosure of all facts when seeking environmental and forest clearances as it is an express requirement under Clause 4 of the EIA notification 1994. That, where a false information, false data, engineered reports are submitted or factual data is concealed, the  
G application is liable to be rejected, and where granted, it is liable to be revoked. According to SAC, M/s. Lafarge had given an express undertaking in its application for environmental clearance dated 17.4.2000 that if any part of the information submitted was found to be false or misleading the project  
H clearance could be revoked at M/s Lafarge's risk and cost.

According to SAC, the region where the mining is taking place and with regard to which permissions were obtained is governed by a specific local Act and Rules framed thereunder, namely, United Khasi Jaintia Hills Autonomous District (Management and Control of Forests) Act, 1958 which Act was enacted by the District Council of the United Khasi Jaintia Hills Autonomous District in exercise of its powers under the Sixth Schedule to the Constitution of India. According to the learned counsel, the 1958 Act classifies forests and regulates forest resource management and use and applying the definition of "forest" under Section 2(f), the region where the mining is taking place is a forest as the said area has not less than 25 trees per acre. Thus, according to the learned counsel for SAC, it ought to be assumed that the officials of M/s. Lafarge had full knowledge of the local law as well as the forest cover and the lay out of the land. From every perspective, M/s. Lafarge could not have commenced the project without a detailed survey of the physical topography of the land and the forest cover. Thus, M/s. Lafarge had knowledge of the forest cover in the region and yet it falsely withheld this information from the concerned authorities including the MoEF. In this connection, learned counsel placed reliance on the NEHU Report of 1997, letter dated 1.6.2006 from the Chief Conservator of Forests (C) to the MoEF, letter dated 9.4.2007 from the Chief Conservator of Forests (C) to the Government of Meghalaya and assessment of floral diversity prepared by NEHU in June, 2010. According to the learned counsel, despite knowledge of the definition of "forest" and the provisions of the 1958 Act, the government officials issued letters containing incorrect information in relation to the forest cover. These letters are the letter dated 28.4.1997 from Khasi Hills Autonomous District Council, letter from the Deputy Commissioner, East Khasi Hills District dated 10.7.1997 enclosing a spot inquiry report which stated that there was no forest on the land proposed to be leased out, letter dated 27.8.1997 from Khasi Hills Autonomous District Council granting NOC on the basis that there was no forest and certificate dated 13.6.2000 issued by DFO, Khasi Hills Division

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- A stating that there was no forest on the land proposed to be leased out. According to the learned counsel, the environmental clearance dated 9.8.2001 issued by MoEF was premised on "No diversion of forest land or displacement of people is involved". According to the learned counsel, the said premise
- B is per se incorrect as there is a tropical moist – deciduous forest in the area being mined. According to the learned counsel, the environmental clearance dated 9.8.2001 was clearly granted on the basis of false representations made by M/s. Lafarge regarding absence of forests; engineered reports
- C projecting the site as "a near wasteland"; and the concealment of factual data available with M/s. Lafarge including the 1997 NEHU Report which showed the subject land as forest land. Thus, according to the learned counsel, the MoEF ought to revoke the environmental clearance dated 9.8.2001 having regard to Para 4 of the EIA Notification 1994 and inasmuch as
- D the MoEF has failed and neglected to revoke the clearance dated 9.8.2001, this Court may quash the said clearance. According to the learned counsel, the environmental clearance dated 9.8.2001 is the parent clearance and, consequently, the revised environmental clearance dated 19.10.2010 (the correct date is 19.4.2010) must automatically fall if the parent clearance is quashed. In any event, the learned counsel submitted that the revised clearance is liable to be set aside since the mandatory procedure of conducting a public consultation had not taken place. According to the learned counsel, a public consultation is mandatory in terms of para 7 of the EIA Notification dated 14.9.2006. Such consultation has not taken place. The public hearing held on 3.6.1998 was without a disclosure of the forest and, hence, there has been no public consultation in accordance with para 7 of the EIA Notification dated 14.9.2006.
- F Thus, according to the learned counsel, the revised environmental clearance dated 19.4.2010 is liable to be quashed on the ground of non-compliance of the mandatory provisions of the EIA Notification of 2006. According to the learned counsel, consequently, the stage-I forest clearance
- G dated 22.4.2010 is also liable to be rejected. It may be noted
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that the stage-I forest clearance dated 22.4.2010 has been granted by FAC of MoEF. The learned counsel submits that under National Forest Policy, 1988 tropical rain/ moist forest is required to be totally safeguarded. That, it is a no-go area. According to the learned counsel, since the region where mining is taking place falls within tropical rain/ moist forest, FAC ought not to have given the clearance on 22.4.2010. For the afore-stated reasons, it is the case of SAC that both on account of the nature of the land in question and the conduct of M/s. Lafarge, this Court should dismiss the IA No. 1868 of 2007 filed by M/s. Lafarge and that the IA No. 2937 of 2010 filed by SAC seeking revocation of the parent environmental clearance dated 9.8.2001 and revised environmental clearance dated 19.4.2010 and forest clearance dated 22.4.2010 be allowed.

12. On the nature of the land in question, learned Attorney General submitted that in the EIA Report (NEHU Report), annexed along with the application dated 1.9.1997 for grant of environmental clearance, a description of the vegetation area at the proposed mining site which is distributed in three distinct layers indicated that the third and the lower layer consisted of shrubs and herbs and their poor growth was due to lack of soil. It was also mentioned that the majority of valuable timber trees had already been extracted from the mining site in the past in Meghalaya by the tribals who lived on timber. In para 4.9 of the Report the site was described to be mostly covered with pole sized trees, shrubs and herbs. This EIA Report did not make reference to the Certificate dated 28.4.1997 of the Khasi Hills Autonomous District Council, the Spot Inspection Report dated 10.7.1997 nor the Certificate dated 27.8.1997 issued by the Council all of which referred to absence of forest. According to the learned Attorney General at each stage MoEF had raised queries and requisitions and after a thorough probe MoEF gave ultimately Environment Clearance on 19.4.2010 and 22.4.2010 being the Forest Clearance. In this regard it was pointed out by MoEF vide letter dated 24.10.1997 that the EIA Notification 1994 was amended on 10.4.1997 making public hearing

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- A mandatory for the development projects listed in Schedule-I of the Notification. Consequently, the proposal required two stage clearance, namely, site as well as project clearance. This is the reason why the project proponent made Site Clearance application on 23.9.1998. Before that the project proponent
- B approached the Meghalaya State Pollution Control Board for consent to establish limestone mining project. Similarly, a public hearing notice was given on 27.4.1998. The public hearing was conducted on 3.6.1998. This was followed by Site Clearance Application dated 23.9.1998. All these steps were
- C taken by M/s. LMMPL, the predecessor of M/s. Lafarge. Even before granting of the Site Clearance on 18.6.1999, a letter dated 8.4.1999 was received from M/s. LMMPL sending a certificate dated 20.3.1999 from DFO, Khasi Hills Division, Shillong indicating absence of forest. Thus, at the stage of Site
- D Clearance MoEF had two certificates before it, one dated 27.8.1997 issued by the Executive Committee, Khasi Hills Autonomous District Council and the other being the certificate dated 20.3.1999 issued by DFO, both indicating absence of forest. To the same effect is the main application for
- E Environmental Clearance dated 17.4.2000. One more fact needs to be mentioned. Along with the application for Environmental Clearance dated 17.4.2000, an EIA Report prepared by Environmental Resources Management India Pvt. Ltd. giving a detailed description of the topography of the area was forwarded to MoEF. It was called as Karst Topography. In
- F that Report it was categorically stated that the project area did not fall in the designated forest land; that the terrain at the site was described as Karst Topography which did not allow normal plant growth. Despite clarification, MoEF wrote a letter dated 1.5.2000 to the project proponent seeking further clarification
- G as to whether there existed forest in terms of the Supreme Court order dated 12.12.1996 and if so a certificate to that extent should be obtained from the local DFO. In reply, M/s. LMMPL forwarded a certificate of DFO dated 13.6.2000 which stated that the proposed mining site for limestone mining project at
- H Phalangkaruh, Nongtraï, East Khasi Hills District, Meghalaya

leased out by M/s. LMMPL is not a forest area as per Supreme Court judgment and it does not fall under any of the notified reserves or protected forests. The area is covered with Karst topography and supports only a sporadic growth of a few trees, shrubs and creepers. The proposal of M/s. LMMPL was once again discussed at the meeting of the Expert Committee (Mining) held on 19-20.10.2000. This Committee sought further information and clarification, one of the clarifications sought was a detailed survey of the plant and animals to be carried out with the help of BSI and ZSI officers situated in Shillong. It also sought a video film of the site and other areas. Accordingly, on 9.2.2001 M/s. LMMPL gave the requisite response as desired by MoEF as well as additional information was also provided in respect of a comprehensive survey and Flora and Fauna Report dated January, 2001 of Dr. A.K. Ghosh (Former Director ZSI). The said Report of January, 2001 extensively dealt with tropical semi-evergreen forest at different elevations. This Report of Dr. Ghosh (Centre for Environment and Development) was placed before the Expert Committee on 7.3.2001. The minutes of the meeting indicate that a video film of the site was also shown. The Report indicates the Karst features, extensive flora and fauna survey carried out by the Centre for Environment and Development in conjunction with the Botanical Survey of India and Zoological Survey of India. After elaborate discussion, the Expert Committee recommended Environmental Clearance of the project once again subject to certain conditions. Even after such recommendation, the MoEF once again wrote to the Chief Conservator of Forest, Meghalaya. This was on 19.4.2001 regarding Environmental Clearance. The Chief Conservator of Forest (Wildlife Division) vide letter dated 1.6.2001 gave his comments as per the annexures which was on the basis of Field Verification Report submitted by DFO, Khasi Hills Wildlife Division, Shillong. According to the Chief Conservator of Forest (Wildlife Division) the project area is sloppy, ending in the nearby plains of Bangladesh and covered wholly by degraded forests and grassland vegetation. Further, he stated that there is a motorable road used for traffic and the

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A forest is farther away up the slope. It was concluded that there was no likelihood of any wildlife presence in the area. Thus, according to the learned Attorney General it is incorrect to say that the EIA clearance dated 9.8.2001 was granted without proper consideration. There has been a detailed consideration at every stage. That, at the time of the submission of the application for Site Clearance dated 23.9.1998 there existed an NOC of the Pollution Control Board, a certificate dated 27.8.1997 issued by East Khasi Hills Autonomous Council and thus it cannot be said that the EIA clearance indicated non-application of mind or that it was liable to be set aside on the ground that the EIA Division of the MoEF did not properly consider the matter. In the circumstances, according to the learned Attorney General, it cannot be said that the Environmental Clearance dated 9.8.2001 came to be issued by MoEF arbitrarily, capriciously or whimsically. At that stage of Environmental Clearance dated 9.8.2001 existence of the forest land was not established. If it had been so established then the project proponent had to obtain forest clearance under the 1980 Act also.

13. At the outset, Shri F.S. Nariman, learned senior counsel appearing on behalf of M/s. Lafarge adopted the submissions made on behalf of MoEF by the learned Attorney General. As regards the nature of the land, the learned counsel invited our attention to the approved mining plan which was submitted by LMMPL to the Regional Controller of Mines, IBM, Calcutta for limestone extraction which plan was duly approved in February, 1998. In this approved mining plan, the project area was described as having Karst topography with the presence of deep caverns, caves and cracks which permit surface water to percolate downwards and circulate underground only to reappear as hills side springs at certain outlets. According to the mining plan, the terrain over the entire area is rocky with very little soil and devoid of hard overburden rocks. The vegetation of the area is seen to be mixed deciduous type. There is no agricultural activity in the area as thin soil cover is

unable to sustain crops. That, even according to the NEHU Report of 1997, the site selected for mining has commercially viable limestone deposit. According to the said report, the land was left unused covered with degraded forests and this was the reason why the Durbar preferred to lease out the site to LMMPL for mining. Other factors responsible for selecting the proposed site were availability of water resource, away from human habitation, closer to the cement plant at Chhatak, easy accessibility by road and minimum damage to the rich biodiversity (see page 19 of the NEHU Report). The learned counsel submitted that Section 2 of the 1980 Act stipulates "prior approval". Thus, prior determination of what constituted forest land is required to be done. This lacuna in the 1980 Act was supplied by the order of this Court dated 12.12.1996 which inter alia provided that every State Government shall first constitute an Expert Committee within one month and based on its recommendations the State Government will identify the land as forest land on the criteria mentioned in the said Order. The learned counsel also invited our attention to Rule 4 of the Forest (Conservation) Rules, 1981 in which it is stipulated that every State Government seeking prior approval under Section 2 of the 1980 Act shall send its proposal to the Central Government in the form appended to the Rules. Thus, according to the learned counsel, under the 1980 Act read with the Rules, the requirement of submission of the proposal for forest diversion under the 1980 Act is exclusively the obligation of the State Government. This was also spelt out in the guidelines issued on 25.10.1992. Later on the Government of India amended the said guidelines in respect of the diversion of forest lands for non-forest purpose under the 1980 Act by letter dated 25.11.1994 and in para 2.4 the concept of "User Agency" was introduced but that concept was made applicable only to cases of renewal of mining leases. However, on 10.1.2003, Rule 4 of the 1981 Rules stood reframed (as Rule 6 of the 2003 Rules) which inter alia provided that every "User Agency" who wants to use any forest land for non-forest purpose shall make its proposal in the specified form appended to the Rules to the

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- A concerned Nodal Officer along with the requisite information before undertaking any non-forest activity on the forest land; after receiving the proposal and if the State Government is satisfied that the proposal required prior approval under Section 2, it had to send the said proposal to the Central
- B Government in the appropriate form within 90 days of the receipt of the proposal from the "User Agency". The threshold limit was kept at 40 hectares. Where the proposal involved forest land of more than 40 hectares, it was to be sent by the State Government to the Government of India with the copy to
- C the Regional Nodal Officer. According to the learned counsel, insofar as M/s. Lafarge was concerned, its predecessor LMMPL was already given environmental clearance on 9.8.2001 and while granting the clearance there was an express finding in the environmental clearance that "*no diversion of forest land was involved*". Thus, it was never
- D stipulated at any time as a condition to the grant of environmental clearance dated 9.8.2001 that permission under the 1980 Act should be obtained. The learned counsel further pointed out that pursuant to the Order of this Court dated 12.12.1996 an Expert Committee was formed by the State of
- E Meghalaya vide notification dated 8.1.1997 with the Principal Chief Conservator of Forests as its Chairman. On 10.2.1997, the State of Meghalaya, on the subject of "Order of the Supreme Court dated 12.12.1996" wrote to the Khasi Hills Autonomous District Council that the land in question was reckoned by the
- F State as non-forest land. The Council was asked to inform/clarify whether the area in question under the mining lease fell on forest land as per the records of the District Council. By letter dated 28.4.1997, the Council informed the State Government that the area in question did not fall on forest lands. Moreover,
- G pursuant to the Order of this Court dated 12.12.1996, the Chairperson of the Expert Committee appointed by the State of Meghalaya also filed the report of the Expert Committee in which it was expressly stated that the mining lease granted by the State Government did not fall on the forest land. Thus, it was
- H under the above circumstances, having regard to the order of

this Court dated 12.12.1996, that the State Government was not required to and it did not submit any proposal to the Central Government under Section 2 of the 1980 Act read with Rule 4 of the 1981 Rules as it treated the site in question as a non-forest land. This position has not been disputed by MoEF. Thus, according to the learned counsel, there was no obligation on the project proponent or on the State of Meghalaya to move MoEF under Section 2 of the 1980 Act.

14. According to the learned counsel, what has happened in the present case is that almost after 9 years there was a change of view on the part of MoEF, i.e., between 1997 and 2007. Under this change of view of MoEF, the report of the Chairperson of the Expert Committee of the State of Meghalaya which report stood annexed to the affidavit dated 3.5.1997 in this Court to the effect that the mining lease did not fall on forest land was given a go-by and an entirely new stand was taken only on and from 2006-07. One more aspect has been highlighted by the learned counsel for M/s. Lafarge. On 1.6.2006, the Chief Conservator of Forests (C), Shri Khazan Singh stated that he had visited the limestone mining project of M/s. Lafarge on 24.5.2006 when he found that the mining lease area is surrounded by thick natural vegetation cover with sizeable number of tall trees. According to the Chief Conservator of Forests (C), the Rapid EIA Report (ERM India Pvt. Ltd.) submitted by the project proponent describes the land as waste land which was not a fact. Thus, according to the Chief Conservator of Forests (C), the project proponent should be directed to obtain clearance under the 1980 Act and not to expand mining activities till such clearance is obtained. After the said letter dated 1.6.2006, the then Principal Chief Conservator of Forests now stated vide letter dated 11.5.2007 that he too agreed with the opinion of the Chief Conservator of Forests (C), Shri Khazan Singh. However, according to the learned counsel, even the Principal Chief Conservator of Forests stated in his letter dated 11.5.2007 that though M/s. Lafarge had failed to take forest clearance, they were not at

- A fault because of the certificate of the Council that the site fell in a non-forest area. The letter dated 11.5.2007 further goes on to state that the activities of the company will provide employment to large number of local tribals and rural people and that since the company had applied for forest clearance on 3.5.2007 forest clearance may be considered. Thus, according to the learned counsel, there was no collusion between M/s. Lafarge and the DFO as alleged to get the certificate dated 13.6.2000.

15. On the question of alleged suppression by M/s. Lafarge from MoEF of the NEHU Report 1997, learned counsel submitted that an application was prepared and submitted by M/s. LMMPL for Environmental Clearance to MoEF vide letter dated 1.9.1997; along with the said letter there were several enclosures. One of the enclosures was the NEHU Report, the other was NOC from Khasi Hills Autonomous Council for mining operation in the project area. This letter dated 1.9.1997 was duly acknowledged by MoEF vide its letter dated 24.10.1997. As stated above, in view of the amendment to the Notification of 1994, the project proponent was advised to make a new proposal in two different parts, namely, site clearance and project clearance. Pursuant to the said advice the project proponent preferred Site Clearance Application on 23.9.1998 made to MoEF in which once again the project proponent enclosed maps which were verbatim reproduction of the relevant pages (including maps) in the NEHU Report. MoEF granted Site Clearance on 18.6.1999. Further even the Mining Plan submitted by the project proponent contained a Chapter on Environment Management Plan (EMP) which is a verbatim copy of Chapter 6 of NEHU Report. The said plan was approved by Bureau of Mines. Moreover, in the Sociological and Ecological Impact Assessment Report dated 16.2.1998 prepared by ERM it has been expressly stated that Environmental Impact Assessment was carried out in 1997 and it was submitted to MoEF in September, 1997. To the same effect one finds reference in the Executive Summary of the EIA

of proposed Limestone Mining of 9.4.1998 by ERM. According to the learned counsel the above documents indicate that there was no suppression by the project proponent from MoEF of NEHU Report of 1997 as alleged. One of the points which SAC has argued before us was absence of public hearing as required under EIA Notification of 1994. On this aspect Shri Nariman, learned counsel appearing on behalf of M/s. Lafarge invited our attention to the requisite correspondence. On 22.4.1998 a Notification was issued by Meghalaya State Pollution Control Board of constituting an Environmental Public Hearing Panel to evaluate and assess the documents submitted by the project proponent and to verify the comments, views and suggestions made by the public on the proposed project. This Notification was issued in terms of the EIA Notification of 1994, as amended on 10.4.1997. On 27.4.1998 a public notice was also issued by MPCB informing the general public about the limestone project of M/s. LMMPL. On 5.5.1998 MPCB informed two local newspapers in writing asking them to publish the Khasi translation of the public notice. On 6.5.1998 MPCB wrote to Shella Confederacy asking its Headman to display two sets of executive summary each in Khasi and English. On 13.5.1998 the State PCB wrote to the Director of Information asking him to publish public notice in Shillong Times. On 25.5.1998 the State PCB wrote to the Secretary, Shella village informing him of date and time of public hearing. 31 members attended the public hearing on 3.6.1998. As stated above, the entire proceedings have been recorded in the minutes of the meeting. On 4.9.1998 the Deputy Director, Govt. of India, MoEF forwarded a letter to the State PCB enclosing proceedings of the public hearing conducted for proposed limestone mining project of M/s. LMMPL, Nongtra. Thus, according to the learned counsel there is no merit in the submission advanced on behalf of SAC that public hearing as per EIA Notification of 1997 did not take place.

16. Shri Nariman, learned counsel appearing on behalf of M/s. Lafarge further submitted that on facts and circumstances

- A of the present case it is clear that both the project proponent and the MoEF were at all relevant times under the bona fide impression that the project site was not forest land; in fact the consistent view of all authorities, including MoEF, was that the project site (mining lease area) was not located on "forest land".
- B In this connection our attention was invited to the application dated 23.9.1998 made by M/s. LMMPL to MoEF for Site Clearance, the NOC from KHADC dated 27.8.1997 stating that the project area does not fall within a forest land, grant of Site Clearance on 18.6.1999 by MoEF, application for Environmental Clearance dated 17.4.2000, grant of Environmental Clearance on 9.8.2001. All these documents and series of letters exchanged during the relevant time, according to the learned counsel, indicate that both the project proponent and MoEF were at all relevant times under the bona fide impression that the project site (mining lease area) was not located on forest land.
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17. Learned counsel further submitted that after stop mining order dated 30.4.2007 and the direction of CCF(C) of even date to obtain Forest Clearance under Section 2 of the 1980 Act, an application was filed by M/s. Lafarge on 3.5.2010 to the State Government under Rule 6 of the Forest Conservation Rules, 2003, as amended in 2004. Accordingly, on 11.5.2007 the Principal Chief Conservator of Forest, Meghalaya wrote to the Government of Meghalaya agreeing with the views of the CCF (C) to the effect that M/s. Lafarge should obtain permission under the 1980 Act. At the same time, as stated above, the PCCF made it clear that no fault lay on the door step of M/s. Lafarge for not seeking Forest Clearance earlier. Accordingly, on 19.6.2007 a formal proposal was made by State Government on 19.6.2007 to MoEF for diversion of 116.589 Ha of forest land for limestone and other ancillary activities in favour of M/s. Lafarge in Khasi Hills Division under Section 2 of the 1980 Act. Thus, all necessary steps were taken, as indicated hereinabove, by M/s. Lafarge which ultimately culminated in the Environmental Clearance by MoEF
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dated 19.4.2010 and Forest Clearance dated 22.4.2010. In the circumstances, learned counsel submitted that I.A. 1868/2007 preferred by M/s. Lafarge be allowed. A

### Issues

- 18(i) Nature of land; B
- (ii) Whether ex post facto environmental and forest clearances dated 19.4.2010 and 22.4.2010 respectively stood vitiated by alleged suppression by M/s. Lafarge regarding the nature of the land. In this connection it was contended by learned Amicus and by the learned counsel appearing on behalf of SAC that the EIA clearance under Section 3 of the 1986 Act dated 9.8.2001 (being a parent clearance) was obtained by M/s. Lafarge on the basis of "absence of forest" with full knowledge that the project site was located on forest land. C D

### Findings

#### (a) Legal Position E

19. Universal human dependence on the use of environmental resources for the most basic needs renders it impossible to refrain from altering environment. As a result, environmental conflicts are ineradicable and environmental protection is always a matter of degree, inescapably requiring choices as to the appropriate level of environmental protection and the risks which are to be regulated. This aspect is recognized by the concept of "sustainable development". It is equally well-settled by the decision of this Court in the case of Narmada Bachao Andolan v. Union of India and Others [(2000) 10 SCC 664] that environment has different facets and care of the environment is an on-going process. These concepts rule out the formulation of across-the-board principle as it would depend on the facts of each case whether diversion in a given case should be permitted or not, barring "No Go" areas (whose F G H

A identification would again depend on undertaking of due diligence exercise). In such cases, the Margin of Appreciation Doctrine would apply.

B 20. Making these choices necessitates decisions, not only about how risks should be regulated, how much protection is enough, and whether ends served by environmental protection could be pursued more effectively by diverting resources to other uses. Since the nature and degree of environmental risk posed by different activities varies, the implementation of environmental rights and duties require proper decision making based on informed reasons about the ends which may ultimately be pursued, as much as about the means for attaining them. Setting the standards of environmental protection involves mediating conflicting visions of what is of value in human life.

D (b) Nature of the land

E 21. In the NEHU Report of June, 1997 (Rapid EIA of Proposed Limestone Mining Project at Nongtraï, Meghalaya), a brief history of limestone mining in Khasi Hills of Meghalaya is spelt out. It indicates that mining of limestone in Khasi Hills dates back to July 10, 1763 when an agreement was signed between East India Company and the *Nawab* of Bengal for preparation of *chunam*. Regular trade of limestone from Khasi Hills of Bengal started on and from 1858. Substantial revenue was earned by the British Government from these limestone quarries as rentals, which was Rs. 23,000/- in 1858 and which subsequently stood increased to Rs. 67,000/- in 1878. The first historical account of exploitation of Nongtraï limestone dates back to 1885 when Don Rai of Shella obtained permits from the *Wahadars* (Head of Confederacy) of Shella to quarry limestone in Nongtraï village. There are historical records about continuance of limestone trade between Khasi Hills and Bengal up to 1947. The business declined after partition. Limestone mining and trade slipped into the hands of unorganized sector. According to the NEHU Report of 1997, today a number of private parties quarry limestone using unscientific methods and

export it to counterparts in Bangladesh, often illegally. These private parties sell the product at a very low price. This aspect is also being examined by CEC which has now filed its report in I.A. No. 3063 of 2011. One more aspect needs to be highlighted. According to the State of Forest Report, 2001, the North Eastern Hill State of Meghalaya is predominantly tribal with 86% population being tribal. According to the NEHU Report of 1997, approximately 60 settlements consisting of 50-200 inhabitants each with a total estimate population of 16500 persons exist within 10 km radius of the proposed mining site. Under an agreement dated 29.9.1993 (lease agreement), the village Durbar represented by a Special Committee headed by the Headman as lessor granted lease of the limestone quarry in Nongtraï to M/s. LMMC (the predecessor-in-interest of M/s. LMMPL). Thus, an area of 100 hectares stood acquired on lease basis for mining whose lessor was the village Durbar of Nongtraï. Coming to the topography of the area, one finds that the limestone bearing area around Nongtraï and Shella villages falls under Karst topography. This area falls on the southern fringe of the Meghalaya plateau. Karst topography is characterized by a limestone caverns/ caves. The factum of limestone bearing area around Nongtraï and Shella falling under Karst topography is also borne out by the certificate dated 27.8.1997 issued by KHADC, Shillong. This Council is a constitutional authority under Sixth Schedule of the Constitution. As stated above, the limestone bearing area around Nongtraï and Shella falls on the southern fringe of Meghalaya plateau. The site is approachable from Shillong via Mawsynram and Nongtraï villages by a motorable road. The site is also accessible from Shillong by road via Cherrapunji. This road is wide enough for crushers and heavy machines to be brought from Shillong. The site is on the uneven terrain with a rugged topography. (See Rapid EIA Report submitted by ERM India Pvt. Ltd. dated 6.4.2000). According to the said report, the Karst topography of the area supports sporadic growth of a few tree shrubs. According to the NEHU Report of 1997, the site selected for mining has commercially viable

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A limestone deposit. The site was selected after thorough consultation with the concerned village Durbar who is the custodian of the land. The land was left unused covered with degraded forests and this was the reason for the Durbar to lease out the said land to the project proponent for mining. The village Durbar also felt that in the area unscientific limestone quarrying was going on resulting in loss of revenue both to the State as well as the inhabitants of the village particularly because the said mining was undertaken by unorganized sectors and, thus, it was decided to enter into the lease with the project proponent so that mining could be done on scientific basis. The site was also selected because of easy accessibility by road and less vegetation clearance stood involved. According to the NEHU Report, the site is located in the area on the outskirts of the forest. (See page 19 of the said Report)

D **(c) Validity of ex post facto clearance**

22. An important argument has been advanced on behalf of SAC that the site clearance dated 18.6.1999 and EIA clearance dated 9.8.2001 were based on misrepresentation by M/s. Lafarge. They proceeded on the basis that there was no forest. That, both the said clearances stood vitiated by suppression of material fact of existence of forest by M/s. Lafarge and as a sequel the subsequent revised environmental clearance dated 19.4.2010 and forest clearance (Stage – I) dated 22.4.2010 stood vitiated. In this connection, it was submitted that having regard to Para 4.3.1 of the National Forest Policy, 1988 tropical rain/ moist forest is required to be totally safeguarded; that, the project is located in a tropical moist forest and no forest clearance ought to have been granted by MoEF because of the special ecological significance recognized by the 1988 policy. According to SAC, the fact that tropical moist forest existed in the area and continues to exist was known to M/s. Lafarge at all material times as can be seen from the NEHU Report of 1997 in which it has been categorically stated that the vegetation at the study

site is a mixed moist deciduous forest composed of deciduous and evergreen tree elements; that, in the same Report it has been further stated that the vegetation of the area is a tropical semi-evergreen forest composed of deciduous and evergreen elements which is further corroborated by the assessment of Floral Diversity prepared by NEHU dated June, 2010 in which it has been stated that the forest in the study area is tropical moist deciduous forest, tropical semi-evergreen forest, savanna, sub-tropical broad leaves forest, forest garden, orchards and riparian forest; that, the vegetation in the unbroken area is tropical moist deciduous type with variable canopy cover mostly sparse. Thus, according to SAC and CEC, the undisputed position emerging from the record that the subject area is covered by a tropical moist forest deserving highest degree of ecological protection ought to have been taken into account by MoEF which was not done at the time of initial clearances dated 18.6.1999 and 9.8.2001. Shri Divan, learned senior counsel appearing for SAC submitted before us that the case in hand essentially deals with the decision making process in relation to the grant of environmental clearance and to test whether the decision making process stood up to judicial review. According to the learned counsel, the following basic points regarding the legal framework must be kept in view: - From the environmental perspective, in relation to a mining project, there are three main sets of permissions that are required to be obtained:

- (i) The first set of permissions is at the State level. This set of permissions primarily has to do with pollution. In each State or a group of States, a Pollution Control Board issues consent/ permit. These consents or permits are granted from a pollution perspective. The scope of enquiry is limited to pollution impacts. Obtaining such consents and permits are essential but they are not a substitute for compliance with other environmental laws.

A (ii) The second set of permissions, according to the  
learned counsel, is with regard to environmental  
clearance. The scope of environmental clearance  
is wider than a pollution control clearance. The  
B authority granting environmental clearance will look  
at broader impacts beyond pollution and will  
examine the effect of the project on the community,  
forests, wild life, ground water, etc. which are beyond  
the scope of Pollution Control Board examination.  
C The exercise of granting environmental clearance  
with regard to a limestone mining project of the  
present magnitude requires MoEF clearance.

(iii) A clearance for diversion of forest under the 1980  
Act which is granted by MoEF on the  
D recommendation of the FAC should logically  
precede the grant of environmental clearance as  
the environmental clearance is broader in scope  
and deals with all aspects, one of which may be  
forest diversion.

E 23. Applying the said legal framework to the facts of the  
present case, the learned counsel appearing for SAC  
submitted that the MoEF, as the authority which decides on  
diversion of forests and which grants environmental clearances,  
is duty bound to examine the diversion application in the context  
F of the 1988 Policy, particularly, where tropical moist forests are  
sought to be cleared by the project proponent. According to the  
learned counsel, where MoEF grants environmental clearance  
in ignorance of the existence of a forest due to mis-declaration,  
it is duty bound to take severest possible action against the  
G party that made the false declaration for profit. According to the  
learned counsel, since impact assessment and EIA clearances  
are processes based on self declarations by the project  
proponent (s), the decision making by MoEF depends upon  
honest and cogent material supplied by the project proponent  
and since the said process is premised on a full and fair  
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disclosure of relevant facts by the project proponent, in cases where material facts are not disclosed, the MoEF should withdraw both the site as well as the environmental clearances. According to the learned counsel, the most important input in this regard must be received by MoEF in the course of its decision making from the public which is an essential check for a failure to disclose correct facts or to have regard to environmental issues that may have escaped the attention of the project proponent. According to the learned counsel, the requirement of public hearing is, thus, mandatory both under the 1994 Notification and the 2006 Notification. That, the requirement for payment of NPV does not automatically mean that environmental clearance is to be granted.

24. We are in full agreement with the legal framework suggested by the learned counsel for SAC. There is no dispute on that point. The question is confined to the application of the legal framework to the facts of the present case. Can it be said on the above facts that a mis-declaration was wilfully made by M/s. Lafarge or its predecessor (project proponent) while seeking site and environmental clearances? Was there non-application of mind by MoEF in granting such clearances? Was the decision of MoEF based solely on the declarations made by the project proponent(s)?

25. At the outset, one needs to take note of Section 2 of the 1980 Act which stipulates prior approval. That Section refers to restriction on the dereservation of forests or use of forest land for non-forest purpose. It begins with non-obstante clause. It states that "Notwithstanding anything contained in any other law for the time being in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing that any forest land or any portion thereof may be used for any non-forest purpose". This is how the concept of prior approval by the Central Government comes into picture. Thus, prior determination of what constitutes "forest land" is required to be done. By an

A order dated 12.12.1996 by a Division Bench of this Court in  
Writ Petition (C) No. 202 of 1995 with another in case of *T.N.  
Godavarman Thirumulpad v. Union of India*, this Court  
directed each State Government to constitute within a specific  
period an Expert Committee to identify areas which are forests  
irrespective of whether they are so notified, recognized or  
classified under any law and also identify areas which were  
earlier forests but stand degraded, denuded or cleared. The  
Committee was to be headed by the Principal Chief  
Conservator of Forests. This order dated 12.12.1996, thus,  
clarified that every State Government seeking prior approval  
under Section 2 of the 1980 Act shall first examine the question  
relating to existence of forests before sending its proposal to  
the Central Government in terms of the form prescribed under  
the Forest (Conservation) Rules, 1981 (see Rule 4). Thus, the  
requirement of submitting the proposal for forest diversion  
under the 1980 Act is exclusively the obligation of the State  
Government. This position was spelt out initially in the  
guidelines dated 25.10.1992. However, later on, the  
Government of India amended the guidelines in respect of  
diversion vide letter dated 25.11.1994 and by the said letter  
the concept of "User Agency" stood introduced. On 10.1.2003,  
Rule 4 of the 1981 Rules stood reframed which inter alia  
provided that every "User Agency" who wants to use any forest  
land for non-forest purpose shall make its proposal in the  
specified form appended to the Rules to the concerned Nodal  
Officer along with the requisite information before undertaking  
any non-forest activity on the forest land and after receiving the  
said proposal and if the State Government is satisfied that the  
proposal required prior approval under Section 2, the State  
Government had to send the said proposal to the Central  
Government in the appropriate form within the specified period  
of 90 days from the receipt of the proposal from the "User  
Agency". At this stage, it may be noted that the earlier project  
proponent in the present case was M/s. LMMPL. That project  
proponent had obtained EIA clearance given by MoEF dated  
9.8.2001 which clearance stood transferred to M/s. Lafarge only

on 30.7.2002. While granting environmental clearance dated 9.8.2001 there was an express finding to the effect that "no diversion of forest land was involved". In terms of the order of this Court dated 12.12.1996, an Expert Committee was in fact formed by the State of Meghalaya vide notification dated 8.1.1997 with the Principal Chief Conservator of Forests as its Chairman. On 10.2.1997, the State of Meghalaya had addressed a specific letter to the Khasi Hills Autonomous District Council, which as stated above is a Constitutional Authority, stating that the land in question was reckoned as non-forest land and the Council was asked to clarify whether the area in question under the mining lease fell in the forest as per the records of the Council. The Council by its letter dated 28.4.1997 had informed the State Government that the area in question did not fall in the forest. Apart from the said letter, the Chairperson of the Expert Committee appointed by the State of Meghalaya being the Principal Chief Conservator of Forests also submitted his report in which it was expressly stated that the mining lease granted by the State Government did not fall in the forest. Since the mining lease granted by the State did not fall in the forest, the State Government did not submit any proposal to the Central Government under Section 2 of the 1980 Act as it treated the site in question as falling on the outskirts of the forests. It is almost after nine years that there was a change of view on the part of MoEF under which the report of the Expert Committee headed by the Principal Chief Conservator of Forests was given a go-by. Between 1997 and 2007, the view which prevailed was that the project site stood located on the outskirts of the forests. In this connection, it needs to be stated that on 1.6.2006 for the first time the Chief Conservator of Forests (C), Shri Khazan Singh came out with the change of view which was ultimately accepted in 2007 by MoEF. According to the Chief Conservator of Forests (C), he had visited the limestone mining project of M/s. Lafarge on 24.5.2006 when he found that the mining lease area stood surrounded by thick natural vegetation covered with sizeable number of tall trees and in the circumstances he recommended

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- A that the project proponent should be directed to obtain clearance under the 1980 Act and not to carry on the mining activities till such clearance is obtained. The most important fact is that subsequent to the letter dated 1.6.2006, addressed by the Chief Conservator of Forests (C), Shri Khazan Singh, the
- B Principal Chief Conservator of Forests agreed with the opinion of the Chief Conservator of Forests (C). This was by letter dated 11.5.2007. However, even according to the Principal Chief Conservator of Forests, who was the Chairperson of the Expert Committee appointed by the State Government, M/s.
- C Lafarge was not at fault because the certificate indicating absence of forests was given by Khasi Hills Autonomous District Council. In fact the letter dated 11.5.2007 further goes to state that the activities of M/s. Lafarge will provide employment to a large number of local tribals and rural people and consequently the application for forest clearance made by
- D M/s. Lafarge without prejudice to their rights and contentions dated 3.5.2007 be considered by MoEF. Apart from the above circumstances, on 22.4.1998, a notification was issued by the State Pollution Control Board constituting an Environmental Public Hearing Panel to evaluate and assess the documents
- E submitted by M/s. LMMPL. A public notice was also issued in local newspapers on 25.5.1998. The State Pollution Control Board also sent a letter to the Secretary, Shella Village informing him of the date and time of public hearing and accordingly on 3.6.1998, a public hearing did take place.
- F According to the minutes of the meeting, 31 citizens of Shella Nongtraï, Pyrkan attended the hearing. In the hearing, the purpose, objective, composition and procedure of environmental public hearing was discussed. The Headman of Nongtraï was also present. He gave reasons as to why the
- G village Durbar had agreed to the proposed project. The main reason being that the limestone was abundantly available in the area but the same remained unutilized by local villagers themselves due to lack of infrastructure. That, for economic development of the local population, the village Durbar had
- H decided to lease the area required for the project to M/s.

Lafarge. In the meeting, the economic benefits of the local people from the project proponent were also discussed. The environmental implications were also discussed. The mitigating measures to be adopted by the project proponent were also discussed to maintain the ecology and environmental balance of the area. The objections of certain persons were also noted and discussed. The Durbar came to the conclusion that there was no destruction of any caves. The complainant was not even present during the hearing. Thus, a public hearing did take place on 3.6.1998. One more aspect at this stage needs to be mentioned. Public participation provides a valuable input in the process of identification of forest. Today, amongst the tribals of the North East, there is a growing awareness of the close relationship between poverty and environmental pollution. According to Environmental Law and Policy in India by Shyam Divan and Armin Rosencranz, "many native and indigenous people are fully aware of what constitutes preservation and conservation of biodiversity. Many native and indigenous people have many a times opposed government policies that permit exploitation on traditional lands because such exploitation threatens to undermine the economic and spiritual fabric of their culture, and often results in forced migration and resettlement, the struggle to protect the environment is often a part of the struggle to protect the culture of the native and indigenous people" (see page 591). In our view, the natives and indigenous people are fully aware and they have knowledge as to what constitutes conservation of forests and development. They equally know the concept of forest degradation. They are equally aware of systematic scientific exploitation of limestone mining without causing of "environment degradation". However, they do not have the requisite wherewithal to exploit limestone mining in a scientific manner. These natives and indigenous people know how to keep the balance between economic and environment sustainability. In the present case, the above is brought out by the Minutes of the meeting held on 3.6.1998. In fact the written submissions filed by the Nongtraï Village Durbar (respondent No. 5) in I.A. No. 1868 of 2007 preferred by M/s.

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- A Lafarge have specifically averred that the total area of the land that falls within the jurisdiction of Nongtraï Village is about 2200 hectares; that, the said lands fall in two categories, namely, individual ownership lands, and community lands. The management and control of community lands is completely
- B within the jurisdiction of the community. Such community lands in highlands of Khasi Hills are termed as *Ri Raid* whereas community lands in low-lying areas are termed as *Ri Seng*. Nongtraï village has about 1300 hectares of community land out of which 900 hectares are limestone bearing land. The
- C manner and method of allocation, use and occupation of the community lands are decided by the Village Durbar. The Village Durbar has granted lease of 100 hectares of community land out of 900 hectares which as stated above is limestone bearing land. It is important to note that apart from the minutes of the meeting held on 3.6.1998 which was attended by the
- D Headman of the Nongtraï Village, a detail written submission has been filed on 13.5.2011 by the Nongtraï Village Durbar fully supporting the impugned project. Thus, this is a unique case from North East. We are fully satisfied that the natives and the indigenous people of Nongtraï Village are fully conscious of
- E their rights and obligations towards clean environment and economic development. There is ample material on record which bears testimony to the fact of their awareness of ecological concerns which has been taken into account by MoEF. In the circumstances, it cannot be said that the
- F impugned project should be discarded and that the decision of MoEF granting ex post facto clearances stands vitiated for non-application of mind as alleged by SAC. At this stage one more argument advanced on behalf of SAC needs to be addressed. According to SAC, in this case a decisive factor
- G which clearly shows that there is "forest" on the core area is the statutory definition of forest contained in the United Khasi – Jaintia Hills Autonomous District (Management and Control of Forests) Act, 1958. Section 2(f) defines the expression "forest" and the tree count emerging from the High Powered
- H Committee (HPC) Report which establishes that the area

answers the statutory definition. According to SAC, in terms of the said definition of forest, if there exists more than 25 trees per acre then it is a forest. This argument has no merit. According to Shri Krishnan Venugopal, learned senior counsel appearing on behalf of the Village Durbar of Nongtraï Village (respondent No. 5), SAC has not stated the full facts in this regard. We find merit in this contention. Section 5 of the 1958 Act inter alia provides that no timber or forest produce shall be removed for the purpose of sale, trade and business without prior permission. Section 7 of the said Act deals with restrictions on felling of trees and further provides that no tree below 1.37 metre in girth at the breast level shall be felled. Thus, it is the trees of a particular girth and breast height and not every tree should be counted while computing whether a particular area is a forest area or not. In fact in the year 2007, a survey of the unbroken area was conducted by the Forest Department of the State of Meghalaya wherein an inventory of the existing trees was prepared based on their nature and girth. The said record confirms that the unbroken area has less than 25 trees per acre having girth of more than 120 cms per acre. It is in view of the existence of the 1958 Act, which is a local legislation, that the native people as also the State officials like the DFO understood the area in the light of the said Act. It is important to note once again that this understanding of the natives and tribals about the Local Act is an important input in the decision making process of granting environmental clearance. It is deeply engrained in the local customary law and usage. It is so understood by the Expert Committee headed by the then Principal Chief Conservator of Forests on the basis of which the State granted the mining lease saying that there was no forest. This certificate was granted by the State in terms of the order of this Court dated 12.12.1996. This understanding also existed in the mind of KHADC when it gave certificates on 28.4.1997, 10.7.1997 and 27.8.1997. In fact this has been the understanding of the Council as is apparent even from its letter dated 18.1.2011 (see page 126 of the affidavit dated 9.3.2011 filed by the State of Meghalaya). As stated above, this

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A view prevailed with the MoEF between 1997 and 2007. The word "environment" has different facets [see para 127 of the judgment of this Court in Narmada Bachao Andolan (supra)]. On the above facts, it is not possible for us to hold that the decision to grant ex post facto clearances stood vitiated on account of non-application of mind or on account of suppression of material facts by M/s. Lafarge as alleged by SAC.

26. Similarly, it is not possible for us to hold on the above facts that ex post facto clearances have been granted by MoEF in ignorance of the existence of forests due to mis-declaration. Two points are required to be highlighted at the outset. Firstly, the ex post facto clearance is based on the revised EIA. In the circumstances, EIA Notification of 2006 would not apply. Secondly, IA preferred by SAC being I.A. No. 2225-2227/08 was preferred only in March, 2008. Thus, during the relevant period of almost a decade, SAC did not object to the said project. In fact an IA is now pending in this Court being IA No. 3063 of 2011 preferred by CEC which indicates that there are 28 active mines out of which 8 are located along the Shella-Cherrapunjee Road which are operating without obtaining approval and in violation of the 1980 Act. Further, the said I.A. alleges that 6 registered quarry owners are under the Shella Wahadarship, East Khasi Hills and that there are 12 individuals involved in mining limestone in the Shella Area during 2008-09. All these aspects require in-depth examination. The locus of SAC is not being doubted. However, the I.A. No. 3063 of 2011 preferred by CEC which has acted only after receiving inputs from the respondent No. 5 prima facie throws doubt on the credibility of objections raised by SAC. However, we do not wish to express any conclusive finding on this aspect at this stage. On the ex post facto clearance, suffice it to state that after Shri Khazan Singh, Chief Conservator of Forests (C) submitted his report on 1.6.2006, MoEF directed the project proponent to apply for necessary clearances on the basis that there existed a forest in terms of the order of this Court dated

12.12.1996 and the ex post facto clearance has now been granted on that basis permitting diversion of forest by granting Stage-I forest clearance subject to compliance of certain conditions imposed by MoEF and by this Court. On the question of non-application of mind by the MoEF, we find that at various stages despite compliances by the project proponent and despite issuance of certificates by various authorities, MoEF sought further clarifications/ information by raising necessary requisitions. To give a few instances in terms of the 1994 EIA Notification, the then project proponent made an application to MoEF for grant of environmental clearance. With that application, the then project proponent submitted the NEHU Report of 1997. However, in the mean time there was an amendment to the EIA Notification of 1994. That amendment took place on 10.4.1997 by which two stage clearances were required to be obtained, namely, site clearance and project clearance. Therefore, immediately MoEF returned the application to the project proponent asking it to submit applications for site clearance as well as for project clearance. Similarly, although the then project proponent had made site clearance application which fulfilled the 1994 Notification (as amended), the MoEF gave site clearance on 18.6.1999 with additional conditions. Similarly, despite the project proponent making application for environmental clearance on 17.4.2000 enclosing Rapid EIA prepared by ERM India Pvt. Ltd. referring to absence of forest, the MoEF asked project proponent to obtain certificate of DFO in terms of the definition of the word "forest" as laid down in the order of this Court dated 12.12.1996. Similarly, despite the certificate given by DFO on 13.6.2000 stating that the proposed mining site is not a forest area, the MoEF sought further details in terms of the connotation of the word "forest" as laid down in the order of this Court dated 12.12.1996. Similarly, from time to time the Expert Committee of MoEF asked for details with regard to flora and fauna, list of species in that area, types of forests existing in that area, etc. Similarly, after receipt of letter from Shri Khazan Singh, the then Chief Conservator of Forests (C) on 1.6.2006,

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- A the MoEF called upon the project proponent to submit an application for forest clearance on the basis that the site was located in the forest. A number of queries have been raised from time to time by the MoEF as indicated from the facts enumerated hereinabove. Even a report from the High Powered
- B Committee (HPC) was called for by MoEF which was submitted on 5.4.2010. There were four terms of references given to the HPC. According to the report, all conditions imposed with regard to environmental clearance had been substantially complied with by M/s. Lafarge. The report also refers to the
- C steps taken by M/s. Lafarge with regard to reforestation. The most important aspect of the HPC Report is regarding the topography of the area. It states that though the area can be treated as forest, still it is a hilly uneven undulating area largely covered by "Karstified" limestone. The Report further states that the area can be reforested as a part of the reclamation plan. It
- D further states that the indigenous and native people are satisfied with the credentials of M/s. Lafarge as the company is providing health care facilities, drinking water facilities, employment for local youth, construction of village roads, employment for school teachers, scholarship programme for
- E children, etc. It also indicates that the issue of mining was thoroughly discussed with the Village Durbar by the members of the HPC who visited the site and that the community was in agreement to allow M/s. Lafarge to continue mining. The report further notes that most of the members of the SAC were not
- F the residents of the locality (Shella Village) and were living in Shillong while occasionally visiting Shella. The report further states that 200 persons participated in a long interaction with the members of HPC. The report further states that in fact the villagers became very upset in the apprehension of M/s.
- G Lafarge not being allowed to mine on their community land. As stated above, even according to the letter dated 11.5.2007, the Principal Chief Conservator of Forests states that though the site falls in the forest as pointed out by Shri Khazan Singh, the Chief Conservator of Forests (C) vide letter dated 1.6.2006,
- H still it is not the fault of M/s. Lafarge. Thus, under the above

circumstances, we are satisfied that the parameters of intergenerational equity are satisfied and no reasonable person can say that the impugned decision to grant Stage – I forest clearance and revised environmental clearance stood vitiated on account of non-application of mind by MoEF. On the contrary, the facts indicate that the MoEF has been diligent. That, MoEF has taken requisite care and caution to protect the environment and in the circumstances, we uphold the stage-I forest clearance and the revised environmental clearance granted by MoEF.

27. Before concluding, we would like to refer to our order dated 12.4.2010 which recites agreed conditions between the parties which conditions are imposed by this Court in addition to the conditions laid down by MoEF. These agreed conditions incorporated in our order dated 12.4.2010 are in terms of our judgment in *T.N. Godavarman Thirumulpad v. Union of India* [(2006) 1 SCC 1] with regard to *commercial exploitability* which even according to SAC was not considered by MoEF at the time of granting revised environmental clearance on 19.4.2010 or at the time of granting forest clearance on 22.4.2010. We reproduce our order dated 12.4.2010, which reads as under:

“Heard both sides. Learned Attorney General for India stated that the Ministry of Environment & Forests will take a decision under the Forest Conservation Act and shall consider granting permission subject to the following conditions :

1. The applicant shall deposit a sum of Rs.55 crores towards five times of the normal NPV (as recommended by the CEC) with interest @ 9% per annum from 1st April, 2007, till the date of payment. Such payment shall be made in totality in one instalment within 4 weeks from the date of the order.

2. An SPV shall be set up under the Chairmanship

- A of the Chief Secretary, Meghalaya with the Principal Chief Conservator of Forests, Meghalaya, Tribal Secretary, Meghalaya, Regional Chief Conservator of Forests, MoEF at Shillong and one reputed NGO (to be nominated by the MoEF) as Members. The
- B SPV will be set up within 4 weeks.
3. The User Agency will deposit with the SPV a sum of Rs.90/- per tonne of the limestone mined from the date on which mining commenced within 4 weeks of the SPV being constituted.
- C 4. The SPV shall follow the principles and procedure presently applied for utilization of CAMPA money. The account will be audited by the Accountant General, Meghalaya. The money will be
- D kept in interest bearing account with a Nationalized Bank. The Accountant General and the SPV shall file an Annual Report before this Hon'ble Court detailing all the work done by it in relation to the welfare projects mandated upon it including the
- E development of health, education, economy, irrigation and agriculture in the project area of 50 kms. solely for the local community and welfare of Tribals.
- F 5. The User Agency will comply with all the conditions imposed on it earlier as well as further recommendations made by the Committee constituted by the MoEF under the order dated 30th march, 2010, including, in particular, the following :
- G (a) It shall prepare a detailed Catchment Area Treatment Plan.
- (b) It shall explore the use of surface miner technology.
- H (c) It shall monitor ambient area quality as per

New National Ambient Air Quality Standards. A

(d) It shall take steps to construct a Sewage Treatment Plant and Effluent Treatment Plant.

(e) It shall discontinue any agreement for procuring limestone on the basis of disorganized and unscientific and ecologically unsustainable mining in the area. B

(f) It shall prepare a comprehensive forest rehabilitation and conservation plan covering the project as well as the surrounding area. C

(g) It shall prepare a comprehensive Biodiversity Management Plan to mitigate the possible impacts of mining on the surrounding forest and wildlife. D

(h) It shall maintain a strip of at least 100 meter of forest area on the boundary of mining area as a green belt.

6. The MoEF shall take a final decision under the Forest Conservation Act, 1980 for the revised environmental clearance for diversion of 116 hectares of forest land, taking into consideration all the conditions stipulated hereinabove and it may impose such further conditions as it may deem proper. E

List on 26.04.2010 at 2.00 p.m. F

28. This order indicates the benefit which will accrue to the natives and residents of the Nongtraï Village. The site covers 100 hectare required for limestone mining. The Village Durbar seeks to exploit it on scientific lines. The minutes of the meeting of the Village Durbar and the submissions filed by the Durbar indicate the exercise of the rights by the tribals and the natives of Nongtraï Village seeking economic development within the parameters of the 1980 Act and the 1986 Act. G

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A 29. At the request of the learned counsel for SAC, we wish  
to state that none of the observations made hereinabove in the  
context of the nature of the land (the extent of the lands owned  
by the community and by private persons) shall be taken into  
account by the competent court in which title dispute is pending  
B today.

(d) Summary

30. Time has come for us to apply the constitutional  
“doctrine of proportionality” to the matters concerning  
C environment as a part of the process of judicial review  
in contradistinction to merit review. It cannot be gainsaid  
that utilization of the environment and its natural  
resources has to be in a way that is consistent with  
principles of sustainable development and  
D intergenerational equity, but balancing of these equities  
may entail policy choices. In the circumstances, barring  
exceptions, decisions relating to utilization of natural  
resources have to be tested on the anvil of the well-  
recognized principles of judicial review. Have all the  
E relevant factors been taken into account? Have any  
extraneous factors influenced the decision? Is the  
decision strictly in accordance with the legislative policy  
underlying the law (if any) that governs the field? Is the  
decision consistent with the principles of sustainable  
F development in the sense that has the decision-maker  
taken into account the said principle and, on the basis  
of relevant considerations, arrived at a balanced  
decision? Thus, the court should review the decision-  
making process to ensure that the decision of MoEF is  
G fair and fully informed, based on the correct principles,  
and free from any bias or restraint. Once this is ensured,  
then the doctrine of “margin of appreciation” in favour of  
the decision-maker would come into play. Our above view  
is further strengthened by the decision of the Court of  
H Appeal in the case of R v. Chester City Council reported

in (2011) 1 All ER 476 (paras 14 to 16).

31. Accordingly, this matter stands disposed of keeping in mind various facets of the word "environment", the inputs provided by the Village Durbar of Nongtraï (including their understanding of the word "forest" and the balance between environment and economic sustainability), their participation in the decision-making process, the topography and connectivity of the site to Shillong, the letter dated 11.5.2007 of the Principal Chief Conservator of Forests and the report of Shri B.N. Jha dated 5.4.2010 (HPC) (each one of which refers to economic welfare of the tribals of Village Nongtraï), the polluter pays principle and the intergenerational equity (including the history of limestone mining in the area from 1858 and the prevalent social and customary rights of the natives and tribals). The word "development" is a relative term. One cannot assume that the tribals are not aware of principles of conservation of forest. In the present case, we are satisfied that limestone mining has been going on for centuries in the area and that it is an activity which is intertwined with the culture and the unique land holding and tenure system of the Nongtraï Village. On the facts of this case, we are satisfied with due diligence exercise undertaken by MoEF in the matter of forest diversion. Thus, our order herein is confined to the facts of this case.

### Conclusion

32. Accordingly, we see no reason to interfere with the decision of MoEF granting site clearance dated 18.6.1999, EIA clearance dated 9.8.2001 read with revised environmental clearance dated 19.4.2010 and Stage-I forest clearance dated 22.4.2010. Accordingly, I.A. No. 1868 of 2007 preferred by M/s. Lafarge stands allowed with no order as to costs. Consequently, I.A. No. 2937 of 2010 preferred by SAC is

A dismissed. The interim order passed by this Court on 5.2.2010 shall also stand vacated. All other I.As. shall stand disposed of.

### Part II

#### **B Guidelines to be followed in future cases**

(i) As stated in our order hereinabove, the words “environment” and “sustainable development” have various facets. At times in respect of a few of these facets data is not available. Care for environment is an ongoing process. Time has come for this Court to declare and we hereby declare that the National Forest Policy, 1988 which lays down far-reaching principles must necessarily govern the grant of permissions under Section 2 of the Forest (Conservation) Act, 1980 as the same provides the road map to ecological protection and improvement under the Environment (Protection) Act, 1986. The principles/ guidelines mentioned in the National Forest Policy, 1988 should be read as part of the provisions of the Environment (Protection) Act, 1986 read together with the Forest (Conservation) Act, 1980. This direction is required to be given because there is no machinery even today established for implementation of the said National Forest Policy, 1988 read with the Forest (Conservation) Act, 1980. Section 3 of the Environment (Protection) Act, 1986 confers a power coupled with duty and, thus, it is incumbent on the Central Government, as hereinafter indicated, to appoint an Appropriate Authority, preferably in the form of Regulator, at the State and at the Centre level for ensuring implementation of the National Forest Policy, 1988. The difference between a regulator and a court must be kept in mind. The court / tribunal is basically an authority

which reacts to a given situation brought to its notice  
 whereas a regulator is a pro-active body with the  
 power conferred upon it to frame statutory Rules  
 and Regulations. The Regulatory mechanism  
 warrants open discussion, public participation,  
 circulation of the Draft Paper inviting suggestions.  
 The basic objectives of the National Forest Policy,  
 1988 include positive and pro-active steps to be  
 taken. These include maintenance of environmental  
 stability through preservation, restoration of  
 ecological balance that has been adversely  
 disturbed by serious depletion of forest,  
 conservation of natural heritage of the country by  
 preserving the remaining natural forests with the  
 vast variety of flora and fauna, checking soil erosion  
 and denudation in the catchment areas, checking  
 the extension of sand-dunes, increasing the forest/  
 tree cover in the country and encouraging efficient  
 utilization of forest produce and maximizing  
 substitution of wood. Thus, we are of the view  
 that under Section 3(3) of the Environment  
 (Protection) Act, 1986, the Central Government  
 should appoint a National Regulator for  
 appraising projects, enforcing environmental  
 conditions for approvals and to impose  
 penalties on polluters. There is one more reason  
 for having a regulatory mechanism in place.  
 Identification of an area as forest area is solely  
 based on the Declaration to be filed by the User  
 Agency (project proponent). The project proponent  
 under the existing dispensation is required to  
 undertake EIA by an expert body/ institution. In many  
 cases, the court is not made aware of the terms of  
 reference. In several cases, the court is not made  
 aware of the study area undertaken by the expert  
 body. Consequently, the MoEF/ State Government  
 acts on the report (Rapid EIA) undertaken by the

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- A Institutions who though accredited submit answers according to the Terms of Reference propounded by the project proponent. We do not wish to cast any doubt on the credibility of these Institutions. However, at times the court is faced with conflicting reports. Similarly, the government is also faced with a *fait accompli* kind situation which in the ultimate analysis leads to grant of ex facto clearance. To obviate these difficulties, we are of the view that a regulatory mechanism should be put in place and till the time such mechanism is put in place, the MoEF should prepare a Panel of Accredited Institutions from which alone the project proponent should obtain the Rapid EIA and that too on the Terms of Reference to be formulated by the MoEF.
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- C
- D (ii) In all future cases, the User Agency (project proponents) shall comply with the Office Memorandum dated 26.4.2011 issued by the MoEF which requires that all mining projects involving forests and for such non-mining projects which involve more than 40 hectares of forests, the project proponent shall submit the documents which have been enumerated in the said Memorandum.
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- F (iii) If the project proponent makes a claim regarding status of the land being non-forest and if there is any doubt the site shall be inspected by the State Forest Department along with the Regional Office of MoEF to ascertain the status of forests, based on which the certificate in this regard be issued. In all such cases, it would be desirable for the representative of State Forest Department to assist the Expert Appraisal Committee.
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- H (iv) At present, there are six regional offices in the country. This may be expanded to at least ten. At each regional office there may be a Standing Site

Inspection Committee which will take up the work of ascertaining the position of the land (namely whether it is forest land or not). In each Committee there may be one non-official member who is an expert in forestry. If it is found that forest land is involved, then forest clearance will have to be applied for first.

(v) Increase in the number of Regional Offices of the Ministry from six presently located at Shillong, Bhubaneswar, Lucknow, Chandigarh, Bhopal and Bangalore to at least ten by opening at least four new Regional Offices at the locations to be decided in consultation with the State/UT Governments to facilitate more frequent inspections and in-depth scrutiny and appraisal of the proposals.

(vi) Constitution of Regional Empowered Committee, under the Chairmanship of the concerned Chief Conservator of Forests (Central) and having Conservator of Forests (Central) and three non-official members to be selected from the eminent experts in forestry and allied disciplines as its members, at each of the Regional Offices of the MoEF, to facilitate detailed/in-depth scrutiny of the proposals involving diversion of forest area more than 5 hectares and up to 40 hectares and all proposals relating to mining and encroachments up to 40 hectares.

(vii) Creation and regular updating of a GIS based decision support database, tentatively containing *inter-alia* the district-wise details of the location and boundary of (i) each plot of land that may be defined as forest for the purpose of the Forest (Conservation) Act, 1980; (ii) the core, buffer and eco-sensitive zone of the protected areas constituted as per the provisions of the Wildlife

- A (Protection) Act, 1972; (iii) the important migratory corridors for wildlife; and (iv) the forest land diverted for non-forest purpose in the past in the district. The Survey of India toposheets in digital format, the forest cover maps prepared by the Forest Survey of India in preparation of the successive State of Forest Reports and the conditions stipulated in the approvals accorded under the Forest (Conservations) Act, 1980 for each case of diversion of forest land in the district will also be part of the proposed decision support database.
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- C (viii) Orders to implement these may, after getting necessary approvals, be issued expeditiously.
- D (ix) The Office Memorandum dated 26.4.2011 is in continuation of an earlier Office Memorandum dated 31.03.2011. This earlier O.M. clearly delineates the order of priority required to be followed while seeking Environmental Clearance under the Environment Impact Assessment Notification 2006. It provides that in cases where environmental clearance is required for a project on forest land, the forest clearance shall be obtained before the grant of the environment clearance.
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- F (x) In addition to the above, an Office Memorandum dated 26.04.2011 on Corporate Environmental Responsibility has also been issued by the MoEF. This O.M. lays down the need for PSUs and other Corporate entities to evolve a Corporate Environment Policy of their own to ensure greater compliance with the environmental and forestry clearance granted to them.
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- H (xi) All minutes of proceedings before the Forest Advisory Committee in respect of the Forest (Conservation) Act, 1980 as well as the minutes of

- proceedings of the Expert Appraisal Committee in respect of the Environment (Protection) Act, 1986 are regularly uploaded on the Ministry's website even before the final approval/decision of the Ministry for Environment and Forests is obtained. This has been done to ensure public accountability. This also includes environmental clearances given under the EIA Notification of 2006 issued under the Environment (Protection) Act, 1986. Henceforth, in addition to the above, all forest clearances given under the Forest (Conservation) Act, 1980 may now be uploaded on the Ministry's website. A B C
- (xii) Completion of the exercise undertaken by each State/UT Govt. in compliance of this Court's order dated 12.12.1996 wherein *inter-alia* each State/UT Government was directed to constitute an Expert Committee to identify the areas which are "forests" irrespective of whether they are so notified, recognized or classified under any law, and irrespective of the land of such "forest" and the areas which were earlier "forests" but stand degraded, denuded and cleared, culminating in preparation of Geo-referenced district forest-maps containing the details of the location and boundary of each plot of land that may be defined as "forest" for the purpose of the Forest (Conservation) Act, 1980. D E F
- (xiii) Incorporating appropriate safeguards in the Environment Clearance process to eliminate chance of the grant of Environment Clearance to projects involving diversion of forest land by considering such forest land as non-forest, a flow chart depicting, the tentative nature and manner of incorporating the proposed safeguards, to be finalized after consultation with the State/ UT Governments. G H

A (xiv) The public consultation or public hearing as it is commonly known, is a mandatory requirement of the environment clearance process and provides an effective forum for any person aggrieved by any aspect of any project to register and seek redressal of his/her grievances;

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(xv) The MoEF will prepare a comprehensive policy for inspection, verification and monitoring and the overall procedure relating to the grant of forest clearances and identification of forests in consultation with the States (given that forests fall under entry 17A of the Concurrent List).

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33. Part II of our order gives guidelines to be followed by the Central Government, State Government and the various authorities under the Forest (Conservation) Act, 1980 and the Environment (Protection) Act, 1986. These guidelines are to be implemented in all future cases. These guidelines are required to be given so that *fait accompli* situations do not recur. We have issued these guidelines in the light of our experience in the last couple of years. These guidelines will operate in all future cases of environmental and forest clearances till a regulatory mechanism is put in place. On the implementation of these Guidelines, MoEF will file its compliance report within six months.

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E R.P. Interlocutory applications disposed of.

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**T.N. Godavarman Thirumulpad vs Union Of India & Ors on 12 March, 2014**

Author: S S Nijjar

**Bench: A.K. Patnaik, Surinder Singh Nijjar, Fakkir Mohamed Kalifulla**

REPORTABLE

IN THE SUPREME COURT OF INDIA  
CIVIL ORIGINAL JURISDICTION

I.A. NOS. 2143 WITH 2283, 3088, 3461, 3479, 3693 IN 2143, 827, 1122,  
1337, 1473 AND 1620 AND 1693 IN 1473 AND 3618

IN

WRIT PETITION (CIVIL) NO. 202 OF 1995

T.N. Godavarman Thirumulpad

...Petitioner(s)

VERSUS

Union Of India & ORS.

...Respondent(s)

J U D G M E N T

**SURINDER SINGH NIJJAR, J.**

1. This order will dispose of the I. As. noted above.

2. Writ Petition (C) No. 202 of 1995 was filed as a PIL under [Article 32](#) of the Constitution of India for and on behalf of the people living in and around the Nilgiri Forest on the Western Ghats. The petitioner sought to challenge the legality and the validity of the actions of the State of Tamil Nadu, the Collector, Nilgiris District and the District Forest Officer, Gudalur and the Timber Committee represented through the Collector, Nilgiris (Respondent Nos. 2 to 5 respectively), in destroying the tropical rain forest in the Gudalur and Nilgiri areas in violation of the [Forest Act, 1927](#), [Forest \(Conservation\) Act, 1980](#) and Tamil Nadu Hill Stations Preservation of Trees Act and the [Environment \(Protection\) Act, 1986](#). This, according to the petitioner, has resulted in serious ecological imbalances affecting lives and livelihood of the people living in the State of Tamil Nadu.

3. The petitioner has highlighted that the respondents have in collusion with certain vested interests allowed trespassers to encroach and enter upon the forest land for the

purpose of felling trees and conversion of forest land into plantations. It was pointed out that the encroachers on the forest land have been indiscriminately cutting and removing valuable Rosewood trees, Teak trees and Ayni trees, which are immensely valuable and are found exclusively in the aforesaid forest. It was pointed out that loss of such trees would be permanent and irreparable to the present and future generations to come. The petitioner has clearly pleaded that the value attached to Rosewood and Teak wood has resulted in a mad rush by timber contractors in collusion with Government agencies, for making quick profits without any regard to the permanent damage and destruction caused to the rain forest and to the eco-system of the region. The petitioner also pointed out that cutting and removing of trees is not limited only to the mature trees. In their anxiety to make huge profits the entire forest areas are being cleared, by indiscriminate felling of trees. The petitioner also pointed out that the national policy adopted in the year 1952 provided for the protection and preservation of forests. The existence of large areas of land covered under forest is recognized as a valuable segment of the national heritage. The petitioner also pointed out that the protection from exploitation of forests, in particular natural forests, is imperative as such forests once destroyed can not be regenerated to their natural state. The petitioner has pleaded that the destruction of rain forests would adversely affect the environment, eco-system, the plants and animals living within the forests. This would result in such destruction, which would ultimately result in drastic changes in the environment and the quality of life of people living in and around the forests. The petitioner also highlighted that although the national policy has provided that 33% of the land mass of India shall be covered with forests, the present extent of the forest covered areas was below 15%. The natural rain forest cover was only around 5%. Such meager forest cover had led to the enactment of the [Forest \(Conservation\) Act, 1980](#). Statement of objects and reasons of the aforesaid Act is as follows:-

(1) Deforestation causes ecological imbalance and leads to environmental deterioration. Deforestation had been taking place on a large scale in the country and it had caused widespread concern.

(2) With a view to checking further deforestation, the President promulgated on the 25th October, 1980, the Forest (Conservation) Ordinance, 1980. The Ordinance made the prior approval of the Central government necessary for de-reservation of reserved forests and for use of forest-land for non-forest purposes. The Ordinance also provided for the constitution of an advisory committee to advise the Central Government with regard to grant of such approval.

4. Apart from pointing out the provisions of the aforesaid Act, the petitioner also protested that the population living in the areas mentioned above is being deprived of the right to live in a clean and pollution free environment and, therefore, their fundamental rights protected under [Article 21](#) of the Constitution of India are being violated. The petitioner pointed out that the preservation and protection of forests is recognized as essential for maintaining a clean and pollution free environment. He further pointed out that the rain forests, which are found only in the southern part of the Western Ghats contain several rarest species of plants and animals and also the main source of water supply to the rivers flowing from the Ghats. The large scale denuding of

the green cover on the Western Ghats has resulted in shortage of water in the rivers and has adversely affected the people living on the water flowing from the rivers.

5. This apart, it was pointed out that forests are the main source of livelihood for a large number of people, who live within and around the forests. It was also pointed out that the rain forests are the source of life and the plants and animals contained within it are useful for enhanced quality of life enjoyed by mankind. The bio-diversity of the rain forest, it was emphasized, has to be preserved for the welfare and well being of future generations of mankind. The petitioner was constrained to move this Court in the present writ petition being so perturbed by the large scale destruction of the forests and other natural resources found in the three States namely Tamil Nadu, Karnataka and Kerala. It was lamented that all the protective legislation enacted by Union of India are nothing more than statements in the statute books, in as much as the forest land and its wealth are being plundered everyday. He pointed out that it can no longer be denied that well organized rackets exist between the forests authorities, timber contractors and the local authorities which are facilitating the cutting and removal of trees and timber in gross violation of Forests Conservation Act. The petitioner has given details of the manner in which individuals, contractors and firms were clandestinely permitted to trespass and plunder the forest area for the invaluable Rosewood trees. It was stated that each tree commands a price of Rs.15 to 20 Lakhs in the market. When all the efforts of all the concerned individuals, NGOs and other social activists failed, the petitioners were constrained to knock on the doors of this Court by way of writ petition under [Article 32](#) of the Constitution of India. The prayers made in the aforesaid writ petitions are as under:-

(a) issue an appropriate writ, order or direction directing the State of Tamil Nadu to take steps to stop all felling and clearing activities in the forests of Nilgiris District in the State of Tamil Nadu.

(b) issue an appropriate writ, order or direction directing the respondents 2 to 5 to stop conversion of forest lands to plantation or other purposes.

(c) issue an appropriate writ, or direction directing respondents 2 to 5 to take steps to remove all unauthorised and illegal occupants of forest land in the Nilgiri District of Tamil Nadu.

(d) issue an appropriate writ, order direction directing respondent 2 to 5 to stop the transport and removal of timber from the forests in the Nilgiri District.

(e) issue an appropriate writ, order direction to appoint a committee for assessing the damage caused to the forest in the western ghats in the State of Tamil Nadu, Karnataka and Kerala and in particular the hills of the Nilgiris mountain.

(f) Pass such other and further orders.

6. Understandably disturbed by the horrendous fact situation narrated in the writ petition, this Court issued notice to not only the concerned States but also to other States. Thereafter, the writ petition is pending.

7. In this writ petition, Interlocutory Applications have been filed seeking either general or specific directions in relation to various issues concerning the protection and improvement of environment. The subjects covered by Interlocutory Applications at various stages ranged from protection of existing forest cover; improvement in the forest cover; protection of lakes, rivers and wild life; and protection of flora and fauna and the ecological system of the country. This Court has been continuously monitoring the enforcement of the protected measures directed to be taken by the various Central/State authorities on the basis of the recommendations made by the relevant expert bodies.

8. On 29th October, 2002, this Court considered I.A. No. 566, in which this Court had taken suo-moto notice on the Statement of Mr. K.N. Rawal, Additional Solicitor General to the effect that the amount collected by various States from the user agencies to whom permissions were granted for using forest land for non-forest purposes, was not being utilized for such compensatory afforestation. It was pointed out that moneys paid by user agencies to State Governments for compensatory afforestation were utilized for such afforestation only to the extent of 63% of the funds actually realized by the State Governments. The shortfall even at that time was nearly Rs. 200 crores. This Court, therefore, recorded that on the next date, it would consider as to how this shortfall was to be made good. It was directed that the Ministry of Environment and Forest should formulate a Scheme whereby, whenever any permission is granted for change of user of forest land for non-forest purposes, and one of the conditions of the permission is that, there should be compensatory afforestation, then the responsibility for the same is that of the user-agency and should be required to set apart a sum of money for doing the needful. It was further provided that in such a case, the State Governments concerned will have to provide or make available land on which forestation can take place. This land may have to be made available either at the expense of the user-agency or of the State Governments, as the State Governments may decide. It was further directed that the scheme which is framed by the MoEF should be such as to ensure that afforestation takes place as per the permissions which are granted and there should be no shortfall in respect thereto.

9. It was also brought to the notice of this Court on the basis of the statement placed on record in I.A.Nos.419 and 420 that the funds accumulated for diverting forest area for non-forest purposes, compensatory afforestation, although actually received, had not been appropriately utilized. The CEC examined this question. The report, inter alia, provided that there should be a change in the manner in which the funds are released by the State Governments relating to Compensatory Afforestation. The CEC recommended that it would be desirable to create a separate fund for Compensatory Afforestation, wherein all the money received from the user-agencies are to be deposited and subsequently released directly to the implementing agencies as and when required. The funds received from a particular State would be utilized in the same State.

10. There was a consensus among the States and the Union Territories that such a fund be created. It was also recommended that the funds should not be a part of general revenues of the Union or all the States or of the Consolidated Funds of India. The CEC Report also contemplated the involvement of user-agencies for Compensatory Afforestation.

11. The CEC in its report dated 5th September, 2002 made eight recommendations which were accepted by the Union of India in an affidavit filed in response to the aforesaid report. The Union of India further stated, in the affidavit, that major institutional reorganization of the present mechanism has to be undertaken. It was proposed that comprehensive rules will be framed which will inter alia relate to the procedure and compensation. It was also proposed that there shall be a body for the management of the Compensatory Afforestation Fund (CAF). The suggestion of the Union of India was that CAF would be composed of a Director General of Forest; Special Secretary, who would be the ex-officio Chairman and Inspector General of Forest, who would be the ex-officio Member Secretary. The report of the CEC was accepted and this Court made the following recommendations :-

“(a) The Union of India shall within eight weeks from today frame comprehensive rules with regard to the constitution of a body and management of the Compensatory Afforestation funds in concurrence with the Central Empowered Committee. These rules shall be filed in this Court within eight weeks from today. Necessary notification constituting this body will be issued simultaneously.

(b) Compensatory Afforestation Funds which have not yet been realised as well as the unspent funds already realised by the States shall be transferred to the said body within six months of its constitution by the respective states and the user- agencies.

(c) In addition to above, while according transfer under [Forest Conservation Act, 1980](#) for change in user-agency from all non- forest purposes, the user agency shall also pay into the said fund the net value of the forest land diverted for non-forest purposes. The present value is to be recovered at the rate of Rs. 5.80 lakhs per hectare to Rs. 9.20 lakhs per hectare of forest land depending upon the quantity and density of the land in question converted for non-forest use. This will be subject to upward revision by the Ministry of Environment & Forests in consultation with Central Empowered Committee as and when necessary.

(d) A 'Compensatory Afforestation Fund' shall be created in which all the monies received from the user-agencies towards compensatory afforestation, additional compensatory afforestation, penal compensatory afforestation, net present value of forest land, Catchment Area Treatment Plan Funds, etc. shall be deposited. The rules, procedure and composition of the body for management of the Compensatory Afforestation Fund shall be finalised by the Ministry of Environment & Forests with the concurrence of Central Empowered Committee within one month.

(e) The funds received from the user-agencies in cases where forest land diverted falls within Protected Areas i.e. area notified under [Section 18, 26A](#) or 35 of the [Wild Life](#)

(Protection) Act, 1972, for undertaking activities related to protection of bio-diversity, wildlife, etc., shall also be deposited in this Fund. Such monies shall be used exclusively for undertaking protection and conservation activities in protected areas of the respective States/Union Territories.

(f) The amount received on account of compensatory afforestation but not spent or any balance amount lying with the States/Union Territories or any amount that is yet to be recovered from the use-agency shall also be deposited in this Fund.

(g) Besides artificial regeneration (plantations), the fund shall also be utilised for undertaking assisted natural regeneration, protection of forests and other related activities. For this purpose, site specific plans should be prepared and implemented in a time bound manner.

(h) The user agencies especially the large public sector undertaking such as Power Grid Corporation, N.T.P.C., etc. which frequently require forest land for their projects should also be involved in undertaking compensatory afforestation by establishing Special Purpose Vehicle. Whereas the private sector user agencies may be involved in monitoring and most importantly, in protection of compensatory afforestation. Necessary procedure for this purpose would be laid down by the Ministry of Environment & Forests with the concurrence of the Central Empowered Committee.

(i) Plantations must use local and indigenous species since exotics have long term negative impacts on the environment.

(j) An independent system of concurrent monitoring and evaluation shall be evolved and implemented through the Compensatory Afforestation Fund to ensure effective and proper utilisation of funds.”

12. Keeping in view the aforesaid representation, the MoEF issued a notification on 23rd April, 2004 constituting a “Compensatory Afforestation Funds Management and Planning Authority (CAMPA)” as an authority under [Section 3\(3\)](#) of the Environment (Protection) Act, 1986. This notification provides that there shall be a governing body. Minister of Environment and Forests, Government of India is the Chairman. Apart from the members who are taken from the level of Secretary, MoEF to the level of Inspector General of Forest, the governing body also includes an eminent professional ecologist, not being from the Central and the State Government for a period of 2 years of time, but for two consecutive terms. The notification also provides for an executive body having seven members with Director General of Forests and Special Secretary, MoEF, Government of India as the Chairman. The notification elaborately provides the power and functions of the Governing Body; power and functions of the Executive Body; Management of the Funds; Disbursement of funds; monitoring and evaluation of works. It also provides that every State or the Union Territory shall have a Steering Committee and a Management Committee. It also provides the powers and functions of the State Steering Committee and the State Management Committee. The jurisdiction of the CAMPA is throughout India. Unfortunately, the aforesaid notification has only remained on paper and it has not been made functional till date by the MoEF.

13. This Court again examined the entire issue in relation to the decline in environment quality due to increasing pollution, loss of vegetation cover and biological diversity, excessive concentrations of harmful chemicals in the ambient atmosphere and in food chains, growing risk of environmental accidents, and threats to life support system, for the protection of which the [Environment \(Protection\) Act, 1986](#) had been enacted. A comprehensive judgment was given in I.A.No.826 in I.A.No.566 in W.P. (C) No.202 1995 on 26th September, 2005. The Court noticed the statutory provisions contained in the [Forest Conservation Act, 1980](#), [Environment \(Protection\) Act, 1986](#), and [Water Prevention and Control of Pollution Act, 1974](#). It also noticed that large sums of money which had been payable by user-agencies in cases where approval had been granted for diverting forest land that stipulated for compensatory afforestation were not being used. It is further noticed by this Court that certain rates had been fixed per hectare of forest land depending on the quality and density of the land in question converted for non-forestry use. After detailed examination of the issues related to the payment of Net Present Value (NPV) and Compensatory Afforestation Fund, the Court upheld the constitutional validity of the payment to CAMPA under the notification dated 23rd April, 2004. It was held that the payment of NPV is for the protection of environment. It was further held that the natural resources are not the ownership of any one State or individual, public at large is its beneficiary. Therefore, the contention that the amount of NPV shall be made over to the State Government was rejected.

14. The Court also constituted a Committee of Experts (Kanchan Chopra Committee) to formulate a practical methodology for determining NPV payable for various categories of forest and the project which deserves to be exempted from payment of NPV.

15. As noticed earlier, huge amount of money received from the user-

agencies towards the NPV, Compensatory Afforestation etc. were lying with various authorities without any effective control and monitoring as the CAMPA notification had not been made operational by the MoEF.

16. The Court reiterated the ratio of *M.C.Mehta Vs. Kamal Nath & Ors.*[1] that it is the duty of the State to preserve the natural resources in their pristine purity. The Doctrine of Public Trust was re-enforced. It was emphasized that the Doctrine of Public Trust is founded on the idea that certain common properties such as rivers, seashore, forest and the air were held by the Government trusteeship for the free and unimpeded use of the general public. It was reiterated that our legal system based on English Common Law which includes the Doctrine of Public Trust as part of its jurisprudence. The State is the trustee of all natural resources which are by nature meant for public use and enjoyment.

17. Therefore, this Court recognized the need to take all precautionary measures when forests land are sought to be diverted for non-forestry use, the creation of CAF was approved. In coming to the aforesaid conclusions, the Court took into consideration intergenerational equity. The State was required to undertake short term as well as long term measures for the protection of the environment.

18. As noticed earlier, this Court by order dated 28th March, 2008 had fixed the rates at which NPV is payable for the non-forestry uses of forest land falling in different Eco-classes and density sub-classes. The rates vary from Rs.10.43 lakh per hectare to Rs.4.38 lakh per hectare. For the use of forest land falling in the National Parks and Wildlife Sanctuaries, the NPV is payable at 10 times and 5 times respectively of the normal rates of NPV. By order dated 9th May, 2008, this Court has exempted the payment of NPV for non-forestry use of forest land (a) upto one hectare for construction of schools, hospitals, village tanks, laying of underground pipe lines and electricity distribution lines upto 22 KV, (b) for relocation of villages from National Parks/Wildlife Sanctuaries, (c) for collection of boulders/silts from river beds, (d) for laying of underground optical fibre cables and (e) for pre-1980 regularization of encroachments and has granted 50% exemption for underground mining projects.

19. Although huge sums of money had been received from user-agencies but there were no effective checks and balances for its utilization. Therefore, by order dated 5th May, 2006, this Court accepted a suggestion made by the CEC submitted in I.A. No.1473 for constitution of an Ad-hoc body till CAMPA becomes operational. All State Governments/Union Territories were directed to account for and pay the amount collected with effect from 30th October, 2002 in conformity with the order dated 29th October, 2002 to the aforesaid Ad-hoc body (Ad-hoc CAMPA). The following two suggestions made by the CEC were accepted:- “(a) ensure that all the monies recovered on behalf of the ‘CAMPA’ and which are presently lying with the various officials of the State Government are transferred to the bank account(s) to be operated by this body.

(b) get audited all the monies received from the user agencies on behalf of the ‘CAMPA’ and the income earned thereon by the various State Government officials. The auditors may be appointed by the CAG. The audit may also examine whether proper financial procedure has been following in investing the funds.”

20. The Chief Secretaries of the State Governments/Administrators of Union Territories were directed to cooperate with the Ad-hoc CAMPA as well as the Comptroller and Auditor General. The Ad-hoc CAMPA under the Chairmanship of the Director General of Forests and Special Secretary, MoEF and has (a) Inspector General of Forest (FC), MoEF (b) representative of Comptroller and Auditor General of India (c) nominee of the Chairman of the CEC as its Members. In accordance with the directions of this Court, the money already received as well as the money being received towards the NPV etc. have been transferred to the Ad-hoc CAMPA and invested in the fixed deposit with National Banks. The money lying with the Ad-hoc CAMPA towards the NPV etc. received from the States (principal amount) and the interest received on the fixed deposit (cumulative interest) has substantially increased over a period of time and is presently about Rs. 30,000 crores.

21. On 2nd April, 2009, MoEF has issued “the guidelines of State Compensatory Afforestation Fund Management and Planning Authority (State CAMPA)”. These guidelines have been prepared on the basis of the discussions held in the meeting of the Chief Secretaries that the objective to assist the States/Union Territories for setting up the requisite mechanism in consonance with the directions issued from time to time by

this Court. The guidelines are general in nature and can be moulded keeping in view the specific needs of any particular State/Union Territory. The State CAMPA has been set up as an instrument to accelerate activities for preservation of natural forests, management of wildlife, infrastructure development in the sector and other allied works. By order dated 10th July, 2009 this Court directed that the guidelines and structure of the State CAMPA as prepared by MoEF may be notified and implemented. The Court also permitted the Ad-hoc CAMPA to release about Rs.1000 crore per year for the next five years, in proportion of 10% of the principal amount pertaining to the respective States/Union Territories, inter alia, subject to the condition that the State Accountant General shall carry out, on annual basis, the audit of the expenditure incurred every year out of the State CAMPA funds. It was further directed that an amount upto 5% of the amount released to the State CAMPA, i.e., upto Rs.50 crore per annum, may also be released and utilized by the National CAMPA Advisory Council constituted under the Chairmanship of Ministry of Environment and Forest for monitoring and evaluation and for the implementation of the various schemes as given in the State CAMPA guidelines.

22. The State CAMPA has been constituted for each State/Union Territory. It has a three-tier structure. The Executive Committee functions under the Chairmanship of the Principal Chief Conservator of Forests is responsible for the Annual Plan of Operation (APO) for various works planned to be undertaken during each year. The Steering Committee under the Chairmanship of Chief Secretary is responsible for approving the APO for each year. The Chief Minister is the Chairman of the Governing Body which is responsible for overall guidance and policy issues. The Ad-hoc CAMPA releases the funds to each of the State CAMPAs as per the approved APO. At present, a total sum of Rs.1000 crore is permitted to be released to the State per year. The State-wise accounts of the principal amounts and cumulative interest be maintained by the Ad-hoc CAMPA. The funds are not permitted to be utilized for any purpose other than those authorized by the Court. The administrative expenses of CAMPA are incurred by the CEC.

23. With the establishment of the Ad-hoc CAMPA, huge sums of money have accumulated which can be released to the State CAMPA for utilization, for protection and for the improvement of the national environment. Now the aforesaid applications have been filed by different States seeking release of some funds for completing the task of compulsory afforestation, as directed by this Court from time to time. The relief claimed in all the applications is almost identical. We shall make a reference to the averments made in I.A.No.3618 of 2013 for the purpose of deciding all the applications.

24. I.A. No. 3618 of 2013 in Writ Petition (C) No. 202 of 1995 has been filed by the State of Gujarat with the following prayer:- "i. To direct the Ad-hoc CAMPA to release minimum of 10% of principal amount deposited by the States/UTs with Ad-hoc CAMPA and the total amount accrued as interest on such deposits to the respective State/UT's including to the State of Gujarat without the ceiling of Rs.1,000 crore, in order to ensure effective and timely implementation of Compensatory Afforestation Scheme, Wildlife Conservation and other Forest conservation and Protection Measures as envisaged in the CAMPA guidelines;

ii. Pass any other directions deemed fit by the Hon'ble Court." Prayers made in other applications are similar, if not identical.

25. The aforesaid relief is claimed on the basis that the amount available with CAMPA is substantially higher than Rs.1,000/- crores, wherein the annual release from the Ad-hoc CAMPA has been restricted to Rs.1,000/- crores p.a. by the orders of this Court. It is further pointed out that only during the year 2009- 10, 10% of the principal amount, i.e., Rs.24.96 crores has been released by the Ad-hoc CAMPA to Gujarat State. During subsequent years, i.e., 2010-11 and 2011-12, the annual release from ad-hoc CAMPA to Gujarat State had come down from 10% to 8% and then to 7%, respectively. For the year 2012-13, the amount released is only 6.5% of the principal amount. It is also submitted by the learned counsel appearing for the State of Gujarat that at the time when these applications were filed in April, 2013, the total funds available with the Ad-hoc CAMPA were as follows:-

- a. The Principal amount at the disposal of ad-hoc CAMPA is around Rs.28000 crores.
- b. The accrued interest on it is of the order of over Rs.4,000 crores.
- c. The annual accrual of interest on the deposits is of the order of Rs. 2200 crores.

26. Relying on the aforesaid facts and figures, it is submitted by the learned counsel for all the States that the funds released to the State CAMPAs are only a fraction of the interest accruing in the Ad-hoc CAMPA accounts. It is further submitted that the value of the compensatory levies, which have been obtained against the diversion of forest land over a period of many years has eroded substantially. This is added to by the continuous inflationary trends, which has made the task of undertaking Compensatory Afforestation very cost intensive. Therefore, it is imperative that the funds are made available to State CAMPAs in a substantial ratio to the amounts collected from the State/Union Territories. To illustrate this dilemma, the applicant has relied on a chart, which is as under:-

(Rs. In Crores)	Year	Amount required	Amount released	Shortfall	as per APO
Gujarat State	CAMPA	1	2	3	4
		2009-10	43.16	24.96	18.20
		2010-11	43.78	29.16	14.62
		2011-12	55.08	26.30	28.78
		2012-13	40.61	32.41	8.20
	Total	182.63	112.83	69.80	

27. Relying on the aforesaid chart, it is submitted that due to release of insufficient CAMPA funds, all the NPV Projects approved by the Steering Committee could not be started. In the year 2009-10, out of 24 NPV Projects only 4 projects could be implemented. In the year 2011-12, out of 14 NPV Projects only 12 Projects could be implemented. In the year 2012-13, out of 15 NPV Projects only 14 Projects could be implemented. It is pointed out that even in relation to the projects, which have been implemented; all the activities in support of the projects could not be taken up due to want of funds. This has resulted in an overall shortfall in the Forest and Wildlife Conservation, which is the prime objective of CAMPA funds. Therefore, several State/Union Territory Governments including State of Gujarat have requested the

Ministry of Environment & Forests to increase the annual release from the Ad-hoc CAMPA funds to a minimum 10% of the principal amount available with Ad-hoc CAMPA, without any ceiling of about Rs.1,000/- crores per annum. However, since no response was received from the MoEF, the State of Gujarat and other applicant States/Union Governments were constrained to file the IAs.

28. These applications came up for hearing on 26th August, 2013, 20th September, 2013 and 4th October, 2013. Upon examination of the entire matter, a direction was issued on 9th December, 2013 to the Central Empowered Committee (hereinafter referred to as "CEC") to submit its report on the applications and the prayers made by the applicant. CEC has submitted its report dated 6th January, 2014.

29. In response to the application filed by the State of Gujarat, this Court by order dated 9th December, 2013 had directed the CEC to submit its report.

30. In its report dated 6th January, 2014, CEC has recommended that the prayer made in the application ought to be accepted. The relevant extract of the CEC Report is as under: "11. The CEC, in the above background, recommends that this Hon'ble Court may in partial modification of its earlier order dated 10th July, 2009 consider permitting the Ad-hoc CAMPA to annually release from the financial year 2014-2015 onwards, out of the interest received / receivable by it, an amount equal to 10% of the principle (sic) amount lying to the credit of each of the State / UT at beginning of the year to the respective State CAMPA subject to the following conditions:

i) the funds will be released by utilizing interest received / being received by the Ad-hoc CAMPA. The principle (sic) amount lying with the Ad-hoc CAMPA will not be released or transferred or utilized;

ii) the funds will be released after receipt of the "Annual Plan of Operation" containing details of the afforestation and other works for the conservation, protection and development of the forests and wildlife and approved by the Steering Committee of the respective State CAMPA;

iii) the Ad-hoc CAMPA will be at liberty to release the funds to the State CAMPAs in one or more installments after considering the utilization of funds earlier released;

iv) the National CAMPA Advisory Council (NCAC) will finalize and issue guidelines before 31st March, 2014 regarding the activities for which the use of the CAMPA funds will not be permissible (such as foreign study tours) and the activities for which a ceiling on the use of the CAMPA funds will apply (such as purchase of vehicles and construction of residential / office buildings). These guidelines will be strictly followed by the State CAMPA;

v) the State CAMPAs and the MoEF will expeditiously take necessary follow up action on the observations made in the "Report of the Comptroller and Auditor General of India on Compensatory Afforestation in India".

vi) the back log of Compensatory Afforestation, if any, will be tackled on priority basis and for which adequate provision will be made in the Annual Plan of Operation (APO) by the respective State CAMPAs; and

vii) the annual release of funds to the National CAMPA Advisory Council (NCAC) will continue to be upto Rs. 50 crore and provided the amounts earlier released are found to have been substantial utilized.” The aforesaid recommendations have been given by the CEC after setting out the background in which the CAMPA was set up.

31. Mr. Salve learned Amicus Curiae on the basis of the record has submitted that on the directions issued by this Court about Rs.6000 crores are being received by CAMPA annually. This amount represents the total amount collected for compensatory afforestation fund (principal amount Rs.3000 crores annually) and approximately Rs.3000 crores by way of interest on fixed deposits annually. This is in addition to the accumulative principal amount which is already invested in fixed deposits. He submits that keeping in view the directions issued by this Court from time to time for ensuring afforestation it would be appropriate to accept the recommendation of the CEC. He submits that the scheme proposed by the CEC will gradually increase in the release of funds to the State/Union Territory over a period of time and on a sustainable basis. The learned Amicus Curiae has, however, suggested that certain other safeguards ought to be incorporated to ensure efficient management of the funds released. Upon consideration of the entire matter at length, we accept the recommendations made by the CEC reproduced above. We, however, modify the direction 11(iv) as under:- The National CAMPA Advisory Council (NCAC) will finalize and issue guidelines before 1st May, 2014 regarding the activities for which the use of the CAMPA funds will not be permissible (such as foreign study tours) and the activities for which a ceiling on the use of the CAMPA funds will apply (such as purchase of vehicles and construction of residential / office buildings).

These guidelines will be strictly followed by the State CAMPA. The same shall be treated as directions of this Court. The order dated 10th July, 2009 is modified accordingly.

32. The Ad-hoc CAMPA is permitted to release annual amount equal to 10% of the principal amount lying to the credit of each State/Union Territory, out of the interest receivable by it with effect from financial year 2014-2015 onwards. The release of the aforesaid funds shall be subjected to the conditions enumerated above.

33. It is further directed that no money out of the amounts available with Ad-hoc CAMPA will be transferred or utilized without the leave of this Court. It is further directed that the National CAMPA Advisory Council will file a Status Report within a period of three months regarding the monitoring and evaluation of the works being undertaken, by utilizing the funds released by CAMPA.

34. The Interlocutory Applications are disposed of with the aforesaid directions.

.....J.

[A.K.Patnaik] .....J.

[Surinder Singh Nijjar] .....J.

[Fakkir Mohamed Ibrahim Kalifulla] New Delhi;

March 12, 2014.

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[1] 1997 (1) SCC 388

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# In Re : T.N. Godavarman Thirumulpad vs Union Of India And Ors. on 31 January, 2024

**Author: Pamidighantam Sri Narasimha**

**Bench: Prashant Kumar Mishra, Pamidighantam Sri Narasimha, B.R. Gavai**

2024 INSC 78

REPORT

IN THE SUPREME COURT OF INDIA  
CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. 202/1995

IN RE: T.N. GODAVARMAN THIRUMULPAD

...PETITIONER

VERSUS

UNION OF INDIA AND ORS.

...RESPONDENT

JUDGMENT

P.C.

1. This judgment is in the context of institutionalisation and reconstitution of the Central Empowered Committee. 1 The CEC was originally directed to be constituted by an order of this Court dated 09.05.2002.2 Almost for a period of two decades, the CEC was functioning as an ad hoc body. We noticed that the present composition of the CEC also consisted of persons who are more than 75 years of age and some of whom are also residing outside India. We also noticed that much water had flown when the CEC 1 Hereinafter 'CEC'.

Jayant Kumar Arora Date: 2024.01.31 2 In IA No. 295 in WP(C) No. 202/1995 reported as T.N. Godavarman Thirumulpad v. Union 16:54:13 IST Reason:

of India, (2013) 8 SCC 198. Pursuant to the said direction, a notification dated 17.09.2002 was issued by the Central Government constituting the CEC as a statutory authority under Section 3(3) of the Environment (Protection) Act, 1986.

was initially constituted, inasmuch as, various enactments concerning environmental issues were enacted, so also various regulatory bodies were constituted under the said enactments.

We further found it necessary to have a relook at the CEC's functioning. We, therefore, passed orders dated 24.03.2023 and 18.05.2023 in this regard.

2. The Ministry of Environment, Forest and Climate Change thereafter issued a Notification dated 05.09.2023 under Section 3(3) of the Environment (Protection) Act, 1986, constituting the CEC as a permanent body for “the purposes of monitoring and ensuring compliance of the orders of the Supreme Court covering the subject matter of Environment, Forest and Wildlife, and related issues arising out of the said orders and to suggest measures and recommendations generally to the State, as well as Central Government, for more effective implementation of the Act and other orders of the Court”.<sup>3</sup> By our order dated 18.08.2023, we have approved the aforesaid Notification. While approving the Notification, we also declared that the CEC shall continue to function subject to such orders and directions that this Court may pass from time to time.

3 See the Preamble of the notification dated 05.09.2023.

3. In Part I of this judgment, we will first present the conception, constitution, functions, and finally the institutionalisation of the CEC. In Part II, to entrench environmental rule of law in our environmental governance, we have attempted to formulate some new principles for the effective monitoring of various bodies, institutions, and regulators established for protecting our forests, wildlife, environment, and ecology.

## PART II

4. Original Constitution and Functioning of CEC till 2023: This Court’s endeavours to protect forests in India and to ensure regulation of non-forest activities in forests commenced in 1996. Even prior to the constitution of the CEC, this Court directed the constitution of various bodies to oversee and monitor the compliance of its orders. In one of the most important orders dated 12.12.1996,<sup>4</sup> this Court defined the term ‘forest’ as covering all statutorily recognised forests, irrespective of how they were designated (either as reserved, protected or otherwise). The term ‘forest land’ in Section 2 of the Forest (Conservation) Act, 1980 was held to include any area recorded as a forest in 4 T.N. Godavarman Thirumulpad v. Union of India, (1997) 2 SCC 267. government records, irrespective of its ownership. Along with mandating prior approval of the Central Government to undertake any non-forest activities in forests and issuing directions on the felling of trees, this Court also directed the constitution of Expert Committees by each state government to identify ‘forests’ and sustainable existence of saw mills in forests. This Court also directed each state government to constitute a committee with the Principal Chief Conservator of Forests and another Senior Official to oversee the compliance of its orders and the filing of status reports by the states.

5. In its order dated 04.03.1997,<sup>5</sup> this Court constituted a High-Powered Committee<sup>6</sup> to oversee the implementation of its orders in the North-Eastern region and to also oversee preparation of inventory of timber, apart from permitting its sale. By order dated 17.04.2000,<sup>7</sup> this Court empowered the HPC to also supervise the transportation of illegal timber, oversee investigation into cases of illegal felling of trees, and to re-examine licensing of units.

6. The CEC was constituted by this Court by order dated 09.05.2002<sup>8</sup> to monitor the implementation of its orders and to 5 T.N. Godavarman Thirumulpad v. Union of India, (1997) 3 SCC 312. 6 Hereinafter ‘HPC’.

7 T.N. Godavarman Thirumulpad v. Union of India, (2002) 10 SCC 646. 8 T.N. Godavarman Thirumulpad v. Union of India, (2013) 8 SCC 198. present cases of non-compliance, including with respect to encroachment removals, implementation of working plans, compensatory afforestation, plantations and other conservation issues. The Court directed that the CEC must be constituted until such time that the Central Government constitutes a statutory body under Section 3 of the Environment (Protection) Act. The CEC, so constituted comprised: (i) a Chairman, nominated by the Ministry of Environment and Forests<sup>9</sup> in consultation with the amicus curiae, (ii) a nominee of the MoEF,

(iii) two NGOs who are to be nominated in consultation with the amicus curiae, and (iv) a Member Secretary. These members (other than the nominee of the MoEF) could not be removed without the Court’s permission.

7. The above order required that the reports and affidavits filed by states pursuant to this Court’s orders were to be placed before the CEC for its examination and recommendations. The recommendations of the CEC would be placed before this Court for orders. Further, persons who are aggrieved by any steps taken by the government in purported compliance of this Court’s orders could seek relief from the CEC, which must decide the applications in conformity with the Court’s orders. To perform<sup>9</sup> Hereinafter ‘MoEF’.

these functions, the CEC was given the power to call for documents from any person or government, summon any person and receive evidence on oath, and seek assistance/presence of any person or official, including the power to co-opt persons as special invitees for dealing with specific issues. When an issue pertains to a particular state, the Chief Secretary and Principal Chief Conservator of Forests of that state were to be co-opted as special invitees wherever feasible. The composition of the CEC was finalised by this Court by order dated 09.09.2002.<sup>10</sup> In this order, the Court also took note of the draft proposed notification under Section 3(3) of the Environment (Protection) Act that constituted the CEC as a statutory body for five years. The Court directed that once the notification is issued, the functions and responsibilities of the CEC are to be exercised as a statutory committee. The Central Government issued the notification constituting the CEC under Section 3(3) on 17.09.2002.<sup>11</sup> 10 T.N. Godavarman Thirumulpad v. Union of India, (2009) 17 SCC 755. Under this order, the Court appointed the following members of the CEC:

- a. PV Jayakrishnan, Secretary, Government of India as Chairman;
- b. Shri NK Joshi, ADG of Forests, Member;
- c. Valmik Thapar, Ranthambore Foundation as Member;
- d. Advocate Mahendra Vyas as Member;
- e. MK Jiwrajka, IGF as Member Secretary.

8. The first modification of the order dated 09.05.2002 came by way of order dated 14.12.2007. 12 The modified terms of reference, which superseded all previous orders, were as follows:

“1.2. The committee shall exercise the following powers and perform the following functions:

(i) to monitor the implementation of this Court's orders and place reports of non□ compliance before the Court and the Central Government for appropriate action;

(ii) to examine pending interlocutory applications in the said writ petitions (as may be referred to it by the Court) as well as the reports and affidavits filed by the States in response to the orders passed by the Hon'ble Court and place its recommendations before the Court for orders;

(iii) to deal with any applications made to it by any aggrieved person and wherever necessary, to make a report to this Court in that behalf;

(iv) for the purposes of effective discharge of powers conferred upon the Committee under this order, the Committee can:

(a) call for any documents from any persons or the Government of the Union or the State or any other official;

(b) undertake site inspection of forest area involved;

(c) seek assistance or presence of any person(s) or official(s) required by it in relation to its work;

(d) co□opt one or more persons as its members or as special invitees for dealing with specific issues;

(e) co□opt, wherever feasible, the Chief Secretary or his representative and Principal Chief Conservator of Forests of the State as special invitees while dealing with issues pertaining to a particular State;

(f) to suggest measures generally to the State, as well as Central Government, for the more effective implementation of the Act and other orders of this Court;

12 T.N. Godavarman Thirumulpad v. Union of India, (2013) 8 SCC 204.

(v) to examine and advise/recommend on any issue referred to the Committee.”

9. The composition of the CEC was modified by this Court by its order dated 21.02.2008<sup>13</sup> and the term of office for the new members was directed to be for three years or until further orders, whichever is earlier. In another order dated 11.09.2009, one of the members of the CEC was replaced<sup>14</sup> and by order dated 03.02.2017, the Member Secretary was replaced.<sup>15</sup>

10. Developments in 2023: It is in the context of IA No. 174896/2019 seeking permission of this Court to construct a Convention Centre at Patnitop that the present issue of reconstitution of CEC is taken up. The said application was allowed by this Court on 24.02.2023 subject to obtaining clearance from the concerned statutory authorities.<sup>16</sup>

11. The CEC submitted its report on the subject matter on 13.03.2023. When the report was placed before this Court on 24.03.2023, the Court made the following observations regarding <sup>13</sup> T.N. Godavarman Thirumulpad v. Union of India, (2008) 3 SCC 182. <sup>14</sup> T.N. Godavarman Thirumulpad v. Union of India, (2009) 16 SCC 401. <sup>15</sup> T.N. Godavarman Thirumulpad v. Union of India, (2022) 10 SCC 584. <sup>16</sup> IA No. 196062 and 174896 of 2019 in T.N. Godavarman Thirumulpad v. Union of India, W.P. (C) No. 202/1995, order dated 24.02.2023 the functioning of the CEC. The relevant portion of the order dated 24.03.2023 is extracted below: <sup>17</sup> “10. In any case, we are of the view that once an order is passed by this Court, it is not appropriate for a Committee which was constituted under the very orders of this Court to give a report which in effect, questions the correctness or otherwise, of the orders passed by this Court.

11. A Committee which is constituted under the orders of the Court cannot consider itself to be an appellate authority in regard to the orders passed by this Court.

12. We are further informed by the learned Solicitor General that at times, the members of the CEC are not ad idem on all the issues, which are ultimately reported to this Court.

13. We, therefore, direct that hereinafter, wherever there is a separate or dissenting opinion of any of the members of the CEC, such opinion shall also be placed before the Court alongwith the report.

14. It is further informed that some of the members of the Committee have crossed the age of 75 years and some of the members are also living abroad.

15. No doubt, the Committee has rendered yeomen services to the cause of environment. However, we are of the view that for effective functioning of the CEC, it is appropriate that some experts in the relevant fields who are relatively younger to the present incumbents, can contribute in a more energetic and efficient manner. It will therefore be appropriate that some of the old members, who have attained an advanced age or are not available in India all the time, are replaced by younger members.

16. We, therefore, request the learned Solicitor General and both the learned Amicus Curiae to give a list of persons, who have expertise in environmental and <sup>17</sup> IA No. 196062 and 174896 of 2019 along with CEC Report No. 11/2023 in T.N. Godavarman Thirumulpad v. Union of India, W.P. (C) No. 202/1995, order dated 24.03.2023. ecological fields. The same shall be done within three weeks

from today.

17. List these applications on 19.04.2023 for direction.”

12. When the matter was next listed on 18.05.2023, 18 learned Solicitor General submitted that the Central Government had accepted the suggestion of the Court to constitute the CEC as a permanent statutory body. Union of India was to publish a draft notification under Section 3 of the Environment (Protection) Act, 1986 to constitute the CEC within 15 days and place the notification before this Court. This notification would contain provisions on the qualification of members, their tenure, powers and responsibilities, etc. The relevant portion of the order dated 18.05.2023 is extracted below:

“On the last date when the matter was heard, a suggestion was made by the Bench that instead of the CEC (Central Empowered Committee) being an ad hoc body, it would be in the larger interest that the CEC as an institution should be a permanent statutory body. Mr. Tushar Mehta, learned Solicitor General, has accepted the said suggestion. He states that the Union of India would publish a draft notification under the provisions of Section 3 of the Environment (Protection) Act, 1986 providing for the constitution of the CEC. He submitted that the draft notification would contain provisions related to the qualification of the Members to be appointed, their tenure, their powers and responsibilities etc. 18 T.N. Godavarman Thirumulpad v. Union of India, I.A. Nos. 196062 and 174896 of 2019 in W.P. No. 202/1995, order dated 18.05.2023.

Learned Solicitor General submits that the draft notification will be published within a period of 15 days from today and that the same shall be placed before the Court on the next date.”

13. On 18.08.2023,<sup>19</sup> a draft notification issued by the Ministry of Environment, Forest and Climate Change<sup>20</sup> for constitution of the CEC was placed before the Court, with a copy to the learned amicus curiae. We examined the draft notification in detail and made certain suggestions about incorporating certain features for the effective and efficient functioning of the CEC. Certain suggestions were also made by the learned amicus curiae. The learned Solicitor General did not have any objection to the same and submitted that the suggestions would be incorporated in the final notification. Pursuantly, the Central Government was permitted to proceed with the issuance of the notification to constitute the CEC as a permanent body in the interest of all stakeholders. This Court also permitted the MoEFCC to proceed with the constitution of members of the CEC in accordance with the notification. The relevant portion of the order passed by this Court is extracted below:

19 T.N. Godavarman Thirumulpad v. Union of India, I.A. Nos. 196062 and 174896 of 2019 in W.P. No. 202/1995, order dated 18.08.2023. 20 Hereinafter ‘MoEFCC’.

“2. In pursuance of the aforesaid order, Mr. Tushar Mehta, learned Solicitor General of India, has handed over a draft notification to be issued by the Ministry of Environment, Forest and Climate Change (MoEFCC) regarding constitution of Central Empowered Committee (CEC). The said draft

has already been shared with Mr. K. Parameshwar, learned Amicus Curiae.

3. Learned Amicus Curiae submits that he has only one suggestion to the draft notification i.e. there should be a provision for periodical audit of the functioning of the CEC by the MoEFCC.

4. Learned Solicitor General does not have any objection to the said suggestion. He states that the suggestion given by the learned Amicus Curiae would be incorporated in the final notification that would be issued by the MoEFCC.

5. We, therefore, permit the Union of India to proceed further with the issuance of notification for constitution of the CEC as a permanent body.

6. We find that rather than CEC functioning as an ad hoc body, it functioning as a permanent body would be in the interest of all the stake holders.

7. We also permit the MoEFCC to proceed further with the constitution of the CEC in accordance with the notification that will be issued by the MoEFCC.”

14. Pursuant to the above referred orders dated 18.05.2023 and 18.08.2023, the MoEFCC issued a Notification dated 05.09.2023<sup>21</sup> under Section 3(3) of the Environment (Protection) Act to constitute a permanent authority, i.e., the Central Empowered Committee (CEC), for monitoring and ensuring compliance of this Court’s orders covering the subject□matter of environment, forest, and wildlife and related issues arising out of these orders; and to suggest measures and make recommendations to the states and Central Government for more effective implementation of the Act and this Court’s orders.

15. Under the new notification, the CEC shall comprise: i) Chairman, ii) Member Secretary, and iii) Three expert members (one each from the fields of environment, forest, and wildlife). The Chairman and three expert members are to be nominated by the Central Government for a tenure of 3 years, which can be extended to one more tenure subject to the prescribed age limit of 66 years. The Member Secretary is appointed by the Central Government to be the Chief Coordinating Officer of the CEC and to assist the CEC in the discharge of its functions.

16. The notification also provides for the functions and powers of the CEC in accordance with the orders of this Court along with certain other functions. They are:

“2. The Committee shall exercise the following powers and perform the following functions:□A. Powers and functions conferred upon the Committee by the Hon'ble Supreme Court of India in Writ Petition (Civil) No. 202/1995 and 171/1996 in the case of T. N. Godavarman Thirumalpad Vs. Union of India and others:□

a) to monitor the implementation of Supreme Court's orders in above matters and place reports of noncompliance before the Central Government for appropriate actions;

b) to deal with any applications made to it by any aggrieved person and wherever necessary, to make a report to the Central Government in that matter;

c) for the purposes of effective discharge of powers conferred upon the Committee under this order; the Committee can: □i. call for any documents from any persons or the government of the Union or the State or any other official.

ii. undertake site inspection.

iii. seek assistance or presence of any person(s) or official(s) required by it in relation to its work. iv. co□opt one or more persons as special invitees for dealing with specific issues.

v. co□opt, wherever feasible, the Secretary of the State Government dealing with the subjects related to Forest or Wildlife or Environment or his representative or the Principal Chief Conservator of Forests of the State as special invitees while dealing with issues pertaining to a particular State.

vi. to suggest or recommend measures generally to the State as well as Central Government, for the more effective implementation of the Act and other orders of the Supreme Court in above matters.

B. to examine and advise or recommend on any issue referred to the Committee by the Central Government, from time to time.”

17. The notification provides that the states or Central Government shall give reasons in writing for not accepting any suggestion or recommendation of the CEC and the decision of the Central Government shall be final. 22 Further, in case of deferment of the decision of any State Government with the CEC’s recommendation, the matter shall be referred to the Central Government and the decision of the Central Government shall be final and binding.23 We may clarify at this very stage that the 22 *ibid*, s.3.

23 *ibid*, s.4.

decisions of the Central Government, or, for that matter, State Governments, are always subject to the orders of this Court. When this notification was placed before us, we clarified this position, and we hereby reiterate that the order of the State and/or Central Government under clauses 3 and 4 will be subject to any direction or order that this Court may pass from time to time.

18. The members of the CEC are appointed in their personal capacity and are to function under the administrative control of the MoEFCC, with headquarters in Delhi. 24 The salaries and allowances payable, other perks and conditions of service of the Chairperson and members are to be prescribed and they cannot be varied to their disadvantage after the appointment. 25 MoEFCC is required to provide suitable and adequate office accommodation for the CEC and requisite manpower, budgetary support, and infrastructure for the discharge of functions and powers delegated to the CEC.26 MoEFCC is also required to meet the expenditure incurred, including salaries and remuneration to members and supporting staff.27 The CEC is required to submit 24 *ibid*, s.5.

25 *ibid*, s.6.

26 *ibid*. s.7.

27 *ibid*, s.8.

quarterly reports to the Central Government and MoEFCC for periodical review and audit of the CEC's functioning. 28

19. Finally, the Central Government appointed the members of the CEC by another notification dated 08.09.2023, and the composition is as follows:29 i) Sri Siddhant Das, Chairman, ii) Sri Chandra Prakash Goyal, Member, iii) Sri Sunil Limaye, Member,

iv) Dr. J.R. Bhatt, Member and v) Ms Banumathi G, Assistant Inspector General of Forests, MoEFCC, Member Secretary. Thereafter, the matter came up before us on 11.12.2023. On the said date, we heard the learned Solicitor General as well as the learned amicus curiae at length. We had also called for suggestions for more effective functioning of the CEC.

20. We find that by virtue of the Notification dated 05.09.2023, our concerns regarding the functioning of the CEC as an ad hoc body and that hereinafter it should be institutionalised as a permanent body have been taken care of. The said Notification provides for the constitution of the CEC, its powers, functions, mandate, members, method of appointment, terms of service, and monitoring of its functioning.

28 *ibid*, s.9.

21. We further direct the CEC to adopt the following measures to promote institutional transparency, efficiency, and accountability in its functioning:

i. The CEC shall formulate guidelines for the conduct of its functions and internal meetings. The CEC shall formulate the operating procedures delineating the roles of its members and the Secretary of the CEC.

ii. The CEC shall formulate guidelines about the public meetings that it holds, ensure the publication of meeting agenda in advance on its website, maintain minutes of meetings, and set out rules regarding notice to parties. iii. The CEC shall formulate guidelines for site visits and, if necessary, hearing the public and affected parties therein.

iv. The CEC shall formulate guidelines fixing time limits for site visits, preparation of reports, and also the manner of preparation of reports.

v. We further direct that these guidelines/regulations must be accessible for anyone to seek. They shall be posted on the official website of the CEC.

## PART II

22. As new bodies, authorities, and regulators for environmental governance emerge from time to time, their institutionalisation assumes extraordinary importance. Institutionalisation means that these bodies must work in compliance with institutional norms of efficiency, integrity, and certainty. In this context, the role of the constitutional courts is even greater.

23. Environmental Rule of Law: Environmental rule of law refers to environmental governance that is undergirded by the fundamental tenets of rule of law. 30 The rule of law regime is one that has effective, accountable, and transparent institutions; responsive, inclusive, participatory, and representative decision-making; and public access to information. 31 It recognises the vital role that institutions play in governance and focuses on defining the structural norms and processes that guide institutional decision-making. 32 30 United Nations, ‘Environmental Rule of Law: First Global Report’ (2019) <https://www.unep.org/resources/assessment/environmental-rule-law-first-global-report>, p.1, 8. The United Nations has defined environmental rule of law with reference to 7 core components, which are:

- i. Fair, clear, and implementable environmental laws; ii. Access to information, public participation, and access to justice through courts, tribunals, commissions, and other bodies; iii. Accountability and integrity of decision-makers and institutions; iv. Clear and coordinated mandates and roles, across and within institutions; v. Accessible, fair, impartial, timely and responsive dispute resolution mechanisms;
- vi. Recognition of the mutually reinforcing relationship between rights and environmental rule of law; and vii. Specific criteria for the interpretation of environmental law.

31 Hanuman Laxman Aroskar v. Union of India, (2019) 15 SCC 401, para 156. 32 Himachal Pradesh Bus Stand Management & Development Authority v. Central Empowered Committee, (2021) 4 SCC 309, para 48.

24. While several laws, rules, and regulations exist for protection of the environment, their objective is not achieved as there is a considerable gap as these laws remain unenforced or ineffectively implemented. Rule of law in environmental governance seeks to redress this issue as the implementation gap has a direct bearing on the protection of the environment, forests, wildlife, sustainable development, and public health, eventually affecting fundamental human rights to a clean environment that are intrinsically tied to right to life. 33 Accountability of the authorities impressed with the duty to enforce and implement environmental and other ecological laws is an important feature of judicial governance. In the context of accountability, this Court in Vijay Rajmohan v. CBI<sup>34</sup> has held:

“34. Accountability in itself is an essential principle of administrative law. Judicial review of administrative action will be effective and meaningful by ensuring

accountability of the officer or authority in charge.

35. The principle of accountability is considered as a cornerstone of the human rights framework. It is a crucial feature that must govern the relationship between “duty bearers” in authority and “right holders” affected by their actions. Accountability of institutions is also one of the development goals adopted by the United Nations in 2015 and is also recognised as one of the six principles of the Citizens Charter Movement.

36. Accountability has three essential constituent dimensions : (i) responsibility, (ii) answerability, and (iii) enforceability. Responsibility requires the identification 33 Hanuman Laxman Aroskar (supra), paras 143-144. 34 (2023) 1 SCC 329.

of duties and performance obligations of individuals in authority and with authorities. Answerability requires reasoned decision-making so that those affected by their decisions, including the public, are aware of the same. Enforceability requires appropriate corrective and remedial action against lack of responsibility and accountability to be taken. Accountability has a corrective function, making it possible to address individual or collective grievances. It enables action against officials or institutions for dereliction of duty. It also has a preventive function that helps to identify the procedure or policy which has become non-functional and to improve upon it.”

25. In India, environmental rule of law must draw attention to the existing legal regime, rules, processes, and norms that environmental regulatory institutions follow to achieve the goal of effective and good governance and implementation of environmental laws. More importantly, the focus must be on the policy and regulatory and implementation agencies. In doing so, environmental rule of law fosters open, accountable, and transparent decision-making and participatory governance. The renewed role of constitutional courts will be to undertake judicial review to ensure that institutions and regulatory bodies comply with the principles of environmental rule of law.

26. Existing Institutional Governance of the Environment in India:

Environmental regulation in our country is performed by various bodies constituted under legislations concerning the environment, forests, and wildlife. Governance is also through the exercise of executive power by the Central and State Governments. These bodies perform their function of regulating private and public activities that impact the environment, forests, and wildlife in accordance with environmental legislations, rules, regulations, and notifications passed under them. An overview of some of the main bodies that regulate the environment in India can be encapsulated as follows:

i. Central Pollution Control Board (CPCB) and State Pollution Control Boards (SPCB): These Boards were initially constituted under the Water (Prevention and Control of Pollution) Act, 1974.<sup>35</sup> They also function under the Air (Prevention and

Control of Pollution) Act, 1981.<sup>36</sup> The function of the CPCB under these Acts is to promote cleanliness of water streams and wells and to improve air quality and combat air pollution. In furtherance of these functions, the Board advises the Central Government, coordinates activities of states, provides technical assistance to SPCBs, lays down standards, and performs any other function as may be prescribed. The SPCBs <sup>35</sup> Water (Prevention and Control of Pollution) Act, 1974, ss. 3 and 4. <sup>36</sup> Air (Prevention and Control of Pollution) Act 1981, ss. 3 and 4.

perform similar functions by advising the State Governments on matters concerning air and water pollution.<sup>37</sup> ii. Authorities concerning protection of wildlife under the Wildlife Protection Act, 1972: The Central Government appoints a Director of Wild Life Preservation and the State Government appoints Chief Wild Life Wardens, Wild Life Wardens, and Honorary Wild Life Wardens.<sup>38</sup> The Central Government shall constitute the National Board for Wild Life to promote the conservation and development of wildlife and forests. <sup>39</sup> The National Board can frame policies and advise the Central and State Governments on promoting wildlife conservation and effectively controlling poaching and illegal trade; recommend setting up and managing national parks and sanctuaries; conduct impact assessment of activities on wildlife; review progress of wildlife conservation; and prepare and publish status reports on wildlife in the country.<sup>40</sup> Similarly, State Board(s) for Wild Life must also be constituted under the Act for selecting and managing <sup>37</sup> Water (Prevention and Control of Pollution) Act, 1974, ss. 16 and 17; Air (Prevention and Control of Pollution) Act 1981, ss. 16 and 17. <sup>38</sup> Wildlife Protection Act, 1972, ss. 3 and 4. <sup>39</sup> Wildlife Protection Act, 1972, ss. 5A and 5C. <sup>40</sup> *ibid*.

protected areas; formulating policies for protection and conservation of wildlife; harmonising the needs of tribals and forest dwellers with wildlife conservation; and any other matter referred to it by the State Governments. <sup>41</sup> The Central Government must constitute the Central Zoo Authority that regulates the functioning of zoos by laying down minimum standards, recognition and derecognition, maintaining records, coordinating personnel training, and providing assistance. <sup>42</sup> The Central Government must also constitute the National Tiger Conservation Authority under the Act,<sup>43</sup> whose powers and functions have been set out in Section 38O. iii. The Central Government constitutes the Advisory Committee under the Forest (Conservation) Act, 1980 to advise the Central Government on the grant of approval for State Government's use of forest land for non-forest purposes and on any other matter connected with forest conservation which may be referred to it by the Central Government.<sup>44</sup> <sup>41</sup> Wildlife Protection Act, 1972, ss. 6 and 8. <sup>42</sup> Wildlife Protection Act, 1972, ss. 38A and 38C. <sup>43</sup> Wildlife Protection Act, 1972, s. 38L.

<sup>44</sup> Forest (Conservation) Act 1980, s. 3.

iv. The Central Government, in exercise of its power under Section 3 of the Environment (Protection) Act, 1986 constitutes the State Environment Impact Assessment Authorities (SEIAA) at the state level to grant prior environmental clearance to certain projects, as specified in the Environment Impact Assessment Notification. v. National Biodiversity Authority and State Biodiversity Boards are constituted under the Biological Diversity Act, 2002.<sup>45</sup> The National Biodiversity Authority has the power to grant permission for obtaining biological resources and to

regulate matters pertaining to the grant of such permission, including intellectual property rights. The Authority also advises the Central Government on conservation and sustainable and equitable use of biodiversity, the State Governments on the management of heritage sites, and such other functions as may be prescribed by the Central Government. 46 The State Biodiversity Boards are tasked with advising State Governments on conservation and sustainable and equitable use of biodiversity, regulating the grant of 45 Biological Diversity Act, 2002, ss. 8 and 22. 46 Biological Diversity Act, 2002, s. 18.

approvals for commercial utilisation, bio-survey and bio-utilisation of biological resources in India, and such other functions as may be prescribed by the State Government.<sup>47</sup> vi. National Green Tribunal (NGT) has been constituted by the Central Government by notification under the NGT Act, 2010.<sup>48</sup> It has jurisdiction over all civil cases where a substantial question relating to the environment is involved and such question arises out of implementation of various legislations pertaining to the environment. 49 The NGT also has appellate jurisdiction over certain matters arising out of the Water (Prevention and Control of Pollution) Act, 1974; Forest (Conservation) Act, 1980; Air (Prevention and Control of Pollution) Act, 1981; Environment (Protection) Act, 1986; and Biological Diversity Act, 2002.<sup>50</sup> In *Municipal Corporation of Greater Mumbai v. Ankita Sinha*,<sup>51</sup> this Court has held that the NGT is a sui generis body with all-encompassing 47 Biological Diversity Act, 2002, s. 23.

48 NGT Act, 2010, s. 3.

49 As per Schedule I of the NGT Act, the following legislations are covered: (i) The Water (Prevention and Control of Pollution) Act, 1974; (ii) The Water (Prevention and Control of Pollution) Cess Act, 1977; (iii) The Forest (Conservation) Act, 1980; (iv) The Air (Prevention and Control of Pollution) Act, 1981; (v) The Environment (Protection) Act, 1986; (vi) The Public Liability Insurance Act, 1991; (vii) The Biological Diversity Act, 2002. 50 NGT Act 2010, s. 16.

51 2021 SCC OnLine SC 897, para 61.

jurisdiction to protect the environment. It not only performs an adjudicatory role but also performs wider functions in the nature of prevention, remedy, and amelioration.<sup>52</sup> vii. In *S. Jagannath v. Union of India*,<sup>53</sup> which was a writ petition regarding prawn farming in ecologically fragile coastal areas, this Court directed the Central Government to constitute an authority under the Environment (Protection) Act, 1986 and confer it with powers to protect ecologically fragile coastal areas, seashores, waterfronts, and other coastal areas. Pursuant to this judgment, the Central Government by notification under Section 3(3) constituted the National Coastal Zone Management Authority,<sup>54</sup> State Coastal Zone Management Authorities,<sup>55</sup> and Union Territory Coastal Zone Management Authorities<sup>56</sup> in coastal states and union territories. The NCZMA coordinates the actions of SCZMAs and UTCZMAs, examines proposals for classifying coastal zonal areas, reviews violations, and 52 *ibid*, para 46.

53 (1997) 2 SCC 87, para 52.

54 Hereinafter 'NCZMA'.

55 Hereinafter 'SCZMA'.

56 Hereinafter 'UTCZMA'.

provides technical assistance to the State Governments and Central Government.

viii. In *M.C. Mehta v. Union of India*,<sup>57</sup> this Court took suo motu cognisance of falling ground water levels and directed the Central Government to constitute a Central Groundwater Board as an authority to regulate and control groundwater management and development under Section 3(3) of the Environment (Protection) Act, 1986. The main object of constituting the Board was the urgent need to regulate indiscriminate boring and withdrawal of underground water.<sup>58</sup> There are many more bodies, authorities, and officers under the Union and states that are involved in environmental governance. A comprehensive list of such bodies, including the above, is as follows:

- i. Animal Welfare Board of India<sup>59</sup>
- ii. Atomic Energy Regulatory Board<sup>60</sup>
- iii. Central Pollution Control Board<sup>61</sup>
- iv. State Pollution Control Boards<sup>62</sup>

<sup>57</sup> (1997) 11 SCC 312, para 9.

<sup>58</sup> *ibid*, para 12.

<sup>59</sup> Constituted under the Prevention of Cruelty to Animals Act, 1960. <sup>60</sup> Constituted under the Atomic Energy Act, 1962. <sup>61</sup> Constituted under the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution Act, 1981. <sup>62</sup> *ibid*.

v. Director of Wild Life Preservation, Chief Wild Life Wardens, Wild Life Wardens, and Honorary Wild Life Wardens <sup>63</sup> vi. National Board for Wild Life<sup>64</sup> vii. State Boards for Wild Life<sup>65</sup> viii. Central Zoo Authority<sup>66</sup> ix. National Tiger Conservation Authority<sup>67</sup> x. Coastal Zone Management Authority<sup>68</sup> xi. Central Groundwater Board<sup>69</sup> xii. Advisory Committee<sup>70</sup> xiii. National Biodiversity Authority<sup>71</sup> xiv. State Biodiversity Boards<sup>72</sup> xv. National Disaster Management Authority<sup>73</sup> xvi. State Disaster Management Authorities<sup>74</sup> xvii. District Disaster Management Authorities<sup>75</sup> xviii. National Green Tribunal<sup>76</sup> xix. State Level Advisory Bodies<sup>77</sup> xx. National Compensatory Afforestation Fund Management and Planning Authority<sup>78</sup> xxi. State Compensatory Afforestation Fund Management and Planning Authority<sup>79</sup> <sup>63</sup> Appointed under the Wildlife Protection Act, 1972. <sup>64</sup> Constituted under the Wildlife Protection Act, 1972. <sup>65</sup> *ibid*.

<sup>66</sup> *ibid*.

<sup>67</sup> *ibid*.

<sup>68</sup> Constituted by the Central Government under Section 3(3) of the Environment Protection Act pursuant to Supreme Court Directions in *S. Jagannath v. Union of India*, (1997) 2 SCC

87. 69 Constituted by the Central Government under Section 3(3) of the Environment Protection Act pursuant to Supreme Court Directions in M.C. Mehta v. Union of India, (1997) 11 SCC

312. 70 Constituted under the Forest (Conservation) Act, 1980. 71 Constituted under the Biological Diversity Act, 2002. 72 *ibid*.

73 Constituted under The Disaster Management Act, 2005. 74 *ibid*.

75 *ibid*.

76 Constituted under the NGT Act, 2010.

77 Constituted under the Solid Waste Management Rules, 2016. 78 Constituted under the Compensatory Afforestation Fund Act, 2016. 79 *ibid*.

xxii. Environment Impact Assessment Authorities 80 xxiii. Expert Appraisal Committee<sup>81</sup> xxiv. Dahanu Taluka Environment Protection Authority 82 xxv. Wildlife Crime Control Bureau xxvi. Forest Survey of India

27. The above referred bodies, authorities, regulators, and officers are constituted with persons having expertise in the field. They have the requisite knowledge to take appropriate decisions about contentious issues of the environment, forests, and wildlife, and also to ensure effective implementation of environmental laws. These bodies constitute the backbone of environmental governance in our country. They need to function with efficiency, integrity, and independence. As duty-bearers, they are also subject to accountability.

28. We may ask a simple question – how effectively are these environmental bodies functioning today? This question has a direct bearing on the protection and restoration of ecological balance.

29. As environmental governance through these bodies emerges, the obligation of the constitutional courts is even greater. Hitherto, the constitutional courts focused on decisions and actions taken by the executive or private persons impacting 80 Constituted under the Environment Impact Assessment Notification issued by the Central Government under Section 3(3) of the Environment (Protection) Act, 1986. 81 *ibid*.

82 Constituted by the Central Government under Section 3(3) of the Environment (Protection) Act, 1986.

the environment and ecology because the scrutiny by regulators was felt to be insufficient. Their judgment, review, and consideration did not inspire confidence and therefore, the Court took up the issue and would decide the case. In this process, a large number of decisions rendered by this Court on sensitive environmental, forest, and ecological matters constitute the critical mass of our environmental jurisprudence. This Court would continue to exercise judicial review, particularly in environmental matters, whenever necessary.

30. We however seek to emphasise and reiterate the importance of ensuring the effective functioning of these environmental bodies as this is imperative for the protection, restitution, and development of the ecology. The role of the constitutional courts is therefore to monitor the proper institutionalisation of environmental regulatory bodies and authorities.

31. In furtherance of the principles of environmental rule of law, the bodies, authorities, regulators, and executive offices entrusted with environmental duties must function with the following institutional features:

i. The composition, qualifications, tenure, method of appointment and removal of the members of these authorities must be clearly laid down. Further, the appointments must be regularly made to ensure continuity and these bodies must be staffed with persons who have the requisite knowledge, technical expertise, and specialisation to ensure their efficient functioning.

ii. The authorities and bodies must receive adequate funding and their finances must be certain and clear.

iii. The mandate and role of each authority and body must be clearly demarcated so as to avoid overlap and duplication of work and the method for constructive coordination between institutions must be prescribed.

iv. The authorities and bodies must notify and make available the rules, regulations, and other guidelines and make them accessible by providing them on the website, including in regional languages, to the extent possible. If the authority or body does not have the power to frame rules or regulations, it may issue comprehensive guidelines in a standardised form and notify them rather than office memoranda.

v. These bodies must clearly lay down the applicable rules and regulations in detail and the procedure for application, consideration, and grant of permissions, consent, and approvals.

vi. The authorities and bodies must notify norms for public hearing, the process of decision-making, prescription of right to appeal, and timelines.

vii. These bodies must prescribe the method of accountability by clearly indicating the allocation of duties and responsibilities of their officers.

viii. There must be regular and systematic audit of the functioning of these authorities.

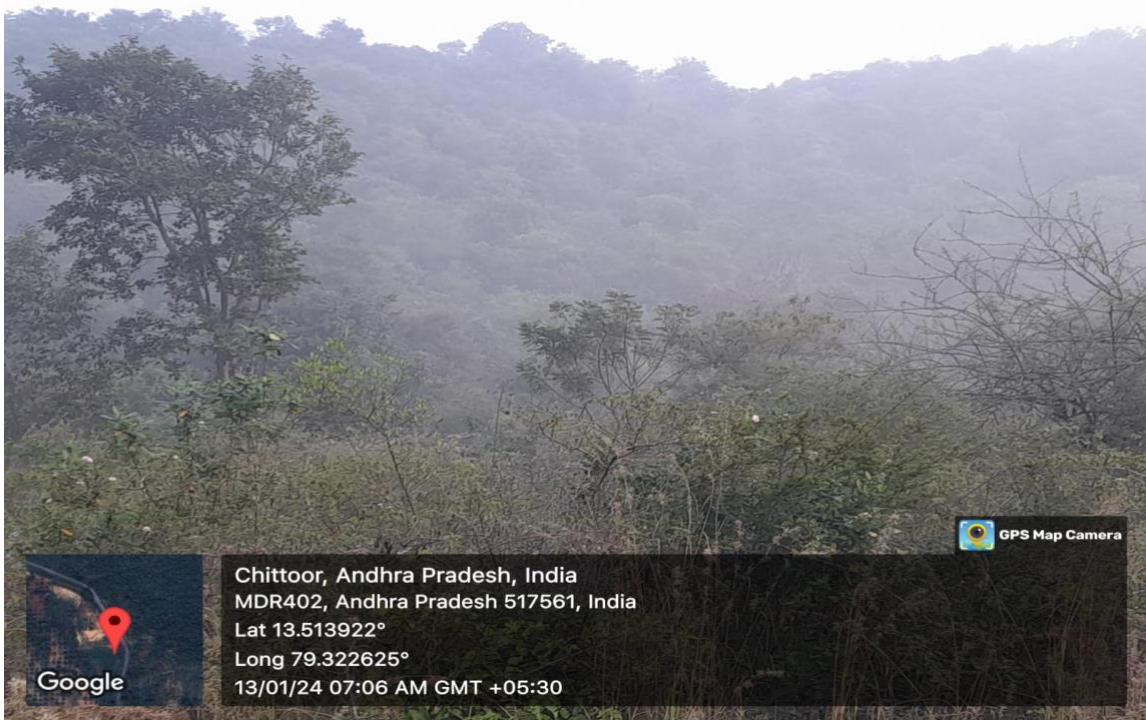
32. The role of the constitutional courts is to ensure that such environmental bodies function vibrantly, and are assisted by robust infrastructure and human resources. The constitutional courts will monitor the functioning of these institutions so that the environment and ecology is not only

protected but also enriched.

33. Ordered accordingly.

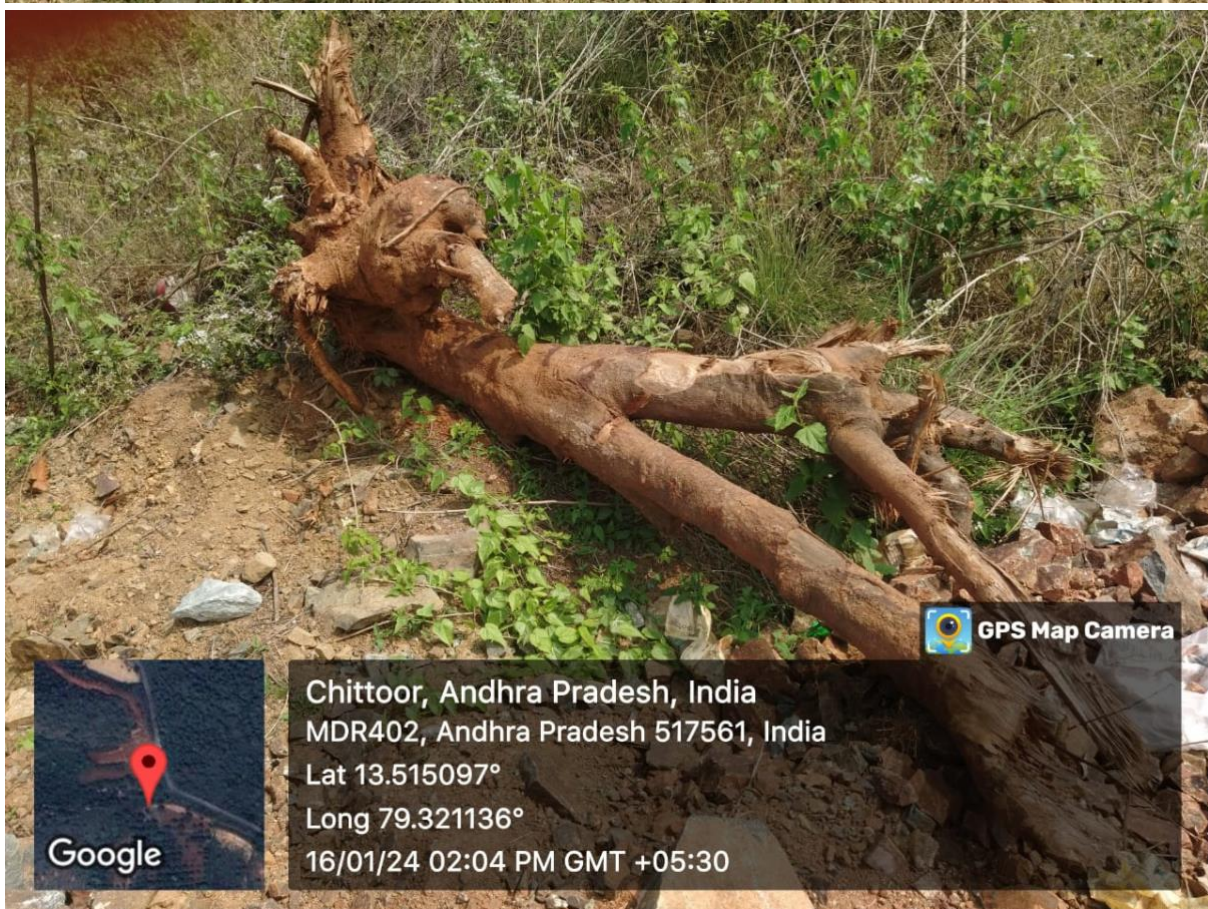
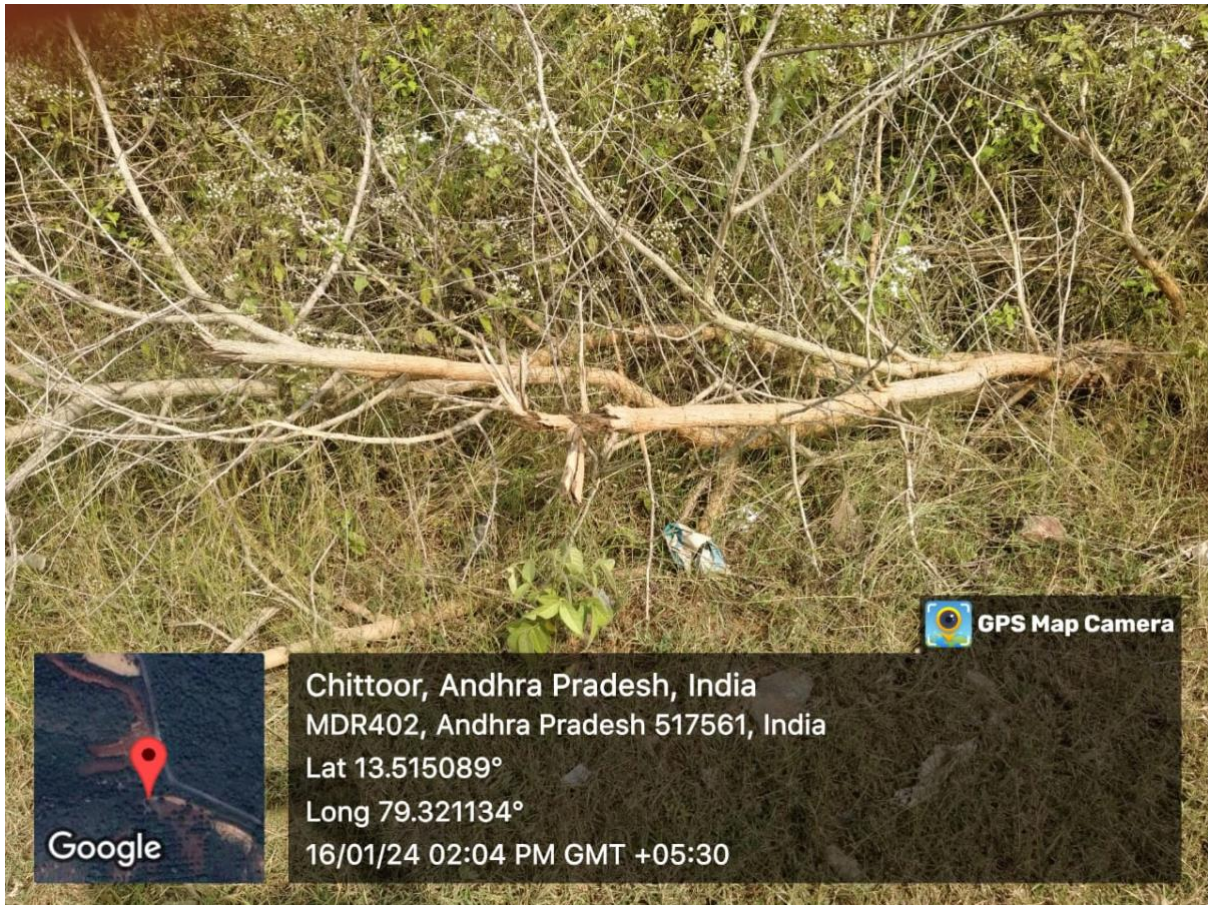
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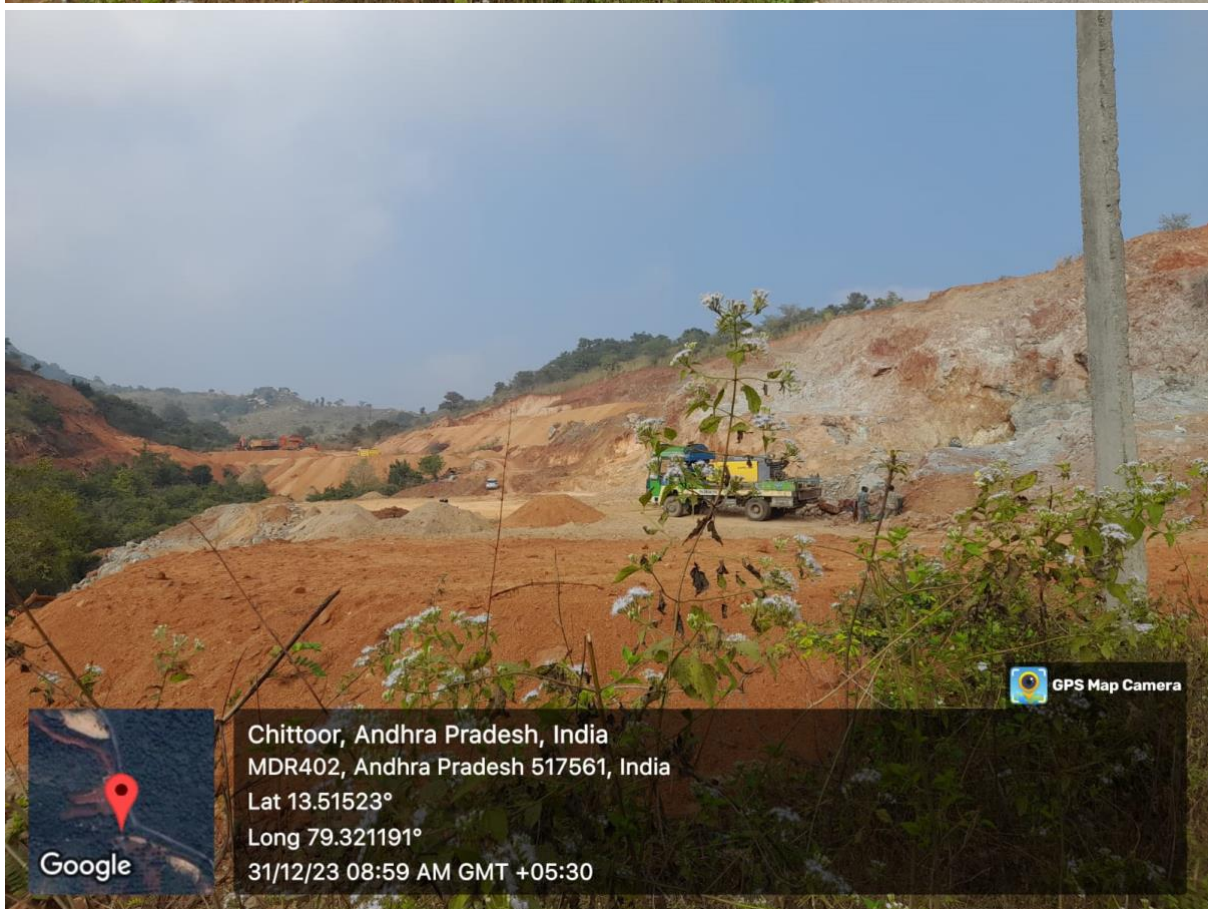
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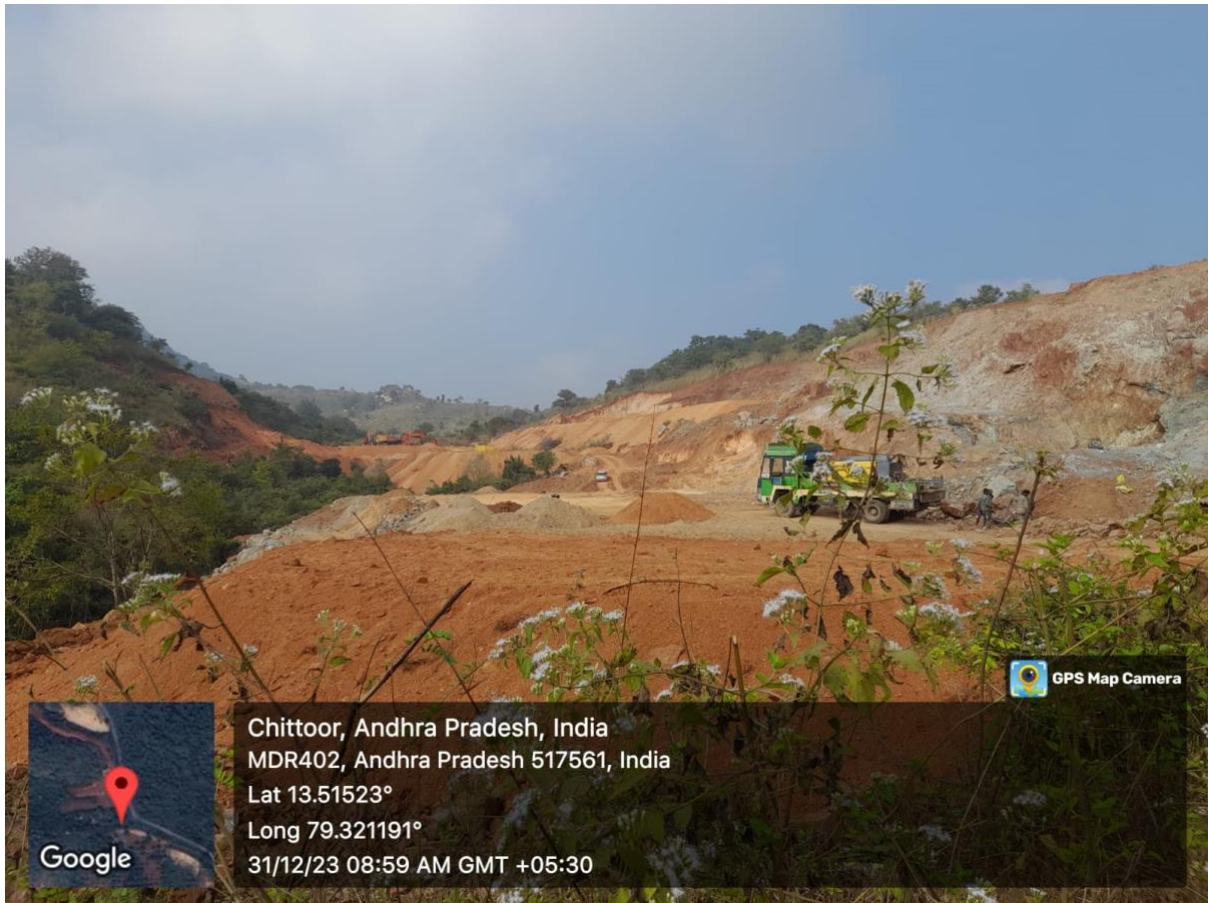




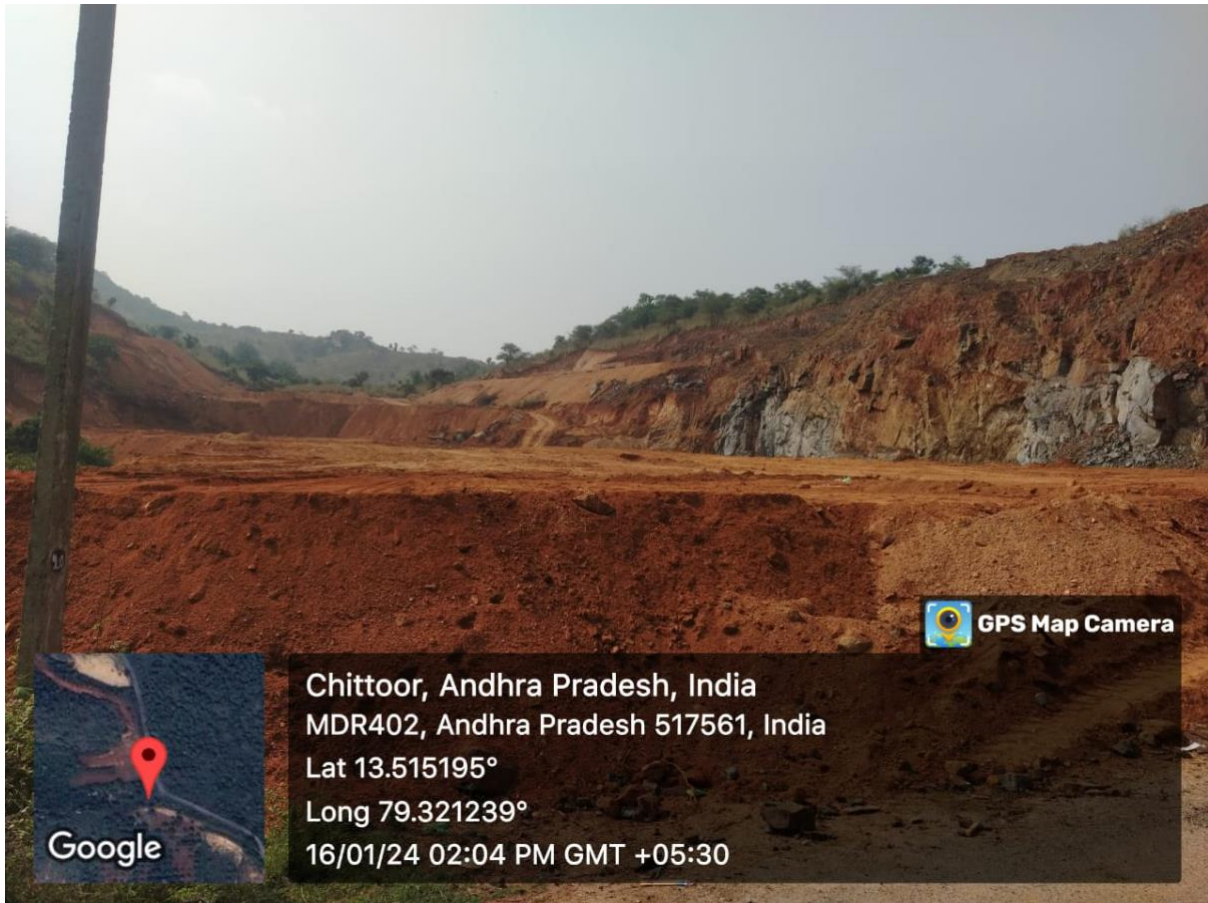



















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