

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH AT NEW DELHI**

ORIGINAL APPLICATION NO. 297 of 2022

IN THE MATTER OF:

Yogendra Mohan Sengupta

...Applicant

Versus

Union of India & ors.

...Respondents

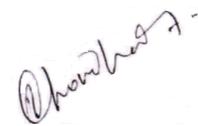
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Through



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IN THE MATTER OF:

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RESPONSE TO COUNTER AFFIDAVIT OF RESPONDENT NO. 2

TO 5 DATED 19.07.2022

MOST RESPECTFULLY SHOWETH:

1. That the above titled Application is raising the substantial issue relating to environment wherein public at large would be affected by the action of Respondent No. 3 which is not only contrary to the precautionary principle but also contrary to the judgment and direction passed by this Hon'ble Tribunal. Respondent No. 3 has finalized a Draft Development Plan for Shimla Planning Area, 2041, dated February 2022 without complying with the recommendations of the Expert Committee Report constituted by this Hon'ble Tribunal and directions of this Hon'ble Tribunal in OA 121 of 2014 dated 16.11.2017. It is further submitted that by this Draft Plan, the Government of Himachal Pradesh is trying to overrule the judgment passed by this Hon'ble Tribunal by allowing constructions in prohibited areas and also permitting to increase the height of the structures in violation of the judgment and against the precautionary principle. The act of the Respondent No. 3 also requires interference of this Hon'ble Tribunal in light of the fact that several multi-storeyed buildings in Shimla have collapsed because of landslides and other environmental disasters.

2. That Respondent No. 2 to Respondent No. 5 have filed a Joint Counter Affidavit to the Original Application dated 19.07.2022. That the contents of the Original Application should be read as part and parcel of the present Response. The contents of the Counter Affidavit of Respondent No. 2 to 5 are denied in entirety, unless specifically admitted or are matter of record.
3. That the Respondent No. 2 to 5 have raised the following grounds in their Counter- Affidavit:
 - (i) That the Hon'ble High Court of Himachal Pradesh in CWP No. 4595 of 2011 in judgment dated 21.09.2021 has settled the point of law relating to validity of the Draft Development Plan and therefore the Hon'ble Tribunal cannot adjudicate on the matter;
 - (ii) That preparation of Development Plan is a statutory right of the State of Himachal Pradesh under the Himachal Pradesh Town and Country Planning Act, 1977;
 - (iii) That the Development Plan has been prepared in compliance with the directions of the Hon'ble Tribunal in OA No. 121 of 2014.

On the averment that Hon'ble High Court of Himachal Pradesh in CWP No. 4595 of 2011 in judgment dated 21.09.2021 has settled the point of law relating to validity of the Draft Development Plan

4. That the Respondents have contended that the Hon'ble High Court of Himachal Pradesh vide tis judgment dated 21.09.2021 in CWP No. 4595 of 2011 titled "*Rajeev Verma v. State of Himachal Pradesh & ors.*" has settled the law on the development plan for

Shimla and therefore the Hon'ble Tribunal cannot adjudicate on the matter.

5. That the Hon'ble High Court of Himachal Pradesh in CWP No. 4595 of 2011 vide its Order dated 21.09.2021 has held the following:

"The latest status details regarding development plan for Shimla planning area has been filed on behalf of the Director, Town & Country Planning. It also includes a table with regard to dates on which necessary steps will be taken by the respondents. The same is taken on record.

2. Since, the entire grievance of the petitioners stands answered by the said affidavit, they do not intend to prosecute these matters further. However, they are at liberty to revive the same in case the same is not given effect to within the reasonable time.

3. The pending miscellaneous applications are disposed off accordingly."

6. That at the outset it is submitted that the Hon'ble High Court has never passed any direction to prepare the Development Plan in contravention of the directions in Judgment of this Hon'ble Tribunal in Order dated 16.11.2017 in OA No. 121 of 2014. Further, it is pertinent to mention that this Hon'ble Tribunal has also passed direction by Judgment dated 16.11.2017 in Para 112 (VIII) to prepare the Development Plan in three months from the date of the Judgment.
7. That it is pertinent to mention that this Hon'ble Tribunal had directed in OA No. 121 of 2014 vide its Order dated 16.11.2017 that:

"We direct the State Government and/or its instrumentalities and more, particularly, the Town and

Country Planning Department to finalize the Development Plan within three months from the date of pronouncement of this judgement without default. The Development Plan so finalized shall be notified in accordance with law. While finalizing the development plan, the directions and precautions stated in this judgement shall be duly considered by the concerned departments and the State of Himachal Pradesh."

(Emphasis supplied)

8. That the Hon'ble Tribunal had given the direction to the State Government of Himachal Pradesh to finalize the Development Plan in November 2017 while the Hon'ble High Court had given the said direction in September 2021. Thereafter, the State of Himachal Pradesh had filed Civil Appeal No. 5348 of 2019 challenging the judgment of this Hon'ble Tribunal in OA No. 121 of 2014 dated 16.11.2017 on 08.07.2019. The Hon'ble Supreme Court admitted the matter however, no stay was granted. The proceedings before the Hon'ble High Court started after the filing of Civil Appeal before the Hon'ble Supreme Court. Therefore, the averment made by the Respondents in Para 2(B) that it was not proper for the Hon'ble Tribunal to continue with the proceedings when the Hon'ble High Court had taken cognizance of the matter is flawed since the Hon'ble Tribunal had passed the Order directing preparation of Development Plan much before the Hon'ble High Court took cognizance of the matter.
9. That it is also made clear that the Hon'ble High Court of Himachal Pradesh had not directed for implementation with the Draft

Development Plan to be done in violation of the directions of the Hon'ble Tribunal in OA No. 121 of 2014 dated 16.11.2017.

10. Therefore, the direction given by the Hon'ble High Court has to be read together with the directions given by the Hon'ble Tribunal in OA No. 121 of 2014.

On the averment that preparation of Development Plan is a statutory right of the State of Himachal Pradesh under the Himachal Pradesh Town and Country Planning Act, 1977

11. That the Respondents have claimed that preparation of the Development Plan is a statutory right of the State of Himachal Pradesh under Himachal Pradesh Town and Country Planning Act, 1977 (hereinafter referred to as "**HP TCP Act**") therefore the State Government can legislate the Development Plan.
12. That even if the State of Himachal Pradesh has been given the statutory right under HP TCP Act to legislate on the Development Plan, the same cannot be done in violation of the orders/ directions of a judicial authority, in this case the Judgment passed by this Hon'ble Tribunal. The Hon'ble Supreme Court has clearly held that if a judicial authority has given a clear direction, legislature cannot pass an order or legislate a law in violation of the same Order of the judicial authority. Therefore, the action of the State of Himachal Pradesh in drafting the Development Plan in violation of the directions of the Hon'ble Tribunal in Judgment dated 16.11.2017 is contrary to the directions of the Hon'ble Supreme Court.
13. That this Hon'ble Tribunal has complete right to interfere in the preparation and implementation of a Development Plan, as has been held by the Hon'ble Supreme Court in ***Mantri Techzone***

Private Limited v. Forward Foundation & Ors. (Civil Appeal No. 5016 of 2016). It was held that:

"47. Section 33 of the Act provides an overriding effect to the provisions of the Act over anything inconsistent contained in any other law or in any instrument having effect by virtue of law other than this Act. This gives the Tribunal overriding powers over anything inconsistent contained in the KIAD Act, Planning Act, Karnataka Municipal Corporations Act, 1976 ("KMC Act"); and the Revised Master Plan of Bengaluru, 2015 ("RMP"). A Central legislation enacted under Entry 13 of List I Schedule VII of the Constitution of India will have the overriding effect over State legislations. The corollary is that the Tribunal while providing for restoration of environment in an area, can specify buffer zones around specific lakes & water bodies in contradiction with zoning regulations under these statutes or the RMP."

(Emphasis supplied)

Relevant pages of the Judgment of the Hon'ble Supreme Court in **Mantri Techzone Private Limited v. Forward Foundation & Ors. (Civil Appeal No. 5016 of 2016)** are annexed herewith as **ANNEXURE A-1.**

14. That the Hon'ble Supreme Court in the matter of **Punjab Termination of Agreement Act, 2004, In Re Special Reference No. 1 of 2004** reported in **(2017) 1 SCC 121** has held that:

"33. As stated hereinabove, it is not in dispute that there was a litigation between the State of Punjab

*and the State of Haryana and ultimately a decree was made whereby the arrangement with regard to sharing of water as per the agreement dated 31-12-1981 had been made. **There is, thus, a legal sanction to the said arrangement and once a binding decree has been passed by a court of law, a party to the litigation cannot unilaterally act in a manner which would nullify the effect of the decree.***

...

*36...**The constitutional principle that the legislature can render judicial decision ineffective by enacting validating law within its legislative field fundamentally altering or changing its character retrospectively has no application where a judicial decision has been rendered by recording a finding of fact. Under the pretence of power, the legislature, cannot neutralize the effect of the judgment given after ascertainment of fact by means of evidence/ materials placed by the parties to the dispute.** A decision which disposes of the matter by giving findings upon the facts is not open to change by legislature. **A final judgment, once rendered, operates and remains in force until altered by the court in appropriate proceedings.***

...

*48. From the abovementioned set-up under our Constitution, **there is no difficulty in concluding***

that no Government, whether Central or State, can usurp the power of adjudicating disputes vested in the judiciary including High Courts and the Supreme Court. Further, as a corollary, the judgments and decrees which are the end product of exercise of judicial power cannot be set at naught by the process of legislative declaration in respect of facts and circumstances. As explained already in the main judgment, the situation is somewhat different when a competent legislature engages itself in the exercise of validating a law declared defective or invalid for reasons which are curable.

(Emphasis supplied)

Relevant pages of the Order of the Hon'ble Supreme Court in ***Punjab Termination of Agreement Act, 2004, In Re Special Reference No. 1 of 2004*** reported in **(2017) 1 SCC 121** are annexed herewith as **ANNEXURE A-2**.

15. That the Hon'ble Supreme Court in ***State of Tamil Nadu v. State of Kerala*** reported in **(2014) 12 SCC 696** has also held that a legislative action cannot overrule a judicial decision. It has held:

"160. Where a dispute between two States has already been adjudicated upon by this Court, which it is empowered to deal with, any unilateral law enacted by one of the parties that results in overturning the final judgment is bad not because it is affected by the principles of res judicata but because it infringed the doctrine of separation of powers and the rule of law, as by such law, the legislature has clearly usurped the judicial power."

Relevant pages of the Order of the Hon'ble Supreme Court in ***State of Tamil Nadu v. State of Kerala*** reported in **(2014) 12 SCC 696** are annexed herewith as **ANNEXURE A-3**.

16. That therefore, the Government of Himachal Pradesh cannot legislate and come out with a Draft Development Plan in violation of the clear directions of this Hon'ble Tribunal in OA No. 121 of 2014. The power to overrule a judicial decision is not derived from the HP TCP Act, 1997 and therefore the Draft Development Plan, which is in violation of the directions of this Hon'ble Tribunal cannot be allowed to be implemented.

On the averment that the Development Plan has been prepared in compliance with the directions of the Hon'ble Tribunal in OA No. 121 of 2014

Construction in core area

17. That the Respondents have contended that the Development Plan has been prepared in compliance with the directions of the Hon'ble Tribunal in OA No. 121 of 2014.
18. That the Hon'ble Tribunal had prohibited all kinds of activities in the core and green area. It had directed:

"II. We hereby prohibit new construction of any kind, i.e. residential, institutional and commercial to be permitted henceforth in any part of the Core and Green/Forest area as defined under the various Notifications issued under the Interim Development Plan as well, by the State Government."

(Emphasis supplied)

19. That however, the Development Plan in Para 12.11.5 (h) has allowed construction to be undertaken in the core area, which is completely prohibited by the Hon'ble Tribunal. Further, by their

own admission in Para 10 (i) of the Counter Affidavit, they have violated the directions of the Hon'ble Tribunal by undertaking construction activities in core and green areas. They have categorically stated that,

"Only minimalistic construction activities and restrictive building regulations have been envisaged in the core and green area."

Construction in the green belts

20. That this Hon'ble Tribunal prohibited any kind of construction by direction in para 112 (II) of the judgment in the green / forest area in Shimla Planning Area by directing that:

"II. We hereby prohibit new construction of any kind, i.e. residential, institutional and commercial to be permitted henceforth in any part of the Core and Green/Forest area as defined under the various Notifications issued under the Interim Development Plan as well, by the State Government."

21. That the Respondents have undertaken construction in the green belt of one floor plus attic for residential use. This is not only clear from Sub-para 4 of Para 2 of Chapter 17 of the Draft Development Plan at page 251 but also by their own admission in Para 5(v) of the Counter Affidavit where the Respondents have claimed that *"the Development Plan for Shimla Planning area caters to this aspect of regulated construction in green areas only for residential use at a minimalistic scale"* and that *"minimum and limited construction can be allowed on vacant and sandwiched plots within the 26 hectares of private open land"*.

22. That Notification dated 11.08.2000 to the interim development plan prohibits any kind of construction in and around green / forest area. As per regulation 10.4.1.2 (x) (c) (i) of interim development

plan no construction is permitted in the green belt and provides that every effort shall be made to preserve and protect character of green belt.

23. That these forests labelled as "Green Belts" in Shimla were selected in 2000 in a strategic way to defend those areas of the urban forest which were near to the hill-top, apex / core area and therefore were most vulnerable to pressure from real estate construction, toxic construction and haphazard growth. Hence, the Green Belts played the most crucial role in defending the forests and ecosystem in Shimla. As such these patches (designated as Green belt / forests of Shimla are "*degraded, denuded part of the main forest*") and need to be given special care, afforestation and protection much more than the covered forest as per the National Forest Policy and the relevant Hon'ble Supreme Court judgment. Hence, these forests have been given double protection as 'Forests' and as 'Green belts' in the National Green Tribunal order in O.A. No. 121/ 2014.

Proposed height of the structures

24. That the Hon'ble Tribunal in its Judgment dated 16.11.2017 had directed the following with regard to height of the structures:

*"III. Beyond the Core, Green/Forest area and the areas falling under the authorities of the Shimla Planning Area, the construction may be permitted strictly in accordance with the provisions of the TCP Act, Development Plan and the Municipal laws in force. **Even in these areas, construction will not be permitted beyond two storeys plus attic floor. However, restricted to these areas, if any construction, particularly public utilities (the buildings like hospitals, schools and offices of essential services but***

would definitely not include commercial, private builders and any such allied buildings) are proposed to be constructed beyond two storeys plus attic floor then the plans for approval or obtaining NOC shall be submitted to the concerned authorities having jurisdiction over the area in question. It would be sanctioned only after the same have been approved and adequate precautionary and preventive measures have been provided by the special committee constituted under this judgement along with the Supervisory Committee."

(Emphasis supplied)

25. That the Draft Development Plan in Tables 7.6 and 17-11, construction is allowed beyond the permissible limit set by this Hon'ble Tribunal. Further, the Respondents by their own admission in Para 10 (iii) of the Counter Affidavit have stated that the height of the structures has been increased and stated that:

"keeping in view the new developments in technology will regard to construction, and to protect the green cover, the norm is to go vertically whenever and whatever permissible....

Keeping in view this aspect only, the Department has made regulations to permit the storeys as per the floor area ratio subject to the maximum heights of the building fixed for that particular area and use of that area."

26. That the direction of this Hon'ble Tribunal with respect to the height of the structures is also important in light of the fact that recent catastrophic events such as landslides have caused multi-storeyed buildings to collapse in Shimla. These natural disasters

are taking place due to the geographical vulnerability of Shimla and therefore, the height of structures has to be strictly maintained to avoid loss of life and property. These disasters have been reported to have taken place in 2021 as well as 2022 and have been widely reported in newspapers. These incidents were reported in India Today in an article titled, "*Multi-storey building in Shimla comes crashing down due to landslide, none hurt*" dated 30.09.2021, "*3-storey building in Shimla comes crashing down as rain batters Himachal*" dated 09.07.2022 and in NDTV in article titled, "*8-Storey Building Collapses Due To Landslide In Shimla*" dated 01.08.2021.

Copy of the newspaper articles dated 30.09.2021, 09.07.2022 and 01.08.2021 recording the collapse of multi-storeyed buildings in Shimla due to landslide are annexed herewith as **ANNEXURE A-4 (colly)**.

Construction in sinking zone of Shimla Planning area

27. The draft plan proposed by Town and Country Planning Department has allowed construction activity in the sinking and sliding area of Shimla Planning Area which is clear from Para 2 (ix) of Chapter 17 of the Development Plan. It states:

"9. Sinking and Sliding Area

i. The development permission shall be granted by the Competent Authority in whose jurisdiction the Sinking and Sliding Area falls.

ii. The Regulations as applicable for Core/Green Area and Non-Core Area shall be applicable in Sinking and Sliding Area."

28. In this regard, it is submitted that the Expert Committee report which was accepted by this Hon'ble Tribunal recommended in Recommendation No.7 that construction in sinking prone area and

sliding area must be avoided for any new construction. Further, the City Disaster Management Plan for Shimla prepared by Municipal Corporation of Shimla states that any further addition of load in sinking zone of Shimla is likely to be hazardous. The Disaster Plan for Shimla (annexed as **Annexure A/7** of the OA) informs that Ridge of Shimla was constructed, the hilltop was sliced and debris was dumped on the slopes and over the years it has stabilized and has become overloaded. Buildings in several heavily crowded localities in central part of the town have become unsafe as they fall in sinking zone. This Hon'ble Tribunal has also recorded in para 62 of the judgment dated 16.11.2017 in OA No. 121 of 2014 that any further addition of building load in sinking zone could be disastrous.

Scientific study done before allowing changes in the Draft Development Plan

29. That the Respondents have averred that a scientific study was conducted through various survey including HH Survey, Traffic volume count, road network inventory etc before making any changes in the Development Plan. However, this Hon'ble Tribunal had not granted any leave to undertake a scientific study and to further draft a Development Plan contrary to the directions of this Hon'ble Tribunal. Therefore, the Respondents could not have gone against the directions without taking leave from this Hon'ble Tribunal.

Carrying capacity study has been conducted before allowing changes in the Shimla Planning Area

30. That the Respondents have averred that the "*carrying capacity report of Shimla has duly raised the right key concerns but it misses out detail about the population density and it has not examined that how much population, per unit of land the complete*

Shimla Planning Area is capable of carrying and accommodating in future'.

31. That the Respondents have wrongly restricted the carrying capacity to only the population of that area and how many more people can the city accommodate based on the population density. However, the carrying capacity is not restricted to just the population of the area but also to other factors such as the impact of such population on the natural resources and the ability of the city to provide for the population of the area. This has been noted in the Judgment dated 16.11.2017 of this Hon'ble Tribunal in OA No. 121 of 2014 as well where it was stated that:

*"The **carrying capacity of Shimla city cannot afford any further building load, traffic load, destruction of green belt, forests and besides all that there is extreme scarcity of natural resources more particularly water.** The roads of Shimla are choked, due to which visitors and residents are stuck in traffic jams for hours together. There has been continuous and persistent degradation of environment and ecology in that area raising serious environmental concerns. There has also been large scale tree felling in the area in the name of development without undertaking precautionary measures including afforestation. Himachal Pradesh, particularly Shimla & its surrounding areas has been exposed to number of natural and manmade calamities including landslides, cloud burst, floods, change in temperature with huge financial costs and property loss including human lives which we have already discussed in some detail. As per the Government of India report on spatial distribution*

and concentration of landslides nearly 97.42% of the total geographical area of Himachal Pradesh is prone to landslides."

32. That the Hon'ble Tribunal in ***Ajay Khera Vs. Container Corporation of India Limited & Ors. (O.A. No. 568/2016)***

had also described in detail that carrying capacity is not restricted to just the population census of the area. It held:

*"17. As a yardstick of sustainability, urban carrying capacity is an important conceptual underpinning that must guide a welfare state in promoting sustainable urban development. **The concept of "carrying capacity" addresses the question as to how many people can be permitted into any area without the risk of degrading the environment of the area.** A dynamic city policy based on carrying capacity assessment is essential to ameliorate the conditions for urban development and residents living quality. Urban carrying capacity is needed to be developed to balance the demands on the resources on the one hand and the capacity of such resources consistent with the need for environment protection. This is the need for sustainable development. **Severely straining and degrading the available natural resources of a particular area without regard to capacity assessment is causing irreversible damage to the ecology in terms of pollution of air, water and earth.** What would happen to the traffic flow if all roads become parking? What happens to the road travelers, if there is no adequate oxygen in the air on account of excessive vehicles and congestion? How would unlimited housing be provided to people if the land resources are exhausted at particular place? How will*

water and waste disposal needs be met, if there is unplanned population density in a particular city?

...

Natural resources have got to be tapped for the purposes of social development but one cannot forget at the same time that tapping of resources have to be done with realistic approach to capacity of a city or area so that environment may not be affected in any serious way; so that there may not be depletion of water resources. Long-term planning must be undertaken consistent with capacity assessment. It has always to be remembered that the air and water are not without limitation."

(Emphasis supplied)

Relevant pages of the Order of the Hon'ble Tribunal in ***Ajay Khera Vs. Container Corporation of India Limited & Ors. (O.A. No. 568/2016)*** are annexed herewith as **ANNEXURE A-5**.

33. That therefore, restricting the calculation of carrying capacity to only the population density of the area is incorrect and incomplete and is not a complete measure of the depletion of natural resources of the area.
34. Therefore, in light of above, the Original Application may be allowed.

Through



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<p>3-Judge Bench</p> <p>2019 March 5</p>	<p>494</p>	<p>SUPREME COURT CASES</p>	<p>(2019) 18 SCC</p>	
		<p>(2019) 18 Supreme Court Cases 494</p>		
		<p>(BEFORE DR A.K. SIKRI, S. ABDUL NAZEER AND M.R. SHAH, JJ.)</p>		
		<p>MANTRI TECHZONE PRIVATE LIMITED .. Appellant;</p>		<p>a</p>
		<p><i>Versus</i></p>		
		<p>FORWARD FOUNDATION AND OTHERS .. Respondents.</p>		
		<p>Civil Appeals No. 5016 of 2016[†] with Nos. 8002-8003, 9227, 10992-95, 12152, 12156-60, 12326 of 2016, 1343, 4923-24 and 14966 of 2017 and 2246 of 2018, decided on March 5, 2019</p>		<p>b</p>
		<p>A. Environment Law — Polluter Pays Principle and Remedial/Compensatory/Punitive Measures — Nature and Scope — Power of NGT to direct Remedial/Compensatory/Punitive Measures</p>		
		<p>— NGT’s power to grant and give directions for relief, compensation and restitution under NGT Act, 2010 — Scope of — Overriding effect of NGT Act, 2010 over State legislation in cases of conflict — Extent of</p>		<p>c</p>
		<p>— Held, NGT while directing restoration of environment can specify buffer zones around specific lakes and water bodies in contradiction to zoning regulations under the State Municipal Corporation Act or Master Plan framed under town planning laws, as NGT Act has overriding effect — NGT Act being a Central Act enacted under Sch. VII List I Entry 13 of the Constitution shall have overriding effect over State legislation — Therefore, specific directions of NGT relating to penalty (on basis of pollution pays principle) and environmental restoration (liability being on project proponents, who had caused damage to water bodies), affirmed even if NGT’s direction relating to buffer zones (no construction zones of various lengths specified for water body types concerned) was different from zoning regulations of State Government</p>		<p>d</p>
		<p>— But general direction of NGT relating to all buffer zones not relating to project proponents and differing from State zoning regulations, set aside — Thus Direction/Condition (1) in order dt. 4-5-2016 in <i>Forward Foundation</i>, 2016 SCC OnLine NGT 1409, set aside except directions issued against R-9 & R-10</p>		<p>e</p>
		<p>— Constitution of India — Sch. VII List I Entry 13 — Water/River/Coastal Pollution — Water Conservation/Preservation, Development Projects and Interlinking of Rivers — Primacy of environmental laws over town planning laws — Wetlands (Conservation and Management) Rules, 2010 — Local Government, Municipalities and Panchayats — Town Planning — Ecology/Environmental clearance — Layout/Master/Zonal Plan — Primacy of environmental laws over — National Green Tribunal Act, 2010, Ss. 33, 14, 15, 20 and 22 (Paras 39 to 47 and 60 to 63)</p>		<p>f</p>
		<p>[Ed.: Project proponents are Respondents 9 and 10 in Original Application No. 222 of 2014 and appellants in in Civil Appeals Nos. 5016 and 8002-03 of 2016.]</p>		<p>g</p>
		<p>[†] Arising from the Judgment and Order in <i>Forward Foundation v. State of Karnataka</i>, 2015 SCC OnLine NGT 5 (National Green Tribunal, Principal Bench at New Delhi, Original Application No. 222 of 2014, dt. 7-5-2015) and <i>Forward Foundation v. State of Karnataka</i>, 2016 SCC OnLine NGT 1409 (National Green Tribunal, Principal Bench at New Delhi, Original Application No. 222 of 2014, dt. 4-5-2016)</p>		<p>h</p>

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SUPREME COURT CASES

(2019) 18 SCC

*Lal v. ESI Corpn.*⁶, para 17.) The existence of the Tribunal without its broad restorative powers under Section 15(1)(c) read with Section 20 of the Act, would render it ineffective and toothless, and shall betray the legislative intent in setting up a specialised Tribunal specifically to address environmental concerns. The Tribunal, specially constituted with Judicial Members as well as with experts in the field of environment, has a legal obligation to provide for preventive and restorative measures in the interest of the environment. a

45. Section 15 of the Act provides power and jurisdiction, independent of Section 14 thereof. Further, Section 14(3) juxtaposed with Section 15(3) of the Act, are separate provisions for filing distinct applications before the Tribunal with distinct periods of limitation, thereby amply demonstrating that jurisdiction of the Tribunal flows from these sections (i.e. Sections 14 and 15 of the Act) independently. The limitation provided in Section 14 is a period of 6 months from the date on which the cause of action first arose and whereas in Section 15 it is 5 years. Therefore, the legislative intent is clear to keep Sections 14 and 15 as self-contained jurisdictions. b c

46. Further, Section 18 of the Act recognises the right to file applications each under Section 14 as well as Section 15. Therefore, it cannot be argued that Section 14 provides jurisdiction to the Tribunal while Section 15 merely supplements the same with powers. As stated supra the typical nature of the Tribunal, its breadth of powers as provided under the statutory provisions of the Act as well as the scheduled enactments, cumulatively, leave no manner of doubt that the only tenable interpretation to these provisions would be to read the provisions broadly in favour of cloaking the Tribunal with effective authority. An interpretation that is in favour of conferring jurisdiction should be preferred rather than one taking away jurisdiction. d e

47. Section 33 of the Act provides an overriding effect to the provisions of the Act over anything inconsistent contained in any other law or in any instrument having effect by virtue of law other than this Act. This gives the Tribunal overriding powers over anything inconsistent contained in the KIAD Act, the Planning Act, the Karnataka Municipal Corporations Act, 1976 (the KMC Act); and the Revised Master Plan of Bengaluru, 2015 (RMP). A Central legislation enacted under Entry 13 of Schedule VII List I of the Constitution of India will have the overriding effect over State legislations. The corollary is that the Tribunal while providing for restoration of environment in an area, can specify buffer zones around specific lakes and waterbodies in contradiction with zoning regulations under these statutes or RMP. f g

48. The second question raised by the appellants is that the petition is barred by time. According to the appellants, environmental clearance was granted to Respondent 9 on 17-2-2012 for which notice was published in the leading newspaper on 12-3-2012 and 14-3-2012. Modified building plan was approved on 30-8-2012, which was followed up to 10-8-2014. Similar events had taken place in regard to the project of Respondent 10 who had been h

t.c.

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(2017) 1 Supreme Court Cases 121 : 2016 SCC OnLine SC 1252

In the Supreme Court of India

(BEFORE ANIL R. DAVE, P.C. GHOSE, SHIVA KIRTI SINGH, A.K. GOEL AND AMITAVA ROY, JJ.)

PUNJAB TERMINATION OF AGREEMENT ACT, 2004, IN RE

Special Reference No. 1 of 2004[±], decided on November 10, 2016

A. Infrastructure Laws – Water and Water Resources – Water disputes – Sutlej-Yamuna Canal link – Sharing of river water by State of Punjab with State of Haryana – Haryana constructing canal on its side by making huge investments but State of Punjab delaying in constructing canal in spite of valid agreements and decree under Art. 131 of the Constitution and orders of Supreme Court to complete it within specified time period

– Instead, State of Punjab enacting the Punjab Termination of Agreements Act, 2004 (Punjab Act) to discharge itself of its obligations under said agreements and decree and final order of Supreme Court – Answering the reference under Art. 143, Punjab Act, held, invalid

– Held (*per curiam*), State of Punjab cannot absolve itself from the liabilities arising out of agreement in question – Not only is there a valid agreement between Punjab and Haryana, there is a legal sanction for its enforcement by a binding decree behind it under Art. 131 of the Constitution – Disputes regarding waters of inter-State river or river valleys can be redressed by Tribunal constituted by Parliament for the same under Art. 262 – But State Government cannot exercise its legislative power even by invoking public trust doctrine to nullify effect of said decree passed by highest court which has attained finality – **If legislature overturns a final judgment of the Supreme Court, it is bad because it violates not only (a) the principle of res judicata but also (b) the doctrine of separation of powers, as the legislature usurps the judicial power to adjudicate**

– Further, pending decision of Tribunal, one of the parties (State of Punjab in present case) cannot unilaterally terminate the agreement by legislation, which agreement it was liable to enforce – Such unilateral termination is contrary to Constitution of India as well as Inter-State Water Disputes Act, 1956

– Further, legislature (Parliament and State Legislatures) cannot be a judge in their own cause in a federal dispute with another State – Permitting this would lead to contradictory and irreconcilable laws – Therefore, in order to obviate likelihood of such contradictory and irreconcilable laws and to provide forum for adjudication of federal disputes, Constitution-makers have enacted Arts. 131 and 262 – In federal disputes, Parliament or State Legislatures by law, if seek to decide a dispute between the two States or between the Union and one or more States directly or indirectly, the adjudicatory mechanism provided in Arts. 131 and 262 of the Constitution



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would be rendered nugatory and, therefore, such legislation cannot be constitutionally countenanced being violative of separation of powers doctrine – Therefore, held, Punjab Act cannot be said to be valid – Reference accordingly answered

– Held (*per S.K. Singh, supplementing*), awareness about our federal set-up and its essential and peculiar features is necessary to keep the system healthy – Constitution envisages a pronounced bias and obvious tilt towards the Central legislation not only during emergency but also during normal times – And the executive powers are understandably coterminous with the legislative powers

– Further, on doctrine of separation of powers, Constitution authorises Supreme Court to interpret and protect Constitution and the laws – Indians have a single Constitution and single citizenship – Judicial power is exercisable by single set of courts with Supreme Court at the apex of hierarchy – It has enormous powers and duties on appellate as well as on original side – Therefore, **no Government can usurp such power of adjudicating disputes vested in judiciary – Judgments and decrees are end product of exercise of judicial power and these cannot be set at naught by a legislative declaration** – Situation is somewhat different when a competent

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32. Upon hearing the learned counsel and going through the record pertaining to the case and upon perusal of the judgments cited by the learned counsel, we are of the view that the Punjab Act cannot be considered to be legal and valid and the State of Punjab cannot absolve itself from its duties/liabilities arising out of the agreement in question.

33. As stated hereinabove, it is not in dispute that there was a litigation between the State of Punjab and the State of Haryana and ultimately a decree was made whereby the arrangement with regard to sharing of water as per the agreement dated 31-12-1981 had been made. There is, thus, a legal sanction to the said arrangement and once a binding decree has been passed by a court of law, a party to the litigation cannot unilaterally act in a manner which would nullify the effect of the decree.

34. In the instant case, instead of approaching the appropriate authority, namely, the Tribunal for appropriate relief, the State of Punjab exercised its legislative power by enacting the Punjab Act so as to nullify the effect of the decree.

35. Dealing with a similar issue, this Court in *State of T.N.*¹⁰, has held that a State "cannot through legislation do an act in conflict with the judgment of the highest court which has attained finality. If a legislation is found to have breached the established constitutional limitation such as separation of powers, it has to go and cannot be allowed to remain". (SCC p. 783, para 146)

36. It has been further observed by this Court as under : (*State of T.N. case*¹⁰, SCC pp. 783-84, paras 147, 149 & 150)

"147. It is true that the State's sovereign interests provide the foundation of the public trust doctrine but the judicial function is also a very important sovereign function of the State and the foundation of the rule of law. The legislature cannot by invoking "public trust doctrine" or "precautionary principle" indirectly control the action of the courts and directly or indirectly set aside the authoritative and binding finding of fact by the court, particularly, in situations where the executive branch (Government of the State) was a party in the litigation and the final judgment was delivered after hearing them.

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149. This Court in *Mullaperiyar Environmental Protection Forum v. Union of India*¹¹, after hearing the State of Kerala, was not persuaded by Kerala's argument that the Mullaperiyar Dam was unsafe or storage of water in that Dam cannot be increased. Rather, it permitted Tamil Nadu to increase the present water level from 136 ft to 142 ft and restrained Kerala from interfering in Tamil Nadu's right in increasing the water level

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in the Mullaperiyar Dam to 142 ft. Thus, a judgment has been given by this Court in contest between the two States in respect of safety of Mullaperiyar Dam for raising the water level to 142 ft. The essential element of the judicial function is the decision of a dispute actually arising between the parties and brought before the court. Necessarily, such decision must be binding upon the parties and enforceable according to the decision. A plain and simple judicial decision on fact cannot be altered by a legislative decision by employing doctrines or principles such as "public trust doctrine", "precautionary principle", "larger safety principle" and, "competence of the State Legislature to override agreements between the two States". The constitutional principle that the legislature can render judicial decision ineffective by enacting validating law within its legislative field fundamentally altering or changing its character retrospectively has no application where a judicial decision has been rendered by recording a finding of fact. Under the pretence of

power, the legislature, cannot neutralise the effect of the judgment given after ascertainment of fact by means of evidence/materials placed by the parties to the dispute. A decision which disposes of the matter by giving findings upon the facts is not open to change by legislature. A final judgment, once rendered, operates and remains in force until altered by the court in appropriate proceedings.

150. The 2006 (Amendment) Act plainly seeks to nullify the judgment of this Court which is constitutionally impermissible. Moreover, it is not disputed by Kerala that the 2006 (Amendment) Act is not a validation enactment. Since the impugned law is not a validating law, it is not required to inquire whether in making the validation the legislature has removed the defect which the Court has found in existing law. The 2006 (Amendment) Act in its application to and effect on the Mullaperiyar Dam is a legislation other than substantially legislative as it is aimed at nullifying the prior and authoritative decision of this Court. The nub of the infringement consists in the Kerala Legislature's revising the final judgment of this Court in utter disregard of the constitutional principle that the revision of such final judgment must remain exclusively within the discretion of the court."

37. It has been further observed in the said judgment that a litigating person cannot become judge in its own cause. The said well-known principle has been clearly depicted in para 158 of the said judgment as under : (*State of T.N. case*¹⁰, SCC p. 787, para 158)

"158. There is yet another facet that in federal disputes, the legislature (Parliament and State Legislatures) cannot be judge in their own cause in the case of any dispute with another State. The rule of law which is the basic feature of our Constitution forbids the Union and the States from deciding, by law, a dispute between two States or between the Union and one or more States. If this was permitted under the Constitution, the Union and the States which have any dispute between them inter se would enact law establishing its claim or right against the other and that would lead

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to contradictory and irreconcilable laws. The Constitution-makers in order to obviate any likelihood of contradictory and irreconcilable laws being enacted has provided for independent adjudication of federal disputes. Article 131 of the Constitution confers original jurisdiction upon this Court in relation to the disputes between the Government of India and one or more States or between the Government of India and any State or States on one side and one or more States on the other or between two or more States insofar as dispute involves any question on which the existence or extent of a legal right depends. The proviso appended to Article 131 carves out an exception to the jurisdiction of this Court to a dispute arising out of treaty, agreement, covenant, engagement, sanad or other similar instrument which have been entered into or executed before the commencement of the Constitution and continues in operation after such commencement, which are political in nature. In relation to dispute relating to waters of inter-State river or river valleys, Article 262 provides for creation of tribunal or forum for their adjudication. In federal disputes, Parliament or State Legislatures by law, if seek to decide a dispute between the two States or between the Union and one or more States directly or indirectly, the adjudicatory mechanism provided in Articles 131 and 262 of the Constitution would be rendered nugatory and, therefore, such legislation cannot be constitutionally countenanced being violative of separation of powers doctrine."

38. Finally, on the subject on hand, this Court observed as under in para 160 : (*State of T.N. case*¹⁰, SCC p. 788)

"160. Where a dispute between two States has already been adjudicated upon by this Court, which it is empowered to deal with, any unilateral law enacted by one of the parties that results in overturning the final judgment is bad not because it is affected

Legislature. Executive powers are understandably coterminous with the legislative powers.

47. Of utmost significance, in the context at hand is supremacy of the Constitution. Even to the permissible extent, it can be amended only by the Union Parliament. The Constitution grants and recognises supreme authority to

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the courts to not only interpret but also to protect the Constitution and the laws. Regardless of other features showing the Indian model to be only quasi-federal, the Indian Constitution is very explicit and emphatic in creating checks and balances by providing for a strong and independent judiciary and a well-defined constitutional mechanism for resolving conflicts between the executive and legislative authority of the Union and those of the States. Indians have given to themselves a single Constitution and single citizenship. Judicial power is exercisable by a single set of courts within their territorial jurisdictions. The High Courts are final courts at State level with constitutional powers under Articles 226 and 227. The Supreme Court is undoubtedly the apex court in the hierarchy with amalgam of ultimate powers over decisions of all courts — civil, criminal, revenue and quasi-judicial tribunals. Its powers and duties are enormous not only on the appellate side but under Article 32 of the Constitution and other original jurisdictions such as Constitutional References and also original suits where the disputes may be between the States or between Union and States, etc.

48. From the abovementioned set-up under our Constitution, there is no difficulty in concluding that no Government, whether Central or State, can usurp the power of adjudicating disputes vested in the judiciary including High Courts and the Supreme Court. Further, as a corollary, the judgments and decrees which are the end product of exercise of judicial power cannot be set at naught by the process of legislative declaration in respect of facts and circumstances. As explained already in the main judgment, the situation is somewhat different when a competent legislature engages itself in the exercise of validating a law declared defective or invalid for reasons which are curable.

49. An observation necessitated by the somewhat disturbing facts : delay in execution of a final judgment or decree, more so when it is of the Apex Court, should never be countenanced by any authority because it would surely tend to undermine people's faith in the judicial system of the country, entailing in turn avoidable harm to all the institutions and functionaries under the Constitution, may be even to the Constitution itself.

[†] Under Article 143(1) of the Constitution of India

[†] Shiva Kirti Singh, J. delivered a separate supplementing opinion as well.

¹ *State of Haryana v. State of Punjab*, (2002) 2 SCC 507

² *State of Haryana v. State of Punjab*, (2004) 12 SCC 673

³ *Punjab Termination of Agreements Act, 2004, In re*, Special Reference No. 1 of 2004, order dated 2-8-2004 (SC)

⁴ *State of Haryana v. State of Punjab*, (2004) 12 SCC 712

⁵ *Commonwealth of Virginia v. State of West Virginia*, 55 L Ed 353 : 220 US 1 (1911) : 1911 SCC OnLine US SC 39, para 19

⁶ *Punjab Termination of Agreement Act, 2004, In re*, (2016) 16 SCC 804

⁷ *Natural Resources Allocation, In re, Special Reference No. 1 of 2012*, (2012) 10 SCC 1

⁸ *Centre for Public Interest Litigation v. Union of India*, (2012) 3 SCC 1

⁹ *Cauvery Water Disputes Tribunal, In re*, 1993 Supp (1) SCC 96 (2)

¹⁰ *State of T.N. v. State of Kerala*, (2014) 12 SCC 696

t.c.

Shivam Singh

696	SUPREME COURT CASES	(2014) 12 SCC
(2014) 12 Supreme Court Cases 696		
(BEFORE R.M. LODHA, C.J. AND H.L. DATTU, CHANDRAMAULI KR. PRASAD, MADAN B. LOKUR AND M. YUSUF EQBAL, JJ.)		
	Original Suit No. 3 of 2006 [†]	a
STATE OF TAMIL NADU	..	Plaintiff;
<i>Versus</i>		
STATE OF KERALA AND ANOTHER	..	Defendants. b
<i>With</i>		
SLP (C) No. 13955 of 2012		
C.R. NEELAKANDAN AND ANOTHER	..	Petitioners;
<i>Versus</i>		
UNION OF INDIA AND OTHERS	..	Respondents. c
Original Suit No. 3 of 2006 with SLP (C) No. 13955 of 2012, decided on May 7, 2014		
<p>A. Constitution of India — Arts. 245, 131, 50, 32, 136 and 226 — Separation of powers — Validating Act or nullification of judicial verdict — Water storage level of Mullaperiyar Dam — Restoration of water level to 142 ft — Directions of Supreme Court regarding in (2006) 3 SCC 643 — Subsequent enactment of Kerala Irrigation and Water Conservation (Amendment) Act, 2006 fixing and limiting Full Reservoir Level (FRL) to 136 ft — Legislature if usurped judicial power — Held, 2006 (Amendment) Act plainly seeks to nullify judgment of Supreme Court which is constitutionally impermissible — Moreover, 2006 (Amendment) Act is not a validation enactment — 2006 (Amendment) Act in its application to and effect on Mullaperiyar Dam is a legislation other than substantially legislative as it is aimed only at nullifying the prior and authoritative decision of the Court — Its unconstitutionality consists in State Legislature’s attempt at revising the final judgment of Supreme Court, in utter disregard of the constitutional principle that the revision of such final judgment must remain exclusively within the discretion of the court — What has been found as a fact by judicial determination cannot be declared otherwise by applying legal fiction by the legislature</p>		
<p>— Furthermore, State of T.N. has been able to establish that invasion of its rights is substantial — Thus, State of Kerala restrained by a decree of permanent injunction from applying and enforcing the impugned legislation or in any manner interfering with or obstructing State of T.N. from increasing water level to 142 ft and from carrying out the repair works as per judgment in (2006) 3 SCC 643 — However, to allay apprehensions of Kerala, though none are warranted, about the safety of the Mullaperiyar Dam on restoration of the FRL to 142 ft, a three-Member Supervisory</p>		
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		e
		f
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[†] Under Article 131 of the Constitution of India

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SUPREME COURT CASES

(2014) 12 SCC

159. Mr Harish Salve, learned Senior Counsel is right in his submission that a legislation can never be challenged on the principles of res judicata and that it binds a party and not the legislature. The question here is not that the 2006 (Amendment) Act is unconstitutional on the ground of res judicata but the question is, when a categorical finding has been recorded by this Court in the earlier judgment that the Dam is safe for raising the water level to 142 ft and permitted the water level of the dam being raised to 142 ft and that judgment has become final and binding between the parties, has the Kerala Legislature infringed the separation of powers doctrine in enacting such law? In what has already been discussed above, the answer to the question has to be in the affirmative and we hold so.

160. Where a dispute between two States has already been adjudicated upon by this Court, which it is empowered to deal with, any unilateral law enacted by one of the parties that results in overturning the final judgment is bad not because it is affected by the principles of res judicata but because it infringes the doctrine of separation of powers and rule of law, as by such law, the legislature has clearly usurped the judicial power.

Res judicata

161. It is true that the 2006 judgment was rendered in exercise of the jurisdiction of this Court under Article 32 of the Constitution and the petitions which were transferred to this Court under Article 139-A but to say that such judgment does not bind this Court while deciding the present suit, which confers exclusive jurisdiction upon it, is not correct. The earlier decision of this Court by no stretch of imagination can be regarded as a judgment rendered without jurisdiction. A finding recorded by this Court in the proceedings under Article 32 is as effective and final as in any other proceedings.

162. The rule of res judicata is not merely a technical rule but it is based on high public policy. The rule embodies a principle of public policy, which in turn, is an essential part of the rule of law. In *Duchess of Kingston*⁷⁰, the House of Lords (in the opinion of Sir William de Grey) has observed:

“From the variety of cases relative to judgments being given in evidence in civil suits, these two deductions seem to follow as generally true: first, that the judgment of a court of concurrent jurisdiction, directly upon the point, is as a plea, a bar, or as evidence, conclusive, between the same parties, upon the same matter, directly in question in another court; secondly, that the judgment of a court of exclusive jurisdiction, directly upon the point, is, in like manner, conclusive upon the same matter, between the same parties, coming incidentally in question in another court, for a different purpose.”

163. *Corpus Juris* explains that res judicata is a rule of universal law pervading every well-regulated system of jurisprudence, and is put upon two grounds, embodied in various maxims of the common law; the one, public policy and necessity, which makes it to the interest of the State that there should be an end to litigation; and the other, the hardship on the individual that he should be vexed twice for the same cause.

t.c.

70 (1776) 2 Smith LC 644 at p. 645 (13 Edn.)

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3-storey building in Shimla comes crashing down as rain batters Himachal | Watch

indiatoday.in/india/story/3-storey-building-shimla-collapses-heavy-rains-himachal-1973756-2022-07-09

India Today Web Desk

July 9, 2022



A three-storey building in Himachal Pradesh's Shimla district collapsed on Saturday afternoon.

The building collapsed in Chopal market around 12.30 pm. However, no loss of life has been reported as the building was vacated before it collapsed.

A branch of UCO Bank, a dhaba, a bar and some other business establishments were located in the building.

Being the second Saturday of the month, there was a holiday in the bank located on the top floor of the building, and none of the seven employees working in the bank were present at the time of the incident, said Ramesh Dadhwal, Chief Manager at UCO Bank's Zonal Branch in Shimla.

As per the information provided to me by one of the employees posted there, some men sitting in the bar on the ground floor noticed sudden cracks in the window glasses, he said, adding that, realising the danger, they immediately ran out of the building and alerted other people sitting in the bar and dhaba.

[READ | Twin Towers demolition: Residents skeptical about safety measures; experts assure of utmost caution](#)

[Live TV](#)

ON CAM | Multi-storey building in Shimla comes crashing down due to landslide, none hurt

indiatoday.in/india/story/multi-storey-building-collapses-in-shimla-due-to-landslide-1859314-2021-09-30

Manjeet Sehgal

September 30, 2021



A multi-storey building collapsed in Kachighati area of Shimla on Thursday due to a landslide triggered by heavy rains. No loss of life was reported.

Some cracks appeared in the eight-storey building in the morning, after which the building was vacated. The building crashed a few hours later.

A video of the building collapse also went viral on social media.

The debris also hit some other houses, threatening half a dozen buildings.

In the Kachi Ghati area, most of the buildings are built on the hill and the ground there has been sinking for a long time.

Watch: 8-Storey Building Collapses Due To Landslide In Shimla

 [ndtv.com/india-news/watch-multi-storey-building-collapses-due-to-landslide-in-shimla-2559428](https://www.ndtv.com/india-news/watch-multi-storey-building-collapses-due-to-landslide-in-shimla-2559428)

Press Trust of India

October 1, 2021



Shimla: No casualties have been reported in the incident so far.

Shimla:

A landslide triggered by recent rains has led to the collapse of a multi-storey building which in turn damaged two adjacent structures, a senior disaster management official said on Friday.

No loss of life has been reported in the incident, he said.

According to Himachal Pradesh State Disaster Management Authority Director Sudesh Kumar Mokhta, the eight-storey building at Ghoda Chowki near Hali Palace in Shimla collapsed on Thursday afternoon due to a landslide triggered by recent rains.

Parts of the eight-storey structure hit two two-storey buildings, damaging them, he said, adding two adjoining buildings, including a hotel, were also at risk.

Mr Mokhta said the district administration has provided Rs 10,000 as immediate financial aid to each of the occupants of the buildings.

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@himalnews7

	<p>Item No. 01</p> <p>October 26, 2018</p> <p>A</p>	<p>it was observed that the relevance of the concept of carrying capacity to the concept of sustainability adds to its value for organizing the management framework.</p> <p>In the light of the current scenario, a similar assessment is necessitated in NCT Delhi.</p> <p>17. As a yardstick of sustainability, urban carrying capacity is an important conceptual underpinning that must guide a welfare state in promoting sustainable urban development. The concept of “carrying capacity” addresses the question as to how many people can be permitted into any area without the risk of degrading the environment of the area. A dynamic city policy based on carrying capacity assessment is essential to ameliorate the conditions for urban development and residents living quality. Urban carrying capacity is needed to be developed to balance the demands on the resources on the one hand and the capacity of such resources consistent with the need for environment protection. This is the need for sustainable development. Severely straining and degrading the available natural resources of a particular area without regard to capacity assessment is causing irreversible damage to the ecology in terms of pollution of air, water and earth. What would happen to the traffic flow if all roads become parking? What happens to the road travelers, if there is no adequate oxygen in the air on account of excessive vehicles and congestion? How would unlimited housing be provided to people if the land resources are exhausted at particular place? How</p>
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	<p>Item No. 01</p> <p>October 26, 2018</p> <p>A</p>	<p>will water and waste disposal needs be met, if there is unplanned population density in a particular city? These questions require serious consideration. “Urban disease” frequently besetting the cities such as traffic congestion, housing shortage, lack of amenity, pose actual challenges and impediments to sustainable development. While emergency measures such as the odd-even scheme, limiting the flow of tourist vehicles and restraining the timing of fire crackers may help momentarily such as is contemplated under the ‘Graded Response Action Plan’, long term assessment of physical and environmental carrying capacity and devising measures to restrict overuse on reaching optimum capacity is inevitable to ensure sustainable development. Without such assessment and action, the very survival of people is threatened what to talk of working towards Sustainable Development Goals, 2030 to tackle climate change may remain only a dream. Sustainable development is essential policy and strategy for continued economic and social development without detriment to the environment and natural resources on the quality of which continued activity and further development depend¹⁶. Natural resources have got to be tapped for the purposes of social development but one cannot forget at the same time that tapping of resources have to be done with realistic approach to capacity of a city or area so that environment may not be affected in any serious way;</p>
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¹⁶ (2002) 10 SCC 606 T.N. Godavarman Thirumulpad Vs. Union of India, , dated 30.10.2002

	<p>Item No. 01</p> <p>October 26, 2018</p> <p>A</p>	<p>so that there may not be depletion of water resources.</p> <p>Long-term planning must be undertaken consistent with capacity assessment. It has always to be remembered that the air and water are not without limitation¹⁷.</p> <p>18. Accordingly, we consider it necessary to direct assessment of carrying capacity for the NCT Delhi as well as other major cities particularly 102 “non-attainment cities” within reasonable time preferably in one year. Such study can be in phases depending on priority areas having pollution hot spots. Such assessment must specifically study capacity in terms of number of vehicles, extent of population, extent of different nature of activities – institutional, industrial, commercial etc.</p> <p>19. The Ministry of Urban Development in coordination with the Central Pollution Control Board, Ministry of Transport and other concerned Ministries, the Authorities such as Planning Commission as well the States may carry out such study with the assistance of experts in the field. Methodology to do so may be worked out within two months.</p> <p>20. As a result of such study, further policy decisions may be taken by concerned Authorities for comprehensive action for checking air pollution in the interest of public health. This may also result in regulation of logistics and infrastructure. The CPCB may act as nodal agency.</p>
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t.c.

¹⁷ 1986 Supp (1) SCC 517 Rural Litigation & Entitlement Kendra, Dehradun Vs. Stat of UP (Doon Valley Case), AIR 1987 SC 359, dated 18.12.1986